

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: March 20, 1998 Revised: _____

Subject: Farm Equipment & MV Parts/ Franchises

	<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>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill prohibits a manufacturer of repair parts for motor vehicles or trucks from terminating, canceling, or failing to renew a contract between the manufacturer and a distributor of such parts where the distributor agrees to maintain a stock of parts unless the manufacturer has good cause, as defined by the bill. The bill provides for liability when there is no good cause. The bill prohibits manufacturers of motor vehicle and truck repair parts from engaging in specified acts.

This bill creates section 686.4035, Florida Statutes.

II. Present Situation:

A. Farm Equipment

Sections 686.40-686.418, F.S., constitute 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 effect 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 686.403, F.S., provides that any person who, within this state, engages directly or indirectly in contracts 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. The section applies to all written or oral agreements between a 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. The section also 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 686.409, F.S., provides that it is unlawful for the manufacturer, distributor, wholesaler, or franchisor, without due cause, to fail to renew a franchise on terms then equally available to his or her other tractor or farm equipment dealers unless the franchisee receives fair and reasonable compensation for the business. The term "due cause" is to be construed in accordance with the definition of that term in s. 686.413(3)(c)2., F.S.

Section 686.413, F.S., declares unlawful all 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. The statute provides that it is a violation of this section for a manufacturer or a representative thereof to terminate or cancel the franchise or selling agreement of any tractor or farm equipment dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, constitutes an unfair termination or cancellation, regardless of the specified time period of such franchise or selling agreement. The statutory tests for determining what constitutes due cause for a manufacturer or distributor to terminate, cancel, or refuse to renew a franchise agreement include whether the dealer:

- Has transferred an ownership interest in the dealership without the manufacturer's or distributor's consent;
- Has made a material misrepresentation in applying for or in acting under the franchise agreement;
- Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against her or him which has not been discharged within 60 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer or distributor, or is in receivership;
- Has engaged in unfair business or trade practices;
- Has inadequately represented the manufacturer's or distributor's products with respect to sales, service, or warranty work;
- Has inadequate and insufficient sales and service facilities and personnel;
- Has failed to comply with an applicable federal, state, or local licensing law;
- Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;
- Has failed to operate in the normal course of business for 10 consecutive business days or has terminated her or his business;
- Has relocated her or his place of business without the manufacturer's or distributor's consent; or
- Has failed to comply with the terms of the dealership or franchise agreement.

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, F.S., provides that if a violation of this act occurs, in addition to private legal action authorized in the section, 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.

B. Motor Vehicles

Section 320.641, F.S., provides required procedures for 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 (department) of his or her intention to discontinue, cancel, or fail to renew, a dealer's franchise agreement. The licensee must also give written notice of his or her intention to modify, or replace a franchise with a succeeding franchise when 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. Both types of notice must be accompanied by a statement of the grounds for such action and must be given at least 90 days before the effective date of the action noticed. If a licensee fails to comply with the 90-day notice period, the discontinuation, cancellation, nonrenewal, modification, or replacement of the franchise agreement is voidable, at the option of the motor vehicle dealer.

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.

If a motor vehicle dealer prevails in his or her complaint for a determination of whether the discontinuation, cancellation, nonrenewal, modification, or replacement was unfair or prohibited, the dealer has a cause of action against the licensee for reasonable attorney's fees and court costs incurred in the action and for civil damages as provided in s. 320.697, F.S. This section provides for an action for damages in an amount equal to 3 times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. Upon a prima facie showing by the person bringing the action that such a violation by the licensee has occurred, the burden of proof shifts to the licensee to prove that the violation or unfair practice did not occur.

III. Effect of Proposed Changes:

The bill creates s. 686.30, F.S. It prohibits a manufacturer of motor vehicle or truck repair parts who enters into a contract with a distributor of the parts, pursuant to which the distributor is to maintain a stock of parts, from terminating, canceling, or failing to renew the contract without good cause. The bill provides definitions as follows:

- “Good cause” is limited to failure by the person, firm, corporation, or limited liability company in the business of selling and retailing or wholesaling to comply with the requirements imposed by the written contract between the parties. The manufacturer’s determination of good cause for such termination, cancellation, or failure to renew must be made in good faith.
- “Repair parts” means any products that are installed on a motor vehicle or truck or any product used in the process of repairing a motor vehicle or truck.
- “Distributor” means any person, firm, corporation, or limited liability company engaged in the business of selling, retailing, or wholesaling automotive repair parts.
- “Manufacturer” means any person engaged in the business of manufacturing, assembling, repackaging, or relabeling new or unused automotive repair parts.

In any action against a manufacturer for terminating, canceling, or failing to renew a contract, the manufacturer has the burden of establishing that the termination, cancellation, or failure to renew was made for good cause as described above. If the manufacturer fails to establish good cause, or if the distributor prevails on a complaint that the manufacturer failed to make payments owed to the distributor or failed to supply repair parts, the manufacturer is liable for 100 percent of the net cost of the parts, 5 percent of the costs of loading and handling, and freight charges which have been paid by the distributor. The distributor is also entitled to reasonable attorney’s fees and, when appropriate, to injunctive relief. The obligations of a 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 provisions described above apply to all contracts entered into, amended, or renewed on or after the effective date of the bill, which is October 1 of the year in which the bill is enacted, and to contracts in effect which are continuing contracts that have no expiration.

The bill also prohibits a manufacturer of repair parts for motor vehicles or trucks from coercing or attempting to coerce a motor vehicle or truck parts distributor into refusing to purchase motor vehicle or truck parts or equipment from another manufacturer.

The bill provides that the newly created section does not apply to an agreement or a franchise agreement as defined in s. 320.60, F.S. That section provides that “agreement” or “franchise agreement” means a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.

The bill takes effect on October 1 of 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.

D. Other Constitutional Issues:

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.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

It is unclear what impact the remedy provisions of this bill will have on the state’s court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
