

SENATE BILL No. 305

By Committee on Transportation

1-23

1 AN ACT concerning the vehicle dealers and manufacturers licensing act;
2 relating to vehicle dealer licensing; increasing the bonding requirement
3 for vehicle dealers; amending K.S.A. 2019 Supp. 8-2404 and repealing
4 the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 Supp. 8-2404 is hereby amended to read as
8 follows: 8-2404. (a) No vehicle dealer shall engage in business in this state
9 without obtaining a license as required by this act. Any vehicle dealer
10 holding a valid license and acting as a vehicle salesperson shall not be
11 required to secure a salesperson's license.

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

18 (c) An application for a license shall be made to the director and shall
19 contain the information provided for by this section, together with such
20 other information as may be deemed reasonable and pertinent, and shall be
21 accompanied by the required fee. The director may require in the
22 application, or otherwise, information relating to the applicant's solvency,
23 financial standing, or other pertinent matter commensurate with the
24 safeguarding of the public interest in the locality in which the applicant
25 proposes to engage in business, all of which may be considered by the
26 director in determining the fitness of the applicant to engage in business as
27 set forth in this section. The director may require the applicant for
28 licensing to appear at such time and place as may be designated by the
29 director for examination to enable the director to determine the accuracy of
30 the facts contained in the written application, either for initial licensure or
31 renewal thereof. Every application under this section shall be verified by
32 the applicant.

33 (d) All licenses shall be granted or refused within 30 days after
34 application is received by the director. All licenses, except licenses issued
35 to salespersons, shall expire, unless previously suspended or revoked, on
36 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
5 salespersons, received by the director after February 15 shall be considered
6 as new applications. All salespersons' licenses shall expire, unless
7 previously suspended or revoked, on June 30 of the calendar year for
8 which they are granted. Applications for renewals of salespersons' licenses
9 received by the director after July 15 shall be considered as new
10 applications. All licenses for supplemental places of business existing or
11 issued on or after January 1, 1994, shall expire on December 31 of the
12 calendar year for which they are granted, unless previously suspended or
13 revoked.

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

- 16 (1) For new vehicle dealers, \$75;
- 17 (2) for distributors, \$75;
- 18 (3) for wholesalers, \$75;
- 19 (4) for distributor branches, \$75;
- 20 (5) for used vehicle dealers, \$75;
- 21 (6) for first and second stage manufacturers, \$225 plus \$75 for each
22 factory branch in this state;
- 23 (7) for factory representatives, \$50;
- 24 (8) for distributor representatives, \$50;
- 25 (9) for brokers, \$75;
- 26 (10) for lending agencies, \$50;
- 27 (11) for first and second stage converters, \$50;
- 28 (12) for salvage vehicle dealers, \$75;
- 29 (13) for auction motor vehicle dealers, \$75;
- 30 (14) for vehicle salesperson, \$25;
- 31 (15) for insurance companies, \$75;
- 32 (16) for vehicle crusher, \$75;
- 33 (17) for vehicle recycler, \$75;
- 34 (18) for scrap metal recycler, \$75;
- 35 (19) for rebuilders, \$75; and
- 36 (20) for salvage vehicle pool, \$75.

37 Any new vehicle dealer who is also licensed as a used vehicle dealer
38 shall be required to pay only one \$75 fee for both licenses.

39 (f) Dealers may establish approved supplemental places of business
40 within the same county of their licensure or, with respect to new vehicle
41 dealers, within their area of responsibility as defined in their franchise
42 agreement. Those doing so shall be required to pay a supplemental license
43 fee of \$35. In addition to any other requirements, new vehicle dealers

1 seeking to establish supplemental places of business shall also comply
2 with the provisions of K.S.A. 8-2430 through 8-2432, and amendments
3 thereto. A new vehicle dealer establishing a supplemental place of business
4 in a county other than such dealer's county of licensure but within such
5 dealer's area of responsibility as defined in such dealer's franchise
6 agreement shall be licensed only to do business as a new motor vehicle
7 dealer in new motor vehicles at such supplemental place of business.
8 Original inspections by the division of a proposed established place of
9 business shall be made at no charge except that a \$30 fee shall be charged
10 by the division for each additional inspection the division must make of
11 such premises in order to approve the same.

12 (g) The license of all persons licensed under the provisions of this act
13 shall state the address of the established place of business, office, branch
14 or supplemental place of business and must be conspicuously displayed
15 therein. The director shall endorse a change of address on a license without
16 charge if: (1) The change of address of an established place of business,
17 office, branch or supplemental place of business is within the same county;
18 or (2) the change of address of a supplemental place of business, with
19 respect to a new vehicle dealer, is within such dealer's area of
20 responsibility as defined in their franchise agreement. A change of address
21 of the established place of business, office or branch to a different county
22 shall require a new license and payment of the required fees but such new
23 license and fees shall not be required for a change of address of a
24 supplemental place of business, with respect to a new vehicle dealer, to a
25 different county but within the dealer's area of responsibility as defined in
26 their franchise agreement.

27 (h) Every salesperson, factory representative or distributor
28 representative shall carry on their person a certification that the person
29 holds a valid state license. The certification shall name the person's
30 employer and shall be displayed upon request. An original copy of the
31 state license for a vehicle salesperson shall be mailed or otherwise
32 delivered by the division to the employer of the salesperson for public
33 display in the employer's established place of business. When a
34 salesperson ceases to be employed as such, the former employer shall mail
35 or otherwise return the original copy of the employee's state license to the
36 division. A salesperson, factory representative or distributor representative
37 who terminates employment with one employer may file an application
38 with the director to transfer the person's state license in the name of
39 another employer. The application shall be accompanied by a \$12 transfer
40 fee. A salesperson, factory representative or distributor representative who
41 terminates employment, and does not transfer the state license, shall mail
42 or otherwise return the certification that the person holds a valid state
43 license to the division.

1 (i) If the director has reasonable cause to doubt the financial
2 responsibility or the compliance by the applicant or licensee with the
3 provisions of this act, the director may require the applicant or licensee to
4 furnish and maintain a bond in such form, amount and with such sureties
5 as the director approves, but such amount shall be not less than \$5,000 nor
6 more than \$20,000, conditioned upon the applicant or licensee complying
7 with the provisions of the statutes applicable to the licensee and as
8 indemnity for any loss sustained by a retail or wholesale buyer or seller of
9 a vehicle by reason of any act by the licensee constituting grounds for
10 suspension or revocation of the license. Every applicant or licensee who is
11 or applies to be a used vehicle dealer or a new vehicle dealer shall furnish
12 and maintain a bond in such form, amount and with such sureties as the
13 director approves, conditioned upon the applicant or licensee complying
14 with the provisions of the statutes applicable to the licensee and as
15 indemnity for any loss sustained by a retail or wholesale buyer or seller of
16 a vehicle by reason of any act by the licensee in violation of any act which
17 constitutes grounds for suspension or revocation of the license. The
18 amount of such bond shall be ~~\$30,000~~ **\$50,000**. To comply with this
19 subsection, every bond shall be a corporate surety bond issued by a
20 company authorized to do business in the state of Kansas and shall be
21 executed in the name of the state of Kansas for the benefit of any
22 aggrieved retail or wholesale buyer or seller of a vehicle. The aggregate
23 liability of the surety for all breaches of the conditions of the bond in no
24 event shall exceed the amount of such bond. The surety on the bond shall
25 have the right to cancel the bond by giving 30 days' notice to the director,
26 and thereafter the surety shall be relieved of liability for any breach of
27 condition occurring after the effective date of cancellation. Bonding
28 requirements shall not apply to first or second stage manufacturers, factory
29 branches, factory representatives or salespersons. Upon determination by
30 the director that a judgment from a Kansas court of competent jurisdiction
31 is a final judgment and that the judgment resulted from an act in violation
32 of this act or would constitute grounds for suspension, revocation, refusal
33 to renew a license or administrative fine pursuant to K.S.A. 8-2411, and
34 amendments thereto, the proceeds of the bond on deposit or in lieu of bond
35 provided by subsection (j); shall be paid. The determination by the director
36 under this subsection is hereby specifically exempted from the Kansas
37 administrative procedure act and the Kansas judicial review act. Any
38 proceeding to enforce payment against a surety following a determination
39 by the director shall be prosecuted by the judgment creditor named in the
40 final judgment sought to be enforced. Upon a finding by the court in such
41 enforcement proceeding that a surety has wrongfully failed or refused to
42 pay, the court shall award reasonable attorney fees to the judgment
43 creditor.

1 (j) An applicant or licensee may elect to satisfy the bonding
2 requirements of subsection (i) by depositing with the state treasurer cash,
3 negotiable bonds of the United States or of the state of Kansas or
4 negotiable certificates of deposit of any bank organized under the laws of
5 the United States or of the state of Kansas. The amount of cash, negotiable
6 bonds of the United States or of the state of Kansas or negotiable
7 certificates of deposit of any bank organized under the laws of the United
8 States or of the state of Kansas deposited with the state treasurer shall be
9 in an amount of no less than ~~\$30,000~~ \$50,000. When negotiable bonds or
10 negotiable certificates of deposit have been deposited with the state
11 treasurer to satisfy the bonding requirements of subsection (i), such
12 negotiable bonds or negotiable certificates of deposit shall remain on
13 deposit with the state treasurer for a period of not less than two years after
14 the date of delivery of the certificate of title to the motor vehicle which
15 was the subject of the last motor vehicle sales transaction in which the
16 licensee engaged prior to termination of the licensee's license. In the event
17 a licensee elects to deposit a surety bond in lieu of the negotiable bonds or
18 negotiable certificates of deposit previously deposited with the state
19 treasurer, the state treasurer shall not release the negotiable bonds or
20 negotiable certificates of deposits until at least two years after the date of
21 delivery of the certificate of title to the motor vehicle which was the
22 subject of the last motor vehicle sales transaction in which the licensee
23 engaged prior to the date of the deposit of the surety bond. The cash
24 deposit or market value of any such securities shall be equal to or greater
25 than the amount of the bond required for the bonded area and any interest
26 on those funds shall accrue to the benefit of the depositor.

27 (k) No license shall be issued by the director to any person to act as a
28 new or used dealer, wholesaler, broker, salvage vehicle dealer, auction
29 motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap
30 metal recycler, salvage vehicle pool, second stage manufacturer, first stage
31 converter, second stage converter or distributor unless the applicant for the
32 vehicle dealer's license maintains an established place of business ~~which~~
33 *that* has been inspected and approved by the division. First stage
34 manufacturers, factory branches, factory representatives, distributor
35 branches, distributor representatives and lending agencies are not required
36 to maintain an established place of business to be issued a license.

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

41 (m) A sign with durable lettering at least 10 inches in height and
42 easily visible from the street identifying the established place of business
43 shall be displayed by every vehicle dealer. Notwithstanding the other

1 provisions of this subsection, the height of lettering of the required sign
2 may be less than 10 inches as necessary to comply with local zoning
3 regulations.

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

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

12 (p) If a supplemental place of business is not operated on a
13 continuous, year-round basis, the dealer shall give the department 15 days'
14 notice as to the dates on which the dealer will be engaged in business at
15 the supplemental place of business.

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

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

35 (r) No person may engage in the business of buying, selling or
36 exchanging used motor vehicles, either directly or indirectly, unless such
37 person holds a license issued by the director for used motor vehicles being
38 bought, sold or exchanged, or unless a person engaged in such activities is
39 not required to be licensed or acts as an employee of a licensee and such
40 acts are only incidentally performed. For the purposes of this section,
41 engaged in the business of buying, selling or exchanging used motor
42 vehicles, either directly or indirectly, includes: (1) Displaying used motor
43 vehicles on a lot or showroom; (2) advertising used motor vehicles, unless

1 the person's business primarily includes the business of broadcasting,
2 printing, publishing or advertising for others in their own names; or (3)
3 regularly or actively soliciting buyers for used motor vehicles.

4 (s) The director of vehicles shall publish a suitable Kansas vehicle
5 salesperson's manual. Before a vehicle salesperson's license is issued, the
6 applicant for an original license shall be required to pass a written
7 examination based upon information in the manual. Thereafter, any
8 salesperson licensee may be required to be re-tested at the discretion of the
9 director based upon terms and conditions established by the director.

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

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

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

27 Sec. 2. K.S.A. 2019 Supp. 8-2404 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after
29 January 1, 2021, and its publication in the statute book.