

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1318
Committee Substitute Favorable 4/24/01

Short Title: Farm Machinery Franchise Law.

(Public)

Sponsors:

Referred to:

April 12, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND CLARIFY THE FARM MACHINERY AGREEMENT
3 LAW.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 26 of Chapter 66 of the General Statutes reads as
6 rewritten:

7 "Article 26.
8 "Farm Machinery ~~Franchises.~~ Agreements.

9 **"§ 66-180. Definitions.**

10 As used in this Article, unless the context requires otherwise:

11 (1) "Agreement" means a written or oral contract or agreement between a
12 dealer and a wholesaler, manufacturer, or distributor by which the
13 dealer is granted one or more of the following rights:

14 a. To sell or distribute goods or services.

15 b. To use a trade name, trademark, service mark, logo type, or
16 advertising or other commercial symbol.

17 (2) "Current model" means a model listed in the wholesaler's,
18 manufacturer's, or distributor's current sales manual or any
19 supplements.

20 ~~(1)~~(3) "Current net price" means the price listed in the supplier's price list or
21 catalog in effect at the time the franchise agreement is terminated, less
22 any applicable discounts allowed.

23 ~~(2)~~(4) "Dealer" means a person engaged in the business of selling at retail
24 farm, construction, utility or industrial, equipment, implements,
25 machinery, attachments, outdoor power equipment, or repair parts.

26 (5) "Family member" means a spouse, brother, sister, parent, grandparent,
27 child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-
28 in-law, stepparent, or stepchild, or a lineal descendant of the dealer or
29 principal owner of the dealership.

- 1 (3) ~~"Franchise agreement" means a written or oral contract or agreement~~
2 ~~between a dealer and a wholesaler, manufacturer, or distributor by~~
3 ~~which the dealer is granted the right to sell or distribute goods or~~
4 ~~services, or use a trade name, trademark, service mark, logo type, or~~
5 ~~advertising or other commercial symbol.~~
- 6 (6) "Good cause" means failure by a dealer to comply with requirements
7 imposed upon the dealer by the agreement if the requirements are not
8 different from those imposed on other dealers similarly situated in this
9 State. In addition, good cause exists in any of the following
10 circumstances:
- 11 a. A petition under bankruptcy or receivership law has been filed
12 against the dealer.
- 13 b. The dealer has made an intentional misrepresentation with the
14 intent to defraud the supplier.
- 15 c. Default by the dealer under a chattel mortgage or other security
16 agreement between the dealer and the supplier or a revocation
17 or discontinuance of a guarantee of a present or future
18 obligation of the retailer to the supplier.
- 19 d. Closeout or sale of a substantial part of the dealer's business
20 related to the handling of goods; the commencement or
21 dissolution or liquidation of the dealer if the dealer is a
22 partnership or corporation; or a change, without the prior
23 written approval of the supplier, which shall not be
24 unreasonably withheld, in the location of the dealer's principal
25 place of business or additional locations set forth in the
26 agreement.
- 27 e. Withdrawal of an individual proprietor, partner, major
28 shareholder, or manager of the dealership, or a substantial
29 reduction in interest of a partner or major shareholder, without
30 the prior written consent of the supplier.
- 31 f. Revocation or discontinuance of any guarantee of the dealer's
32 present or future obligations to the supplier.
- 33 g. The dealer has failed to operate in the normal course of business
34 for seven consecutive business days or has otherwise
35 abandoned the business.
- 36 h. The dealer has pleaded guilty to or has been convicted of a
37 felony affecting the relationship between the dealer and the
38 supplier.
- 39 i. The dealer transfers an interest in the dealership, or a person
40 with a substantial interest in the ownership or control of the
41 dealership, including an individual proprietor, partner, or major
42 shareholder, withdraws from the dealership or dies, or a

1 substantial reduction occurs in the interest of a partner or major
2 shareholder in the dealership.

3 (4)(7) "~~Inventory~~" means ~~farm, utility, or industrial equipment, implements,~~
4 ~~machinery, farm implements and machinery, construction, utility and~~
5 ~~industrial equipment, consumer products, outdoor power equipment,~~
6 ~~attachments, or repair parts. These terms do not include heavy~~
7 ~~construction equipment.~~

8 (5)(8) "Net cost" means the price the dealer paid the supplier for the
9 inventory, less all applicable discounts allowed, plus the amount the
10 dealer paid for freight costs from the supplier's location to the dealer's
11 location, plus reasonable cost of assembly or disassembly performed
12 by the dealer.

13 (6)(9) "Supplier" means a wholesaler, manufacturer, ~~or distributor~~
14 ~~distributor, or any purchaser of assets or stock of any surviving~~
15 ~~corporation resulting from a merger or liquidation, any receiver or~~
16 ~~assignee, or any trustee of the original manufacturer, wholesaler, or~~
17 ~~distributor who enters into a franchise an agreement with a dealer.~~

18 (10) "Superseded part" means any part that will provide the same function
19 as a currently available part as of the date of cancellation.

20 (7)(11) "~~Termination~~" of a ~~franchise an~~ agreement means the termination,
21 cancellation, nonrenewal, or noncontinuance of the agreement.

22 **"§ 66-181. Usage of trade.**

23 The terms "utility" and "industrial", when used to refer to equipment, implements,
24 machinery, attachments, or repair parts, shall have the meaning commonly used and
25 understood among dealers and suppliers of farm equipment as a usage of trade in
26 accordance with G.S. 25-1-205(2).

27 **"§ 66-182. Notice of termination of franchise agreements.**

28 (a) ~~Notwithstanding any agreement to the contrary, a supplier who terminates a~~
29 ~~franchise agreement with a dealer shall notify the dealer of the termination not less than~~
30 ~~90 days prior to the effective date of the termination; however, the supplier may~~
31 ~~immediately terminate the agreement at any time after the occurrence of any of the~~
32 ~~following events:~~

33 (1) ~~A petition under bankruptcy or receivership law has been filed against~~
34 ~~the dealer;~~

35 (2) ~~The dealer has made an intentional misrepresentation with the intent to~~
36 ~~defraud the supplier;~~

37 (3) ~~Default by the dealer under a chattel mortgage or other security~~
38 ~~agreement between the dealer and the supplier;~~

39 (4) ~~Closeout or sale of a substantial part of the dealer's business related to~~
40 ~~the handling of goods; the commencement or dissolution or liquidation~~
41 ~~of the dealer if the dealer is a partnership or corporation; or a change,~~

1 without the prior written approval of the supplier, in the location of the
2 dealer's principal place of business under the agreement;

3 (5) ~~Withdrawal of an individual proprietor, partner, major shareholder, or~~
4 ~~manager of the dealership, or a substantial reduction in interest of a~~
5 ~~partner or major shareholder, without the prior written consent of the~~
6 ~~supplier; or~~

7 (6) ~~Revocation or discontinuance of any guarantee of the dealer's present~~
8 ~~or future obligations to the supplier.~~

9 No supplier, directly or through an officer, agent, or employee, may terminate,
10 cancel, fail to renew, or substantially change the competitive circumstances of an
11 agreement without good cause.

12 (b) Notwithstanding any agreement to the contrary, a dealer who terminates a an
13 agreement with a supplier shall notify the supplier of the termination not less than 30 90
14 days prior to the effective date of the termination.

15 (b1) A supplier shall provide a dealer with at least 90 days' written notice of
16 termination of the agreement and a 60-day right-to-cure the deficiency. If the deficiency
17 is cured within the allotted time, the notice is void. In the case where cancellation of an
18 agreement is based upon the dealer's failure to capture the share of the market required
19 in the agreement, a minimum 12-month period of time shall have existed where the
20 supplier has worked with the dealer to gain the desired market share. The notice shall
21 state all reasons constituting good cause.

22 (c) Notification under this section shall be in writing and shall be by certified
23 mail or personally delivered to the recipient. It shall contain all of the following:

24 (1) A statement of intention to terminate the ~~franchise, dealership.~~

25 (2) A statement of the reasons for the ~~termination, and~~ termination.

26 (3) The date on which the termination takes effect.

27 **"§ 66-183. Supplier's duty to repurchase.**

28 (a) Whenever a dealer enters into a ~~franchise-an~~ agreement evidenced by a
29 written or oral contract in which the dealer agrees to maintain an inventory, and the
30 agreement is terminated by either party, the supplier shall repurchase the dealer's
31 inventory as provided in this Article unless the dealer chooses to keep the inventory. If
32 the dealer has any outstanding debts to the supplier, then the repurchase amount may be
33 set off or credited to the retailer's account.

34 (b) Whenever a dealer enters into a ~~franchise-an~~ agreement in which the dealer
35 agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer,
36 if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the
37 option of the heir, personal representative, or guardian of the dealer, or the person who
38 succeeds to the stock of the majority stockholder, repurchase the inventory as if the
39 agreement had been terminated. The heir, personal representative, guardian, or
40 succeeding stockholder has one year from the date of the death of the dealer or majority
41 stockholder to exercise the option under this Article.

42 **"§ 66-184. Repurchase terms.**

1 (a) The supplier shall repurchase from the dealer within 90 days after termination
2 of the ~~franchise~~ agreement all inventory previously purchased from the supplier that
3 remains unsold on the date of termination of the agreement.

4 (b) The supplier shall pay the dealer:

5 (1) One hundred percent (100%) of the current net cost-price of all new,
6 unused, unsold, undamaged, and complete farm, construction, utility,
7 and industrial equipment, implements, machinery, outdoor power
8 equipment, and attachments, ~~less a reasonable allowance for~~
9 ~~deterioration attributable to weather conditions at the dealer's location;~~
10 attachments.

11 (2) Ninety percent (90%) of the current net price of all new, unused, and
12 undamaged repair ~~parts~~; and superseded parts.

13 (3) ~~Eighty five percent (85%) of the current net price of all new, unused,~~
14 ~~undamaged, superseded repair parts.~~

15 Seventy-five percent (75%) of the net cost of all specialized repair
16 tools purchased in the previous three years and fifty percent (50%) of
17 the net cost of all specialized repair tools purchased in the previous
18 four through six years pursuant to the requirements of the supplier and
19 held by the dealer on the date of termination. Such specialized repair
20 tools shall be unique to the supplier's product line and shall be in
21 complete and resalable condition. Farm implements, machinery, utility
22 and industrial equipment, and outdoor power equipment used in
23 demonstrations, including equipment leased primarily for
24 demonstration or lease, shall also be subject to repurchase under this
25 section at its agreed depreciated value, provided the equipment is in
26 new condition and has not been damaged.

27 (4) At its amortized value, the price of any specific data processing
28 hardware and software and telecommunications equipment that the
29 supplier required the dealer to purchase within the past five years.

30 (c) ~~The supplier may, within 90 days after the date of termination of the franchise~~
31 ~~agreement, audit the dealer's books or records to verify the eligibility of the inventory~~
32 ~~for repurchase.~~

33 (d) The supplier shall pay the cost of shipping the inventory from the dealer's
34 location and shall pay the dealer ~~five percent (5%)~~ ten percent (10%) of the current net
35 price of all new, unused, undamaged repair parts returned, to cover the cost of handling,
36 packing, and loading. The supplier may perform the handling, packing, and loading
37 instead of paying the ~~five percent (5%)~~ ten percent (10%) for the services. The dealer
38 and the supplier may each furnish a representative to inspect all parts and certify their
39 acceptability when packed for shipment.

40 (e) The supplier shall pay the full repurchase amount to the dealer not later than
41 30 days after receipt of the inventory. If the dealer has any outstanding debts to the
42 supplier, then the repurchase amount may be credited to the dealer's account.

1 (f) Upon payment of the repurchase amount to the dealer, the title and right of
2 possession to the repurchased inventory shall transfer to the supplier. Annually, at the
3 end of each calendar year, or after termination or cancellation, the dealer's reserve
4 account for recourse, retail sale, or lease contracts shall not be debited by a supplier or
5 lender for any deficiency unless the dealer or the heirs of the dealer have been given at
6 least seven business days' notice by certified or registered United States mail, return
7 receipt requested, of any proposed sale of the equipment financed and an opportunity to
8 purchase the equipment. The former dealer or the heirs of the dealer shall be given
9 quarterly status reports on any remaining outstanding recourse contracts. As the
10 recourse contracts are reduced, any reserve account funds shall be returned to the dealer
11 or the heirs of the dealer in direct proportion to the liabilities outstanding.

12 (g) In the event of the death of the dealer or the majority stockholder of a
13 corporation operating as a dealer, the supplier shall, at the option of the heir, repurchase
14 the inventory from the heir of the dealer or majority stockholder as if the supplier had
15 terminated the agreement. The heir shall have one year from the date of the death of the
16 dealer or majority stockholder to exercise the heir's options under this section. Nothing
17 in this section shall require the repurchase of any inventory if the heir and the supplier
18 enter into a new agreement to operate the retail dealership.

19 (h) A supplier shall have 90 days in which to consider and make a determination
20 upon a request by a family member to enter into a new agreement to operate the
21 dealership. In the event the supplier determines that the requesting family member is not
22 acceptable, the supplier shall provide the family member with a written notice of its
23 determination with the stated reasons for nonacceptance. This section does not entitle an
24 heir, personal representative, or family member to operate a dealership without the
25 specific written consent of the supplier.

26 (i) Notwithstanding the provisions of this section, in the event that a supplier and
27 a dealer have executed an agreement concerning succession rights prior to the dealer's
28 death, and if the agreement has not been revoked, that agreement shall be enforced even
29 if it designates someone other than the surviving spouse or heir of the decedent as the
30 successor.

31 **"§ 66-185. Exceptions to repurchase requirement.**

32 This Article does not require the repurchase from a dealer of:

- 33 (1) A repair part with a limited storage life or otherwise subject to
34 deterioration, such as gaskets or batteries, except for industrial "press
35 on" or industrial pneumatic ~~tires~~;tires.
- 36 (2) A single repair part that is priced as a set of two or more ~~items~~;items.
- 37 (3) A repair part that, because of its condition, is not resalable as a new
38 part without repackaging or ~~reconditioning~~;reconditioning.
- 39 (3a) Any repair part that is not in new, unused, undamaged condition.
- 40 (4) An item of inventory for which the dealer does not have title free of all
41 claims, liens, and encumbrances other than those of the
42 ~~supplier~~;supplier.

- 1 (5) Any inventory that the dealer chooses to ~~keep~~;keep.
- 2 (6) Any inventory that was ordered by the dealer after either party's
3 receipt of notice of termination of the ~~franchise agreement~~;
4 ~~and agreement~~.
- 5 (6a) Any farm implements and machinery, construction, utility and
6 industrial equipment, outdoor power equipment, and attachments that
7 are not current models or that are not in new, unused, undamaged,
8 complete condition, provided that the equipment used in
9 demonstrations or leased, as provided in G.S. 66-184, shall be
10 considered new and unused.
- 11 (6b) Any farm implements and machinery, construction, utility and
12 industrial equipment, outdoor power equipment, and attachments that
13 were purchased more than 36 months prior to notice of termination of
14 the agreement.
- 15 (7) Any inventory that was acquired by the dealer from a source other than
16 the supplier.

17 **"§ 66-186. Uniform commercial practice.**

18 (a) This Article does not affect a security interest of the supplier in the inventory
19 of the dealer.

20 (b) A repurchase of inventory under this Article shall not be subject to the bulk
21 sales provisions of Article 6 of Chapter 25 of the General Statutes.

22 (c) The dealer and supplier shall furnish representatives to inspect all parts and
23 certify their acceptability when packed for shipment. Failure of the supplier to provide a
24 representative within 60 days shall result in automatic acceptance by the supplier of all
25 returned items.

26 **"§ 66-187. Warranty obligations.**

27 (a) Whenever a supplier and a dealer enter into a ~~franchise~~ an agreement, the
28 supplier shall pay any warranty claim made by the dealer for warranty parts or service
29 within 30 days after its approval. The supplier shall approve or disapprove a warranty
30 claim within 30 days after its receipt. If a claim is disapproved, the manufacturer,
31 wholesaler, or distributor shall notify the dealer within 30 days stating the specific
32 grounds upon which the disapproval is based. If a claim is not specifically disapproved
33 in writing within 30 days after its receipt it is approved and payment must follow within
34 30 days.

35 (b) Whenever a supplier and a dealer enter into a ~~franchise~~ an agreement, the
36 supplier shall indemnify and hold harmless the dealer against any judgment for damages
37 or any settlement agreed to by the supplier, including court costs and a reasonable
38 attorney's fee, arising out of a complaint, claim, or lawsuit including negligence, strict
39 liability, misrepresentation, breach of warranty, or ~~recession~~ rescission of the sale, to the
40 extent the judgment or settlement relates to the manufacture, assembly, or design of
41 inventory, or other conduct of the supplier beyond the dealer's control.

1 (b1) If, after termination of an agreement, the dealer submits a claim to the
2 manufacturer, wholesaler, or distributor for warranty work performed prior to the
3 effective date of the termination, the manufacturer, wholesaler, or distributor shall
4 accept or reject the claim within 30 days of receipt.

5 (c) If a claim is not paid within the time allowed under this section, interest shall
6 accrue at the maximum lawful interest rate.

7 (d) Warranty work performed by the dealer shall be compensated in accordance
8 with the reasonable and customary amount of time required to complete the work,
9 expressed in hours and fractions thereof. The cost of the work shall be computed by
10 multiplying the time required to complete the work by the dealer's established customer
11 hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or
12 distributor for whom the dealer is performing warranty work of the dealer's established
13 customer hourly retail labor rate before the dealer performs any work.

14 (e) Expenses expressly excluded under the warranty of the manufacturer,
15 wholesaler, or distributor to the customer shall neither be included nor required to be
16 paid for warranty work performed, even if the dealer requests compensation for the
17 work performed.

18 (f) The dealer shall be paid for all parts used by the dealer in performing
19 warranty work. Payment shall be in an amount equal to the dealer's net price for the
20 parts, plus a minimum of fifteen percent (15%).

21 (g) The manufacturer, wholesaler, or distributor has a right to adjust
22 compensation for errors discovered during an audit and, if necessary, to adjust claims
23 paid in error.

24 (h) The dealer shall have the right to accept the reimbursement terms and
25 conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and
26 conditions of this section.

27 **"§ 66-187.1. Prohibited acts.**

28 No supplier shall do any of the following:

29 (1) Coerce any dealer to accept delivery of equipment, parts, or
30 accessories which the dealer has not ordered voluntarily, except as
31 required by any applicable law, or unless the parts or accessories are
32 safety parts or accessories required by the supplier.

33 (2) Condition the sale of additional equipment to a dealer upon a
34 requirement that the dealer also purchase other goods or services,
35 except that a supplier may require the dealer to purchase those parts
36 reasonably necessary to maintain the quality of operation in the field of
37 the equipment used in the trade area.

38 (3) Coerce a dealer into refusing to purchase equipment manufactured by
39 another supplier.

40 (4) Terminate, cancel, or fail to renew or substantially change the
41 competitive circumstances of the retail agreement based on the results
42 of any circumstance beyond the dealer's control, including a natural

1 disaster such as a sustained drought, high unemployment in the
2 dealership market area, or a labor dispute.

3 **"§ 66-188. Failure to repurchase; civil remedy.**

4 (a) If a supplier fails or refuses to repurchase any inventory covered under the
5 provisions of this Article within the time periods established in G.S. 66-184, the
6 supplier is civilly liable for one hundred percent (100%) of the current net price of the
7 inventory, any freight charges paid by the dealer, the dealer's reasonable attorney's fee
8 and court costs, and interest on the current net price of the inventory computed at the
9 legal rate of interest from the 91st day after termination of the franchise agreement.

10 (b) Notwithstanding any agreement to the contrary, and in addition to any other
11 legal remedies available, any person who suffers monetary loss due to a violation of this
12 Article or because he refuses to accede to a proposal for an arrangement that, if
13 consummated, is in violation of this Article, may bring a civil action to enjoin further
14 violations and to recover damages sustained by him together with the costs of the suit,
15 including a reasonable attorney's fee.

16 (b1) The provisions of G.S. 66-182 through G.S. 66-187.1 shall not be waivable
17 in any contract or agreement, and any such attempted waiver shall be null and void.

18 (c) A civil action commenced under the provisions of this Article shall be
19 brought within four years after the violation complained of is or reasonably should have
20 been discovered, whichever occurs first."

21 **SECTION 2.** If any provision of this act or its application is held invalid, the
22 invalidity does not affect other provisions or applications of this act that can be given
23 effect without the invalid provisions or application, and to this end the provisions of this
24 act are severable.

25 **SECTION 3.** This act becomes effective October 1, 2001, and applies to
26 agreements entered into, modified, transferred, or renewed on or after that date.