



**House  
Legislative  
Analysis  
Section**

Washington Square Building, Suite 1025  
Lansing, Michigan 48909  
Phone 517/373-6466

### ***THE APPARENT PROBLEM:***

The Farm and Utility Equipment Franchise Act was enacted in 1984 to protect farm and utility equipment dealers from losses incurred when a supplier terminates a contract, leaving the dealer with surplus inventories which the supplier refuses to repurchase. These dealers often are required by their suppliers to maintain certain parts and machinery inventories — in some cases, worth over \$1 million — in order to meet emergency demands for equipment from farmers and others who use this type of machinery, who, due to equipment failure, may need to get parts or equipment quickly to ensure their operations are uninterrupted. The act requires an equipment supplier to repurchase surplus inventories if a contract between a supplier and dealer terminates. After a recent court ruling declared that a certain dealer was not a "franchise," as the act defines that word, which exempted the supplier in the case from having to comply with requirements in the act, the proponents of the original legislation see the need to amend the act and its title to ensure that the act includes a broader range of dealers, wholesalers and distributors of various types of farm and utility equipment who, they assert, should be covered under the act. Also, since the act's creation, it has been evident that some larger suppliers, when under contract with small dealers, have been able to easily absorb the financial penalty for failing to repurchase certain inventory upon a contract termination when they find it to their advantage to ignore the requirement.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Farm and Utility Equipment Franchise Act and its title to differentiate between types of dealers engaged in the buying or selling of farm and utility equipment. The act's title would be changed to the "Farm and Utility Equipment Act" and the bill would include the words "wholesaler or distributor" throughout the act, thus making the provisions of the act apply to farm equipment businesses that are not franchises.

The act would be amended to specify that if a wholesaler or distributor entered into a wholesaler or distributor agreement with a manufacturer — as evidenced by a written or implied contract, sales agreement, security agreement, or franchise agreement — which was subsequently terminated, the manufacturer would be required to repurchase the inventory of the wholesaler or distributor in the same manner that a franchise supplier is required to repurchase a dealer's inventory. The penalty for failing to repurchase inventory as required by the act would be increased from 100 percent of the net price of the inventory to 200 percent of that amount. Further, the bill would extend the deadline for repurchase by the manufacturer or supplier of inventory from 60 to 90 days after the supplier or manufacturer receives the inventory.

MCL 445.1451 et al.

## **REQUIRE REPURCHASE OF CERT. INVENTORY**

House Bill 4412 as introduced  
First Analysis (3-22-89)

Sponsor: Rep. Thomas L. Hickner  
Committee: Corporations and Finance

**RECEIVED**

MAY 23 1989  
Mich. State Law Library

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

### ***ARGUMENTS:***

#### ***For:***

The bill would include in the act language which would cover a broader range of dealers, wholesalers and distributors of various types of equipment. Proponents of the 1984 legislation intended to include a larger number of equipment dealers under the act, such as those who deal in lawn and garden equipment, but the bill that created the act was amended and its final form excluded various types of equipment dealers. Also, a lawsuit which occurred since the legislation was enacted resulted in a ruling which excluded certain types of "franchise" agreements, and a need arose to amend the language of the act to ensure that it did not exclude these dealers. In addition, the act does not exact stiff enough penalties to ensure that some larger manufacturers and suppliers of various types of farm and utility equipment repurchase surplus inventory that a dealer does not need if the contract between the two is terminated. The failure to repurchase inventory can bankrupt a small dealer, while causing insubstantial financial damage to a large supplier. To remedy this, the bill would increase the liability penalty to a supplier that failed to repurchase inventory from 100 to 200 percent of the value of the inventory.

#### ***Against:***

While the penalty to repurchase 100 percent of the value of a dealer's equipment after a contract termination seems ineffective in motivating a buyback, increasing the penalty to 200 percent of the equipment's value seems overly harsh. A penalty of having to repurchase 150 percent of the value of the equipment would be enough to motivate suppliers to buy the equipment back.

**Response:** The bill's provision extending the buyback period an extra 30 days (from 60 to 90) for suppliers represents a tradeoff with the proposed 200 percent buyback penalty. The current penalty obviously has not worked, and should be increased. In any case, if a supplier repurchased the equipment before the 90-day deadline there would be no penalty whatsoever.

### ***POSITIONS:***

The Michigan Equipment Dealers Association supports the bill. (3-21-89)

The Michigan Merchants Council supports the bill. (3-21-89)

The Michigan Manufacturers Association opposes the bill. (3-21-89)

H.B. 4412 (3-22-89)