

190.045 Cancellation, termination, refusal to renew franchise -- Notice -- Duty of manufacturer.

- (1) Notwithstanding the terms, provisions, or conditions of any franchise or notwithstanding the terms or provisions of any waiver, a manufacturer shall not cancel, terminate, or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:
 - (a) Satisfied the notice requirement of subsection (4) of this section;
 - (b) Has good cause for cancellation, termination, or nonrenewal;
 - (c) Has acted in good faith as defined in KRS 190.010(22); and
 - (d) Has established the requirements of this subsection in proceedings before the licensor if the action is protested by the new motor vehicle dealer within fifteen (15) days after receiving notice of the cancellation, termination, or nonrenewal.

When a protest is filed, the licensor shall inform the manufacturer, distributor, factory branch, or factory representative that a timely protest has been filed and that the manufacturer, distributor, factory branch, or factory representative shall not cancel, terminate, or fail to renew any franchise with the licensed new motor vehicle dealer until the licensor has held a hearing and the licensor has determined that the manufacturer has met its burden under this section.

- (2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or nonrenewal when:
 - (a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days after the manufacturer first acquired knowledge of the failure.
 - (b) If the failure by the new motor vehicle dealer, defined in paragraph (a) of this subsection, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer, if the new motor vehicle dealer was apprised by the manufacturer in writing of a failure, and
 1. The notification stated that notice was provided of failure of performance pursuant to this section;
 2. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with the criteria; and
 3. The new motor vehicle dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during the designated period.
- (3) The manufacturer shall have the burden of proof under this section.
- (4) Notwithstanding the terms, provisions, or conditions of any franchise prior to the

termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of a termination, cancellation, or nonrenewal to the new motor vehicle dealer as follows:

- (a) In the manner described in subsection (2)(b) of this section; and
 - (b) In not less than ninety (90) days prior to the effective date of the termination, cancellation or nonrenewal; or
 - (c) In not less than fifteen (15) days prior to the effective date of a termination, cancellation, or nonrenewal with respect to any of the following:
 - 1. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - 2. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - 3. Fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor which is material to the franchise;
 - 4. Conviction of the new motor vehicle dealer, or any owner or operator thereof, of any felony which is punishable by imprisonment; or
 - 5. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - (d) In not less than one hundred eighty (180) days prior to the effective date of a termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.
- (5) Notification under this section shall be in writing by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- (a) A statement of intent to terminate, cancel, or not to renew the franchise; and
 - (b) A statement of the reasons for the termination, cancellation, or nonrenewal; and
 - (c) The date on which the termination, cancellation, or nonrenewal takes effect.
- (6) Upon the termination, nonrenewal, or cancellation of any franchise, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
- (a) New current model year motor vehicle inventory which has been acquired from the manufacturer, and which has not been damaged or altered while in the dealer's possession;
 - (b) Supplies and parts which have been acquired from the manufacturer;
 - (c) Equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources; and
 - (d) Special tools.

Fair and reasonable compensation shall be paid by the manufacturer within ninety

(90) days of the effective date of termination, cancellation, or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

- (7) In the event of a termination, cancellation, or nonrenewal under this section, and the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, or owns the dealership facilities, the manufacturer shall pay a reasonable rent to the dealer in accordance with and subject to subsection (8) of this section.
- (8) (a) Reasonable rental value shall be paid only to the extent the dealership premises are recognized in the franchise and only if they are:
1. Used solely for performance in accordance with the franchise; and
 2. Not substantially in excess of those facilities recommended by the manufacturer.
- (b) If the facilities are owned by the dealer, the manufacturer will either:
1. Locate a purchaser who will offer to purchase the dealership facilities at a reasonable price; or
 2. Locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent; or
 3. Failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year.
- (c) If the facilities are leased by the dealer, the manufacturer will either:
1. Locate a tenant or tenants satisfactory to the lessor, who will sublet or assume the balance of the lease; or
 2. Arrange with the lessor for the cancellation of the lease without penalty to the dealer; or
 3. Failing the foregoing, lease the dealership facilities at a reasonable rent for one (1) year.
- (d) The manufacturer shall not be obligated to provide assistance under this section if the dealer:
1. Fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee; or
 2. Refuses to execute a settlement agreement with the lessor if the agreement would be without cost to the dealer; or
 3. Fails to make a written request for assistance under this section within one (1) month of the termination, cancellation, or nonrenewal.
- (e) If, in an action for damages under this section, the manufacturer or distributor fails to prove either that the manufacturer or distributor has acted in good faith or that there was good cause for the franchise termination, cancellation, or nonrenewal, then the manufacturer or distributor may terminate, cancel, or fail to renew the franchise upon payment to the new motor vehicle dealer of an amount equal to the value of the dealership as an ongoing business location.

- (9) Notice of termination to a dealer shall entitle the dealer to continue the franchise and the dealer may attempt to sell the franchise until all of the dealer's appeal rights have been exhausted.

Effective: February 22, 2000

History: Amended 2000 Ky. Acts ch. 23, sec. 3, effective February 22, 2000. -- Amended 1996 Ky. Acts ch. 111, sec. 5, effective July 15, 1996. -- Amended 1984 Ky. Acts ch. 357, sec. 5, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 373, sec. 6, effective July 15, 1982. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Created 1972 Ky. Acts ch. 75, sec. 1.