

SENATE BILL 14

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1998 Regular Session
8lr0031

(PRE-FILED)

By: **Senator Middleton**

Requested: July 14, 1997

Introduced and read first time: January 14, 1998

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Equipment Dealer Contract Act**

3 FOR the purpose of repealing certain provisions of the Equipment Dealer Contract
4 Act that relate to the termination of contracts between equipment dealers and
5 suppliers; establishing rules to govern the termination and amendment of
6 contracts between equipment dealers and suppliers; requiring that a supplier
7 must have good cause before unilaterally terminating or amending a contract
8 with an equipment dealer under certain circumstances; requiring that notice be
9 given to an equipment dealer or supplier under certain circumstances;
10 specifying certain requirements for notice required under this Act; establishing
11 rules to govern the transfer of the business of an equipment dealer; prohibiting
12 a supplier from requiring or proscribing changes in the management or
13 personnel of a dealer under certain circumstances; defining a term; and
14 generally relating to the Equipment Dealer Contract Act.

15 BY repealing

16 Article - Commercial Law

17 Section 19-301 through 19-305, inclusive, and the subtitle "Subtitle 3. Notice of
18 Termination of Contracts"

19 Annotated Code of Maryland

20 (1990 Replacement Volume and 1997 Supplement)

21 BY adding to

22 Article - Commercial Law

23 Section 19-301 through 19-306, inclusive, to be under the new subtitle "Subtitle
24 3. Termination and Amendment of Contracts and Notice Required";

25 19-4A-01 to be under the new subtitle "Subtitle 4A. Transfer of the

26 Business of a Dealer"; and 19-4B-01 to be under the new subtitle "Subtitle
27 4B. Miscellaneous Provisions"

28 Annotated Code of Maryland

29 (1990 Replacement Volume and 1997 Supplement)

30 BY repealing and reenacting, with amendments,

1 Article - Commercial Law
2 Section 19-503
3 Annotated Code of Maryland
4 (1990 Replacement Volume and 1997 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - Commercial Law**

8 [Subtitle 3. Notice of Termination of Contracts]

9 [19-301.

10 Notwithstanding any agreement to the contrary and subject to § 19-302 of this
11 title, a supplier who plans to terminate a contract shall notify, in accordance with §
12 19-305 of this title, the dealer of the planned termination not less than 6 months
13 prior to the effective date of the termination.]

14 [19-302.

15 A supplier may immediately terminate a contract at any time after:

16 (1) The filing of a pleading to commence an assignment for the benefit of
17 creditors proceeding, or receivership proceeding against the dealer;

18 (2) The dealer has made an intentional misrepresentation with the
19 intent to defraud the supplier;

20 (3) The dealer defaults under a chattel mortgage or other security
21 agreement between the dealer and the supplier;

22 (4) The closing or sale of a substantial part of the dealer's business
23 related to the handling of the supplier's product;

24 (5) The commencement of procedures to dissolve or liquidate the dealer if
25 the dealer is a partnership or corporation;

26 (6) A change, without the prior written approval of the supplier, in the
27 location of the dealer's principal place of business;

28 (7) The withdrawal of an individual proprietor, partner, major
29 shareholder, or manager of the dealership, or a substantial reduction in interest of a
30 partner or major shareholder, without the prior written consent of the supplier; or

31 (8) The revocation or discontinuance of any guarantee of the dealer's
32 present or future obligations to the supplier.]

1 [19-303.

2 Notwithstanding any agreement to the contrary, a dealer who plans to
3 terminate a contract with a supplier shall notify the supplier, in accordance with §
4 19-305 of this title, of the planned termination not less than 6 months prior to the
5 effective date of the termination.]

6 [19-304.

7 The contract may be terminated by the mutual written consent of the parties, on
8 any effective date mutually agreed on.]

9 [19-305.

10 (a) Notification under this subtitle shall be in writing and shall be by certified
11 mail or personal delivery to the supplier or dealer.

12 (b) A notice shall contain:

13 (1) A statement of intention to terminate the contract;

14 (2) A statement of the reasons for the termination; and

15 (3) The date on which the termination takes effect.]

16 SUBTITLE 3. TERMINATION AND AMENDMENT OF CONTRACTS AND NOTICE
17 REQUIRED.

18 PART I. RULES OF TERMINATION AND AMENDMENT OF CONTRACTS.

19 19-301.

20 (A) (1) IN THIS SUBTITLE, "GOOD CAUSE" MEANS:

21 (I) THE WITHDRAWAL BY THE SUPPLIER AND THE SUCCESSORS
22 AND ASSIGNS OF THE SUPPLIER OF THE SALE OF ITS PRODUCTS IN THE STATE; OR

23 (II) A DEFICIENCY IN DEALER PERFORMANCE, INCLUDING A
24 FAILURE OF THE DEALER TO:

25 1. COMPLY SUBSTANTIALLY, WITHOUT REASONABLE
26 EXCUSE OR JUSTIFICATION, WITH A REASONABLE AND MATERIAL WRITTEN
27 REQUIREMENT OF THE SUPPLIER;

28 2. MAINTAIN A SALES VOLUME OR TREND OF THE
29 PRODUCTS OF THE SUPPLIER THAT IS COMPARABLE TO THE SALES VOLUME OR
30 TREND OF OTHER SIMILARLY SITUATED DEALERS OF THE SAME PRODUCTS; OR

31 3. RENDER SERVICES THAT ARE COMPARABLE IN QUANTITY,
32 QUALITY, AND VOLUME TO THE SERVICES RENDERED BY OTHER SIMILARLY
33 SITUATED DEALERS OF THE SAME PRODUCTS.

1 (2) "GOOD CAUSE" DOES NOT INCLUDE THE SALE OR PURCHASE OF A
2 SUPPLIER.

3 (B) EXCEPT AS PROVIDED IN § 19-302 OF THIS SUBTITLE, A SUPPLIER MAY
4 NOT UNILATERALLY TERMINATE OR AMEND A CONTRACT UNLESS THE SUPPLIER:

5 (1) COMPLIES WITH THE NOTICE PROVISIONS UNDER PART II OF THIS
6 SUBTITLE; AND

7 (2) HAS GOOD CAUSE.

8 (C) IN A DETERMINATION AS TO WHETHER A DEALER HAS FAILED TO COMPLY
9 SUBSTANTIALLY, WITHOUT REASONABLE EXCUSE OR JUSTIFICATION, WITH A
10 REASONABLE AND MATERIAL WRITTEN REQUIREMENT OF THE SUPPLIER, THE
11 DETERMINING ENTITY SHALL CONSIDER THE:

12 (1) RELATIVE SIZE OF THE MARKET OF THE DEALER;

13 (2) POPULATION THAT COMPRISES THE MARKET OF THE DEALER;

14 (3) GEOGRAPHICAL LOCATION OF THE MARKET OF THE DEALER;

15 (4) NUMBER OF RETAIL OUTLETS IN THE MARKET OF THE DEALER; AND

16 (5) DEMAND FOR RELEVANT PRODUCTS IN THE MARKET OF THE
17 DEALER AND IN COMPARABLE MARKETS.

18 (D) IN A DISPUTE AS TO WHETHER A SUPPLIER HAS ACTED WITH GOOD CAUSE
19 UNDER THIS SECTION, THE SUPPLIER SHALL HAVE THE BURDEN OF PROVING THAT
20 GOOD CAUSE EXISTED.

21 19-302.

22 (A) NOTWITHSTANDING ANY PROVISION IN THIS SUBTITLE, A SUPPLIER MAY
23 IMMEDIATELY TERMINATE A CONTRACT WITH A DEALER, WITHOUT HAVING TO
24 PROVE GOOD CAUSE AND WITHOUT PROVIDING THE DEALER WITH PRIOR NOTICE, AT
25 ANY TIME AFTER:

26 (1) THE FILING OF A PLEADING AGAINST THE DEALER TO COMMENCE A:

27 (I) PROCEEDING FOR AN ASSIGNMENT FOR THE BENEFIT OF
28 CREDITORS OR A SIMILAR DISPOSITION OF THE ASSETS OF THE BUSINESS OF THE
29 DEALER, OTHER THAN THE CREATION OF A SECURITY INTEREST IN THE ASSETS OF
30 THE BUSINESS OF THE DEALER FOR FINANCING IN THE ORDINARY COURSE OF THE
31 BUSINESS OF THE DEALER;

32 (II) RECEIVERSHIP PROCEEDING; OR

33 (III) BANKRUPTCY PROCEEDING;

1 (2) THE DEALER HAS MADE AN INTENTIONAL MISREPRESENTATION
2 WITH THE INTENT TO DEFRAUD THE SUPPLIER;

3 (3) THE DEALER DEFAULTS UNDER A CHATTEL MORTGAGE OR OTHER
4 SECURITY AGREEMENT BETWEEN THE DEALER AND THE SUPPLIER;

5 (4) THE CLOSING OR SALE OF A SUBSTANTIAL PART OF THE BUSINESS
6 OF A DEALER RELATED TO THE HANDLING OF THE PRODUCT OF THE SUPPLIER;

7 (5) THE COMMENCEMENT OF PROCEDURES TO DISSOLVE OR LIQUIDATE
8 THE DEALER IF THE DEALER IS A PARTNERSHIP OR CORPORATION;

9 (6) A CHANGE, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE
10 SUPPLIER, IN THE LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE
11 DEALER;

12 (7) THE WITHDRAWAL OF AN INDIVIDUAL PROPRIETOR, PARTNER,
13 MAJOR SHAREHOLDER, OR MANAGER OF THE DEALERSHIP, OR A SUBSTANTIAL
14 REDUCTION IN INTEREST OF A PARTNER OR MAJOR SHAREHOLDER, WITHOUT THE
15 PRIOR WRITTEN CONSENT OF THE SUPPLIER;

16 (8) THE REVOCATION OR DISCONTINUANCE OF ANY GUARANTEE OF
17 THE PRESENT OR FUTURE OBLIGATIONS OF THE DEALER TO THE SUPPLIER;

18 (9) THE FAILURE OF THE DEALER TO CONDUCT ITS CUSTOMARY SALES
19 AND SERVICE OPERATIONS DURING ITS CUSTOMARY BUSINESS HOURS FOR 7
20 CONSECUTIVE BUSINESS DAYS UNLESS THE FAILURE RESULTED FROM:

21 (I) AN ACT OF GOD;

22 (II) CASUALTIES;

23 (III) STRIKES; OR

24 (IV) A CIRCUMSTANCE BEYOND THE REASONABLE CONTROL OF
25 THE DEALER;

26 (10) THE FAILURE OF THE DEALER TO PAY ANY UNDISPUTED AMOUNT
27 DUE TO THE SUPPLIER BEYOND 30 DAYS AFTER THE SUPPLIER PROVIDED THE
28 DEALER WITH WRITTEN NOTICE OF THE AMOUNT DUE; OR

29 (11) THE FINAL CONVICTION OF A FELONY OF A DEALER OR ANY PERSON
30 WITH AN OWNERSHIP INTEREST IN THE DEALER.

31 (B) NOTWITHSTANDING ANY PROVISION IN THIS SUBTITLE, A SUPPLIER MAY
32 UNILATERALLY AMEND A CONTRACT WITH A DEALER WITHOUT HAVING TO PROVE
33 GOOD CAUSE AND WITHOUT PROVIDING PRIOR NOTICE TO A DEALER TO COMPLY
34 WITH A LAW OR REGULATION OF THE STATE OR FEDERAL GOVERNMENT.

1 19-303.

2 NOTWITHSTANDING ANY PROVISION IN THIS SUBTITLE, A SUPPLIER AND A
3 DEALER MAY TERMINATE OR AMEND THEIR CONTRACT ON ANY EFFECTIVE DATE
4 WITH THE MUTUAL WRITTEN CONSENT OF THE SUPPLIER AND THE DEALER.

5 PART II. NOTICE REQUIRED.

6 19-304.

7 NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY AND SUBJECT TO §
8 19-301 OF THIS SUBTITLE, A SUPPLIER THAT PLANS TO TERMINATE OR AMEND A
9 CONTRACT WITH A DEALER UNILATERALLY SHALL NOTIFY THE DEALER, IN
10 ACCORDANCE WITH § 19-306 OF THIS SUBTITLE, OF THE PLANNED TERMINATION OR
11 AMENDMENT AT LEAST 180 DAYS PRIOR TO THE EFFECTIVE DATE OF THE
12 TERMINATION OR AMENDMENT.

13 19-305.

14 NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, A DEALER THAT
15 PLANS TO TERMINATE OR AMEND A CONTRACT WITH A SUPPLIER UNILATERALLY
16 SHALL NOTIFY THE SUPPLIER, IN ACCORDANCE WITH § 19-306 OF THIS SUBTITLE, OF
17 THE PLANNED TERMINATION OR AMENDMENT AT LEAST 180 DAYS PRIOR TO THE
18 EFFECTIVE DATE OF THE TERMINATION OR AMENDMENT.

19 19-306.

20 (A) EACH NOTIFICATION REQUIRED UNDER THIS SUBTITLE SHALL:

21 (1) BE IN WRITING;

22 (2) CONTAIN:

23 (I) A STATEMENT OF INTENTION TO TERMINATE OR AMEND THE
24 CONTRACT;

25 (II) A STATEMENT OF THE REASONS FOR THE TERMINATION OR
26 AMENDMENT; AND

27 (III) THE DATE ON WHICH THE TERMINATION OR AMENDMENT
28 TAKES EFFECT; AND

29 (3) BE DELIVERED TO THE SUPPLIER OR DEALER BY:

30 (I) CERTIFIED OR REGISTERED MAIL WITH POSTAGE PREPAID; OR

31 (II) PERSONAL DELIVERY.

32 (B) (1) IF THE REASONS GIVEN BY THE SUPPLIER FOR THE TERMINATION
33 OR AMENDMENT OF A CONTRACT CAN BE RECTIFIED BY AN ACTION OF THE DEALER,

1 THE DEALER MAY TAKE THAT ACTION WITHIN 135 DAYS OF THE RECEIPT OF THE
2 NOTICE BY THE DEALER.

3 (2) IF A DEALER TAKES ACTION UNDER PARAGRAPH (1) OF THIS
4 SUBSECTION, THE DEALER SHALL PROVIDE THE SUPPLIER WITH WRITTEN NOTICE
5 WITHIN 135 DAYS OF THE RECEIPT OF THE NOTICE BY THE DEALER THAT THE
6 DEALER HAS TAKEN THE RECTIFYING ACTION.

7 (3) IF THE SUPPLIER DOES NOT AGREE THAT THE ACTION TAKEN BY
8 THE DEALER HAS RECTIFIED THE REASONS FOR THE TERMINATION OR
9 AMENDMENT, THE SUPPLIER SHALL PROVIDE THE DEALER WITH WRITTEN NOTICE
10 OF THAT DISAGREEMENT WITHIN 15 DAYS OF THE RECEIPT OF THE DEALER'S
11 NOTICE BY THE SUPPLIER.

12 (4) IF THE ACTION TAKEN BY THE DEALER UNDER PARAGRAPH (1) OF
13 THIS SUBSECTION RECTIFIES THE REASON FOR THE TERMINATION OR AMENDMENT,
14 THE SUPPLIER MAY NOT TERMINATE OR AMEND THE CONTRACT UNILATERALLY.

15 (C) (1) WITHIN 135 DAYS OF RECEIPT OF NOTICE UNDER § 19-304 OF THIS
16 SUBTITLE, A DEALER MAY TRANSFER THE OWNERSHIP OF ITS BUSINESS TO
17 ANOTHER PERSON THAT MEETS THE MATERIAL AND REASONABLE QUALIFICATIONS
18 AND STANDARDS REQUIRED BY THE SUPPLIER.

19 (2) IF A DEALER TRANSFERS THE OWNERSHIP OF ITS BUSINESS UNDER
20 PARAGRAPH (1) OF THIS SUBSECTION, THE TRANSFERRING DEALER SHALL PROVIDE
21 WRITTEN NOTICE OF THE TRANSFER TO THE SUPPLIER WITHIN 135 DAYS OF THE
22 RECEIPT OF NOTICE BY THE DEALER.

23 SUBTITLE 4A. TRANSFER OF THE BUSINESS OF A DEALER.

24 19-4A-01.

25 (A) (1) IF A TRANSFEREE OF A DEALER MEETS THE MATERIAL AND
26 REASONABLE QUALIFICATIONS AND STANDARDS REQUIRED BY THE SUPPLIER, THE
27 SUPPLIER MAY NOT UNREASONABLY WITHHOLD OR DELAY CONSENT TO A
28 TRANSFER OF THE:

29 (I) BUSINESS OF THE DEALER; OR

30 (II) STOCK OR OTHER INTEREST IN THE DEALERSHIP.

31 (2) A SUPPLIER MAY NOT WITHHOLD CONSENT TO A TRANSFER OF THE
32 BUSINESS OF A DEALER OR THE STOCK OR OTHER INTEREST IN A DEALERSHIP
33 BECAUSE THE PROPOSED TRANSFEREE IS A PUBLICLY HELD CORPORATION.

34 (B) (1) A DEALER SHALL PROVIDE THE SUPPLIER WITH WRITTEN NOTICE OF
35 A PROPOSED TRANSFER OF THE BUSINESS OF THE DEALER OR THE STOCK OR OTHER
36 INTEREST IN THE DEALERSHIP.

1 (2) ON RECEIPT OF THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF
2 THIS SUBSECTION, A SUPPLIER HAS 45 DAYS TO CONSIDER THE PROPOSED
3 TRANSFER.

4 (3) IF THE SUPPLIER FAILS TO SEND A WRITTEN RESPONSE TO THE
5 DEALER BEYOND 45 DAYS AFTER RECEIPT OF THE NOTICE OF THE PROPOSED
6 TRANSFER, THE SUPPLIER MAY NOT WITHHOLD CONSENT TO THE PROPOSED
7 TRANSFER.

8 (C) (1) IF THE SUPPLIER DETERMINES THAT THE PROPOSED TRANSFEREE
9 OF A DEALER DOES NOT MEET THE MATERIAL AND REASONABLE QUALIFICATIONS
10 AND STANDARDS REQUIRED BY THE SUPPLIER, THE SUPPLIER SHALL PROVIDE
11 WRITTEN NOTICE OF THAT DETERMINATION TO THE DEALER.

12 (2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION
13 SHALL CONTAIN THE SPECIFIC REASONS OF THE SUPPLIER FOR WITHHOLDING
14 CONSENT TO THE PROPOSED TRANSFER.

15 (D) IN ANY DISPUTE AS TO WHETHER A SUPPLIER VIOLATED A PROVISION OF
16 THIS SUBTITLE BY WITHHOLDING CONSENT TO A PROPOSED TRANSFER OF THE
17 BUSINESS OF A DEALER OR THE STOCK OR OTHER INTEREST IN A DEALERSHIP, THE
18 SUPPLIER HAS THE BURDEN OF PROVING THAT THE PROPOSED TRANSFEREE OF A
19 DEALER DOES NOT MEET THE MATERIAL AND REASONABLE QUALIFICATIONS AND
20 STANDARDS REQUIRED BY THE SUPPLIER.

21 (E) UNDER AN AGREEMENT THAT IS CONSISTENT WITH THE PROVISIONS OF
22 THIS TITLE, A TRANSFEREE OF THE BUSINESS OF A DEALER OR THE STOCK OR
23 OTHER INTEREST IN A DEALERSHIP:

24 (1) ASSUMES ALL OF THE OBLIGATIONS OF THE TRANSFERRING
25 DEALER; AND

26 (2) SUCCEEDS TO ALL OF THE RIGHTS OF THE TRANSFERRING DEALER.

27 SUBTITLE 4B. MISCELLANEOUS PROVISIONS.

28 19-4B-01.

29 A SUPPLIER MAY NOT REQUIRE OR PROHIBIT A CHANGE IN THE MANAGEMENT
30 OR PERSONNEL OF A DEALER UNLESS THE CURRENT OR POTENTIAL MANAGEMENT
31 OR PERSONNEL FAIL TO MEET THE REASONABLE QUALIFICATIONS AND STANDARDS
32 REQUIRED BY THE SUPPLIERS.

33 19-503.

34 In the event of failure to provide required notice of termination OR AMENDMENT
35 or otherwise comply with provisions of [the law] THIS TITLE, the supplier is civilly
36 liable for the dealer's loss of business for the time period the supplier is in violation of
37 [the notice of termination provisions of] this title, plus reasonable attorney fees and
38 court costs.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1998.