

8-2430. Establishment of additional or relocation of existing new vehicle dealer; procedure; relevant market area. (a) Any licensee, or proposed licensee, who proposes to establish an additional new vehicle dealer for new motor vehicles, including a supplemental place of business for new motor vehicles, or permit the relocation of an existing new vehicle dealer in new motor vehicles to a location within the relevant market area where the same line-make vehicle is already presently represented by a new vehicle dealer or dealers in new motor vehicles of that same line-make shall give written notice of its intention by certified mail to the director of vehicles and shall establish good cause for adding or relocating the new vehicle dealer. The notice required hereunder shall state:

- (1) The specific location at which the additional or relocated new vehicle dealer in new motor vehicles will be established;
- (2) the date on or after which the licensee, or proposed licensee, intends to be engaged in business as a new vehicle dealer in new motor vehicles at the proposed location;
- (3) the identity of all new vehicle dealers in new motor vehicles who are franchised to sell the same line-make vehicle from licensed locations whose relevant market areas include the location where the additional or relocated dealer is proposed to be located;
- (4) the names and addresses of the new vehicle dealer-operator and principal investors in the proposed new vehicle dealer's business; and
- (5) a short and plain statement of the evidence the licensee, or proposed licensee, intends to rely upon in meeting the burden of proof for establishing good cause for an additional new vehicle dealer for new motor vehicles or permit relocation of an existing new vehicle dealer in new motor vehicles within a relevant market area where the same line-make of vehicle is presently represented by a new vehicle dealer.

Immediately upon receipt of such notice the director shall cause a notice to be published in the Kansas register. The published notice shall state that a petition or complaint by any dealer with standing to protest pursuant to subsection (c) must be filed with the director not more than 30 days from the date of publication of the notice in the Kansas register. The published notice shall describe and identify the proposed new vehicle dealer and dealership sought to be licensed, and the director shall cause a copy of the notice to be mailed to those dealers identified in the notice under paragraph (3) of this subsection.

(b) (1) An application for a new vehicle dealer license to act as a vehicle dealer in new motor vehicles in any city or county shall not be granted when the licensee, or proposed licensee, seeking to establish an additional new vehicle dealer, including a supplemental place of business for new motor vehicles, or relocate an existing new vehicle dealer in the same line-make of vehicles fails to comply with the requirements of this act, or when:

(A) A timely protest is filed by a presently existing new vehicle dealer in new motor vehicles with standing to protest as defined in subsection (c); and

(B) the director has held a hearing and determined that good cause has not been established for permitting the addition or relocation of such new vehicle dealer. The burden of proof in establishing good cause to permit an additional new vehicle dealer in new motor vehicles or to permit the relocation of an existing new vehicle dealer in new motor vehicles shall be on the licensee, or proposed licensee, seeking to establish or relocate a new vehicle dealer and shall be by a preponderance of the evidence presented;

(2) in determining whether good cause has been established for an additional new vehicle dealer or the relocation of an existing new vehicle dealer for the same line-make of vehicle as provided herein, the director shall take into consideration the existing circumstances, including, but not limited to:

- (A) Permanency of the investment of both the existing and proposed new vehicle dealers;
- (B) growth or decline in population and new car registrations in the relevant market area;
- (C) effect on the consuming public in the relevant market area;
- (D) whether it is injurious or beneficial to the public welfare for an additional new vehicle dealer to be established;
- (E) whether the new vehicle dealers of the same line-make vehicles in that relevant market area are providing adequate competition and convenient customer care for the vehicles of the line-make in the market area which shall include the adequacy of vehicle sales and service facilities, equipment, supply of vehicle parts and qualified service personnel;
- (F) whether the establishment of an additional new vehicle dealer would increase competition and whether such increased competition would be in the public interest;
- (G) the effect and denial of relocation will have on a relocating dealer; and
- (H) the effect the new vehicle dealer addition or relocation which is proposed will have on the existing dealer or dealers.

The application for a new vehicle dealer license shall not be denied after the applicant meets the requirements of this section if the applicant otherwise meets the requirements of the vehicle dealers and manufacturers licensing act K.S.A. 8-2401, et seq., and amendments thereto.

(c) An existing new vehicle dealer in new motor vehicles shall have standing to protest the proposed addition or relocation of a new vehicle dealer in new motor vehicles where such existing new vehicle dealer in new motor vehicles has a franchise agreement for the same line-make vehicle as that which is to be sold or offered for sale or transfer by the proposed additional or relocated new vehicle dealer and is physically located such that the protesting dealer's relevant market area, as defined in subsection (c), includes the location where the additional or relocated dealer is proposed to be located.

(d) The director shall not issue a license for the proposed additional or relocated new vehicle dealer until a final decision is rendered determining good cause exists for establishing an additional new vehicle dealer or relocating a new vehicle dealer and that the application for the new vehicle dealer's license should be granted.

(e) The words or phrases used in this section shall have the meanings otherwise provided by law, except the following specific words or phrases shall have the following meanings:

(1) "Line-make vehicle" means those new motor vehicles which are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer or distributor of the same; and

(2) "relevant market area" means the area within:

(A) A radius of 10 miles around an existing new vehicle dealer in new motor vehicles, if the existing new vehicle dealer's principal location is in a county having a population of 30,000 or more persons;

(B) a radius of 15 miles around an existing new vehicle dealer in new motor vehicles, if the existing new vehicle dealer's principal location is in a county having a population of less than 30,000 persons; or

(C) the area of responsibility defined in the franchise agreement of the existing dealer, whichever is greater.

(f) No person, entity, licensee or their agents or employees, shall require the relocation, cancellation or termination of an existing dealer or otherwise take any action to penalize any dealer who exercises the rights provided under this section, or undertake such action for the purpose of preventing or avoiding the exercise by a dealer of the rights provided under this section. No franchise agreement made, entered or renewed after the effective date of this act shall contain provisions which avoid or circumvent the requirements of this act.

(g) A dealer's license may be denied, suspended or revoked, or the renewal of a dealer's license may be refused by the director for the dealer's failure to comply with this section or for otherwise violating its provisions.

(h) Any licensee, or proposed licensee, aggrieved by a final order of the director may appeal as provided in subsection (d) of K.S.A. 8-2410, and amendments thereto.

History: L. 1991, ch. 32, § 1; L. 1993, ch. 252, § 8; L. 1994, ch. 302, § 8; July 1.