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Bill Analysis

Legislative Service Commission

Sub. H.B. 200

124th General Assembly
(As Passed by the House)

Reps. Calvert, Hollister, Redfern, Allen, Brinkman, Rhine, Lendrum, Flowers, Kearns, Webster, Evans, Peterson, Schaffer, Willamowski, Hagan, Fessler, Latta, Hughes, Goodman, Coates, Setzer, Collier, Schmidt, Manning, Hartnett, Faber, Aslanides, Barrett, Cirelli, Latell, DeWine, Roman, Carmichael, Widowfield

BILL SUMMARY

- Includes compact tractors within the definition of "farm machinery," and includes mobile, motorized utility maintenance and industrial equipment used in construction, maintenance, or materials handling within the definition of "construction equipment," thus applying the law governing the relationship between suppliers and dealers of farm machinery or construction equipment to the sale of those items.
- Prohibits a supplier of farm machinery or construction 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 machinery or construction equipment, and requires a supplier to provide written notice to a dealer before terminating or not renewing such an agreement.
- Requires a farm machinery or construction 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 machinery or construction equipment dealer to repurchase, under certain circumstances, any inventory previously purchased from him by a dealer engaged in the retail sale of farm machinery or construction equipment.
- Requires a farm machinery or construction equipment supplier who is required to repurchase inventory from a farm machinery or construction equipment dealer to pay the net cost for new, unused, and undamaged

repair parts rather than 85% of the current net price, and, under certain circumstances, also requires such a supplier to pay the average "as-is" value shown in current industry guides for each component of a rental fleet of farm machinery or construction equipment that is owned by the dealer and financed by the supplier or its finance subsidiary.

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 addition, the definition of "attachments" includes the phrase "farm implements and machinery or construction equipment." (Sec. 1353.01(A), (C), (D), (E), and (G).) The bill eliminates those phrases from those definitions and replaces them with the words "farm machinery or construction equipment." This change is designed to make the statute more concise and thus is partially technical in nature because the bill then defines the term "farm machinery" and the term "construction equipment" to include the items (i.e. attachments, special service tools, and repair parts) that are mentioned in the existing longer phrases. However, the bill also adds compact tractors to the definition of "farm machinery" and adds mobile, motorized utility maintenance and industrial equipment used in construction, maintenance, or materials handling to the definition of "construction equipment"; those additions are substantive changes. (Sec. 1353.01(H) and (J).)

The bill's resulting definition of "farm machinery" includes farm implements and machinery together with the attachments, special service tools, or repair parts for such implements and machinery. "Farm machinery" includes compact tractors, but does not include a motor vehicle as defined in the Motor Vehicles Law. (Sec. 1353.01(H).) 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)).

Under the bill, "construction equipment" means construction equipment and the attachments, special service tools, or repair parts for such equipment together with mobile, motorized utility maintenance and industrial equipment used in construction, maintenance, or materials handling. "Construction equipment" does not include a motor vehicle as defined in the Motor Vehicles Law. (Sec. 1353.01(J).)

Prohibition against farm machinery or construction equipment supplier's termination of certain agreements with a farm machinery or construction 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)(1)). "Supplier" means a manufacturer, wholesaler, or distributor of farm machinery or construction equipment to dealers under a dealer agreement 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 machinery or construction 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 machinery or construction 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)).

The bill specifies that circumstances that constitute good cause for a supplier to terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement include failure by the dealer to comply with the requirements imposed on the dealer by a dealer agreement if the requirements are not materially different from those imposed on other dealers similarly situated in Ohio or surrounding states. In addition, circumstances that constitute good cause include those in which the dealer consistently does any of the following:

- (1) Engages in business practices that are detrimental to the consumer or the supplier, including engaging in misleading advertising or failing to provide service and replacement parts or to perform warranty obligations;
- (2) Fails to provide adequate sales, service, or parts personnel in accordance with the dealer agreement;
- (3) Fails to meet reasonable building and housekeeping requirements;

¹Because 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.

(4) Fails to comply with applicable licensing laws with respect to any of the products and services that the dealer represents as being sold or provided by the dealer on behalf of the supplier; or

(5) Fails to meet the supplier's reasonable market penetration requirements based on accurate records and after receiving notice from the supplier of the supplier's requirements. (Sec. 1353.06(A)(2).)

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 except as required by any applicable law or unless the inventory is comprised of safety parts or accessories that are required by the supplier;

(2) The sole fact that the supplier desires further penetration of the market unless the dealer consistently has failed to meet the supplier's reasonable market penetration requirements based on accurate records and after receiving notice from the supplier or the supplier's requirements; and

(3) Refusal by the dealer to participate at the dealer's expense in any national advertising campaign or contest (sec. 1353.06(A)(3)).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 180 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 that have resulted in the supplier's intent to terminate or not renew the dealer agreement. The dealer must submit to the supplier a plan for correcting the deficiencies. The supplier, when making the final determination regarding termination of the agreement, must consider corrective actions taken by the dealer. (Sec. 1353.06(B).)

² "Inventory" means farm machinery or construction 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)).

Farm machinery or construction 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 machinery or construction equipment supplier's termination of certain agreements with a farm machinery or construction 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).)

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.³ 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. In addition, the bill requires the supplier to pay the average "as-is" value shown in current industry guides for each component of a rental fleet of farm machinery or construction equipment that is owned by the dealer or financed by the supplier or its finance subsidiary, provided that the component was purchased from the supplier not more than 30 months prior to the date of termination of the dealer agreement. (Sec. 1353.02(B).)

³ 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)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-03-01	p. 287
Reported, H. Agriculture & Natural Resources	05-30-01	p. 610
Passed House (97-0)	06-06-01	pp. 630-631

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