

8-2416. Sale, transfer or assignment of dealership, notice and limitations; disapproval procedure; duties of manufacturer or distributor; appointment of successor. (a) A vehicle dealer shall not transfer, assign or sell a franchise agreement or interest in a dealership to another person unless the dealer first gives written notice to the first or second stage manufacturer or distributor of the dealer's decision to make such transfer, assignment or sale. The dealer shall provide the first or second stage manufacturer or distributor with any completed application forms and related information generally utilized by the first or second stage manufacturer or distributor to conduct its review of prospective new vehicle dealers, and a copy of all agreements regarding the proposed transfer, assignment or sale.

(b) The first or second stage manufacturer or distributor shall send a letter by certified mail to the dealer within 60 days of receipt of the information specified in subsection (a). The letter shall indicate any disapproval of the transfer, assignment or sale and shall specifically set forth the reasons for the disapproval. If the first or second stage manufacturer or distributor does not respond by letter within the 60-day period, its consent to the proposed transfer, assignment or sale is deemed to have been granted. A first or second stage manufacturer or distributor shall not arbitrarily or unreasonably withhold approval of the transfer, assignment or sale of a franchise agreement or an interest in a dealership. The first or second stage manufacturer or distributor may not approve or reject only a part of an agreement for the transfer, assignment or sale, but must accept or reject the whole agreement. If the first or second stage manufacturer or distributor rejects an agreement, it may indicate changes to the agreement which would cause it to accept the proposed agreement. An agreement may not be rejected merely because it provides provisions which operate in the future, an option to undertake or refrain from an action, or because it is to operate over an extended period of time or as an installment agreement.

(c) Within 90 days after receipt of a notice of disapproval as provided in subsection (b), the new vehicle dealer may file a complaint with the director with respect to the first or second stage manufacturer or distributor's failure to approve the proposed transfer, assignment or sale. When such a complaint has been filed, the director shall inform the first or second stage manufacturer or distributor that a timely complaint has been filed and a hearing is required in accordance with the provisions of K.S.A. 8-2411, and amendments thereto, to determine whether good cause exists to disapprove the transfer, assignment or sale. A disapproval shall not be final until the director or the director's designee makes a final determination as to good cause.

(d) A first or second stage manufacturer or distributor shall not fail or refuse to approve the transfer, assignment or sale of the business and assets of a new vehicle dealer, or refuse to continue the franchise agreement with the prospective transferee after the holding of a hearing on the complaint if the director or the director's designee determines that good cause does not exist for the first or second stage manufacturer or distributor to fail or refuse to approve such transfer, assignment or sale. The burden of proof shall be on the first or second stage manufacturer or distributor to show by a preponderance of the evidence that the disapproval of the transfer, assignment or sale was with good cause and the refusal is not unjust, unfair, inequitable or otherwise in violation of the dealers and manufacturers licensing act. Material factors to be considered may include, but are not limited to:

(1) Whether the basic financial and facility requirements of the franchise agreement will be met by the proposed transfer, assignment or sale;

(2) whether the proposed purchaser, transferee or assignee is capable of operating, managing and supervising such business; and

(3) the extent to which the refusal to approve will have a substantial and adverse effect upon the dealer's investment or return on investment.

(e) The first or second stage manufacturer or distributor shall have a right of first refusal to acquire the new vehicle dealer's assets or ownership in the event of a proposed change of all or substantially all of the dealer's ownership, or the transfer of all or substantially all of the new vehicle dealer's assets, if all of the following are met:

(1) The first or second stage manufacturer or distributor notifies the dealer in writing within the 60-day limit established under subsection (b) of its intent to exercise its right of first refusal;

(2) the exercise of the right of first refusal will result in the dealer and dealer's owners receiving consideration, terms and conditions that either are the same as or greater than that which they have contracted to receive in connection with the proposed change of all or substantially all of the dealer's ownership, or the transfer of all or substantially all of the new vehicle dealer's assets;

(3) the proposed change of all or substantially all of the dealership's ownership or the transfer of all or substantially all of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a designated family member or members, including the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner, or one or more dealer owners, or to a qualified manager, or to a partnership or corporation controlled by any such person; or to a trust arrangement established or to be established for the purpose of allowing the new vehicle dealer to continue to qualify as such a dealer, so long as the new vehicle dealer continues to qualify as such pursuant to the first or second stage manufacturer or distributor's standards, or provides for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners; and

(4) except as otherwise provided in this subsection, the first or second stage manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney fees, which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the first or second stage manufacturer or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all or substantially all of the dealer ownership, or the transfer of all or substantially all of the new vehicle dealer's assets. No payment of expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 20 days of the dealer's receipt of the first or second stage manufacturer or distributor's written request for such an accounting. Such an expense accounting may be requested by a first or second stage manufacturer or distributor before exercising its right of first refusal.

(f) A new vehicle dealer and its owners may appoint by trust, will or any other valid written instrument a successor to the owner's interest in the franchise agreement upon the owner's death or incapacity, subject to the following procedures:

(1) Unless the first or second stage manufacturer or distributor has good cause to refuse to approve the

succession, the successor may succeed to the ownership of the new vehicle dealer under the existing franchise agreement if:

(A) Within 90 days of the owner's death or incapacity, the successor gives written notice of the successor's intent to succeed to ownership of the new vehicle dealer and its franchise agreement; and

(B) the successor agrees to be bound by all the terms and conditions of the franchise agreement with the prior new vehicle dealer.

(2) Upon request, the successor shall promptly provide the first or second stage manufacturer or distributor evidence of the succession appointment, as well as personal and financial information reasonably necessary to determine whether the succession should be approved by the first or second stage manufacturer or distributor.

(3) If a first or second stage manufacturer or distributor believes that good cause exists to refuse to approve the intended succession under subsection (f)(1), then the first or second stage manufacturer or distributor shall serve the new vehicle dealer and named successor written notice of refusal to approve the intended succession within 60 days of its receipt of the notice of the intended succession, or within 60 days of receiving the information requested under paragraph (f)(2), whichever is later. The notice must contain specific grounds for the refusal to approve the succession. In the event of such a refusal the new vehicle dealer or successor may file a complaint as provided under subsection (c), and the matter shall then proceed to hearing in the manner and on the same basis as the disapproval of a transfer, assignment or sale.

(4) If notice of refusal to approve the intended succession is not served within 60 days upon the intended successor, the successor may continue the franchise agreement and the successor shall thereby be deemed approved by the first or second stage manufacturer or distributor.

(g) It shall be a violation of this act for a first or second stage manufacturer or distributor, or anyone on their behalf, to exercise a right of first refusal or other right to acquire the business of the new vehicle dealer or a franchise agreement as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the business or franchise agreement or to influence a person to refrain from entering into, or to withdraw from, negotiations for the acquisition of the business or franchise agreement.

History: L. 1980, ch. 36, § 16; L. 1983, ch. 43, § 4; L. 1998, ch. 71, § 2; L. 2010, ch. 71, § 6; Apr. 15.