

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 175

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

ROMAN M. MAES III

AN ACT

RELATING TO AGREEMENTS; ENACTING THE HEAVY EQUIPMENT DEALER ACT; PROVIDING STANDARDS FOR PROPOSED CHANGES TO AGREEMENTS BETWEEN HEAVY EQUIPMENT DEALERS AND SUPPLIERS; PROVIDING REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Heavy Equipment Dealer Act".

Section 2. FINDINGS--PURPOSE.--

A. The legislature finds that the distribution, sale and lease of heavy equipment products in New Mexico affect the general economy of the state and the public interest and welfare of its citizens.

B. It is the purpose of the Heavy Equipment Dealer Act to exercise the state's police power to:

Underscored material = new
[bracketed material] = del ete

1 (1) ensure a sound system of distributing,
2 selling and leasing heavy equipment products; and

3 (2) regulate suppliers and dealers of heavy
4 equipment products and prevent the occurrence of frauds and
5 unfair practices.

6 Section 3. DEFINITIONS. -- As used in the Heavy Equipment
7 Dealer Act:

8 A. "agreement" means a contract, written or oral,
9 between a supplier and a dealer in which the dealer is
10 authorized to distribute the supplier's heavy equipment
11 products and attachments and repair parts for those products
12 and the dealer is authorized to use the supplier's trade name,
13 trademark, logo or advertising. "Agreement" includes sales
14 contracts, service contracts, advertising contracts, leases or
15 mortgages of real or personal property, promises to pay,
16 security interests, pledges, insurance contracts, construction
17 or installation contracts and all other contracts in which the
18 supplier and dealer have a direct or indirect interest;

19 B. "dealer" means a person engaged in the retail
20 business of selling or leasing heavy equipment products who:

21 (1) maintains a total inventory, valued at
22 more than seven hundred fifty thousand dollars (\$750,000), of
23 new heavy equipment products and attachments and repair parts
24 for those products; and

25 (2) performs repair services for the heavy

Underscored material = new
[bracketed material] = del ete

1 equipment products he sells;

2 C. "heavy equipment products" means self-
3 propelled, self-powered or pull-type equipment or machinery,
4 including engines, that weighs five thousand pounds or more
5 and that is commonly used for agricultural, construction,
6 industrial, maritime, mining and forestry operations; and

7 D. "supplier" means a person, or that person's
8 agent or authorized broker, who enters into an agreement with
9 a dealer.

10 Section 4. AMENDMENT OR TERMINATION OF AN AGREEMENT. --

11 A. A supplier shall not unilaterally amend or
12 terminate or cause a dealer to resign from an agreement unless
13 the supplier complies with the provisions of the Heavy
14 Equipment Dealer Act and due cause exists for amendment or
15 termination of an agreement or for causing a dealer to resign
16 from an agreement.

17 B. As used in this section, "due cause" does not
18 include the sale or purchase of a supplier. "Due cause" is
19 limited to:

20 (1) withdrawal by the supplier, its
21 successors and assigns of the sale or lease of its heavy
22 equipment products in New Mexico; or

23 (2) dealer performance deficiencies,
24 including the following:

25 (a) the dealer initiates bankruptcy

Underscored material = new
[bracketed material] = delete

1 proceedings or a receiver is appointed to manage the dealer's
2 business;

3 (b) the dealer assigns assets for the
4 benefit of the dealer's creditors, other than the creation of
5 a security interest in the assets for the purpose of securing
6 financing in the ordinary course of business; or

7 (c) the dealer fails to substantially
8 comply, without reasonable cause or justification, with a
9 reasonable and material requirement imposed in writing upon
10 the dealer by the supplier, including a substantial failure by
11 the dealer to: 1) maintain a sales volume or trend of his
12 supplier's heavy equipment products comparable to that of
13 other similarly situated dealers; or 2) render heavy equipment
14 product services comparable in quality, quantity or volume to
15 the provision of services by other similarly situated dealers.

16 C. In a determination as to whether a dealer has
17 failed to substantially comply, without reasonable cause or
18 justification, with a reasonable and material requirement
19 imposed upon the dealer by the supplier, consideration shall
20 be given to the relative size, population, geographic
21 location, number of retail outlets and demand for the heavy
22 equipment products applicable to the market area of the dealer
23 in question and to comparable market areas.

24 D. A supplier is not required to show due cause as
25 a prerequisite to unilaterally amending or terminating an

Underscored material = new
[bracketed material] = delete

1 agreement if the amendment or termination is necessary to:

2 (1) comply with federal or state law; or

3 (2) uniformly amend the supplier's agreements

4 with all of the supplier's dealers in all states in which the
5 supplier markets its heavy equipment products.

6 E. In a dispute as to whether due cause exists to
7 amend or terminate an agreement or cause a dealer to resign
8 from an agreement, the supplier has the burden of proof to
9 establish that due cause existed.

10 Section 5. PROPOSED AMENDMENTS TO OR TERMINATION OF AN
11 AGREEMENT-- PROCEDURAL REQUIREMENTS-- EXCEPTIONS. --

12 A. Except as provided in Subsection C of this
13 section, a supplier shall give a dealer at least one hundred
14 twenty days' written notice of the supplier's intention to
15 amend or terminate an agreement. The written notice shall
16 state the supplier's reasons for amending or terminating the
17 agreement.

18 B. When the supplier's reasons for amending
19 or terminating the agreement relate to a condition that may be
20 remedied by the dealer, the dealer shall have seventy-five
21 days to remedy the condition. If the dealer elects to remedy
22 the condition within that time period, he shall provide the
23 supplier with written notice of the remedy. If the supplier
24 accepts the dealer's remedy, the supplier's proposed
25 amendments to or termination of the agreement shall be void.

. 120167. 3

Underscored material = new
[bracketed material] = delete

1 If the supplier does not accept the dealer's remedy, the
2 supplier shall provide the dealer with written notice of the
3 supplier's refusal no later than fifteen days after the
4 supplier receives the dealer's proposed remedy.

5 C. A supplier is not required to provide written
6 notice to a dealer and may immediately amend or terminate an
7 agreement when:

8 (1) the dealer initiates bankruptcy
9 proceedings or a receiver is appointed to manage the dealer's
10 business;

11 (2) the dealer makes intentional
12 misrepresentations for the purpose of defrauding the supplier;

13 (3) the dealer fails to pay an undisputed
14 amount of money due to the supplier and more than thirty days
15 have passed since the supplier provided the dealer with
16 written notice of the amount due;

17 (4) the dealer fails to conduct his customary
18 sales and service operations during his customary business
19 hours for seven consecutive business days, unless the failure
20 to conduct business is the result of an act of God, a strike
21 or other circumstances beyond the dealer's control; or

22 (5) the dealer is convicted of a felony
23 offense and exhausts his right to appeal.

24 D. During the one hundred twenty-day notice period
25 provided for in Subsection A of this section, a dealer has the

Underscored material = new
[bracketed material] = del etc

1 right to transfer his business to another person who meets the
2 reasonable and material requirements imposed upon other
3 dealers by the supplier. A dealer shall give notice to the
4 supplier of the transfer of the dealer's business at least
5 forty-five days prior to the expiration of the one hundred
6 twenty-day notice period.

7 Section 6. TRANSFER OF A DEALER'S BUSINESS. --

8 A. A supplier shall not unreasonably withhold or
9 delay consent to a transfer of a dealer's business or a
10 transfer of stock in a dealer's business if the transferee
11 meets reasonable standards and qualifications required by the
12 supplier of all its dealers. If a supplier determines that a
13 proposed transferee does not meet the supplier's standards and
14 qualifications, the supplier shall provide the dealer with
15 written notice of its reasons for withholding consent to the
16 transfer. A supplier shall have forty-five days to respond to
17 a dealer's request to make a transfer.

18 B. Notwithstanding the provisions of Subsection A
19 of this section, a supplier shall not withhold consent when a
20 dealer proposes to transfer his business to a member of the
21 dealer's family. As used in this subsection, "family" means a
22 spouse, parent, sibling, child, adopted child, stepchild or
23 lineal descendant.

24 C. When a transfer of a dealer's business occurs,
25 the transferee shall assume all obligations and succeed to all

Underscored material = new
[bracketed material] = delete

1 rights held by the selling dealer, as set forth in the
2 agreement between the selling dealer and his supplier.

3 D. In a dispute as to whether a supplier has
4 unreasonably withheld or delayed consent regarding the
5 transfer of a dealer's business, the supplier has the burden
6 of proving a reasonable and substantial justification for
7 withholding or delaying consent to the transfer.

8 Section 7. CAPITAL STRUCTURE. -- A supplier shall
9 not coerce or attempt to coerce, by agreement or otherwise, a
10 dealer to change the capital structure of his business or the
11 means by which the dealer finances his business, so long as
12 the dealer meets reasonable capital standards that are
13 mutually agreed to by the dealer and the supplier.

14 Section 8. MANAGEMENT. --

15 A. A supplier shall not require a dealer to change
16 the dealer's management or other personnel, unless the
17 dealer's current management or personnel fails to meet
18 reasonable qualifications and standards required by the
19 supplier of all his dealers.

20 B. A supplier shall not prohibit a dealer from
21 changing the dealer's management or other personnel, unless
22 the dealer's prospective management or personnel fail to meet
23 reasonable qualifications and standards required by the
24 supplier of all his dealers.

25 Section 9. REMEDIES. --

. 120167. 3

Underscored material = new
[bracketed material] = delete

1 A. When a dispute arises concerning the terms of
2 an agreement or compliance with the provisions of the Heavy
3 Equipment Dealer Act, the district court in which the dealer
4 has its principal place of business shall have jurisdiction to
5 hear the case. The district court may grant relief that is
6 necessary to remedy the dispute, including injunctive relief.

7 B. In addition to other remedies available at law
8 or equity, if a supplier violates the provisions of the Heavy
9 Equipment Dealer Act by amending or terminating an agreement,
10 causing a dealer to resign from an agreement, or delaying or
11 withholding consent to a dealer's transfer, then if the dealer
12 is the prevailing party in resulting litigation, the dealer is
13 entitled to recover general and special damages, court costs
14 and reasonable attorney fees.

15 C. The parties to an agreement may include a
16 provision in the agreement that authorizes binding arbitration
17 of disputes. When arbitration is used, it shall be held in
18 the county in which the dealer has its principal place of
19 business.

20 Section 10. NOTICE.--Written notice required pursuant to
21 the provisions of the Heavy Equipment Dealer Act shall be sent
22 by certified mail.

23 Section 11. WAIVER DISALLOWED.--A supplier shall not
24 require a dealer to waive compliance with the provisions of
25 the Heavy Equipment Dealer Act. An agreement that purports to

Underscored material = new
[bracketed material] = delete

1 waive the provisions of that act is void and unenforceable to
2 the extent of the waiver.

3 Section 12. EFFECTIVE DATE. --The effective date of the
4 provisions of this act is July 1, 1998.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 January 30, 1998
7

8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 175
13

14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 29, and thence referred to
16 the CORPORATIONS & TRANSPORTATION COMMITTEE.
17

18
19 Respectfully submitted,
20
21
22
23
24

25 _____
Manny M. Aragon, Chairman

Underscored material = new
~~[bracketed material]~~ = delete

Adopted _____ Not Adopted _____

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(Chief Clerk)

(Chief Clerk)

Date _____

S0175CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3 SB 175/a

4
5
6 February 3, 1998

7
8 Mr. President:

9
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
11 has been referred

12
13 SENATE BILL 175

14
15 has had it under consideration and reports same with recommendation
16 that it DO PASS, amended as follows:

17
18 1. On page 3, between lines 1 and 2, insert the following:

19
20
21 "but does not include a motor vehicle dealer, as defined in Section
22 57-16-3 NMSA 1978, to the extent that dealer is engaged in the sale
23 or lease of motor vehicles, as defined in that section";

24
25 and thence referred to the JUDICIARY COMMITTEE.

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

%%%

Page 14

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

No: 0

Excused: McKibben

Absent: None

S0175CT1

. 122771. 1

. 120167. 3

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Page 15

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

%%%

Underscored material = new
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE

SB 175/a

2 SECOND SESSION, 1998

6 February 6, 1998

8 Mr. President:

10 Your JUDICIARY COMMITTEE, to whom has been referred

12 SENATE BILL 175, as amended

14 has had it under consideration and reports same WITHOUT

16 RECOMMENDATION, amended as follows:

18 1. On page 2, line 22, strike "seven hundred fifty thousand
19 dollars (\$750,000)" and insert in lieu thereof "three hundred
20 thousand dollars (\$300,000)".

21 2. On page 3, lines 18 and 19, strike "is limited to" and insert
22 in lieu thereof "includes".

24 3. On page 3, line 22, strike "or".

25 . 120167. 3

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SJC/SB 175

Page 2

4. On page 4, line 7, strike "substantially".

5. On page 4, line 10, strike "substantial".

6. On page 4, line 15, strike the period and insert in lieu thereof "; or".

7. On page 4, between lines 15 and 16, insert the following new paragraph:

"(3) any other material dealer performance deficiencies that violate an agreement."

8. On page 4, line 17, strike "substantially".

9. On page 4, line 25, strike "or terminating".

10. On page 5, line 1, strike "or termination".

11. On page 5, lines 6 through 8, strike "In a dispute as to whether due cause exists to amend or terminate an agreement or cause a dealer to resign from an agreement, the" and insert in lieu thereof "The", and on page 5, line 9, strike "existed" and insert in lieu thereof "exists to amend or terminate an agreement or cause a dealer to resign from an agreement".

. 120167. 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SJC/SB 175

Page 2

12. On page 8, line 9, strike "coerce or attempt to coerce" and insert in lieu thereof "prevent or attempt to prevent".

13. On page 8, line 10, strike "to change" and insert in lieu thereof "from changing".

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

. 120167. 3

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SJC/SB 175

Page 2

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Tsosie, Vernon

Absent: None

S0175JU1

. 122982. 2

. 120167. 3

Underscored material = new
[bracketed material] = delete