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Bill Analysis
Legislative Service Commission

H.B. 648
123rd General Assembly
(As Introduced)

Reps. Calvert, Widener, Logan, Taylor, Sullivan, Hollister, Roman

BILL SUMMARY

- Prohibits a supplier of farm equipment, without good cause, from terminating, failing to renew, or substantially altering the competitive circumstances of certain agreements that the supplier has entered into with a dealer of farm equipment and requires a supplier to provide written notice to a dealer before terminating or not renewing such an agreement.
- Requires a farm equipment supplier who violates the prohibition against terminating, failing to renew, or substantially altering the competitive circumstances of certain agreements entered into with a farm equipment dealer to repurchase, under certain circumstances, any inventory previously purchased from him by a dealer engaged in the retail sale of farm equipment.
- Requires a farm equipment supplier who is required to repurchase inventory from a farm equipment dealer to pay the net cost for new, unused, and undamaged repair parts rather than 85% of the current net price.
- Includes compact tractors within the definition of "farm equipment" and thus applies the law governing the relationship between suppliers and dealers of farm equipment to the sale of compact tractors.

CONTENT AND OPERATION

Definitions

The bill makes changes to the law governing the relationship between dealers and suppliers of farm equipment. Under current law, the definitions of "supplier," "dealer," "dealer agreement," and "inventory" include the phrase "farm implements

and machinery or construction equipment, or the attachments, special service tools, or repair parts for such implements, machinery, or equipment." In order to make the statute more concise, the bill eliminates this phrase from those definitions and replaces it with the term "farm equipment," which then is defined to include all the items mentioned in the phrase. This change is technical in nature; however, the bill also adds compact tractors to the definition of "farm equipment," and that addition is a substantive change. The bill's resulting definition of "farm equipment" includes farm implements and machinery or construction equipment together with attachments, special service tools, or repair parts for such implements, machinery, or equipment, and includes compact tractors. (Sec. 1353.01(H).) The bill also adds compact tractors to the current definition of "attachments" by stating that "attachments" means equipment designed to be used on or in conjunction with compact tractors or farm implements and machinery or construction equipment (sec. 1353.01(A)). Finally, the bill defines "compact tractors" as garden and small utility tractors and riding mowers and specifies that compact tractors are not motor vehicles (sec. 1353.01(I)).

Prohibition against farm equipment supplier's termination of certain agreements with a farm equipment dealer

The bill prohibits a supplier, without good cause, from terminating, failing to renew, or substantially altering the competitive circumstances of a dealer agreement that is entered into by the supplier and a dealer on or after the bill's effective date or that is a continuing contract with no expiration date (sec. 1353.06(A)). "Supplier" means a manufacturer, wholesaler, or distributor of farm equipment to dealers under a dealer agreement and who also may require the dealer to purchase data processing hardware to satisfy the minimum requirements of the dealer agreement (sec. 1353.01(D)).¹ "Dealer" means a person engaged in the business of the retail sale of farm equipment under a dealer agreement, which also may include a requirement to purchase data processing hardware (sec. 1353.01(G)). "Dealer agreement" means a written or implied contract, sales agreement, or security agreement between a supplier and a dealer that authorizes the dealer to engage in the retail sale and service of farm equipment in accordance with methods and procedures prescribed by the supplier and includes any data processing hardware the supplier requires the dealer to purchase to satisfy the minimum requirements of the dealer agreement (sec. 1353.01(C)).

¹*Because the changes that the bill makes to the definitions of certain terms were described under "**Definitions**," above, subsequent discussions involving those terms in this analysis use the terms as they are defined in the bill.*

Under the bill, circumstances that do not constitute good cause for a supplier to terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement include, without limitation, any of the following:

(1) The dealer's refusal to purchase or accept delivery from the supplier of any inventory or other commodity or service that the dealer did not order under the terms of the dealer agreement;

(2) The sole fact that the supplier desires further penetration of the market; and

(3) Refusal by the dealer to participate at the dealer's expense in any national advertising campaign or contest, to attend sales meetings, or to purchase at the dealer's expense any promotional or display materials (sec. 1353.06(A)).²

The bill requires a supplier, prior to the supplier's termination of or failure to renew a dealer agreement, to provide the dealer with not fewer than 90 days' prior written notice of the intent to terminate or not renew it. The notice must explain the deficiencies on the part of the dealer, if any, that have resulted in the supplier's intent to terminate or not renew the dealer agreement. The dealer has 90 days following receipt of the notice during which the dealer may submit to the supplier a plan for correcting the deficiencies. (Sec. 1353.06(B).)

Farm equipment supplier's duty to repurchase inventory upon termination of dealer agreement

Under current law, if a dealer enters into a dealer agreement with a supplier that is evidenced by a written or implied contract, sales agreement, or security agreement in which the dealer agrees to maintain an inventory, and the dealer agreement subsequently is terminated by the supplier in violation of the terms of the dealer agreement or because of the merger or consolidation of the supplier with or into another corporation, the supplier must repurchase the inventory of the dealer. The bill specifies that if a supplier terminates a dealer agreement in violation of the provisions described under "**Prohibition against farm equipment supplier's termination of certain agreements with a farm equipment dealer,**" above, the supplier also must repurchase the dealer's inventory. The bill retains current law specifying that the dealer may choose to keep the inventory if the dealer has a contractual right to do so. (Sec. 1353.02(A).)

² "Inventory" means farm equipment held by a dealer for sale or lease and also means any data processing hardware that the supplier requires the dealer to purchase (sec. 1353.01(E)).

With certain exceptions, current law requires the supplier to repurchase inventory previously purchased from him and held by the dealer at the time the dealer agreement was terminated. The supplier must pay 85% of the current net price for all used special service tools in good condition and for all new, unused, and undamaged repair parts and must pay the net cost for all other new, unused, and undamaged inventory. The bill eliminates the language requiring the supplier to pay 85% of the current net price for all new, unused, and undamaged repair parts. Repair parts thus are included with all other new, unused, and undamaged inventory for which the supplier must pay net cost. (Sec. 1353.02(B).) Current law retained by the bill defines "current net price" as the price listed in the supplier's price list or catalog in effect at the time the dealer agreement is terminated, less all applicable discounts (sec. 1353.01(B)).

Compact tractors

Current law requires, under certain conditions, a supplier of farm equipment to repurchase any inventory previously purchased from him by a dealer engaged in the retail sale of farm equipment and creates a civil action to enable the dealer to compel the repurchase (sec. 1353.02). The bill includes compact tractors within the types of inventory to which this repurchase requirement and civil action provision applies (secs. 1353.01 and 1353.02). In addition, the bill includes compact tractors as farm equipment for the purposes of the bill's prohibition against a farm equipment supplier's termination, failure to renew, or substantial alteration of the competitive circumstances of certain agreements that the supplier has entered into with a farm equipment dealer (sec. 1353.06).

HISTORY

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