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FARM EQUIPMENT AGREEMENTS

House Bill 4352 with committee amendments
First Analysis (3-30-95)

Sponsor: Rep. Lloyd F. Weeks
Committee: Agriculture and Forestry

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. Dealers often are required by their suppliers to maintain certain parts and machinery inventories--in some cases, worth millions of dollars--in order to meet emergency demands for equipment from farmers whose equipment fails or cannot be used during busy times of the year, such as harvest. Among other things, the act requires an equipment supplier to repurchase surplus inventories if a contract between a supplier and dealer terminates. However, other circumstances also serve to create problems in contracts between farm equipment dealers and suppliers. Changes in the global economy in recent years resulted in mergers and consolidations in multi-national corporations. In the flux and change of the business world, it became not uncommon for a large company to close its operations in this country and relocate to another, or to turn its operations over to a subsidiary in another country. When this happens, questions arise regarding contracts that the company has entered into with Michigan-based dealers. Who, for instance, inherits the company's obligation to its dealers? Would the newly-formed corporation, or perhaps the company's remaining subsidiaries? Some people feel the act needs to be updated to clarify not only what constitutes a "supplier" under the act, but also what he or she is obligated to buy back from a dealer, or is otherwise required to do, when a dealer contract is terminated.

THE CONTENT OF THE BILL:

The Farm and Utility Equipment Act regulates agreements made between persons who sell farm and utility equipment (that is, dealers) and those who supply them with their equipment inventory. Generally, the act requires an equipment supplier to repurchase a dealer's surplus inventories if an "agreement" (i.e., a written or implied contract) between the supplier and dealer is terminated. The bill would amend the act to add new provisions governing the obligations of both a dealer and supplier when inventory goods must be repurchased due to the termination of an agreement. Under the bill, an agreement would include an oral contract made between these parties. The bill also would expand the definition of "supplier" to include, among other things, any component member of a controlled group of corporations, including "parent-subsidiary" or "brother-sister" controlled groups or other "combined groups." The provisions of the bill would apply to contracts entered into after January 2, 1990.

Repurchase requirements. Currently, when an agreement between a supplier and dealer is terminated, the supplier must pay to the dealer 100 percent of the net cost of all new, unused, undamaged and complete tractors, equipment and attachments, and 90 percent of the current net price of all new, unused and undamaged repair parts. The bill would revise this provision to specify that a supplier would have to pay 100 percent of the net cost of only all undamaged and complete tractors, equipment and attachments that had been purchased within 30 months of the termination of the agreement, less an allowance for demonstration or rental use, provided the demonstration and rental programs were not in conflict with the supplier's agreement or written policies.

In addition, the supplier would have to purchase or repurchase -- at the dealer's book value net of depreciation on the date of termination -- all dealer supplies, except that: no "electronic device" more than five years old would have to be purchased; the supplier would have to assume the dealer's lease obligations with respect to any dealer supplies that were leased; the supplier would have to pay the dealer at least 75 percent of the supplier's net price last published for any new dealer supplies purchased from the supplier; and no specialized repair tool that was not complete and in usable condition would have to be purchased.

Return of inventory. The bill would permit a dealer, with or without the prior consent or authorization of a supplier, to ship all inventory suitable for repurchase to the supplier not less than 60 days after the supplier had notified the dealer, or the dealer had notified the supplier by certified mail, that the agreement between them had been terminated. The supplier could inspect a dealer's inventory and designate portions of it as not returnable under the bill's provisions. This designation would not be effective, however, if it was received by the dealer more than 30 days after a contract was terminated.

Not more than 90 days after an agreement was terminated, the dealer could ship inventory to any location from which goods of like kind had been shipped to the dealer in the 12 months preceding the shipment, or, if such goods hadn't been shipped in this time period, to any place of business maintained by the supplier. The dealer would have to pay the freight charge and the supplier would have to accept the shipment. If a properly-shipped shipment was undeliverable or not accepted by the supplier, the dealer could order the inventory returned, order it stored for the supplier's account, or order it liquidated or abandoned by the carrier.

A supplier would assume all risk of loss for properly-shipped but undeliverable or unaccepted goods, including, but not limited to, losses from exposure, liquidation, abandonment or theft. A supplier's acceptance of a shipment would not constitute an admission that the inventory inspected by him or her before it was shipped and declared not returnable would have to be repurchased, but that all properly-shipped inventory that was not deliverable or not accepted was considered to have been properly submitted for repurchase, and the supplier was liable to pay the repurchase amount for that inventory.

Instead of returning inventory to a supplier in this way, a dealer could notify the supplier by certified mail that the dealer had inventory which he or she intended to return. The notice would have to be in writing, and the accuracy of the inventory list and suitability of items for repurchase would have to be sworn to by the dealer before a notary public. The notice would have to contain certain identifying information of the person in possession of the goods as well as of anyone authorized to act on behalf of the dealer as an "escrow agent." A supplier would have 30 days from the date the notice was mailed to inspect the inventory and verify the accuracy of the dealer's list. Within 10 days after inspection, the supplier would have to do one of the following: pay the escrow agent; give evidence that a credit to the dealer's account had been made if the dealer had outstanding sums due the supplier; or send to the escrow agent a credit list and shipping labels for the return of inventory to the supplier that were acceptable as returns.

If a supplier sent a credit list to the dealer's escrow agent, payment or a credit against the dealer's indebtedness for the acceptable returns would have to accompany the credit list. Upon receipt of 1) the payment, 2) evidence of a credit to the dealer's account, or 3) the credit list with payment, the title to the inventory acceptable as returns would pass to the supplier who made the payment or allowed the credit, and the supplier could keep the inventory. The escrow agent would have to ship or cause to be shipped the inventory acceptable as returns to the supplier unless the supplier elected to personally perform the inventorying, packing and loading. When the inventory was received by the supplier, the escrow agent would have to be notified of this by certified mail and he or she would have to disburse 90 percent of the payment he or she had received--less actual expenses and a reasonable fee for the agent's services--to the dealer. The agent would have to keep remaining funds in the dealer's escrow account until he or she was notified that an agreement had been reached regarding the nonreturnables, after which remaining funds would be disbursed and remaining inventory disposed of as provided in the settlement.

Consumer Warranties. When an agreement provided for a dealer to service consumer warranties by repairing, returning, or replacing inventory, the supplier would have to pay any warranty claim made by or through the dealer for parts or service within 90 days after the notice of the termination of the agreement. If a claim was not specifically disapproved in writing during the 90-day period, it would be considered approved. If a claim was approved but the repairs not made, the supplier would not be obligated to pay the dealer.

However, the supplier would have to accept for return by the dealer any inventory purchased, received, or set aside by the dealer for servicing the claim, unless the inventory was no longer in appropriate condition for return. Inventory in the possession of a supplier and identified to a warranty claim made by or through a dealer on the date of the notice of termination could be shipped by the supplier, at the dealer's option, but that inventory would not be returnable.

Liability, bringing of an action. The act currently provides that, if a supplier fails or refuses to pay or credit a dealer's account for any inventory required to be repurchased, he or she is liable for 100 percent of the current net price of the inventory plus freight charges paid by the dealer, reasonable attorney's fees, court costs, and interest on the value of the inventory. The bill would delete "reasonable attorney's fees" and "court costs" as items for which a supplier would be liable under such circumstances. A dealer located in the state could not waive his or her right to bring any action under the act in the state's courts, and a dealer would not--simply by contracting with a supplier in another state--be considered to be doing business in another state.

Termination of an agreement. A supplier could not terminate, cancel, fail to renew or substantially change the competitive circumstances of an agreement "without good cause" and would have to provide a dealer at least 90 days' prior written notice before taking any of these actions. The notice would have to state why action was taken and would have to specify that a dealer would have 90 days to rectify any claimed deficiency. If a corrective plan was submitted or the deficiency rectified within 90 days, the notice would be voided. Provisions requiring a notice to be given would not apply if the reason for termination, cancellation or nonrenewal was insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or material misrepresentation and falsification of records.

If an agreement was changed because sums due under it hadn't been paid, the dealer would be entitled to written notice of default in payment and would have 10 days from the date when the notice was made to correct the default. A supplier would be liable to a dealer for damages caused to the dealer by the supplier's failure to give prior notices.

MCL 445.1452 et al.

BACKGROUND INFORMATION:

A similar bill, House Bill 4506, passed both Houses last session but was vetoed by the governor. In his veto message, dated 29 December 1994, the governor stated that he felt it would be "unwise to create a new statutory cause of action for persons who have access to a judicial remedy through general contract law." The governor further stated that the bill was unacceptable as it would have "award[ed] attorney fees only to the [prevailing] party that has commenced the lawsuit," instead of to either a prevailing plaintiff or defendant.

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (3-29-95)

ARGUMENTS:

For:

Farm equipment dealers say changes need to be made to the Farm and Utility Equipment Act that would supply additional details on the obligations of both parties when contracts between farm equipment dealers and suppliers are terminated. During the past decade, a general downturn in the economy has had serious consequences for the farm equipment industry. Massey Ferguson, one of the oldest farm equipment companies, has ceased operating in the United States. An 80 percent reduction in farm equipment sales also convinced Ford Motor Company to leave the field four years ago. Beginning in the 1980s, economic changes also resulted in mergers, consolidations, and the movement of large multinational corporations to other countries--actions which not only have affected the corporation's employees, but also the contracts and franchise agreements that bind a company to its equipment dealers and franchisees. When relocations occur, farm equipment dealers say that they are at the mercy of suppliers. Dealers maintain that suppliers, being large corporations, have the resources to hire large legal firms that can argue successfully for interpretations of contracts that are favorable to their clients. The bill would help avoid future litigation by adding provisions that would clarify the relationship between dealers and suppliers; extend the act's definition of "supplier" to include companies that are members of corporate chains; specify the types of farm equipment that a supplier must repurchase; and outline the procedures to be followed when inventory must be returned for repurchase by a supplier.

For:

The House Agriculture and Forestry Committee adopted amendments to the bill to remove language that apparently prompted the governor to veto a very similar bill, House Bill 4506, from last session. By both removing language currently in the act that allows attorney's fees to only be awarded to a prevailing *plaintiff* (in this case, when a suit is brought by a dealer) and deleting language proposed in the bill that would have allowed the bringing of an action by dealers, the bill would discourage the kind of frivolous lawsuits referred to in the governor's veto message from last year.

Against:

Negotiations between manufacturers and dealers should be conducted in the private sector through bargaining in the free market system. The bill would provide a legislative mandate that spells out the exact nature of the relationship. Competition would decrease as a result of the bill.

Response:

The bill would not restrict the bargaining process in any way, as manufacturers and dealers still would work out the details of their agreements themselves. The bill simply would require both manufacturers and dealers to provide more detail about the expectations and obligations of their relationship.

Against:

The provisions of the bill would apply to contracts entered into after January 2, 1990. This provision seems unfair to those who have lived under the conditions of a contract for five years.

Response:

The bill requires that the provisions of the act apply to contracts entered into after January 2, 1990, to assure that these provisions are extended to contracts currently in effect. To do otherwise would leave open the possibility that current contracts could be terminated to avoid the provisions of the bill.

POSITIONS:

The Michigan Equipment Dealers Association supports the bill. (3-29-95)