

HOUSE BILL No. 4412

March 9, 1989, Introduced by Reps. Hickner and DeMars 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.

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 to read as follows:

TITLE

1

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

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

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

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

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

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

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

1 (e) ~~"Franchise agreement"~~ "AGREEMENT" means a written or
2 implied contract, sales agreement, ~~or~~ security agreement, OR
3 FRANCHISE AGREEMENT between a supplier OR MANUFACTURER and a
4 dealer, WHOLESALER, OR DISTRIBUTOR by which the dealer,
5 WHOLESALER, OR DISTRIBUTOR is authorized to engage in the busi-
6 ness of the retail sale and service, WHOLESALE SALE AND SERVICE,
7 OR THE DISTRIBUTION of tractors and equipment in accordance with
8 methods and procedures prescribed by the supplier OR
9 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~~
22 distributor of farm and utility tractors and farm and utility
23 equipment, or the attachments to or repair parts for that
24 equipment.

25 Sec. 3. If a dealer, WHOLESALER, OR DISTRIBUTOR enters into
26 ~~a franchise~~ AN agreement with a supplier OR MANUFACTURER that
27 is evidenced by a written or implied contract, sales agreement,

1 ~~or~~ security agreement, ~~in which the dealer agrees to maintain~~
2 ~~an inventory~~ OR FRANCHISE AGREEMENT, and the contract, sales
3 agreement, ~~or~~ security agreement, OR FRANCHISE AGREEMENT is
4 subsequently terminated, the supplier OR MANUFACTURER shall
5 repurchase ~~the~~ ANY inventory of the dealer, WHOLESALER, OR
6 DISTRIBUTOR as provided in this act. The dealer, WHOLESALER, OR
7 DISTRIBUTOR may choose to keep the inventory if ~~the dealer has~~
8 THERE EXISTS a contractual right to do so.

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

22 (2) Upon payment of the repurchase amount to the dealer,
23 WHOLESALER, OR DISTRIBUTOR, the title and right of possession to
24 the repurchased inventory shall transfer to the supplier OR
25 MANUFACTURER.

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

4 Sec. 5. (1) The provisions of this act are supplemental to
5 any agreement between the dealer, WHOLESALER, OR DISTRIBUTOR and
6 the supplier OR MANUFACTURER governing the return of inventory
7 and the dealer, WHOLESALER, OR DISTRIBUTOR may elect to pursue
8 either a contract remedy or the remedy provided in this act.

9 (2) An election by the dealer, WHOLESALER, OR DISTRIBUTOR to
10 pursue a contract remedy does not bar the right of the dealer,
11 WHOLESALER, OR DISTRIBUTOR to the remedy provided in this act as
12 to that inventory not affected by the contract remedy.

13 (3) Notwithstanding anything contained in this act, the
14 rights of a supplier OR MANUFACTURER to charge back to the
15 dealer's, WHOLESALER'S, OR DISTRIBUTOR'S account amounts previ-
16 ously paid or credited as a discount incident to the dealer's,
17 WHOLESALER'S, OR DISTRIBUTOR'S purchase of the inventory repur-
18 chased shall not be affected.

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

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

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

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

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

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

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

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

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

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

19 Sec. 7. If any supplier OR MANUFACTURER fails or refuses to
20 pay or credit the account of the dealer, WHOLESALER, OR
21 DISTRIBUTOR for any inventory required to be repurchased by sec-
22 tion 3 within ~~60~~ 90 days after receipt by the supplier OR
23 MANUFACTURER of that inventory, he or she shall be liable for
24 ~~+100%~~ 200% of the current net price of the inventory plus any
25 freight charges paid by the dealer, WHOLESALER, OR DISTRIBUTOR,
26 reasonable attorney's fees, court costs, and interest on the

1 current net price computed at the legal interest rate from the
2 sixty-first day after receipt of ~~such~~ THE inventory.

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

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

26 Sec. 10. The provisions of this act shall apply to all
27 AGREEMENTS, contracts, sales agreements, ~~or~~ security

1 agreements, OR FRANCHISE AGREEMENTS written or implied in force
2 and effect on or after ~~the effective date of this act~~
3 DECEMBER 27, 1984.