

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2480

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Alexander

SUBJECT: Agricultural Equipment Manufacturers, Distributors, and Dealers

DATE: March 18, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula/Maclure	Maclure	CM	Favorable/CS
2.	_____	_____	AG	_____
3.	_____	_____	TR	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 2480 expands the types of businesses governed by the provisions of the Farm Equipment Manufacturers and Dealers Act (act). Currently, the act regulates the contractual relationships between a tractor or farm equipment dealer that sells farm implements which are primarily for use in agriculture and its manufacturer, distributor, or wholesale suppliers. The provisions of the committee substitute will make the act applicable to the contractual relationships between a dealer of tractors, farm implements, and items including irrigation equipment primarily for use in commercial agriculture or horticulture and its suppliers. The committee substitute excludes from the definition of a dealer a mass-market retailer. In addition, the measure provides that the act does not apply to machinery primarily designed for, or used in, off-road construction, mining, or industrial non-agricultural purposes.

New provisions of the act as amended by the committee substitute:

- Make it unlawful for a dealer’s supplier to withhold payment of funds owed to a dealer.
- Prohibit a dealer’s supplier from conducting audits of warranty claims more than 1 year after the claims were paid and require audits of incentives and rebates paid to a dealer to take place within 6 months after the end of an incentive program.
- Require a dealer’s suppliers to provide 180-days notice to the dealer that a competing dealer will be located in the existing dealer’s relevant market area.
- Provide that franchise agreements may only be terminated for failure to meet marketing or market-penetration criteria with advance notice to the dealer of at least 1 year and 90 days.
- Prohibit a dealer’s suppliers from imposing unreasonable restrictions on the location, transfer, and site control of a dealer.

- Make it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines.

Provisions of existing law have the effect of making the provisions of the committee substitute applicable to contracts in existence before the effective date of the committee substitute.

This committee substitute substantially amends the following sections of the Florida Statutes: 686.40, 686.401, 686.402, 686.403, 686.405, 686.406, 686.407, 686.409, 686.413, and 686.418.

## II. Present Situation:

The Farm Equipment Manufacturers and Dealers Act (act), codified in ss. 686.40-686.418, F.S., regulates the contractual relationship between a tractor or farm equipment dealer and manufacturers, distributors, and wholesalers of tractors and farm equipment. The act applies to all agreements between a tractor or farm equipment dealer and its suppliers of tractors and farm equipment that have no expiration date and to contracts entered into or renewed after July 1, 1984.<sup>1</sup>

### Definitions

Under the act, a tractor or farm equipment dealer is “a person who sells, solicits, or advertises the sale of new and used tractors and farm equipment to the consuming public.”<sup>2</sup> A manufacturer is a “person engaged in the business of manufacturing or assembling new and unused tractors and farm equipment.”<sup>3</sup> A distributor or wholesaler is a “person, firm, association, corporation, or company that sells or distributes new tractors and farm equipment to tractor or farm equipment dealers.”<sup>4</sup> “‘Farm equipment’ means those farm implements which are primarily designed for use in agriculture.”<sup>5</sup>

### Warranty Service

According to the act, when a tractor or farm equipment dealer satisfies warranty claims by providing parts or services, the dealer must be paid within 30 days by the manufacturer, distributor, or wholesaler.<sup>6</sup> The minimum lawful payment for a dealer’s warranty work is the dealer’s established retail hourly rate times the amount of time required to complete the work.<sup>7</sup> The minimum lawful payment to a dealer for parts used for warranty work is the dealer’s cost for the parts, plus shipping and handling charges, plus 15 percent of the cost of the parts and shipping charges.<sup>8</sup>

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<sup>1</sup> 686.403(2) and (3), F.S. The effective date of the act was July 1, 1984.

<sup>2</sup> Section 686.402(16), F.S.

<sup>3</sup> Section 686.402(11), F.S.

<sup>4</sup> Section 686.402(1), F.S.

<sup>5</sup> Section 686.402(6), F.S.

<sup>6</sup> Section 686.405(2)(a), F.S.

<sup>7</sup> Section 686.405(3)(a), F.S.

<sup>8</sup> Section 686.405(3)(b), F.S.

### **Returned Parts**

Manufacturers and distributors must allow dealers to annually return for credit at least 6 percent of the dollar value of the parts purchased by the dealer during the prior year.<sup>9</sup> A dealer must be credited with at least 85 percent of the wholesale cost of the returned parts.<sup>10</sup>

### **Repurchased Inventory**

Within 60 days after the termination of a franchise agreement between a tractor or farm equipment dealer and a manufacturer or distributor, the manufacturer or distributor must offer to repurchase the dealer's inventory.<sup>11</sup> For new tractors and other complete equipment, the dealer must be paid 100 percent of the dealer's cost plus freight, less a reasonable allowance for depreciation.<sup>12</sup> For repair parts, the dealer must be paid 85 percent of the wholesale cost, plus an additional 6 percent for the dealer's costs to return the parts.<sup>13</sup>

### **Franchise Agreement Termination**

A manufacturer or distributor may not without due cause fail to renew a franchise on terms then equally available to all of its tractor or farm equipment dealers, terminate a franchise, or restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business.<sup>14</sup> A dealer must be notified in writing of the intent to terminate a franchise or selling agreement at least 90 days before the effective date of the termination of the agreement.<sup>15</sup> The notice must also state the grounds for termination. A court may enjoin the termination of a franchise or selling agreement which was made without due cause.<sup>16</sup>

Under s. 686.413(3)(c)2., F.S., a manufacturer or distributor has due cause to terminate or refuse to renew a franchise agreement if the dealer:

- a. Has transferred an ownership interest in the dealership without the manufacturer's or distributor's consent;
- b. Has made a material misrepresentation in applying for or in acting under the franchise agreement;
- c. Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against her or him which has not been discharged within 60 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer or distributor, or is in receivership;
- d. Has engaged in unfair business or trade practices;
- e. Has inadequately represented the manufacturer's or distributor's products with respect to sales, service, or warranty work;

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<sup>9</sup> Section 686.406(3)(c), F.S.

<sup>10</sup> Section 686.406(3)(e), F.S.

<sup>11</sup> Section 686.407, F.S.

<sup>12</sup> Section 686.407(2)(a), F.S.

<sup>13</sup> Section 686.407(2)(b), F.S.

<sup>14</sup> Section 686.409, F.S.

<sup>15</sup> Section 686.413(3)(c)1., F.S.

<sup>16</sup> *Id.*

- f. Has inadequate and insufficient sales and service facilities and personnel;
- g. Has failed to comply with an applicable federal, state, or local licensing law;
- h. Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;
- i. Has failed to operate in the normal course of business for 10 consecutive business days or has terminated her or his business;
- j. Has relocated her or his place of business without the manufacturer's or distributor's consent; or
- k. Has failed to comply with the terms of the dealership or franchise agreement.

### **Unfair Competition and Unfair or Deceptive Acts or Practices**

The act also defines and prohibits numerous unfair methods of competition and unfair or deceptive acts or practices.<sup>17</sup>

### **Legal Remedies**

A contract or franchise agreement or a provision of a contract or agreement in violation of the act is unenforceable.<sup>18</sup> Additionally, a person who is harmed as the result of a violation of the act may bring an action in circuit court for damages, including punitive damages in some cases, and attorney's fees.<sup>19</sup> The act may also be enforced by the Department of Legal Affairs or by a state attorney.<sup>20</sup>

## **III. Effect of Proposed Changes:**

### **Scope of Act**

Committee Substitute for Senate Bill 2480 renames the Farm Equipment Manufacturers and Dealers Act (act) as the Agricultural Equipment Manufacturers and Dealers Act.

The committee substitute expands the application of the act by deleting the word "farm"<sup>21</sup> from the defined term "farm equipment" as it is used throughout the act. Further, the definition of "farm equipment," now "equipment" under the committee substitute, includes items primarily designed for use in agriculture<sup>22</sup> or horticulture,<sup>23</sup> including irrigation equipment. Additionally, the defined term "tractor or farm equipment dealer" becomes "dealer" under the committee substitute. A "dealer" is "a person who sells, solicits, or advertises the sale of new and used

<sup>17</sup> Section 686.413, F.S.

<sup>18</sup> Section 686.415, F.S.

<sup>19</sup> Section 686.417(1) and (4), F.S.

<sup>20</sup> Section 686.417(5), F.S.

<sup>21</sup> As used in s. 823.14, F.S., the Florida Right to Farm Act, the term "'Farm' means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products."

<sup>22</sup> As used in the state's agricultural laws, the term "'Agriculture' means the science and art of production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production." Section 570.02(1), F.S.

<sup>23</sup> Horticulture is "the science and art of growing fruits, vegetables, flowers, or ornamental plants." Merriam-Webster's Collegiate Dictionary 559 (10th ed. 2001).

equipment to the consuming public or who maintains such equipment.” As such, any duty under the act owed by a manufacturer or distributor to a tractor or farm equipment dealer is owed to a person or entity that meets the expanded definition of dealer under the committee substitute. The committee substitute specifies, however, that a dealer does not include a mass-market retailer. In addition, through the definition of the term “equipment,” the measure provides that the act does not apply to machinery primarily designed for, or used in, off-road construction, mining, or industrial non-agricultural purposes.

### **Definitions**

The committee substitute adds the terms “dealership,” “relevant market area,” and “termination” to the definitions section of the act.

### **Payments to Dealers**

The committee substitute makes it unlawful for a manufacturer or distributor to deny, delay payment for, or restrict a claim by a dealer for warranty service or parts, incentives, hold-backs, or other amounts owed to a dealer.

### **Audits of Dealers**

The committee substitute requires a manufacturer, distributor, or wholesaler that conducts audits of warranty claims submitted by a dealer to conduct the audit within 1 year after paying the claims. A dealer may only be charged back the amount of claims paid that are shown by an audit to be invalid. However, a dealer may be charged back for a fraudulent claim after the one-year period. Audits of the incentives or rebates paid to a dealer must be conducted within 6 months after the end of the incentive compensation program. Audits of the incentives paid to a dealer may take place after the 6 month period in the case of fraud.

### **Repurchased Parts**

Under current law, a repair part with a limited storage life is exempt from the items that a manufacturer or distributor must purchase from a dealer when the dealer’s franchise agreement terminates. Under the committee substitute, repair parts with a limited storage life must be purchased upon the termination of a franchise agreement.

### **Notice of Competing Dealerships**

When a manufacturer, distributor, or wholesaler decides to establish a new dealership or relocate an existing dealership into the relevant market area of an existing dealership, the dealer must be provided with at least 180-days written notice.

### **Dealer Preparation and Delivery Fee**

When a manufacturer, distributor, or wholesaler directly sells an item of equipment in a dealer’s territory, the dealer should, if practical, be used to prepare and deliver the equipment. The dealer

must be paid at least 8 percent of the sale price of the equipment for the preparation and delivery of the equipment.

### **Franchise Agreement Termination**

Under existing law, a dealer must be provided with at least 90-days notice before a franchise or selling agreement may be terminated. Under the committee substitute, a dealer must be provided with at least 180-days notice. Furthermore, the committee substitute prohibits the termination of a franchise or selling agreement if a dealer cures the deficiency for which the agreement is to be terminated during the 180-day notice period. If the termination of a franchise or selling agreement is sought because a dealer has failed to meet marketing or market-penetration criteria, the dealer must be provided with notice of the intent to terminate the agreement at least 1 year before the termination. During the 1-year period, the manufacturer or entity issuing the notice must make good faith efforts to assist the dealer to gain market share. If the termination of the selling or franchise agreement continues to be sought after the 1-year notice period, the dealer must be provided with an additional 90-days notice before the effective date of the termination of the agreement. The notice must specify the reasons for the determination that the dealer failed to meet marketing or market-penetration criteria. If the dealer cures the deficiency in the 90-day notice period, the agreement may not be cancelled. Additionally, a dealer may seek an injunction against the unlawful termination of an agreement for failure to meet marketing or market-penetration criteria.

### **Unfair Competition and Unfair or Deceptive Acts or Practices**

The committee substitute provides that the following acts by a manufacturer, distributor, or wholesaler are unlawful:

- Imposing unreasonable restrictions on the dealer relative to transfer, renewal, termination, location, or site control; and
- Preventing a dealer from having an investment in or holding a dealership contract for the sale of competing product lines or requiring a dealer to provide separate facilities for competing product lines.

The committee substitute makes other grammatical and technical changes to the act.

The committee substitute provides an effective date of July 1, 2004.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The application of the committee substitute to contracts in effect before the effective date of the committee substitute is likely unconstitutional under the Contracts Clause of s. 10, Art. I, State Constitution.

Section 10, Art. I, State Constitution, states: “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” This constitutional provision prohibits the retroactive application of laws that impair contractual obligations.<sup>24</sup>

Under s. 686.403(3), F.S., the provisions of the committee substitute will apply retroactively to a contract between a dealer and a manufacturer, distributor, or wholesaler which was executed before the effective date of the committee substitute. Section 686.403(3), F.S., states:

Sections 686.40-686.418[, the sections that comprise the Farm Equipment Manufacturers and Dealers Act,] apply to all continuing contracts now in effect which have no expiration date and to all other contracts entered into or renewed after July 1, 1984.

Section 9 of the committee substitute, which amends s. 686.413(3)(c)1., F.S., contains an example of a provision that is likely an unconstitutional impairment of a contract. In the existing s. 686.413(3)(c)1., F.S., a manufacturer, distributor, or wholesaler must give a dealer at least 90-days notice before a franchise agreement with the dealer may be terminated for cause. The committee substitute extends the 90-day period to at least 180 days. By operation of s. 686.403(3), F.S., the 180-day notice requirement will apply to contracts in effect before the effective date of the committee substitute.

In *Yamaha Parts Distributors, Inc., v. Ehrman*, 316 So. 2d 557 (Fla. 1975), Yamaha entered into a 5-year franchise agreement with U-Cycle on April 30, 1970.<sup>25</sup> The agreement provided that it could be terminated with 30-days written notice to either party.<sup>26</sup> On June 12, 1974, Yamaha terminated the agreement.<sup>27</sup> On January 1, 1971, however, s. 320.641, F.S., became effective and required a motor vehicle manufacturer to give a franchisee at least 90-days notice before a franchise agreement could be terminated.<sup>28</sup> U-Cycle sought to enjoin the termination of the franchise agreement at least in part because Yamaha did not comply with the statutory 90-day notice requirement.<sup>29</sup> The court determined that s. 320.641, F.S., which required 90-days written notice before

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<sup>24</sup> See, e.g., *Geary Distributing Co., Inc., v. All Brand Importers, Inc.*, 931 F. 2d 1431 (11th Cir. 1991).

<sup>25</sup> *Yamaha Parts Distributors, Inc., v. Ehrman*, 316 So. 2d 557, 558 (Fla. 1975).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

termination, applied prospectively because retroactive application of the statute to the franchise agreement would be an unconstitutional impairment of a contract.<sup>30</sup>

Because the issues in *Yamaha* are directly analogous to the issues raised by the committee substitute, the application of the provisions of the committee substitute to contracts in effect before the effective date of the committee substitute is likely unconstitutional. As a result, the Legislature may wish to amend the committee substitute to make its provisions applicable only to contracts or contract renewals executed after the effective date of the committee substitute.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Because the committee substitute expands the types of dealers that may be protected under the Farm Equipment Manufacturers and Dealers Act, the contractual relationships between more dealers and their suppliers may be governed by the act.

Provisions of the committee substitute may enhance the degree of economic security in their business relationships with suppliers for those equipment dealers who are covered by the act, such as the provisions:

- Making it unlawful for a dealer's supplier to withhold payment of funds owed to a dealer;
- Requiring a dealer's suppliers to provide 180-days notice to the dealer that a competing dealer will be located in the existing dealer's relevant market area;
- Providing that franchise agreements may only be terminated for failure to meet marketing or market-penetration criteria with advance notice to the dealer of at least 1 year and 90 days;
- Prohibiting a dealer's suppliers from imposing unreasonable restrictions on the location, transfer, and site control of a dealer; and
- Making it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines.

### C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

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<sup>30</sup> *Id.* at 559.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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