

STORAGE NAME: h0801a.brc

DATE: April 3, 1997

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

BILL #: HB 801

RELATING TO: Outdoor Power Equipment

SPONSOR(S): Representative Mackey and others

STATUTE(S) AFFECTED: ss. 686.60 -- 686.614, F.S.

COMPANION BILL(S): SB 1594 (s)

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

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|-----|--|---------------|
| (1) | BUSINESS REGULATION AND CONSUMER AFFAIRS | YEAS 8 NAYS 0 |
| (2) | GOVERNMENTAL RULES & REGULATIONS | |
| (3) | FINANCE & TAXATION | |
| (4) | | |
| (5) | | |

I. SUMMARY:

This bill creates the Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act (Act). For purposes of the Act, outdoor power equipment (OPE) is defined as motorized "equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance." The Act will most directly affect the relationship between an OPE dealer and its respective manufacturer, distributor, or wholesaler. By expanding the present statutory rights held by dealers and consumer users of new outdoor power equipment, the Act is intended to provide added protection against fraud and unfair business practices. This bill creates significant obligations and rights relative to OPE warranties, repurchase of OPE inventories, servicing agreements, and certain acts and practices.

This bill does not appear to have a fiscal impact on state or local revenues.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

According to various sources, approximately 500-600 OPE dealers of varying size conduct business in Florida. These dealers sell to consumers various types of motorized equipment used to maintain residential, commercial and public lawns, gardens, landscaping, golf courses, and forestry. OPE dealers purchase their equipment inventory from a number of sources, including manufacturers, distributors, and wholesalers.

There are presently no state or federal laws which specifically govern the rights and duties of OPE dealers. The business relationship between the OPE dealer and the entity providing the equipment is generally governed by the written agreement between the parties. Relevant provisions of the Uniform Commercial Code (UCC), as codified by chapters 671 (General Provisions) and 672 (Sales), F.S., follow:

- ◆ Every contract or duty imposes an obligation of good faith in its performance or enforcement. s. 671.203, F.S.;
- ◆ Contracts for the sale of goods for a price of \$500 or greater must be in writing. s. 672.201(1), F.S.;
- ◆ A court may refuse to enforce an unconscionable clause or contract. s. 672.302(1), F.S.;
- ◆ A lawful exclusive dealing contract imposes an obligation upon the dealer to use best efforts to supply goods to the buyer. s. 672.306(2), F.S.;
- ◆ Unless otherwise agreed, the shipment of goods must be made in a reasonable time. s. 672.309(1), F.S.;
- ◆ An implied warranty of merchantability is found in the contract for the sale of goods. s. 672.314(1), F.S.; and
- ◆ A buyer may reject goods if their condition or delivery fails to conform to the contract. s. 672.601, F.S.

In addition, the Florida Deceptive and Unfair Trade Practices Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. s. 501.204(1), F.S.

Although the UCC provisions found within Florida Statutes provide a framework of reasonable commercial practices, carefully constructed boilerplate clauses can mitigate or entirely eliminate the contract rights of a relatively unsophisticated party. Over the last several years, particularly as OPE manufacturing entities merge or otherwise change ownership, dealers allege that they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases.

B. EFFECT OF PROPOSED CHANGES:

The provisions of the Act will have significant effects on the rights of OPE dealers and the corresponding obligations of manufacturers, distributors, and wholesalers. The areas most potentially affected include:

◆ **Warranties, Claims, and Compensation:**

Section 686.604, F.S., provides that dealers *will be provided* a fair and reasonable warranty. This is significant in light of the practice of some unscrupulous sellers providing goods with *no* warranties, either express or implied. The section's other provisions likewise create significant rights for the dealer by specifying procedures relating to the prompt processing of warranty claims by the manufacturer, distributor, or wholesaler.

◆ **Parts Availability and Return**

Section 686.605, F.S., creates an obligation for manufacturers, dealers and wholesalers to provide a steady flow of OPE repair parts during the reasonable life of the equipment, and allows for return of excess parts to the seller. These provisions are significant in that they allow OPE dealers to maintain a ready stock of the parts needed to honor warranties extended to the consumer.

◆ **Repurchase of Inventory**

Sections 686.606 and 686.607, F.S., require the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a servicing dealer agreement is terminated or the dealer dies or becomes incapacitated. These sections will allow the free transfer of inventory to the manufacturer, distributor, or wholesaler when the dealer has no incentive to retain the equipment.

◆ **Unlawful acts and Unenforceable Contracts**

Sections 686.608--686.612, F.S., define a wide array of unlawful or unenforceable acts and practices. These provisions are examined more fully in the section-by-section analysis, but generally make unlawful any unfair or deceptive practice, and contracts or agreements that are violative of public policy.

◆ **Remedies**

Section 686.613, F.S., authorizes a civil action for damages and costs for violations of the Act's provisions. Relief in the form of a declaratory judgment, injunction, or class action is also authorized.

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?

No.

4. Individual Freedom:

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

The bill offers the OPE dealer an expanded array of potential legal remedies from which to choose.

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

No.

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?

No.

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. SECTION-BY-SECTION RESEARCH:

Section 1. Creates the following sections within Chapter 686, F.S., governing sales, distribution, and franchise relationships:

- ▶ s. 686.60, F.S., to provide a short title of the “Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act”;
- ▶ s. 686.601, F.S., to create legislative finding and intent that the sale and distribution of OPE vitally affects the state and its citizens, and that the state’s police power is necessary to regulate the entities engaged in the sale and distribution of OPE to prevent abuses on its citizens;
- ▶ s. 686.602, F.S., to create definitions for dealer, distributor, distributor branch, distributor representative, factory branch, factory representative, fraud, manufacturer, new outdoor power equipment, outdoor power equipment, person, sale, servicing dealer, and servicing dealer agreement;
- ▶ s. 686.603, F.S., to specify that any person engaging in contracts or agreements for the sale or advertisement of new OPE is subject to the Act and the jurisdiction of state courts; and provides that the Act applies to all continuing contracts now in effect with no expiration date and to all other contracts entered into after the effective date of the Act;
- ▶ s. 686.604, F.S., to provide that fair and reasonable warranty agreements shall be provided on new OPE sold and fair compensation for labor and parts paid by every OPE manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division; requires determinations on warranty claims to be made within 30 days of receipt and payment or notice of disapproval within 30 days of determination; requires 30-day written notice and good and sufficient reason for enforcement of special and non-uniform claim handling requirements; and provides minimum basis for compensating dealer for labor costs and parts incurred in performing warranty work;
- ▶ s. 686.605, F.S., to provide that reasonable predelivery and preparation obligations shall be specified, provided, and fulfilled prior to delivery of OPE to retail purchasers; provides for the availability of repair parts throughout the reasonable useful life of OPE; and provides that dealers annually be given the opportunity to return surplus parts for credit, subject to certain conditions;
- ▶ s. 686.606, F.S., to provide for the repurchase of OPE or parts inventory by a manufacturer, distributor, or wholesaler upon termination of a servicing dealer agreement; provides amounts to be repaid to OPE dealers for return of equipment and parts; provides for title transfer of repurchased inventory within a reasonable time of payment of repurchase amount to dealer; provides that repurchase of specified equipment is not required; and provides certain civil liability in the event that manufacturer, distributor, or wholesaler refuses to repurchase within 60 days of contract termination;

- ▶ s. 686.607, F.S., to provide for the repurchase of inventory by the manufacturer, distributor, or wholesaler upon the death or incapacity of a dealer, at the option of the dealer's heirs or devisees and subject to provisions of any contract or agreement consistent with this section and the provisions of s. 686.606, F.S.;
- ▶ s. 686.608, F.S., to provide for fair and reasonable compensation for business inventory to the dealer in the event that without due cause a manufacturer, distributor, or wholesaler, refuses to renew, terminates, or restricts the transfer of a servicing dealer agreement;
- ▶ s. 686.609, F.S., to provide that a manufacturer, distributor or wholesaler shall indemnify and hold harmless a dealer against losses arising out of any complaint, claim, or lawsuit relating to the manufacture, assembly, or design of items covered by the act or other functions beyond the control of the dealer;
- ▶ s. 686.611, F.S., to provide that unfair methods of competition and certain unfair acts or practices are unlawful; makes unlawful certain actions engaged in by an OPE entity which damage any of the parties or the public; provides that an OPE entity or its agent violates this section when it coerces or compels a dealer to order or accept certain equipment; makes unlawful certain actions by an OPE entity or its agent relating to equipment delivery, supplementary agreements, selling agreements, advertising, pricing of new OPE and parts, willful discrimination, dealer's capital structure and financing, sale or transfer of a dealer's interest, receiving benefits, and releases of liability; and makes unlawful certain acts by an OPE dealer;
- ▶ s. 686.612, F.S., to provide that contracts or servicing dealer agreements violative of the act are void and unenforceable;
- ▶ s. 686.613, F.S., to provide a cause of action in circuit court for violations of the act and recovery of actual damages and costs; allows declaratory and injunctive relief; permits class actions; allows punitive damages; and allows the Department of Legal Affairs or state attorney to bring a civil action; and
- ▶ s. 686.614, F.S., to provide that the provisions of ss. 686.601-686.614 are supplemental and do not preempt local ordinances relating to the unlawful conduct of OPE entities, if such ordinances are not inconsistent with this Act.

Section 2. Provides an effective date of October 1, 1997.

III. 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:

Indeterminate.

2. Direct Private Sector Benefits:

None.

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

Because of the increased warranty obligations imposed on manufacturers, distributors, and wholesalers, competition will be restricted as the number of those entities decrease due to increased costs. Those entities that already have existing favorable relationships with OPE dealers will be least affected.

D. FISCAL COMMENTS:

None.

IV. 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.

V. COMMENTS:

This bill is supported by the Southeastern Equipment Dealers Association, an organization that represents OPE dealers. The Act is modeled after the Farm Equipment Manufacturers and Dealers Act, ss. 686.40--686.418, F.S., which provides farm equipment dealers with analogous contract rights.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee approved a strike everything after the enacting clause amendment making technical changes throughout the bill, including an amended short title of the "Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act." The amendment has no substantive impact on the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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