

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1318

Short Title: Farm Machinery Franchise Law. (Public)

Sponsors: Representatives Warwick, Cole, Culpepper, Brubaker (Primary Sponsors); Smith, Thompson, Mitchell, and Cox.

Referred to: Agriculture.

April 12, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND CLARIFY THE FARM MACHINERY FRANCHISE
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:

"Article 26.

"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 the right to sell or distribute goods or services, or use
14 a trade name, trademark, service mark, logo type, or advertising or
15 other commercial symbol.
- 16 (2) "Current model" means a model listed in the wholesaler's,
17 manufacturer's, or distributor's current sales manual or any
18 supplements thereto.
- 19 ~~(1)~~(3) "Current net price" means the price listed in the supplier's price list or
20 catalog in effect at the time the franchise agreement is terminated, less
21 any applicable discounts allowed.
- 22 ~~(2)~~(4) "Dealer" means a person engaged in the business of selling at retail
23 farm, utility or industrial, equipment, implements, machinery,
24 attachments, outdoor power equipment, or repair parts.
- 25 (5) "Family member" means a spouse, child, son-in-law or daughter-in-
26 law, or a lineal descendant of the dealer or principal owner of the
27 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 retail agreement if the requirements are
8 not different from those imposed on other dealers similarly situated in
9 this State.
- 10 ~~(4)(7)~~ "Inventory" means farm, utility, or industrial equipment, implements,
11 machinery, farm implements and machinery, construction, utility and
12 industrial equipment, consumer products, outdoor power equipment,
13 attachments, or repair parts. These terms do not include heavy
14 construction equipment.
- 15 ~~(5)(8)~~ "Net cost" means the price the dealer paid the supplier for the
16 inventory, less all applicable discounts allowed, plus the amount the
17 dealer paid for freight costs from the supplier's location to the dealer's
18 location, plus reasonable cost of assembly or disassembly performed
19 by the dealer.
- 20 ~~(6)(9)~~ "Supplier" means a wholesaler, manufacturer, or distributor
21 distributor, or any purchaser of assets or stock of any surviving
22 corporation resulting from a merger or liquidation, any receiver or
23 assignee, or any trustee of the original manufacturer, wholesaler, or
24 distributor who enters into a franchise agreement with a dealer.
- 25 (10) "Superseded part" means any part that will provide the same function
26 as a currently available part as of the date of cancellation.
- 27 ~~(7)(11)~~ "Termination" of a franchise agreement means the termination,
28 cancellation, nonrenewal, or noncontinuance of the agreement.

29 **"§ 66-181. Usage of trade.**

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

34 **"§ 66-182. Notice of termination of franchise agreements.**

35 ~~(a) Notwithstanding any agreement to the contrary, a supplier who terminates a~~
36 ~~franchise agreement with a dealer shall notify the dealer of the termination not less than~~
37 ~~90 days prior to the effective date of the termination; however, the supplier may~~
38 ~~immediately terminate the agreement at any time after the occurrence of any of the~~
39 ~~following events: No supplier, directly or through an officer, agent, or employee may~~
40 ~~terminate, cancel, fail to review, or substantially change the competitive circumstances~~
41 ~~of a retail agreement without good cause. "Good cause" means failure by a dealer to~~
42 ~~comply with the requirements imposed upon the dealer by the agreement if those~~
43 ~~requirements are not different from those imposed on other dealers similarly situated in~~
44 ~~this State. In addition, good cause exists in any of the following circumstances:~~

- 1 (1) A petition under bankruptcy or receivership law has been filed against
2 the ~~dealer~~; dealer.
- 3 (2) The dealer has made an intentional misrepresentation with the intent to
4 defraud the ~~supplier~~; supplier.
- 5 (3) Default by the dealer under a chattel mortgage or other security
6 agreement between the dealer and the ~~supplier~~; supplier or there has
7 been a revocation or discontinuance of a guarantee of a present or
8 future obligation of the retailer to the supplier.
- 9 (4) Closeout or sale of a substantial part of the dealer's business related to
10 the handling of goods; the commencement or dissolution or liquidation
11 of the dealer if the dealer is a partnership or corporation; or a change,
12 without the prior written approval of the ~~supplier~~; supplier (which shall
13 not be unreasonably withheld), in the location of the dealer's principal
14 place of business or added locations under the ~~agreement~~; agreement.
- 15 (5) Withdrawal of an individual proprietor, partner, major shareholder, or
16 manager of the dealership, or a substantial reduction in interest of a
17 partner or major shareholder, without the prior written consent of the
18 ~~supplier~~; or supplier.
- 19 (6) Revocation or discontinuance of any guarantee of the dealer's present
20 or future obligations to the supplier.
- 21 (7) The equipment dealer has failed to operate in the normal course of
22 business for seven consecutive days or has otherwise abandoned the
23 business.
- 24 (8) The dealer has pleaded guilty to or has been convicted of a felony
25 affecting the relationship between the dealer and the supplier.
- 26 (9) The dealer transfers an interest in the dealership, or a person with a
27 substantial interest in the ownership or control of the dealership,
28 including an individual proprietor, partner, or major shareholder,
29 withdraws from the dealership or dies, or a substantial reduction
30 occurs in the interest of a partner or major shareholder in the
31 dealership. However, good cause does not exist if the supplier consents
32 to an action described in this subdivision.
- 33 (b) Notwithstanding any agreement to the contrary, a dealer who terminates a an
34 agreement with a supplier shall notify the supplier of the termination not less than 30 90
35 days prior to the effective date of the termination.
- 36 (b1) A supplier shall provide a dealer with at least 90 days' written notice of
37 termination of the agreement and a 60-day right-to-cure the deficiency. If the deficiency
38 is cured within the allotted time, the notice is void. In the case where cancellation is
39 enacted due to market penetration, a minimum 12-month period of time shall have
40 existed where the supplier has worked with the dealer to gain the desired market share.
41 The notice shall state all reasons constituting good cause of action. The notice is not
42 required if the reason for termination is violation under the provisions of subsection (a)
43 of this section.

1 (c) Notification under this section shall be in writing and shall be by certified
2 mail or personally delivered to the recipient. It shall contain:

- 3 (1) A statement of intention to terminate the ~~franchise, dealership;~~
- 4 (2) A statement of the reasons for the ~~termination, termination;~~ and
- 5 (3) The date on which the termination takes effect.

6 **"§ 66-183. Supplier's duty to repurchase.**

7 (a) Whenever a dealer enters into a ~~franchise-an~~ agreement in which the dealer
8 agrees to maintain an inventory, and the agreement is terminated by either party, the
9 supplier shall repurchase the dealer's inventory as provided in this Article unless the
10 dealer chooses to keep the inventory. If the dealer has any outstanding debts to the
11 supplier, then the repurchase amount may be set off or credited to the retailer's account.

12 (b) Whenever a dealer enters into a ~~franchise-an~~ agreement in which the dealer
13 agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer,
14 if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the
15 option of the heir, personal representative, or guardian of the dealer, or the person who
16 succeeds to the stock of the majority stockholder, repurchase the inventory as if the
17 agreement had been terminated. The heir, personal representative, guardian, or
18 succeeding stockholder has one year from the date of the death of the dealer or majority
19 stockholder to exercise the option under this Article.

20 **"§ 66-184. Repurchase terms.**

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

24 (b) The supplier shall pay the dealer:

- 25 (1) One hundred percent (100%) of the current net cost-price of all new,
26 unused, unsold, undamaged, and complete farm, utility, and industrial
27 equipment, implements, machinery, outdoor power equipment, and
28 attachments, less a reasonable allowance for deterioration attributable
29 to weather conditions at the dealer's location; attachments;
- 30 (2) Ninety percent (90%) of the current net price of all new, unused,
31 superseded, undamaged repair parts; ~~and~~
- 32 (3) ~~Eighty five percent (85%) of the current net price of all new, unused,~~
33 ~~undamaged, superseded repair parts.~~

34 Seventy-five percent (75%) of the net cost of all specialized repair
35 tools purchased in the previous three years and fifty percent (50%) of
36 the net cost of all specialized repair tools purchased in the previous
37 four through six years pursuant to the requirements of the supplier and
38 held by the dealer on the date of termination. Such specialized repair
39 tools shall be unique to the supplier's product line and shall be in
40 complete and resalable condition. Farm implements, machinery, utility
41 and industrial equipment, and outdoor power equipment used in
42 demonstrations, including equipment leased primarily for
43 demonstration or lease, shall also be subject to repurchase under this

1 section at its agreed depreciated value, provided the equipment is in
2 new condition and has not been damaged; and

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

6 (e) ~~The supplier may, within 90 days after the date of termination of the franchise~~
7 ~~agreement, audit the dealer's books or records to verify the eligibility of the inventory~~
8 ~~for repurchase.~~

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

16 (e) The supplier shall pay the full repurchase amount to the dealer not later than
17 30 days after receipt of the inventory. If the dealer has any outstanding debts to the
18 supplier, then the repurchase amount may be credited to the dealer's account.

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

30 (g) In the event of the death of the dealer or the majority stockholder of a
31 corporation operating as a dealer, the supplier shall, at the option of the heir, repurchase
32 the inventory from the heir of the dealer or majority stockholder as if the supplier had
33 terminated the agreement. The heir shall have one year from the date of the death of the
34 dealer or majority stockholder to exercise the heir's options under this section. Nothing
35 in this section shall require the repurchase of any inventory if the heir and the supplier
36 enter into a new agreement to operate the retail dealership.

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

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

6 **"§ 66-185. Exceptions to repurchase requirement.**

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

- 8 (1) A repair part with a limited storage life or otherwise subject to
9 deterioration, such as gaskets or batteries, except for industrial "press
10 on" or industrial pneumatic tires;
11 (2) A single repair part that is priced as a set of two or more items;
12 (3) A repair part that, because of its condition, is not resalable as a new
13 part without repackaging or reconditioning;
14 (3a) Any repair part that is not in new, unused, undamaged condition;
15 (4) An item of inventory for which the dealer does not have title free of all
16 claims, liens, and encumbrances other than those of the supplier;
17 (5) Any inventory that the dealer chooses to keep;
18 (6) Any inventory that was ordered by the dealer after either party's
19 receipt of notice of termination of the ~~franchise~~ agreement; and
20 (6a) Any farm implements and machinery, construction, utility and
21 industrial equipment, outdoor power equipment, and attachments that
22 are not current models or that are not in new, unused, undamaged,
23 complete condition, provided that the equipment used in
24 demonstrations or leased, as provided in G.S. 66-184, shall be
25 considered new and unused;
26 (6b) Any farm implements and machinery, construction, utility and
27 industrial equipment, outdoor power equipment, and attachments that
28 were purchased more than 36 months prior to notice of termination of
29 the agreement; and
30 (7) Any inventory that was acquired by the dealer from a source other than
31 the supplier.

32 **"§ 66-186. Uniform commercial practice.**

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

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

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

41 **"§ 66-187. Warranty obligations.**

42 (a) Whenever a supplier and a dealer enter into a ~~franchise an~~ agreement, the
43 supplier shall pay any warranty claim made by the dealer for warranty parts or service
44 within 30 days after its approval. The supplier shall approve or disapprove a warranty

1 claim within 30 days after its receipt. If a claim is disapproved, the manufacturer,
2 wholesaler, or distributor shall notify the dealer within 30 days stating the specific
3 grounds upon which the disapproval is based. If a claim is not specifically disapproved
4 in writing within 30 days after its receipt it is approved and payment must follow within
5 30 days.

6 (b) Whenever a supplier and a dealer enter into ~~a franchise~~ an agreement, the
7 supplier shall indemnify and hold harmless the dealer against any judgment for damages
8 or any settlement agreed to by the supplier, including court costs and a reasonable
9 attorney's fee, arising out of a complaint, claim, or lawsuit including negligence, strict
10 liability, misrepresentation, breach of warranty, or rescision of the sale, to the extent the
11 judgment or settlement relates to the manufacture, assembly, or design of inventory, or
12 other conduct of the supplier beyond the dealer's control.

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

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

19 (d) Warranty work performed by the dealer shall be compensated in accordance
20 with the reasonable and customary amount of time required to complete the work,
21 expressed in hours and fractions thereof. The cost of the work shall be computed by
22 multiplying the time required to complete the work by the dealer's established customer
23 hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or
24 distributor for whom the dealer is performing warranty work of the dealer's established
25 customer hourly retail labor rate before the dealer performs any work.

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

30 (f) All parts used by the dealer in performing the warranty work shall be paid to
31 the dealer in the amount equal to the dealer's net price for the parts, plus a minimum of
32 fifteen percent (15%). The additional amount is to reimburse the dealer for the
33 reasonable cost of doing business in performing the warranty service on behalf of the
34 manufacturer, wholesaler, or distributor, including freight and handling costs incurred.

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

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

41 **"§ 66-187.1. Prohibited acts.**

42 No supplier shall:

43 (1) Coerce any dealer to accept delivery of equipment, parts, or
44 accessories which the dealer has not ordered voluntarily, except as

1 required by any applicable law, or unless the parts or accessories are
2 safety parts or accessories required by the supplier;

3 (2) Condition the sale of additional equipment to a dealer upon a
4 requirement that the dealer also purchase other goods or services,
5 except that a supplier may require the dealer to purchase those parts
6 reasonably necessary to maintain the quality of operation in the field of
7 the equipment used in the trade area;

8 (3) Coerce a dealer into refusing to purchase equipment manufactured by
9 another supplier; or

10 (4) Terminate, cancel, or fail to renew or substantially change the
11 competitive circumstances of the retail agreement based on the results
12 of any circumstance beyond the dealer's control, including a natural
13 disaster such as a sustained drought, high unemployment in the
14 dealership market area, or a labor dispute.

15 **"§ 66-188. Failure to repurchase; civil remedy.**

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

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

28 (b1) The provisions of this Article shall apply to all contracts and shall apply to all
29 agreements in effect which have no expiration date and are a continuing contract and
30 shall apply to all other contracts entered into, amended, extended, ratified, or renewed
31 after October 1, 1985. The provisions of this section shall apply to and be binding upon
32 all suppliers, all successors in interest or purchasers of assets or stock of suppliers, and
33 all receivers, trustees, or assignees of suppliers. Any contractual term restricting the
34 procedural or substantive rights of a dealer under this Article, including a choice of law
35 or choice of forum clause, is void.

36 (b2) The provisions of this section shall not be waivable in any contract or
37 agreement, and any such attempted waiver shall be null and void.

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

41 **SECTION 2.** This act becomes effective October 1, 2001.