

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 13, 1998 Revised: 01/22/98 \_\_\_\_\_

Subject: Sales contracts for farm equipment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Givens</u>	<u>Austin</u>	<u>CM</u>	<u>Fav/4 amendments</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill revises the Farm Equipment Manufacturers and Dealers Act to require that the termination of franchises must be done in good faith and provides definitions for the terms “good cause” and “repair parts.” It also provides for liability when there is no good faith termination. Further, this bill provides regulations with respect to franchise agreements between manufacturers and retail or wholesale dealers and distributors for motor vehicle and truck repair parts.

This bill creates section 686.4035 of the Florida Statutes:

**II. Present Situation:**

Sections 686.40-686.418, F.S., are known as the “Farm Equipment Manufacturers and Dealers Act.”

Section 686.401, F.S., provides legislative intent and declares that the distribution and sale of tractors and farm equipment in Florida vitally effects the general economy of the state, the public interest, and the general welfare and that in the exercise of its police power, it is necessary to regulate the conduct of tractor and farm equipment manufacturers, distributors, and dealers and their representatives doing business in this state in order to prevent fraud and unfair business practices.

Section 686.402, F.S., defines the terms used within the Farm Equipment Manufacturers and Dealers Act which include the following:

“Distributor” or “wholesaler” means any person, firm, association, corporation, or company that sells or distributes new tractors and farm equipment to tractor or farm equipment dealers and that maintains distributor representatives within this state.

“Distributor representative” means a representative employed by a distributor, distributor branch, or wholesaler.

“Farm equipment” means those farm implements which are primarily designed for use in agriculture.

“Franchise” means a contract or agreement, either expressed or implied, whether oral or written, for a definite or indefinite period of time in which a manufacturer, distributor, or wholesaler grants to a tractor or farm equipment dealer permission to use a trade name, service mark, trademark, or related characteristic in which there is a common interest in the marketing of tractors or farm equipment or services related thereto at wholesale or retail, whether by leasing, sale, or otherwise.

“Manufacturer” means any person engaged in the business of manufacturing or assembling new and unused tractors and farm equipment.

“New tractor or farm equipment” means a tractor or item of farm equipment which has not been previously sold to and put into regular use or service by any person, except a distributor, wholesaler, or tractor or farm equipment dealer for resale.

“Tractor or equipment dealer” means a person who sells, solicits, or advertises the sale of new and used tractors and farm equipment to the consuming public, but does not include the following:

- A receiver, trustee, administrator, executor, personal representative, guardian, or other person appointed by or acting under judgment, decree, or order of any court;
- A public officer while performing her or his duties as such officer;
- A person making casual or isolated sales of his or her own tractors or items of farm equipment not subject to sales tax under the laws of this state;
- A person engaged in the auction sale of tractors and farm equipment; or
- A dealer in used tractors and farm equipment.

Section 686.403, F.S., provides that any person who engages directly or indirectly in purposeful agreements or contracts within this state in connection with the sale or advertising for sale of new tractors and farm machinery and parts is subject to the provisions of the act and to the jurisdiction of the courts of this state. This section applies to all written or oral agreements between a

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manufacturer, distributor, or wholesaler with a tractor or farm equipment dealer, including, but not limited to, the franchise offering; the franchise agreement; and all other such agreements in which the manufacturer, distributor, or wholesaler has any direct or indirect interest. In addition, this section applies to all continuing contracts in effect which have no expiration date and to all other contracts entered into or renewed after July 1, 1984.

Section 686.405, F.S., provides that every manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesale branch or division is to provide a fair and reasonable warranty agreement on any new tractor or item of farm equipment which it sells and shall fairly compensate each of its tractor or farm equipment dealers for labor and parts used in fulfilling such warranty agreements. This section also provides that each claim for payment under such warranty agreements made by a tractor or farm equipment dealer for such labor and parts is to be paid within 30 days following its approval. Each of these claims is to be either approved or disapproved within 30 days after its receipt. When any claim is disapproved, the tractor or farm equipment dealer who submitted it shall be notified in writing of the disapproval within the appropriate time period, and the notice is to state the specific grounds upon which the disapproval is based. In addition, any special handling of claims required of the dealer by, among others, the manufacturer, distributor, and wholesaler, which handling is not uniformly required of all dealers of that make, may be enforced only after 30 day's notice in writing to the dealer and upon good and sufficient reason. This section provides that the minimum lawful basis for compensating a dealer for warranty work is to be calculated for labor in accordance with the customary amount of time required to complete such work, expressed in hours and fractions of hours multiplied by the dealer's established hourly retail labor rate. Lastly, this section provides that the basis for compensating the dealer for parts used in fulfilling warranties shall be the dealer's costs for parts, including all freight and handling charges applicable to such parts, plus 15 percent of the sum of costs and charges to reimburse the dealer's reasonable cost of doing business and providing the warranty service on behalf of the manufacturer.

Section 686.406, F.S., provides that every manufacturer shall specify, and every dealer shall provide and fulfill, reasonable predelivery and preparation obligations for its tractors and farm equipment prior to delivery of the tractors and equipment to retail purchasers. Every manufacturer shall also provide for the availability of repair parts throughout the reasonable useful life of any tractor or farm equipment sold. In addition, every manufacturer or distributor shall provide to their dealers an opportunity to return a portion of their surplus parts inventories for credit based upon a list of criteria provided in the section.

Section 686.407, F.S., provides for the repurchase of inventory upon termination of franchise agreements. Whenever any tractor or farm equipment dealer enters into a franchise agreement with a manufacturer, distributor, or wholesaler in which the dealer agrees to maintain an inventory of tractors, farm equipment, or repair parts and the franchise is subsequently terminated, the manufacturer, distributor, or wholesaler shall repurchase the inventory pursuant to a lengthy list of criteria which is provided in this section. However, the dealer may keep the inventory if he or she desires. If the dealer, has any outstanding debts to the manufacturer, distributor, or wholesaler, then the repurchase amount may be credited to the dealer's account. In addition, if the

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dealer decides not to keep the inventory, the manufacturer, distributor, or wholesaler shall repurchase the inventory they previously purchased which was held by the dealer on the date of termination of the contract. Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall be transferred to the manufacturer, distributor or wholesaler. However, the provisions of this section do not require a repurchase from the dealer if the repurchase is subject to the lengthy list of criteria provided in this section of which include:

- Any repair part which has a limited storage life or is otherwise subject to deterioration;
- Any single repair part which is priced as a set of two or more items; or
- Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.

Finally, if any manufacturer, distributor, or wholesaler fails or refuses to repurchase any inventory covered under the provisions of this section within 60 days after termination of a dealer's contract, they shall be liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the dealer, the dealer's attorney's fees, court costs, and interest on the current wholesale price computed by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 points to the averaged federal discount rate.

Section 686.408, F.S., provides for the repurchase of inventory upon the death or incapacity of the dealer. In the event of the death or incapacity of a dealer or the majority stockholder of a corporation operating as a dealer, the manufacturer, distributor, or wholesaler, shall repurchase the inventory from the dealer or the majority stockholder as if the manufacturer, distributor, or wholesaler had terminated the contract. In the event there are heirs or devisees of the dealer or majority stockholder of the corporation, they have one year from the date of death to exercise their option pursuant to the inventory repurchase provisions of s. 686.407, F.S., as provided above. However, this section does not require the repurchase of inventory if the heirs or devisees and the manufacturer, distributor, or wholesaler enter into a new franchise agreement or operate the retail dealership.

Section 686.409, F.S., provides that it is unlawful for the manufacturer, distributor, wholesaler, or franchisor, without cause, to fail to renew a franchise on terms then equally available to their other tractor or farm equipment dealers unless the franchisee receives fair and reasonable compensation for the business. It is also unlawful to terminate a franchise, or to restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business.

Section 686.41, F.S., provides for the indemnification of the dealer with respect to legal actions in that a manufacturer, distributor, or wholesaler is required to indemnify and hold harmless his or her dealer against any losses including, but not limited to, court costs and reasonable attorney's fees or damages arising out of any complaint.

Section 686.413, F.S., provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, distributing, wholesaling, franchising, selling, and advertising of tractors and farm equipment are declared to be unlawful. This section also provides a lengthy list of criteria by which acts or practices may be deemed illegal. In addition, this section provides a litany of tests for determining what constitutes due cause for a manufacturer or distributor to terminate, cancel, or refuse to renew a dealer's franchise agreement. Further, it is deemed a violation for a tractor or farm equipment dealer to require a retail purchaser of a new tractor or item of farm equipment, as a condition of sale and delivery of the tractor or equipment, to also purchase special features not desired or requested by the purchaser. However, this provision does not apply to those items already installed when received from the manufacturer, distributor, or wholesaler. Lastly, it is a violation to represent and sell as new any tractor or item of farm equipment which has been used and operated without notifying the buyer prior to the sale.

Section 686.415, F.S., provides that any contract or agreement which is in violation of this act is void and unenforceable.

Section 686.417 provides that in addition to private legal action authorized in the section, if a violation of this act occurs, the Florida Department of Legal Affairs or the state attorney may bring an action for injunctive or other appropriate civil relief in his or her judicial circuit.

Section 686.418 provides that this act is supplemental to and does not preempt local ordinances dealing with unlawful conduct in the manufacturing, distributing, wholesaling, advertising or selling of tractors and other items of farm equipment.

Section 320.641, F.S., provides for the unfair cancellation of franchise agreements between a manufacturer, factory branch, distributor, or importer, herein referred to as a licensee, and a motor vehicle dealer. A licensee must give written notice to the motor vehicle dealer and the Florida Department of Highway safety and Motor vehicles of his or her's intention to discontinue, cancel, or fail to renew, a dealers franchise agreement. The licensee must also give written notice of his or her intention to modify, or replace a franchise with a succeeding franchise, where such modification or replacement will adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or will substantially impair the sales, service obligations, or investment of the motor vehicle dealer, along with the grounds for such action at least 90 days before the effective date thereof. The failure by the licensee to comply with the 90-day notice period shall render voidable, at the option of the motor vehicle dealer, any discontinuation, cancellation, nonrenewal, modification, or replacement of any franchise agreement.

The section further provides that franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of the discontinuation of, cancellation of, failure to renew, modification of, or replacement of the agreement of any of its motor vehicle dealers. Any motor vehicle dealer whose franchise agreement is discontinued, canceled, not renewed, modified, or replaced may, within the 90 day notice period, file a petition or complaint for a determination of whether such an action is an unfair or prohibited discontinuation, cancellation, nonrenewal, modification or replacement. A discontinuation, cancellation, or nonrenewal of a

franchise agreement is unfair if it is not clearly permitted by the franchise agreement, is not undertaken in good faith, is not undertaken for good cause, or is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach.

Notwithstanding any other provision of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 10 consecutive days constitutes abandonment by the dealer of his or her franchise agreement. Also, if a motor vehicle dealer has abandoned his or her franchise agreement, the licensee may give written notice to the dealer and to the department of his or her intention to discontinue, cancel, or fail to renew, the agreement at least 15 days before the effective date thereof. If the motor dealer prevails in his or her complaint, they shall have cause against the licensee for attorney's fees and court costs in addition to those provided in s. 320.697, F.S., relating to civil damages.

### **III. Effect of Proposed Changes:**

Section 1 of this bill revises the Farm Equipment Manufactures and Dealers Act. The bill provides that any manufacturer of farm implements, machinery, and repair parts who enters into a contract with a dealer who is defined as any person, firm, corporation, or limited liability company engaged in selling, retailing, or wholesaling farm implements and repair parts for farm implements that also maintains a stock of inventory, which is defined as parts or complete or whole machines or attachments, may not terminate, cancel, or fail to renew said contract with said dealer without good cause.

Good cause for terminating, canceling, or failing to renew a contract by a manufacturer is defined in the bill as being limited to the dealer's inability to comply with those requirements imposed by the written contract between the parties. In addition, the determination for such termination, cancellation, or failure to renew said contract must be made by the manufacturer in good faith.

In lieu of any action that may be taken against the manufacturer by the dealer for a violation of the franchise agreement, it shall be incumbent upon the manufacturer to establish that the termination, cancellation, or failure to renew was made in good faith and for good cause as described above. If the manufacturer fails to establish good cause for its action, it shall be liable for all special and general damages sustained by the dealer, including, but not limited to, the costs of the litigation and reasonable attorney fees for prosecuting the action. The dealer, where appropriate, shall be entitled to injunctive relief. In addition, the obligations of any manufacturer apply to any successor of that manufacturer. The provisions as described above apply to all contracts now in effect which have no expiration date, are continuing contracts and to all other contracts entered into, amended, or renewed on or after October 1 of the year in which this bill is enacted.

Section 2 of this bill provides that any manufacturer of repair parts for motor vehicles or trucks who enters into a contract with a dealer who is defined as any person, firm, corporation, or limited liability company engaged in selling and retailing, or wholesaling repair parts for motor vehicles or trucks and maintaining a stock of parts, may not terminate, cancel, or fail to renew said contract with said dealer without good cause.

Good cause for termination, canceling, or failing to renew a contract by a manufacturer is defined in the bill as being limited to the dealer's inability to comply with those requirements imposed by the written contract between the parties. In addition, the determination for such termination, cancellation, or failure to renew of said contract must be made by the manufacturer in good faith.

Repair parts are defined in the bill as products that are installed on a motor vehicle or truck or any product used in the process of repairing a motor vehicle or truck.

In any action that may be taken against the manufacturer by a dealer for a violation of the franchise agreement, it shall be incumbent upon the manufacturer to establish that the termination, cancellation, or failure to renew was made in good faith and for good cause as described above. If the manufacturer fails to establish good cause for its action, it shall be liable for all special and general damages sustained by the dealer, including, but not limited to, the costs of the litigation and reasonable attorney fees for prosecuting the action. The dealer, where appropriate, shall be entitled to injunctive relief. In addition, the obligations of any manufacturer apply to any successor of that manufacturer. The provisions as described above apply to all contracts now in effect which have no expiration date, are continuing contracts and to all other contracts entered into, amended, or renewed on or after October 1 of the year in which this bill is enacted.

A manufacturer of repair parts for motor vehicles or trucks who enters into a contract with any dealer who is selling and retailing or wholesaling such parts may not:

- Coerce or attempt to coerce the motor vehicle or truck parts dealer to accept delivery of equipment, parts, or accessories that the dealer has not voluntarily ordered;
- Condition or attempt to condition the sale of motor vehicle or truck parts on a requirement that the dealer also purchase other goods or services, except upon the requirement from the manufacturer to the dealer to purchase all parts reasonably necessary to maintain the quality of operating any motor vehicle or truck part used in the industry sector and telecommunication which may be necessary to communicate with the manufacturer;
- Coerce or attempt to coerce a motor vehicle or truck parts dealer into refusing to purchase motor vehicle or truck parts or equipment from another manufacturer;
- Discriminate in the prices charged for motor vehicle or truck parts of like grade and quality sold by the manufacturer to similar motor vehicle or truck parts dealers. However, this does not prevent the use of differentials that make only due allowance for differences in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the motor vehicles or truck parts are sold or delivered by the manufacturer. In addition, this does not diminish the manufacturer's, wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special ordering programs; or
- Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership contract for any reason other than the failure of

the dealer to comply with the terms of the written contract between the parties. Termination or the threat of termination, cancelation, failure to renew, or changing the contract is also prohibited if the decision is based on the circumstances beyond the dealer's control which may include a labor dispute or a natural disaster in the dealership market or area.

The manufacturer shall be liable to the dealer in a civil action for 100 percent of the net cost of parts, plus transportation costs that may have been paid, plus 85 percent of the current net price of the repair parts, plus five percent of the handling and loading, plus freight charges which may have been paid if the manufacturer failed or refused to pay the dealer pursuant to the good cause and good faith clauses described above, or refused to supply repair parts to the dealer who had a retail, wholesale, or distribution sales contract in effect on or after October 1 of the year in which this bill was enacted. In addition, the obligations of any manufacturer apply to any successor in interest or assignee of that manufacturer. The bill defines a successor in interest to include any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original manufacturer.

The bill provides for an effective date of October 1 on the year in which it is enacted.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Indeterminent.



**C. Government Sector Impact:**

It is unclear at this time what impact injunctive or other appropriate civil actions will have on the state's court system as a result of the remedy provisions of this bill.

**VI. Technical Deficiencies:**

The use of the word "distributor" on page 2, line 1, is redundant with the term "wholesaler." Section 686.402, F.S., defines the terms "distributor" and "wholesaler" synonymously.

**VII. Related Issues:**

The provisions in sections 1 and 2 relating to "good cause" for terminating, canceling, or failing to renew a contract appear to be inconsistent with the basic principles of contract law in that the bill would require parties to enter into contracts. These provisions may be intended to enforce contractual obligations to renew franchise or other contractual agreements, but as written, the bill appears to compel a manufacturer, even one which was closing its doors, to renew contracts.

**VIII. Amendments:**

#1 by Committee on Commerce and Economic Opportunities:  
Eliminates a redundancy in the bill.

#2 by Committee on Commerce and Economic Opportunities:  
Clarifies that requirements to renew a contract are dependant upon the terms of the contract.

#3 by Committee on Commerce and Economic Opportunities:  
Deletes the catch phrase which erroneously refers to franchises.

#4 by Committee on Commerce and Economic Opportunities:  
Eliminates the prohibition that a manufacturer that enters into a contract with a dealer may not terminate, cancel, fail to renew, or change the competitive circumstances of the dealership contract.