2020 Kansas Statutes

8-2410. Denial, suspension or revocation of license; grounds; notice and hearing; licensee responsibility for agents; appeals; prohibited acts. (a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:
(1) Proof of financial unfitness of the applicant;
(2) material false statement in an application for a license;
(3) filing a materially false or fraudulent tax return as certified by the director of taxation;
(4) negligently failing to comply with any applicable provision of this act or any applicable rule or regulation adopted pursuant thereto;
(5) knowingly defrauding any retail buyer to the buyer's damage;
(6) negligently failing to perform any written agreement with any buyer;
(7) failure or refusal to furnish and keep in force any required bond;
(8) knowingly making a fraudulent sale or transaction;
(9) knowingly engaging in false or misleading advertising;
(10) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;
(11) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;
(12) knowingly violating any law relating to the sale, distribution or financing of vehicles;
(13) being a first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer, agent or any representative thereof, who has:
(A) Required any new vehicle dealer to order or accept delivery of any new motor vehicle, part or accessory of such part, equipment or any other commodity not required by law, or not necessary for the repair or service, or both, of a new motor vehicle which was not ordered by the new vehicle dealer;
(B) unfairly, without due regard to the equities of the vehicle dealer, and without just provocation, canceled, terminated or failed to renew a franchise agreement with any new vehicle dealer; or
(C) induced, or has attempted to induce, by coercion, intimidation or discrimination, any vehicle dealer to involuntarily enter into any franchise agreement with such first or second stage manufacturer, factory branch, distributor, or any representative thereof, or to do any other act to a vehicle dealer which may be deemed a violation of this act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a franchise agreement existing between such parties;
(14) being a first or second stage manufacturer, or distributor who for the protection of the buying public fails to specify in writing the delivery and preparation obligations of its vehicle dealers prior to delivery of new vehicles to new vehicle dealers. A copy of such writing shall be filed with the division by every licensed first or second stage manufacturer of vehicles and the contents thereof shall constitute the vehicle dealer's only responsibility for product liability as between the vehicle dealer and the first or second stage manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the first or second stage manufacturer shall constitute the product or warranty liability of the first or second stage manufacturer. The first or second stage manufacturer shall reasonably compensate any authorized vehicle dealer for the performance of delivery and preparation obligation;
(15) being a first or second stage manufacturer of new vehicles, factory branch or distributor who fails to supply a new vehicle dealer with a reasonable quantity of new vehicles, parts and accessories, in accordance with the franchise agreement. It shall not be deemed a violation of this act if such failure is attributable to factors reasonably beyond the control of such first or second stage manufacturer, factory branch or distributor;

(16) knowingly used or permitted the use of dealer plates contrary to law;
(17) has failed or refused to permit an agent of the division, during the licensee's regular business hours, to examine or inspect such dealer's records pertaining to titles and purchase and sale of vehicles;
(18) has failed to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed;
(19) has failed or refused to surrender their dealer's license or dealer's plates to the division or its agent upon demand;
(20) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;
(21) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a dealer or salesperson;
(22) has cross-titled a title to any purchaser of any vehicle. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any vehicle and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned first or second stage manufacturer's certificate of origin or reassigned certificate of title;
(23) has changed the location of such person's established place of business or supplemental place of business prior to approval of such change by the division;
(24) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";
(25) doing business as a vehicle dealer other than at the dealer's established or supplemental place of business, with the exception that dealers selling new recreational vehicles may engage in business at other than their established or supplemental place of business for a period not to exceed 15 days;
(26) any violation of K.S.A. 8-126 et seq., and amendments thereto, in connection with such person's operation as a dealer;
(27) any violation of K.S.A. 8-116, and amendments thereto;
(28) any violation of K.S.A. 2020 Supp. 21-5835, and amendments thereto;
(29) any violation of K.S.A. 79-1019, 79-3294 et seq., or 79-3601 et seq., and amendments thereto;
(30) failure to provide adequate proof of ownership for motor vehicles in the dealer's possession;
(31) being a first or second stage manufacturer who fails to provide the director of property valuation all information necessary for vehicle identification number identification and determination of vehicle classification at least 90 days prior to release for sale of any new make, model or series of vehicles; or
(32) displaying motor vehicles at a location other than at the dealer's established place of business or supplemental place of business without obtaining the authorization required in K.S.A. 8-2435, and amendments thereto.
(b) In addition to the provisions of subsection (a), and notwithstanding the terms and conditions of any franchise agreement, including any policy, bulletin, practice or guideline with respect thereto or performance thereunder, no first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer or agent or any representative thereof, or any other person may do or cause to be done any of the following acts or practices referenced in this subsection, all of which are also declared to be a violation of the vehicle dealers and manufacturers licensing act, and amendments thereto:
(1) Through the use of a written instrument or otherwise, unreasonably fail or refuse to offer to its same line-make new vehicle dealers all models manufactured for that line-make, or unreasonably require a dealer to:
(A) Pay any extra fee;
(B) purchase unreasonable advertising displays or other materials; or
(C) remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles. The provisions of this subsection shall not apply to manufacturers of recreational vehicles;
(2) require a change in the capital structure of the new vehicle dealership, or the

means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer and in accordance with uniformly applied criteria;
(3) discriminate unreasonably among competing dealers of the same line-make in the sale of vehicles or availability of incentive programs or sales promotion plans or other similar programs, unless justified by obsolescence;
(4) unless required by subpoena or as otherwise compelled by law:
(A) Require a new vehicle dealer to release, convey or otherwise provide customer information if to do so is unlawful, or if the customer objects in writing to doing so, unless the information is necessary for the first or second stage manufacturer of vehicles, factory branch or distributor to meet its obligations to consumers or the new vehicle dealer, including vehicle recalls or other requirements imposed by state or federal law; or
(B) release to any unaffiliated third party any customer information which has been provided by the dealer to the manufacturer;
(5) unless the parties have reached a voluntary agreement where separate and adequate consideration has been offered and accepted in exchange for altering or foregoing the following limitations, through the use of written instrument, or otherwise:
(A) Prohibit or prevent a dealer from acquiring, adding or maintaining a sales or service operation for another line-make at the same or expanded facility at which the dealership is located if the prohibition or prevention of such arrangements would be unreasonable in light of all existing circumstances including, but not limited to, debt exposure, cost, return on investment, the dealer's and manufacturer's business plans and other financial and economic conditions and considerations;
(B) require a dealer to establish or maintain exclusive facilities, personnel or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including, but not limited to, debt exposure, cost, return on investment, the dealer's and manufacturer's business plans and other financial and economic conditions and considerations;
(C) to require a dealer to build or relocate and build new facilities, or make a material alteration, expansion or addition to any dealership facility, unless the requirement is reasonable in light of all existing conditions, including, but not limited to, debt exposure, cost, return on investment, the dealer's and manufacturer's business plans and other financial and economic conditions and considerations;
(6) through the use of written instrument, or otherwise, require, coerce or force a dealer to underutilize its facilities by requiring the dealer to exclude or remove operations for the display, sale or service of any vehicle for which the dealer has a franchise agreement, except that in light of all existing circumstances the dealer must comply with reasonable facilities requirements. The requirement for a dealer to meet reasonable facilities requirements shall not include any requirement that a dealer establish or maintain exclusive facilities.
In the event a dealer decides to add an additional franchise agreement to sell another line-make of new vehicles of a different first or second stage manufacturer or distributor from that currently sold in its existing facility, it shall be a rebuttable presumption that the decision to do so is reasonable. Any dealer adding a franchise agreement for an existing facility shall provide 60 days written notice of its intent to those other parties to franchise agreements it may have. The other party must respond to such notice within 60 days by requesting a hearing before the director in accordance with K.S.A. 8-2411, and amendments thereto. Consent shall be deemed to have been given approving the addition of the line-make if no hearing is timely requested. A party objecting to the addition shall have the burden to overcome such presumption by a preponderance of the evidence;
(7) (A) through the use of written instrument, or otherwise, directly or indirectly condition the awarding of a franchise agreement to a prospective dealer, the addition of a line-make or franchise agreement to an existing dealer, the renewal of a franchise agreement, the approval of a dealer or facility relocation, the acquisition of a franchise agreement or the approval of a sale or transfer of a franchise agreement or other arrangement on the willingness of a dealer or a prospective dealer to enter into a site control agreement or exclusive use agreement as defined in this subsection;

(B) as used in this paragraph, "site control agreement" and "exclusive use agreement" include any agreement by or required by the first or second stage manufacturer of vehicles, factory branch or distributor ("manufacturer parties" in this paragraph) that has the effect of either:
(i) Requiring that the dealer establish or maintain exclusive dealership facilities in violation of the dealer and manufacturers licensing act;
(ii) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease or other similar agreement; or
(iii) which gives control of the premises to a designated party. "Site control agreement" and "exclusive use agreement" also include manufacturer parties restricting the ability of a dealer to transfer, sell or lease the dealership premises by right of first refusal to purchase or lease, option to purchase, or option to lease, except as otherwise allowed by K.S.A. 8-2416, and amendments thereto, except that voluntary agreements where separate and adequate consideration has been offered and accepted are excluded;
(8) through the use of written instrument, or otherwise, require adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements by law, the following shall apply:
(A) A performance standard, sales objective or program for measuring dealer performance that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program and the application of the standard, sales objective or program by a manufacturer, distributor or factory branch shall be fair, reasonable, equitable and based on accurate information;
(B) a dealer that claims that the application of a performance standard, sales objective or program for measuring dealership performance does not meet the standards listed in subparagraph (A) may request a hearing before the director pursuant to K.S.A. 8-2411, and amendments thereto; and
(C) a first or second stage manufacturer of vehicles, factory branch or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective or program for measuring dealership information complies with this subsection;
(9) in addition to any other provisions of law, a franchise agreement or other contract offered to a dealer by a first or second stage manufacturer of vehicles, factory branch or distributor may not contain any provision requiring a dealer to pay the attorney's fees of the first or second stage manufacturer of vehicles, factory branch or distributor related to disputes between the parties.
(c) The director may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.
(d) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its salespersons or representatives while acting as its agent.
(e) Any licensee or other person aggrieved by a final order of the director, may appeal to the district court as provided by the Kansas judicial review act.
(f) The revocation or suspension of a first or second stage manufacturer's or distributor's license may be limited to one or more municipalities or counties or any other defined trade area.
History: L. 1980, ch. 36, § 10; L. 1981, ch. 48, § 8; L. 1984, ch. 313, § 47; L. 1986, ch. 50, § 2; L. 1988, ch. 52, § 4; L. 1989, ch. 47, § 1; L. 1991, ch. 33, § 25; L. 1992, ch. 44, § 3; L. 1993, ch. 252, § 7; L. 1994, ch. 302, § 6; L. 1998, ch. 71, § 1; L. 2010, ch. 71, § 2; L. 2010, ch. 155, § 2; L. 2011, ch. 30, § 98; July 1.
Revisor's Note:

Section was also amended by L. 2010, ch. 17, § 20, but that version was repealed by L. 2010, ch. 155, § 26.