

STORAGE NAME: h801a.grr
DATE: April 15, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
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:

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

I. SUMMARY:

Presently, manufacturers, distributors, wholesalers and dealers of outdoor power equipment enter into contracts for the sale and service of such equipment. Such contracts typically address warranty agreements, the availability of repair and replacement parts, the return of surplus inventory, and the repurchase of inventory upon termination of a contract or upon the death or incapacity of a dealer. Such contracts are generally governed by the Uniform Commercial Code. Additionally, the Florida Deceptive and Unfair Trade Practices Act provides for the investigation and punishment of unlawful business practices.

HB 801 creates the Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act (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 creates and imposes certain regulations on manufacturers, distributors and wholesalers of outdoor power equipment. The Act is intended to provide added protection against fraud and unfair business practices by implementing specific regulatory requirements with which manufacturers, distributors, wholesalers and dealers of outdoor power equipment must comply. 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.

This act shall take effective on October 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Outdoor Power Equipment 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 manufacturers, distributors, and wholesalers. Additionally, outdoor power equipment is also sold by certain retail chains, such as Home Depot, Sears, Wal-Mart, and others.

Currently, there are no state or federal laws which specifically govern the rights and responsibilities of OPE manufacturers, distributors, wholesalers or dealers. However, the business relationship between the OPE dealer and the entity providing the equipment is generally governed by a written agreement or contract between the parties.

Uniform Commercial Code

Chapter 671, F.S., contains the general provisions of the Uniform Commercial Code and chapter 672, F.S., contains the provisions of the Uniform Commercial Code that govern sales. Some of the relevant provisions of the Uniform Commercial Code are as follows:

- ◆ 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.

The UCC provisions found within Florida Statutes provide a framework of reasonable commercial practices. Some OPE dealers allege that, as OPE 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.

Florida Deceptive and Unfair Trade Practices Act

Chapter 501, F.S., contains the Florida Deceptive and Unfair Trade Practices Act, which provides that "unfair 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, F.S. The Florida Deceptive and Unfair Trade Practices Act authorizes the enforcing authority (the Office of the State Attorney or the Department of Legal Affairs) to investigate violative practices, outlines the remedies available to the enforcing authority, and provides for a civil penalty of up to \$10,000 for each violation.

B. EFFECT OF PROPOSED CHANGES:

HB 801 creates 14 new sections of Florida Statute, which provide for the regulation of outdoor power equipment manufacturers, distributors, wholesalers and dealers. Such regulations include:

◆ Contracts

Section 686.603, F.S., provides that any person who sells or advertises new outdoor power equipment in Florida shall be subject to the provisions of this Act. Additionally, this Act shall apply to all written or oral agreements between a manufacturer, distributor or wholesaler with a dealer and shall apply to any existing contracts which have no expiration date. Any new contract entered into or renewed after October 1, 1997 will be subject to the Act.

◆ Warranties, Claims, and Compensation

Section 686.604, F.S., requires OPE manufacturers, distributors or wholesalers to provide a fair and reasonable warranty agreement on all new outdoor power equipment. Any claim for warranty payment by a dealer must be approved or disapproved by a manufacturer, distributor or wholesaler within 30 days. Approved claims must be paid within 30 days. If a claim is disapproved, the manufacturer, distributor or wholesaler denying the request is required to notify the dealer in writing, stating the specific reasons for disapproval. This section also establishes the minimum dealer compensation for parts and labor utilized in any warranty work.

◆ Parts Availability and Return

Section 686.605, F.S., creates an obligation for manufacturers, dealers and wholesalers to provide OPE repair parts during the reasonable life of the equipment. Additionally, this section requires manufacturers, distributors and wholesalers to allow dealers to return a portion of their surplus parts inventories for credit. Manufacturers, distributors and wholesalers may specify a time period of at least 60 days in which dealers may return certain surplus parts. If no time period is specified within the 12 months, the manufacturer, distributor or wholesaler must allow a dealer to return certain surplus parts within 30 days after the receipt of the dealer's request.

Furthermore, this section establishes the minimum lawful credit to be allowed for returned parts as 85% of the wholesale cost of a part as listed in the manufacturer's, distributor's or wholesaler's current returnable parts list at the time of such supplier's

parts return program or the date of the dealer's parts return request, whichever is higher. Consequently, any applicable increase in the price of the returnable part would be credited to the dealer.

◆ **Repurchase of Inventory upon Termination of the Dealer Agreement**

Section 686.606 F.S., requires the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a dealer agreement is voluntarily or involuntarily terminated. This section requires that such inventory is to be repurchased by the manufacturer, distributor or wholesaler as follows:

- 100% of actual dealer cost, including freight, for all new, unsold and undamaged outdoor power equipment, less a reasonable allowance for depreciation due to dealer usage and deterioration attributable to weather conditions at the dealer's location;
- 85% of the current wholesale price of all new and unused parts. The manufacturer, distributor, or wholesaler must also pay the dealer 6% of the current wholesale price for such parts to cover packing and loading costs, or provide this service themselves.

Any manufacturer, distributor, or wholesaler which fails or refuses to repurchase such inventory within 30 days after termination of the contract is civilly liable for 100% of the current wholesale price of the inventory plus any accrued interest, any freight charges paid by the dealer, and the dealer's reasonable attorney's fees and court costs.

◆ **Repurchase of Inventory upon Death or Incapacity of a Dealer**

Section 686.607, F.S., requires the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a dealer dies or becomes incapacitated. Under this section, the heirs or devisees have one year to exercise their option to have the manufacturer, distributor or wholesaler repurchase the inventory. Any repurchase shall be in the manner described above.

In addition, subsection (2) states that the provisions of this section would override any existing contract that addressed the death or incapacity of a dealer if such contract was inconsistent with this section.

◆ **Compensation for Inventory**

Section 686.606, F.S., states that it is unlawful for a manufacturer, distributor or wholesaler, without due cause, to terminate an agreement, fail to renew an agreement on terms equally available to all their dealers, or to restrict the transfer of an agreement unless the dealer receives fair and reasonable compensation for the inventory of the business. The term "fair and reasonable compensation" is not defined and how it shall be determined is unclear. Also, this section provides compensation for the "inventory of the business". It is unclear whether used equipment or any equipment purchased from another supplier would be included as "inventory of the business".

◆ Indemnification of a Dealer with Respect to Legal Actions

Section 686.609, F.S., provides that a dealer shall be held harmless against any losses or damages arising from a complaint, claim or lawsuit relating to the manufacture, assembly or design of new outdoor power equipment, parts, accessories, or other functions by the manufacturer, distributor, or wholesaler which are beyond the control of the dealer.

◆ Unlawful Acts and Practices

Section 686.611, F.S., states that deceptive and unfair practices and unfair methods of competition relating to the manufacturing, distribution, wholesaling, sale and advertising of outdoor power equipment are unlawful. This section broadly sets forth the various acts which are in violation of this section.

◆ Unenforceable Contract or Agreement

Section 686.612, F.S., provides that any contract or dealer agreement or any portion or practice of such an agreement which is in "violation of" this Act is deemed to be against public policy and is void and unenforceable. It is unclear whether this provision is intended to apply to existing contracts or only to those contracts entered into after the effective date. If this provision applies to existing contracts, some presently lawful agreements may become unenforceable.

◆ 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?

Yes. Manufacturers, distributors, wholesalers and dealers of outdoor power equipment will be subject to the specific regulations created by this bill.

(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.

The bill also places various restrictions and regulatory requirements upon manufacturers, distributors, and wholesalers of outdoor power equipment.

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

Yes, this bill may adversely affect existing contracts which have been lawfully entered into by both parties. Section 686.603(3), F.S., applies the provisions of this Act to all existing contracts which have no expiration date and all other contracts entered into or renewed after October 1, 1997. Therefore, any existing contract which contains a provision which is in violation of or inconsistent with this Act, is deemed void and unenforceable.

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 require 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 certain equipment is not required; and provides for civil liability in the event that a manufacturer, distributor, or wholesaler refuses to repurchase within 60 days of contract termination;
- ▶ s. 686.607, F.S., to require 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 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. Manufacturers, distributors and wholesalers of outdoor power equipment may incur increased costs due to the regulatory requirements created by this bill.

2. Direct Private Sector Benefits:

OPE dealers are the beneficiaries of this legislation. Dealers will be guaranteed warranty agreements, credit for returned surplus parts and equipment, repurchase of equipment inventory upon termination of a contract or the death of a dealer, compensation for inventory upon termination of or refusal to renew certain dealer agreements, protection from certain legal actions, and an expanded array of potential legal remedies.

Consumers of outdoor power equipment will benefit from the mandatory warranty agreements and repair parts availability provisions of this bill.

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

The regulatory requirements contained in this bill may discourage certain manufacturers, distributors or wholesalers from conducting business with dealers in this state. Alternatively, such manufacturers, distributors, or wholesalers may attempt to expand their business with those retail chains which sell outdoor power equipment, because such agreements would not be subject to the regulatory requirements created by this bill.

D. **FISCAL COMMENTS:**

None.

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

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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 (SEDA), an organization that represents OPE dealers. SEDA states that some suppliers are taking advantage of OPE dealers by not honoring their warranty agreements, by terminating or not renewing a dealer's contract without cause, and by discriminating between 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.

Mr. Jerry Parkin, Government Affairs Director for the John Deere Company, a manufacturer and distributor of outdoor power equipment, indicates that the company has serious concerns with the bill. Mr. Parkin points out that outdoor power equipment differs from farm equipment in that it is sold by dealers as well as retail outlets such as Sears, Wal-Mart and Home Depot. The bill would regulate equipment dealers but not large retailers. He suggests that the bill would create unfair competitive situations. Additionally, Mr. Parkin suggests that remedies under common law and the Uniform Commercial Code are currently available to all dealers, and that the indemnification provisions, remedies, and injunctive relief provisions contained in the bill are unnecessary.

If HB 801 becomes law, s. 686.603(3), F.S., states that the bill's provisions would override existing contracts. This section may be problematic with regard to the enforceability of contracts lawfully entered into prior to this Act. It is unclear how such a provision will impact existing agreements.

Also, the bill contains several undefined terms which are unclear and may impair the enforcement of this Act.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted a remove-everything amendment which is traveling with the bill. This amendment makes 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:

Prepared by:

Legislative Research Director:

Peter M. Rodnite

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

Angela Price

David M. Greenbaum