

BILL ANALYSIS

Senate Research Center

S.B. 1415
By: Deuell
Transportation
7/22/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of S.B. 1415 is to make an adjustment to reflect the original intent of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act before it was revised to reflect Texas code-drafting principles during the 82nd Legislature.

H.B. 3079, 82nd Legislature, Regular Session, 2011, which was not drafted by the Texas Legislative Council, provided that a manufacturer could terminate a dealer for good cause due to a failure by the dealer "to substantially comply with essential and reasonable requirements imposed on the dealer under the terms of the dealer agreement." However, to do this, the original bill required the manufacturer to notify the dealer of the issue and provide the dealer 60 days to correct the problem to avoid termination. The bill also listed several other specific "good cause" events (e.g., conviction of a crime) that allowed a manufacturer to terminate a dealer agreement immediately without giving the dealer any opportunity to correct the problem.

As part of the process to revise the style and language of the bill to reflect Texas code-drafting principles, the list of both types of "good cause" events were combined into one numerical listing in Section 57.154. When this was done, it had the unintentional effect of treating the "failure to substantially comply" good cause reason the same as the other good cause reasons for purposes of notice of termination. This had the effect of giving a manufacturer the right to terminate a dealer for a failure to substantially comply with the dealer agreement even though it did not give the dealer prior notice of the problem and an opportunity to correct the problem.

S.B. 1415 simply separates the "failure to substantially comply" good cause reason from the other types of good cause for purposes of establishing the correct time period for a notice of termination and giving the dealer the opportunity to correct a problem, which was the intent of the original legislation.

S.B. 1415 amends current law relating to notice of termination by suppliers of certain dealer agreements governed by the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 57.155(c), Business & Commerce Code, as added by Chapter 1039 (H.B. 3079), Acts of the 82nd Legislature, Regular Session, 2011, to provide that the notice and right to cure provisions in this section do not apply if the reason for termination is for any reason stated in Sections 57.154(a)(2) (relating to good cause for termination of a dealer agreement if dealer has transferred a controlling ownership interest without consent of the supplier), (3) (relating to good cause for termination of a dealer agreement if dealer has a petition filed in bankruptcy), (4) (relating to good cause for termination of a dealer agreement if there has been a sale or other closeout of the dealer's assets), (5) (relating to good cause for termination of a dealer agreement if there has been commencement of an action for dissolution of dealership), (6) (relating to good cause for termination of a dealer agreement if there has been a change in

dealership locations without approval of the supplier), (7) (relating to good cause for termination of a dealer agreement if the dealer has defaulted), (8) (relating to good cause for termination of a dealer agreement if there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier), (9) (relating to good cause for termination of a dealer agreement if the dealer has failed to operate in the normal course of business for seven consecutive days), (10) (relating to good cause for termination of a dealer agreement if the dealer has been convicted of or pleaded nolo contendere to a felony), and (11) (relating to good cause for termination of a dealer agreement if the dealer has engaged in injurious conduct), rather than Sections 57.154(a)(1) (relating to good cause for termination of a dealer agreement if the dealer fails to comply with requirements under the agreement) through (11).

SECTION 2. Effective date: September 1, 2013.