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BILL ANALYSIS

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House Bill 4352
Sponsor: Representative Lloyd F. Weeks
House Committee: Agriculture and Forestry
Senate Committee: Agriculture and Forestry

Date Completed: 5-22-95

SUMMARY OF HOUSE BILL 4352 as passed by the House:

The bill would amend the Farm and Utility Equipment Act, which regulates agreements between dealers who sell farm equipment and persons who supply the equipment, to do the following:

- **Revise repurchase requirements for undamaged farm equipment when an agreement is terminated.**
- **Permit a dealer to ship to a supplier all inventory suitable for repurchase.**
- **Permit a dealer to notify a supplier by certified mail that the dealer had inventory to be returned and specify that the notice would constitute the appointment of an escrow agent to act on the dealer's behalf.**
- **Prohibit a dealer in the State from waiving his or her right to bring any action under the Act in the State courts.**
- **Prohibit a supplier from terminating an agreement without good cause and require a supplier to provide a dealer with notice of termination.**
- **Specify that the Act would apply to agreements and contracts that were in effect on or after January 2, 1990.**

Contract Termination

Currently, if a dealer, wholesaler, or distributor enters into an agreement with a supplier or manufacturer under a written or implied contract or a sales, security, or franchise agreement, and it is subsequently terminated, the supplier or manufacturer must repurchase anyof the dealer's, wholesaler's, or distributor's inventory. The dealer, wholesaler, or distributor may choose to keep the inventory if there is a contractual right to do so. The supplier or manufacturer must repurchase the inventory by the contract's termination date. The supplier or manufacturer must pay 100% of the net cost of all new, unused, undamaged, and complete tractors, equipment, and attachments, and 90% of the current net price of all new, unused, and undamaged repair parts. The supplier or manufacturer must pay the dealer, wholesaler, or distributor, 5% of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. The supplier or manufacturer may perform the handling, packing, and loading in lieu of paying the 5% for services.

The bill would revise the repurchase requirements to require a supplier to pay 100% of the net cost of all undamaged and complete tractors, equipment, and attachments that had been purchased within 30 months of the agreement's termination, less an allowance for "usage for demonstration" or "usage for rental", provided the dealer's demonstration and rental programs did not conflict with the supplier's agreement or written policies. ("Usage for demonstration" would mean usage, not prohibited by an agreement, to demonstrate the function of equipment or inventory to potential customers, but would not include use by a buyer who subsequently rescinded the purchase of the inventory or equipment. "Usage for rental" would mean usage by a dealer's customer, not prohibited by the agreement, under a rental contract or nonfinancing lease.)

The bill also would revise the repurchase provisions by deleting references to a wholesaler or distributor and deleting the requirement that an agreement be evidenced by a written or implied contract or other specified agreement. The bill would revise the definition of "dealer" to include retail dealers, wholesalers, and distributors that obtained inventory from another person for resale.

The bill would revise the definition of "supplier" to include a manufacturer and to specify that supplier would include any component member of a "controlled group of corporations" of which a supplier was a component member, or a successor in interest of a supplier, including any person who acquired more than 25% of the assets, stock, good will, or trade name of a supplier, any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of a supplier. ("Controlled group of corporations" would mean a "parent-subsidiary controlled group", a "brother-sister controlled group", a "combined group" (as those terms would be defined by the bill), or a group having constructive ownership of one or more corporations.)

The supplier would have to purchase or repurchase, at the dealer's book value net of depreciation on the termination date, 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% 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 usage condition would have to be purchased.

Return of Inventory

A dealer could ship, with or without a supplier's consent or authorization, all inventory suitable for repurchase to the supplier, at least 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 would have to inspect a dealer's inventory within 30 days of an agreement's termination and designate portions of that inventory to be not returnable under the Act. A designation received by the dealer more than 30 days after the termination would not be effective.

Within 90 days from the agreement's termination, a dealer could ship inventory to any location from which inventory of like kind had been shipped to the dealer in the 12 months preceding the shipment, or if no shipment had occurred in the period, to any place of business maintained by the supplier. The dealer would have to pay the freight. The supplier would have to accept a shipment made pursuant to these provisions.

If a properly shipped shipment were undeliverable, or not accepted by the supplier, the dealer could order the inventory returned, stored for the supplier's account, or liquidated or abandoned by the carrier. All risk of loss, including losses from exposure, liquidation, abandonment, or theft, to properly shipped but undeliverable or unaccepted goods would by the supplier's. A supplier's acceptance of a shipment would not constitute an admission that the inventory inspected by the supplier before shipment and declared not returnable would have to be repurchased, but that all properly shipped inventory that was not deliverable or accepted would be considered to have been properly submitted for repurchase, and the supplier would be liable to pay the repurchase amount for that inventory.

Instead of returning the inventory to the supplier, a dealer could notify a supplier by certified mail that the dealer had inventory that the dealer intended to return. The notice would have to be in writing, and sworn to before a notary public as to the accuracy of the listing of inventory and the suitability of the items for repurchase. The notice would have to include the name and address of the person or business that had possession and custody of the inventory and the location where the inventory could be inspected and the inventory list could be verified. The notice also would have to state the name and business address of the person or business that had the authority to serve as the dealer's escrow agent, to accept payment or credit to the dealer's account on behalf of the dealer, and to release the machinery and parts to the supplier. The bill specifies that the notice would constitute the appointment of the escrow agent to act an the dealer's behalf. The escrow agent would have to be a person or business that was independent of the dealership, dealer principal, or any of the dealership's or supplier's employees.

The supplier would have 30 days from the day the notice was mailed in which to inspect the inventory and verify the accuracy of the dealer's list. Within 10 days after the 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 listing and shipping labels for the return of the inventory to the supplier that were acceptable as returns.

If the supplier sent a credit list to the escrow agent, payment or a credit against the dealer's indebtedness for the acceptable returns would

have to accompany the credit list. Upon receiving the payment, evidence of a credit to the dealer's account, or 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 would be entitled to 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 perform personally the inventorying, packing, and loading.

When the supplier received the inventory, notice of the receipt would have to be sent by certified mail to the escrow agent who then would have to disburse 90% of the payment he or she had received, less its actual expenses and a reasonable fee for his or her services, to the dealer. The escrow agent would have to keep the balance of the funds in the dealer's escrow account until he or she was notified that an agreement had been reached as to the nonreturnables, after which the escrow agent would have to disburse the remaining funds and dispose of any remaining inventory as provided in the settlement.

Whenever 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 warranty parts or service within 90 days after being notified of the agreement's termination. If a claim were not specifically disapproved in writing during the 90-day period after notice of termination, stating the reasons for disapproval, the claim would be considered approved and the supplier would have to pay the dealer for all parts and service applied to the servicing of the warranty claim.

If a warranty claim were approved or considered approved but repairs were not made, the supplier would not be obligated to pay the dealer. The supplier, however, would have to accept for return by the dealer any inventory purchased, received, or set aside by the dealer for claim servicing, unless the inventory had ceased to be in appropriate condition for return while in the dealer's possession.

Inventory in a supplier's possession and identified to a warranty claim made by or through a dealer on the date of the termination notice could be shipped by the supplier, at the dealer's option, provided that if the dealer directed the supplier to ship the inventory after notice of termination, that inventory would not be returnable.

Currently, the Act specifies that its provisions are supplemental to any agreement between the dealer and the supplier governing the return of inventory and a dealer may elect to pursue either a contract remedy or the remedy provided in the Act. The bill also specifies that with respect to a dealer located in the State, a remedy provided for in the Act could not be limited by any agreement or contract between a supplier and a dealer.

The Act provides that it does not require a supplier to repurchase from a dealer certain items including any repair part that has a limited storage life or shows evidence of deterioration. The bill would revise this description to include any perishable repair part included in a list of parts with shelf lives published by the supplier and provided to the dealer before termination, the shelf life of which had elapsed before the termination, or which showed deterioration. In addition, a supplier currently does not have to repurchase any farm tractors and equipment, utility tractors and equipment, and equipment, or attachments that are not in new, unused, undamaged, complete, and salable condition. The bill specifies that this provision would not apply to those resalable items described in the bill that were used for demonstration or rental.

Legal Action Against Supplier

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. A dealer would not be considered to be doing business in another state by virtue of entering into an agreement with a supplier in the other state. An action arising under the Act's provisions would have to be brought in the circuit court of the county in which the dealer had its principal place of business in the 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. A supplier would have to provide a dealer at least 90 days' prior written notice of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice would have to state the reasons or deficiencies for the action, and the dealer would have 90 days to submit a plan to correct the reasons or deficiencies that was acceptable to the supplier or to correct the stated reasons or deficiencies. A dealer's failure to comply with the requirements imposed on the dealer by the supplier's agreement would be cause for termination, provided the

requirements were not different from those requirements imposed by the supplier on other similarly situated equipment dealers in the State.

The notice would have to state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and would have to provide that the dealer had 90 days to rectify any claimed deficiency. If a plan to rectify were submitted or the deficiency were rectified within 90 days, the notice would be considered void.

The bill specifies that the notice provisions would not apply if the reason for termination, cancellation, or nonrenewal were insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or material misrepresentation and falsification of records. If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances were nonpayment of sums due under the agreement, the dealer would be entitled to written notice of default in payment and would have 10 days from the delivery date or posting of the notice in which to remedy the default. A supplier would be liable to a dealer for damages caused to the dealer by the supplier's breach of an agreement.

MCL 445.1452 et al.

Legislative Analyst: L. Arasim

FISCAL IMPACT

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

Fiscal Analyst: L. Nacionales-Tafoya

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