

1 HB307
2 116502-1
3 By Representatives Thigpen, Harper and Beasley
4 RFD: Commerce
5 First Read: 19-JAN-10

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8 SYNOPSIS: Existing law provides for the licensing of
9 used motor vehicle dealers and motor vehicle
10 wholesalers.

11 This bill would provide that, effective
12 October 1, 2010, applicants, other than renewal
13 applicants, for a license as a used motor vehicle
14 dealer or as a motor vehicle wholesaler must obtain
15 certain training prior to obtaining a license.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to obtaining a license as a used motor
22 vehicle dealer or as a motor vehicle wholesaler; to amend
23 Sections 40-12-390 and 40-12-391, Code of Alabama 1975, to
24 further regulate applicants for a license as a used motor
25 vehicle dealer or as a motor vehicle wholesaler; to provide
26 definitions; and to provide for enforcement by the State
27 Department of Revenue.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 40-12-390 and 40-12-391, Code of
3 Alabama 1975, are amended to read as follows:

4 "§40-12-390.

5 "The following words and phrases, when used in this
6 article, shall have the following meanings:

7 "(1) COMMISSIONER. The state Commissioner of
8 Revenue.

9 "(2) DISTRIBUTOR. Any person, firm, or corporation
10 engaged in the business of selling or distributing new motor
11 vehicles to new motor vehicle dealers.

12 "(3) MANUFACTURER. Any person, firm, or corporation
13 engaged in the business of manufacturing or assembling new and
14 unused motor vehicles.

15 "(4) MOTOR VEHICLE. Any motor vehicle as defined in
16 Section 40-12-240, but the term shall not include trailers,
17 semitrailers, or house trailers as defined in Section
18 40-12-240.

19 "(5) MOTOR VEHICLE EDUCATION SEMINAR PROVIDER. A
20 person or entity providing a used motor vehicle education
21 seminar or a motor vehicle wholesaler education seminar, or
22 both, as approved by the commissioner.

23 "(6) MOTOR VEHICLE REBUILDER. Any person, firm, or
24 corporation engaged in the business of making or causing to be
25 made extensive repairs, replacements, or combination of
26 different motor vehicles to the extent of extinguishing the
27 identity of the original vehicle to the extent that the

1 finished motor vehicle shall be assigned a new identification
2 to be issued by the Department of Revenue under the provisions
3 of Chapter 8 of Title 32.

4 "~~(5)~~(7) MOTOR VEHICLE RECONDITIONER. Any person,
5 firm, or corporation engaged in the business of refurbishing,
6 repairing, or replacing damaged parts of motor vehicles for
7 the purpose of preparing the vehicle for resale under the same
8 identification and identity as the vehicle bore before the
9 refurbishing.

10 "~~(7)~~(8) MOTOR VEHICLE WHOLESALER. Any person, firm,
11 or corporation engaged in the business of buying, selling, or
12 exchanging motor vehicles at wholesale to motor vehicle
13 dealers, as defined in this article, and not to the public.

14 "(9) MOTOR VEHICLE WHOLESALER EDUCATION SEMINAR. An
15 educational program approved by the commissioner, consisting
16 of at least four hours of classroom training in the legal
17 requirements of motor vehicle wholesaling.

18 "~~(8)~~(10) NEW MOTOR VEHICLE. A motor vehicle, other
19 than a used motor vehicle, the legal title of which has never
20 been transferred by a manufacturer, distributor, or new motor
21 vehicle dealer to an ultimate purchaser.

22 "~~(9)~~(11) NEW MOTOR VEHICLE DEALER. Any person, firm,
23 or corporation which holds a bona fide contract or franchise
24 in this state in effect with a manufacturer or distributor of
25 new motor vehicles and is engaged in the business of selling,
26 advertising, or negotiating the sale of new motor vehicles or
27 new and used motor vehicles, and the duly licensed new motor

1 vehicle dealers shall be the sole and only persons, firms, or
2 corporations entitled, other than in connection with the
3 rental or leasing of new motor vehicles by persons engaged in
4 the business of motor vehicle rental and leasing, to sell and
5 publicly or otherwise solicit and advertise for sale new motor
6 vehicles.

7 "~~(10)~~(12) PERMANENT LOCATION. A building or
8 structure from which sales of motor vehicles are conducted. A
9 house used as a residence by the business owner, a partner, or
10 a corporate officer from which sales of motor vehicles are
11 conducted may also be a permanent location. The building or
12 structure must be owned, rented, or leased and must be used as
13 an office and a place to receive mail, keep records, and
14 conduct routine business, to include an operable telephone
15 listed with the telephone company under the name of the
16 licensed business.

17 "(13) ULTIMATE PURCHASER. With respect to a new
18 motor vehicle, the first person, firm, or corporation, other
19 than a new motor vehicle dealer purchasing in his or her
20 capacity as a new motor vehicle dealer, who in good faith
21 purchases the new motor vehicle for purposes other than
22 resale. Ultimate purchaser shall not include a person, firm,
23 or corporation who purchases a vehicle for purposes of
24 altering or remanufacturing the motor vehicle for future
25 resale.

26 "~~(11)~~(14) USED MOTOR VEHICLE. A motor vehicle, the
27 legal title of which has been transferred by a manufacturer,

1 distributor, or new motor vehicle dealer to an ultimate
2 purchaser.

3 ~~"(12)(15)~~ USED MOTOR VEHICLE DEALER. Any person,
4 firm, or corporation engaged in the business of buying,
5 selling, exchanging, advertising, or negotiating the sale of
6 five or more motor vehicles at retail during a calendar year,
7 whether or not the motor vehicles are owned by such person,
8 firm, or corporation, or in offering or displaying motor
9 vehicles for sale at retail to the public. The term "selling"
10 or "sale" shall include lease-purchase transactions. The term
11 "used motor vehicle dealer" does not include banks and finance
12 companies which acquire motor vehicles as an incident to their
13 regular business and does not include motor vehicle rental and
14 leasing companies.

15 "(16) USED MOTOR VEHICLE EDUCATION SEMINAR. An
16 educational program, approved by the commissioner, consisting
17 of at least four hours of classroom training in the legal
18 requirements of selling used motor vehicles.

19 "§40-12-391.

20 "(a) (1) No person shall be licensed as an automobile
21 dealer under the provisions of Section 40-12-51, nor shall any
22 person engage in business as, serve in the capacity of, or act
23 as a new motor vehicle dealer, used motor vehicle dealer,
24 motor vehicle reconditioner, motor vehicle rebuilder, or motor
25 vehicle wholesaler in this state, without first obtaining a
26 license as provided in this article and, if a new motor

1 vehicle dealer, or a used motor vehicle dealer, a state sales
2 tax number.

3 "(2) On and after October 1, 2010, new applicants
4 for licensure as either a used motor vehicle dealer or as a
5 motor vehicle wholesaler shall meet the requirements of
6 subsection (d).

7 "(b) No person, firm, or corporation shall engage in
8 the business of buying, selling, exchanging, advertising, or
9 negotiating the sale of new motor vehicles unless he or she
10 holds a valid license as a new motor vehicle dealer in this
11 state for the make or makes of new motor vehicles being
12 bought, sold, exchanged, advertised, or negotiated or unless a
13 bona fide employee or agent of the licensee.

14 "(c) Notwithstanding any law of this state providing
15 otherwise, neither a new motor vehicle dealer nor a used motor
16 vehicle dealer nor any person engaged in the business of motor
17 vehicle rental and leasing:

18 "(1) With respect to a credit sale transaction, is
19 required to be licensed under Chapter 19 of Title 5 in order
20 to pay any amount necessary to satisfy a lease on, security
21 interest in, or lien on any motor vehicle either returned to
22 that dealer or to the lessor or traded in by the purchaser in
23 connection with the credit sale transaction, and to include
24 that amount as part of the amount to be paid by the purchaser
25 under the credit sale transaction; or

26 "(2) With respect to a lease transaction, is subject
27 to Chapter 19 of Title 5 or otherwise deemed to have made a

1 loan or credit sale by virtue of paying any amount necessary
2 to satisfy a lease on, security interest in, or lien on any
3 motor vehicle either returned to that dealer or to the
4 original lessor or traded in by the lessee in connection with
5 the lease transaction, and including that amount as part of
6 the amount to be paid by the lessee under the lease
7 transaction.

8 "(d) (1) The Legislature finds and determines that
9 there exists among the citizens of this state a widespread
10 demand for the retail and wholesale purchase of used motor
11 vehicles. It is the intent of the Legislature, in order to
12 protect the public at large, to establish for new applicants
13 for a license as a used motor vehicle dealer or as a motor
14 vehicle wholesaler, or both, a system of training in the legal
15 requirements of conducting business as such a dealer or
16 wholesaler.

17 "(2) Beginning October 1, 2010, every person who
18 applies for a new license as a used motor vehicle dealer and
19 every person who applies for a new license as a motor vehicle
20 wholesaler in this state, in addition to all other
21 requirements of this article and applicable laws, shall
22 provide to the commission, at the time he or she submits the
23 application, acceptable proof that the applicant has completed
24 a used motor vehicle education seminar or a motor vehicle
25 wholesaler education seminar, as applicable. The new
26 requirement shall not apply to persons licensed and in good
27 standing as a used motor vehicle dealer or as a motor vehicle

1 wholesaler on October 1, 2010, and such persons may renew
2 their licenses without complying with this subdivision.

3 "(3) Each applicant for a new license as a used
4 motor vehicle dealer or as a motor vehicle wholesaler, or
5 both, shall insure that he or she, through an owner,
6 principal, corporate officer, director or member or partner of
7 a limited liability corporation or limited liability
8 partnership, has completed a used motor vehicle education
9 seminar or a motor vehicle wholesaler education seminar, as
10 applicable, prior to submitting an application to become a
11 used motor vehicle dealer or a motor vehicle wholesaler.

12 "(e) Persons or entities seeking to conduct used
13 motor vehicle education seminars and/or motor vehicle
14 wholesaler education seminars shall apply to the commissioner
15 for such purpose or purposes. The commissioner shall review
16 applications submitted by seminar providers to insure that the
17 program or programs proposed to be provided to applicants for
18 a license as a used motor vehicle dealer or as a motor vehicle
19 wholesaler, or both, provides sufficient training to the
20 applicants. No person or entity shall represent itself as an
21 authorized education seminar provider or present an education
22 seminar without the prior approval of the commissioner. An
23 education seminar shall provide training in the following
24 areas:

25 "(1) Federal and state laws, rules, and regulations
26 applicable to the motor vehicle industry.

1 "(2) Paperwork required to complete the sale of a
2 used motor vehicle or motor vehicle wholesaling, as
3 applicable.

4 "(3) The process of applying for and obtaining
5 titles for used motor vehicles or wholesale motor vehicle, as
6 applicable.

7 "(4) Any other area deemed necessary or proper by
8 the commissioner."

9 Section 2. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law and shall become
12 operative on October 1, 2010.