

2012 Kansas Statutes

8-2414. Cancellation, termination or nonrenewal of franchise agreements between dealers and manufacturers or distributors; cause; hearing; burden of proof; compensation upon termination; effect of noncompliance by manufacturer or distributor. (a) No franchise agreement entered into between a vehicle dealer and a first or second stage manufacturer or distributor may be cancelled, terminated or not renewed by the first or second stage manufacturer or distributor unless 90 days notice has been given to the vehicle dealer and the director, which notice must state in full the reasons and causes for the cancellation, termination or nonrenewal of such franchise agreement, except that in the event of a showing of fraud, insolvency or failure to perform in the ordinary course of business, a notice of not less than 15 days may be approved by the director, with notice thereof to such vehicle dealer and upon written application by such first or second stage manufacturer or distributor. A notice required under this subsection shall be given by certified mail and the period of time given in the notice prior to cancellation, termination or nonrenewal shall be computed from the date of mailing thereof.

(b) A vehicle dealer, within a period of time equal to that provided for in the notice filed pursuant to subsection (a), may file a complaint with the director against a first or second stage manufacturer or distributor challenging the reasons and causes given for the proposed cancellation, termination or nonrenewal of the franchise agreement. Upon a complaint being filed, the director shall promptly set the matter for public hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for the purpose of determining whether there has been a violation of K.S.A. 8-2410, and amendments thereto, or whether good cause exists for cancellation, termination or nonrenewal of the franchise agreement in accordance with the dealers and manufacturers licensing act. Notwithstanding the provisions of K.S.A. 8-2411, and amendments thereto, the hearing may be set for a time which is not less than the number of days provided in the notice given pursuant to subsection (a), from the date the director gives notice thereof.

(c) The franchise agreement shall remain in full force and effect pending the determination by the director of the issues involved as provided by this act. If the director determines that the first or second stage manufacturer or distributor is acting in violation of this act or that good cause does not exist for the proposed action, the director shall order for the franchise agreement to be kept in full force and effect.

(d) The burden of proof shall be on the first or second stage manufacturer or distributor to show by a preponderance of the evidence that it did not act arbitrarily or unreasonably and that good cause did exist for the proposed cancellation, termination or nonrenewal of the franchise agreement. The director shall order that the franchise agreement may be cancelled, terminated or not renewed if the director finds, after a hearing that the licensed vehicle dealer is acting in violation of this act or that the judgment of the first or second stage manufacturer or distributor is with good cause and the vehicle dealer's default is material.

(e) (1) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause as used in this section shall mean the failure of the new vehicle dealer to effectively carry out the performance provisions of the franchise agreement if all of the following have occurred:

(A) The new vehicle dealer was given notice by the first or second stage manufacturer or distributor of the failure prior to the notice of cancellation, termination or nonrenewal as required by subsection (a);

(B) the notification stated that the notice of failure of performance was provided pursuant to this article;

(C) the new vehicle dealer was afforded a reasonable opportunity to carry out the franchise agreement; and

(D) the failure continued for more than one year after the date notification was given.

(2) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause shall not exist where there has been a violation by the first or second stage manufacturer or distributor of K.S.A. 8-2410, and amendments thereto, or any other provision of the dealers and manufacturers licensing act. Additionally, notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation or nonrenewal of a franchise agreement:

(A) A change in ownership of the new vehicle dealer's dealership. This subparagraph does not authorize any change in ownership which would have the effect of a sale or an assignment of the franchise agreement or a change in the principal management of the dealership without the first or second stage manufacturer's or distributor's prior written consent;

(B) the refusal of the new vehicle dealer to purchase or accept delivery of any new motor vehicles, parts, accessories or any other commodity or services not ordered by the new vehicle dealer;

(C) the fact that the new vehicle dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or that the new vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the first or second stage manufacturer or distributor;

(D) the fact that the new vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new vehicle dealer's spouse, son or daughter, except that the sale or transfer shall not have the effect of a sale or an assignment of the franchise agreement without the first or second stage manufacturer's or distributor's prior written consent or approved as allowed by K.S.A. 8-2416, and amendments thereto.

(f) (1) In event of cancellation, termination or nonrenewal of a franchise agreement, whether voluntary or involuntary, the first or second stage manufacturer or distributor shall pay the new vehicle dealer, at a minimum:

(A) Dealer net acquisition cost for any new, undamaged and unsold new motor vehicle inventory purchased from the first or second stage manufacturer or distributor within 12 months prior to the receipt of notice of termination, cancellation or nonrenewal, provided the new motor vehicle has less than 500 miles registered on the odometer, not including mileage incurred in delivery to the new vehicle dealer or in transporting the vehicle between dealers for sale or delivery, plus any cost to the new vehicle dealer for returning the vehicle inventory to the first or second stage manufacturer or distributor;

(B) the dealer price listed in the current list or catalog or, if unavailable, the list or catalog actually utilized within the 12 months previous to termination, cancellation or nonrenewal, as the case may be, for any new, unused and undamaged parts, supplies, and accessories acquired from a first or second stage manufacturer, or distributor, or a source approved or recommended by it, less applicable allowances specified in advance of dealer purchase, plus 5% of the catalog or list price, as the case may be, for the cost of packing and returning the parts, supplies and accessories to the first or second stage manufacturer or distributor. Parts, supplies or accessories which are reconditioned or subject to reconditioning or rebuilding or other return in the ordinary course of business which are considered to be core parts in the trade practice and usage of the industry shall be valued for payment purposes at

their core value, the price listed in the catalog or list referenced above or the amount paid for expedited return of core parts, whichever is higher;

(C) fair market value for furnishings required to be purchased by the first or second stage manufacturer or distributor and signs which bear the trademark or trade name of the first or second stage manufacturer or distributor which were required or recommended to be purchased or leased from the first or second stage manufacturer or distributor, or their approved sources;

(D) dealer cost for special tools and equipment required to be purchased or leased by the first or second stage manufacturer or distributor within three years of the date of termination, cancellation or nonrenewal;

(E) dealer cost for computers and data processing systems which are in usable condition and were leased or purchased within three years of the date of termination, cancellation or nonrenewal of the franchise agreement up to an amount equal to the cost of meeting the minimum standards and requirements for the dealer to participate in promotional or incentive programs or perform the franchise agreement;

(F) the cost of transporting, handling, packing and loading of signs, special tools, equipment and furnishings.

(2) Upon termination, cancellation or nonrenewal of a franchise agreement by the first or second stage manufacturer or distributor, the first or second stage manufacturer or distributor shall also pay to the new vehicle dealer a sum equal to the current fair rental value of its established place of business for a period of one year from the effective date of termination, cancellation or nonrenewal, or the remainder of the lease, whichever is less. If the new vehicle dealer owns the dealership facilities, the first or second stage manufacturer or distributor shall pay the new vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year or until the facilities are leased or sold, whichever is less. The rental payment required under this subsection is only required to the extent that the established place of business was being used for activities under the franchise agreement and only to the extent such facilities were not leased for unrelated purposes. The first or second stage manufacturer or distributor shall not be required to make the payment set forth under this subsection if the basis of the cancellation, termination or nonrenewal of such franchise agreement under this act is due to conviction of the dealer of a felony or any crime involving moral turpitude, or if the dealer has been adjudged guilty of the violation of any law of any state or the United States in connection with such person's operation as a dealer.

(3) To the extent the franchise agreement provides for payment or reimbursement to the new vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(4) The first or second stage manufacturer or distributor shall pay the new vehicle dealer the sums specified in this subsection within 90 days after the tender of the property, subject to the new vehicle dealer providing evidence of good and clear title upon return of the property to the first or second stage manufacturer or distributor.

(5) Nothing in this subsection shall preclude or prohibit the first or second stage manufacturer or distributor or vehicle dealer from agreeing to other terms for additional payment or reimbursement, except that such terms shall include, at a minimum, the payment or reimbursement requirements contained in this subsection.

(6) The provisions of this subsection shall not apply to voluntary termination by dealers of recreational vehicles or to where the new vehicle dealer has voluntarily terminated its franchise agreement in conjunction with the sale of the business.

(g) Failure of the first or second stage manufacturer or distributor to give proper notice or maintain the franchise agreement in full force and effect pending determination by the director pursuant to this act, or to abide by the final order of the director, shall be cause for the director to refuse to issue a license to a replacement vehicle dealer or to a dealership which would be conducting business in the same trade area and selling the same make of vehicles where the vehicle dealer in question was engaged in business.

History: L. 1980, ch. 36, § 14; L. 1981, ch. 48, § 10; L. 1983, ch. 43, § 3; L. 1996, ch. 128, § 1; L. 2010, ch. 71, § 4; Apr. 15.