

Proposed law retains present law and adds that in addition to good cause an agent must also act in good faith in order to terminate, cancel, fail to renew, or substantially change an agreement or contract.

Proposed law provides that an agent shall bear the burden of proof that it has acted in good faith and that there was good cause for the termination or cancellation of any dealership agreement or contract.

Present law provides that good cause exists whenever:

- (1) An individual proprietor, partner, or major shareholder of the dealership has withdrawn.
- (2) There has been a substantial reduction in interest of a substantial partner or major stockholder.
- (3) The dealer has filed or had filed against it a petition in bankruptcy that has not been discharged within 60 days after the filing, has been sold a substantial part of the dealer's assets related to the equipment business, or has commenced dissolution or liquidation.
- (4) The dealer has changed its principal place of business without prior approval of the agent, which shall not be unreasonably withheld.
- (5) The equipment dealer has substantially defaulted under chattel mortgage or other security agreement between the dealer and the agent, or there has been a revocation or discontinuance of a guarantee of a present or future obligation to the agent.
- (6) The equipment dealer has failed to operate in the normal course of business for 14 days.
- (7) The dealer has pleaded guilty to or has been convicted of a felony substantially affecting the relationship between the dealer and the agent.
- (8) The dealer has engaged in conduct which is substantially injurious or detrimental to the dealer's customers or to the public.
- (9) After receiving at least 12 months' notice from the agent of its specific and achievable requirements for reasonable market penetration based on the agent's contemporaneous experience in other comparable marketing areas, the dealer has consistently failed to meet the agent's reasonable market penetration requirements.

Proposed law provides that good cause exists whenever:

- (1) An individual proprietor, partner, or major shareholder who owns more than 25% of the dealership has withdrawn from the dealership, and a replacement from the withdrawing individual proprietor, partner, or major shareholder, who meets the qualifying criteria typically applied by the agent, has not previously been identified or is not identified within a reasonable time frame.

- (2) There has been a substantial reduction in interest of a substantial partner or major stockholder, and such interest is not being transferred to one or more replacement partners or major shareholders.
- (3) The dealer has filed or had filed against it a petition in bankruptcy that has not been discharged within 60 days after the filing, has sold a substantial part of the dealer's assets related to the equipment business outside of the ordinary course of business, or has commenced dissolution or liquidation.
- (4) The dealer has changed its principal place of business without prior approval of the agent, which shall not be unreasonably withheld.
- (5) Except as due to force majeure, the equipment dealer has failed to operate in the normal course of business for 14 days.
- (6) The dealer has pleaded guilty to or has been convicted of a felony substantially affecting the relationship between the dealer and the agent.
- (7) The dealer has engaged in conduct which is substantially injurious or detrimental to the dealer's customers or to the public.
- (8) The dealer has substantially defaulted under chattel mortgage or other security agreement between the dealer and the agent, or there has been a revocation or discontinuance of a guarantee of a present or future obligation to the agent.
- (9) After receiving at least 12 months' notice from the agent of its specific and achievable requirements for reasonable market penetration based on the performance standards that are applied uniformly to similarly situated dealers, the dealer has consistently failed to use commercially reasonable efforts to meet the agent's reasonable market penetration requirements and the agent can demonstrate that the dealer's failure is a result of the dealer's sole efforts or lack of efforts in its markets and not a result of the agent's efforts or lack of efforts in the market. However, good cause shall not exist if in the dealer's market share penetration meets or exceeds 80% of the agent's North American average in the 24 months immediately preceding the agent's attempt to terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement or contract.

Present law provides the procedure by which an agent may terminate, cancel, or fail to renew a dealership agreement.

Proposed law provides except as otherwise provided by law, an agent shall provide a dealer with at least 90 days' written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency, specifying the action that must be taken in order to cure the deficiency. If the deficiency is rectified within 60 days, the notice is void. Except as otherwise provided by law, the notice and the right to cure provisions are not required if

the reason for termination, cancellation, or nonrenewal is a violation of certain provisions of law.

Proposed law provides that notwithstanding the terms of any dealer agreement, each agent shall indemnify and hold harmless its dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the dealer, arising out of complaints, claims or lawsuits, including but not limited to strict liability, negligence, misrepresentation, express or implied warranty, or rescission of sale, if the judgment arises out of an alleged defective or negligent manufacture, assembly, design, or modifications or alterations made by dealer, who was authorized by an agent to make such modifications or alterations, of farm equipment, construction equipment, forestry equipment, material handling equipment, utility equipment, lawn and garden equipment, parts, attachments, or accessories, or other functions by the agent, which are beyond the control of the dealer.

Proposed law provides that in no event shall a dealer be liable for the gross negligence or willful misconduct of any third party and that any provision or clause in a dealer agreement which conflicts shall be null, void, and unenforceable.

Effective August 1, 2015.

(Amends R.S. 51:481(A) and (B)(1) and (3), and 482; adds R.S. 51:481(B)(5), 481.1, 483.1, and 490.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill

1. Technical amendments only.