

## KRS § 190.010

Current through 2022 legislation effective as of July 14, 2022.

***Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)***

### **190.010. Definitions for chapter.**

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As used in this chapter:

- (1)** “Manufacturer” means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term “manufacturer” shall include the following terms:

  - (a)** “Distributor” which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers;
  - (b)** “Factory branch” which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers;
  - (c)** “Factory representative” which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers;
  - (d)** “Distributor branch” which means a branch office similarly maintained by a distributor or wholesaler for the same purposes; and
  - (e)** “Distributor representative” which means a representative similarly employed by a distributor, distributor branch, or wholesaler;
- (2)** “Motor vehicle dealer” means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto;
- (3)** The term “motor vehicle dealer” shall not include:

  - (a)** Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
  - (b)** Public officers while performing their official duties; or

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- (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees;
- (4) “New motor vehicle dealer” means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer’s new motor vehicles;
- (5) “New motor vehicle dealership facility” means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles;
- (6) “Used motor vehicle dealer” means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles or autocycles as defined in KRS 186.010, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties;
- (7) “Motor vehicle leasing dealer” means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers;
- (8) “Restricted motor vehicle dealer” means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation;
- (9) “Motorcycle dealer” means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles, including alternative-speed motorcycles as defined in KRS 186.010 and autocycles as defined in KRS 186.010. Motorcycles shall not include mopeds as defined in this section;
- (10) “Motor vehicle salesperson” means any person who is employed as a salesperson by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction;
- (11) “Motor vehicle auction dealer” means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction;
- (12) “Motor vehicle” means every vehicle intended primarily for use and operation on the public highways that is self-propelled including low-speed motor vehicles as defined in KRS 186.010, but shall not include any recreational vehicle or farm tractors and other machines and tools used in the production, harvesting, and care of farm products;
- (13) “New motor vehicle” means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer;
- (14) “Moped” means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- (15) “Commission” means the Motor Vehicle Commission;
- (16) “Commissioner” means the commissioner of the department;

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- (17)** “Department” means the Department of Vehicle Regulation;
- (18)** “Licensor” means the commission;
- (19)** “Established place of business” means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances;
- (20)** “Person” means a person, partnership, firm, corporation, association, trust, estate, or other legal entity;
- (21)** “Franchise” means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product;
- (22)** “Good faith” means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b);
- (23)** “Designated family member” means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer’s ownership interest in the dealership under the terms of the dealer’s will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer’s property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer;
- (24)** “Fraud” means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact;
- (25)** “Sale” means the issuance, transfer, agreement for transfer, exchange, lease, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise;
- (26)** “Automotive mobility dealer” means any motor vehicle dealer who:
- (a)** Exclusively engages in the business of selling, offering to sell, or soliciting or advertising the sale of adapted vehicles;
  - (b)** Possesses adapted vehicles exclusively for the purpose of resale, either on his or her own account or on behalf of another, as his or her primary business or incidental thereto; or
  - (c)** Engages in the business of selling, installing, or servicing; offering to sell, install, or service; or soliciting or advertising the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a motor vehicle by an aging or disabled person;
- (27)** “Adapted vehicle” means a new or used motor vehicle especially designed or modified for use by an aging or disabled person;
- (28)** “Mobility equipment” means equipment specifically designed to facilitate the use of a motor vehicle by an aging or disabled person;
- (29)** “Nonprofit motor vehicle dealer” means a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that purchases motor vehicles that it may offer for purchase to clients and other individuals who meet the definition of client as defined in this section and who are referred to the organization by public or private social service agencies;

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(30) "Client" means a person who has an open case file with a nonprofit organization or governmental agency and who meets the standards for disability or disadvantaging condition as established in administrative regulations promulgated by the commission pursuant to KRS 190.032(4);

(31) "Recreational vehicle" means a vehicle that:

- (a) Is primarily designed as temporary living quarters for noncommercial recreation or camping use;
- (b) Has its own motive power or is towed by another vehicle;
- (c) Is regulated by the National Highway Traffic Safety Administration as a vehicle; and
- (d) Does not require a special highway use permit; and

(32) "New recreational vehicle dealer" means a new recreational vehicle dealer as defined in KRS 190A.010.

## History

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### HISTORY:

Enact. Acts 1956, ch. 161, § 1; 2017, ch. 69, § 4, effective June 29, 2017.

Annotations

## NOTES TO DECISIONS

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### 1.Salesman.

### 2.Vehicle Acquired for Resale.

#### 1. Salesman.

Individual who sold pick-up truck was not a motor vehicle salesperson under this section and was not subject to its provisions. *Greene v. Waddell*, 657 S.W.2d 589, 1983 Ky. App. LEXIS 321 (Ky. Ct. App. 1983).

#### 2. Vehicle Acquired for Resale.

Car purchased by dealership, to be transferred as gift to son of dealership's owner, was still considered to be a vehicle acquired for resale, with regard to statutes on titling and registration of cars. *Hartford Acci. & Indem. Co. v. Maddix*, 842 S.W.2d 871, 1992 Ky. App. LEXIS 208 (Ky. Ct. App. 1992).

### Cited:

*American Motors Sales Corp. v. Runke*, 708 F.2d 202, 1983 U.S. App. LEXIS 28110 (6th Cir. 1983); *Blair v. General Motors Corp.*, 838 F. Supp. 1196, 1993 U.S. Dist. LEXIS 17728 (W.D. Ky. 1993).

## Opinion Notes

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Opinions of Attorney General.

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To determine whether a bank or finance company is a “dealer” needing a license and a dealer’s registration tag in disposing of automobiles on which there is a deficiency the definition in KRS 139.110(1)(c) (now repealed) is used. OAG 62-954.

Motor vehicle dealers in states other than Kentucky are eligible to respond to invitations to bid on new motor vehicles and subsequently sell the vehicles to Kentucky upon proper award, even though they are not licensed as dealers under this section, since the statutes under KRS Chapter 190, and the Model Procurement Code, KRS Chapter 45A, are not in pari materia and do not have to be construed together. OAG 81-89. (OAG 78-464 withdrawn.)

## Research References & Practice Aids

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### Research References and Practice Aids

#### Cross-References.

Contracts, formality and assignability, KRS ch. 371.

Interest and usury, KRS ch. 360.

Lien on motor vehicles and contents for towing, recovery, storage, transporting, and other applicable charges — Attempt to notify registered owner — Inspection of vehicle and contents prior to release — Forfeiture and sale of contents — Limitation of storage or growing company’s liability, KRS 376.270, 376.275.

Seat belt anchors required in new passenger vehicles, KRS 189.125.

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## KRS § 190.015

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### **190.015. Public policy declared.**

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The Legislature finds and declares that the distribution and sale of vehicles within this state vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate and license vehicle manufacturers, distributors or wholesalers, brokers and auctioneers, and factory or distributor representatives, and to regulate and license dealers of vehicles doing business in this state, in order to prevent frauds, impositions, and other abuses upon its citizens, and to protect and preserve the investments and properties of the citizens of this state.

### **History**

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Enact. Acts 1966, ch. 175, § 6; 1982, ch. 373, § 2, effective July 15, 1982.

Annotations

### **NOTES TO DECISIONS**

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#### **1. Legislative Intent.**

#### **2. Invalid Regulation.**

#### **1. Legislative Intent.**

The General Assembly did not intend to enact this section for the protection of out-of-state dealerships. *BMW Stores, Inc. v. Peugeot Motors of America, Inc.*, 860 F.2d 212, 1988 U.S. App. LEXIS 14522 (6th Cir. Ky. 1988).

#### **2. Invalid Regulation.**

A regulation by the Motor Vehicle Commission which restricted off-site sales of motor vehicles was properly ruled to be invalid for lack of any legitimate purpose and was further held to contain several key provisions which were individually unconstitutional. *Motor Vehicle Com. v. Hertz Corp.*, 767 S.W.2d 1, 1989 Ky. App. LEXIS 39 (Ky. Ct. App. 1989).

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## KRS § 190.020

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### **190.020. Commission to issue licenses and supervise licensees.**

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The commission shall, under administrative regulations promulgated by it, issue the licenses provided for by KRS 190.010 to 190.080 and shall have supervision over the licensees thereunder in respect to all the provisions of KRS 190.010 to 190.080.

### **History**

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Enact. Acts 1956, ch. 161, § 2; 1966, ch. 175, § 2; 1982, ch. 374, § 5, effective July 15, 1982; 1984, ch. 357, § 2, effective July 13, 1984.

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## KRS § 190.030

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*Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)*

### **190.030. License requirement — Application for license — Time within which license to be granted or refused — Licenses to be displayed — Administrative regulations establishing fees — Temporary sale or display — Bond — Reports by motor vehicle dealer and new recreational dealer. [Effective July 14, 2022]**

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(1)

(a) Except as provided in paragraph (b) of this subsection, a motor vehicle dealer, new, used, or auction motor vehicle dealer, nonprofit motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, new recreational vehicle dealer, a salesperson of motor vehicles, or a salesperson of new recreational vehicles shall not engage in business in this state at any location without a license issued for that location as provided in KRS 190.010 to 190.080.

(b) An entity identified in paragraph (a) of this subsection with an established place of business may conduct sales activities via the Internet and deliver vehicles sold or leased by the licensed dealer to a customer at the customer's residence or other suitable location, as long as the sale, lease, or delivery is requested by the customer.

(c) If a person licensed as a motor vehicle dealer or new recreational vehicle dealer acts as a motor vehicle salesperson or a new recreational vehicle salesperson, that person shall secure a motor vehicle salesperson's license or a new recreational vehicle salesperson's license in addition to a license for a motor vehicle dealer or for a new recreational vehicle dealer.

(2) A manufacturer of motor vehicles, recreational vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.

(3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.

(4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require, as part of the application process, information relating to the applicant's solvency, financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.

(5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.

(6)

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**(a)** The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish annual license fees, not to exceed five hundred dollars (\$500), for:

1. New motor vehicle dealers;
2. Used motor vehicle dealers;
3. Motor vehicle leasing dealers;
4. Restricted motor vehicle dealers;
5. Motorcycle dealers;
6. Motor vehicle manufacturers and factory branches;
7. Distributors, motor vehicle auction dealers, and wholesalers;
8. Factory representatives and distributor branch representatives;
9. Automotive mobility dealers;
10. Nonprofit motor vehicle dealers;
11. Recreational vehicle manufacturers and distributors; and
12. New recreational vehicle dealers.

**(b)** The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish annual license fees, not to exceed fifty dollars (\$50), for motor vehicle salespersons and new recreational vehicle salespersons.

**(c)** In addition to the annual license fees established under paragraph (b) of this subsection, the commission may promulgate administrative regulations in accordance with KRS Chapter 13A to establish licenses and appropriate fees for other licensee activities.

**(d)** A license fee imposed on motor vehicle salespersons and new recreational vehicle salespersons shall be paid by the licensed dealer for every salesperson the dealer employs.

**(e)** A license fee shall not be imposed on nonprofit motor vehicle dealer salespersons.

**(7)**

**(a)** The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall endorse the change of location on the license. A licensee shall not be charged a fee for changing locations. A change of location shall require a new application.

**(b)**

1. A motor vehicle dealer who is not a new motor vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business.
2. A new motor vehicle dealer may conduct a temporary sale or display in the dealer's market as defined in KRS 190.047(6).
3. A recreational vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business or in any other county where there is no licensed recreational vehicle dealer.

**(c)** A temporary sale or display may be conducted under this subsection if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee.

**(d)** The provisions of this subsection shall not apply to a nonprofit motor vehicle dealer.

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(8) Every salesperson, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesperson shall immediately mail his license to the licensor who shall endorse the change on the license without charge.

(9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties up to one hundred thousand dollars (\$100,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.

(10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.

(11) Every motor vehicle dealer or new recreational vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

## History

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### HISTORY:

Enact. Acts 1956, ch. 161, § 3; 1966, ch. 175, § 3; 1974, ch. 74, Art. IV, § 20(2); 1978, ch. 313, § 1, effective June 17, 1978; 1982, ch. 373, § 3, effective July 15, 1982; 1982, ch. 374, § 6, effective July 15, 1982; 1984, ch. 357, § 3, effective July 13, 1984; 1992, ch. 452, § 2, effective July 14, 1992; 1994, ch. 186, § 2, effective July 15, 1994; 2000, ch. 216, § 1, effective July 14, 2000; 2003, ch. 13, § 1, effective June 24, 2003; 2007, ch. 125, § 3, effective June 26, 2007; 2010, ch. 43, § 3, effective July 15, 2010; 2014, ch. 83, § 1, effective July 15, 2014; 2014, ch. 27, § 16, effective January 1, 2015; 2021 ch. 156, § 15, effective March 29, 2021; 2021 ch. 190, § 14, effective June 29, 2021; 2022 ch. 53, § 1, effective July 14, 2022.

Annotations

## Commentary

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### Legislative Research Commission Notes.

(6/29/2021). This statute was amended by 2021 Ky. Acts chs. 156 and 190. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 190, which was last enacted by the General Assembly, prevails under KRS 446.250.

## Opinion Notes

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Opinions of Attorney General.

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The department of motor transportation (now department of vehicle regulation) can rely upon the advice given to the commissioner by the advisory committee as such advice would constitute good cause for issuing or revoking salesmen's licenses. OAG 64-862.

## **Research References & Practice Aids**

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### **Research References and Practice Aids**

#### **Cross-References.**

Registration of dealers and salesmen with county clerk; fees; dealer's plates, KRS 186.070.

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## KRS § 190.038

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### **190.038. Manufacturer to provide information on service or repairs of its motor vehicles.**

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(1) Any manufacturer of motor vehicles licensed in accordance with KRS 190.030 shall provide to any person upon request and at reasonable cost, any schematic, manual or any other technical documentation needed to service or repair motor vehicles manufactured by the manufacturer of a year model not to exceed ten (10) years prior to the current year model.

(2) Failure to comply with the provisions of subsection (1) of this section shall be grounds for suspension or revocation of a manufacturer's license in accordance with KRS 190.040.

### **History**

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Enact. Acts 1988, ch. 183, § 1, effective July 15, 1988.

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### **190.040. Grounds for denial, suspension, or revocation of license — Notice of denial of application for license — Hearings — Inspection of licensee's records — Appeals from order of commission.**

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- (1) A license may be denied, suspended, or revoked on the following grounds:
- (a) Proof of financial or moral unfitness of applicant;
  - (b) Material misstatement in application for license;
  - (c) Filing a materially false or fraudulent tax return as certified by the Department of Revenue;
  - (d) Willful failure to comply with any provision of this chapter or any administrative regulation promulgated under this chapter;
  - (e) Willfully defrauding any retail buyer to the buyer's damage;
  - (f) Willful failure to perform any written agreement with any buyer;
  - (g) Failure or refusal to furnish and keep in force any bond required;
  - (h) Having made a fraudulent sale, transaction, or repossession;
  - (i) False or misleading advertising;
  - (j) Fraudulent misrepresentation, circumvention, or concealment through subterfuge or device of any of the material particulars or the nature of them required to be stated or furnished to the retail buyer;
  - (k) Employment of fraudulent devices, methods, or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of goods;
  - (l) Having violated any law relating to the sale, distribution, or financing of motor vehicles or new recreational vehicles;
  - (m) Being a manufacturer of motor vehicles or recreational vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer, recreational vehicle manufacturer, or factory branch, who has induced, coerced, or attempted to induce or coerce any automobile dealer or new recreational vehicle dealer to accept delivery of any motor vehicle, new recreational vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;
  - (n) Being a manufacturer of motor vehicles or recreational vehicles, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any dealer to enter into any agreement with a manufacturer, factory branch, or representative, or to do any other act unfair to the dealer, by threatening to cancel any franchise existing between a manufacturer, factory branch, or representative and the dealer;

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- (o) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of the dealer and without just provocation, canceled the franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation;
- (p) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer, recreational vehicle manufacturer, or factory branch, or wholesaler who makes, attempts to make, or aids or abets the making of a sale of a motor vehicle or a new recreational vehicle to a person other than a licensed motor vehicle dealer or new recreational vehicle dealer. This section shall not prevent any manufacturer from offering discounts or rebates on any motor vehicle or new recreational vehicle to any of its employees; or
- (q) Being a dealer who advertises for sale a new motor vehicle or new recreational vehicle unless he is a dealer operating under a franchise with a licensed manufacturer, factory branch, or distributor authorizing the sale of the new motor vehicle or the new recreational vehicle being advertised.
- (2) The licensor may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for denial. Upon request by the applicant whose license has been denied, the licensor shall set the time and place of hearing a review of denial, to be conducted in accordance with KRS Chapter 13B.
- (3) A license shall not be suspended or revoked except after a hearing conducted in accordance with KRS Chapter 13B.
- (4) The commission may inspect the pertinent books, letters, records, and contracts of a licensee.
- (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if the licensee approved of or had knowledge of the acts and after approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from the acts.
- (6) Any licensee or other person in interest who is dissatisfied with a final order of the commission may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS Chapter 13B.

## History

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Enact. Acts 1956, ch. 161, § 4; 1966, ch. 175, § 5; 1972, ch. 211, § 2; 1974, ch. 74, Art. IV, § 20(2); 1982, ch. 374, § 7, effective July 15, 1982; 1992, ch. 452, § 4, effective July 14, 1992; 1996, ch. 111, § 3, effective July 15, 1996; 1996, ch. 318, § 76, effective July 15, 1996; 2000, ch. 23, § 2, effective February 22, 2000; 2000, ch. 216, § 2, effective July 14, 2000; 2005, ch. 85, § 616, effective June 20, 2005; 2014, ch. 27, § 19, effective January 1, 2015.

Annotations

## NOTES TO DECISIONS

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### 1. Conflict With Federal Law.

### 2. Enjoining Administrative Proceedings.

### 1. Conflict With Federal Law.

## KRS § 190.040

Subdivisions (1)(m) and (1)(n) of this section, which in part prohibit distributors from “inducing” certain actions by automobile dealers, conflict with the provision of the federal Automobile Dealers’ Day in Court Act, 15 USCS § 1221(e), which expressly authorizes “persuasion” by a distributor, as the dictionary meaning of “induce” is synonymous with “persuasion”; in light of this conflict, the federal district court properly held that the bureau (now department) of vehicle regulation was prohibited by the Supremacy Clause from enforcing subdivisions (1)(m) and (1)(n) to the extent that those provisions purported to forbid “inducement” by an automobile distributor. *American Motors Sales Corp. v. Runke*, 708 F.2d 202, 1983 U.S. App. LEXIS 28110 (6th Cir. Ky. 1983).

## 2. Enjoining Administrative Proceedings.

The federal Anti-Injunction Act (28 USCS § 2283), by its terms only prohibits federal courts from enjoining state court proceedings, and therefore it did not prohibit a federal district court from enjoining a state administrative agency from enforcing the provisions of this section in an administrative proceeding. *American Motors Sales Corp. v. Runke*, 708 F.2d 202, 1983 U.S. App. LEXIS 28110 (6th Cir. Ky. 1983).

### Cited:

*Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 2008 Ky. LEXIS 61 (Ky. 2008).

## Opinion Notes

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### Opinions of Attorney General.

The Department of Motor Transportation (now Department of Vehicle Regulation) can rely upon the advice given to the commissioner by the advisory committee as such advice would constitute good cause for issuing or revoking salesmen’s licenses. OAG 64-862.

A program which provides an incentive bonus payment to salesmen of licensed or franchised dealers, does not violate this section as long as the merchandise sold by the salesmen is purchased from the licensed dealer-employer and delivered to customer by the dealer-employer of the salesmen. OAG 75-329.

In view of KRS 186.076 (now repealed), 186.090 (now repealed), 186.200 and this section, a motor vehicle dealer must secure a transfer of all used cars acquired by that dealer to his own name before the county clerk is required to issue a transfer of registration from that dealer to a subsequent transferee. OAG 75-593.

A bid under KRS 45A.080 is not an advertisement within the meaning of subsection (1)(q) of this section. OAG 79-255.

A Governor’s pardon or other type of rehabilitative action or law is not conclusive proof of rehabilitation of a convicted felon and does not automatically qualify that person for a motor vehicle dealer’s license since it is for the licensing authority to decide whether the applicant has been rehabilitated. OAG 80-388.

If the Bureau of Vehicle Regulation (now Department) issues a license to a dealer or salesman knowing him to be a former felon and he later commits other crimes in the area of the activities for which the Bureau (now Department) licensed him, the Bureau (now Department) has no liability since the members of a licensing board are immune from civil liability for the quasi-judicial decisions within the scope of their authority without regard for bad faith, malice or other evil motives. OAG 80-388.

The Bureau of Vehicle Regulation (now Department) has the discretion to weigh all factors in an individual’s background, including felonies, before deciding to grant or deny a motor vehicle dealer’s license. OAG 80-388.

## KRS § 190.040

The conviction of a felony requires a licensing board to deny a motor vehicle dealer's license unless it determines that the applicant has been successfully rehabilitated and the applicant has the burden of demonstrating to the licensing authority that he has been rehabilitated. OAG 80-388.

The implication of KRS Chapter 335B is that a licensing authority should look beyond the mere record of a felony conviction and should not arbitrarily refuse all former felons, although the chapter does not expressly order the authority to consider former felons the better policy is to review each case on its merits and not to have a policy of arbitrary rejection. OAG 80-388.

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## KRS § 190.042

Current through 2022 legislation effective as of July 14, 2022.

***Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)***

### **190.042. Succession to ownership of a new motor vehicle dealership of a deceased or incapacitated owner.**

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(1) Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member to succeed in the ownership interest of the said owner in the new motor vehicle dealership.

(2) Unless there exists good cause for refusal to honor succession on the part of the manufacturer or distributor, any designated family member of a deceased or incapacitated owner of a new motor vehicle dealership may succeed to the ownership of the new motor vehicle dealership under the existing franchise provided that:

(a) The designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the new motor vehicle dealership within ninety (90) days of the owner's death or incapacity; and

(b) The designated family member agrees to be bound by all the terms and conditions of the franchise.

(3) The manufacturer or distributor may request, and the designated family member shall provide, promptly upon said request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

### **History**

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Enact. Acts 1982, ch. 373, § 10, effective July 15, 1982.

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## KRS § 190.043

Current through 2022 legislation effective as of July 14, 2022.

**Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)**

### **190.043. Refusal of manufacturer or distributor to honor succession.**

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(1) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealership by a family member of a deceased or incapacitated owner of a new motor vehicle dealership under the existing franchise agreement, the manufacturer or distributor may, not more than sixty (60) days following the receipt of:

(a) Notice of the designated family member's intent to succeed to the ownership of the new motor vehicle dealership; or

(b) Any personal or financial data which it has requested;

serve upon the designated family member and the commission, notice of its refusal to honor the succession and its intent to discontinue the existing franchise with the dealer no sooner than ninety (90) days from the date such notice is served.

(2) The notice provided in subsection (1) of this section must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise with the new motor vehicle dealer no sooner than ninety (90) days from the date such notice is served.

(3) If notice of refusal and discontinuance as provided in subsection (1) of this section is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted by KRS 190.045.

(4) In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving before the commission that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards, and considering the volume of sales and service of the new motor vehicle dealership, the uniformly applied business experience standards in the market area.

### **History**

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Enact. Acts 1982, ch. 373, § 11, effective July 15, 1982; 1996, ch. 111, § 4, effective July 15, 1996.

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## KRS § 190.045

Current through 2022 legislation effective as of July 14, 2022.

*Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)*

### **190.045. Cancellation, termination, refusal to renew franchise — Notice — Duty of manufacturer.**

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(1) Notwithstanding the terms, provisions, or conditions of any franchise or notwithstanding the terms or provisions of any waiver, a manufacturer shall not cancel, terminate, or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

- (a) Satisfied the notice requirement of subsection (4) of this section;
- (b) Has good cause for cancellation, termination, or nonrenewal;
- (c) Has acted in good faith as defined in KRS 190.010(22); and
- (d) Has established the requirements of this subsection in proceedings before the licensor if the action is protested by the new motor vehicle dealer within fifteen (15) days after receiving notice of the cancellation, termination, or nonrenewal.

When a protest is filed, the licensor shall inform the manufacturer, distributor, factory branch, or factory representative that a timely protest has been filed and that the manufacturer, distributor, factory branch, or factory representative shall not cancel, terminate, or fail to renew any franchise with the licensed new motor vehicle dealer until the licensor has held a hearing and the licensor has determined that the manufacturer has met its burden under this section.

(2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or nonrenewal when:

- (a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days after the manufacturer first acquired knowledge of the failure.
- (b) If the failure by the new motor vehicle dealer, defined in paragraph (a) of this subsection, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer, if the new motor vehicle dealer was apprised by the manufacturer in writing of a failure, and

- 1. The notification stated that notice was provided of failure of performance pursuant to this section;
- 2. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with the criteria; and
- 3. The new motor vehicle dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during the designated period.

(3) The manufacturer shall have the burden of proof under this section.

## KRS § 190.045

**(4)** Notwithstanding the terms, provisions, or conditions of any franchise prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of a termination, cancellation, or nonrenewal to the new motor vehicle dealer as follows:

**(a)** In the manner described in subsection (2)(b) of this section; and

**(b)** In not less than ninety (90) days prior to the effective date of the termination, cancellation or nonrenewal; or

**(c)** In not less than fifteen (15) days prior to the effective date of a termination, cancellation, or nonrenewal with respect to any of the following:

1. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
2. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
3. Fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor which is material to the franchise;
4. Conviction of the new motor vehicle dealer, or any owner or operator thereof, of any felony which is punishable by imprisonment; or
5. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

**(d)** In not less than one hundred eighty (180) days prior to the effective date of a termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

**(5)** Notification under this section shall be in writing by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

**(a)** A statement of intent to terminate, cancel, or not to renew the franchise; and

**(b)** A statement of the reasons for the termination, cancellation, or nonrenewal; and

**(c)** The date on which the termination, cancellation, or nonrenewal takes effect.

**(6)** Upon the termination, nonrenewal, or cancellation of any franchise, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

**(a)** New current model year motor vehicle inventory which has been acquired from the manufacturer, and which has not been damaged or altered while in the dealer's possession;

**(b)** Supplies and parts which have been acquired from the manufacturer;

**(c)** Equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources; and

**(d)** Special tools.

Fair and reasonable compensation shall be paid by the manufacturer within ninety (90) days of the effective date of termination, cancellation, or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

**(7)** In the event of a termination, cancellation, or nonrenewal under this section, and the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, or owns the dealership facilities, the manufacturer shall pay a reasonable rent to the dealer in accordance with and subject to subsection (8) of this section.

**(8)**

## KRS § 190.045

**(a)** Reasonable rental value shall be paid only to the extent the dealership premises are recognized in the franchise and only if they are:

1. Used solely for performance in accordance with the franchise; and
2. Not substantially in excess of those facilities recommended by the manufacturer.

**(b)** If the facilities are owned by the dealer, the manufacturer will either:

1. Locate a purchaser who will offer to purchase the dealership facilities at a reasonable price; or
2. Locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent; or
3. Failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year.

**(c)** If the facilities are leased by the dealer, the manufacturer will either:

1. Locate a tenant or tenants satisfactory to the lessor, who will sublet or assume the balance of the lease; or
2. Arrange with the lessor for the cancellation of the lease without penalty to the dealer; or
3. Failing the foregoing, lease the dealership facilities at a reasonable rent for one (1) year.

**(d)** The manufacturer shall not be obligated to provide assistance under this section if the dealer:

1. Fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee; or
2. Refuses to execute a settlement agreement with the lessor if the agreement would be without cost to the dealer; or
3. Fails to make a written request for assistance under this section within one (1) month of the termination, cancellation, or nonrenewal.

**(e)** If, in an action for damages under this section, the manufacturer or distributor fails to prove either that the manufacturer or distributor has acted in good faith or that there was good cause for the franchise termination, cancellation, or nonrenewal, then the manufacturer or distributor may terminate, cancel, or fail to renew the franchise upon payment to the new motor vehicle dealer of an amount equal to the value of the dealership as an ongoing business location.

**(9)** Notice of termination to a dealer shall entitle the dealer to continue the franchise and the dealer may attempt to sell the franchise until all of the dealer's appeal rights have been exhausted.

## History

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Enact. Acts 1972, ch. 75, § 1; 1974, ch. 74, Art. IV, § 20(2); 1982, ch. 373, § 6, effective July 15, 1982; 1984, ch. 357, § 5, effective July 13, 1984; 1996, ch. 111, § 5, effective July 15, 1996; 2000, ch. 23, § 3, effective February 22, 2000.

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## KRS § 190.0451

Current through 2022 legislation effective as of July 14, 2022.

*Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)*

### **190.0451. New motor vehicle dealer license — Prohibition against licensing new dealer after prior dealer's franchise has been revoked — Exceptions — Ten year duration of prohibition.**

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- (1) Except as provided in subsections (2) and (3) of this section, if a dealer licensed under this chapter has its franchise revoked by the manufacturer on or after January 1, 2009, for grounds other than those provided in KRS Chapter 190, the commission shall not grant a new motor vehicle dealer license establishing a new motor vehicle dealership, or relocating an existing new motor vehicle dealership, within a ten (10) mile radius of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicles had its franchise revoked.
- (2) If the manufacturer can show proof that the franchise was offered to the original franchisee at substantially similar terms as offered to other potential buyers, and the original franchisee refused the offer, then the prohibition in subsection (1) of this section shall not apply and the commission may grant a new motor vehicle dealer license within the ten (10) mile radius described in subsection (1) of this section.
- (3) The prohibition against granting a new motor vehicle dealer license outlined in subsection (1) of this section shall remain in effect for ten (10) years from the date of revocation of the original franchise by the manufacturer.

### **History**

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Enact. Acts 2010, ch. 84, § 1, effective July 15, 2010.

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## KRS § 190.046

Current through 2022 legislation effective as of July 14, 2022.

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### **190.046. Compensation to dealer for work performed under warranty — “Reasonable compensation” — Submission, determination, and payment of dealer’s claims — Compensation to dealer for sponsored sales or service promotion events — Audits — Fraud.**

---

(1) Notwithstanding the terms of any franchise agreement, each motor vehicle manufacturer or distributor, doing business within this Commonwealth, shall assume all responsibility for and shall defend, indemnify, and hold harmless its motor vehicle dealers against any loss, damages, and expenses, including legal costs, arising out of complaints, claims, recall repairs or modifications or factory authorized or directed repairs, or lawsuits resulting from warranty defects, which shall include structural or production defects; defects in the assembly; or design of motor vehicles, parts, accessories; or other functions beyond the control of the dealer, including without limitation, the selection of parts or components for the vehicle. Each manufacturer or distributor shall pay reasonable compensation to any authorized dealer who performs work to repair defects, or to repair any damage to the manufacturer’s or distributor’s product sustained while the product is in transit to the dealer, when the carrier or the means of transportation is designated by the manufacturer or distributor. Each manufacturer or distributor shall provide to its dealers with each model year a schedule of time allowances for the performance of warranty repair work and services, which shall include time allowances for the diagnosis and performance of warranty work and service time, and shall be reasonable and adequate for the work to be performed.

(2) In the determination of what constitutes “reasonable compensation” under this section, the principal factor to be considered shall be the amount of money that the dealer is charging its other customers for the same type service or repair work. Other factors may be considered, including the compensation being paid by other manufacturers or distributors to their dealers for work; and the prevailing amount of money being paid or charged by the dealers in the city or community in which the authorized dealer is doing business. “Reasonable compensation” shall include diagnosing the defect; repair service; labor; parts and administrative and clerical costs. The compensation of a dealer shall not be less than the amount charged by the dealer for like services and parts, which minimum compensation for parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers for nonwarranty service and repairs, or less than the amounts indicated for work on the schedule of warranty compensation required to be filed by the manufacturer with the commission as a part of the manufacturer’s license application by KRS 190.030. A manufacturer or distributor shall not require unreasonable proof to establish “reasonable compensation.”

(3)

(a) A manufacturer or distributor shall not require a dealer to submit a claim authorized under this section sooner than thirty (30) days after the dealer completes the preparation, delivery, or warranty service authorizing the claim for preparation, delivery, or warranty service.

(b) All claims made by a dealer under this section shall be paid within thirty (30) days after their approval.

(c) All claims shall be either approved or disapproved by the manufacturer or distributor within thirty (30) days after their receipt on a completed form supplied or approved by the manufacturer or distributor.

## KRS § 190.046

- (d)** Any claims not specifically disapproved in writing within thirty (30) days after the receipt of the form shall be considered to be approved and payment shall be made within thirty (30) days thereafter.
- (e)** A dealer shall not be required to maintain defective parts for more than thirty (30) days after payment of a claim.
- (f)** Any dispute between the dealer and the manufacturer or distributor shall be subject to the provisions of KRS 190.057.
- (4)** A manufacturer or distributor shall compensate the dealer for manufacturer-sponsored or distributor-sponsored sales or service promotion events, including but not limited to rebates, programs, or activities in accordance with established written guidelines for such events, programs, or activities, which the manufacturer or distributor shall provide to each dealer.
- (5)**
- (a)** A manufacturer or distributor shall not require a dealer to submit a claim authorized under subsection (4) of this section sooner than thirty (30) days after the dealer becomes eligible to submit the claim.
- (b)** All claims made by a dealer pursuant to subsection (4) of this section for promotion events, including but not limited to rebates, programs, or activities, shall be paid within thirty (30) days after their approval.
- (c)** All claims shall be either approved or disapproved by the manufacturer or distributor within thirty (30) days after their receipt on a completed form supplied or approved by the manufacturer or distributor.
- (d)** Any claim not specifically disapproved in writing within thirty (30) days after the receipt of this form shall be considered to be approved and payment shall be made within thirty (30) days.
- (6)** If a dealer submits any claim under this section to a manufacturer or distributor that is incomplete, inaccurate, or lacking any information usually required by the manufacturer or distributor, or if incomplete, inaccurate, or missing information is discovered during an audit, then the manufacturer or distributor shall promptly notify the dealer, and the time limit to submit the claim shall be extended for a reasonable length of time, not less than five (5) business days following notice by the manufacturer or distributor to the dealer, for the dealer to provide the complete, accurate, or lacking information to the manufacturer or distributor. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing a claim may not constitute grounds for denial of the claim or reduction of the amount of compensation paid to the dealer if the dealer presents reasonable documentation or other evidence to substantiate the claim.
- (7)**
- (a)** A manufacturer or distributor may only audit warranty, sales, or incentive claims for a period of twelve (12) months following payment, or the end of a program which does not exceed one (1) year in length, whichever is later, subject to all of the provisions of this section.
- (b)** A manufacturer or distributor shall not require documentation for warranty, sales, or incentive claims more than twelve (12) months after the claim was paid or the end of a program which does not exceed one (1) year in length, whichever is later.
- (c)** Prior to requiring any charge-back, reimbursement, or credit against a future transaction arising out of an audit, the manufacturer or distributor shall submit written notice to the dealer along with a copy of its audit and the detailed reason for each intended charge-back, reimbursement, or credit.
- (d)** The limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim.

## History

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## KRS § 190.046

Enact. Acts 1972, ch. 75, § 2; 1974, ch. 107, § 1; 1978, ch. 182, § 2, effective June 17, 1978; 1982, ch. 373, § 7, effective July 15, 1982; 1992, ch. 452, § 5, effective July 14, 1992; 2000, ch. 23, § 4, effective February 22, 2000; 2011, ch. 3, § 1, effective June 8, 2011.

Annotations

## Opinion Notes

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### Opinions of Attorney General.

A manufacturer is prohibited from requiring that a franchise dealer submit to an arbitration panel the question of whether the dealer must pay for all or part of the cost of repairing or replacing a defective new motor vehicle. OAG 87-69.

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## KRS § 190.0461

Current through 2022 legislation effective as of July 14, 2022.

***Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)***

### **190.0461. Recall of vehicle — Duty of manufacturer or distributor.**

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In the event a manufacturer or distributor recalls any of its products, the manufacturer or distributor must include within the written notice thereof to vehicle owners and dealers the expected date by which necessary parts and equipment will be available for the correction of the defects necessitating the recall.

### **History**

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Enact. Acts 1978, ch. 182, § 3, effective June 17, 1978.

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## KRS § 190.0462

Current through 2022 legislation effective as of July 14, 2022.

*Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)*

### **190.0462. Manufacturer's schedule of compensation to be paid to dealers for warranty service and repairs.**

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Included within the application for a license to engage in business within this state as a manufacturer of motor vehicles must be a schedule specifying the compensation to be paid the manufacturer's dealers for parts, work and service in connection with warranty service and repairs which shall include compensation for diagnostic work, as well as repair service and labor.

### **History**

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Enact. Acts 1978, ch. 182, § 4, effective June 17, 1978.

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## KRS § 190.047

Current through 2022 legislation effective as of July 14, 2022.

***Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)***

### **190.047. Transfer of motor vehicle sales franchise — Proposal to establish additional dealership or to relocate existing dealership.**

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- (1) Unless a franchise specifically states to the contrary, no franchise or any interest in a franchise may be sold, transferred, or assigned without the approval of the manufacturer or distributor.
- (2) A dealer desiring to sell, transfer, or assign all or any portion of his franchise shall submit a written proposal of the sale, transfer, or assignment to the manufacturer or distributor, and approval of the proposal shall not be arbitrarily or unreasonably withheld.
- (3) The refusal of the manufacturer or the distributor to approve a proposed sale, transfer, or assignment shall be subject to review by the licensor, if a written application for review is filed with the licensor, with notice to the manufacturer or distributor, within thirty (30) days of the date of the refusal. The refusal shall not be final until the licensor, after a hearing has been held in accordance with the provisions of KRS Chapter 13B, has determined that the approval was not arbitrarily or unreasonably withheld.
- (4) The burden of proof shall be on the dealer to show that the approval of the sale, transfer, or assignment of any interest in the franchise was arbitrarily or unreasonably withheld. Factors to be considered in determining whether the manufacturer or distributor acted arbitrarily or unreasonably shall include whether the basic financial and facility requirements of the franchise will be met by the proposed transfer, sale, or assignment and that the proposed purchaser, transferee, or assignee is capable of operating, managing, and supervising the operation of the business in question.
- (5) Failure of the manufacturer or distributor to abide by the final order of the licensor or to continue the franchise in effect pending the final determination of the issue by the licensor shall be cause for the licensor to refuse to issue a subsequent license in the same county or franchise area to an applicant who will be selling the same motor vehicles as the former dealer for the same manufacturer or distributor.
- (6) If a manufacturer, distributor, factory branch, or factory representative seeks to:
  - (a) Enter into a franchise establishing an additional new motor vehicle dealership facility;
  - (b) Establish an additional new motor vehicle dealership facility under an existing franchise; or
  - (c) Relocate an existing new motor vehicle dealership facility, within or into a relevant market area where the same line make is then represented,

the manufacturer, distributor, factory branch, or factory representative shall, in writing, first notify the licensor, and each new motor vehicle dealer in the line make in the relevant market area, of the intention to establish an additional new motor vehicle dealership facility, or to establish an additional new motor vehicle dealership facility under an existing franchise, or to relocate an existing new motor vehicle dealership facility within or into that market area. The relevant market area shall be a radius of ten (10) miles around an existing new motor vehicle dealership facility. Within fifteen (15) days of receiving the notice, or within fifteen (15) days after the end of any appeal procedure provided by the manufacturer, distributor, factory branch, or factory representative, any new motor vehicle dealership may file with the licensor a protest to the establishment or relocation of the new motor vehicle dealership facility. When a protest is filed, the licensor shall inform the manufacturer, distributor, factory

## KRS § 190.047

branch, or factory representative that a timely protest has been filed and that the manufacturer, distributor, factory branch, or factory representative shall not establish or relocate the proposed new motor vehicle dealership facility until the licensor has held a hearing in accordance with KRS Chapter 13B, if the licensor has determined that there is good cause for permitting the new motor vehicle dealership facility. For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for two (2) years or more shall be deemed the establishment of an additional new motor vehicle dealership facility.

**(7)** In determining whether good cause has been established for entering into an additional franchise for the same line make, or establishing an additional new motor vehicle dealership facility under an existing franchise, or relocating an existing new motor vehicle dealership facility within or into a relevant market area where the same line make is then represented, the licensor shall take into consideration the existing circumstances, including, but not limited to:

**(a)** Permanency of the investment;

**(b)** Whether the new motor vehicle dealer of the same line make in that relevant market area is providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; and

**(c)** Growth, or decline in population and new car registrations in the relevant market areas.

In the case of the establishment of an additional new motor vehicle dealership facility under an existing franchise, good cause shall not be found if the additional facility fails to offer a range of service, including, but not limited to sales, service, parts, and financing.

**(8)** Any parties to a hearing by the licensor concerning the establishing or relocating of a new motor vehicle dealership shall have a right of judicial review of the final order in accordance with KRS Chapter 13B.

**(9)** The provisions of this section shall apply to the personal representative, executor, or administrator of the estate of an individual who had an interest in a franchise, or to the guardian or conservator of an individual who has been declared mentally disabled and who has that interest for one (1) year following appointment.

**(10)** The provisions of this section do not apply to:

**(a)** The relocation of an existing dealership within that dealer's area of responsibility contained in its franchise agreement, provided the relocation is not within five (5) miles of a new motor vehicle dealer of the same line make; or

**(b)** The relocation of an existing new motor vehicle dealership facility to a site that is further away from an existing dealership of the same line make.

## History

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Enact. Acts 1972, ch. 75, § 3; 1974, ch. 74, Art. IV, § 20(2); 1982, ch. 141, § 64, effective July 1, 1982; 1982, ch. 373, § 8, effective July 15, 1982; 1984, ch. 357, § 6, effective July 13, 1984; 1996, ch. 111, § 6, effective July 15, 1996; 1996, ch. 318, § 77, effective July 15, 1996.

Annotations

## Notes

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Compiler's Notes.

This section was amended by § 69 of Acts 1980, ch. 396, which would have taken effect July 1, 1982; however, Acts 1982, ch. 141, § 146, effective July 1, 1982, repealed Acts 1980, ch. 396. Section 9 of Acts 1982, ch. 373, purported to amend this section as amended by ch. 396, but the repeal of ch. 396 by Acts 1982, ch. 141 prevails over such purported amendment.

## Commentary

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### Legislative Research Commission Note.

(7/15/96). This section was amended by 1996 Ky. Acts chs. 111 and 318 which do not appear to be in conflict and have been codified together.

## NOTES TO DECISIONS

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### 1.Application.

### 2.Legislative Intent.

### 3.Sale of Franchise.

### 4.Third Parties.

#### 1. Application.

The limitations imposed by subsection (6) of this section do not apply when the existing dealership is within 10 miles of the proposed dealership, but is located in another state. *BMW Stores, Inc. v. Peugeot Motors of America, Inc.*, 860 F.2d 212, 1988 U.S. App. LEXIS 14522 (6th Cir. Ky. 1988).

#### 2. Legislative Intent.

The General Assembly did not intend to enact this section for the protection of out-of-state dealerships. *BMW Stores, Inc. v. Peugeot Motors of America, Inc.*, 860 F.2d 212, 1988 U.S. App. LEXIS 14522 (6th Cir. Ky. 1988).

#### 3. Sale of Franchise.

The purpose of the Kentucky Automobile Dealer Act is to protect the dealer's interest; if manufacturer does not approve the sale of a franchise and if franchise dealer does not initiate a review of such disapproval, a third party purchaser has no standing to do so. *Blair v. General Motors Corp.*, 838 F. Supp. 1196, 1993 U.S. Dist. LEXIS 17728 (W.D. Ky. 1993).

Without any facts of bad faith or arbitrary conduct relevant to the transfer evaluation process, the dealership had not stated a claim for breach of contract and violation of Kentucky Motor Vehicle Act, Ky. Rev. Stat. Ann. § 190.010 et seq., for unreasonably withheld consent. *Epps Chevrolet Co. v. Nissan N. Am., Inc.*, 99 F. Supp. 3d 692, 2015 U.S. Dist. LEXIS 38949 (E.D. Ky. 2015).

#### 4. Third Parties.

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Nothing in the statutory language of the Kentucky Automobile Dealer Act indicates that the legislature intended to protect or otherwise provide an administrative remedy for third parties not having a contractual relationship with the manufacturer. *Blair v. General Motors Corp.*, 838 F. Supp. 1196, 1993 U.S. Dist. LEXIS 17728 (W.D. Ky. 1993).

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## KRS § 190.0491

Current through 2022 legislation effective as of July 14, 2022.

*Michie's™ Kentucky Revised Statutes > TITLE XVI Motor Vehicles (Chs. 186 — 190A) > CHAPTER 190 Motor Vehicle Sales (§§ 190.010 — 190.991)*

### **190.0491. “Delivery” defined — Dealer’s duties concerning vehicle damaged in transit — Reversion of ownership — Certification to consumer — Failure of manufacturer to indemnify dealer.**

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(1) “Delivery” of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:

- (a) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer’s place of business or designated place of delivery, and
- (b) The giving of notice of the tender of the motor vehicle and documents to the dealer.

(2) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

- (a) Notify the manufacturer or distributor of the damage within three (3) working days of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
- (b) Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

Notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.

(3) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of the damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for the damage to the motor vehicle. In determining when the notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.

(4) In computing the lapse of three (3) working days under this section, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in subsection (3) of this section, shall not be included, but the last working day of the period so computed shall be included.

(5) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in subsection (2) of this section, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer’s original equipment and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of the damage must be disclosed by the dealer to the consumer, and upon repair of the damage sustained, or replacement of the parts or accessories damaged, the manufacturer and/or dealer, must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer’s standards; if the dealer makes the certification he shall be

## KRS § 190.0491

indemnified by the manufacturer. Upon this certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.

**(6)** Whenever a motor vehicle is damaged resulting in repairs, for items other than wheels, tires, or glass, that exceed two thousand dollars (\$2,000) after delivery to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, but before sale by the dealer to the consumer, the occurrence and extent of the damage must be disclosed by the dealer to the consumer prior to a sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards. Upon this certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.

**(7)** Notwithstanding the terms of any franchise agreement, it shall be a violation of this section for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as is defined in KRS 355.2-608, to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions by the manufacturer, beyond the control of the dealer.

## History

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Enact. Acts 1978, ch. 182, § 1, effective June 17, 1978; 1980, ch. 114, § 35, effective July 15, 1980; 1982, ch. 373, § 12, effective July 15, 1982; 1996, ch. 111, § 8, effective July 15, 1996; 2000, ch. 23, § 5, effective February 22, 2000; 2017, ch. 139, § 2, effective June 29, 2017.

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## KRS § 190.053

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### **190.053. Citation of suspected violators.**

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If a licensee is found to be violating any of the provisions of this chapter, or any administrative regulation promulgated by the commission pursuant thereto, or is found to be permitting any of its salesmen to violate any of the provisions of this chapter, or any administrative regulation promulgated by the commission pursuant thereto, the commission may, upon complaint or upon its own motion, issue its order to a licensee notifying it to appear before the commission at a fixed time and place, at which time and place the commission shall have a hearing conducted in accordance with KRS Chapter 13B. If the commission is satisfied, after a hearing, that the licensee has violated or refused to observe any of the provisions of this chapter, or any order or administrative regulation of the commission, or has permitted any of its salesmen to violate any of the provisions of this chapter or any order or administrative regulation promulgated by the commission pursuant thereto, the commission may suspend or revoke the license of the licensee. The renewal by the commission of any license shall not be construed to be a waiver or condonement of any violation which occurred prior to renewal and shall not prevent subsequent proceedings against the licensee for the violation.

### **History**

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Enact. Acts 1966, ch. 175, § 16; 1982, ch. 374, § 8, effective July 15, 1982; 1992, ch. 452, § 6, effective July 14, 1992; 1996, ch. 318, § 78, effective July 15, 1996.

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## KRS § 190.059

Current through 2022 legislation effective as of July 14, 2022.

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### **190.059. Appeal from final order of commission.**

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The final order of the commission granting or refusing to grant an application for a license, or to suspend or revoke a license may be appealed by an aggrieved party to the Circuit Court of Franklin County in accordance with KRS Chapter 13B. Nothing in this section shall be construed to limit the authority of the court to grant such relief as the circumstances may require. If the issues involved were first presented to the commission by a complaint filed with the commission, the complainant may appeal from the decision of the commission in the same manner as prescribed above.

### **History**

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Enact. Acts 1982, ch. 374, § 2, effective July 15, 1982; 1996, ch. 318, § 81, effective July 15, 1996.

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## KRS § 190.062

Current through 2022 legislation effective as of July 14, 2022.

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### **190.062. Action for damages — Power of commission — Applicability of chapter and KRS Chapter 190A — Written demand for mediation required before civil action involving recreational vehicle franchise issues may be brought.**

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(1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, or the terms or provisions of any waiver, any person who is injured in his business or property by a violation of this section or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this section, may bring a civil action in the Franklin Circuit Court to enjoin further violations, to recover the actual damages sustained by him, together with costs of the suit, including a reasonable attorney's fee.

(2) The commission may order, deny, suspend, or revoke the license of any new motor vehicle dealer, new recreational vehicle dealer, manufacturer, distributor, factory branch, or factory representative for failing to comply with any provisions of KRS 190.010 to 190.080 or KRS Chapter 190A, as such provisions apply, respectively, to new motor vehicle dealers, new recreational vehicle dealers, manufacturers, distributors, factory branches, or factory representatives; or in lieu thereof, or in addition thereto, may assess monetary penalties of a civil nature not to exceed one thousand dollars (\$1,000) for each violation.

(3) The provisions of KRS 190.010 to 190.080 and KRS Chapter 190A, as such provisions apply, respectively, to new motor vehicle dealers, new recreational vehicle dealers, manufacturers, distributors, factory branches, or factory representatives, shall apply to all persons required to be licensed under the terms herein, and to dealerships and contracts between new motor vehicle dealers, new recreational vehicle dealers, and manufacturers, distributors, factory branches, or factory representatives at the time of its passage, and to all such future new motor vehicle dealerships and contracts.

(4)

(a) In addition to the provisions of this section, before a civil action involving recreational vehicle franchise issues is brought, the party bringing suit for an alleged violation of this chapter shall serve a written demand for mediation on the offending party. The demand for mediation shall include a brief statement of the dispute and the relief sought by the party making the demand. The party making the demand shall serve the demand by certified mail to one (1) of the following addresses:

1. In an action between a new recreational vehicle dealer and a manufacturer, the address stated in the dealer agreement between the parties;
2. In an action between a new recreational vehicle dealer and a warrantor that is not a manufacturer, the address stated in any agreement between the parties; or
3. In an action between two (2) new recreational vehicle dealers, the address of the offending dealer in the records of the commission.

(b) Within twenty (20) days after a demand for mediation is served under this subsection, the parties shall mutually select an independent mediator who is approved by the commission and meet with that mediator for the purpose of attempting to resolve the dispute at a location in this state selected by the

## KRS § 190.062

mediator. The mediator may extend the date of the meeting for good cause shown by either party or if the parties agree to the extension.

**(c)** The service of a demand for mediation under this subsection tolls the time for the filing of any complaint, petition, protest, or other action under this chapter until representatives of both parties have met with the mediator selected pursuant to paragraph (b) of this subsection for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, if all the parties to the proceeding or action stipulate in writing that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

**(d)** Each of the parties to the mediation under this subsection is responsible for its own attorney fees. The parties shall equally divide the cost of the mediator.

## History

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Enact. Acts 1982, ch. 374, § 3, effective July 15, 1982; 2014, ch. 27, § 20, effective January 1, 2015.

Annotations

## NOTES TO DECISIONS

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### 1. In General.

The statute requires that anyone proceeding under this chapter must bring the civil action in Franklin Circuit Court. *GMC v. Book Chevrolet*, 979 S.W.2d 918, 1998 Ky. LEXIS 149 (Ky. 1998).

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## KRS § 190.070

Current through 2022 legislation effective as of July 14, 2022.

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### **190.070. Prohibited practices on the part of a manufacturer, distributor, factory branch, or factory representative.**

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- (1) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative licensed under this chapter to require any new motor vehicle dealer in the Commonwealth:
- (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliances, equipment, or any other product not required by law, which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this section is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.
  - (b) To order or accept delivery of any new motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle, as publicly advertised by the manufacturer or distributor.
  - (c) To order for any person any parts, accessories, equipment, machinery tools, appliance, or any commodity whatsoever not required in connection with a recall campaign.
  - (d) To participate monetarily in an advertising campaign or contest, any promotional materials, training materials, showroom or other display decorations, or materials, at the expense of the dealer, without the consent of the dealer.
  - (e) To enter into any agreement with the manufacturer, distributor, factory branch, or factory representative, or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer, distributor, factory branch, or factory representative. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer's franchise, or contractual agreement shall not constitute a violation of this law.
  - (f) To change the capital structure of the dealership, or the means by or through which the dealer finances the operation of the dealership, provided that the dealership at all times meets any reasonable capital standards agreed to by the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
  - (g) To refrain from participation in the management or investment in, or the acquisition of any other line of new motor vehicle or related products; provided, however, that this section does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facility requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealership.
  - (h) To change location of the dealership, or to, during the course of the agreement, make any substantial alterations to the dealership premises, when to do so, would be unreasonable in light of the current economic, political, and social considerations.

## KRS § 190.070

- (i)** To prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law, or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, or to the commissioner, if the referral would be binding upon the dealer.
- (j)** To establish or maintain exclusive facilities, personnel, display space, or signage for a new motor vehicle make or line.
- (k)** To expand facilities without making available a sufficient supply of new motor vehicles to support the expansion in light of the market and economic conditions.
- (2)** It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative:
- (a)** To delay, refuse, or fail to deliver motor vehicles, or vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, but in any case no more than sixty (60) days, after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts, or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within sixty (60) days, without cause. This section is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.
- (b)** To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the relevant market areas.
- (c)** To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall not be a transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.
- (d)** To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and the other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
- (e)** To increase prices of motor vehicles which the dealer had ordered for private retail customers prior to the dealer's receipt of the written official price increase notification, a sales contract signed by a private retail consumer shall constitute evidence of each order, provided that the vehicle is in fact delivered to the customer. In the event of manufacturer price reductions, the amount of a reduction received by a dealer shall be passed on to the private retail consumer by the dealer, if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by the following shall not be subject to the provisions of this section:
1. The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;
  2. Revaluation of the United States dollar, in the case of foreign-make vehicles or components; or

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- 3.** Increased transportation charges due to an increase in the rate charged by common carrier or transporter.
- (f)** To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof, without making the same offer, upon written request, to all other dealers in the same line make within the relevant market area.
- (g)** To release to any outside party, except under subpoena, any administrative, judicial or arbitration proceedings, or any business, financial, or personal information which may be, from time to time, provided by the dealer to the manufacturer, without the express written consent of the dealer.
- (h)** To deny any dealer the right of free association with any other dealer for any lawful purpose.
- (i)** To establish or maintain a relationship, on the part of a manufacturer, distributor, factory branch, or factory representative, where the voting rights exceed a simple majority.
- (j)** To own, operate, or control any motor vehicle dealership in the Commonwealth; however, this subsection shall not prohibit:
- 1.** The operation by any manufacturer of a dealership for a temporary period, not to exceed one (1) year, during the transition from one (1) owner to another;
  - 2.** The ownership or control of a dealership by a manufacturer while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or
  - 3.** The ownership, operation, or control of a dealership by a manufacturer if the licensor determines after a hearing at the request of any party, that there is not a dealer who is independent of the manufacturer available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.
- (k)** To compete without good faith with a new motor vehicle dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer, distributor, factory branch, or factory representative in the relevant market area. A manufacturer, distributor, factory branch, or factory representative shall not, however, be deemed to be competing when operating a dealership, either temporarily for a reasonable period, not to exceed one (1) year, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment, subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.
- (l)** To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new motor vehicle dealers to make warranty adjustment with retail customers.
- (m)** To fail to give consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state; provided that consent may be withheld when in light of other circumstances, granting the consent would be unreasonable.
- (n)** To fail to be licensed as provided in this chapter, and to maintain a bond in an amount as determined by this chapter.
- (3)** It shall be unlawful for a manufacturer, either directly or indirectly, or in combination with or through any subsidiary or affiliated entity, to discriminate in favor of one (1) dealer against another dealer holding a franchise for the same line make of motor vehicle by furnishing to only one (1) dealer any of the following:
- (a)** Any vehicle, part, or other product that is not available to each dealer at the same price, including discounts, rebates, incentives, or other payments or allowances affecting the net price of the product;
  - (b)** Any vehicle, part, or other product that is not made available to each dealer in quantities proportionate to the demand for the vehicle, part, or other product;

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- (c) Any vehicle, part, or other product that is not made available to each dealer on comparable delivery terms, including time of delivery after placement of an order;
  - (d) Any promotional or advertising payment or allowance that is not made available to each dealer on proportionally equal terms;
  - (e) Any opportunity to purchase or lease from the manufacturer the dealer's facility that is not made available to each dealer on terms proportionate to the respective values of its facilities;
  - (f) Any personnel training that is not made available to each dealer on proportionally equal terms;
  - (g) Any inventory or other financing that is not made available to each dealer on proportionally equal terms, except that a manufacturer, subsidiary, or affiliated entity shall not be obligated to make available financing to a dealer who does not meet reasonable credit standards uniformly applied by the manufacturer, subsidiary, or affiliated entity;
  - (h) Any opportunity to perform work for which the dealer is entitled to be compensated under this chapter that is not made available to each dealer under uniformly applied standards;
  - (i) Any opportunity to sell products or services distributed by the manufacturer for resale in connection with the line make of the motor vehicle covered by the franchise that is not made available to each dealer on proportionally equal terms;
  - (j) Any opportunity to establish an additional sales, service, or parts outlet that is not made available to each dealer in whose relevant market area the sales, service, or parts outlet will be located;
  - (k) Any information concerning the manufacturer's products, prices or other terms of sale, or promotional programs that is not contemporaneously furnished to the dealer;
  - (l) Any improvement to, or payment to the dealer for an improvement to, the dealer's facilities that is not made available to each dealer on proportionally equal terms;
  - (m) Any opportunity to sell or assign retail installment contracts or consumer leases to the manufacturer or the manufacturer's sales finance company subsidiary that is not made available to each dealer on proportionally equal terms, except that a manufacturer or sales finance company shall not be obligated to purchase any retail installment contract or consumer lease that does not meet reasonable credit terms uniformly applied by the manufacturer or sales finance company subsidiary;
  - (n) Any product assistance, service, or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms; or
  - (o) Any payment for any service or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms.
- (4) It shall not be a defense to an alleged violation of subsection (3) of this section, that an item or opportunity was offered to a dealer if the offer was conditioned upon the dealer meeting one (1) or more requirements that are not reasonable and necessary to fulfill the dealer's obligations under the franchise. The manufacturer shall have the burden of proving that any requirement upon which an offer was conditioned was reasonable and necessary to fulfill the dealer's obligations under the franchise when the offer was made. A requirement shall not be found to be reasonable and necessary to fulfill the dealer's obligations under the franchise if the manufacturer cannot prove that it was within the control of each dealer to meet the requirement imposed on the dealer as a condition of the offer.
- (5) A dealer who alleges a good faith belief that the dealer has been, or is being, discriminated against in violation of subsection (3) of this section, may demand in writing that the manufacturer furnish the dealer with pertinent information reasonably necessary for the dealer to determine if discrimination exists. If the manufacturer fails to furnish the dealer with the information demanded within thirty (30) days of the manufacturer's receipt of the dealer's written demand, the manufacturer shall have, in any subsequent legal proceeding, the burden of proving that the alleged violation has not occurred.

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(6) Any dealer who is discriminated against by a manufacturer in violation of subsection (3) of this section shall recover three (3) times an amount equal to the value of what the dealer would have received if the manufacturer had complied with subsection (3) of this section upon furnishing any item or opportunity to another dealer.

(7) A change in ownership of a manufacturer or distributor that contemplates a continuation of that line make in the state shall not directly or indirectly, through actions of any parent of the manufacturer or distributor, subsidiary of the manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal of a dealer agreement by a present or previous manufacturer or distributor of an existing agreement unless the manufacturer or distributor offers the new vehicle dealer an agreement substantially similar to that offered to other dealers of the same line make.

## History

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Enact. Acts 1956, ch. 161, § 7, effective May 18, 1956; 1982, ch. 373, § 13, effective July 15, 1982; 2000, ch. 23, § 6, effective February 22, 2000; 2008, ch. 17, § 1, effective July 15, 2008.

Annotations

## Opinion Notes

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### Opinions of Attorney General.

A manufacturer is prohibited from requiring that a franchise dealer submit to an arbitration panel the question of whether the dealer must pay for all or part of the cost of repairing or replacing a defective new motor vehicle. OAG 87-69.

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## KRS § 190.075

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### **190.075. Restraint of violations.**

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At the instance of the commission, the department or of any person having any interest in the subject matter, the courts of this state may enjoin any person from violating any of the provisions of this chapter, or any order, rule, regulation or requirement of the commission. The Franklin Circuit Court shall hold concurrent venue with the courts of this Commonwealth of all civil and injunctive actions instituted by the commission for the enforcement of the provisions of this chapter, or the orders, rules, regulations or requirements properly promulgated under this chapter.

### **History**

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Enact. Acts 1966, ch. 175, § 12; 1974, ch. 74, Art. IV, § 20(2); 1982, ch. 374, § 13, effective July 15, 1982; 1984, ch. 357, § 12, effective July 13, 1984.

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