

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1187 w/CS Agricultural equipment manufacturers, distributors, and dealers  
**SPONSOR(S):** Rep. Poppell  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2480

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	12 Y, 0 N w/CS	Kaiser	Reese
2) Commerce	16 Y, 0 N w/CS	McDonald	Billmeier
3)			
4)			
5)			

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### SUMMARY ANALYSIS

HB 1187 w/CS amends the Agricultural Equipment Manufacturers and Dealers Act, which was enacted during the 1984 legislative session. Among other things, the bill will:

- Extend the definition of "equipment" to better describe the equipment that is designed for or used in agricultural production.
- Require a manufacturer to work with a dealer before canceling a franchise agreement when the dealer is having difficulty meeting market share sales requirements.
- Allow a dealer to sell competing lines or makes of equipment without having to build separate facilities for each line.
- Prohibit a manufacturer from imposing unreasonable restrictions on a dealer relative to transfer, sale, or location of his dealership.
- Clarify the time allowed for warranty claims.
- Require a manufacturer to compensate a dealer when the dealer is expected to service, deliver, and provide warranty to equipment sold directly by a manufacturer in a dealer's market area.

In addition, the bill clarifies current statute to reflect the intent to provide an exception for agricultural tractors and self-propelled agricultural implements in excess of standard width, with load in tow or not.

The proposed legislation has no fiscal impact to state or local governments and will become effective July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1187c.com.doc  
**DATE:** April 1, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

HB 1187 w/CS amends the Agricultural Equipment Manufacturers and Dealers Act, which was enacted during the 1984 legislative session. Few changes have been made to the act in the past 20 years and it has become necessary to update and amend some areas of the law.

The bill provides for the Farm Equipment Manufacturers and Dealers Act to be renamed as the Agricultural Equipment Manufacturers and Dealers Act (act). In addition, the definition of equipment is amended to better describe the equipment that is designed for or used in agricultural production. Other changes in the definitions section include new definitions for dealership, relevant market area, and termination. Several other definitions, as well as sections of the statutes, are amended to reflect the change in the definition of “equipment.”

The bill prohibits the denial or delay of payment for a claim by a dealer for warranty parts or service, or other amounts due unless the delay or denial is a direct result of a material defect in the claim that affects its validity. The bill further provides that a manufacturer, distributor, or wholesaler may audit warranty claims submitted by its dealers only for a period of up to one year following the payment of such claims. Only the amounts based upon paid claims shown to be invalid by the audit may be charged back to the dealer. The bill provides that audits of a dealer by or on behalf of a manufacturer, distributor, or wholesaler for sales incentives or other forms of incentive compensation must be completed no later than nine months after the termination date of such incentive compensation program.

In addition, the bill provides that a manufacturer, distributor or wholesaler that intends to establish a new dealership or relocate a current dealership within a relevant market area of an existing dealership of the same product line or make of equipment must give written notice of such intent by certified mail or overnight delivery, return receipt requested, to the existing dealership. The notice, which must contain specified information, is required to be delivered at least 180 days prior to establishment of the new dealership or the relocation of the current dealership.

The bill provides that a manufacturer, distributor, or wholesaler may sell or lease new equipment for use within the state. The bill further provides if a manufacturer, distributor or wholesaler sells or leases new equipment within the state, and the equipment is prepared for delivery or serviced by a dealer, the dealer is entitled to a sales commission from the manufacturer, distributor or wholesaler of not less than 8 percent of the sale price of the equipment. When practicable, the bill requires the manufacturer, distributor, or wholesaler to utilize the dealer in the relevant market area for preparation and delivery. The bill provides specifics of what determines relevant market area and instances when the requirement for the commission would not apply.

The notice requirement regarding termination of dealership is changed from 90 days to 180 days. Furthermore, the bill states if a dealer, to whom a termination notice has been served, cures the

claimed deficiency within the 180-day notice period, the franchise or selling agreement may not be terminated.

The bill also includes a provision requiring the manufacturer, distributor, wholesaler, or any representative of such, to make a good faith effort to work with a dealer, who has been provided notice of termination, in an effort to gain the desired market share. The bill requires the manufacturer, distributor, or wholesaler to notify the dealer at least 1 year in advance of the intention to terminate the franchise or selling agreement. Upon the end of the 1 year notice period, if after working with the dealer and failing to see a reasonable gain in the market share, the manufacturer may provide written notice specifying that termination is effective 90 days from the date of the notice.

The bill provides it is unlawful to impose unreasonable restrictions on a dealer in regards to transfer, renewal, termination, location, or site control. It is also unlawful to prevent a dealer from having an investment in or holding a dealership contract for the sale of competing product lines or makes of equipment, or to require a dealer to provide separate facilities for competing product lines or makes of equipment.

The bill amends s. 316.515, F.S., to provide an exception for agricultural tractors and self-propelled agricultural implements in excess of standard width, with load in tow or not.

#### C. SECTION DIRECTORY:

**Section 1:** Amending s. 686.40, F.S.; amending the popular name.

**Section 2:** Amending s. 686.401, F.S.; amending the legislative intent of the act.

**Section 3:** Amending s. 686.402, F.S.; amending and providing new definitions.

**Section 4:** Amending s. 686.403, F.S.; reflecting changes of definitions.

**Section 5:** Amending s. 686.405, F.S.; reflecting changes of definitions; prohibiting delay of payment to a dealer with exceptions; authorizing audit of warranty claims by manufacturer for 1 year following payment of claims; authorizing charge backs by manufacturer of invalid claims; and, providing for audits by or on behalf of manufacturer for any type of incentive compensation to be completed no later than 9 months after the termination date of the incentive compensation program.

**Section 6:** Amending s. 686.406, F.S.; reflecting changes of definitions.

**Section 7:** Amending s. 686.407, F.S.; reflecting changes of definitions; removing certain merchandise from list of provisions not requiring repurchase from dealer; providing for notification by manufacturer of intention to establish new dealership or relocate current dealership; providing notice requirements; and, providing requirements for sale or lease of new equipment.

**Section 8:** Amending s. 686.409, F.S.; reflecting changes of definitions.

**Section 9:** Amending s. 686.413, F.S.; reflecting changes of definitions; providing additional unlawful acts and conducts; and providing requirements for termination of a franchise or selling agreement.

**Section 10:** Amending s. 686.418, F.S.; reflecting changes of definitions.

**Section 11:** Amending s. 316.515, F.S.; clarifying an exception for agricultural tractors and self-propelled agricultural implements in excess of standard width, with load in tow or not.

**Section 12:** Providing an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

### B. RULE-MAKING AUTHORITY:

None

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The legislative bodies in Alabama and Georgia recently passed this same legislation.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Committee on Commerce adopted three amendments to HB 1187 w/CS and passed the bill with a committee substitute. The changes in the bill made by the Committee on Commerce are as follows:

- Changed the definition to exclude a mass market retailer from the definition of “dealer”;
- Changed the definition of “equipment” to remove equipment used in horticulture and equipment designed for or used in irrigation for agriculture or horticulture; and
- Changed the time in which an audit of a dealer by or on behalf of a manufacturer, distributor, or wholesaler for sales incentives or other forms of incentive compensation must be completed from six to nine months after the termination date of the incentive program.

On March 16, 2004, the Committee on Agriculture adopted three amendments to HB 1187.

- Amendment 1 is a technical amendment, which removes the word “the.”
- Amendment 2 clarifies the definition of “equipment.”
- Amendment 3 clarifies existing statute language to reflect the intent to provide an exception for agricultural tractors and self-propelled agricultural implements in excess of standard width, with load in tow or not.