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FARM EQUIPMENT AGREEMENTS

House Bill 4352
Sponsor: Rep. Lloyd F. Weeks
Committee: Agriculture & Forestry

Complete to 2-28-95

A SUMMARY OF HOUSE BILL 4352 INTRODUCED 2-8-95

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.

Bringing of an action. A dealer could bring an action against a supplier in a court of competent jurisdiction for actual damages sustained by him or her that resulted from a supplier violating the act's provisions, together with the actual costs of the action and reasonable attorney fees. 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 dealer could bring an action in any court of competent jurisdiction for damages and injunctive relief if a supplier failed to give prior notice and could recover the actual costs of the action, including reasonable attorney fees.

MCL 445.1452 et al.