

HOUSE BILL No. 2793

By Committee on Transportation

2-7

AN ACT amending the vehicle dealers and manufacturers act; relating to certain licenses; amending K.S.A. 8-2404 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 8-2404 is hereby amended to read as follows: 8-2404. (a) No vehicle dealer shall engage in business in this state without obtaining a license as required by this act. Any vehicle dealer holding a valid license and acting as a vehicle salesperson shall not be required to secure a salesperson's license.

(b) No first stage manufacturer, second stage manufacturer, factory branch, factory representative, distributor branch or distributor representative shall engage in business in this state without a license as required by this act, regardless of whether or not an office or other place of business is maintained in this state for the purpose of conducting such business.

(c) An application for a license shall be made to the director and shall contain the information provided for by this section, together with such other information as may be deemed reasonable and pertinent, and shall be accompanied by the required fee. The director may require in the application, or otherwise, 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, all of which may be considered by the director in determining the fitness of the applicant to engage in business as set forth in this section. The director may require the applicant for licensing to appear at such time and place as may be designated by the director for examination to enable the director to determine the accuracy of the facts contained in the written application, either for initial licensure or renewal thereof. Every application under this section shall be verified by the applicant.

(d) All licenses shall be granted or refused within 30 days after application is received by the director. All licenses, except licenses issued to salespersons, shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which they are granted, except that

1 where a complaint respecting the cancellation, termination or nonrenewal
2 of a sales agreement is in the process of being heard, no replacement
3 application shall be considered until a final order is issued by the director.
4 Applications for renewals, except for renewals of licenses issued to sales-
5 persons, received by the director after February 15 shall be considered
6 as new applications. All salespersons' licenses issued on or after January
7 1, 1987, shall expire on June 30, 1988, and thereafter shall expire, unless
8 previously suspended or revoked, on June 30 of the calendar year for
9 which they are granted. Applications for renewals of salespersons' licenses
10 received by the director after July 15 shall be considered as new appli-
11 cations. All licenses for supplemental places of business existing or issued
12 on or after January 1, 1994, shall expire on December 31, 1994, unless
13 previously expired, suspended or revoked, and shall thereafter expire on
14 December 31 of the calendar year for which they are granted, unless
15 previously suspended or revoked.

16 (e) License fees for each calendar year, or any part thereof shall be
17 as follows:

- 18 (1) For new vehicle dealers, \$50;
- 19 (2) for distributors, \$50;
- 20 (3) for wholesalers, \$50;
- 21 (4) for distributor branches, \$50;
- 22 (5) for used vehicle dealers, \$50;
- 23 (6) for first and second stage manufacturers, \$200 plus \$50 for each
24 factory branch in this state;
- 25 (7) for factory representatives, \$25;
- 26 (8) for distributor representatives, \$25;
- 27 (9) for brokers, \$50;
- 28 (10) for lending agencies, \$25;
- 29 (11) for first and second stage converters, \$25;
- 30 (12) for salvage vehicle dealers, \$50;
- 31 (13) for auction motor vehicle dealers, \$50;
- 32 (14) for vehicle salesperson, \$15; and
- 33 (15) for insurance companies, \$50.

34 ~~Any salvage vehicle dealer who is also licensed as a used vehicle dealer~~
35 ~~shall be required to pay only one \$50 fee for both licenses.~~ Any new
36 vehicle dealer who is also licensed as a used vehicle dealer shall be re-
37 quired to pay only one \$50 fee for both licenses.

38 (f) Dealers may establish approved supplemental places of business
39 within the same county of their licensure or, with respect to new vehicle
40 dealers, within their area of responsibility as defined in their franchise
41 agreement. Those doing so shall be required to pay a supplemental license
42 fee of \$10. In addition to any other requirements, new vehicle dealers
43 seeking to establish supplemental places of business shall also comply with

1 the provisions of K.S.A. 8-2430 through 8-2432, and amendments thereto.
2 A new vehicle dealer establishing a supplemental place of business in a
3 county other than such dealer's county of licensure but within such
4 dealer's area of responsibility as defined in such dealer's franchise agree-
5 ment shall be licensed only to do business as a new motor vehicle dealer
6 in new motor vehicles at such supplemental place of business. Original
7 inspections by the division of a proposed established place of business
8 shall be made at no charge except that a \$5 fee shall be charged by the
9 division for each additional inspection the division must make of such
10 premises in order to approve the same.

11 (g) The license of all persons licensed under the provisions of this act
12 shall state the address of the established place of business, office, branch
13 or supplemental place of business and must be conspicuously displayed
14 therein. The director shall endorse a change of address on a license with-
15 out charge if: (1) The change of address of an established place of busi-
16 ness, office, branch or supplemental place of business is within the same
17 county; or (2) the change of address of a supplemental place of business,
18 with respect to a new vehicle dealer, is within such dealer's area of re-
19 sponsibility as defined in their franchise agreement. A change of address
20 of the established place of business, office or branch to a different county
21 shall require a new license and payment of the required fees but such
22 new license and fees shall not be required for a change of address of a
23 supplemental place of business, with respect to a new vehicle dealer, to
24 a different county but within the dealer's area of responsibility as defined
25 in their franchise agreement.

26 (h) Every salesperson, factory representative or distributor represen-
27 tative shall carry on their person a certification that the person holds a
28 valid state license. The certification shall name the person's employer and
29 shall be displayed upon request. An original copy of the state license for
30 a vehicle salesperson shall be mailed or otherwise delivered by the divi-
31 sion to the employer of the salesperson for public display in the em-
32 ployer's established place of business. When a salesperson ceases to be
33 employed as such, the former employer shall mail or otherwise return
34 the original copy of the employee's state license to the division. A sales-
35 person, factory representative or distributor representative who termi-
36 nates employment with one employer may file an application with the
37 director to transfer the person's state license in the name of another
38 employer. The application shall be accompanied by a \$2 transfer fee. A
39 salesperson, factory representative or distributor representative who ter-
40 minates employment, and does not transfer the state license, shall mail
41 or otherwise return the certification that the person holds a valid state
42 license to the division.

43 (i) If the director has reasonable cause to doubt the financial respon-

1 sibility or the compliance by the applicant or licensee with the provisions
2 of this act, the director may require the applicant or licensee to furnish
3 and maintain a bond in such form, amount and with such sureties as the
4 director approves, but such amount shall be not less than \$5,000 nor more
5 than \$20,000, conditioned upon the applicant or licensee complying with
6 the provisions of the statutes applicable to the licensee and as indemnity
7 for any loss sustained by a retail or wholesale buyer or seller of a vehicle
8 by reason of any act by the licensee constituting grounds for suspension
9 or revocation of the license. Every applicant or licensee who is or applies
10 to be a used vehicle dealer or a new vehicle dealer shall furnish and
11 maintain a bond in such form, amount and with such sureties as the
12 director approves, conditioned upon the applicant or licensee complying
13 with the provisions of the statutes applicable to the licensee and as in-
14 demnity for any loss sustained by a retail or wholesale buyer or seller of
15 a vehicle by reason of any act by the licensee in violation of any act which
16 constitutes grounds for suspension or revocation of the license. The
17 amount of such bond shall be as follows: (1) For any new applicant
18 \$30,000; or (2) for any current licensee, \$15,000, until the renewal date
19 of the existing bond, then \$30,000, except that on and after January 1,
20 2003, the amount of such bond shall be \$30,000. To comply with this
21 subsection, every bond shall be a corporate surety bond issued by a com-
22 pany authorized to do business in the state of Kansas and shall be executed
23 in the name of the state of Kansas for the benefit of any aggrieved retail
24 or wholesale buyer or seller of a vehicle. The aggregate liability of the
25 surety for all breaches of the conditions of the bond in no event shall
26 exceed the amount of such bond. The surety on the bond shall have the
27 right to cancel the bond by giving 30 days' notice to the director, and
28 thereafter the surety shall be relieved of liability for any breach of con-
29 dition occurring after the effective date of cancellation. Bonding require-
30 ments shall not apply to first or second stage manufacturers, factory
31 branches, factory representatives or salespersons. Upon determination by
32 the director that a judgment from a Kansas court of competent jurisdic-
33 tion is a final judgment and that the judgment resulted from an act in
34 violation of this act or would constitute grounds for suspension, revoca-
35 tion, refusal to renew a license or administrative fine pursuant to K.S.A.
36 8-2411, and amendments thereto, the proceeds of the bond on deposit
37 or in lieu of bond provided by subsection (j), shall be paid. The deter-
38 mination by the director under this subsection is hereby specifically ex-
39 empted from the Kansas administrative procedure act (K.S.A. 77-501
40 through 77-549, and amendments thereto,) and the act for judicial review
41 and civil enforcement of agency actions (K.S.A. 77-601 through 77-627,
42 and amendments thereto). Any proceeding to enforce payment against a
43 surety following a determination by the director shall be prosecuted by

1 the judgment creditor named in the final judgment sought to be enforced.
2 Upon a finding by the court in such enforcement proceeding that a surety
3 has wrongfully failed or refused to pay, the court shall award reasonable
4 attorney fees to the judgment creditor.

5 (j) An applicant or licensee may elect to satisfy the bonding require-
6 ments of subsection (i) by depositing with the state treasurer cash, ne-
7 gotiable bonds of the United States or of the state of Kansas or negotiable
8 certificates of deposit of any bank organized under the laws of the United
9 States or of the state of Kansas. On or after January 1, 2003, the amount
10 of cash, negotiable bonds of the United States or of the state of Kansas
11 or negotiable certificates of deposit of any bank organized under the laws
12 of the United States or of the state of Kansas deposited with the state
13 treasurer shall be in an amount of no less than \$30,000. When negotiable
14 bonds or negotiable certificates of deposit have been deposited with the
15 state treasurer to satisfy the bonding requirements of subsection (i), such
16 negotiable bonds or negotiable certificates of deposit shall remain on
17 deposit with the state treasurer for a period of not less than two years
18 after the date of delivery of the certificate of title to the motor vehicle
19 which was the subject of the last motor vehicle sales transaction in which
20 the licensee engaged prior to termination of the licensee's license. In the
21 event a licensee elects to deposit a surety bond in lieu of the negotiable
22 bonds or negotiable certificates of deposit previously deposited with the
23 state treasurer, the state treasurer shall not release the negotiable bonds
24 or negotiable certificates of deposits until at least two years after the date
25 of delivery of the certificate of title to the motor vehicle which was the
26 subject of the last motor vehicle sales transaction in which the licensee
27 engaged prior to the date of the deposit of the surety bond. The cash
28 deposit or market value of any such securities shall be equal to or greater
29 than the amount of the bond required for the bonded area and any in-
30 terest on those funds shall accrue to the benefit of the depositor.

31 (k) No license shall be issued by the director to any person to act as
32 a new or used dealer, wholesaler, broker, salvage vehicle dealer, auction
33 motor vehicle dealer, second stage manufacturer, first stage converter,
34 second stage converter or distributor unless the applicant for the vehicle
35 dealer's license maintains an established place of business which has been
36 inspected and approved by the division. First stage manufacturers, factory
37 branches, factory representatives, distributor branches, distributor rep-
38 resentatives and lending agencies are not required to maintain an estab-
39 lished place of business to be issued a license.

40 (l) Dealers required under the provisions of this act to maintain an
41 established place of business shall own or have leased and use sufficient
42 lot space to display vehicles at least equal in number to the number of
43 dealer license plates the dealer has had assigned.

1 (m) A sign with durable lettering at least 10 inches in height and easily
2 visible from the street identifying the established place of business shall
3 be displayed by every vehicle dealer. Notwithstanding the other provi-
4 sions of this subsection, the height of lettering of the required sign may
5 be less than 10 inches as necessary to comply with local zoning
6 regulations.

7 (n) If the established or supplemental place of business or lot is
8 zoned, approval must be secured from the proper zoning authority and
9 proof that the use complies with the applicable zoning law, ordinance or
10 resolution must be furnished to the director by the applicant for licensing.

11 (o) An established or supplemental place of business, otherwise
12 meeting the requirements of this act may be used by a dealer to conduct
13 more than one business, provided that suitable space and facilities exist
14 therein to properly conduct the business of a vehicle dealer.

15 (p) If a supplemental place of business is not operated on a contin-
16 uous, year-round basis, the dealer shall give the department 15 days' no-
17 tice as to the dates on which the dealer will be engaged in business at the
18 supplemental place of business.

19 (q) Any vehicle dealer selling, exchanging or transferring or causing
20 to be sold, exchanged or transferred new vehicles in this state must sat-
21 isfactorily demonstrate to the director that such vehicle dealer has a bona
22 fide franchise agreement with the first or second stage manufacturer or
23 distributor of the vehicle, to sell, exchange or transfer the same or to
24 cause to be sold, exchanged or transferred.

25 No person may engage in the business of buying, selling or exchanging
26 new motor vehicles, either directly or indirectly, unless such person holds
27 a license issued by the director for the make or makes of new motor
28 vehicles being bought, sold or exchanged, or unless a person engaged in
29 such activities is not required to be licensed or acts as an employee of a
30 licensee and such acts are only incidentally performed. For the purposes
31 of this section, engaged in the business of buying, selling or exchanging
32 new motor vehicles, either directly or indirectly, includes: (1) Displaying
33 new motor vehicles on a lot or showroom; (2) advertising new motor
34 vehicles, unless the person's business primarily includes the business of
35 broadcasting, printing, publishing or advertising for others in their own
36 names; or (3) regularly or actively soliciting or referring buyers for new
37 motor vehicles.

38 (r) No person may engage in the business of buying, selling or ex-
39 changing used motor vehicles, either directly or indirectly, unless such
40 person holds a license issued by the director for used motor vehicles being
41 bought, sold or exchanged, or unless a person engaged in such activities
42 is not required to be licensed or acts as an employee of a licensee and
43 such acts are only incidentally performed. For the purposes of this sec-

1 tion, engaged in the business of buying, selling or exchanging used motor
2 vehicles, either directly or indirectly, includes: (1) Displaying used motor
3 vehicles on a lot or showroom; (2) advertising used motor vehicles, unless
4 the person's business primarily includes the business of broadcasting,
5 printing, publishing or advertising for others in their own names; or (3)
6 regularly or actively soliciting buyers for used motor vehicles.

7 (s) The director of vehicles shall publish a suitable Kansas vehicle
8 salesperson's manual. Before a vehicle salesperson's license is issued, the
9 applicant for an original license or renewal thereof shall be required to
10 pass a written examination based upon information in the manual.

11 (t) No new license shall be issued nor any license renewed to any
12 person to act as a salvage vehicle dealer until the division has received
13 evidence of compliance with the junkyard and salvage control act as set
14 forth in K.S.A. 68-2201 *et seq.*, and amendments thereto.

15 (u) On and after the effective date of this act, no person shall act as
16 a broker in the advertising, buying or selling of any new or used motor
17 vehicle. Nothing herein shall be construed to prohibit a person duly li-
18 censed under the requirements of this act from acting as a broker in
19 buying or selling a recreational vehicle as defined by subsection (f) of
20 K.S.A. 75-1212, and amendments thereto, when the recreational vehicle
21 subject to sale or purchase is a used recreational vehicle which has been
22 previously titled and independently owned by another person for a period
23 of 45 days or more, or is a new or used recreational vehicle repossessed
24 by a creditor holding security in such vehicle.

25 (v) Nothing herein shall be construed to prohibit a person not oth-
26 erwise required to be licensed under this act from selling such person's
27 own vehicle as an isolated and occasional sale.

28 Sec. 2. K.S.A. 8-2404 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.

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