

§1434-A. Termination, cancellation and nonrenewal of a dealer agreement

1. Termination; cancellation; nonrenewal. A manufacturer or distributor, directly or through an authorized officer, agent or employee, may terminate, cancel or fail to renew a dealer agreement with or without good cause. If the manufacturer or distributor terminates, cancels or fails to renew the dealer agreement without good cause, the manufacturer or distributor must comply with subsection 4. The manufacturer or distributor has the burden of showing good cause for terminating, canceling or failing to renew a dealer agreement. For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered in a proceeding:

A. The extent of the affected dealer's penetration in the area of sales responsibility; [PL 2009, c. 562, §18 (NEW).]

B. The nature and extent of the dealer's investment in the dealer's business; [PL 2009, c. 562, §18 (NEW).]

C. The adequacy of the dealer's service facilities, equipment, parts, supplies and personnel; [PL 2009, c. 562, §18 (NEW).]

D. The effect of the proposed action on the community; [PL 2009, c. 562, §18 (NEW).]

E. The extent and quality of the dealer's service under recreational vehicle warranties; [PL 2009, c. 562, §18 (NEW).]

F. The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership; and [PL 2009, c. 562, §18 (NEW).]

G. The dealer's performance under the terms of its dealer agreement. [PL 2009, c. 562, §18 (NEW).]

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2. Notice to dealer; requirements. Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least 90 days' prior written notice of termination, cancellation or nonrenewal of a dealer agreement if the dealer agreement is being terminated for good cause.

A. A notice under this subsection must state all reasons for the proposed termination, cancellation or nonrenewal and must further state that if, within 30 days following receipt of the notice, the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then have 90 days following the manufacturer's or distributor's receipt of the notice to cure the deficiencies. If the deficiencies are cured within 90 days, the manufacturer's or distributor's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancellation or nonrenewal takes effect 30 days after the dealer's receipt of the notice unless the dealer has new and untitled inventory on hand that may be disposed of pursuant to subsection 4. [PL 2009, c. 562, §18 (NEW).]

B. The notice period under this subsection may be reduced to not less than 30 days' prior written notice of termination, cancellation or nonrenewal if good cause exists. Good cause exists for purposes of this paragraph when:

(1) A dealer or one of its owners is convicted of or enters a plea of nolo contendere to murder or a Class A, Class B or Class C crime for which a sentence of imprisonment of one year or more is imposed under Title 17-A, section 1603 or 1604;

(2) A dealer abandons or closes the dealer's business operations for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty or other cause over which the dealer has no control;

- (3) There is a significant misrepresentation by the dealer materially affecting the business relationship between the dealer and the manufacturer or distributor;
- (4) The dealer's license has been suspended or revoked or has not been renewed;
- (5) There is a declaration by the dealer of bankruptcy or insolvency or the occurrence of an assignment for the benefit of creditors or bankruptcy; or
- (6) A dealer fails to notify in writing the manufacturer or distributor at least 30 days prior to entering into a dealer agreement with a manufacturer or distributor of a competing, similar line make.

The notice requirements of this paragraph do not apply if the reason for termination, cancellation or nonrenewal is the dealer's insolvency, the occurrence of an assignment for the benefit of creditors or the dealer's bankruptcy. [PL 2019, c. 113, Pt. C, §7 (AMD).]

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3. Notice to manufacturer or distributor; requirement. A dealer may terminate, cancel or refuse to renew a dealer agreement with or without good cause by giving 30 days' written notice to the manufacturer or distributor.

A. If the termination, cancellation or refusal to renew is for good cause, the notice must state all reasons for the proposed termination, cancellation or nonrenewal and must further state that if, within 30 days following receipt of the notice, the manufacturer or distributor provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then have 90 days following receipt of the original notice to cure the deficiencies. If the deficiencies are cured within 90 days, the dealer's notice is voided. If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the time period prescribed in the original notice of termination, cancellation or nonrenewal, the pending termination, cancellation or nonrenewal takes effect 30 days after the manufacturer's or distributor's receipt of the original notice. [PL 2009, c. 562, §18 (NEW).]

B. If the dealer terminates, cancels or fails to renew the dealer agreement without good cause, subsection 4 does not apply. If the dealer terminates, cancels or fails to renew the dealer agreement with good cause, subsection 4 applies. The dealer has the burden of showing good cause. [PL 2009, c. 562, §18 (NEW).]

C. For purposes of this subsection, good cause for termination, cancellation or nonrenewal exists when:

- (1) A manufacturer or distributor is convicted of, or enters a plea of nolo contendere to, murder or a Class A, Class B or Class C crime for which a sentence of imprisonment of one year or more is imposed under Title 17-A, section 1603 or 1604;
- (2) The business operations of the manufacturer or distributor have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty or other cause over which the manufacturer or distributor has no control;
- (3) There is a significant misrepresentation by the manufacturer or distributor materially affecting the business relationship between the dealer and the manufacturer or distributor; or
- (4) There is a declaration by the manufacturer or distributor of bankruptcy or insolvency or the occurrence of an assignment for the benefit of creditors or bankruptcy. [PL 2019, c. 113, Pt. C, §8 (AMD).]

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4. Repurchase of inventory. If the dealer agreement is terminated, canceled or not renewed by the manufacturer or distributor without good cause, or if the dealer terminates or cancels the dealer agreement for good cause and the manufacturer or distributor fails to cure the claimed deficiencies, the

manufacturer or distributor shall, at the election of the dealer and within 45 days after termination, cancellation or nonrenewal, repurchase:

A. All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within 12 months before the effective date of the termination, cancellation or nonrenewal that have not been used, except for demonstration purposes, and that have not been damaged, at 100% of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. If any of the vehicles repurchased pursuant to this subsection are damaged, but do not trigger a consumer disclosure requirement, the amount due the dealer is reduced by the cost to repair the vehicle. Damage prior to delivery to the dealer that is disclosed at the time of delivery does not disqualify repurchase under this paragraph; [PL 2009, c. 562, §18 (NEW).]

B. All undamaged accessories and proprietary parts sold to the dealer for resale within the 12 months prior to termination, cancellation or nonrenewal, if contained in the original packaging, at 105% of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing and shipping the accessories or parts; and [PL 2009, c. 562, §18 (NEW).]

C. All properly functioning diagnostic equipment, special tools, current signs and other equipment and machinery at 100% of the dealer's net cost plus freight, destination, delivery and distribution charges and sales taxes, if any, if purchased by the dealer within 5 years before termination, cancellation or nonrenewal upon the manufacturer's or distributor's request and the dealer establishes that the items can no longer be used in the normal course of the dealer's ongoing business. The manufacturer or distributor shall pay the dealer within 30 days after receipt of the returned items. [PL 2009, c. 562, §18 (NEW).]

[PL 2009, c. 562, §18 (NEW).]

SECTION HISTORY

PL 2009, c. 562, §18 (NEW). PL 2019, c. 113, Pt. C, §§7, 8 (AMD).

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