

HOUSE BILL No. 5516

March 22, 1988, Introduced by Reps. Hickner, Bender, Hart, Middaugh, Farhat, Gubow, Allen, Niederstadt, DeBeaussiaert, Berman, DeMars, Van Singel, Docherty, Barns and Bartnik and referred to the Committee on Corporations and Finance.

A bill to amend the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Act No. 341 of the Public Acts of 1984, entitled "Farm and utility equipment franchise act," being sections 445.1451, 445.1452, 445.1453, 445.1454, 445.1455, 445.1456, 445.1457, 445.1458, 445.1459, and 445.1460 of the Michigan Compiled Laws; and to add section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, 3, 4, 5, 6, 7, 8,
2 9, and 10 of Act 341 of the Public Acts of 1984, being sections
3 445.1451, 445.1452, 445.1453, 445.1454, 445.1455, 445.1456,
4 445.1457, 445.1458, 445.1459, and 445.1460 of the Michigan
5 Compiled Laws, are amended and section 3a is added to read as
6 follows:

1 TITLE

2 An act to provide for the repurchase of farm tractors and
3 equipment and utility tractors and equipment subject to a
4 ~~franchise~~ DEALER, WHOLESALER, OR DISTRIBUTOR agreement; to pro-
5 vide for the repurchase of repair parts; ~~and~~ to impose certain
6 duties and responsibilities; and to provide remedies.

7 Sec. 1. This act shall be known and may be cited as the
8 "farm and utility equipment ~~franchise~~ act".

9 Sec. 2. As used in this act unless the context clearly
10 requires otherwise:

11 (a) "Attachments" means equipment or any part of a piece of
12 equipment designed to be used on or in conjunction with farm
13 tractors, farm equipment, utility tractors, and utility
14 equipment.

15 (b) "Current net price" means the price listed in the
16 supplier's printed price lists or catalogs in effect at the time
17 the contract is canceled or discontinued, less all applicable
18 discounts.

19 (c) "Dealer" means a person engaged in the business of the
20 retail sale of farm tractors and equipment, utility tractors and
21 equipment, or the attachments to or repair parts for that
22 equipment.

23 (d) "~~Equipment~~ FARM AND UTILITY EQUIPMENT" means machines
24 designed for or adapted and used for agriculture, horticulture,
25 livestock raising, forestry, ~~and~~ grounds maintenance, LAWN AND
26 GARDEN, CONSTRUCTION, MATERIALS HANDLING, AND EARTH MOVING.

1 (e) "~~Franchise~~ DEALER, WHOLESALER, OR DISTRIBUTOR
2 agreement" means a written or implied contract, sales agreement,
3 ~~or~~ security agreement, OR FRANCHISE AGREEMENT between a sup-
4 plier OR MANUFACTURER and a dealer, WHOLESALER, OR DISTRIBUTOR by
5 which the dealer, WHOLESALER, OR DISTRIBUTOR is authorized to
6 engage in the business of the retail sale and service, WHOLESale
7 SALE AND SERVICE, OR THE DISTRIBUTION of tractors and equipment
8 in accordance with methods and procedures prescribed by the sup-
9 plier OR MANUFACTURER.

10 (f) "Inventory" means farm tractors and equipment, utility
11 tractors and equipment, and the attachments to and repair parts
12 for those tractors and equipment.

13 (g) "Net cost" means an amount equal to the original invoice
14 price that the dealer paid for the merchandise to the manufactur-
15 er, wholesaler, or distributor, less all applicable discounts
16 allowed, plus the freight cost incurred by the dealer from the
17 location of the manufacturer, wholesaler, or distributor to the
18 location of the dealer.

19 (h) "Person" means a sole proprietorship, partnership, cor-
20 poration, or any other form of business organization.

21 (i) "Supplier" means a manufacturer, wholesaler, or distrib-
22 utor of farm and utility tractors and farm and utility equipment,
23 or the attachments to or repair parts for that equipment.

24 Sec. 3. If a dealer enters into a ~~franchise~~ DEALER agree-
25 ment with a supplier that is evidenced by a written or implied
26 contract, sales agreement, ~~or~~ security agreement, OR FRANCHISE
27 AGREEMENT in which the dealer agrees to maintain an inventory,

1 and the contract, sales agreement, ~~or~~ security agreement, OR
2 FRANCHISE AGREEMENT WHICH is subsequently terminated, the sup-
3 plier shall repurchase the inventory of the dealer as provided in
4 this act. The dealer may choose to keep the inventory if the
5 dealer has a contractual right to do so.

6 SEC. 3A. IF A WHOLESALER OR DISTRIBUTOR ENTERS INTO A
7 WHOLESALER OR DISTRIBUTOR AGREEMENT WITH A MANUFACTURER THAT IS
8 EVIDENCED BY A WRITTEN OR IMPLIED CONTRACT, SALES AGREEMENT,
9 SECURITY AGREEMENT, OR FRANCHISE AGREEMENT WHICH IS SUBSEQUENTLY
10 TERMINATED, THE MANUFACTURER SHALL REPURCHASE THE INVENTORY OF
11 THE WHOLESALER OR DISTRIBUTOR AS PROVIDED IN THIS ACT.

12 Sec. 4. (1) The supplier OR MANUFACTURER shall repurchase
13 inventory previously purchased from the supplier OR MANUFACTURER
14 and held by the dealer, WHOLESALER, OR DISTRIBUTOR at the date of
15 termination of the contract. The supplier OR MANUFACTURER shall
16 pay 100% of the net cost of all new, unused, undamaged, and com-
17 plete tractors, equipment, and attachments, and 90% of the cur-
18 rent net price of all new, unused, and undamaged repair parts.
19 The supplier OR MANUFACTURER shall pay the dealer, WHOLESALER, OR
20 DISTRIBUTOR 5% of the current net price on all new, unused, and
21 undamaged repair parts returned to cover the cost of handling,
22 packing, and loading. The supplier OR MANUFACTURER may perform
23 the handling, packing, and loading in lieu of paying the 5% for
24 services.

25 (2) Upon payment of the repurchase amount to the dealer,
26 WHOLESALER, OR DISTRIBUTOR, the title and right of possession to

1 the repurchased inventory shall transfer to the supplier OR
2 MANUFACTURER.

3 (3) The supplier OR MANUFACTURER may subtract from the sums
4 due under subsection (1) the amount of debts owed by the dealer,
5 WHOLESALE, OR DISTRIBUTOR to the supplier OR MANUFACTURER.

6 Sec. 5. The provisions of this act are supplemental to any
7 agreement between the dealer, WHOLESALE, OR DISTRIBUTOR and the
8 supplier OR MANUFACTURER governing the return of inventory and
9 the dealer, WHOLESALE, OR DISTRIBUTOR may elect to pursue either
10 a contract remedy or the remedy provided in this act. An elec-
11 tion by the dealer, WHOLESALE, OR DISTRIBUTOR to pursue a con-
12 tract remedy does not bar the right of the dealer, WHOLESALE, OR
13 DISTRIBUTOR to the remedy provided in this act as to that inven-
14 tory not affected by the contract remedy. Notwithstanding any-
15 thing contained in this act, the rights of a supplier OR
16 MANUFACTURER to charge back to the dealer's, WHOLESALE'S, OR
17 DISTRIBUTOR'S account amounts previously paid or credited as a
18 discount incident to the dealer's, WHOLESALE'S, OR DISTRIBUTOR'S
19 purchase of the inventory repurchased shall not be affected.

20 Sec. 6. The provisions of this act shall not require the
21 repurchase of the following by a supplier OR MANUFACTURER from a
22 dealer, WHOLESALE, OR DISTRIBUTOR:

23 (a) Any repair part that has a limited storage life or shows
24 evidence of deterioration.

25 (b) Any single repair part that is priced as, or is only
26 sold as, a set of 2 or more items.

1 (c) Any repair part that, because of its condition, is not
2 resaleable as a new part.

3 (d) Any inventory for which the dealer, WHOLESALER, OR
4 DISTRIBUTOR is unable to furnish evidence, satisfactory to the
5 supplier OR MANUFACTURER, of title free and clear of all claims,
6 liens, and encumbrances.

7 (e) Any inventory that the dealer chooses to keep and has a
8 contractual right to keep.

9 (f) Any farm tractors and equipment, utility tractors and
10 equipment, and attachments that are not in new, unused, undam-
11 aged, complete, and saleable condition.

12 (g) Any farm tractors and equipment, utility tractors and
13 equipment, or attachments purchased 30 or more months prior to
14 notice of termination of the contract.

15 (h) Any inventory that was ordered by the dealer,
16 WHOLESALER, OR DISTRIBUTOR on or after the date of notification
17 of termination of the contract.

18 (i) Any inventory that was acquired by the dealer,
19 WHOLESALER, OR DISTRIBUTOR from any source other than the sup-
20 plier OR MANUFACTURER.

21 Sec. 7. If any supplier OR MANUFACTURER fails or refuses to
22 pay or credit the account of the dealer, WHOLESALER, OR
23 DISTRIBUTOR for any inventory required to be repurchased by
24 ~~section 3~~ SECTIONS 3 OR 3A within 60 days after receipt by the
25 supplier OR MANUFACTURER of that inventory, he or she shall be
26 liable for ~~+100%~~ 200% of the current net price of the inventory
27 plus any freight charges paid by the dealer, WHOLESALER, OR

1 DISTRIBUTOR, reasonable attorney's fees, court costs, and
2 interest on the current net price computed at the legal interest
3 rate from the sixty-first day after receipt of ~~such~~ THE
4 inventory.

5 Sec. 8. Upon the death of the dealer, WHOLESALER, OR
6 DISTRIBUTOR or the majority stockholder of a corporation or a
7 partner in a partnership operating as a dealer, WHOLESALER, OR
8 DISTRIBUTOR, the supplier OR MANUFACTURER shall, at the option of
9 the heirs, repurchase the inventory from the surviving spouse or
10 the heir or heirs of the dealer, WHOLESALER, OR DISTRIBUTOR or
11 majority stockholder as if the contract had been terminated. The
12 heir or heirs shall have 270 days from the date of the death of
13 the dealer, WHOLESALER, OR DISTRIBUTOR or majority stockholder to
14 exercise their options under this act. The repurchase of an
15 inventory is not required if the heirs or the supplier OR
16 MANUFACTURER enter into a new franchise agreement to operate the
17 dealership, WHOLESALE BUSINESS, OR DISTRIBUTORSHIP.

18 Sec. 9. The provisions of this act shall not be construed
19 to affect in any way any security interest which any financial
20 institution, person, ~~or~~ supplier, OR MANUFACTURER has in the
21 inventory of the dealer, WHOLESALER, OR DISTRIBUTOR, and any
22 repurchase ~~hereunder~~ shall not be subject to article 6 of THE
23 UNIFORM COMMERCIAL CODE, Act No. 174 of the Public Acts of 1962,
24 being sections 440.6101 to 440.6111 of the Michigan Compiled
25 Laws. The supplier OR MANUFACTURER may furnish a representative
26 to inspect all parts and certify their acceptability when packed
27 for shipment.

1 Sec. 10. The provisions of this act shall apply to all
2 contracts, sales agreements, ~~or~~ security agreements, OR FRAN-
3 CHISE AGREEMENTS written or implied in force and effect on or
4 after ~~the effective date of this act~~ DECEMBER 27, 1984.