

1 AN ACT relating to consumer protections in motor vehicle financing.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 190 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) For purposes of this section:*

6 *(a) "Consumer" means an individual that purchases or leases a motor vehicle*
7 *for other than agricultural, business, or commercial use;*

8 *(b) "Dealer" means a person that is required to be licensed under KRS*
9 *190.030(1);*

10 *(c) "Financing" includes the sale or assignment of a retail installment*
11 *contract;*

12 *(d) "Retail installment contract" has the same meaning as in KRS 190.090;*
13 *and*

14 *(e) "Third-party lender" means a person, other than the dealer, that:*

15 *1. Finances a sale or lease of a motor vehicle; or*

16 *2. Creates and holds, purchases, or acquires a retail installment contract.*

17 *(2) A dealer shall not charge a fee or receive a commission or other compensation*
18 *for providing, procuring, or arranging financing through a third-party lender for*
19 *the purchase or lease of a motor vehicle by a consumer, unless the dealer*
20 *provides the notice set forth under subsection (3) of this section:*

21 *(a) On a conspicuous sign that:*

22 *1. Measures at least twenty-four (24) inches on each side; and*

23 *2. Is posted in the sales or finance area of the dealership; and*

24 *(b) In a written acknowledgment that is signed by the consumer at or prior to*
25 *the time the consumer executes a purchase order, lease agreement, retail*
26 *installment contract, or other agreement for the purchase or lease of a*
27 *motor vehicle.*

1 (3) The notice required under subsection (2) of this section shall state as follows:
 2 "NOTICE TO CONSUMERS: The dealer may charge a fee or receive a
 3 commission or other compensation for providing, procuring, or arranging
 4 financing through a third-party lender for the purchase or lease of motor vehicles
 5 by consumers, for which the consumer may be responsible."

6 (4) Any dealer that charges a fee or receives a commission or other compensation in
 7 violation of this section shall be:

8 (a) Liable to the consumer in an amount equal to the fee charged or the
 9 commission or other compensation received by the dealer;

10 (b) Subject to a civil penalty of one thousand dollars (\$1,000) for the first
 11 violation and five thousand dollars (\$5,000) for the second and each
 12 subsequent violation, which may be recovered on behalf of the
 13 Commonwealth by the Attorney General; and

14 (c) Subject to the licensure penalties set forth in Section 2 of this Act.

15 (5) This section shall not be construed to require a dealer to disclose:

16 (a) The dealer's contractual arrangements with any third-party lender; or

17 (b) The amount of the markup, profit, or compensation that a dealer has
 18 contracted to receive in any particular transaction or series of transactions.

19 ➔Section 2. KRS 190.040 is amended to read as follows:

20 (1) A license may be denied, suspended, or revoked on the following grounds:

21 (a) Proof of financial or moral unfitness of applicant;

22 (b) Material misstatement in application for license;

23 (c) Filing a materially false or fraudulent tax return as certified by the Department
 24 of Revenue;

25 (d) Willful failure to comply with any provision of this chapter or any
 26 administrative regulation promulgated under this chapter;

27 (e) Willfully defrauding any retail buyer to the buyer's damage;

- 1 (f) Willful failure to perform any written agreement with any buyer;
- 2 (g) Failure or refusal to furnish and keep in force any bond required;
- 3 (h) Having made a fraudulent sale, transaction, or repossession;
- 4 (i) False or misleading advertising;
- 5 (j) Fraudulent misrepresentation, circumvention, or concealment through
6 subterfuge or device of any of the material particulars or the nature of them
7 required to be stated or furnished to the retail buyer;
- 8 (k) Employment of fraudulent devices, methods, or practices in connection with
9 compliance with the requirements under the statutes of this state with respect
10 to the retaking of goods under retail installment contracts and the redemption
11 and resale of goods;
- 12 (l) Having violated any law relating to the sale, distribution, or financing of
13 motor vehicles or new recreational vehicles, except in the case of a third or
14 any subsequent violation of Section 1 of this Act by a dealer, the dealer's
15 license shall be revoked if the dealer has willfully engaged in repetitive
16 violations of Section 1 of this Act;
- 17 (m) Being a manufacturer of motor vehicles or recreational vehicles, factory
18 branch, distributor, field representative, officer, agent, or any representative of
19 the motor vehicle manufacturer, recreational vehicle manufacturer, or factory
20 branch, who has induced, coerced, or attempted to induce or coerce any
21 automobile dealer or new recreational vehicle dealer to accept delivery of any
22 motor vehicle, new recreational vehicle, vehicles, parts, accessories, or any
23 other commodities that shall not have been ordered by the dealer;
- 24 (n) Being a manufacturer of motor vehicles or recreational vehicles, factory
25 branch, distributor, field representative, officer, agent, or any representative of
26 a motor vehicle manufacturer or factory branch, who has attempted to induce
27 or coerce, or has induced or coerced, any dealer to enter into any agreement

1 with a manufacturer, factory branch, or representative, or to do any other act
2 unfair to the dealer, by threatening to cancel any franchise existing between a
3 manufacturer, factory branch, or representative and the dealer;

4 (o) Being a manufacturer, factory branch, distributor, field representative, officer,
5 agent, or any representative of a motor vehicle manufacturer or factory branch,
6 who has unfairly, without due regard to the equities of the dealer and without
7 just provocation, canceled the franchise of any motor vehicle dealer. The
8 nonrenewal of a franchise or selling agreement without just provocation or
9 cause shall be deemed an evasion of this section and shall constitute an unfair
10 cancellation;

11 (p) Being a manufacturer, factory branch, distributor, field representative, officer,
12 agent, or any representative of a motor vehicle manufacturer, recreational
13 vehicle manufacturer, or factory branch, or wholesaler who makes, attempts to
14 make, or aids or abets the making of a sale of a motor vehicle or a new
15 recreational vehicle to a person other than a licensed motor vehicle dealer or
16 new recreational vehicle dealer. This section shall not prevent any
17 manufacturer from offering discounts or rebates on any motor vehicle or new
18 recreational vehicle to any of its employees; or

19 (q) Being a dealer who advertises for sale a new motor vehicle or new
20 recreational vehicle unless he is a dealer operating under a franchise with a
21 licensed manufacturer, factory branch, or distributor authorizing the sale of
22 the new motor vehicle or the new recreational vehicle being advertised.

23 (2) The licensor may deny the application for a license within thirty (30) days after
24 receipt thereof by written notice to the applicant, stating the grounds for denial.
25 Upon request by the applicant whose license has been denied, the licensor shall set
26 the time and place of hearing a review of denial, to be conducted in accordance with
27 KRS Chapter 13B.

- 1 (3) A license shall not be suspended or revoked except after a hearing conducted in
2 accordance with KRS Chapter 13B.
- 3 (4) The commission may inspect the pertinent books, letters, records, and contracts of a
4 licensee.
- 5 (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial,
6 suspension, or revocation of a license that any officer, director, or trustee of the firm
7 or corporation, or any member in case of a partnership, has been guilty of any act or
8 omission which would be cause for refusing, suspending, or revoking a license to
9 the party as an individual. Each licensee shall be responsible for the acts of any or
10 all of his salesmen while acting as his agent, if the licensee approved of or had
11 knowledge of the acts and after approval or knowledge retained the benefit,
12 proceeds, profits, or advantages accruing from the acts.
- 13 (6) Any licensee or other person in interest who is dissatisfied with a final order of the
14 commission may appeal to the Franklin Circuit Court and to the Court of Appeals in
15 the manner provided by KRS Chapter 13B.