

CHAPTER 71

HOUSE BILL No. 2547
(Amended by Chapter 155)

AN ACT amending the vehicle dealers and manufacturers licensing act; amending K.S.A. 8-2409, 8-2410, 8-2413, 8-2414, 8-2415, 8-2416, 8-2417 and 8-2419 and repealing the existing sections.

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

Section 1. K.S.A. 8-2409 is hereby amended to read as follows: 8-2409. (a) Any dealer may purchase from the division of vehicles thirty-day temporary registration permits, in multiples of five permits valid for 30 days at a cost of \$3 each. Such dealer shall have completed the application and permit as required by the division and mail a copy of such application to the division within 24 hours from the date of issuance. Such registration shall not extend the date when registration fees are due, but shall be valid registration for a period of 30 days from date of issuance. The dealer upon presentation of evidence of ownership in the applicant and evidence that the sales tax has been paid, if due, shall issue a sticker or paper registration as determined by the division. No dealer, or county treasurer, as authorized by K.S.A. 8-143, and amendments thereto, shall issue more than one thirty-day temporary registration permit to the purchaser of a vehicle.

(b) The division of vehicles may deny any dealer the authority to purchase thirty-day temporary permits if the vehicle dealer is delinquent in monthly sales reports to the division for two months or more or if the vehicle dealer is found to have issued more than one thirty-day permit to the purchaser of a vehicle.

(c) ~~The temporary registration authorized by this section shall not entitle a truck, truck tractor or any combination of truck or truck tractor and any type of trailer or semitrailer to be operated under laden conditions, except that such temporary registration shall authorize any such vehicle or combination of vehicles to be operated under laden conditions for 48 hours after the time of issuance of the temporary permit.~~

Sec. 2. K.S.A. 8-2410 is hereby amended to read as follows: 8-2410. (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. 21-3757, 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 act for judicial review and civil enforcement of agency actions.

(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.

Sec. 3. K.S.A. 8-2413 is hereby amended to read as follows: 8-2413.

(a) Upon application of the board, the director or any person having any interest in the subject matter, the district courts of this state may enjoin any person from violating any of the provisions of this act or any order or rule and regulation issued or adopted pursuant thereto.

(b) *Notwithstanding any other statute, law or rule of court, any first or second stage manufacturer or distributor or new vehicle dealer which has entered a franchise agreement with the other under which a dispute has arisen with respect to the conduct of business or the business relationship between the parties shall participate in the mediation of the dispute upon the request of any party to the matter. In the event mediation is requested, any time frame applicable for taking action under the dealers and manufacturers licensing act shall be deemed stayed or tolled, as the case may be until the mediation is completed. The mediation shall be nonbinding, unless the parties reach agreement resolving the dispute.*

Sec. 4. K.S.A. 8-2414 is hereby amended to read as follows: 8-2414.

(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 ~~which existed on or before February 1, 1996, or is approved in writing by 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;

~~(E)~~ (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.

Sec. 5. K.S.A. 8-2415 is hereby amended to read as follows: 8-2415.

(a) A first or second stage manufacturer or distributor shall pay reasonable compensation to any authorized new vehicle dealer who performs work to rectify warranty defects in the first or second stage manufacturer's or distributor's product.

(b) A first or second stage manufacturer or distributor shall pay any authorized new vehicle dealer all promotional allowances or other incentive payments submitted by the dealer as provided by the applicable provisions of such programs subject to the applicable requirements of this act.

(c) In the determination of what constitutes reasonable compensation for warranty work under this act, among the factors to be considered shall be: The rate or charge which the authorized vehicle dealer in good faith is charging other customers for the same type of service or repair work, the compensation being paid by other first or second stage manufacturers or distributors to their vehicle dealers for the same work or service, and the prevailing wage or labor rate being paid or charged by all vehicle dealers licensed to operate in the city or community in which said authorized vehicle dealer is doing business.

(d) A first or second stage manufacturer or distributor shall not require unreasonable proof to establish compensation under this section, nor act unreasonably to delay payments or adjustments in the rate or charge for particular warranty work, promotional allowances or other incentive payments as circumstances or changes may justify or require such adjustments. *A claim for compensation shall not be divided or the amount to be reimbursed reduced if the new vehicle dealer has reasonably substantiated the claim. A new vehicle dealer's failure to comply with the specific requirements of processing a claim may not constitute grounds for denial of the claim or reduction of the amount of compensation paid to the dealer if the dealer presents reasonable documentation or other evidence to substantiate the claim. If the claim is for warranty work, whether or not it includes parts, repairs or services, then the amount of compensation for the claims shall not be reduced or disallowed on the grounds the dealer failed to submit the claim fewer than 60 days after the dealer completed the work underlying the claim.*

(e) A claim made by a new motor vehicle dealer for compensation under this section shall be either approved or disapproved within 30 days after the claim is submitted to the first or second stage manufacturer or distributor in the manner and on the forms the first or second stage manufacturer or distributor reasonably prescribes. An approved claim shall be paid within 30 days after its approval. If a claim is not specifically disapproved in writing or by electronic transmission within 30 days after the date on which the first or second stage manufacturer or distributor receives it, the claim shall be considered to be approved and payment shall follow within 30 days. A first or second stage manufacturer or distributor retains the right to audit claims for warranty work for a period of one year after the date on which the claim is paid and to chargeback any amounts paid on claims that are false or unsubstantiated. A first or second stage manufacturer or distributor retains the right to audit claims for promotional allowances or other incentive payments submitted by the dealer for a period of ~~two years~~ *one year* after the date on which the claim is paid and to chargeback any amounts paid on claims that are false or unsubstantiated. If there is evidence of fraud, this subsection does not limit the right of the manufacturer to audit for longer periods and chargeback for any fraudulent claim, subject to the limitation period under paragraph (3) of subsection (a) of K.S.A. 60-513, and amendments thereto, in addition to any other available remedy, ~~this~~. *A claim for reimbursement by the first or second stage manufacturer or distributor of sums due following an audit must be presented to the dealer within 90 days of the audit of the item subject to the claim. A first or second stage manufacturer or distributor may not setoff or otherwise take control over funds owned, or under the control of the new vehicle dealer, or which are*

in an account designated for the new vehicle dealer when such action is based upon the findings of an audit or other claim with respect thereto until a final decision is issued with respect to any challenge or appeal by either party of any such audit or claim. This section may be enforced pursuant to K.S.A. 8-2411, and amendments thereto.

Sec. 6. K.S.A. 8-2416 is hereby amended to read as follows: 8-2416.

(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 successorship 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.

Sec. 7. K.S.A. 8-2417 is hereby amended to read as follows: 8-2417.

(a) The obtaining of a license hereunder shall bring the applicant under the jurisdiction of the state of Kansas, and if no agent for service of process has been designated by a licensee, the ~~said~~ licensee will be deemed to have designated the secretary of the state of Kansas as agent for receipt of service of process.

(b) *No franchise agreement or other agreement between the parties to a franchise agreement may limit, waive or substitute the party's rights, duties or obligations under this act absent separate and additional, adequate consideration, nor compel a party to consent to jurisdiction or governance by the law of of another state or territory outside Kansas, or to forego any right to trial by jury.*

Sec. 8. K.S.A. 8-2419 is hereby amended to read as follows: 8-2419.

(a) All first or second stage manufacturers *and distributors* shall be liable for the full period of the warranty of the vehicle for all defects in any equipment attached to any vehicle at the factory and all defects in any equipment produced by or advertised as an accessory to a vehicle ~~manufacturer~~ *manufactured* by such first or second stage manufacturer which is added at the dealership whether such equipment is added to a new or to a used vehicle so long as such equipment has been advertised as being either an "accessory" or an "option."

(b) *All first stage manufacturers and second stage manufacturers and distributors shall, upon demand:*

(1) *Indemnify any existing or former licensee or party to a franchise agreement and the licensee or party's successors and assigns from any and all damages sustained and attorney's fees and other expenses reasonably incurred by the licensee or party that result from or relate to any claim made or asserted by a third party against the licensee or party to the extent the claim results from any of the following:*

(A) *The condition, characteristics, manufacture, assembly or design of any vehicle, parts, accessories, tools or equipment or the selection or combination of parts or components manufactured or distributed by the manufacturer or distributor;*

(B) *service systems, procedures or methods the franchisor required or recommended the licensee or party to use if the licensee or party properly uses the system, procedure or method;*

(C) *improper use or disclosure by a manufacturer or distributor of nonpublic personal information obtained from a licensee or party concerning any consumer, customer or employee of the licensee or party; and*

(D) *any act or omission of the manufacturer or distributor for which the licensee or party would have a claim for contribution or indemnity under applicable law or under the franchise, irrespective of and without regard to a prior termination or expiration of the franchise.*

(2) *This subsection does not limit in any way the existing rights, remedies or recourses available to any licensee, party or other person.*

Sec. 9. K.S.A. 8-2409, 8-2410, 8-2413, 8-2414, 8-2415, 8-2416, 8-2417 and 8-2419 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 6, 2010.

Published in the *Kansas Register* April 15, 2010.
