

TERMINATION OR CANCELLATION OF A MARKETING AGREEMENT, IT IS A DEFENSE THAT THE MARKETING AGREEMENT WAS TERMINATED OR CANCELLED:

- (1) BY MUTUAL AGREEMENT OF THE PARTIES;
- (2) BECAUSE OF THE BANKRUPTCY OR INSOLVENCY OF THE DEALER;
- (3) BECAUSE THE DEALER FAILED TO COMPLY WITH AN EXPRESS REQUIREMENT OF THE MARKETING AGREEMENT; OR
- (4) BECAUSE THE DEALER FAILED TO ACT IN GOOD FAITH IN CARRYING OUT THE TERMS OF THE MARKETING AGREEMENT.

REVISOR'S NOTE: This section presently appears as Art. 23, §167G.

Reference to a marketing agreement "with the distributor" is deleted as unnecessary in light of the definition of "marketing agreement" contained in §11-301(d).

The only other changes are in style.

The Commission is uncertain as to whether and to what extent the provisions of this section, particularly items (3) and (4), were intended to limit or otherwise modify the concept of a "material" breach by the dealer, which is an expressed exception to the goodwill payment provisions of §11-304(i); cf., §11-304(i)(3).

The Commission also notes that, although Ch. 852, Acts of 1974, amended what are now § 11-304(g) and (i) to prohibit an unreasonable refusal to renew a marketing agreement and to provide for certain goodwill payments in the event of a termination, cancellation, or unreasonable refusal to renew, this section—perhaps deliberately—was left unamended, without apparent application to an action based on a refusal to renew.

11-306. NOTICE OF INTENT REQUIRED TO RAISE DEFENSES.

(A) NOTICE REQUIRED TO RAISE DEFENSE.

A PARTY TO A MARKETING AGREEMENT MAY NOT RAISE ANY DEFENSE SET OUT IN §11-305 UNLESS HE GIVES WRITTEN NOTICE TO THE OTHER PARTY OF HIS INTENT TO TERMINATE OR CANCEL THE AGREEMENT. THIS NOTICE SHALL BE GIVEN IN PERSON OR BY REGISTERED OR CERTIFIED MAIL AT LEAST 60 DAYS BEFORE THE DATE ON WHICH HE INTENDS TO TERMINATE OR CANCEL IT.