Kentucky Motor Vehicle Commission Dealer Handbook

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Notice: This Book is intended for use only as a guide, and should not be considered as a final authority on any matter.

The Kentucky Motor Vehicle Commission does not discriminate on the basis of race, color, national origin, sex, age, religion or disability and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs and activities.

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I. MOTOR VEHICLE COMMISSION

The Kentucky Motor Vehicle Commission is the state agency which licenses and regulates all motor vehicle dealers, salespersons, manufacturers and distributors in the Commonwealth.

Kentucky has been licensing and regulating vehicle dealers since 1914. The Commission in its present form was created in 1982 and is made up of twelve members: four new car dealers, four used car dealers, one consumer, one whole- sale dealer, a manufacturer's representative and the Commissioner of the Transportation Cabinet's Department of Vehicle Regulation.

The Commission acts as the arbiter in disputes between new vehicle dealers and manufacturers in cases involving franchise succession, cancellation, termination, transfer and relevant market area protection.

The statutes and regulations overseen by the Commission are found in KRS 186, 186A, and 190, and Chapter 605 of the Kentucky Administrative Regulations.

The Commission employs an executive director, five field inspectors, and an office staff of four. The field inspectors travel the state and inspect applicant facilities and licensed facilities and they investigate illegal activities as they pertain to motor vehicle sales. The inspectors are authorized to file criminal charges against any person who acts as a dealer without a license.

The Commission meets once a month, and at such other times as may be necessary, at its office in Frankfort. Meetings are open to the public. The meetings are usually on the second Friday of each month, and begin at 9:00 a.m.

II. DEALER LICENSES

A dealer license is required of any person who is engaged in the business of selling, offering to sell, soliciting or advertising the same, of motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another.

There is no minimum or maximum number of vehicle transfers which are allowed before a dealer license is needed, and the requirement is not excused when vehicles are registered (and taxes paid) by the person who buys and sells them. The license requirement comes into play and a license must be obtained if one is engaged in the business of a motor vehicle dealer, even if it is only a single vehicle which is purchased with the intention of resale.

The Commission issues ten separate types of dealer license: New, Used, Leasing, Wholesale, Motorcycle, Auction, Restricted, Mobility, Automotive Recycling and Supplemental Lot.

A **NEW MOTOR VEHICLE DEALER** is one who holds a valid sales and service agreement, franchise, or contract granted by a manufacturer for the sale of the manufacturer's new vehicles.

A **NEW MOTOR VEHICLE** is one that is in the possession of its manufacturer or has been sold only to the holder of a valid franchise granted by the manufacturer and which is, in fact, new, and one on which the original title (manufacturer's statement of origin, certificate of origin) has not been issued from the franchised dealer.

A **USED MOTOR VEHICLE DEALER** is one who is engaged in the business of selling at retail, displaying, offering for sale or otherwise dealing in used motor vehicles.

A New Motor Vehicle Dealer who sells used cars must have a used motor vehicle dealer endorsement on his license.

A **MOTOR VEHICLE LEASING DEALER** is one who is 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 lease or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly (30 day) term, and title to the vehicle is in the name of a person other than the user. If a consumer comes to a dealer and that dealer then negotiates or otherwise arranges a lease of a vehicle for a term of at least thirty days, that dealer must have a leasing license, even if title to the vehicle is held by a financial institution, or someone else. Any dealer who lease a vehicle in which they are the titled owner or who is in the business of renting and/or leasing vehicles will need to obtain U Drive It permit through the U Drive It Section of the Transportation Cabinet per KRS 281.626.

A **WHOLESALE MOTOR VEHICLE DEALER** is one who is engaged in the business of selling, offering for sale or otherwise dealing in used motor vehicles, transferring them only to other licensed dealers. A wholesale dealer may not sell a vehicle at retail to anyone other than his employee.

A **MOTORCYCLE DEALER** is one who exclusively sells, offers to sell, solicits or advertises motorcycles (excluding mopeds having a cylinder capacity no greater than 50 c.c. and capable of speed no greater than 30 m.p.h.)

A **AUTOMOTIVE MOBILITY VEHICLE DEALER** is one who is engaged in the business of selling at retail, displaying, offering for sale or otherwise dealing in new or used motor vehicles which are specially designed or permanently modified for use by aging or disabled persons.

A **MOTOR VEHICLE AUCTION DEALER** is one who operates an auction and, under a typical auction format, offers, negotiates or attempts to negotiate a sale or purchase of a motor vehicle on behalf of another. An auction may not transfer vehicles into the auction's name unless it also holds a used or wholesale motor vehicle dealer license. An auction dealer may not issue temporary tags on vehicles sold through an auction unless he holds another type of dealer license and the vehicle on which the temporary tag is placed is transferred to the auction dealer pursuant to that other license.

A **NONPROFIT MOTOR VEHICLE DEALER** is an organization exempt from taxation pursuant to 26 U.S.C. Section 501 (c)(3) of the Internal Revenue Code and that has made all required filings with the Internal Revenue Service. The organization sales program serves only clients meeting disability or disadvantaging conditions.

A **RESTRICTED MOTOR VEHICLE DEALER** is one who exclusively sells, offers to sell, solicits or advertises the sale of specialized motor vehicles for ex- ample, funeral coaches or emergency vehicles.

An **RECREATION CAMPER DEALER** is one who engages in the business of selling, offering for sale or otherwise dealing in "recreational vehicles" which includes travel trailers, fifth wheel trailers and folding camping trailers.

An **AUTOMOTIVE RECYCLING DEALER** is one who engages 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.

An **ESTABLISHED PLACE OF BUSINESS** (a dealer's licensed location) 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 may be lawfully carried on in accordance with all applicable building codes, zoning and other land use regulatory ordinances.

A **SUPPLEMENTAL LOT** license is required for each lot used by a new motor vehicle dealer for the sale of used vehicles, where the lot is not immediately adjacent to the main

lot. The activity at the supplemental lot will be restricted to the display or sale of used motor vehicles only. In naming the location you cannot use trademark names such as Ford, Chevy, Toyota, etc.

A **MOTOR VEHICLE SALESPERSON** license is required for every person employed by a dealer to sell motor vehicles (even if on a temporary basis), and for every person employed at a vehicle auction as an auctioneer of vehicles. Anyone acting for a dealer in any aspect of negotiating for or displaying a vehicle for sale to the public must have a salesperson's license.

A **DEMONSTRATOR** is a vehicle held for sale by a new motor vehicle dealer (franchised for the sale of that particular line make) which has not been previously registered in any state or country, and has been used by the dealer for demonstration purposes only, if it has acquired at least 1,000 miles before it is registered in this state.

The fee per calendar year for each type of dealer and supplemental lot license is $100, and for each salesperson, $20.

The number of individual manufacturers, dealers and salespersons licensed by the Commission in recent years are:

	2011	2012	2013	2014
Dealers:	3,276	3,263	3,261	3,311
Salespersons:	14,803	16,051	17,285	17,769
Manufacturers:	131	122	107	103

The Commission's ultimate authority over dealers is the license itself. While it is a service agency, always available to assist Kentucky dealers when called upon to do so, the Commission is also a regulatory agency.

The Commission has imposed penalties on licensees ranging from a fine to revocation of the license. The infractions include violations of the dealer plate law, improper issuance of temporary tags, violation of the criminal code, chronic facility deficiencies, selling from unlicensed premises, failing to transfer, material misstatement in the application, chronic failure to report a change of location or change of ownership, the advertisement for sale of new vehicles by dealers who do not hold the proper franchise, advertising violations and failure to post FTC Buyers Guide Stickers.

The number of such regulatory actions, including consumer complaint intervention and resolution, taken by the Commission in recent years are:

2011	2012	2013	2014
800	820	796	823

III. DEALER FACILITY REQUIREMENTS

Every dealer must maintain an established place of business within this state which is easily accessible and open for business at all reasonable times. Business hours must be posted on door. An established place of business must include both an office and a vehicle storage/ display lot, at a location which is properly zoned for such use, and must have its own mailing address.

The office must be a permanent, enclosed, commercial (not residential) structure on or adjoining the storage/display lot. The office must have at least 100 square feet of floor space, electricity, a business telephone, and the usual office furnishings (desk, chairs, file cabinet). It must be set up in such a way that it is not used for any other purpose.

The vehicle storage/display lot must have at least 2,000 square feet, a hard surface covering (e.g., gravel, asphalt, concrete) and must be set up in such a manner that it may not be used for any purpose other than the display or storage of vehicles for sale, or dealer customer parking.

Every dealer, except a wholesale dealer, must have a sign which identifies the dealer business by name, which is permanently placed on the premises so that it is clearly visible and can easily be read from the nearest roadway, with lettering of at least nine inches in height.

The dealer license certificate and white copy of all salesperson licenses must be conspicuously displayed in the dealer's office.

Only one license for the same licensed activity may be issued for single location.

IV. PLATES AND TAGS

A. DEALER PLATES/DEALER REGISTRATION WITH COUNTY CLERK

After a dealer license is issued by the Commission, the licensee must register with the County Clerk of the county where the dealership is located, by presenting the dealer license certificate, paying a fee of $28.50, and filing an affidavit listing the names, social security numbers and other information of all bona fide sales- persons and other employees who are authorized to operate a vehicle bearing a dealer plate assigned to that dealer. The employee list must be updated when- ever there is a change of employees or every three months. Dealers report to the Commission the number of motor vehicles sold by their dealership during the period from the second preceding July 1 to the following June 30. The number of dealer plates issued to a dealership are based on the number of motor vehicles sold by that dealership.

Upon payment of the $28.50 fee, the Clerk will issue one dealer plate. Additional plates may be obtained for $15.00 each. If a dealer can document a need, the Commission may authorize additional plates.

Pursuant to 601 KAR 9:220, dealers and bona fide salespersons may operate a vehicle bearing a dealer plate at any time with the intent of offering or advertising the vehicle for sale to the public. Other bona fide employees of the dealership (not salespersons) may operate a vehicle bearing a dealer plate only when testing the mechanical operation of the vehicle. These other bona fide employees (not salespersons) may not operate a vehicle bearing dealer plates for personal purposes or in demonstration or advertising to a prospective customer.

A prospective customer who is operating a vehicle bearing a dealer plate shall be limited to one (1) demonstration trip unless he is accompanied by the licensed dealer to whom that plate is issued, or a licensed salesperson for that dealer.

A demonstration trip by a prospective customer means a temporary use by a single customer or his employee for a reasonable evaluative purpose incidental to the sale of the vehicle.

"Bona fide" means either a licensed salesman, or an employee, who is actively engaged in and devotes a substantial part of his time to the conduct of the dealer business.

The affidavit listing personnel authorized to operate on dealer plates must be updated quarterly (every three months). Failure to do so may result in the Transportation Cabinet's refusal to allow title transfer or other processing.

Persons who are temporarily hired as drivers for the sole purpose of driving a vehicle to or from the dealership may operate on a dealer plate FOR THAT PUR- POSE

ONLY. A permit, good for a maximum of five days, may be obtained from the Clerk for this purpose. The issuance of the five day permit does not require the driver to be listed on the affidavit.

If the dealer license is revoked, surrendered or lapses, all dealer plates issued to that dealership will be cancelled and must be turned back in to the County Clerk's office.

Every vehicle bearing a dealer plate must, if it is a new vehicle, have a "Monroney" (MSRP) sticker attached to it, or, if it is a used vehicle, Federal Trade Commission Buyer's Guide sticker attached to it.

Dealer plates may not be used on service vehicles, parts vehicles or courtesy vehicles, nor may they be used on a vehicle used for hauling other vehicles. Dealer plates may not be used on any vehicle which is on a salvage title.

B. TEMPORARY TAGS

A temporary tag issued by a dealership must be obtained from the County Clerk of the County where the dealership is located.

A temporary tag is issued only upon the sale of a vehicle by the issuing dealer, at the time of the delivery of the vehicle to the purchaser for use.

A temporary tag can be placed on any vehicle sold by a dealer unless that vehicle already has on it a current registration plate issued in the name of the buyer at the time the vehicle is delivered to the buyer.

A temporary tag is valid for thirty days from the date the vehicle is delivered to the purchaser.

No more than one temporary tag may be issued per vehicle, per sale.

When the temporary tag is issued, the following information must be written (or stamped) on the tag, in dark, waterproof ink:

1. The month, day and year the vehicle was delivered to the purchaser;
2. The temporary tag contains six (6) blocks which are to be filled in with the month, day and year of expiration of the tag (no more than sixty days after the date of delivery to the purchaser). Only one numeral can be entered in each block, and EACH NUMERAL MUST OCCUPY AT LEAST EIGHTY (80%) OF ITS BLOCK;
3. The purchaser's name;
4. The year, model, make and VIN of the vehicle sold; and
5. The issuing dealer's name, city of principal place of business, and telephone number.
6. Whoever issues the tag must put his/her signature in the space provided.

A log must be kept of the issuance of each temporary tag, and the log must be kept for two years (a form for the log sheet, called "TC-209", can be obtained from the County Clerk). The log must show the issuing dealer's name and address, the tag number, the date of delivery of the vehicle to the purchaser, the name of the purchaser, the complete VIN, the make and model, year, and the expiration date of the tag.

A dealer as well as the dealer's employee who improperly issues a temporary tag may each be prosecuted for a Class A Misdemeanor, (KRS 186A.990 [5]) which carries a penalty of a fine of up to $500 or a jail sentence up to one year or both.

A Motor Vehicle Leasing Dealer may not issue a temporary tag for a leased vehicle and a Motor Vehicle Auction Dealer may not issue a temporary tag for another person's vehicle sold through an auction. A temporary tag may not be placed on any vehicle which is on a salvage title.

C. CIVIC EVENT PLATES

KRS 190.085 allows dealers who donate or loan vehicles for use in a civic event to apply for civic event plates for those vehicles, to avoid the use of dealer plates. Application for such plates should be made directly to the Commissioner of Vehicle Regulation, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622, 502/564-7000, at least sixty days prior to the event for which the plates are to be used. The use of vehicles bearing these plates is confined to the provision of services for events for which approval is given and only for a limited time period.

V. LICENSE PLATE FRAMES

License plate rims or frames, such as those used by many dealers showing the dealership name, may not in any way obscure or cover any lettering or decal on a registration plate.

VI. VEHICLE ACQUISITION AND TRANSFER REQUIREMENTS BY A DEALER

A. ORDINARY TRANSFERS

A dealer is not required to obtain a title for a used motor vehicle acquired by the dealership for the purpose of resale unless the transferring title document or proper supplemental title document has no more space on it for future transfers or unless the transferring document is not itself a securely printed, conforming document. "Conforming" means that it has the exact language required by the Federal Truth in Mileage Act of 1986. If it's not conforming, or if the transferring title document or proper supplemental title document has no more space on it for another transfer from the acquiring dealer, that dealer must obtain title in his own name.

After acquiring a vehicle which has a Kentucky title, the acquiring dealer is required to notify his County Clerk of the assignment of that vehicle to his dealership within fifteen days or prior to selling the vehicle, whichever occurs first. The dealer is required to file a form (TC-183, Notice to County Clerk of Vehicle Acquisition) to fulfill this requirement. When a dealer acquires a used motor vehicle he must obtain from his transferor all transfer documents necessary to enable him to properly transfer the vehicle to his buyer.

Whether a vehicle is "titled" to a dealer or "dealer assigned" to a dealer will have an impact on how the dealer is taxed for that vehicle. All vehicles titled in a dealership name as of January 1 of each year will be taxed at a rate considerably higher than if those same vehicles are dealer assigned in the dealership name.

When a dealer sells a used motor vehicle to a purchaser for use (a consumer), the dealer must also give to the purchaser a properly assigned certificate of title at the time of the delivery of the vehicle UNLESS the buyer has given the dealer permission to make application for title on his behalf. If the selling dealer takes the transfer documents to the clerk's office on the buyer's behalf, the dealer must re- quire from the buyer proof of insurance on the vehicle being sold before delivering possession of the vehicle. While not required to do so, dealers are advised to keep a record of the proof of insurance shown by the buyer. "Proof of insurance" should be proof of insurance on the vehicle being sold to the buyer.

If the dealer has received a title from the previous owner which is not clear (for example, a title which still has an active lien), and if he has the buyer's consent to deliver

the title and VTR to the County Clerk on the buyer's behalf, the dealer must retain the documents in his possession until the title has been cleared.

B. BROKERING/CONSIGNMENT OF VEHICLES

Kentucky law does not allow for the brokering or consignment of vehicles. Any vehicle displayed on a dealer's premises for sale must be assigned or transferred to that dealer, within fifteen days of the acquisition, or before being sold, whichever occurs first.

VII. TRANSFER OF NEW MOTOR VEHICLE BETWEEN DEALERS

If a new motor vehicle is transferred or assigned to any dealer other than a new motor vehicle dealer holding a valid franchise for the sale of the vehicle, the transferee must obtain a title to the vehicle in the transferee's name before the vehicle may be offered for sale or further transferred then this makes the vehicle used.

VIII. PREVIOUS OWNER INFORMATION STICKER

Dealers are no longer required to post the previous owner information sticker. However, the dealer is required to furnish a prospective purchaser upon request – the name, address and telephone number, if known or available, of the previous owner of any used car offered for sale.

IX. FEDERAL TRADE COMMISSION BUYER'S GUIDE STICKER

Before offering a used motor vehicle (passenger auto or light duty truck) for sale at retail, a completed Buyer's Guide window sticker must be displayed on or in the vehicle. The Federal Trade Commission recently amended its rule and now allows a Buyers Guide sticker to be posted anywhere on a used vehicle as long as it is displayed prominently and both sides of the sticker are easy to read. The FTC suggests hanging the stickers from a rear-view mirror. The sticker advises the consumer whether the vehicle is being offered for sale with a warranty (and, if so, the extent of that warranty) or, if it is being offered "As Is". The Federal Trade Commission does allow the sticker to be removed while the vehicle is being driven. Each violation of the rule may subject the offending dealer to a fine of up to $10,000 and private remedies may be sought by customers who are dam- aged by the dealer's failure to abide by the rule. These Buyers Guide stickers may be obtained from the Kentucky Automobile Dealer Association or from any printing company. But, if you have your own printed, be advised that the sticker's form, content and size are strictly regulated by the language of the FTC rule.

X. DEALER LIABILITY INSURANCE

Every licensed dealer (except an automotive recycling dealer) must maintain and have on file with the Commission a garage liability insurance policy providing public liability and property damage coverage for the operation of any vehicle owned or being offered for sale by the dealer.

The insurance shall be in the amount of at least $250,000 per person, $500,000 per occurrence, and $250,000 for property damage.

An automotive recycling dealer must have commercial general liability coverage in the same amount.

Upon cancellation of a dealer's insurance for any reason, his license is automatically suspended. If any dealer goes longer than thirty days without this insurance coverage, the dealer license is automatically void and the County Clerk will be notified to cancel the dealer's plates.

XI. CHANGE OF LOCATION

If a dealer decides to relocate his place of business, he may not continue operation at the new place of business unless, prior to the relocation the dealer has submitted a valid application to the Commission requesting a license at the new place of business. In the event that the Commission cannot approve the application prior to the anticipated relocation date, a temporary permit pursuant to KRS 190.037 may be requested pending approval of the permanent license. If a permanent application is not approved, no further activity may take place at the location after the application is denied. Notification to the Commission and a submission of an application after relocation shall not cure any violation of KRS Chapter 190 if the dealer engaged in business at the new location without a valid permanent or temporary license.

XII. CHANGE OF OWNERSHIP

Any change of ownership of a dealer which is a sole proprietorship or general partnership requires a new application to be submitted by the prospective new owner prior to the change in ownership. If it appears that the new application cannot be approved prior to the anticipated sale date, the new owner may request a temporary permit pursuant to KRS 190.037 pending approval of the new application.

The death of any partner or majority owner of a dealership shall be reported to the Commission in a timely manner.

If the licensee is a limited partnership, corporation or limited liability company, a sale of the majority ownership interest requires a new application to be submitted. However, such an application may be submitted either prior to the change in majority ownership or immediately after the change takes place. The entity may continue to conduct business under its old license pending approval of the new license.

Sales of a minority interest in such entities do not require a new application but the licensee must inform the Commission of the change in ownership and submit personal data sheets, personal financial statements for the new owners within 15 days of the sale.

XIII. BUSINESS NAME

The Commission may disapprove a business name if it misleadingly suggests affiliation with an existing dealer or causes confusion as to a relationship with an existing dealer.

A dealer's business name must include the words "used cars", "auto sales", "auto mart" or other similar terms which clearly identify the nature of the vehicle sales business.

Unless a dealer holds a franchise, the business name may not include the name of any make of motor vehicle.

XIV. ADVERTISING

An advertising regulation was enacted in 1991 and is in effect. Copies of the advertising regulation are distributed to all newly licensed dealers. A dealer is responsible for insuring that all advertisements placed in the name of the dealer- ship, whether in print or on the airwaves, conform to the requirements of the regulation.

In addition to the advertising regulation, KRS 365.495 prohibits advertising a sale at wholesale unless the sale is made to a transferee for resale (another dealer). This provision prohibits the claim "Wholesale to the public" or similar claims.

If you need another copy of the regulation, please contact the Motor Vehicle Commission office.

XV. MOTOR VEHICLE AUCTION DEALER TRANSFER REQUIREMENTS

Every person (except a licensed motor vehicle dealer) who brings a vehicle to sell through an auction must have a valid title to that vehicle showing that person as the titled owner and must tender that title to the auction before the vehicle may be offered for sale. Auction dealers may not accept any purchase money from a buyer of a vehicle unless the auction has the title and other required transfer documents and is ready to deliver those documents to the buyer. Finally, an auction may not allow any title or other transfer document to be taken out of its possession unless those documents are completely filled out and signed by the seller and buyer as indicated.

XVI. SALE OF PREVIOUSLY DAMAGED OR SALVAGED VEHICLES

A. Previous Damage Disclosure

Any person who sells a new or used motor vehicle in Kentucky must disclose to a buyer all damages to that vehicle which:

1. Occurred while the vehicle was in the possession of the seller; and
2. Which resulted in repairs or repair estimates greater than one thousand ($1,000.00) dollars.

This disclosure must be in writing and signed by the buyer; the duty to dis- close applies to individuals as well as dealers.

Franchise dealers must disclose to a consumer the occurrence and extent of damage to a new motor vehicle when the following occurs:

1. If the new motor vehicle is damaged while in transit to the dealer and the damage exceeds six (6%) percent of the vehicle's sticker price (excluding damage to tires, glass, or bumpers when replaced by original manufacturer's equipment); or
2. If the damage to the new motor vehicle occurs after delivery to the dealer, the $1,000.00 damage disclosure rule set forth above applies.

B. Previous Salvage Title

Kentucky places a brand, consisting of the words "rebuilt vehicle", on the titles of certain previously salvaged motor vehicles. When a dealer offers to sell a vehicle which has a branded title and which is not more than then (10) model years old, he must

disclose that prior salvage status to a consumer by a notice included on sticker and by a separate signed disclosure.

Dealer disclosure of a Kentucky branded title must be located on a sticker placed on the vehicles as follows:

1) The sticker with the notice of branded title disclosure language must be printed in a color of ink which is obviously different from the background color of the paper.
2) The brand disclosure language must be printed in bold-faced type which is at least ten (10) points in size.
3) The brand disclosure on the notice shall state "THIS IS A REBUILT VEHICLE."

In addition to the brand disclosure language on the previous owner sticker, dealers must also disclose a branded title and obtain the customer's signature on a form (other than the purchase contract) acknowledging the disclosure. Finally, a dealer must disclose a branded title on the Application for Title form.

If the seller fails to obtain the buyer's acknowledgement of the title brand disclosure, the buyer can, if he so chooses, void the purchase within forty-five (45) days after the buyer's title is issued. If the buyer does not void the purchase within forty-five (45) days, he can still file suit or seek other remedies against the seller.

Failure to give the title brand disclosure can result in criminal charges against the seller punishable by a fine of up to $500 or a jail sentence of up to one year, or both. In addition, a dealer's license can be revoked or suspended.

XVII. PROHIBITED ACTS, ALL DEALERS

Any one of the following is grounds for suspension or revocation of the dealer's license. (For a list of prohibited practices on the part of new motor vehicle dealers only, refer to the next section in this handbook.)

A. Proof of financial or moral unfitness;
B. Conviction of any criminal offense for which a jail sentence may be imposed;
C. Willfully defrauding any retail buyer to the buyer's damage;
D. Willful failure to perform any written agreement with any buyer;
E. Having made a fraudulent sale, transaction or repossession;
F. False or misleading advertising;
G. Violation of any law having to do with the sale, distribution or financing of motor vehicles;
H. Selling or advertising for sale a new motor vehicle unless the dealer has a franchise for the sale of that new vehicle;
I. Being a dealer (other than a wholesale dealer) who acquires a used vehicle and fails to have the ownership transferred to him within fifteen days or prior to the time the vehicle is sold or otherwise transferred, whichever first occurs;
J. Disconnecting, resetting or altering the odometer of any vehicle with intent to fraudulently change the mileage thereon.
K. Failing to have an established place of business used primarily for the purpose of selling, buying, displaying, repairing or servicing vehicles.
L. Failing to reasonably supervise agents, salesmen or employees.

XVIII. PROHIBITED ACTS, NEW MOTOR VEHICLE DEALERS

A new motor vehicle dealer's license may be suspended or revoked for:

A. Requiring the purchaser of a motor vehicle, as a condition of sale or delivery thereof, to also purchase special features, appliances or accessories or equipment not desired by the purchaser, unless such features, etc., are ordinarily installed on the vehicle by the manufacturer of the vehicle when acquired by the dealer.

B. Advertising, displaying, representing or selling as new any vehicle which has been operated for demonstration purposes, or which is otherwise a used motor vehicle.

C. Selling or offering for sale a new motorvehicle for which he cannot secure for the purchaser such new car warranty as the vehicle's manufacturer offers, unless that fact is communicated to the purchaser, and is disclosed prominently in writing.

D. Using false or fraudulent representations in connection with the operation of the new motor vehicle dealership.

E. Transferring a new motor vehicle with a manufacturer's statement of origin to another dealer who does not have either a valid sales and service agreement or franchise from the particular line make manufacturer.

XIX. FRANCHISE PROTECTION STATUTES

Because of the complexity of these provisions, only very general information is contained in this section. For a definitive reading of the statutes themselves, the reader is advised to consult those statutes directly.

Dealers who are the holders of a valid sales and service agreement, franchise or contract granted by a manufacturer or distributor for the sale of said manufacturer's new motor vehicles enjoy strong franchise protection in Kentucky.

Again, for specific provisions relating to the following subjects, please refer to the statute indicated.

A. Succession to the ownership of a franchise dealership of a deceased or incapacitated owner, KRS 190.042

Any franchise owner may appoint by will or other written instrument a designated family member to take over the franchise ownership upon the death or incapacity of the owner. Generally, unless a manufacturer has good cause for refusing to honor the designated successor, the successor may take over the franchise provided that:

1. The designated family member gives the manufacturer written notice of the intention to succeed within ninety days of the owner's death or incapacity;
2. The designated family member agrees to be bound by the terms of the franchise agreement.

B. Refusal of manufacturer or distributor to honor succession, KRS 190.043.

If a manufacturer believes that it has good cause for refusing to honor the designated succession, it must serve upon the designated successor and the Commission notice of its refusal and its intent to discontinue the franchise no sooner than ninety days from the date of the notice. This notice must be served no later than sixty days after the receipt of either.

1. Notice of the designated family member's intent to succeed; or
2. Any personal or financial data which it had requested.

The manufacturer has the burden of proving either that the proposed successor is not of "good moral character", or does not meet the manufacturer's existing and reasonable standards, and business experience standards.

C. Franchise cancellation, termination or refusal to renew, notice, duties of manufacturer, KRS 190.045.

A manufacturer may not cancel, terminate or fail to renew an existing franchise agreement unless the manufacturer:

1. Has "good cause" for the action; and
2. Has acted in "good faith"; and
3. Has given the proper notice of its intent; and
4. Has established the above in proceedings before the Commission when a protest to the action is filed by the dealer.

The standard for "good cause" is set forth in Section 2 of 190.045, the definition of "good faith" is contained in 190.010 (21) and the notice requirements are set forth in Section 4 of 190.045.

Upon a valid cancellation, termination or refusal to renew, the dealer is to be allowed a fair and reasonable compensation by the manufacturer for new vehicle inventory, supplies and parts, and equipment and furnishings supplied by the manufacturer. In addition, if the dealer is leasing the facility from someone other than the manufacturer, or if he owns the facility, the manufacturer must comply with certain provisions assisting the dealer, if so requested, as set forth in 190.046(8).

D. Compensation to franchise dealer for work performed under warranty, determination of "reasonable compensation", proof required, KRS 190.046.

A manufacturer assumes all responsibility for and must defend, indemnify and hold harmless its franchised dealers against any loss, damages, expenses and legal costs arising out of any claim resulting from warranty defects.

Each manufacturer must pay reasonable compensation to its authorized dealers for repairs for warranty defects or for damage sustained while the vehicle was in transit to the dealership (if the means of transportation is designated by the manufacturer). The manufacturer is to provide for each model year a schedule of time allowances for the performance of warranty repair work. The schedule shall be reasonable and adequate for the work performed.

Standards for the determination of what is "reasonable compensation" are set forth in 190.046 (2). It is specified in this section that the warranty compensation of a dealer shall not be less than the amount charged by the dealer for like service and parts to retail customers for non-warranty service and repairs.

E. Duty of manufacturer or distributor upon recall of vehicle, KRS 190.0461.

Upon a recall, the manufacturer must inform vehicle owners and dealers of the expected date by which necessary parts and equipment will be available.

F. Manufacturer to supply schedule of compensation to be paid to dealers for warranty service and repairs, to Commission, KRS 190.0462.

A manufacturer is to submit with its application for a license a schedule specifying the compensation to be paid for parts, work, and service in connection with warranty service and repairs, including compensation for diagnostic work as well as repair service and labor.

G. Transfer of franchise, establishment of additional franchise (of same line make) within relevant market area of existing franchise, KRS 190.047.

Unless a franchise specifically states to the contrary, it cannot be sold or transferred without the approval of the manufacturer, and such approval may not be arbitrarily or unreasonably withheld. A dealer desiring to sell or transfer a franchise must submit a proposal to do so in writing to the manufacturer.

A manufacturer's refusal to approve a proposed sale or transfer is subject to review by the Commission provided the dealer files a written application (with a copy to the manufacturer) for the Commission's review within thirty days of the date of the refusal.

The burden of proof is on the dealer to show that the approval of the sale or transfer was arbitrarily or unreasonably withheld. In determining this question, the Commission will consider whether the basic financial and facility requirements of the franchise would be met, and whether the proposed buyer is capable of operating the business.

If a manufacturer seeks: A) To enter into a franchise establishing an additional new motor vehicle dealership facility, or B) To establish an additional new motor vehicle dealership facility under an existing franchise, or C) To relocate an existing new motor vehicle dealership facility, within or into a relevant market area where the same line make is represented, the manufacturer must first notify the Com- mission and each franchise holder of the same line make in that relevant market area of its intention.

A relevant market area is a radius of ten miles around an existing franchise. In the case of a franchise located near a state border, that area does not extend over the state line.

To protest either the franchisor establishing a new motor vehicle dealership facility or the establishment of an additional new motor vehicle dealership facility under an existing franchise or the relocation of an existing new motor vehicle dealership facility, an existing franchise holder must file a written notice with the Commission within fifteen days of receiving the manufacturer's notice.

This section does not apply to the relocation of an existing dealership within that dealer's area of responsibility (contained in the dealer's franchise agreement) provided that the relocation is not within five miles of another franchise dealer of the same line make, or to the relocation of an existing new motor vehicle dealership facility to a site that is further away from another existing dealership of the same line make.

H. "Delivery" of new motor vehicle, definition, dealer's duties concerning vehicle damaged in transit, certification to consumer-buyer, manufacturer's duty to indemnify dealer, KRS 190.0491.

A delivery of a new motor vehicle to a franchise dealer from the manufacturer takes place when there is a tender of the vehicle and any documents necessary to enable the

dealer to obtain title and possession of the vehicle, to the dealer at the dealer's designated place of delivery.

If a new vehicle is damaged in transit and the means of transportation is designated by the manufacturer, the dealer must notify the manufacturer by certified mail, return receipt requested, of the damage within three working days of the vehicle's delivery and must request from the manufacturer authorization to repair or replace the damaged parts or accessories.

Except for damage to glass, tires or bumpers (when replaced by identical manufacturer's original equipment) and except for any damage not exceeding six percent of the sticker price of the vehicle, the occurrence and extent of the dam- age must be disclosed by the dealer to a consumer prior to any sale of the vehicle. Upon the repair or replacement of the damaged parts, the manufacturer and/or the dealer must certify to the consumer that the vehicle has been repaired or re- manufactured to the manufacturer's standards. If the dealer so certifies, he will be indemnified by the manufacturer. Upon such certification, liability for any concealed damages then remaining with the vehicle shall lie with the manufacturer.

When a new vehicle is damaged after delivery to the franchised dealer, but before sale to a consumer, the dealer must disclose the occurrence and extent of such damage to the consumer if the damage occurred while the vehicle was in the seller's possession and if the damage results in repairs or repair estimates exceeding one thousand dollars ($1,000.00).

I. Prohibited practices on part of manufacturer or distributor, KRS 190.070.

Manufactures may not require any new motor vehicle dealer:

1. To order or accept delivery of any vehicle, part, or accessory which has not been ordered by the dealer, except as provided for in the franchise;
2. To order or accept delivery of any vehicle with special features or accessories not included in the list price of that vehicle;
3. To order for any person any commodity whatsoever not required in connection with a recall campaign;
4. To participate monetarily in any advertising or other promotional campaign without the consent of the dealer;
5. To enter into any agreement with the manufacturer, or to do any other act prejudicial to the dealer by threatening to cancel any contract between the dealer and manufacturer, except for notice in good faith to the dealer of the dealer's violation of any term of the franchise;
6. To change the capital structure of the dealership provided that the dealership meets any reasonable capital standards agreed to by the dealer, excluding any entity engaged primarily in providing financing or insurance on vehicles;
7. To refrain from participating in the management or investment in, or the acquisition of any other line of new vehicle or related products, unless the dealer fails to maintain a reasonable line of credit for each make or line of new vehicle, or unless the dealer fails to remain in substantial compliance with the terms of the franchise, or unless there has been a change in the principal management of the dealership;
8. To change the location of the dealership, or make any substantial alteration to the premises during the course of the agreement, if it would be unreasonable in light of the current economic, political and social considerations;

9. To assent to any release which would relieve any person from any liability imposed by this law, or require any controversy between a dealer and a manufacturer to be referred to any person other than the courts of the Commonwealth or the United States, if such referral would be binding upon the dealer.
10. To establish or maintain exclusive facilities, personnel, display space or signage for a new motor vehicle make or line.
11. 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.

KRS 190.070 (2) specifies prohibited acts on the part of motor vehicle manufacturers. As these provisions are numerous and complex, an interested party is advised to consult the statutes themselves for information in this area.

XX. MOTOR VEHICLE OFF-SITE SALES/DISPLAYS

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. New motor vehicle dealer may conduct a temporary sale or display in the dealer's market area as defined in KRS 190.047(6).

All motor vehicle dealers must confine the display and sale of their motor vehicles to the location for which their dealer license was issued, except for sales at licensed motor vehicle auctions, and except for temporary off-site motor vehicles sales or display events that meet certain conditions.

No motor vehicle dealer may conduct a temporary off-site sale or display of motor vehicles unless the dealer obtains a permit pursuant to 605 KAR 1:060. You should consult the regulation for the permit requirements and limitations.

A. The city, county, urban county or consolidated local government where the temporary sale or display event is to occur has passed an enabling ordinance that specifically addresses and allows motor vehicle off-site sales or displays; and
B. The temporary sale or display event must be advertised as being temporary in nature; and
C. The temporary sale or display event must include a representative sampling of the dealership's inventory.
D. The dealer has received a permit for the sale or display from the Com- mission. Contact the Commission office for a permit application. An off- site motor vehicle display shall not exceed 60 successive days. An off-site motor vehicle sale shall not exceed five successive days, or repeat at same location for 30 days.
E. The applicant shall certify that he/she has complied with or shall comply with all requirements contained in the city, County, urban County, or consolidated local government ordinance.
F. Each individual involved in attempting to make a sale as defined in KRS 190.010(25) at a temporary sale event shall possess a valid salesman's license issued by the Motor Vehicle Commission in the name of the participating dealer or dealers prior to the date of the temporary sale event.

XXI. CONCLUSION

This handbook is presented as an easy reference to the functions of the Kentucky Motor Vehicle Commission. However, there are many motor vehicle code sections not covered here. For example, titling and registration by individuals, vehicle usage tax and

ad valorem taxation, and U-Drive-It permits are not discussed as they are not within the area of the Commission's responsibility.

Any questions about the matters contained in this handbook can be addressed by contacting the Kentucky Motor Vehicle Commission, Frankfort, Kentucky 40601, 502/573-1000.

Notice: This book is intended for use only as a guide, and should not be considered as a final authority on any matter.

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