



**House
Legislative
Analysis
Section**

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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 — often worth over a million dollars — 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 firms doing business in farm and other types of equipment that are not franchises. The term "equipment" also would be changed to "farm and utility equipment" and it would include machines used for "lawn and garden, construction, materials handling, and earth moving."

Added to the act would be a provision which states that if a wholesaler or distributor entered into an agreement with a manufacturer or supplier — as evidenced by a written or implied contract, sales agreement, security agreement, or franchise agreement — which was subsequently terminated, the manufacturer or supplier 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 bill would extend the deadline for the repurchase by the manufacturer or supplier of certain inventory from 60 to 90 days after the supplier or

REQUIRE REPURCHASE OF CERT. INVENTORY

House Bill 5516 with committee amendments
First Analysis (5-12-88)

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

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manufacturer receives the inventory. Further, the penalty for failing to repurchase inventory within 90 days would be increased from 100 percent supplier liability for the net price of the inventory to 200 percent of that amount.

MCL 445.1451 et al.

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 into 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.

POSITIONS:

The Michigan Equipment Dealers Association supports the bill. (5-9-88)

The Michigan Merchants Council supports the bill. (5-11-88)

H.B. 5516 (5-12-88)