

House Substitute for SENATE BILL No. 99

By Committee on Transportation

3-17

1 AN ACT concerning motor vehicles; relating to the vehicle dealers and
2 manufacturers licensing act; increasing the bonding requirement for
3 vehicle dealers; providing for display show licenses; allowing for new
4 vehicle dealers and manufacturers to participate in display shows;
5 amending K.S.A. 2020 Supp. 8-2404 and 8-2435 and repealing the
6 existing sections; also repealing K.S.A. 2020 Supp. 8-2435, as
7 amended by section 1 of 2021 Senate Bill No. 33.
8

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

10 Section 1. On and after January 1, 2022, K.S.A. 2020 Supp. 8-2404 is
11 hereby amended to read as follows: 8-2404. (a) No vehicle dealer shall
12 engage in business in this state without obtaining a license as required by
13 this act. Any vehicle dealer holding a valid license and acting as a vehicle
14 salesperson shall not be required to secure a salesperson's license.

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

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

36 (d) All licenses shall be granted or refused within 30 days after

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

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

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

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

42 (f) Dealers may establish approved supplemental places of business
43 within the same county of their licensure or, with respect to new vehicle

1 dealers, within their area of responsibility as defined in their franchise
2 agreement. Those doing so shall be required to pay a supplemental license
3 fee of \$35. In addition to any other requirements, new vehicle dealers
4 seeking to establish supplemental places of business shall also comply
5 with the provisions of K.S.A. 8-2430 through 8-2432, and amendments
6 thereto. A new vehicle dealer establishing a supplemental place of business
7 in a county other than such dealer's county of licensure but within such
8 dealer's area of responsibility as defined in such dealer's franchise
9 agreement shall be licensed only to do business as a new motor vehicle
10 dealer in new motor vehicles at such supplemental place of business.
11 Original inspections by the division of a proposed established place of
12 business shall be made at no charge except that a \$30 fee shall be charged
13 by the division for each additional inspection the division must make of
14 such premises in order to approve the same.

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

30 (h) Every salesperson, factory representative or distributor
31 representative shall carry on their person a certification that the person
32 holds a valid state license. The certification shall name the person's
33 employer and shall be displayed upon request. An original copy of the
34 state license for a vehicle salesperson shall be mailed or otherwise
35 delivered by the division to the employer of the salesperson for public
36 display in the employer's established place of business. When a
37 salesperson ceases to be employed as such, the former employer shall mail
38 or otherwise return the original copy of the employee's state license to the
39 division. A salesperson, factory representative or distributor representative
40 who terminates employment with one employer may file an application
41 with the director to transfer the person's state license in the name of
42 another employer. The application shall be accompanied by a \$12 transfer
43 fee. A salesperson, factory representative or distributor representative who

1 terminates employment, and does not transfer the state license, shall mail
2 or otherwise return the certification that the person holds a valid state
3 license to the division.

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

1 enforcement proceeding that a surety has wrongfully failed or refused to
2 pay, the court shall award reasonable attorney fees to the judgment
3 creditor.

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

30 (k) No license shall be issued by the director to any person to act as a
31 new or used dealer, wholesaler, broker, salvage vehicle dealer, auction
32 motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap
33 metal recycler, salvage vehicle pool, second stage manufacturer, first stage
34 converter, second stage converter or distributor unless the applicant for the
35 vehicle dealer's license maintains an established place of business which
36 has been inspected and approved by the division. First stage
37 manufacturers, factory branches, factory representatives, distributor
38 branches, distributor representatives and lending agencies are not required
39 to maintain an established 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
2 easily visible from the street identifying the established place of business
3 shall be displayed by every vehicle dealer. Notwithstanding the other
4 provisions of this subsection, the height of lettering of the required sign
5 may 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
16 continuous, year-round basis, the dealer shall give the department 15 days'
17 notice as to the dates on which the dealer will be engaged in business at
18 the 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
21 satisfactorily demonstrate to the director that such vehicle dealer has a
22 bona fide franchise agreement with the first or second stage manufacturer
23 or 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 of
31 this section, engaged in the business of buying, selling or exchanging new
32 motor vehicles, either directly or indirectly, includes: (1) Displaying new
33 motor vehicles on a lot or showroom; (2) advertising new motor vehicles,
34 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
39 exchanging 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 is
42 not required to be licensed or acts as an employee of a licensee and such
43 acts are only incidentally performed. For the purposes of this section,

1 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 shall be required to pass a written
10 examination based upon information in the manual. Thereafter, any
11 salesperson licensee may be required to be re-tested at the discretion of the
12 director based upon terms and conditions established by the director.

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

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

27 (v) Nothing ~~herein~~ *in this section* shall be construed to prohibit a
28 person not otherwise required to be licensed under this act from selling
29 such person's own vehicle as an isolated and occasional sale.

30 Sec. 2. K.S.A. 2020 Supp. 8-2435 is hereby amended to read as
31 follows: 8-2435. (a) (1) Upon proper application, on a form approved by
32 the division of vehicles, the director of vehicles may authorize the display
33 of new motor vehicles *of a new vehicle dealer* at a location other than the
34 established or supplemental place of business of a motor vehicle dealer
35 provided that the requirements of ~~subsections (i) and (n)~~ of K.S.A. 8-2404;
36 ~~and amendments thereto, (i) and (n) and K.S.A. 8-2405, and amendments~~
37 *thereto*, are satisfied by the motor vehicle dealer. A fee in the amount of
38 \$15 shall be paid by an applicant for each application. No sales
39 transactions, *leases or test drives* may occur at such display locations.

40 (2) (A) *Upon proper application on a form approved by the division*
41 *of vehicles, the director of vehicles may issue a license known as a*
42 *temporary display show license to a sponsor of such display show that is*
43 *responsible for organizing and operating the display show under such*

1 *terms and conditions as the director may reasonably require. A fee in the*
2 *amount of \$100 shall be paid by the sponsor applying for each application*
3 *and each participant displaying vehicles shall pay a fee of \$35 to the*
4 *sponsor. The sponsor shall remit all fees to the director. New vehicle*
5 *dealers, first stage manufacturers, second stage manufacturers, first stage*
6 *converters, second stage converters and distributors may attend and*
7 *participate in the display of new motor vehicles under this subparagraph*
8 *and may display vehicles without regard to geographical territorial*
9 *assignment or relevant market area, as defined in K.S.A. 8-2430, and*
10 *amendments thereto. New motor vehicle dealers participating in a display*
11 *show may do so without the approval of any first stage manufacturer,*
12 *second stage manufacturer, first stage converter, second stage converter or*
13 *distributor who may not bar or treat such new vehicle dealer adversely for*
14 *participating in a display show. No sales or lease transactions may occur*
15 *at a display show, but test drives for purposes other than the sale or lease*
16 *of a vehicle may be made to demonstrate the vehicle and its features.*

17 *(B) For purposes of this paragraph, "display show" means a display*
18 *of new motor vehicles that does not fall under the description set forth in*
19 *subsection (a)(1) or K.S.A. 8-2444(a), and amendments thereto.*

20 *(b) Authorization granted by the director under ~~this section~~*
21 *subsection (a)(1) shall be granted only to motor vehicle dealers licensed by*
22 *the director and to no other person, natural or otherwise. The authorization*
23 *shall be for a period not to exceed 15 consecutive days unless otherwise*
24 *authorized by the director of vehicles. A sponsor under subsection (a)(2) is*
25 *not required to be a licensed new vehicle dealer; but participating new*
26 *vehicle dealers must be licensed motor vehicle dealers or the participant*
27 *must be a first stage manufacturer, second stage manufacturer, first stage*
28 *converter, second stage converter or distributor for such manufacturer or*
29 *converter. Such type of participant is not required to be licensed to*
30 *participate.*

31 *(c) Authorization to display under this section shall not be granted for*
32 *events for which a temporary trade show license under K.S.A. 2020 Supp.*
33 *8-2444, and amendments thereto, would be required.*

34 *(d) The director may deny an application for a license under this*
35 *section if the director:*

36 *(1) Has probable cause to believe that the applicant's request for a*
37 *license should be made under the provisions of K.S.A. 2020 Supp. 8-2444,*
38 *and amendments thereto; or*

39 *(2) the request for a license under this section is being made to avoid*
40 *compliance with the provisions of K.S.A. 2020 Supp. 8-2444, and*
41 *amendments thereto.*

42 *(e) The provisions of this section shall be a part of and supplemental*
43 *to the vehicle dealers and manufacturers licensing act.*

1 Sec. 3. K.S.A. 2020 Supp. 8-2435 is hereby repealed.

2 Sec. 4. On and after July 1, 2021, K.S.A. 2020 Supp. 8-2435, as
3 amended by section 1 of 2021 Senate Bill No. 33, is hereby repealed.

4 Sec. 5. On and after January 1, 2022, K.S.A. 2020 Supp. 8-2404 is
5 hereby repealed.

6 Sec. 6. This act shall take effect and be in force from and after its
7 publication in the Kansas register.