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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4412 (as reported with amendment)
Sponsor: Representative Thomas L. Hickner
House Committee: Corporations and Finance
Senate Committee: Commerce and Technology

Date Completed: 12-7-89

RATIONALE

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 that 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 and who, due to equipment failure, may need to get parts or equipment quickly to ensure that their operations are uninterrupted. The Act requires an equipment supplier to repurchase surplus inventories if a contract between a supplier and dealer terminates. Reportedly, after a recent court ruling declared that a certain dealer was not a "franchise", as the Act defines that word, thereby exempting the supplier in the case from having to comply with requirements in the Act, some have argued the need for amending the Act to ensure that it includes a broader range of dealers, wholesalers and distributors of various types of farm and utility equipment.

CONTENT

The bill would amend the Farm and Utility Equipment Franchise Act, which currently regulates only the repurchase of farm and utility equipment subject to franchise agreements, to apply the Act's provisions to all repurchase agreements

between manufacturers or suppliers of such equipment and dealers, wholesalers, and distributors; reduce the amount of time in which a dealer's heirs may exercise their option to have the supplier or manufacturer repurchase the inventory; extend the deadline for repurchasing the equipment; and expand the types of equipment that are subject to the Act.

The bill specifies that if a dealer, wholesaler or distributor entered into an agreement with a supplier or manufacturer--as evidenced by a written or implied contract, sales agreement, security agreement, or franchise agreement--that was subsequently terminated, the manufacturer or supplier would be required to repurchase the inventory of the dealer, wholesaler or distributor. (The conditions of the repurchase would be the same as currently applied to the repurchase of a dealer's inventory under a franchise agreement.) Further, the bill would extend the deadline for repurchase by the manufacturer or supplier of the inventory from 60 to 90 days after the supplier or manufacturer received the inventory.

The bill would reduce the amount of time in which the heirs of a deceased dealer, wholesaler, or distributor may exercise their option to have the supplier or manufacturer repurchase the inventory of the dealer, wholesaler or distributor. Currently, the heirs

have 270 days from the date of the death to exercise their option; the bill would reduce the time to 200 days.

Finally, the bill would expand the Act to cover lawn and garden, construction, materials handling and earth moving equipment, in addition to the agriculture, horticulture, livestock raising, forestry and grounds maintenance equipment now covered by the Act.

MCL 445.1451 et al.

SENATE COMMITTEE ACTION

The Committee adopted an amendment to reduce the amount of time in which a dealer's heirs may exercise their option to have the supplier or manufacturer repurchase the inventory, and to restore to 100% of net price of the inventory the penalty for failing to repurchase inventory as required by the Act. The House-passed version of the bill would have increased the penalty to 200% because it was argued that the current penalty was not a sufficient deterrent, especially for large suppliers.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

By applying the bill's provisions to all repurchase agreements between manufacturers or suppliers of farm and utility equipment and dealers, wholesalers, and distributors and expanding the types of equipment subject to the Act, the bill would help protect the financial interests of small equipment dealers who can be bankrupt by the failure of a supplier to repurchase equipment when a contract is terminated.

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