

By Senator Williams

4-466-98

See HB

1 A bill to be entitled
2 An act relating to sales contracts for farm
3 equipment and motor vehicle or truck repair
4 parts; creating s. 686.4035, F.S.; revising the
5 Farm Equipment Manufacturers and Dealers Act to
6 provide that the termination of franchise
7 agreements must be done in good faith;
8 providing definitions; providing for
9 applicability; providing requirements with
10 respect to franchise agreements between
11 manufacturers, wholesalers, and distributors
12 and dealers of motor vehicle or truck repair
13 parts; requiring that termination of such
14 franchises be done in good faith; providing a
15 definition; providing for liability; providing
16 for applicability; prohibiting certain
17 practices; providing liability with respect to
18 failure to pay a specified sum on cancellation
19 of contract; providing an effective date.

21 Be It Enacted by the Legislature of the State of Florida:

23 Section 1. Section 686.4035, Florida Statutes, is
24 created to read:

25 686.4035 Termination of franchises to be done in good
26 faith; definition.--

27 (1) Any manufacturer of farm implements, machinery,
28 and repair parts therefor who enters into a contract with any
29 person, firm, corporation, or limited liability company
30 engaged in the business of selling, retailing, or wholesaling
31 farm implements and repair parts for farm implements, whereby

1 such retailer, wholesaler, or distributor agrees to maintain a
2 stock of parts or complete or whole machines or attachments,
3 may not terminate, cancel, or fail to renew any such contract
4 with the person, firm, corporation, or limited liability
5 company without good cause.

6 (2) For the purposes of this section, "good cause" for
7 terminating, canceling, or failing to renew a contract is
8 limited to failure by the person, firm, corporation, or
9 limited liability company in the business of selling,
10 retailing, or wholesaling to comply with those requirements
11 imposed by the written contract between the parties. Further,
12 the determination by the manufacturer of good cause for such
13 termination, cancellation, or failure to renew must be made in
14 good faith.

15 (3) In any action against a manufacturer for a
16 violation of this section, the manufacturer shall establish
17 that the termination, cancellation, or failure to renew was
18 made in good faith for good cause as that term is defined in
19 subsection (2). If the manufacturer fails to establish good
20 cause for its action, it is liable for all special and general
21 damages sustained by the plaintiff, including, but not limited
22 to, the costs of the litigation and reasonable attorney's fees
23 for prosecuting the action, and the plaintiff, where
24 appropriate, is entitled to injunctive relief. The obligations
25 of any manufacturer apply to any successor in interest or
26 assignee of that manufacturer. A successor in interest
27 includes any purchaser of assets or stock, any surviving
28 corporation or limited liability company resulting from merger
29 or liquidation, any receiver, or any trustee of the original
30 manufacturer. The provisions of this section apply to all
31 contracts now in effect which have no expiration date and are

1 continuing contracts and all other contracts entered into,
2 amended, or renewed on or after the effective date of this
3 act.

4 Section 2. Franchises for repair parts for motor
5 vehicles and trucks; termination must be done in good faith;
6 definition of good cause; prohibited practices under franchise
7 contracts; failure to pay sum specified on cancellation of
8 contract; liability.--

9 (1)(a) Any manufacturer of repair parts for motor
10 vehicles or trucks who enters into a contract with any person,
11 firm, corporation, or limited liability company engaged in the
12 business of selling and retailing or wholesaling repair parts
13 for motor vehicles or trucks, whereby such retailer,
14 wholesaler, or distributor agrees to maintain a stock of
15 parts, may not terminate, cancel, or fail to renew any such
16 contract with the person, firm, corporation, or limited
17 liability company without good cause.

18 (b)1. For the purposes of this section, "good cause"
19 for terminating, canceling, or failing to renew a contract is
20 limited to failure by the person, firm, corporation, or
21 limited liability company in the business of selling and
22 retailing or wholesaling to comply with those requirements
23 imposed by the written contract between the parties. Further,
24 the determination by the manufacturer of good cause for such
25 termination, cancellation, or failure to renew must be made in
26 good faith.

27 2. For the purposes of this section the term "repair
28 parts" means any products that are installed on a motor
29 vehicle or truck or any product used in the process of
30 repairing a motor vehicle or truck.

31

1 (c) In any action against a manufacturer for a
2 violation of this section, the manufacturer shall establish
3 that the termination, cancellation, or failure to renew was
4 made in good faith for good cause as that term is defined in
5 this subsection. If the manufacturer fails to establish good
6 cause for its action, it is liable for all special and general
7 damages sustained by the plaintiff, including, but not limited
8 to, the costs of the litigation and reasonable attorney's fees
9 for prosecuting the action, and the plaintiff, where
10 appropriate, is entitled to injunctive relief. The obligations
11 of any manufacturer apply to any successor in interest or
12 assignee of that manufacturer. A successor in interest
13 includes any purchaser of assets or stock, any surviving
14 corporation or limited liability company resulting from a
15 merger or liquidation, any receiver, or any trustee of the
16 original manufacturer. The provisions of this subsection apply
17 to all contracts now in effect which have no expiration date
18 and are continuing contracts and all other contracts entered
19 into, amended, or renewed after the effective date of this
20 act.

21 (2) A manufacturer of repair parts for motor vehicles
22 or trucks who enters into a contract with any person engaged
23 in the business of selling and retailing or wholesaling such
24 repair parts may not:

25 (a) Coerce or attempt to coerce the motor vehicle or
26 truck parts dealer to accept delivery of equipment, parts, or
27 accessories that the dealer has not voluntarily ordered.

28 (b) Condition or attempt to condition the sale of
29 motor vehicle or truck parts on a requirement that the dealer
30 also purchase other goods or services, except that a motor
31 vehicle or truck parts manufacturer may require the parts

1 dealer to purchase all parts reasonably necessary to maintain
2 the quality of operation in the field of any motor vehicle or
3 truck parts used in the trade area and telecommunication
4 necessary to communicate with the manufacturer.

5 (c) Coerce or attempt to coerce a motor vehicle or
6 truck parts dealer into a refusal to purchase motor vehicle or
7 truck parts or equipment from another manufacturer.

8 (d) Discriminate in the prices charged for motor
9 vehicle or truck parts of like grade and quality sold by the
10 manufacturer to similarly situated motor vehicle or truck
11 parts dealers. This paragraph does not prevent the use of
12 differentials that make only due allowance for differences in
13 the cost of manufacture, sale, or delivery or for the
14 differing methods or quantities in which the motor vehicle or
15 truck parts are sold or delivered by the manufacturer. This
16 section does not diminish the manufacturer's, wholesaler's, or
17 distributor's ability to provide volume discounts, bonuses, or
18 special ordering programs commonly used in the industry.

19 (e) Attempt or threaten to terminate, cancel, fail to
20 renew, or substantially change the competitive circumstances
21 of the dealership contract for any reason other than the
22 failure of the dealer to comply with the terms of the written
23 contract between the parties, or if the attempt or threat is
24 based on the results of a circumstance beyond the dealer's
25 control, including a natural disaster in the dealership market
26 area or a labor dispute.

27 (3) In the event that any manufacturer of motor
28 vehicle or truck parts, upon cancellation of a contract by
29 either a retailer, wholesaler, or distributor, or a
30 manufacturer fails or refuses to make payment to such dealer
31 as required by subsection (1), or refuses to supply repair

1 parts to any retailer, wholesaler, or distributor of such
2 products, who may have a retail, wholesale, or distribution
3 sales contract dated on or after the effective date of this
4 act, or a contract with no expiration date or a continuing
5 contract in force and effect on or after the effective date of
6 this act, with such manufacturer shall be liable in a civil
7 action to be brought by such retailer, wholesaler, or
8 distributor for 100 percent of the net cost of such parts,
9 plus transportation charges which have been paid by the
10 retailer and 85 percent of the current net price of the repair
11 parts, plus 5 percent of the handling and loading plus freight
12 charges which have been paid by the retailer, wholesaler, or
13 distributor. The obligations of any manufacturer apply to any
14 successor in interest or assignee of that manufacturer. A
15 successor in interest includes any purchaser of assets or
16 stock, any surviving corporation or limited liability company
17 resulting from a merger or liquidation, any receiver, or any
18 trustee of the original manufacturer.

19 Section 3. This act shall take effect October 1 of the
20 year in which enacted.

21
22
23
24
25
26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

Revises the Farm Equipment Manufacturers and Dealers Act to require that the termination of franchises must be done in good faith. Provides definitions of the terms "good cause" and "repair parts." Provides for liability when there is no good faith termination.

Provides regulations with respect to franchise agreements between manufacturers and retail or wholesale dealers and distributors in motor vehicle and truck repair parts. Requires that the termination of franchise agreements be done in good faith and defines the term "good cause." Provides for liability when there is no good faith termination. Provides for a list of prohibited practices under motor vehicle or truck parts dealership contracts. Provides for liability for failure to pay the sum specified on cancellation of such contracts. See bill for details.