

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 441  
HOUSE BILL 762

AN ACT TO PROVIDE FOR FRANCHISE AGREEMENTS BETWEEN DEALERS ENGAGED IN THE BUSINESS OF RETAILING FARM, UTILITY, AND INDUSTRIAL IMPLEMENTS, EQUIPMENT, ATTACHMENTS, OR REPAIR PARTS, AND WHOLESALERS, MANUFACTURERS, OR DISTRIBUTORS OF THE PRODUCTS; TO REQUIRE REPURCHASE OF INVENTORY FROM DEALERS UPON TERMINATION OF A CONTRACT; TO PROVIDE PROCEDURES; TO ESTABLISH LIMITATIONS, RIGHTS, AND CIVIL LIABILITY RELATIVE TO REPURCHASE; TO EXTEND THE RIGHT TO REQUIRE REPURCHASE OPTION TO THE HEIRS OF DEALERS; AND TO PROVIDE WARRANTY OBLIGATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 26.

"Farm Machinery Franchises.

"§ 66-180. **Definitions.**—As used in this Article, unless the context requires otherwise:

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

(2) 'Dealer' means a person engaged in the business of selling at retail farm, utility or industrial, equipment, implements, machinery, attachments, or repair parts.

(3) 'Franchise agreement' means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

(4) 'Inventory' means farm, utility, or industrial equipment, implements, machinery, attachments, or repair parts. These terms do not include heavy construction equipment .

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

(6) 'Supplier' means a wholesaler, manufacturer, or distributor who enters into a franchise agreement with a dealer.

(7) 'Termination' of a franchise agreement means the termination, cancellation, nonrenewal, or noncontinuance of the agreement.

"§ 66-181. **Usage of trade.**—The terms 'utility' and 'industrial', when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with G.S. 25-1- 205(2).

"§ 66-182. **Notice of termination of franchise agreements.**—(a) Notwithstanding any agreement to the contrary, a supplier who terminates a franchise agreement with a dealer shall notify the dealer of the termination not less than 90 days prior to the effective date of the termination; however, the supplier may immediately terminate the agreement at any time after the occurrence of any of the following events:

- (1) A petition under bankruptcy or receivership law has been filed against the dealer;
- (2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;
- (3) Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
- (4) Close out or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation; or a change, without the prior written approval of the supplier, in the location of the dealer's principal place of business under the agreement;
- (5) Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier; or
- (6) Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

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

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

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

"§ 66-183. **Supplier's duty to repurchase.**—(a) Whenever a dealer enters into a franchise agreement in which the dealer agrees to maintain an inventory, and the agreement is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this Article unless the dealer chooses to keep the inventory.

(b) Whenever a dealer enters into a franchise agreement in which the dealer agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person who

succeeds to the stock of the majority stockholder, repurchase the inventory as if the agreement had been terminated. The heir, personal representative, guardian, or succeeding stockholder has one year from the date of the death of the dealer or majority stockholder to exercise the option under this Article.

**"§ 66-184. Repurchase terms.**—(a) The supplier shall repurchase from the dealer within 90 days after termination of the franchise agreement all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement.

(b) The supplier shall pay the dealer:

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

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

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

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

**"§ 66-185. Exceptions to repurchase requirement.**—This Article does not require the repurchase from a dealer of:

- (1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial 'press on' or industrial pneumatic tires;
- (2) A single repair part that is priced as a set of two or more items;
- (3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning;
- (4) An item of inventory for which the dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier;
- (5) Any inventory that the dealer chooses to keep;
- (6) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of the franchise agreement; and
- (7) Any inventory that was acquired by the dealer from a source other than the supplier.

**"§ 66-186. Uniform commercial practice.**—(a) This Article does not affect a security interest of the supplier in the inventory of the dealer.

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

**"§ 66-187. Warranty obligations.**—(a) Whenever a supplier and a dealer enter into a franchise agreement, the supplier shall pay any warranty claim made by the dealer for warranty parts or service within 30 days after its approval. The supplier shall approve or disapprove a warranty claim within 30 days after its receipt. If a claim is not specifically disapproved in writing within 30 days after its receipt it is approved and payment must follow within 30 days.

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

**"§ 66-188. Failure to repurchase; civil remedy.**—(a) If a supplier fails or refuses to repurchase any inventory covered under the provisions of this Article within the time periods established in G.S. 66-184, the supplier is civilly liable for one hundred percent (100%) of the current net price of the inventory, any freight charges paid by the dealer, the dealer's reasonable attorney's fee and court costs, and interest on the current net price of the inventory computed at the legal rate of interest from the 91st day after termination of the franchise agreement.

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

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

Sec. 2. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 21st day of June, 1985.