

STORAGE NAME: s280s1z.brc
DATE: June 2, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/1ST ENG/SB 280

RELATING TO: Sales Contracts for Motor Vehicle and Truck Repair Parts

SPONSOR(S): Senate Committee on Judiciary and Senator Williams

COMPANION BILL(S): CS/HB 3371 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) SENATE COMMERCE AND ECONOMIC OPPORTUNITIES YEAS 7 NAYS 2
- (2) SENATE JUDICIARY YEAS 11 NAYS 0

I. FINAL ACTION STATUS:

Chapter 98-86, Laws of Florida.

CS/1ST ENG/SB 280 was substituted by the House for CS/HB 3371 and passed.
Vote: Senate Yeas 33 Nays 0; House Yeas 118 Nays 0

II. SUMMARY:

This act revises Chapter 686, Florida Statutes, to prohibit a manufacturer of repair parts for motor vehicles or trucks from terminating or canceling a contract, without good cause, with a distributor of such parts when that distributor agrees to maintain a stock of the parts. "Good cause" is defined and liability is provided when a manufacturer is found in violation of the act. Franchise agreements are specifically exempt from the act.

The act takes effect October 1, 1998.

There is no determinable fiscal impact on government or the private sector.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Large, national companies manufacture repair parts for motor vehicles and enter into written contracts with local, generally family-owned businesses to distribute those parts for them. The distributors buy the parts from the manufacturers, often carrying inventories worth thousands of dollars. Manufacturers agree, by contract, to assist distributors in selling the repair parts through direct advertising, co-operative advertising, and warranty support. The contracts are written by the manufacturers who offer them to the distributors without negotiation.

Some repair part distributors allege that, as repair part manufacturing entities merge or otherwise change ownership, they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases.

Chapter 686, F. S., creates the Farm Equipment Manufacturers and Dealers Act and the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers and Servicing Dealers Act. Both laws require manufacturers to repurchase inventory upon termination of their agreement (contract) with their dealers (distributors), ss. 686.407 and 686.607, F.S., respectively.

B. EFFECT OF PROPOSED CHANGES:

Chapter 686, F.S., is amended to create a new section prohibiting manufacturers of repair parts for motor vehicles and trucks from terminating or canceling, without good cause, a contract with a distributor of those parts when the distributor agrees to maintain a stock of the parts. The phrase "good cause" is defined as failure of the distributor to comply with the conditions of the written contract, and any determination by the manufacturer that the distributor failed to comply must be made in good faith. "Good faith" is not defined. The act applies to all new contracts entered into or amended on or after October 1, 1998.

If a manufacturer terminates a contract in violation of the act, the manufacturer is liable for 100 percent of the net cost of the parts still in the distributors' inventory, 5 percent of the costs of loading and handling and reasonable freight charges paid by the distributor. The prevailing party in a legal action is entitled to attorney's fees. The contract obligations specified in the act extend to any successor of the manufacturing company.

A manufacturer is prohibited from coercing a distributor into refusing to carry repair parts from another manufacturer. However, a manufacturer and distributor may enter into an exclusive contract, the negotiation of which may not be considered coercion. Franchise agreements, as defined in s. 320, F.S., are specifically exempt from the act.

The act takes effect October 1, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Certain manufacturers of repair parts are prohibited from terminating certain contracts under specified circumstances.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 686.30, Florida Statutes, is created.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates s. 686.30, F.S., relating to termination of contracts between manufacturers of repair parts for motor vehicles and trucks and distributors of those parts; providing for liability; and prohibiting certain acts by those manufacturers.

Section 2. Provides that franchise agreements, as defined in s. 320.60, F.S., are not regulated by s. 686.30, F.S.

Section 3. Applies act only to new contracts entered into or amended on or after October 1, 1998.

Section 4. Provides that the act takes effect October 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

A parts manufacturing company that formed as a result of the merger of two companies could incur the cost of having to continue honoring contracts that are not beneficial to the new company.

2. Direct Private Sector Benefits:

Distributors of certain repair parts would benefit from the protections provided by the bill against unscrupulous business practices of certain manufacturing companies.

3. Effects on Competition, Private Enterprise and Employment Markets:

Distributors would be protected from unfair competition caused by certain manufacturers entering into a distribution relationship with another, nearby distributor while the first business is left with the inventory of that manufacturer's parts and cannot replenish those parts.

Manufacturers that merge to form another company would be prohibited from terminating existing distribution contracts.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

In the aggregate, this bill does not reduce municipality or county authority to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

Constitutional concerns that led to several of the changes to the bill, as filed:

A. IMPAIRMENT OF EXISTING CONTRACTS

The state constitution prohibits laws impairing the obligation of contracts. s. 10, Art. I, Fla. Const. The Supreme Court of Florida has held that s. 320.641, F.S., cannot constitutionally be applied retroactively to contracts in existence *prior to* the effective date of the legislation enacting the section. *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So.2d 557 (Fla. 1975)(emphasis supplied). In this case, the parties had a prior contract which provided that either could terminate the contract with 30 days notice. *Id.*

at 559. Yamaha terminated the contract and the dealer brought suit, arguing that the 90 day notice requirement of s. 320.641, F.S., applied to the contract. *Id.* at 558. Yamaha argued that the statute was not intended to operate retroactively and if it was so applied, it would unconstitutionally impair Yamaha's contract. *Id.* at 559. The dealer argued that the statute was a part of a valid regulatory scheme adopted pursuant to the police power. *Id.* The court held that a retroactive application of the statute would constitute an unconstitutional impairment of the contract as "the state's interest in policing franchise agreements and other manifestations of the motor vehicle distribution system is not so great as to override the sanctity of contracts." *Id.*

To the extent that the bill retroactively impacts obligations or rights under "contracts in effect on the effective date of this act which are continuing contracts and have no expiration date" it is subject to constitutional challenge as being violative of the prohibition against impairment of contracts. *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So.2d 557 (Fla. 1975).

There has been no similar challenge to s. 686.413, F.S.

B. RIGHT TO CONTRACT

The state constitution provides that no person may be deprived of liberty or property without due process. s. 9, Art. I, Fla. Const. The Supreme Court of Florida has stated that "[t]he right to make contracts of any kind, so long as no fraud or deception is practiced and the contracts are legal in all respects, is an element of civil liberty possessed by all persons who are sui juris." *State ex rel Fulton v. Ives*, 167 So. 394, 398 (Fla. 1936)(citations omitted). The right to contract is both a liberty and property right and is within the protection of the guaranties against the taking of liberty or property without due process of law. *Id.* at 399. As such, neither the federal nor state governments may impose any arbitrary or unreasonable restraint on the freedom of contract. *Id.* The freedom is not an absolute, however, but is a qualified right subject to a reasonable restraint in the interest of the public welfare. *Id.*

The bill requires manufacturers of farm equipment or motor vehicle parts to renew contracts with sellers of those products unless "good cause" exists, that is, unless the seller has failed to comply with the requirements imposed by the contract. A manufacturer may have other reasons for choosing not to renew a contract, such as economic difficulties. To the extent that the bill requires a manufacturer to renew contracts which it would otherwise choose not to renew, it is subject to challenge as being violative of the due process guarantee of the constitution.

There is no reported case involving any such challenge to the failure to renew provisions in existing ss. 686.409 and 320.641, F.S.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Senate Committee on Commerce and Economic Opportunities adopted four amendments that:

- Delete the catch phrase which erroneously refers to franchises.

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- Remove the prohibition against a manufacturer threatening to terminate, cancel, fail to renew, or change the competitive circumstances of a contract with a distributor.
- Clarify that requirements to renew a contract are dependent upon the terms of the contract.
- Remove the term “distributor” since it is synonymous with the term “wholesaler” as used in s. 686.4035, F.S.

Senate Committee on Judiciary adopted a strike-everything amendment negating the need for the amends adopted by the Senate Committee on Commerce and Economic Opportunities, and passed the bill as a committee substitute. The committee substitute:

- Deletes all provisions from the bill relating to farm equipment or parts.
- Changes the damages recoverable in an action against a manufacturer.
- Adds definitions of “distributor” and “manufacturer”.

Senate Floor Amendments:

- Remove the renewal of contracts between manufacturers and distributors from the provisions of the act.
- Remove entitlement to injunctive relief in actions brought against a manufacturer.
- Change the distributor’s entitlement to attorney’s fees in actions brought against a manufacturer, to the prevailing party having such entitlement.
- Add the right for manufacturers and distributors to enter into exclusive contracts, and provides that negotiations of such contracts may not be considered coercion.
- Remove the provisions making the act applicable to continuing contracts with no expiration date, and replaces it with language making the act only applicable to contracts entered into or amended on or after October 1, 1998.

History of HB 3371:

HB 3371, as filed, was identical to SB 280, as filed.

House Committee on Business Regulation and Consumer Affairs adopted a strike-everything amendment and passed the bill as a committee substitute which:

- Removes reference to farm machinery repair parts since they are currently regulated by ss. 686.40 - 686.418, F.S.
- Removes the reference to franchise agreements and, specifically, exempts those agreements from regulation under this act.
- Corrects the inconsistencies and technical deficiencies of the bill, as filed.

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CS/HB 3371 was not further amended.

CS/1ST ENG/SB 280 differs from CS/HB 3371 by:

- Deleting contract renewals from the provisions of the act.
- Making reference to a “written” contract in the definition of “good cause”.
- Making manufacturers liable for reasonable freight charges, instead of the actual freight charges paid by the distributor, when the manufacturer is found to have violated the act.
- Deleting the entitlement of distributors to obtain injunctive relief, when appropriate, if a manufacturer violates the act.
- Deleting from the provisions of the act contracts in effect at the time of enactment of the bill.
- Allowing manufacturers and distributors to enter into exclusive contracts and prohibiting the negotiations of such contracts from being considered coercion.

VIII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

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