

## **190.010 Definitions for chapter.**

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
  - (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, 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. 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 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;
- (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; and
- (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).

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 43, sec. 2, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 103, sec. 4, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 125, sec. 1, effective June 26, 2007. -- Amended 2000 Ky. Acts ch. 23, sec. 1, effective February 22, 2000. -- Amended 1998 Ky. Acts ch. 565, sec. 6, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 111, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 186, sec. 1, effective July 15, 1994. Amended 1992 Ky. Acts ch. 452, sec. 1, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 105, effective July 13, 1984; and ch. 357, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 194, sec. 5, effective July 15, 1982; ch. 373, sec. 1, effective July 15, 1982; and ch. 374, sec. 4, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 349, sec. 10, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2), (3). -- Amended 1972 Ky. Acts ch. 211, sec. 1. -- Amended 1966 Ky. Acts ch. 175, sec. 1. -- Created 1956 Ky. Acts ch. 161, sec. 1.