

SENATE BILL 14

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1998 Regular Session
8r0031

(PRE-FILED)

By: **Senator Middleton**
Requested: July 14, 1997
Introduced and read first time: January 14, 1998
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 31, 1998

CHAPTER _____

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, canceling, or~~
8 failing to renew a contract with an equipment dealer under certain
9 circumstances; requiring that notice be given to an equipment dealer or supplier
10 under certain circumstances; specifying certain requirements for notice required
11 under this Act; establishing rules to govern the transfer of the business of an
12 equipment dealer; ~~prohibiting a supplier from requiring or proscribing changes~~
13 ~~in the management or personnel of a dealer under certain circumstances;~~
14 defining a term; and 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, Cancellation, and Nonrenewal of

1 Contracts and Notice Required"; and 19-4A-01 and 19-4A-02 to be under
2 the new subtitle "Subtitle 4A. Transfer of the Business of a Dealer"; ~~and~~
3 ~~19-4B-01 to be under the new subtitle "Subtitle 4B. Miscellaneous~~
4 ~~Provisions"~~
5 Annotated Code of Maryland
6 (1990 Replacement Volume and 1997 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article - Commercial Law
9 Section 19-503
10 Annotated Code of Maryland
11 (1990 Replacement Volume and 1997 Supplement)

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

14 **Article - Commercial Law**

15 [Subtitle 3. Notice of Termination of Contracts]

16 [19-301.

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

21 [19-302.

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

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

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

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

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

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

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

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

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

6 [19-303.

7 Notwithstanding any agreement to the contrary, a dealer who plans to
 8 terminate a contract with a supplier shall notify the supplier, in accordance with §
 9 19-305 of this title, of the planned termination not less than 6 months prior to the
 10 effective date of the termination.]

11 [19-304.

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

14 [19-305.

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

17 (b) A notice shall contain:

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

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

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

21 SUBTITLE 3. TERMINATION AND AMENDMENT, CANCELLATION, AND NONRENEWAL
 22 OF CONTRACTS AND NOTICE REQUIRED.

23 PART I. RULES OF TERMINATION AND AMENDMENT, CANCELLATION, AND
 24 NONRENEWAL OF CONTRACTS.

25 19-301.

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

27 ~~(I) THE WITHDRAWAL BY THE SUPPLIER AND THE SUCCESSORS~~
 28 ~~AND ASSIGNS OF THE SUPPLIER OF THE SALE OF ITS PRODUCTS IN THE STATE; OR~~

29 ~~(II) A DEFICIENCY IN DEALER PERFORMANCE, INCLUDING A~~
 30 ~~FAILURE OF THE DEALER TO:~~

31 ~~I. COMPLY SUBSTANTIALLY, WITHOUT REASONABLE~~
 32 ~~EXCUSE OR JUSTIFICATION, WITH A REASONABLE AND MATERIAL WRITTEN~~
 33 ~~REQUIREMENT OF THE SUPPLIER;~~

1 19-302.

2 ~~(A)~~ NOTWITHSTANDING ANY OTHER PROVISION IN THIS SUBTITLE, A
3 SUPPLIER MAY ~~IMMEDIATELY~~ TERMINATE A CONTRACT WITH A DEALER, WITHOUT
4 HAVING TO PROVE GOOD CAUSE AND WITHOUT PROVIDING THE DEALER WITH PRIOR
5 NOTICE, AT ANY TIME AFTER:

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

7 (I) PROCEEDING FOR AN ASSIGNMENT FOR THE BENEFIT OF
8 CREDITORS OR A SIMILAR DISPOSITION OF THE ASSETS OF THE BUSINESS OF THE
9 DEALER, OTHER THAN THE CREATION OF A SECURITY INTEREST IN THE ASSETS OF
10 THE BUSINESS OF THE DEALER FOR FINANCING IN THE ORDINARY COURSE OF THE
11 BUSINESS OF THE DEALER;

12 (II) RECEIVERSHIP PROCEEDING; OR

13 (III) BANKRUPTCY PROCEEDING;

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

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

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

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

22 (6) A CHANGE OR ADDITION, WITHOUT THE PRIOR WRITTEN APPROVAL
23 OF THE SUPPLIER, IN THE LOCATION OF ~~THE PRINCIPAL~~ A PLACE OF BUSINESS OF
24 THE DEALER;

25 (7) THE WITHDRAWAL OF AN INDIVIDUAL PROPRIETOR, PARTNER,
26 MAJOR SHAREHOLDER, OR MANAGER OF THE DEALERSHIP, OR A SUBSTANTIAL
27 REDUCTION IN INTEREST OF A PARTNER OR MAJOR SHAREHOLDER, WITHOUT THE
28 PRIOR WRITTEN CONSENT OF THE SUPPLIER;

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

31 (9) THE FAILURE OF THE DEALER TO CONDUCT ITS CUSTOMARY SALES
32 AND SERVICE OPERATIONS DURING ITS CUSTOMARY BUSINESS HOURS FOR 7
33 CONSECUTIVE BUSINESS DAYS, UNLESS THE FAILURE ~~RESULTED FROM~~ WAS THE
34 DIRECT RESULT OF:

35 (I) AN ACT OF GOD;

36 (II) ~~CASUALTIES~~ A CASUALTY;

1 (III) ~~STRIKES A STRIKE~~; OR

2 (IV) A CIRCUMSTANCE BEYOND THE REASONABLE CONTROL OF
3 THE DEALER;

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

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

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

13 19-303.

14 NOTWITHSTANDING ANY PROVISION IN THIS SUBTITLE, A SUPPLIER AND A
15 DEALER MAY TERMINATE ~~OR AMEND~~ THEIR CONTRACT ON ANY EFFECTIVE DATE
16 WITH THE MUTUAL WRITTEN CONSENT OF THE SUPPLIER AND THE DEALER.

17 PART II. NOTICE REQUIRED.

18 19-304.

19 NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY AND SUBJECT TO §
20 19-301 OF THIS SUBTITLE, A SUPPLIER THAT PLANS TO TERMINATE ~~OR AMEND~~ A
21 CONTRACT WITH A DEALER UNILATERALLY SHALL NOTIFY THE DEALER, IN
22 ACCORDANCE WITH § 19-306 OF THIS SUBTITLE, OF THE PLANNED TERMINATION ~~OR~~
23 ~~AMENDMENT~~ AT LEAST 180 DAYS PRIOR TO THE EFFECTIVE DATE OF THE
24 TERMINATION ~~OR AMENDMENT~~.

25 19-305.

26 NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, A DEALER THAT
27 PLANS TO TERMINATE ~~OR AMEND~~ A CONTRACT WITH A SUPPLIER UNILATERALLY
28 SHALL NOTIFY THE SUPPLIER, IN ACCORDANCE WITH § 19-306 OF THIS SUBTITLE, OF
29 THE PLANNED TERMINATION ~~OR AMENDMENT~~ AT LEAST 180 DAYS PRIOR TO THE
30 EFFECTIVE DATE OF THE TERMINATION ~~OR AMENDMENT~~.

31 19-306.

32 ~~(A)~~ EACH NOTIFICATION REQUIRED UNDER THIS SUBTITLE SHALL:

33 (1) BE IN WRITING;

34 (2) CONTAIN:

1 (I) A STATEMENT OF INTENTION TO TERMINATE ~~OR AMEND~~ THE
2 CONTRACT;

3 (II) A STATEMENT OF THE REASONS FOR THE TERMINATION ~~OR~~
4 ~~AMENDMENT~~; AND

5 (III) THE DATE ON WHICH THE TERMINATION ~~OR AMENDMENT~~
6 TAKES EFFECT; AND

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

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

9 (II) PERSONAL DELIVERY.

10 ~~(B) (1) IF THE REASONS GIVEN BY THE SUPPLIER FOR THE TERMINATION~~
11 ~~OR AMENDMENT OF A CONTRACT CAN BE RECTIFIED BY AN ACTION OF THE DEALER,~~
12 ~~THE DEALER MAY TAKE THAT ACTION WITHIN 135 DAYS OF THE RECEIPT OF THE~~
13 ~~NOTICE BY THE DEALER.~~

14 ~~(2) IF A DEALER TAKES ACTION UNDER PARAGRAPH (1) OF THIS~~
15 ~~SUBSECTION, THE DEALER SHALL PROVIDE THE SUPPLIER WITH WRITTEN NOTICE~~
16 ~~WITHIN 135 DAYS OF THE RECEIPT OF THE NOTICE BY THE DEALER THAT THE~~
17 ~~DEALER HAS TAKEN THE RECTIFYING ACTION.~~

18 ~~(3) IF THE SUPPLIER DOES NOT AGREE THAT THE ACTION TAKEN BY~~
19 ~~THE DEALER HAS RECTIFIED THE REASONS FOR THE TERMINATION OR~~
20 ~~AMENDMENT, THE SUPPLIER SHALL PROVIDE THE DEALER WITH WRITTEN NOTICE~~
21 ~~OF THAT DISAGREEMENT WITHIN 15 DAYS OF THE RECEIPT OF THE DEALER'S~~
22 ~~NOTICE BY THE SUPPLIER.~~

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

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

30 ~~(2) IF A DEALER TRANSFERS THE OWNERSHIP OF ITS BUSINESS UNDER~~
31 ~~PARAGRAPH (1) OF THIS SUBSECTION, THE TRANSFERRING DEALER SHALL PROVIDE~~
32 ~~WRITTEN NOTICE OF THE TRANSFER TO THE SUPPLIER WITHIN 135 DAYS OF THE~~
33 ~~RECEIPT OF NOTICE BY THE DEALER.~~

1 (C) (1) A SUPPLIER SHALL MAKE A DETERMINATION ON A REQUEST
2 SUBMITTED BY A DEALER UNDER SUBSECTION (B)(1) OF THIS SECTION WITHIN 90
3 DAYS OF RECEIPT.

4 (2) IF THE SUPPLIER DETERMINES THAT THE REQUEST IS NOT
5 ACCEPTABLE, THE SUPPLIER SHALL PROVIDE THE DEALER WITH A WRITTEN NOTICE
6 OF ITS DETERMINATION THAT INCLUDES A STATEMENT OF THE REASONS FOR
7 NONACCEPTANCE.

8 (3) NOTHING IN THIS SUBSECTION PERMITS AN HEIR, A PERSONAL
9 REPRESENTATIVE, OR A FAMILY MEMBER OF A DECEASED DEALER TO OPERATE A
10 DEALERSHIP WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SUPPLIER.

11 19-4A-02.

12 (A) THE HEIRS OF A DECEASED DEALER HAVE 180 DAYS AFTER THE DEALER'S
13 DEATH TO ENTER INTO A NEW CONTRACT WITH THE SUPPLIER TO OPERATE THE
14 DEALERSHIP.

15 (B) THE HEIRS OF A DECEASED DEALER MAY NOT OPERATE A DEALERSHIP
16 MORE THAN 180 DAYS AFTER THE DEALER'S DEATH WITHOUT THE EXPRESS
17 WRITTEN CONSENT OF THE SUPPLIER.

18 (C) NOTHING IN THIS SECTION PRECLUDES THE ENFORCEABILITY OF A VALID
19 CONTRACT BETWEEN A SELLER AND A DEALER CONCERNING SUCCESSION RIGHTS
20 MADE BEFORE THE DEALER'S DEATH, EVEN IF THE CONTRACT DESIGNATES A
21 PERSON OTHER THAN A SURVIVING SPOUSE OR AN HEIR OF THE DEALER AS THE
22 SUCCESSOR TO THE DEALER.

23 19-503.

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

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