

House Substitute for SENATE BILL No. 99

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

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

Section 1. On and after January 1, 2022, K.S.A. 2020 Supp. 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 where a complaint respecting the cancellation, termination or nonrenewal of a sales agreement is in the process of being heard, no replacement application shall be considered until a final order is issued by the director. Applications for renewals, except for renewals of licenses issued to salespersons, received by the director after February 15 shall be considered as new applications. All salespersons' licenses shall expire, unless previously suspended or revoked, on June 30 of the calendar year for which they are granted. Applications for renewals of salespersons' licenses received by the director after July 15 shall be considered as new applications. All licenses for supplemental places of business existing or issued on or after January 1, 1994, shall expire on December 31 of the calendar year for which they are granted, unless previously suspended or revoked.

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

- (1) For new vehicle dealers, \$75;
- (2) for distributors, \$75;
- (3) for wholesalers, \$75;
- (4) for distributor branches, \$75;
- (5) for used vehicle dealers, \$75;
- (6) for first and second stage manufacturers, \$225 plus \$75 for each factory branch in this state;
- (7) for factory representatives, \$50;

- (8) for distributor representatives, \$50;
- (9) for brokers, \$75;
- (10) for lending agencies, \$50;
- (11) for first and second stage converters, \$50;
- (12) for salvage vehicle dealers, \$75;
- (13) for auction motor vehicle dealers, \$75;
- (14) for vehicle salesperson, \$25;
- (15) for insurance companies, \$75;
- (16) for vehicle crusher, \$75;
- (17) for vehicle recycler, \$75;
- (18) for scrap metal recycler, \$75;
- (19) for rebuilders, \$75; and
- (20) for salvage vehicle pool, \$75.

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

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

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

(h) Every salesperson, factory representative or distributor representative shall carry on their person a certification that the person holds a valid state license. The certification shall name the person's employer and shall be displayed upon request. An original copy of the state license for a vehicle salesperson shall be mailed or otherwise delivered by the division to the employer of the salesperson for public display in the employer's established place of business. When a salesperson ceases to be employed as such, the former employer shall mail or otherwise return the original copy of the employee's state license to the division. A salesperson, factory representative or distributor representative who terminates employment with one employer may file an application with the director to transfer the

person's state license in the name of another employer. The application shall be accompanied by a \$12 transfer fee. A salesperson, factory representative or distributor representative who terminates employment, and does not transfer the state license, shall mail or otherwise return the certification that the person holds a valid state license to the division.

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

(j) An applicant or licensee may elect to satisfy the bonding requirements of subsection (i) by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas or negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas. The amount of cash, negotiable bonds of the United States or of the state of Kansas or negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas deposited with the state treasurer shall be in an amount of ~~no~~ *not* less than ~~\$30,000~~ \$50,000.

When negotiable bonds or negotiable certificates of deposit have been deposited with the state treasurer to satisfy the bonding requirements of subsection (i), such negotiable bonds or negotiable certificates of deposit shall remain on deposit with the state treasurer for a period of not less than two years after the date of delivery of the certificate of title to the motor vehicle which was the subject of the last motor vehicle sales transaction in which the licensee engaged prior to termination of the licensee's license. In the event a licensee elects to deposit a surety bond in lieu of the negotiable bonds or negotiable certificates of deposit previously deposited with the state treasurer, the state treasurer shall not release the negotiable bonds or negotiable certificates of deposits until at least two years after the date of delivery of the certificate of title to the motor vehicle which was the subject of the last motor vehicle sales transaction in which the licensee engaged prior to the date of the deposit of the surety bond. The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area and any interest on those funds shall accrue to the benefit of the depositor.

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

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

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

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

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

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

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

No person may engage in the business of buying, selling or

exchanging new motor vehicles, either directly or indirectly, unless such person holds a license issued by the director for the make or makes of new motor vehicles being bought, sold or exchanged, or unless a person engaged in such activities is not required to be licensed or acts as an employee of a licensee and such acts are only incidentally performed. For the purposes of this section, engaged in the business of buying, selling or exchanging new motor vehicles, either directly or indirectly, includes: (1) Displaying new motor vehicles on a lot or showroom; (2) advertising new motor vehicles, unless the person's business primarily includes the business of broadcasting, printing, publishing or advertising for others in their own names; or (3) regularly or actively soliciting or referring buyers for new motor vehicles.

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

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

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

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

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

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

such display locations.

(2) (A) *Upon proper application on a form approved by the division of vehicles, the director of vehicles may issue a license known as a temporary display show license to a sponsor of such display show that is responsible for organizing and operating the display show under such terms and conditions as the director may reasonably require. A fee in the amount of \$100 shall be paid by the sponsor applying for each application and each participant displaying vehicles shall pay a fee of \$35 to the sponsor. The sponsor shall remit all fees to the director. New vehicle dealers, first stage manufacturers, second stage manufacturers, first stage converters, second stage converters and distributors may attend and participate in the display of new motor vehicles under this subparagraph and may display vehicles without regard to geographical territorial assignment or relevant market area, as defined in K.S.A. 8-2430, and amendments thereto. New motor vehicle dealers participating in a display show may do so without the approval of any first stage manufacturer, second stage manufacturer, first stage converter, second stage converter or distributor who may not bar or treat such new vehicle dealer adversely for participating in a display show. No sales or lease transactions may occur at a display show, but test drives for purposes other than the sale or lease of a vehicle may be made to demonstrate the vehicle and its features.*

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

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

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

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.