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HOUSE BILL NO. 143

Offered January 12, 2022

Prefiled January 7, 2022

A BILL to amend and reenact §§ 59.1-354 and 59.1-359 of the Code of Virginia, relating to the Heavy Equipment Dealer Act; agreements and exclusivity.

Patron—Wiley

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:**1. That §§ 59.1-354 and 59.1-359 of the Code of Virginia are amended and reenacted as follows:****§ 59.1-354. Cancellation.**

A. Notwithstanding the terms, provisions, or conditions of any agreement, no supplier shall unilaterally amend, cancel, terminate, or refuse to continue to renew any agreement, or unilaterally cause a dealer to resign from an agreement, unless the supplier has first complied with the provisions of § 59.1-355, and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance, or causing a resignation. *A supplier's refusal to continue with a dealer an agreement that is expiring in accordance with its terms shall constitute a refusal to continue or renew the agreement even if the supplier offers to enter into a replacement agreement with such dealer.* "Good cause" shall not include the sale or purchase of a supplier. "Good cause" shall be limited to withdrawal by the supplier, its successors, and assigns, of the sale of its products in Virginia, or dealer performance deficiencies including, but not limited to, the following:

1. Bankruptcy or receivership of the dealer;

2. Assignment for the benefit of creditors or similar disposition of the assets of the dealer, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business; or

3. Failure by the dealer to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the supplier including, but not limited to, a substantial failure by a dealer to (i) maintain a sales volume or trend of his supplier's product line or lines comparable to that of other similarly situated dealers of that product line, or (ii) render services comparable in quality, quantity, or volume to the services rendered by other dealers of the same product or product line similarly situated.

In any determination as to whether a dealer has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the supplier, consideration shall be given to the relative size, population, geographical location, number of retail outlets, and demand for the products applicable to the market area of the dealer in question and to comparable market area.

B. No supplier shall be required to give notice or show good cause pursuant to subsection A of this section to unilaterally amend agreements with dealers to comply with federal or state law ~~or, where not inconsistent with this chapter, to uniformly amend agreements as to all dealers of the supplier in question in all states in which the supplier is marketing its products.~~

C. In any dispute as to whether a supplier has acted with good cause as required by this section the supplier shall have the burden of proof to establish that good cause existed.

§ 59.1-359. Management; exclusivity.

A. No supplier shall require or prohibit any change in management or personnel of any dealer unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the supplier for its dealers.

B. No supplier shall prohibit a dealer from purchasing equipment manufactured by another supplier for purposes of rental or resale to the dealer's customers or directly or indirectly discriminate or take adverse action against, or otherwise penalize, any dealer that purchases equipment or repair parts manufactured by another supplier for purposes of rental or resale to the dealer's customers.

INTRODUCED

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