

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Poppell offered the following:

3 **Amendment**

4 Remove line(s) 68-170 and insert:

5 ~~tractors and farm~~ equipment to the consuming public, but does  
6 not include:

7 ~~(a) A receiver, trustee, administrator, executor, personal~~  
8 ~~representative, guardian, or other person appointed by or acting~~  
9 ~~under judgment, decree, or order of any court.~~

10 (a)~~(b)~~ A public officer while performing her or his duties  
11 as such officer.

12 (b)~~(e)~~ A person making casual or isolated sales of her or  
13 his own ~~tractors or items of farm~~ equipment not subject to sales  
14 tax under the laws of this state.

15 (c)~~(d)~~ A person engaged in the auction sale of ~~tractors~~  
16 ~~and farm~~ equipment.

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17 (d)(e) A dealer in used ~~tractors and farm~~ equipment.

18 (e) A mass-market retailer.

19 (2) "Dealership" means the business of selling or  
20 attempting to effect the sale by a dealer of new equipment or  
21 the right conferred by written or oral agreement with the  
22 manufacturer, distributor, or wholesaler, for a definite or  
23 indefinite period of time, to sell or attempt to effect the sale  
24 of new equipment.

25 (3)(1) "Distributor" or "wholesaler" means any person,  
26 firm, association, corporation, or company that sells or  
27 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~  
28 ~~equipment~~ dealers and that maintains distributor representatives  
29 within this state.

30 (4)(2) "Distributor branch" means a branch office  
31 maintained by a distributor or wholesaler which sells or  
32 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~  
33 ~~equipment~~ dealers.

34 (5)(3) "Distributor representative" means a representative  
35 employed by a distributor, distributor branch, or wholesaler.

36 (6) "~~Farm~~ Equipment" means those tractors, farm  
37 implements, or items which are primarily designed for or used  
38 use in agriculture. Equipment designed for or used in off-road  
39 construction, mining, utility, and industrial purposes is not  
40 included in this definition.

41 (7)(4) "Factory branch" means a branch office maintained  
42 by a manufacturer which manufactures and assembles ~~tractors and~~  
43 ~~farm~~ equipment for sale to distributors ~~of tractors~~ or ~~to farm~~

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44 ~~equipment~~ dealers or which is maintained for directing and  
45 supervising the representatives of the manufacturer.

46 (8)~~(5)~~ "Factory representative" means a representative  
47 employed by a manufacturer or factory branch for the purpose of  
48 making or promoting the sale of ~~tractors and farm~~ equipment or  
49 for supervising, servicing, introducing, or contracting with  
50 ~~tractor or farm equipment~~ dealers or prospective dealers.

51 (9)~~(7)~~ "Franchise" means a contract or agreement, either  
52 expressed or implied, whether oral or written, for a definite or  
53 indefinite period of time in which a manufacturer, distributor,  
54 or wholesaler grants to a ~~tractor or farm equipment~~ dealer  
55 permission to use a trade name, service mark, trademark, or  
56 related characteristic and in which there is a common interest  
57 or community of interest in the marketing of ~~tractors or farm~~  
58 equipment or services related thereto at wholesale or retail,  
59 whether by leasing, sale, or otherwise.

60 (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~  
61 dealer to whom a franchise is offered or granted.

62 (11)~~(9)~~ "Franchisor" means a manufacturer, distributor, or  
63 wholesaler who grants a franchise to a ~~tractor or farm equipment~~  
64 dealer.

65 (12)~~(10)~~ "Fraud" means and includes actual fraud or  
66 constructive fraud as normally defined, in addition to the  
67 following:

68 (a) A misrepresentation in any manner, whether  
69 intentionally false or arising from gross negligence, of a  
70 material fact.

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71 (b) A promise or representation not made honestly and in  
72 good faith.

73 (c) An intentional failure to disclose a material fact.

74 (d) Any artifice employed to deceive another.

75 (13)~~(11)~~ "Manufacturer" means any person engaged in the  
76 business of manufacturing or assembling new and unused ~~tractors~~  
77 ~~and farm~~ equipment.

78 (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a ~~tractor~~  
79 ~~or item of farm~~ equipment which has not been previously sold to  
80 and put into regular use or service by any person, except a  
81 distributor, wholesaler, or ~~tractor or farm equipment~~ dealer for  
82 resale.

83 (15)~~(13)~~ "Person" means a natural person, corporation,  
84 association, partnership, trust, or other business entity and,  
85 in the case of a business entity, includes any other entity in  
86 which the business entity has a majority interest or which it  
87 effectively controls, as well as the individual officers,  
88 directors, and other persons in active control of the activities  
89 of each such entity.

90 (16) "Relevant market area" means the geographic area for  
91 which a dealer is assigned responsibility for selling or  
92 soliciting or advertising the sale of equipment under the terms  
93 of a franchise.

94 (17)~~(14)~~ "Sale" means and includes the issuance, transfer,  
95 agreement for transfer, exchange, pledge, hypothecation, or  
96 mortgage in any manner or form, whether by transfer in trust or  
97 otherwise, of any ~~tractor or item of farm~~ equipment or interest  
98 therein, or of any franchise related thereto, for a

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99 consideration and any option, subscription or other contract, or  
100 solicitation, looking to a sale, or offer or attempt to sell in  
101 any form, whether in oral or written form for a consideration.

102 (18) "Termination" means the termination, cancellation,  
103 nonrenewal, or noncontinuation of a contract or agreement.

104 (19)~~(15)~~ "Tractor" means a vehicle that is operated  
105 principally upon a farm, grove, or orchard in connection with  
106 agriculture ~~agricultural or horticultural pursuits.~~