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By Senators Thomas, Williams and Bronson

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1 A bill to be entitled

2 An act relating to outdoor power equipment;
3 creating ss. 686.60-686.614, F.S.; regulating
4 sales and distribution of, and dealer
5 relationships relating to, outdoor power
6 equipment; providing a short title; providing
7 legislative findings and intent; providing
8 definitions; providing application; providing
9 for warranty agreements; providing for claims
10 and compensation of dealers; providing for
11 parts availability and return; providing for
12 repurchase of inventory under certain
13 circumstances; providing for compensation for
14 inventory under certain circumstances;
15 providing for indemnification of dealers under
16 certain legal actions; specifying unlawful acts
17 and practices; specifying unenforceable
18 contracts or agreements; providing remedies;
19 providing for effect on other remedies;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Sections 686.60, 686.601, 686.602, 686.603,
25 686.604, 686.605, 686.606, 686.607, 686.608, 686.609, 686.611,
26 686.612, 686.613, and 686.614, Florida Statutes, are created
27 to read:

28 686.60 Outdoor Power Equipment Servicing
29 Manufacturers, Distributors, Wholesalers, and Dealers Act;
30 short title.--Sections 686.601-686.614 may be cited as the
31

1 "Outdoor Power Equipment Servicing Manufacturers,
2 Distributors, Wholesalers, and Dealers Act."

3 686.601 Legislative finding and intent;
4 construction.--

5 (1) The Legislature finds and declares that the
6 distribution and sale of outdoor power equipment in this state
7 vitaly affects the general economy of the state, the public
8 interest, the ecology of this state, and the public welfare
9 and that, in the exercise of its police power, it is necessary
10 to regulate the conduct of outdoor power equipment
11 manufacturers, distributors, and dealers and their
12 representatives doing business in this state in order to
13 prevent fraud, unfair business practices, unfair methods of
14 competition, impositions, and other abuses upon its citizens.

15 (2) In order to promote the intention and policies
16 announced in this section, the provisions of ss.
17 686.601-686.614 shall be liberally construed.

18 686.602 Definitions of terms used in ss.
19 686.601-686.614.--In construing ss. 686.601-686.614, unless
20 the context otherwise requires, the word, phrase, or term:

21 (1) "Distributor" or "wholesaler" means any person,
22 firm, association, corporation, or company that sells or
23 distributes new outdoor power equipment to outdoor power
24 equipment servicing dealers and that maintains distributor
25 representatives within this state.

26 (2) "Distributor branch" means a branch office
27 maintained by a distributor or wholesaler which sells or
28 distributes new outdoor power equipment to outdoor power
29 equipment servicing dealers.

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1 (3) "Distributor representative" means a
2 representative employed by a distributor, distributor branch,
3 or wholesaler.

4 (4) "Factory branch" means a branch office maintained
5 by a manufacturer which manufactures and assembles outdoor
6 power equipment for sale to distributors of outdoor power
7 equipment or to outdoor power equipment servicing dealers or
8 which is maintained for directing and supervising the
9 representatives of the manufacturer.

10 (5) "Factory representative" means a representative
11 employed by a manufacturer or factory branch for the purpose
12 of making or promoting the sale of outdoor power equipment or
13 for supervising, servicing, introducing, or contracting with
14 outdoor power equipment servicing dealers or prospective
15 dealers.

16 (6) "Fraud" means and includes actual fraud or
17 constructive fraud as normally defined, in addition to the
18 following:

19 (a) A misrepresentation in any manner, whether
20 intentionally false or arising from gross negligence, of a
21 material fact.

22 (b) A promise or representation not made honestly and
23 in good faith,

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

26 (d) Any artifice employed to deceive another.

27 (7) "Manufacturer" means any person engaged in the
28 business of manufacturing or assembling new and unused outdoor
29 power equipment.

30 (8) "New outdoor power equipment" means outdoor power
31 equipment which has not been previously sold to and put into

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1 regular use or service by any person, except to a distributor,
2 wholesaler, or outdoor power equipment servicing dealer for
3 resale.

4 (9) "Outdoor power equipment" means two-cycle and
5 four-cycle gas, diesel, and electric engines and any other
6 type of equipment used to maintain commercial, public, and
7 residential lawns and gardens or used in landscape, turf, golf
8 course, green nursery, or forestry or tree maintenance.

9 (10) "Outdoor power equipment servicing dealer" means
10 a person who sells, solicits, or advertises the sale of new
11 and used outdoor power equipment to the consuming public, but
12 does not include:

13 (a) A receiver, trustee, administrator, executor,
14 personal representative, guardian, or other person appointed
15 by or acting under judgment, decree, or order of any court.

16 (b) A public officer while performing his duties as
17 such officer.

18 (c) A person making casual or isolated sales of his
19 own outdoor power equipment not subject to sales tax under the
20 laws of this state.

21 (d) A person engaged in the auction sale of outdoor
22 power equipment.

23 (e) A dealer in used outdoor power equipment.

24 (11) "Person" means a natural person, corporation,
25 association, partnership, trust, or other business entity and,
26 in the case of a business entity, includes any other entity in
27 which the business entity has a majority interest or which it
28 effectively controls, as well as the individual officers,
29 directors, and other persons in active control of the
30 activities of each such entity.

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1 (12) "Sale" means and includes the issuance, transfer,
2 agreement for transfer, exchange, pledge, hypothecation, or
3 mortgage in any manner or form, whether by transfer in trust
4 or otherwise, of any outdoor power equipment or interest
5 therein, or of any servicing dealer agreement related thereto,
6 for a consideration and any option, subscription or other
7 contract, or solicitation, looking to a sale, or offer or
8 attempt to sell in any form, whether in oral or written form
9 for a consideration.

10 (13) "Servicing dealer" means a private business which
11 has contracted with the manufacturer or distributor to sell
12 its products at the retail level and which is required to
13 undergo training in the sale and servicing of such products.

14 (14) "Servicing dealer agreement" means a contract or
15 agreement, express or implied, oral or written, for a definite
16 or indefinite period of time, in which a manufacturer,
17 distributor, or wholesaler grants to an outdoor power
18 equipment servicing dealer permission to use a trade name,
19 service mark, trademark, or a related characteristic and in
20 which there is a common interest or community of interest in
21 the marketing of outdoor power equipment or services related
22 thereto at wholesale or retail, whether leasing, sale, or
23 otherwise.

24 686.603 Application.--

25 (1) Any person who engages directly or indirectly in
26 purposeful agreements or contracts within this state in
27 connection with the sale or advertising for sale of new
28 outdoor power equipment and parts is subject to ss.
29 686.601-686.614 and to the jurisdiction of the courts of this
30 state for violations of such sections in accordance with the
31 provisions of the laws of this state.

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1 (2) Sections 686.601-686.614 apply to all written or
2 oral agreements between a manufacturer, distributor, or
3 wholesaler with a outdoor power equipment servicing dealer,
4 including, but not limited to, the servicing dealer agreement;
5 sales of goods, services, and advertising; leases or mortgages
6 of real or personal property; promises to pay; security
7 interests; pledges; insurance contracts; advertising
8 contracts; construction or installation contracts; servicing
9 contracts; and all other such agreements in which the
10 manufacturer, distributor, or wholesaler has any direct or
11 indirect interest.

12 (3) Sections 686.601-686.614 apply to all continuing
13 contracts now in effect which have no expiration date and to
14 all other contracts entered into or renewed after October 1,
15 1997.

16 686.604 Warranty agreements; claims; compensation of
17 dealers.--

18 (1) Every manufacturer, distributor, wholesaler,
19 factory branch or division, distributor branch or division, or
20 wholesale branch or division shall provide a fair and
21 reasonable warranty agreement on any new outdoor power
22 equipment which it sells and shall fairly compensate each of
23 its outdoor power equipment servicing dealers for labor and
24 parts used in fulfilling such warranty agreements.

25 (2)(a) Each claim for payment under such warranty
26 agreements made by an outdoor power equipment servicing dealer
27 for such labor and parts shall be paid within 30 days
28 following its approval. Each such claim shall be either
29 approved or disapproved within 30 days after its receipt. When
30 any such claim is disapproved, the outdoor power equipment
31 servicing dealer who submitted it shall be notified in writing

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1 of such disapproval within such period, and such notice shall
2 state the specific grounds upon which the disapproval is
3 based.

4 (b) Any special handling of claims required of the
5 dealer by the manufacturer, distributor, wholesaler, factory
6 branch or division, distributor branch or division, or
7 wholesale branch or division, which handling is not uniformly
8 required of all dealers of that make, may be enforced only
9 after 30 days' notice in writing to the dealer and upon good
10 and sufficient reason.

11 (3)(a) The minimum lawful basis for compensating a
12 dealer for warranty work, as provided for in this section,
13 shall be calculated for labor in accordance with the
14 reasonable and customary amount of time required to complete
15 such work, expressed in hours and fractions of hours
16 multiplied by the dealer's established hourly retail labor
17 rate. Prior to filing a claim for reimbursement for warranty
18 work, the dealer must notify the applicable manufacturer,
19 distributor, or wholesaler of his hourly retail labor rate.
20 Prior to filing a claim for reimbursement for warranty work,
21 the dealer must notify the applicable manufacturer,
22 distributor, or wholesaler of the dealer's retail labor rate.

23 (b) The minimum lawful basis for compensation to the
24 dealer for parts used in fulfilling such warranty work shall
25 be at the dealer's costs for such parts, including all freight
26 and handling charges applicable to such parts, plus 15 percent
27 of the sum of such costs and charges to reimburse the dealer's
28 reasonable cost of doing business and providing such warranty
29 service on behalf of the manufacturer.

30 686.605 Parts; availability; return.--
31

1 (1) Every manufacturer, distributor, and wholesaler
2 shall specify, and every dealer shall provide and fulfill,
3 reasonable predelivery and preparation obligations for its
4 outdoor power equipment prior to delivery of the outdoor power
5 equipment to retail purchasers.

6 (2) Every manufacturer, distributor, and wholesaler
7 shall provide for the availability of repair parts throughout
8 the reasonable useful life of any outdoor power equipment
9 sold.

10 (3) Every manufacturer, distributor, and wholesaler
11 shall provide to their dealers, annually, an opportunity to
12 return a portion of their surplus parts inventories for
13 credit. The surplus procedure shall be administered as
14 follows:

15 (a) The manufacturer, distributor, or wholesaler may
16 specify, and thereupon notify their dealers of, a time period
17 of at least 60 days' duration during which the dealers may
18 submit their surplus parts lists and return their surplus
19 parts to the manufacturer, distributor, or wholesaler.

20 (b) If a manufacturer, distributor, or wholesaler has
21 not notified a dealer of a specific time period for returning
22 surplus parts within the preceding 12 months, they shall
23 authorize and allow the dealer's surplus parts return request
24 within 30 days after receipt of such request from the dealer.

25 (c) A manufacturer, distributor, or wholesaler must
26 allow surplus parts return authority on a dollar value of
27 parts equal to 6 percent of the total dollar value of parts
28 purchased from the manufacturer, distributor, or wholesaler by
29 the dealer during the 12-month period immediately preceding
30 the notification to the dealer by the manufacturer,
31 distributor, or wholesaler of the surplus parts return

1 program, or the month the dealer's return request is made,
2 whichever is applicable. However, the dealer may, at his
3 option, elect to return a dollar value of his surplus parts
4 equal to less than 6 percent of the total dollar value of
5 parts purchased by the dealer from the manufacturer,
6 distributor, or wholesaler during the preceding 12-month
7 period as provided herein.

8 (d) No obsolete or superseded part may be returned,
9 but any part listed in the manufacturer's, distributor's, or
10 wholesaler's current returnable parts list at the date of
11 notification of the surplus parts return program by the
12 manufacturer, distributor, or wholesaler to the dealer, or the
13 date of the dealer's parts return request, whichever is
14 applicable, is eligible for return and credit specified.
15 However, returned parts must be in new and unused condition
16 and must have been purchased from the manufacturer,
17 distributor, or wholesaler to whom they are returned.

18 (e) The minimum lawful credit to be allowed for
19 returned parts is 85 percent of the wholesale cost of the
20 parts as listed in the manufacturer's, distributor's, or
21 wholesaler's current returnable parts list at the date of the
22 notification of the surplus parts return program by the
23 manufacturer, wholesaler, or distributor to the dealer, or the
24 date of the dealer's parts return request, whichever is
25 higher.

26 (f) Applicable credit must be issued or furnished by
27 the manufacturer, distributor, or wholesaler to the dealer
28 within 60 days after receipt of the returned parts.

29 (g) The packing and return freight expense incurred in
30 any return of surplus parts pursuant to the terms of this
31 section shall be borne by the dealer.

1 586.606 Repurchase of inventory upon termination of
2 servicing dealer agreement.--

3 (1) Whenever any outdoor power equipment servicing
4 dealer enters into a servicing dealer agreement with a
5 manufacturer, distributor, or wholesaler in which agreement
6 the dealer agrees to maintain an inventory of outdoor power
7 equipment or repair parts and the agreement is subsequently
8 voluntarily or involuntarily terminated, the manufacturer,
9 distributor, or wholesaler shall repurchase the inventory as
10 provided in this section. However, the dealer may keep the
11 inventory if he desires. If the dealer has any outstanding
12 debts to the manufacturer, distributor, or wholesaler, then
13 the repurchase amount may be credited to the dealer's account.

14 (2) If the dealer decides not to keep the inventory,
15 the manufacturer, distributor, or wholesaler shall repurchase
16 that inventory previously purchased from him and held by the
17 dealer on the date of termination of the contract. The
18 manufacturer, distributor, or wholesaler shall pay:

19 (a) One hundred percent of the actual dealer cost,
20 including freight, of all new, unsold, undamaged, and complete
21 outdoor power equipment or other items of such equipment which
22 are resalable, less a reasonable allowance for depreciation
23 due to usage by the dealer and deterioration directly
24 attributable to weather conditions at the dealer's location;
25 and

26 (b) Eighty-five percent of the current wholesale price
27 of all new, unused, and undamaged repair parts and accessories
28 which are listed in the manufacturer's, distributor's, or
29 wholesaler's current returnable parts list. The manufacturer,
30 distributor, or wholesaler shall also pay the dealer 6 percent
31 of the current wholesale price on all new, unused, and

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1 undamaged repair parts returned to cover the cost of handling,
2 packing, and loading. However, the manufacturer, distributor,
3 or wholesaler shall have the option of performing the
4 handling, packing, and loading in lieu of paying the 6-percent
5 sum imposed in this subsection for these services; and, in
6 this event, after receipt by the dealer of the full repurchase
7 amount as provided in this section, the dealer shall make
8 available to the manufacturer, distributor, or wholesaler, at
9 the dealer's address or at the places at which the outdoor
10 power equipment is located, all outdoor power equipment
11 previously purchased by the dealer.

12 (3) Upon payment within a reasonable time of the
13 repurchase amount to the dealer, the title and right of
14 possession to the repurchased inventory shall transfer or be
15 transferred to the manufacturer, distributor, or wholesaler,
16 as the case may be.

17 (4) The provisions of this section do not require the
18 repurchase from a dealer of:

19 (a) Any repair part which has a limited storage life
20 or is otherwise subject to deterioration.

21 (b) Any single repair part which is priced as a set of
22 two or more items.

23 (c) Any repair part which because of its condition is
24 not resalable as a new part without repackaging or
25 reconditioning.

26 (d) Any inventory for which the dealer is unable to
27 furnish evidence, reasonably satisfactory to the manufacturer,
28 distributor, or wholesaler, of good title, free and clear of
29 all claims, liens, and encumbrances.

30 (e) Any inventory which the dealer desires to keep, if
31 the dealer has a contractual right to keep it.

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1 (f) Any outdoor power equipment or item of such
2 equipment which is not in new, unused, undamaged, and complete
3 condition.

4 (g) Any outdoor power equipment or item of such
5 equipment which has been used by the dealer or has
6 deteriorated because of weather conditions at the dealer's
7 location unless the manufacturer, distributor, or wholesaler
8 receives a reasonable allowance for such usage or
9 deterioration.

10 (h) Any repair parts which are not in new, unused, and
11 undamaged condition.

12 (i) Any inventory which was ordered by the dealer on
13 or after the date of receipt of the notification of
14 termination of the servicing dealer agreement.

15 (j) Any inventory which was acquired by the dealer
16 from any source other than the manufacturer, distributor, or
17 wholesaler.

18 (5) If any manufacturer, distributor, or wholesaler
19 fails or refuses to repurchase any inventory covered under the
20 provisions of this section within 60 days after termination of
21 a dealer's contract, he is civilly liable for 100 percent of
22 the current wholesale price of the inventory plus any freight
23 charges paid by the dealer, the dealer's reasonable attorney's
24 fees, court costs, and interest on the current wholesale price
25 computed at the legal interest rate provided in s. 687.01 from
26 the 61st day after termination.

27 586.607 Repurchase of inventory upon death or
28 incapacity of dealer.--

29 (1) In the event of the death or incapacity of a
30 dealer or the majority stockholder of a corporation operating
31 as a dealer, the manufacturer, distributor, or wholesaler

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1 shall, at the option of the heirs at law, if the dealer died
2 intestate, or the devisees or transferees under the terms of
3 the deceased dealer's last will and testament, if the dealer
4 died testate, repurchase the inventory from such heirs or
5 devisees as if the manufacturer, distributor, or wholesaler
6 had terminated the contract; and the inventory repurchase
7 provisions of s. 686.606 are made expressly applicable to the
8 repurchase under this section. The heirs or devisees shall
9 have 1 year from the date of the death of the dealer or
10 majority stockholder to exercise their option under this
11 section. However, nothing in this section requires the
12 repurchase of inventory if the heirs or devisees and the
13 manufacturer, distributor, or wholesaler enter into a new
14 franchise agreement to operate the retail dealership.

15 (2) This section is subject to that portion of the
16 manufacturer's, distributor's, or wholesaler's contract or
17 agreement with the dealer pertaining to death of the dealer or
18 succession to the extent such contract or agreement is not
19 inconsistent with this section.

20 686.608. Compensation for inventory upon refusal to
21 renew, termination of, or restriction on transfer of a
22 servicing dealer agreement.--It is unlawful for the
23 manufacturer, distributor, or wholesaler, without due cause,
24 to fail to renew a servicing dealer agreement on terms then
25 equally available to all their outdoor power equipment
26 servicing dealers, to terminate an agreement, or to restrict
27 the transfer of an agreement unless the dealer receives fair
28 and reasonable compensation for the inventory of the business.
29 As used in this section, the term "due cause" shall be
30 construed in accordance with the definition of due cause
31 contained in s. 686.611(3)(c)2.

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1 686.609 Indemnification of dealer with respect to
2 legal actions.--A manufacturer, distributor, or wholesaler
3 shall fully indemnify and hold harmless a dealer against any
4 losses including, but not limited to, court costs and
5 reasonable attorney's fees or damages arising out of any
6 complaint, claim, or lawsuit involving, but not limited to,
7 strict liability, negligence, misrepresentation, express or
8 implied warranty, or rescission of the sale when the
9 complaint, claim, or lawsuit relates to the manufacture,
10 assembly, or design of new items covered by ss.
11 686.601-686.614, parts or accessories, or other functions by
12 the manufacturer, distributor, or wholesaler which are beyond
13 the control of the dealer.

14 686.611 Unlawful acts and practices.--Unfair methods
15 of competition and unfair or deceptive acts or practices in
16 the conduct of the manufacturing, distribution, wholesaling,
17 sale, and advertising of outdoor power equipment are declared
18 to be unlawful.

19 (1) It is deemed a violation of this section for any
20 manufacturer, factory branch, factory representative,
21 distributor, distributor branch, distributor representative,
22 wholesaler, or outdoor power equipment servicing dealer to
23 engage in any action which is arbitrary, capricious, in bad
24 faith, or unconscionable and which causes damage in terms of
25 law or equity to any of the parties or to the public.

26 (2) It is deemed a violation of this section for a
27 manufacturer, factory branch or division, distributor,
28 distributor branch or division, wholesaler, or wholesale
29 branch or division, or officer, agent, or other representative
30 thereof, to coerce, compel, or attempt to coerce or compel any
31 outdoor power equipment servicing dealer:

1 (a) To order or accept delivery of any outdoor power
2 equipment or item of such equipment, parts or accessories
3 therefor, or other commodity or commodities which such outdoor
4 power equipment servicing dealer has not voluntarily ordered.

5 (b) To order or accept delivery of any outdoor power
6 equipment with special features, accessories, or equipment not
7 included in the base list price of such outdoor power
8 equipment as publicly advertised by the manufacturer of the
9 outdoor power equipment.

10 (3) It is deemed a violation of this section for a
11 manufacturer, factory branch or division, distributor,
12 distributor branch or division, wholesaler, or wholesale
13 branch or division, or officer, agent, or other representative
14 thereof:

15 (a) To refuse to deliver to any outdoor power
16 equipment servicing dealer having a contractual agreement for
17 the retail sale of new outdoor power equipment sold or
18 distributed by such manufacturer, factory branch or division,
19 distributor branch or division, or wholesale branch or
20 division, in reasonable quantities and within a reasonable
21 time after receipt of the dealer's order, any outdoor power
22 equipment or item of such equipment covered by such agreement
23 specifically advertised or represented by such manufacturer,
24 factory branch or division, distributor, distributor branch or
25 division, wholesaler, or wholesale branch or division to be
26 available for immediate delivery. However, the failure to
27 deliver any such outdoor power equipment or item of such
28 equipment is not considered a violation of this section if
29 such failure is due to a prudent and reasonable restriction on
30 the extension of credit by the manufacturer, distributor, or
31 wholesaler to the dealer, an act of God, a work stoppage or

1 delay due to a strike or labor difficulty, a bona fide
2 shortage of materials, a freight embargo, or another cause
3 over which the manufacturer, distributor, or wholesaler, or
4 any agent thereof, has no control whatsoever.

5 (b) To coerce, compel, or attempt to coerce or compel
6 any outdoor power equipment servicing dealer to enter into any
7 agreement, whether written or oral, supplementary to an
8 existing servicing dealer agreement with such manufacturer,
9 factory branch or division, distributor, distributor branch or
10 division, wholesaler, or wholesale branch or division, or
11 officer, agent, or other representative thereof; or to do any
12 other act prejudicial to such dealer by threatening to cancel
13 any contractual agreement existing between such manufacturer,
14 factory branch or division, distributor, distributor branch or
15 division, wholesaler, or wholesale branch or division and such
16 dealer. However, notice in good faith to any outdoor power
17 equipment servicing dealer of such dealer's violation or
18 breach of any terms or provisions of such contractual
19 agreement does not constitute a violation of this section if
20 such notice is in writing and is mailed by registered or
21 certified mail to such dealer at his current business address
22 and such notice contains the specific facts as to the dealer's
23 violation or breach of such contractual agreement.

24 (c) To terminate or cancel the selling agreement of
25 any outdoor power equipment servicing dealer without due
26 cause, as defined in subparagraph 2. The nonrenewal of a
27 selling agreement, without due cause, constitutes an unfair
28 termination or cancellation, regardless of the specified time
29 period of such selling agreement. Except when the ground for
30 such termination or cancellation falls within sub-subparagraph
31 2.c., such manufacturer, factory branch or division,

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1 distributor, distributor branch or division, wholesaler, or
2 wholesale branch or division, or officer, agent, or other
3 representative thereof, shall notify an outdoor power
4 equipment servicing dealer in writing of the termination or
5 cancellation of the selling agreement of such dealer at least
6 90 days before the effective date of the termination or
7 cancellation, stating the specific ground for such termination
8 or cancellation. In no event shall the contractual term of any
9 such selling agreement expire, without the written consent of
10 the outdoor power equipment servicing dealer involved, prior
11 to the expiration of at least 90 days following such written
12 notice. During the 90-day period, either party may, in
13 appropriate circumstances, petition a court of competent
14 jurisdiction to modify such 90-day stay or to extend it
15 pending a final determination of such proceeding on the
16 merits. The court shall have authority to grant temporary,
17 preliminary, and final injunctive relief.

18 2. As used in this subparagraph, tests for determining
19 what constitutes due cause for a manufacturer, distributor, or
20 wholesaler to terminate, cancel, or refuse to renew a
21 servicing dealer agreement include whether the dealer:

22 a. Has transferred a majority ownership interest in
23 the dealership without the manufacturer's, distributor's, or
24 wholesaler's consent;

25 b. Has made a material misrepresentation in applying
26 for or in acting under the agreement;

27 c. Has filed a voluntary petition in bankruptcy or has
28 had an involuntary petition in bankruptcy filed against the
29 dealer which has not been discharged within 60 days after the
30 filing, is in default under the provisions of a security
31

1 agreement in effect with the manufacturer, distributor, or
2 wholesaler, or is in receivership;
3 d. Has engaged in unfair business or trade practices;
4 e. Has inadequately represented the manufacturer's,
5 distributor's, or wholesaler's products with respect to sales,
6 service, or warranty work;
7 f. Has inadequate and insufficient sales and service
8 facilities and personnel;
9 g. Has failed to comply with an applicable federal,
10 state, or local licensing law;
11 h. Has been convicted of a crime, the effect of which
12 would be detrimental to the manufacturer, distributor,
13 wholesaler, or dealership;
14 i. Has failed to operate in the normal course of
15 business for 10 consecutive business days or has terminated
16 the dealer's business;
17 j. Has relocated the dealer's place of business
18 without the manufacturer's, distributor's, or wholesaler's
19 consent; or
20 k. Has failed to comply with the terms of the
21 agreement.
22 (d) To resort to or use any false or misleading
23 advertisement in connection with the dealer's business as such
24 manufacturer, factory branch or division, distributor,
25 distributor branch or division, wholesaler, or wholesale
26 branch or division, or officer, agent, or other representative
27 thereof.
28 (e) To offer to sell or to sell any new outdoor power
29 equipment or item of such equipment, or parts or accessories
30 therefor, to any other outdoor power equipment servicing
31 dealer at a lower actual price therefor than the actual price

1 offered to any other outdoor power equipment servicing dealer
2 for the same model outdoor power equipment identically
3 equipped or to utilize any device, including, but not limited
4 to, sales promotion plans or programs, which results in such
5 lesser actual price or results in a fixed price predetermined
6 solely by the manufacturer, distributor, or wholesaler.
7 However, the provisions of this paragraph do not apply to
8 sales to an outdoor power equipment servicing dealer for
9 resale to any unit or agency of the United States Government,
10 the state or any of its political subdivisions, or any
11 municipality located within this state. Further, the
12 provisions of this paragraph do not apply so long as a
13 manufacturer, distributor, or wholesaler, or any agent
14 thereof, sells or offers to sell such new outdoor power
15 equipment, parts, or accessories to all outdoor power
16 equipment servicing dealers of such manufacturer's,
17 distributor's, or wholesaler's dealers at an equal price.

18 (f) To willfully discriminate, either directly or
19 indirectly, in price, programs, or terms of sale offered to
20 dealers, when the effect of such discrimination may be to
21 substantially lessen competition or to give to one holder of
22 an agreement any economic, business, or competitive advantage
23 not offered to all holders of the same or similar agreement.

24 (g) To prevent or attempt to prevent, by contract or
25 otherwise, any outdoor power equipment servicing dealer from
26 changing the capital structure of the dealership or the means
27 by or through which the dealer finances the operation of the
28 dealership, provided the dealer at all times meets any
29 reasonable capital standards agreed to between the dealership
30 and the manufacturer, distributor, or wholesaler and provided

31

1 such change by the dealer does not result in a change in the
2 executive management of the dealership.

3 (h) To prevent or attempt to prevent, by contract or
4 otherwise, any outdoor power equipment servicing dealer or any
5 officer, member partner, or stockholder of any outdoor power
6 equipment servicing dealer from selling or transferring any
7 part of the interest of any of them to any other person or
8 persons or party or parties. However, no dealer, officer,
9 partner, or stockholder has the right to sell, transfer, or
10 assign the franchise or power of management or control
11 thereunder without the written consent of the manufacturer,
12 distributor, or wholesaler, except that such consent may not
13 be unreasonably withheld.

14 (i) To obtain money, goods, services, anything of
15 value, or any other benefit from any other person with whom
16 the outdoor power equipment servicing dealer does business or
17 employs on account of or in relation to the transactions
18 between the dealer, the manufacturer, distributor, or
19 wholesaler, and such other person.

20 (j) To require an outdoor power equipment servicing
21 dealer to assent to a release, assignment, novation, waiver,
22 or estoppel which would relieve any person from liability
23 imposed by ss. 686.601-686.614.

24 (4) It is deemed a violation of this section for an
25 outdoor power equipment servicing dealer;

26 (a) To require a retail purchaser of new outdoor power
27 equipment or item of such equipment, as a condition of sale
28 and delivery of the item or equipment, also to purchase
29 special features, appliances, equipment, parts, or accessories
30 not desired or requested by the purchaser. However, this
31 prohibition does not apply to special features, appliances,

1 equipment, parts, or accessories which are already installed
2 when the outdoor power equipment or item of outdoor power
3 equipment is received by the dealer from the manufacturer,
4 distributor, or wholesaler of such equipment or item of such
5 equipment.

6 (b) To represent and sell as new and unused any
7 outdoor power equipment or item of such equipment which has
8 been used and operated for demonstration or other purposes
9 without stating to the purchaser prior to the sale the
10 approximate amount of use the outdoor power equipment or item
11 of such equipment has experienced or undergone.

12 (c) To resort to or use any false or misleading
13 advertisement in connection with the dealer's business as such
14 outdoor power equipment servicing dealer.

15 686.612 Unenforceable contract or agreement.--Any
16 contract or servicing dealer agreement or part thereof or
17 practice thereunder which is in violation of any provision of
18 ss. 686.601-686.614 is deemed against public policy and is
19 void and unenforceable.

20 686.613 Remedies.--

21 (1) In addition to temporary, preliminary, or final
22 injunctive relief as provided in s. 686.611(3)(c)1., any
23 person who is aggrieved or injured in his business or property
24 by reason of anything forbidden in ss. 686.60-686.614 may
25 bring an action therefor in the appropriate circuit court of
26 this state and shall recover the actual damages sustained and
27 the costs of such action, including a reasonable attorney's
28 fee.

29 (2) Without regard and in addition to any other remedy
30 or relief to which a person is entitled, anyone aggrieved by a
31 violation of ss. 686.601-686.614 may bring an action to obtain

1 a declaratory judgment that an act, action, or practice
2 violates such sections and to enjoin a manufacturer,
3 distributor, wholesaler, or dealer who has violated, is
4 violating, or is otherwise likely to violate such sections.

5 (3) When such action is one of common or general
6 interest to many persons or when the parties are numerous and
7 it is impracticable to bring them all before the court, one or
8 more may bring a class action for the benefit of the whole,
9 including an action for injunctive relief.

10 (4) In an action for money damages, if a judge or jury
11 finds that the defendant acted maliciously, the judge or jury
12 may award punitive damages as permitted by state law.

13 (5) The Department of Legal Affairs or the state
14 attorney, if a violation of ss. 686.601-686.614 occurs in his
15 judicial circuit, may bring an action for injunctive or other
16 appropriate civil relief for any violation of ss.
17 686.601-686.614.

18 (6) The remedies provided in this section are in
19 addition to any other remedies provided by law or in equity.
20 686.614 Effect of act on other remedies.--Sections
21 686.601-686.614 are supplemental to and do not preempt local
22 ordinances dealing with prohibited or unlawful conduct in the
23 manufacturing, distribution, wholesaling, advertising, or sale
24 of outdoor power equipment and other items of outdoor power
25 equipment if such ordinances are not inconsistent with such
26 sections.

27 Section 2. This act shall take effect October 1, 1997.
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HOUSE SUMMARY

Provides for regulation of sales and distribution of outdoor power equipment and dealer relationships of such equipment. See bill for details.

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By the Committee on Commerce and Economic Opportunities and
Senators Thomas, Williams, Bronson and Kirkpatrick

310-1921-97

1 A bill to be entitled
2 An act relating to outdoor power equipment;
3 creating ss. 686.60-686.614, F.S.; regulating
4 sales and distribution of, and dealer
5 relationships relating to, outdoor power
6 equipment; providing a short title; providing
7 legislative findings and intent; providing
8 definitions; providing application; providing
9 for warranty agreements; providing for claims
10 and compensation of dealers; providing for
11 parts availability and return; providing for
12 repurchase of inventory under certain
13 circumstances; providing for compensation for
14 inventory under certain circumstances;
15 providing for indemnification of dealers under
16 certain legal actions; specifying unlawful acts
17 and practices; specifying unenforceable
18 contracts or agreements; providing remedies;
19 providing for effect on other remedies;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Sections 686.60, 686.601, 686.602, 686.603,
25 686.604, 686.605, 686.606, 686.607, 686.608, 686.609, 686.611,
26 686.612, 686.613, and 686.614, Florida Statutes, are created
27 to read:

28 686.60 Short title.--Sections 686.601-686.614 may be
29 cited as the "Outdoor Power Equipment Manufacturers,
30 Distributors, Wholesalers, and Servicing Dealers Act."

31

1 686.601 Legislative finding and intent;
2 construction.--

3 (1) The Legislature finds and declares that the
4 distribution and sale of outdoor power equipment in this state
5 vitaly affects the general economy of the state, the public
6 interest, the public safety, the ecology of this state, and
7 the public welfare and that, in the exercise of its police
8 power, it is necessary to regulate the conduct of outdoor
9 power equipment manufacturers, distributors, wholesalers, and
10 dealers and their representatives doing business in this state
11 in order to prevent fraud, unfair business practices, unfair
12 methods of competition, impositions, and other abuses upon its
13 citizens.

14 (2) In order to promote the intention and policies
15 announced in this section, the provisions of ss.
16 686.601-686.614 shall be liberally construed.

17 686.602 Definitions of terms used in ss.
18 686.601-686.614.--In construing ss. 686.601-686.614, unless
19 the context otherwise requires, the word, phrase, or term:

20 (i) "Dealer" or "servicing dealer" means a person who
21 sells, solicits, or advertises the sale of new or used outdoor
22 power equipment to the consuming public and services such
23 equipment or a private business which has contracted with the
24 manufacturer or distributor to sell such equipment at retail
25 and services such equipment and which is required to undergo
26 training in the sale and servicing of such equipment, but does
27 not include:

28 (a) A receiver, trustee, administrator, executor,
29 personal representative, guardian, or other person appointed
30 by or acting under judgment, decree, or order of any court.

1 (b) A public officer while performing his duties as
2 such officer.

3 (c) A person making casual or isolated sales of his
4 own outdoor power equipment not subject to sales tax under the
5 laws of this state.

6 (d) A person engaged in the auction sale of outdoor
7 power equipment.

8 (e) A dealer in used outdoor power equipment.

9 (2) "Dealer agreement" means a contract or agreement,
10 express or implied, oral or written, for a definite or
11 indefinite period of time, in which a manufacturer,
12 distributor, or wholesaler grants to a dealer permission to
13 use a trade name, service mark, trademark, or a related
14 characteristic and in which there is a common interest or
15 community of interest in the marketing of outdoor power
16 equipment or services related thereto at wholesale or retail,
17 whether leasing, sale, or otherwise.

18 (3) "Distributor" or "wholesaler" means any person,
19 firm, association, corporation, or company that sells or
20 distributes new outdoor power equipment to dealers and that
21 maintains distributor representatives within this state.

22 (4) "Distributor branch" means a branch office
23 maintained by a distributor or wholesaler which sells or
24 distributes new outdoor power equipment to dealers.

25 (5) "Distributor representative" means a
26 representative employed by a distributor, distributor branch,
27 or wholesaler.

28 (6) "Factory branch" means a branch office maintained
29 by a manufacturer which manufactures and assembles outdoor
30 power equipment for sale to distributors of outdoor power
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1 equipment or to dealers or which is maintained for directing
2 and supervising the representatives of the manufacturer.

3 (7) "Factory representative" means a representative
4 employed by a manufacturer or factory branch for the purpose
5 of making or promoting the sale of outdoor power equipment or
6 for supervising, servicing, introducing, or contracting with
7 dealers or prospective dealers.

8 (8) "Fraud" means and includes actual fraud or
9 constructive fraud as normally defined, in addition to the
10 following:

11 (a) A misrepresentation in any manner, whether
12 intentionally false or arising from gross negligence, of a
13 material fact.

14 (b) A promise or representation not made honestly and
15 in good faith.

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

18 (d) Any artifice employed to deceive another.

19 (9) "Manufacturer" means any person engaged in the
20 business of manufacturing or assembling new and unused outdoor
21 power equipment.

22 (10) "New outdoor power equipment" means outdoor power
23 equipment which has not been previously sold to and put into
24 regular use or service by any person, except to a distributor,
25 wholesaler, or dealer for resale.

26 (11) "Outdoor power equipment" means two-cycle and
27 four-cycle gas, diesel, and electric engines and any other
28 type of equipment used to maintain commercial, public, and
29 residential lawns and gardens or used in landscape, turf, golf
30 course, green nursery, or forestry or tree maintenance.

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1 (12) "Person" means a natural person, corporation,
2 association, partnership, trust, or other business entity and,
3 in the case of a business entity, includes any other entity in
4 which the business entity has a majority interest or which it
5 effectively controls, as well as the individual officers,
6 directors, and other persons in active control of the
7 activities of each such entity.

8 (13) "Sale" means and includes the issuance, transfer,
9 agreement for transfer, exchange, pledge, hypothecation, or
10 mortgage in any manner or form, whether by transfer in trust
11 or otherwise, of any outdoor power equipment or interest
12 therein, or of any dealer agreement related thereto, for a
13 consideration and any option, subscription or other contract,
14 or solicitation, looking to a sale, or offer or attempt to
15 sell in any form, whether in oral or written form for a
16 consideration.

17 686.603 Application.--

18 (1) Any person who engages directly or indirectly in
19 purposeful agreements or contracts within this state in
20 connection with the sale or advertising for sale of new
21 outdoor power equipment and parts is subject to ss.
22 686.601-686.614 and to the jurisdiction of the courts of this
23 state for violations of such sections in accordance with the
24 provisions of the laws of this state.

25 (2) Sections 686.601-686.614 apply to all written or
26 oral agreements between a manufacturer, distributor, or
27 wholesaler with a dealer, including, but not limited to, the
28 dealer agreement; sales of goods, services, and advertising;
29 leases or mortgages of real or personal property; promises to
30 pay; security interests; pledges; insurance contracts;
31 advertising contracts; construction or installation contracts;

1 servicing contracts; and all other such agreements in which
2 the manufacturer, distributor, or wholesaler has any direct or
3 indirect interest.

4 (3) Sections 686.601-686.614 apply to all continuing
5 contracts now in effect which have no expiration date and to
6 all other contracts entered into or renewed after October 1,
7 1997.

8 686.604 Warranty agreements; claims; compensation of
9 dealers.--

10 (1) Every manufacturer, distributor, wholesaler,
11 factory branch or division, distributor branch or division, or
12 wholesale branch or division shall provide a fair and
13 reasonable warranty agreement on any new outdoor power
14 equipment which it sells and shall fairly compensate each of
15 its dealers for labor and parts used in fulfilling such
16 warranty agreements.

17 (2)(a) Each claim for payment under such warranty
18 agreements made by a dealer for such labor and parts shall be
19 paid within 30 days following its approval. Each such claim
20 shall be either approved or disapproved within 30 days after
21 its receipt. When any such claim is disapproved, the dealer
22 who submitted it shall be notified in writing of such
23 disapproval within such period, and such notice shall state
24 the specific grounds upon which the disapproval is based.

25 (b) Any special handling of claims required of the
26 dealer by the manufacturer, distributor, wholesaler, factory
27 branch or division, distributor branch or division, or
28 wholesale branch or division, which handling is not uniformly
29 required of all dealers of that make, may be enforced only
30 after 30 days' notice in writing to the dealer and upon good
31 and sufficient reason.

1 (3)(a) The minimum lawful basis for compensating a
2 dealer for warranty work, as provided for in this section,
3 shall be calculated for labor in accordance with the
4 reasonable and customary amount of time required to complete
5 such work, expressed in hours and fractions of hours
6 multiplied by the dealer's established hourly retail labor
7 rate. Prior to filing a claim for reimbursement for warranty
8 work, the dealer must notify the applicable manufacturer,
9 distributor, or wholesaler of his hourly retail labor rate.

10 (b) The minimum lawful basis for compensation to the
11 dealer for parts used in fulfilling such warranty work shall
12 be at the dealer's costs for such parts, including all freight
13 and handling charges applicable to such parts, plus 15 percent
14 of the sum of such costs and charges to reimburse the dealer's
15 reasonable cost of doing business and providing such warranty
16 service on behalf of the manufacturer.

17 686.605 Parts; availability; return.--

18 (1) Every manufacturer, distributor, and wholesaler
19 shall specify, and every dealer shall provide and fulfill,
20 reasonable predelivery and preparation obligations for its
21 outdoor power equipment prior to delivery of the outdoor power
22 equipment to retail purchasers.

23 (2) Every manufacturer, distributor, and wholesaler
24 shall provide for the availability of repair parts throughout
25 the reasonable useful life of any outdoor power equipment
26 sold.

27 (3) Every manufacturer, distributor, and wholesaler
28 shall provide to their dealers, annually, an opportunity to
29 return a portion of their surplus parts inventories for
30 credit. The surplus procedure shall be administered as
31 follows:

1 (a) The manufacturer, distributor, or wholesaler may
2 specify, and thereupon notify their dealers of, a time period
3 of at least 60 days' duration during which the dealers may
4 submit their surplus parts lists and return their surplus
5 parts to the manufacturer, distributor, or wholesaler.

6 (b) If a manufacturer, distributor, or wholesaler has
7 not notified a dealer of a specific time period for returning
8 surplus parts within the preceding 12 months, they shall
9 authorize and allow the dealer's surplus parts return request
10 within 30 days after receipt of such request from the dealer.

11 (c) A manufacturer, distributor, or wholesaler must
12 allow surplus parts return authority on a dollar value of
13 parts equal to 6 percent of the total dollar value of parts
14 purchased from the manufacturer, distributor, or wholesaler by
15 the dealer during the 12-month period immediately preceding
16 the notification to the dealer by the manufacturer,
17 distributor, or wholesaler of the surplus parts return
18 program, or the month the dealer's return request is made,
19 whichever is applicable. However, the dealer may, at his
20 option, elect to return a dollar value of his surplus parts
21 equal to less than 6 percent of the total dollar value of
22 parts purchased by the dealer from the manufacturer,
23 distributor, or wholesaler during the preceding 12-month
24 period as provided herein.

25 (d) No obsolete or superseded part may be returned,
26 but any part listed in the manufacturer's, distributor's, or
27 wholesaler's current returnable parts list at the date of
28 notification of the surplus parts return program by the
29 manufacturer, distributor, or wholesaler to the dealer, or the
30 date of the dealer's parts return request, whichever is
31 applicable, is eligible for return and credit specified.

1 However, returned parts must be in new and unused condition
2 and must have been purchased from the manufacturer,
3 distributor, or wholesaler to whom they are returned.

4 (e) The minimum lawful credit to be allowed for
5 returned parts is 85 percent of the wholesale cost of the
6 parts as listed in the manufacturer's, distributor's, or
7 wholesaler's current returnable parts list at the date of the
8 notification of the surplus parts return program by the
9 manufacturer, wholesaler, or distributor to the dealer, or the
10 date of the dealer's parts return request, whichever is
11 higher.

12 (f) Applicable credit must be issued or furnished by
13 the manufacturer, distributor, or wholesaler to the dealer
14 within 60 days after receipt of the returned parts.

15 (g) The packing and return freight expense incurred in
16 any return of surplus parts pursuant to the terms of this
17 section shall be borne by the dealer.

18 686.606 Repurchase of inventory upon termination of
19 dealer agreement.--

20 (1) Whenever any dealer enters into a dealer agreement
21 with a manufacturer, distributor, or wholesaler in which
22 agreement the dealer agrees to maintain an inventory of
23 outdoor power equipment or repair parts and the agreement is
24 subsequently voluntarily or involuntarily terminated, the
25 manufacturer, distributor, or wholesaler shall repurchase the
26 inventory as provided in this section. However, the dealer
27 may keep the inventory if he desires. If the dealer has any
28 outstanding debts to the manufacturer, distributor, or
29 wholesaler, then the repurchase amount may be credited to the
30 dealer's account.

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1 (2) If the dealer decides not to keep the inventory,
2 the manufacturer, distributor, or wholesaler shall repurchase
3 that inventory previously purchased from him and held by the
4 dealer on the date of termination of the contract. The
5 manufacturer, distributor, or wholesaler shall pay:

6 (a) One hundred percent of the actual dealer cost,
7 including freight, of all new, unsold, undamaged, and complete
8 outdoor power equipment or other items of such equipment which
9 are resalable, less a reasonable allowance for depreciation
10 due to usage by the dealer and deterioration directly
11 attributable to weather conditions at the dealer's location;
12 and

13 (b) Eighty-five percent of the current wholesale price
14 of all new, unused, and undamaged repair parts and accessories
15 which are listed in the manufacturer's, distributor's, or
16 wholesaler's current returnable parts list. The manufacturer,
17 distributor, or wholesaler shall also pay the dealer 6 percent
18 of the current wholesale price on all new, unused, and
19 undamaged repair parts returned to cover the cost of handling,
20 packing, and loading. However, the manufacturer, distributor,
21 or wholesaler shall have the option of performing the
22 handling, packing, and loading in lieu of paying the 6-percent
23 sum imposed in this subsection for these services; and, in
24 this event, after receipt by the dealer of the full repurchase
25 amount as provided in this section, the dealer shall make
26 available to the manufacturer, distributor, or wholesaler, at
27 the dealer's address or at the places at which the outdoor
28 power equipment is located, all outdoor power equipment
29 previously purchased by the dealer.

30 (3) Upon payment within a reasonable time of the
31 repurchase amount to the dealer, the title and right of

1 possession to the repurchased inventory shall transfer or be
2 transferred to the manufacturer, distributor, or wholesaler,
3 as the case may be.

4 (4) The provisions of this section do not require the
5 repurchase from a dealer of:

6 (a) Any repair part which has a limited storage life
7 or is otherwise subject to deterioration.

8 (b) Any single repair part which is priced as a set of
9 two or more items.

10 (c) Any repair part which because of its condition is
11 not resalable as a new part without repackaging or
12 reconditioning.

13 (d) Any inventory for which the dealer is unable to
14 furnish evidence, reasonably satisfactory to the manufacturer,
15 distributor, or wholesaler, of good title, free and clear of
16 all claims, liens, and encumbrances.

17 (e) Any inventory which the dealer desires to keep, if
18 the dealer has a contractual right to keep it.

19 (f) Any outdoor power equipment or item of such
20 equipment which is not in new, unused, undamaged, and complete
21 condition.

22 (g) Any outdoor power equipment or item of such
23 equipment which has been used by the dealer or has
24 deteriorated because of weather conditions at the dealer's
25 location unless the manufacturer, distributor, or wholesaler
26 receives a reasonable allowance for such usage or
27 deterioration.

28 (h) Any repair parts which are not in new, unused, and
29 undamaged condition.

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1 (i) Any inventory which was ordered by the dealer on
2 or after the date of receipt of the notification of
3 termination of the dealer agreement.

4 (j) Any inventory which was acquired by the dealer
5 from any source other than the manufacturer, distributor, or
6 wholesaler.

7 (5) If any manufacturer, distributor, or wholesaler
8 fails or refuses to repurchase any inventory covered under the
9 provisions of this section within 60 days after termination of
10 a dealer's contract, he is civilly liable for 100 percent of
11 the current wholesale price of the inventory plus any freight
12 charges paid by the dealer, the dealer's reasonable attorney's
13 fees, court costs, and interest on the current wholesale price
14 computed at the legal interest rate provided in s. 687.01 from
15 the 61st day after termination.

16 686.607 Repurchase of inventory upon death or
17 incapacity of dealer.--

18 (1) In the event of the death or incapacity of a
19 dealer or the majority stockholder of a corporation operating
20 as a dealer, the manufacturer, distributor, or wholesaler
21 shall, at the option of the heirs at law, if the dealer died
22 intestate, or the devisees or transferees under the terms of
23 the deceased dealer's last will and testament, if the dealer
24 died testate, repurchase the inventory from such heirs or
25 devisees as if the manufacturer, distributor, or wholesaler
26 had terminated the contract; and the inventory repurchase
27 provisions of s. 686.606 are made expressly applicable to the
28 repurchase under this section. The heirs or devisees shall
29 have 1 year from the date of the death of the dealer or
30 majority stockholder to exercise their option under this
31 section. However, nothing in this section requires the

1 repurchase of inventory if the heirs or devisees and the
2 manufacturer, distributor, or wholesaler enter into a new
3 agreement to operate the retail dealership.

4 (2) This section is subject to that portion of the
5 manufacturer's, distributor's, or wholesaler's contract or
6 agreement with the dealer pertaining to death of the dealer or
7 succession to the extent such contract or agreement is not
8 inconsistent with this section.

9 686.608 Compensation for inventory upon refusal to
10 renew, termination of, or restriction on transfer of a dealer
11 agreement.--It is unlawful for the manufacturer, distributor,
12 or wholesaler, without due cause, to fail to renew a dealer
13 agreement on terms then equally available to all their
14 dealers, to terminate an agreement, or to restrict the
15 transfer of an agreement unless the dealer receives fair and
16 reasonable compensation for the inventory of the business. As
17 used in this section, the term "due cause" shall be construed
18 in accordance with the definition of due cause contained in s.
19 686.611(3)(c)2.

20 686.609 Indemnification of dealer with respect to
21 legal actions.--A manufacturer, distributor, or wholesaler
22 shall fully indemnify and hold harmless a dealer against any
23 losses including, but not limited to, court costs and
24 reasonable attorney's fees or damages arising out of any
25 complaint, claim, or lawsuit involving, but not limited to,
26 strict liability, negligence, misrepresentation, express or
27 implied warranty, or rescission of the sale when the
28 complaint, claim, or lawsuit relates to the manufacture,
29 assembly, or design of new items covered by ss.
30 686.601-686.614, parts or accessories, or other functions by
31

1 the manufacturer, distributor, or wholesaler which are beyond
2 the control of the dealer.

3 686.611 Unlawful acts and practices.--Unfair methods
4 of competition and unfair or deceptive acts or practices in
5 the conduct of the manufacturing, distribution, wholesaling,
6 sale, and advertising of outdoor power equipment are declared
7 to be unlawful.

8 (1) It is deemed a violation of this section for any
9 manufacturer, factory branch, factory representative,
10 distributor, distributor branch, distributor representative,
11 wholesaler, or dealer to engage in any action which is
12 arbitrary, capricious, in bad faith, or unconscionable and
13 which causes damage in terms of law or equity to any of the
14 parties or to the public.

15 (2) It is deemed a violation of this section for a
16 manufacturer, factory branch or division, distributor,
17 distributor branch or division, wholesaler, or wholesale
18 branch or division, or officer, agent, or other representative
19 thereof, to coerce, compel, or attempt to coerce or compel any
20 dealer;

21 (a) To order or accept delivery of any outdoor power
22 equipment or item of such equipment, parts or accessories
23 therefor, or other commodity or commodities which such dealer
24 has not voluntarily ordered.

25 (b) To order or accept delivery of any outdoor power
26 equipment with special features, accessories, or equipment not
27 included in the base list price of such outdoor power
28 equipment as publicly advertised by the manufacturer of the
29 outdoor power equipment.

30 (3) It is deemed a violation of this section for a
31 manufacturer, factory branch or division, distributor,

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1 distributor branch or division, wholesaler, or wholesale
2 branch or division, or officer, agent, or other representative
3 thereof:

4 (a) To refuse to deliver to any dealer having a
5 contractual agreement for the retail sale of new outdoor power
6 equipment sold or distributed by such manufacturer, factory
7 branch or division, distributor branch or division, or
8 wholesale branch or division, in reasonable quantities and
9 within a reasonable time after receipt of the dealer's order,
10 any outdoor power equipment or item of such equipment covered
11 by such agreement specifically advertised or represented by
12 such manufacturer, factory branch or division, distributor,
13 distributor branch or division, wholesaler, or wholesale
14 branch or division to be available for immediate delivery.
15 However, the failure to deliver any such outdoor power
16 equipment or item of such equipment is not considered a
17 violation of this section if such failure is due to a prudent
18 and reasonable restriction on the extension of credit by the
19 manufacturer, distributor, or wholesaler to the dealer, an act
20 of God, a work stoppage or delay due to a strike or labor
21 difficulty, a bona fide shortage of materials, a freight
22 embargo, or another cause over which the manufacturer,
23 distributor, or wholesaler, or any agent thereof, has no
24 control whatsoever.

25 (b) To coerce, compel, or attempt to coerce or compel
26 any dealer to enter into any agreement, whether written or
27 oral, supplementary to an existing dealer agreement with such
28 manufacturer, factory branch or division, distributor,
29 distributor branch or division, wholesaler, or wholesale
30 branch or division, or officer, agent, or other representative
31 thereof; or to do any other act prejudicial to such dealer by

1 threatening to cancel any contractual agreement existing
2 between such manufacturer, factory branch or division,
3 distributor, distributor branch or division, wholesaler, or
4 wholesale branch or division and such dealer. However, notice
5 in good faith to any dealer of such dealer's violation or
6 breach of any terms or provisions of such contractual
7 agreement does not constitute a violation of this section if
8 such notice is in writing and is mailed by registered or
9 certified mail to such dealer at his current business address
10 and such notice contains the specific facts as to the dealer's
11 violation or breach of such contractual agreement.

12 (c)1. To terminate or cancel the selling agreement of
13 any dealer without due cause, as defined in subparagraph 2.
14 The nonrenewal of a selling agreement, without due cause,
15 constitutes an unfair termination or cancellation, regardless
16 of the specified time period of such selling agreement. Except
17 when the ground for such termination or cancellation falls
18 within sub-subparagraph 2.c., such manufacturer, factory
19 branch or division, distributor, distributor branch or
20 division, wholesaler, or wholesale branch or division, or
21 officer, agent, or other representative thereof, shall notify
22 a dealer in writing of the termination or cancellation of the
23 selling agreement of such dealer at least 90 days before the
24 effective date of the termination or cancellation, stating the
25 specific ground for such termination or cancellation. In no
26 event shall the contractual term of any such selling agreement
27 expire, without the written consent of the dealer involved,
28 prior to the expiration of at least 90 days following such
29 written notice. During the 90-day period, either party may,
30 in appropriate circumstances, petition a court of competent
31 jurisdiction to modify such 90-day stay or to extend it

1 pending a final determination of such proceeding on the
2 merits. The court shall have authority to grant temporary,
3 preliminary, and final injunctive relief.

4 2. As used in this subparagraph, tests for determining
5 what constitutes due cause for a manufacturer, distributor, or
6 wholesaler to terminate, cancel, or refuse to renew a dealer
7 agreement include whether the dealer:

8 a. Has transferred a majority ownership interest in
9 the dealership without the manufacturer's, distributor's, or
10 wholesaler's consent;

11 b. Has made a material misrepresentation in applying
12 for or in acting under the agreement;

13 c. Has filed a voluntary petition in bankruptcy or has
14 had an involuntary petition in bankruptcy filed against the
15 dealer which has not been discharged within 60 days after the
16 filing, is in default under the provisions of a security
17 agreement in effect with the manufacturer, distributor, or
18 wholesaler, or is in receivership;

19 d. Has engaged in unfair business or trade practices;

20 e. Has inadequately represented the manufacturer's,
21 distributor's, or wholesaler's products with respect to sales,
22 service, or warranty work;

23 f. Has inadequate and insufficient sales and service
24 facilities and personnel;

25 g. Has failed to comply with an applicable federal,
26 state, or local licensing law;

27 h. Has been convicted of a crime, the effect of which
28 would be detrimental to the manufacturer, distributor,
29 wholesaler, or dealership;

30

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1 i. Has failed to operate in the normal course of
2 business for 10 consecutive business days or has terminated
3 the dealer's business;

4 j. Has relocated the dealer's place of business
5 without the manufacturer's, distributor's, or wholesaler's
6 consent; or

7 k. Has failed to comply with the terms of the
8 agreement.

9 (d) To resort to or use any false or misleading
10 advertisement in connection with the dealer's business as such
11 manufacturer, factory branch or division, distributor,
12 distributor branch or division, wholesaler, or wholesale
13 branch or division, or officer, agent, or other representative
14 thereof.

15 (e) To offer to sell or to sell any new outdoor power
16 equipment or item of such equipment, or parts or accessories
17 therefor, to any other dealer at a lower actual price therefor
18 than the actual price offered to any other dealer for the same
19 model outdoor power equipment identically equipped or to
20 utilize any device, including, but not limited to, sales
21 promotion plans or programs, which results in such lesser
22 actual price or results in a fixed price predetermined solely
23 by the manufacturer, distributor, or wholesaler. However, the
24 provisions of this paragraph do not apply to sales to a dealer
25 for resale to any unit or agency of the United States
26 Government, the state or any of its political subdivisions, or
27 any municipality located within this state. Further, the
28 provisions of this paragraph do not apply so long as a
29 manufacturer, distributor, or wholesaler, or any agent
30 thereof, sells or offers to sell such new outdoor power
31 equipment, parts, or accessories to all dealers of such

1 manufacturer's, distributor's, or wholesaler's dealers at an
2 equal price.

3 (f) To willfully discriminate, either directly or
4 indirectly, in price, programs, or terms of sale offered to
5 dealers, when the effect of such discrimination may be to
6 substantially lessen competition or to give to one holder of
7 an agreement any economic, business, or competitive advantage
8 not offered to all holders of the same or similar agreement.

9 (g) To prevent or attempt to prevent, by contract or
10 otherwise, any dealer from changing the capital structure of
11 the dealership or the means by or through which the dealer
12 finances the operation of the dealership, provided the dealer
13 at all times meets any reasonable capital standards agreed to
14 between the dealership and the manufacturer, distributor, or
15 wholesaler and provided such change by the dealer does not
16 result in a change in the executive management of the
17 dealership.

18 (h) To prevent or attempt to prevent, by contract or
19 otherwise, any dealer or any officer, member partner, or
20 stockholder of any dealer from selling or transferring any
21 part of the interest of any of them to any other person or
22 persons or party or parties. However, no dealer, officer,
23 partner, or stockholder has the right to sell, transfer, or
24 assign the agreement or power of management or control
25 thereunder without the written consent of the manufacturer,
26 distributor, or wholesaler, except that such consent may not
27 be unreasonably withheld.

28 (i) To obtain money, goods, services, anything of
29 value, or any other benefit from any other person with whom
30 the dealer does business or employs on account of or in
31 relation to the transactions between the dealer, the

1 manufacturer, distributor, or wholesaler, and such other
2 person.

3 (j) To require a dealer to assent to a release,
4 assignment, novation, waiver, or estoppel which would relieve
5 any person from liability imposed by ss. 686.601-686.614.

6 (4) It is deemed a violation of this section for a
7 dealer:

8 (a) To require a retail purchaser of new outdoor power
9 equipment or item of such equipment, as a condition of sale
10 and delivery of the item or equipment, also to purchase
11 special features, appliances, equipment, parts, or accessories
12 not desired or requested by the purchaser. However, this
13 prohibition does not apply to special features, appliances,
14 equipment, parts, or accessories which are already installed
15 when the outdoor power equipment or item of outdoor power
16 equipment is received by the dealer from the manufacturer,
17 distributor, or wholesaler of such equipment or item of such
18 equipment.

19 (b) To represent and sell as new and unused any
20 outdoor power equipment or item of such equipment which has
21 been used and operated for demonstration or other purposes
22 without stating to the purchaser prior to the sale the
23 approximate amount of use the outdoor power equipment or item
24 of such equipment has experienced or undergone.

25 (c) To resort to or use any false or misleading
26 advertisement in connection with the dealer's business as such
27 dealer.

28 686.612 Unenforceable contract or agreement.--Any
29 contract or dealer agreement or part thereof or practice
30 thereunder which is in violation of any provision of ss.
31

1 686.601-686.614 is deemed against public policy and is void
2 and unenforceable.

3 686.613 Remedies.--

4 (1) In addition to temporary, preliminary, or final
5 injunctive relief as provided in s. 686.611(3)(c)1., any
6 person who is aggrieved or injured in his business or property
7 by reason of anything forbidden in ss. 686.60-686.614 may
8 bring an action therefor in the appropriate circuit court of
9 this state and shall recover the actual damages sustained and
10 the costs of such action, including a reasonable attorney's
11 fee.

12 (2) Without regard and in addition to any other remedy
13 or relief to which a person is entitled, anyone aggrieved by a
14 violation of ss. 686.601-686.614 may bring an action to obtain
15 a declaratory judgment that an act, action, or practice
16 violates such sections and to enjoin a manufacturer,
17 distributor, wholesaler, or dealer who has violated, is
18 violating, or is otherwise likely to violate such sections.

19 (3) When such action is one of common or general
20 interest to many persons or when the parties are numerous and
21 it is impracticable to bring them all before the court, one or
22 more may bring a class action for the benefit of the whole,
23 including an action for injunctive relief.

24 (4) In an action for money damages, if a judge or jury
25 finds that the defendant acted maliciously, the judge or jury
26 may award punitive damages as permitted by state law.

27 (5) The Department of Legal Affairs or the state
28 attorney, if a violation of ss. 686.601-686.614 occurs in his
29 judicial circuit, may bring an action for injunctive or other
30 appropriate civil relief for any violation of ss.

31 686.601-686.614.

1 (6) The remedies provided in this section are in
2 addition to any other remedies provided by law or in equity.

3 686.614 Effect of act on other remedies.--Sections
4 686.601-686.614 are supplemental to and do not preempt local
5 ordinances dealing with prohibited or unlawful conduct in the
6 manufacturing, distribution, wholesaling, advertising, or sale
7 of outdoor power equipment and other items of outdoor power
8 equipment if such ordinances are not inconsistent with such
9 sections.

10 Section 2. This act shall take effect October 1, 1997.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 1594

15 The committee substitute differs from the original bill in two
16 ways. First, the committee substitute deletes the term
17 "outdoor power equipment servicing dealer." In its place, the
18 committee substitute replaces the term "outdoor power
19 equipment servicing dealer" with the term "dealer." However,
20 the definition remains the same. Second, the committee
21 substitute deletes the term "servicing dealer agreement" and
22 its definition.
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

Date March 19, 1997 Revised: _____

Subject Outdoor Power Equipment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	Givens 7	Austin ^{AK}	CM	Favorable/CS
2			GO	
3			WM	
4				
5				

I. Summary:

This committee substitute (CS) creates the "Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act." It provides for the regulation of sales and distribution of outdoor power equipment and dealer relationships of such equipment

This CS creates sections 686.60, 686.601, 686.602, 686.603, 686.604, 686.605, 686.606, 686.607, 686.608, 686.609, 686.611, 686.612, 686.613, and 686.614, Florida Statutes:

II. Present Situation:

There are no state or federal statutory provisions regulating the relationship between outdoor power equipment and dealers of such equipment. However, this CS is modeled after s 686 40, F S , which establishes the "Farm Equipment Manufacturers and Dealers Act."

III. Effect of Proposed Changes:

This CS creates the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act. The act will govern all persons who enter into contracts and agreements for the sale of new outdoor power equipment in this state, in addition to all contracts and agreements (both oral and written), between a manufacturer, wholesaler, distributor or dealer of new outdoor power equipment. Individual sections of the bill provide for the following:

Section 686 60, F.S , provides that the short title of the act is the "Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act."

Section 686.601, F S., provides for legislative intent and findings.

- “Manufacture” means any person engaged in the business of manufacturing or assembling new unused outdoor power equipment
- “New outdoor power equipment” means outdoor power equipment which has not been previously sold to and put into regular use or service by any person, except to a distributor, wholesaler, or outdoor power equipment servicing dealer for resale.
- “Outdoor power equipment” means two-cycle and four-cycle gas, diesel, and electric engines and any other type of equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance.

Section 686.603, F.S., provides which persons are subject to the provisions of the act. It also makes this act applicable to all written or oral agreements between a manufacturer, distributor, or wholesaler with a dealer. This section also provides that this act is applicable to all existing contracts without expiration dates, and to all contracts entered into or renewed after October 1, 1997.

Section 686 604, F S., provides that every manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesale branch or division is to provide fair and reasonable warranty agreements on new outdoor power equipment which it sells. Such entities shall also compensate each of their dealers for parts and labor used in fulfilling the warranty agreements.

Claims for payments under warranty agreements made by dealers for parts and labor are to be paid within 30 days of approval. In addition, such claims are to be approved or disapproved within 30 days after receipt.

This section provides for the disapproval of dealer’s claims for reimbursement for services relating to warranty obligations; special handling of such claims; and the calculation of compensation to dealers for warranty work. In addition, prior to filing a claim for reimbursement for warranty work, the dealer must notify the applicable manufacturer, distributor, or wholesaler of his or her hourly rate. Further, the minimum compensation to the dealer for parts used in fulfilling warranty work shall be the dealers cost for the parts, including freight and handling charges, plus 15 percent of the cost to reimburse the dealer’s cost of doing business and providing the warranty service on behalf of the manufacturer.

Section 686.605, F.S., governs the redelivery and preparation obligations of a manufacturer, distributor, and wholesaler to a retail purchaser; the availability of repair parts to a dealer; and the return of surplus parts from the dealer to the manufacturer. The procedure for returning surplus parts for credit on an annual basis is as follows:

- The manufacturer, distributor, or wholesaler may notify the dealer that it has 60 days in which to submit its surplus parts lists and return its surplus parts.

- If the manufacturer, distributor, or wholesaler do not notify the dealer of a specified time within 12 months in which to return surplus parts, they are to authorize the dealer's surplus parts return request within 30 days of receipt of the request from the dealer
- Up to 6% of the total dollar value of parts purchased by the dealer from the manufacturer, distributor, or wholesaler may be returned annually. Returned parts must be in new and unused condition and must have been purchased from the manufacturer, distributor, or wholesaler to whom they are returned.
- The minimum lawful credit allowed for returned parts is 85% of the wholesale cost of the part as listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list.
- The applicable credit must be issued by the manufacturer, distributor, or wholesaler, to the dealer within 60 days after receipt of the returned parts.
- The packing and return freight expenses are to be borne by the dealer.

Section 686.606, F.S., provides for, at the dealer's discretion, the repurchase by the manufacturer, distributor, or wholesaler of the dealer's inventory upon the termination of the dealer agreement. This section further provides for the payment of such inventory repurchased, title to repurchased inventory, exempt inventory, and civil liability for failure to repurchase such inventory.

Section 686.607, F.S., provides for the repurchase of a dealer's inventory by the manufacturer, distributor, or wholesaler, upon the death or incapacity of the dealer, at the option of the dealer's heirs or intestate successors.

Section 686.608, F.S., provides that it is unlawful for any manufacturer, wholesaler, or distributor, without due cause, to fail to renew, terminate, or restrict the transfer of a dealer agreement unless the dealer receives fair and reasonable compensation for the inventory of the business.

Section 686.609, F.S., provides that a manufacturer, distributor, or wholesaler, as the case may be, shall fully indemnify and hold harmless its dealers against any losses relating to the manufacture, assembly, or design of new items covered by this act, parts or accessories, or other functions by the manufacturer, distributor, or wholesaler, which are beyond the control of the dealer.

Section 686.611, F.S., provides that unfair methods of competition and deceptive acts in connection with the manufacturing, distribution, wholesaling, sale, and advertising of outdoor power equipment are declared to be unlawful. This section further defines unfair methods of competition and unfair or deceptive acts or practices. The following are applicable prohibitions

for a manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division:

- coercing, compelling, or attempting to coerce or compel any dealer to order any item against the dealers will or to accept delivery of any outdoor power equipment or equipment loaded with special features not included in the base price;
- refusing or failing to deliver in a reasonable time to its dealer, any item available for immediate delivery; or coercing, compelling, or attempting to coerce or compel any dealer to enter into agreements supplemental to an existing dealer agreement; or to do any act prejudicial to the dealer by threatening to cancel an existing agreement with the dealer;
- canceling or not renewing a selling agreement of the dealer without due cause as defined herein. Tests are included to define what constitutes "due cause" for a manufacturer, distributor, or wholesaler to cancel or not renew a selling agreement;
- using any false or misleading advertising;
- selling or offering for sale identical equipment to different dealers at different prices. Exempted are sales to government agencies;
- preventing a dealer from changing the capital structure of his dealership, though the dealer may be required to comply with reasonable capital standards as agreed to by the dealership and the manufacturer, distributor, or wholesaler;
- preventing a dealer from selling or transferring any interest to any other person, though no dealer may transfer, sell, or assign the franchise or power of management or control without the written consent of the manufacturer, distributor, or wholesaler. Such consent shall not be unreasonably withheld;
- obtaining anything of value or benefit from any other person with whom the dealer does business or employs; and
- requiring a dealer to release any person from liability imposed by this act.

The following are applicable prohibitions for a dealer:

- requiring a purchaser of new outdoor power equipment or item of such equipment to purchase special features not desired by the purchaser, unless such features were already installed when the dealer received the item;
- represent as new and unused any outdoor power equipment or item of such equipment which has been used or operated; and

- Using any false or misleading advertisement.

Section 686.612, F S , provides that any contracts, agreements, or parts thereof which are in violation of this act are void and unenforceable

Section 686.613, F S , governs the damages recoverable for injuries sustained by violations of this act (i.e , actual damages, the court costs incurred in enforcing this act, and reasonable attorney's fees) Persons harmed by violations of this act are authorized to bring a class action if appropriate, seek an injunction, and/or seek punitive damages. In addition, the Department of Legal Affairs is authorized to seek injunctive or other appropriate civil relief for violations of this act.

Section 686 614, F.S., provides that this act is supplemental to any local ordinances not inconsistent with this act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of this bill which effect existing contracts may be in violation of section 10 of Article I of the Florida Constitution and section 10 of Article I of the United States Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B Private Sector Impact:

This CS prohibits certain acts as unfair and deceptive practices. However, since there has previously been no statutory provision governing such acts and practices with respect to outdoor power equipment servicing manufacturers, distributors, wholesalers, and dealers, it is difficult to determine how many current equipment servicing agreements are in violation of the provisions of this CS

The costs resulting from the buy-back provisions contained in the bill will only be realized by a manufacturer, distributor, or wholesaler in the event he seeks to cancel an existing dealer agreement without cause or through the death or incapacitation of a dealer or major stockholder. The number of manufacturers, distributors, and wholesalers which will cancel a dealers agreement and thereby be subject to this provision is indeterminable.

C Government Sector Impact:

The Department of Legal Affairs or the state attorney may bring an action for injunctive or other appropriate civil relief for any violation of this CS. The extent to which they may do so is indeterminable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

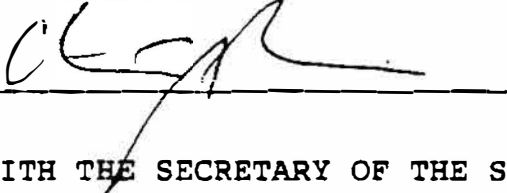
VIII. Amendments:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1594

The committee substitute differs from the original bill in two ways. First, the committee substitute deletes the term "outdoor power equipment servicing dealer." In its place, the committee substitute replaces the term "outdoor power equipment servicing dealer" with the term "dealer." However, the definition remains the same. Second, the committee substitute deletes the term "servicing dealer agreement" and its definition.

Committee on Commerce and Economic Opportunities

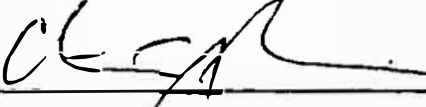
Staff Director 

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1594

The committee substitute differs from the original bill in two ways. First, the committee substitute deletes the term "outdoor power equipment servicing dealer." In its place, the committee substitute replaces the term "outdoor power equipment servicing dealer" with the term "dealer." However, the definition remains the same. Second, the committee substitute deletes the term "servicing dealer agreement" and its definition.

Committee on Commerce and Economic Opportunities

Staff Director 

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

Date April 15, 1997 Revised _____

Subject Outdoor Power Equipment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	<u>Givens</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2	_____	_____	<u>GO</u>	_____
3	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) creates the “Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act ” It provides for the regulation of sales and distribution of outdoor power equipment and dealer relationships of such equipment

This CS creates sections 686 60, 686 601, 686.602, 686.603, 686 604, 686 605, 686 606, 686.607, 686 608, 686 609, 686 611, 686 612, 686 613, and 686.614, Florida Statutes

II. Present Situation:

There are no state or federal statutory provisions regulating the relationship between outdoor power equipment and dealers of such equipment However, this CS is modeled after s 686 40, F S., which establishes the “Farm Equipment Manufacturers and Dealers Act ”

III. Effect of Proposed Changes:

This CS creates the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act The act will govern all persons who enter into contracts and agreements for the sale of new outdoor power equipment in this state, in addition to all contracts and agreements (both oral and written), between a manufacturer, wholesaler, distributor or dealer of new outdoor power equipment Individual sections of the bill provide for the following

Section 686 60, F S , provides that the short title of the act is the “Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act ”

Section 686 601, F S , provides for legislative intent and findings.

Section 686 602, F S., provides the definitions to be used in construing this act, including the following

- “Dealer” or “servicing dealer” means a person who sells, solicits, or advertises the sale of new or used outdoor power equipment to the public and services such equipment or a private business which has contracted with the manufacturer or distributor to sell such equipment at retail and services the equipment and which is required to undergo training in the sale servicing of such equipment. However, a “dealer” or “servicing dealer” does not include the following
 - a receiver, trustee, administrator, executor, personal representative, guardian, or other person appointed by or acting under judgment, decree, or order of any court
 - a public officer while performing his duties as such officer.
 - a person making casual or isolated sales of his own outdoor power equipment not subject to sales tax under the laws of this state
 - a person engaged in the auction sale of outdoor power equipment.
- “Distributor” or “wholesaler” means any person, firm, association, corporation, or company that sells or distributes new outdoor power equipment to dealers and that maintains distributor representatives within this state
- “Distributor branch” means a branch office maintained by a distributor or wholesaler which sells or distributes new outdoor power equipment to dealers
- “Distributor representative” means a representative employed by a distributor, distributor branch, or wholesaler
- “Factory branch” means a branch office maintained by a manufacturer which manufactures and assembles outdoor power equipment for sale to distributors of outdoor power equipment or to dealers or which is maintained for directing and supervising the representatives of the manufacturer
- “Factory representative” means a representative employed by a manufacturer or factory branch for the purpose of making or promoting the sale of outdoor power equipment or for supervising, servicing, introducing, or contracting with dealers or prospective dealers
- “Fraud” means and includes actual fraud or constructive fraud as normally defined, in addition to the following
 - a misrepresentation of a material fact
 - a promise or representation that is not made honestly and in good faith
 - an intentional failure to disclose a material fact.
 - any article employed to deceive another

- “Manufacture” means any person engaged in the business of manufacturing or assembling new unused outdoor power equipment
- “New outdoor power equipment” means outdoor power equipment which has not been previously sold to and put into regular use or service by any person, except to a distributor, wholesaler, or outdoor power equipment servicing dealer for resale
- “Outdoor power equipment” means two-cycle and four-cycle gas, diesel, and electric engines and any other type of equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance

Section 686 603, F.S., provides which persons are subject to the provisions of the act. It also makes this act applicable to all written or oral agreements between a manufacturer, distributor, or wholesaler with a dealer. This section also provides that this act is applicable to all existing contracts without expiration dates, and to all contracts entered into or renewed after October 1, 1997.

Section 686 604, F.S., provides that every manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesale branch or division is to provide fair and reasonable warranty agreements on new outdoor power equipment which it sells. Such entities shall also compensate each of their dealers for parts and labor used in fulfilling the warranty agreements.

Claims for payments under warranty agreements made by dealers for parts and labor are to be paid within 30 days of approval. In addition, such claims are to be approved or disapproved within 30 days after receipt.

This section provides for the disapproval of dealer’s claims for reimbursement for services relating to warranty obligations, special handling of such claims, and the calculation of compensation to dealers for warranty work. In addition, prior to filing a claim for reimbursement for warranty work, the dealer must notify the applicable manufacturer, distributor, or wholesaler of his or her hourly rate. Further, the minimum compensation to the dealer for parts used in fulfilling warranty work shall be the dealer’s cost for the parts, including freight and handling charges, plus 15 percent of the cost to reimburse the dealer’s cost of doing business and providing the warranty service on behalf of the manufacturer.

Section 686 605, F.S., governs the redelivery and preparation obligations of a manufacturer, distributor, and wholesaler to a retail purchaser, the availability of repair parts to a dealer, and the return of surplus parts from the dealer to the manufacturer. The procedure for returning surplus parts for credit on an annual basis is as follows:

- The manufacturer, distributor, or wholesaler may notify the dealer that it has 60 days in which to submit its surplus parts lists and return its surplus parts.

- If the manufacturer, distributor, or wholesaler do not notify the dealer of a specified time within 12 months in which to return surplus parts, they are to authorize the dealer's surplus parts return request within 30 days of receipt of the request from the dealer.
- Up to 6% of the total dollar value of parts purchased by the dealer from the manufacturer, distributor, or wholesaler may be returned annually. Returned parts must be in new and unused condition and must have been purchased from the manufacturer, distributor, or wholesaler to whom they are returned.
- The minimum lawful credit allowed for returned parts is 85% of the wholesale cost of the part as listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list.
- The applicable credit must be issued by the manufacturer, distributor, or wholesaler, to the dealer within 60 days after receipt of the returned parts
- The packing and return freight expenses are to be borne by the dealer

Section 686 606, F S , provides for, at the dealer's discretion, the repurchase by the manufacturer, distributor, or wholesaler of the dealer's inventory upon the termination of the dealer agreement. This section further provides for the payment of such inventory repurchased, title to repurchased inventory, exempt inventory, and civil liability for failure to repurchase such inventory.

Section 686 607, F S , provides for the repurchase of a dealer's inventory by the manufacturer, distributor, or wholesaler, upon the death or incapacity of the dealer, at the option of the dealer's heirs or intestate successors.

Section 686 608, F S , provides that it is unlawful for any manufacturer, wholesaler, or distributor, without due cause, to fail to renew, terminate, or restrict the transfer of a dealer agreement unless the dealer receives fair and reasonable compensation for the inventory of the business.

Section 686 609, F S , provides that a manufacturer, distributor, or wholesaler, as the case may be, shall fully indemnify and hold harmless its dealers against any losses relating to the manufacture, assembly, or design of new items covered by this act, parts or accessories, or other functions by the manufacturer, distributor, or wholesaler, which are beyond the control of the dealer.

Section 686 611, F S , provides that unfair methods of competition and deceptive acts in connection with the manufacturing, distribution, wholesaling, sale, and advertising of outdoor power equipment are declared to be unlawful. This section further defines unfair methods of competition and unfair or deceptive acts or practices. The following are applicable prohibitions for a manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division.

- coercing, compelling, or attempting to coerce or compel any dealer to order any item against the dealer's will or to accept delivery of any outdoor power equipment or equipment loaded with special features not included in the base price,
- refusing or failing to deliver in a reasonable time to its dealer, any item available for immediate delivery, or coercing, compelling, or attempting to coerce or compel any dealer to enter into agreements supplemental to an existing dealer agreement, or to do any act prejudicial to the dealer by threatening to cancel an existing agreement with the dealer,
- canceling or not renewing a selling agreement of the dealer without due cause as defined herein. Tests are included to define what constitutes "due cause" for a manufacturer, distributor, or wholesaler to cancel or not renew a selling agreement,
- using any false or misleading advertising,
- selling or offering for sale identical equipment to different dealers at different prices
Exempted are sales to government agencies,
- preventing a dealer from changing the capital structure of his dealership, though the dealer may be required to comply with reasonable capital standards as agreed to by the dealership and the manufacturer, distributor, or wholesaler,
- preventing a dealer from selling or transferring any interest to any other person, though no dealer may transfer, sell, or assign the franchise or power of management or control without the written consent of the manufacturer, distributor, or wholesaler. Such consent shall not be unreasonably withheld;
- obtaining anything of value or benefit from any other person with whom the dealer does business or employs, and
- requiring a dealer to release any person from liability imposed by this act

The following are applicable prohibitions for a dealer

- requiring a purchaser of new outdoor power equipment or item of such equipment to purchase special features not desired by the purchaser, unless such features were already installed when the dealer received the item,
- represent as new and unused any outdoor power equipment or item of such equipment which has been used or operated, and
- Using any false or misleading advertisement

Section 686.612, F S , provides that any contracts, agreements, or parts thereof which are in violation of this act are void and unenforceable

Section 686.613, F S , governs the damages recoverable for injuries sustained by violations of this act (i e , actual damages, the court costs incurred in enforcing this act, and reasonable attorney's fees) Persons harmed by violations of this act are authorized to bring a class action if appropriate, seek an injunction, and/or seek punitive damages In addition, the Department of Legal Affairs is authorized to seek injunctive or other appropriate civil relief for violations of this act

Section 686.614, F S , provides that this act is supplemental to any local ordinances not inconsistent with this act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None

B. Public Records/Open Meetings Issues:

None

C. Trust Funds Restrictions:

None

D. Other Constitutional Issues.

The provisions of this bill which effect existing contracts may be in violation of section 10 of Article I of the Florida Constitution and section 10 of Article I of the United States Constitution

V. Economic Impact and Fiscal Note:

A Tax/Fee Issues.

None

B Private Sector Impact

This CS prohibits certain acts as unfair and deceptive practices However, since there has previously been no statutory provision governing such acts and practices with respect to outdoor power equipment servicing manufacturers, distributors, wholesalers, and dealers, it is

difficult to determine how many current equipment servicing agreements are in violation of the provisions of this CS

The costs resulting from the buy-back provisions contained in the bill will only be realized by a manufacturer, distributor, or wholesaler in the event he seeks to cancel an existing dealer agreement without cause or through the death or incapacitation of a dealer or major stockholder. The number of manufacturers, distributors, and wholesalers which will cancel a dealer's agreement and thereby be subject to this provision is indeterminable.

C Government Sector Impact.

The Department of Legal Affairs or the state attorney may bring an action for injunctive or other appropriate civil relief for any violation of this CS. The extent to which they may do so is indeterminable.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

Date. April 16, 1997 Revised _____

Subject. Outdoor Power Equipment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	<u>Givens</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
4	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This committee substitute creates the “Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act ” It provides for the regulation of sales and distribution of outdoor power equipment and dealer relationships of such equipment

This committee substitute creates sections 686 60, 686 601, 686 602, 686 603, 686 604, 686 605, 686 606, 686 607, 686.608, 686.609, 686 611, 686 612, 686 613, and 686 614, Florida Statutes

II. Present Situation:

There are no state or federal statutory provisions regulating the relationship between outdoor power equipment and dealers of such equipment However, this committee substitute is modeled after s 686 40, F.S , which establishes the “Farm Equipment Manufacturers and Dealers Act ”

III. Effect of Proposed Changes:

This committee substitute creates the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act The act will govern all persons who enter into contracts and agreements for the sale of new outdoor power equipment in this state, in addition to all contracts and agreements (both oral and written), between a manufacturer, wholesaler, distributor or dealer of new outdoor power equipment Individual sections of the bill provide for the following

Section 686 60 of the committee substitute provides that the short title of the act is the “Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act ”

Section 686 601 of the committee substitute provides for legislative intent and findings. Specifically, the Legislature finds that the distribution and sale of outdoor power equipment vitally affects the general economy, the public interest, safety, and welfare, as well as the state ecology. The committee substitute provides that, in the exercise of its police power, it is necessary to regulate the conduct of outdoor power equipment manufacturers, distributors, wholesalers, and dealers and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses

Section 686 602 of the committee substitute provides the definitions to be used in construing this act, including the following

- “Dealer” or “servicing dealer” means a person who sells, solicits, or advertises the sale of new or used outdoor power equipment to the public and services such equipment or a private business which has contracted with the manufacturer or distributor to sell such equipment at retail and services the equipment and which is required to undergo training in the sale servicing of such equipment. However, a “dealer” or “servicing dealer” does not include the following
 - a receiver, trustee, administrator, executor, personal representative, guardian, or other person appointed by or acting under judgment, decree, or order of any court
 - a public officer while performing his duties as such officer
 - a person making casual or isolated sales of his own outdoor power equipment not subject to sales tax under the laws of this state
 - a person engaged in the auction sale of outdoor power equipment
- “Distributor” or “wholesaler” means any person, firm, association, corporation, or company that sells or distributes new outdoor power equipment to dealers and that maintains distributor representatives within this state
- “Distributor branch” means a branch office maintained by a distributor or wholesaler which sells or distributes new outdoor power equipment to dealers
- “Distributor representative” means a representative employed by a distributor, distributor branch, or wholesaler
- “Factory branch” means a branch office maintained by a manufacturer which manufactures and assembles outdoor power equipment for sale to distributors of outdoor power equipment or to dealers or which is maintained for directing and supervising the representatives of the manufacturer
- “Factory representative” means a representative employed by a manufacturer or factory branch for the purpose of making or promoting the sale of outdoor power equipment or for supervising, servicing, introducing, or contracting with dealers or prospective dealers

- “Fraud” means and includes actual fraud or constructive fraud as normally defined, in addition to the following
 - a misrepresentation of a material fact
 - a promise or representation that is not made honestly and in good faith
 - an intentional failure to disclose a material fact
 - any article employed to deceive another
- “Manufacture” means any person engaged in the business of manufacturing or assembling new unused outdoor power equipment
- “New outdoor power equipment” means outdoor power equipment which has not been previously sold to and put into regular use or service by any person, except to a distributor, wholesaler, or outdoor power equipment servicing dealer for resale
- “Outdoor power equipment” means two-cycle and four-cycle gas, diesel, and electric engines and any other type of equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance

Section 686 603 of the committee substitute provides which persons are subject to the provisions of the act. It also makes this act applicable to all written or oral agreements between a manufacturer, distributor, or wholesaler with a dealer. This section also provides that this act is applicable to all existing contracts without expiration dates, and to all contracts entered into or renewed after October 1, 1997.

Section 686 604 of the committee substitute provides that every manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesale branch or division is to provide fair and reasonable warranty agreements on new outdoor power equipment which it sells. Such entities shall also compensate each of their dealers for parts and labor used in fulfilling the warranty agreements.

Claims for payments under warranty agreements made by dealers for parts and labor are to be paid within 30 days of approval. In addition, such claims are to be approved or disapproved within 30 days after receipt.

This section provides for the disapproval of dealer’s claims for reimbursement for services relating to warranty obligations, special handling of such claims, and the calculation of compensation to dealers for warranty work. In addition, prior to filing a claim for reimbursement for warranty work, the dealer must notify the applicable manufacturer, distributor, or wholesaler of his or her hourly rate. Further, the minimum compensation to the dealer for parts used in fulfilling warranty work shall be the dealer’s cost for the parts, including freight and handling charges, plus 15 percent of the cost to reimburse the dealer’s cost of doing business and providing the warranty service on behalf of the manufacturer.

Section 686 605 of the committee substitute governs the redelivery and preparation obligations of a manufacturer, distributor, and wholesaler to a retail purchaser, the availability of repair parts to a dealer, and the return of surplus parts from the dealer to the manufacturer. The procedure for returning surplus parts for credit on an annual basis is as follows.

- The manufacturer, distributor, or wholesaler may notify the dealer that it has 60 days in which to submit its surplus parts lists and return its surplus parts
- If the manufacturer, distributor, or wholesaler do not notify the dealer of a specified time within 12 months in which to return surplus parts, they are to authorize the dealer's surplus parts return request within 30 days of receipt of the request from the dealer
- Up to 6% of the total dollar value of parts purchased by the dealer from the manufacturer, distributor, or wholesaler may be returned annually. Returned parts must be in new and unused condition and must have been purchased from the manufacturer, distributor, or wholesaler to whom they are returned
- The minimum lawful credit allowed for returned parts is 85% of the wholesale cost of the part as listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list
- The applicable credit must be issued by the manufacturer, distributor, or wholesaler, to the dealer within 60 days after receipt of the returned parts
- The packing and return freight expenses are to be borne by the dealer

Section 686 606 of the committee substitute provides for, at the dealer's discretion, the repurchase by the manufacturer, distributor, or wholesaler of the dealer's inventory upon the termination of the dealer agreement. This section further provides for the payment of such inventory repurchased, title to repurchased inventory, exempt inventory, and civil liability for failure to repurchase such inventory.

Section 686 607 of the committee substitute provides for the repurchase of a dealer's inventory by the manufacturer, distributor, or wholesaler, upon the death or incapacity of the dealer, at the option of the dealer's heirs or intestate successors.

Section 686 608 of the committee substitute provides that it is unlawful for any manufacturer, wholesaler, or distributor, without due cause, to fail to renew, terminate, or restrict the transfer of a dealer agreement unless the dealer receives fair and reasonable compensation for the inventory of the business.

Section 686 609 of the committee substitute provides that a manufacturer, distributor, or wholesaler, as the case may be, shall fully indemnify and hold harmless its dealers against any losses relating to the manufacture, assembly, or design of new items covered by this act, parts or

accessories, or other functions by the manufacturer, distributor, or wholesaler, which are beyond the control of the dealer

Section 686 611 of the committee substitute provides that unfair methods of competition and deceptive acts in connection with the manufacturing, distribution, wholesaling, sale, and advertising of outdoor power equipment are declared to be unlawful. This section further defines unfair methods of competition and unfair or deceptive acts or practices. The following are applicable prohibitions for a manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division:

- coercing, compelling, or attempting to coerce or compel any dealer to order any item against the dealer's will or to accept delivery of any outdoor power equipment or equipment loaded with special features not included in the base price,
- refusing or failing to deliver in a reasonable time to its dealer, any item available for immediate delivery, or coercing, compelling, or attempting to coerce or compel any dealer to enter into agreements supplemental to an existing dealer agreement; or to do any act prejudicial to the dealer by threatening to cancel an existing agreement with the dealer,
- canceling or not renewing a selling agreement of the dealer without due cause as defined herein. Tests are included to define what constitutes "due cause" for a manufacturer, distributor, or wholesaler to cancel or not renew a selling agreement;
- using any false or misleading advertising,
- selling or offering for sale identical equipment to different dealers at different prices. Exempted are sales to government agencies,
- preventing a dealer from changing the capital structure of his dealership, though the dealer may be required to comply with reasonable capital standards as agreed to by the dealership and the manufacturer, distributor, or wholesaler,
- preventing a dealer from selling or transferring any interest to any other person, though no dealer may transfer, sell, or assign the franchise or power of management or control without the written consent of the manufacturer, distributor, or wholesaler. Such consent shall not be unreasonably withheld,
- obtaining anything of value or benefit from any other person with whom the dealer does business or employs, and
- requiring a dealer to release any person from liability imposed by this act

The following are applicable prohibitions for a dealer

- requiring a purchaser of new outdoor power equipment or item of such equipment to purchase special features not desired by the purchaser, unless such features were already installed when the dealer received the item;
- represent as new and unused any outdoor power equipment or item of such equipment which has been used or operated, and
- Using any false or misleading advertisement

Section 686 612 of the committee substitute provides that any contracts, agreements, or parts thereof which are in violation of this act are void and unenforceable

Section 686 613 of the committee substitute governs the damages recoverable for injuries sustained by violations of this act (i e , actual damages, the court costs incurred in enforcing this act, and reasonable attorney's fees) Persons harmed by violations of this act are authorized to bring a class action if appropriate, seek an injunction, and/or seek punitive damages In addition, the Department of Legal Affairs is authorized to seek injunctive or other appropriate civil relief for violations of this act.

Section 686 614 of the committee substitute provides that this act is supplemental to any local ordinances not inconsistent with this act

IV. Constitutional Issues:

A Municipality/County Mandates Restrictions

None

B. Public Records/Open Meetings Issues

None

C. Trust Funds Restrictions.

None

D. Other Constitutional Issues

The provisions of this bill which effect existing contracts may be in violation of section 10 of Article I of the State Constitution and section 10 of Article I of the United States Constitution.

V. Economic Impact and Fiscal Note:

A Tax/Fee Issues:

None

B Private Sector Impact

This committee substitute prohibits certain acts as unfair and deceptive practices. However, since there has previously been no statutory provision governing such acts and practices with respect to outdoor power equipment servicing manufacturers, distributors, wholesalers, and dealers, it is difficult to determine how many current equipment servicing agreements are in violation of the provisions of this committee substitute.

The costs resulting from the buy-back provisions contained in the bill will only be realized by a manufacturer, distributor, or wholesaler in the event he seeks to cancel an existing dealer agreement without cause or through the death or incapacitation of a dealer or major stockholder. The number of manufacturers, distributors, and wholesalers which will cancel a dealer's agreement and thereby be subject to this provision is indeterminable.

C Government Sector Impact.

The Department of Legal Affairs or the state attorney are authorized to bring actions for injunctive or other appropriate civil relief for any violation of this committee substitute. The number of such potential actions is indeterminable at this time and, as a result, the costs involved in bringing such actions cannot be calculated.

VI. Technical Deficiencies:

None

VII. Related Issues:

Section 11 62, F.S., the Sunrise Act, provides that it is the intent of the Legislature that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose. The act further provides that no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public. In determining whether to regulate a profession or occupation, the Legislature must consider the following specific factors:

- ◆ Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare and whether the potential for harm is recognizable and not remote,
- ◆ Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability,
- ◆ Whether the public is or can be effectively protected by other means, and
- ◆ Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable

Section 11 62(4), F S , provides that proponents of legislation that provides for the regulation of a profession or occupation not already expressly subject to state regulation must provide, upon request, specific information, upon request, in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred

- ◆ The number of individuals or businesses that would be subject to regulation,
- ◆ The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct,
- ◆ Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years,
- ◆ A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law,
- ◆ A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public,
- ◆ A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- ◆ A copy of any federal legislation mandating regulation,

- ◆ An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public,
- ◆ The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- ◆ The details of any previous efforts in this state to implement regulation of the profession or occupation, and
- ◆ Any other information the agency or the committee considers relevant to the analysis of the proposed legislation

Section 11 62(5), F S , provides that the agency must provide the Legislature with information concerning the effect of the proposed legislation that provides for new regulation of a profession or occupation regarding

- ◆ The departmental resources necessary to implement and enforce the proposed regulation,
- ◆ The technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professionals and occupations under existing law; and
- ◆ If applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme

VIII. Amendments:

None

By Representative Mackey

1 A bill to be entitled

2 An act relating to outdoor power equipment;
 3 creating ss. 686.60-686.614, F.S.; regulating
 4 sales and distribution of, and dealer
 5 relationships relating to, outdoor power
 6 equipment; providing a short title; providing
 7 legislative findings and intent; providing
 8 definitions; providing application; providing
 9 for warranty agreements; providing for claims
 10 and compensation of dealers; providing for
 11 parts availability and return; providing for
 12 repurchase of inventory under certain
 13 circumstances; providing for compensation for
 14 inventory under certain circumstances;
 15 providing for indemnification of dealers under
 16 certain legal actions; specifying unlawful acts
 17 and practices; specifying unenforceable
 18 contracts or agreements; providing remedies;
 19 providing for effect on other remedies;
 20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Sections 686.60, 686.601, 686.602, 686.603,
 25 686.604, 686.605, 686.606, 686.607, 686.608, 686.609, 686.611,
 26 686.612, 686.613, and 686.614, Florida Statutes, are created
 27 to read:

28 686.60 Outdoor Power Equipment Servicing
 29 Manufacturers, Distributors, Wholesalers, and Dealers Act;
 30 short title.--Sections 686.601-686.614 may be cited as the
 31

1 "Outdoor Power Equipment Servicing Manufacturers,
2 Distributors, Wholesalers, and Dealers Act."

3 686.601 Legislative finding and intent;
4 construction.--

5 (1) The Legislature finds and declares that the
6 distribution and sale of outdoor power equipment in this state
7 vitaly affects the general economy of the state, the public
8 interest, the public safety, the ecology of this state, and
9 the public welfare and that, in the exercise of its police
10 power, it is necessary to regulate the conduct of outdoor
11 power equipment manufacturers, distributors, wholesalers, and
12 dealers and their representatives doing business in this state
13 in order to prevent fraud, unfair business practices, unfair
14 methods of competition, impositions, and other abuses upon its
15 citizens.

16 (2) In order to promote the intention and policies
17 announced in this section, the provisions of ss.
18 686.601-686.614 shall be liberally construed.

19 686.602 Definitions of terms used in ss.
20 686.601-686.614.--In construing ss. 686.601-686.614, unless
21 the context otherwise requires, the word, phrase, or term:

22 (1) "Dealer" means a person who sells, solicits, or
23 advertises the sale of new and used outdoor power equipment to
24 the consuming public and services such equipment, but does not
25 include:

26 (a) A receiver, trustee, administrator, executor,
27 personal representative, guardian, or other person appointed
28 by or acting under judgment, decree, or order of any court.

29 (b) A public officer while performing his duties as
30 such officer.

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1 (c) A person making casual or isolated sales of his
2 own outdoor power equipment not subject to sales tax under the
3 laws of this state.

4 (d) A person engaged in the auction sale of outdoor
5 power equipment.

6 (e) A dealer in used outdoor power equipment.

7 (2) "Distributor" or "wholesaler" means any person,
8 firm, association, corporation, or company that sells or
9 distributes new outdoor power equipment to dealers and that
10 maintains distributor representatives within this state.

11 (3) "Distributor branch" means a branch office
12 maintained by a distributor or wholesaler which sells or
13 distributes new outdoor power equipment to dealers.

14 (4) "Distributor representative" means a
15 representative employed by a distributor, distributor branch,
16 or wholesaler.

17 (5) "Factory branch" means a branch office maintained
18 by a manufacturer which manufactures and assembles outdoor
19 power equipment for sale to distributors of outdoor power
20 equipment or to dealers or which is maintained for directing
21 and supervising the representatives of the manufacturer.

22 (6) "Factory representative" means a representative
23 employed by a manufacturer or factory branch for the purpose
24 of making or promoting the sale of outdoor power equipment or
25 for supervising, servicing, introducing, or contracting with
26 dealers or prospective dealers.

27 (7) "Fraud" means and includes actual fraud or
28 constructive fraud as normally defined, in addition to the
29 following:

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1 (a) A misrepresentation in any manner, whether
2 intentionally false or arising from gross negligence, of a
3 material fact.

4 (b) A promise or representation not made honestly and
5 in good faith.

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

8 (d) Any artifice employed to deceive another.

9 (8) "Manufacturer" means any person engaged in the
10 business of manufacturing or assembling new and unused outdoor
11 power equipment.

12 (9) "New outdoor power equipment" means outdoor power
13 equipment which has not been previously sold to and put into
14 regular use or service by any person, except to a distributor,
15 wholesaler, or dealer for resale.

16 (10) "Outdoor power equipment" means two-cycle and
17 four-cycle gas, diesel, and electric engines and any other
18 type of equipment used to maintain commercial, public, and
19 residential lawns and gardens or used in landscape, turf, golf
20 course, green nursery, or forestry or tree maintenance.

21 (11) "Person" means a natural person, corporation,
22 association, partnership, trust, or other business entity and,
23 in the case of a business entity, includes any other entity in
24 which the business entity has a majority interest or which it
25 effectively controls, as well as the individual officers,
26 directors, and other persons in active control of the
27 activities of each such entity.

28 (12) "Sale" means and includes the issuance, transfer,
29 agreement for transfer, exchange, pledge, hypothecation, or
30 mortgage in any manner or form, whether by transfer in trust
31 or otherwise, of any outdoor power equipment or interest

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1 therein, or of any servicing dealer agreement related thereto,
2 for a consideration and any option, subscription or other
3 contract, or solicitation, looking to a sale, or offer or
4 attempt to sell in any form, whether in oral or written form
5 for a consideration.

6 (13) "Servicing dealer" means a private business which
7 has contracted with the manufacturer or distributor to sell
8 its products at the retail level and which is required to
9 undergo training in the sale and servicing of such products.

10 (14) "Servicing dealer agreement" means a contract or
11 agreement, express or implied, oral or written, for a definite
12 or indefinite period of time, in which a manufacturer,
13 distributor, or wholesaler grants to a dealer permission to
14 use a trade name, service mark, trademark, or a related
15 characteristic and in which there is a common interest or
16 community of interest in the marketing of outdoor power
17 equipment or services related thereto at wholesale or retail,
18 whether leasing, sale, or otherwise.

19 686.603 Application.--

20 (1) Any person who engages directly or indirectly in
21 purposeful agreements or contracts within this state in
22 connection with the sale or advertising for sale of new
23 outdoor power equipment and parts is subject to ss.
24 686.601-686.614 and to the jurisdiction of the courts of this
25 state for violations of such sections in accordance with the
26 provisions of the laws of this state.

27 (2) Sections 686.601-686.614 apply to all written or
28 oral agreements between a manufacturer, distributor, or
29 wholesaler with a dealer, including, but not limited to, the
30 servicing dealer agreement; sales of goods, services, and
31 advertising; leases or mortgages of real or personal property;

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1 promises to pay; security interests; pledges; insurance
2 contracts; advertising contracts; construction or installation
3 contracts; servicing contracts; and all other such agreements
4 in which the manufacturer, distributor, or wholesaler has any
5 direct or indirect interest.

6 (3) Sections 686.601-686.614 apply to all continuing
7 contracts now in effect which have no expiration date and to
8 all other contracts entered into or renewed after October 1,
9 1997.

10 686.604 Warranty agreements; claims; compensation of
11 dealers.--

12 (1) Every manufacturer, distributor, wholesaler,
13 factory branch or division, distributor branch or division, or
14 wholesale branch or division shall provide a fair and
15 reasonable warranty agreement on any new outdoor power
16 equipment which it sells and shall fairly compensate each of
17 its dealers for labor and parts used in fulfilling such
18 warranty agreements.

19 (2)(a) Each claim for payment under such warranty
20 agreements made by a dealer for such labor and parts shall be
21 paid within 30 days following its approval. Each such claim
22 shall be either approved or disapproved within 30 days after
23 its receipt. When any such claim is disapproved, the dealer
24 who submitted it shall be notified in writing of such
25 disapproval within such period, and such notice shall state
26 the specific grounds upon which the disapproval is based.

27 (b) Any special handling of claims required of the
28 dealer by the manufacturer, distributor, wholesaler, factory
29 branch or division, distributor branch or division, or
30 wholesale branch or division, which handling is not uniformly
31 required of all dealers of that make, may be enforced only

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1 after 30 days' notice in writing to the dealer and upon good
2 and sufficient reason.

3 (3)(a) The minimum lawful basis for compensating a
4 dealer for warranty work, as provided for in this section,
5 shall be calculated for labor in accordance with the
6 reasonable and customary amount of time required to complete
7 such work, expressed in hours and fractions of hours
8 multiplied by the dealer's established hourly retail labor
9 rate. Prior to filing a claim for reimbursement for warranty
10 work, the dealer must notify the applicable manufacturer,
11 distributor, or wholesaler of his hourly retail labor rate.

12 (b) The minimum lawful basis for compensation to the
13 dealer for parts used in fulfilling such warranty work shall
14 be at the dealer's costs for such parts, including all freight
15 and handling charges applicable to such parts, plus 15 percent
16 of the sum of such costs and charges to reimburse the dealer's
17 reasonable cost of doing business and providing such warranty
18 service on behalf of the manufacturer.

19 686.605 Parts; availability; return.--

20 (1) Every manufacturer, distributor, and wholesaler
21 shall specify, and every dealer shall provide and fulfill,
22 reasonable predelivery and preparation obligations for its
23 outdoor power equipment prior to delivery of the outdoor power
24 equipment to retail purchasers.

25 (2) Every manufacturer, distributor, and wholesaler
26 shall provide for the availability of repair parts throughout
27 the reasonable useful life of any outdoor power equipment
28 sold.

29 (3) Every manufacturer, distributor, and wholesaler
30 shall provide to their dealers, annually, an opportunity to
31 return a portion of their surplus parts inventories for

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1 credit. The surplus procedure shall be administered as
2 follows:

3 (a) The manufacturer, distributor, or wholesaler may
4 specify, and thereupon notify their dealers of, a time period
5 of at least 60 days' duration during which the dealers may
6 submit their surplus parts lists and return their surplus
7 parts to the manufacturer, distributor, or wholesaler.

8 (b) If a manufacturer, distributor, or wholesaler has
9 not notified a dealer of a specific time period for returning
10 surplus parts within the preceding 12 months, they shall
11 authorize and allow the dealer's surplus parts return request
12 within 30 days after receipt of such request from the dealer.

13 (c) A manufacturer, distributor, or wholesaler must
14 allow surplus parts return authority on a dollar value of
15 parts equal to 6 percent of the total dollar value of parts
16 purchased from the manufacturer, distributor, or wholesaler by
17 the dealer during the 12-month period immediately preceding
18 the notification to the dealer by the manufacturer,
19 distributor, or wholesaler of the surplus parts return
20 program, or the month the dealer's return request is made,
21 whichever is applicable. However, the dealer may, at his
22 option, elect to return a dollar value of his surplus parts
23 equal to less than 6 percent of the total dollar value of
24 parts purchased by the dealer from the manufacturer,
25 distributor, or wholesaler during the preceding 12-month
26 period as provided herein.

27 (d) No obsolete or superseded part may be returned,
28 but any part listed in the manufacturer's, distributor's, or
29 wholesaler's current returnable parts list at the date of
30 notification of the surplus parts return program by the
31 manufacturer, distributor, or wholesaler to the dealer, or the

1 date of the dealer's parts return request, whichever is
2 applicable, is eligible for return and credit specified.
3 However, returned parts must be in new and unused condition
4 and must have been purchased from the manufacturer,
5 distributor, or wholesaler to whom they are returned.

6 (e) The minimum lawful credit to be allowed for
7 returned parts is 85 percent of the wholesale cost of the
8 parts as listed in the manufacturer's, distributor's, or
9 wholesaler's current returnable parts list at the date of the
10 notification of the surplus parts return program by the
11 manufacturer, wholesaler, or distributor to the dealer, or the
12 date of the dealer's parts return request, whichever is
13 higher.

14 (f) Applicable credit must be issued or furnished by
15 the manufacturer, distributor, or wholesaler to the dealer
16 within 60 days after receipt of the returned parts.

17 (g) The packing and return freight expense incurred in
18 any return of surplus parts pursuant to the terms of this
19 section shall be borne by the dealer.

20 686.606 Repurchase of inventory upon termination of
21 servicing dealer agreement.--

22 (1) Whenever any dealer enters into a servicing dealer
23 agreement with a manufacturer, distributor, or wholesaler in
24 which agreement the dealer agrees to maintain an inventory of
25 outdoor power equipment or repair parts and the agreement is
26 subsequently voluntarily or involuntarily terminated, the
27 manufacturer, distributor, or wholesaler shall repurchase the
28 inventory as provided in this section. However, the dealer
29 may keep the inventory if he desires. If the dealer has any
30 outstanding debts to the manufacturer, distributor, or
31

1 wholesaler, then the repurchase amount may be credited to the
2 dealer's account.

3 (2) If the dealer decides not to keep the inventory,
4 the manufacturer, distributor, or wholesaler shall repurchase
5 that inventory previously purchased from him and held by the
6 dealer on the date of termination of the contract. The
7 manufacturer, distributor, or wholesaler shall pay:

8 (a) One hundred percent of the actual dealer cost,
9 including freight, of all new, unsold, undamaged, and complete
10 outdoor power equipment or other items of such equipment which
11 are resalable, less a reasonable allowance for depreciation
12 due to usage by the dealer and deterioration directly
13 attributable to weather conditions at the dealer's location;
14 and

15 (b) Eighty-five percent of the current wholesale price
16 of all new, unused, and undamaged repair parts and accessories
17 which are listed in the manufacturer's, distributor's, or
18 wholesaler's current returnable parts list. The manufacturer,
19 distributor, or wholesaler shall also pay the dealer 6 percent
20 of the current wholesale price on all new, unused, and
21 undamaged repair parts returned to cover the cost of handling,
22 packing, and loading. However, the manufacturer, distributor,
23 or wholesaler shall have the option of performing the
24 handling, packing, and loading in lieu of paying the 6-percent
25 sum imposed in this subsection for these services; and, in
26 this event, after receipt by the dealer of the full repurchase
27 amount as provided in this section, the dealer shall make
28 available to the manufacturer, distributor, or wholesaler, at
29 the dealer's address or at the places at which the outdoor
30 power equipment is located, all outdoor power equipment
31 previously purchased by the dealer.

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1 (3) Upon payment within a reasonable time of the
2 repurchase amount to the dealer, the title and right of
3 possession to the repurchased inventory shall transfer or be
4 transferred to the manufacturer, distributor, or wholesaler,
5 as the case may be.

6 (4) The provisions of this section do not require the
7 repurchase from a dealer of:

8 (a) Any repair part which has a limited storage life
9 or is otherwise subject to deterioration.

10 (b) Any single repair part which is priced as a set of
11 two or more items.

12 (c) Any repair part which because of its condition is
13 not resalable as a new part without repackaging or
14 reconditioning.

15 (d) Any inventory for which the dealer is unable to
16 furnish evidence, reasonably satisfactory to the manufacturer,
17 distributor, or wholesaler, of good title, free and clear of
18 all claims, liens, and encumbrances.

19 (e) Any inventory which the dealer desires to keep, if
20 the dealer has a contractual right to keep it

21 (f) Any outdoor power equipment or item of such
22 equipment which is not in new, unused, undamaged, and complete
23 condition.

24 (g) Any outdoor power equipment or item of such
25 equipment which has been used by the dealer or has
26 deteriorated because of weather conditions at the dealer's
27 location unless the manufacturer, distributor, or wholesaler
28 receives a reasonable allowance for such usage or
29 deterioration.

30 (h) Any repair parts which are not in new, unused, and
31 undamaged condition.

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1 (i) Any inventory which was ordered by the dealer on
2 or after the date of receipt of the notification of
3 termination of the servicing dealer agreement.

4 (j) Any inventory which was acquired by the dealer
5 from any source other than the manufacturer, distributor, or
6 wholesaler.

7 (5) If any manufacturer, distributor, or wholesaler
8 fails or refuses to repurchase any inventory covered under the
9 provisions of this section within 60 days after termination of
10 a dealer's contract, he is civilly liable for 100 percent of
11 the current wholesale price of the inventory plus any freight
12 charges paid by the dealer, the dealer's reasonable attorney's
13 fees, court costs, and interest on the current wholesale price
14 computed at the legal interest rate provided in s. 687.01 from
15 the 61st day after termination.

16 686.607 Repurchase of inventory upon death or
17 incapacity of dealer.--

18 (1) In the event of the death or incapacity of a
19 dealer or the majority stockholder of a corporation operating
20 as a dealer, the manufacturer, distributor, or wholesaler
21 shall, at the option of the heirs at law, if the dealer died
22 intestate, or the devisees or transferees under the terms of
23 the deceased dealer's last will and testament, if the dealer
24 died testate, repurchase the inventory from such heirs or
25 devisees as if the manufacturer, distributor, or wholesaler
26 had terminated the contract; and the inventory repurchase
27 provisions of s. 686.606 are made expressly applicable to the
28 repurchase under this section. The heirs or devisees shall
29 have 1 year from the date of the death of the dealer or
30 majority stockholder to exercise their option under this
31 section. However, nothing in this section requires the

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1 repurchase of inventory if the heirs or devisees and the
2 manufacturer, distributor, or wholesaler enter into a new
3 agreement to operate the retail dealership.

4 (2) This section is subject to that portion of the
5 manufacturer's, distributor's, or wholesaler's contract or
6 agreement with the dealer pertaining to death of the dealer or
7 succession to the extent such contract or agreement is not
8 inconsistent with this section.

9 686.608 Compensation for inventory upon refusal to
10 renew, termination of, or restriction on transfer of a
11 servicing dealer agreement.--It is unlawful for the
12 manufacturer, distributor, or wholesaler, without due cause,
13 to fail to renew a servicing dealer agreement on terms then
14 equally available to all their dealers, to terminate an
15 agreement, or to restrict the transfer of an agreement unless
16 the dealer receives fair and reasonable compensation for the
17 inventory of the business. As used in this section, the term
18 "due cause" shall be construed in accordance with the
19 definition of due cause contained in s. 686.611(3)(c)2.

20 686.609 Indemnification of dealer with respect to
21 legal actions.--A manufacturer, distributor, or wholesaler
22 shall fully indemnify and hold harmless a dealer against any
23 losses including, but not limited to, court costs and
24 reasonable attorney's fees or damages arising out of any
25 complaint, claim, or lawsuit involving, but not limited to,
26 strict liability, negligence, misrepresentation, express or
27 implied warranty, or rescission of the sale when the
28 complaint, claim, or lawsuit relates to the manufacture,
29 assembly, or design of new items covered by ss.

30 686.601-686.614, parts or accessories, or other functions by
31

1 the manufacturer, distributor, or wholesaler which are beyond
2 the control of the dealer.

3 686.611 Unlawful acts and practices.--Unfair methods
4 of competition and unfair or deceptive acts or practices in
5 the conduct of the manufacturing, distribution, wholesaling,
6 sale, and advertising of outdoor power equipment are declared
7 to be unlawful.

8 (1) It is deemed a violation of this section for any
9 manufacturer, factory branch, factory representative,
10 distributor, distributor branch, distributor representative,
11 wholesaler, or dealer to engage in any action which is
12 arbitrary, capricious, in bad faith, or unconscionable and
13 which causes damage in terms of law or equity to any of the
14 parties or to the public.

15 (2) It is deemed a violation of this section for a
16 manufacturer, factory branch or division, distributor,
17 distributor branch or division, wholesaler, or wholesale
18 branch or division, or officer, agent, or other representative
19 thereof, to coerce, compel, or attempt to coerce or compel any
20 dealer:

21 (a) To order or accept delivery of any outdoor power
22 equipment or item of such equipment, parts or accessories
23 therefor, or other commodity or commodities which such dealer
24 has not voluntarily ordered.

25 (b) To order or accept delivery of any outdoor power
26 equipment with special features, accessories, or equipment not
27 included in the base list price of such outdoor power
28 equipment as publicly advertised by the manufacturer of the
29 outdoor power equipment.

30 (3) It is deemed a violation of this section for a
31 manufacturer, factory branch or division, distributor,

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1 distributor branch or division, wholesaler, or wholesale
2 branch or division, or officer, agent, or other representative
3 thereof;

4 (a) To refuse to deliver to any dealer having a
5 contractual agreement for the retail sale of new outdoor power
6 equipment sold or distributed by such manufacturer, factory
7 branch or division, distributor branch or division, or
8 wholesale branch or division, in reasonable quantities and
9 within a reasonable time after receipt of the dealer's order,
10 any outdoor power equipment or item of such equipment covered
11 by such agreement specifically advertised or represented by
12 such manufacturer, factory branch or division, distributor,
13 distributor branch or division, wholesaler, or wholesale
14 branch or division to be available for immediate delivery.
15 However, the failure to deliver any such outdoor power
16 equipment or item of such equipment is not considered a
17 violation of this section if such failure is due to a prudent
18 and reasonable restriction on the extension of credit by the
19 manufacturer, distributor, or wholesaler to the dealer, an act
20 of God, a work stoppage or delay due to a strike or labor
21 difficulty, a bona fide shortage of materials, a freight
22 embargo, or another cause over which the manufacturer,
23 distributor, or wholesaler, or any agent thereof, has no
24 control whatsoever.

25 (b) To coerce, compel, or attempt to coerce or compel
26 any dealer to enter into any agreement, whether written or
27 oral, supplementary to an existing servicing dealer agreement
28 with such manufacturer, factory branch or division,
29 distributor, distributor branch or division, wholesaler, or
30 wholesale branch or division, or officer, agent, or other
31 representative thereof; or to do any other act prejudicial to

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1 such dealer by threatening to cancel any contractual agreement
2 existing between such manufacturer, factory branch or
3 division, distributor, distributor branch or division,
4 wholesaler, or wholesale branch or division and such dealer.
5 However, notice in good faith to any dealer of such dealer's
6 violation or breach of any terms or provisions of such
7 contractual agreement does not constitute a violation of this
8 section if such notice is in writing and is mailed by
9 registered or certified mail to such dealer at his current
10 business address and such notice contains the specific facts
11 as to the dealer's violation or breach of such contractual
12 agreement.

13 (c)1. To terminate or cancel the selling agreement of
14 any dealer without due cause, as defined in subparagraph 2.
15 The nonrenewal of a selling agreement, without due cause,
16 constitutes an unfair termination or cancellation, regardless
17 of the specified time period of such selling agreement. Except
18 when the ground for such termination or cancellation falls
19 within sub-subparagraph 2.c., such manufacturer, factory
20 branch or division, distributor, distributor branch or
21 division, wholesaler, or wholesale branch or division, or
22 officer, agent, or other representative thereof, shall notify
23 a dealer in writing of the termination or cancellation of the
24 selling agreement of such dealer at least 90 days before the
25 effective date of the termination or cancellation, stating the
26 specific ground for such termination or cancellation. In no
27 event shall the contractual term of any such selling agreement
28 expire, without the written consent of the dealer involved,
29 prior to the expiration of at least 90 days following such
30 written notice. During the 90-day period, either party may,
31 in appropriate circumstances, petition a court of competent

1 jurisdiction to modify such 90-day stay or to extend it
2 pending a final determination of such proceeding on the
3 merits. The court shall have authority to grant temporary,
4 preliminary, and final injunctive relief.

5 2. As used in this subparagraph, tests for determining
6 what constitutes due cause for a manufacturer, distributor, or
7 wholesaler to terminate, cancel, or refuse to renew a
8 servicing dealer agreement include whether the dealer:

9 a. Has transferred a majority ownership interest in
10 the dealership without the manufacturer's, distributor's, or
11 wholesaler's consent;

12 b. Has made a material misrepresentation in applying
13 for or in acting under the agreement;

14 c. Has filed a voluntary petition in bankruptcy or has
15 had an involuntary petition in bankruptcy filed against the
16 dealer which has not been discharged within 60 days after the
17 filing, is in default under the provisions of a security
18 agreement in effect with the manufacturer, distributor, or
19 wholesaler, or is in receivership;

20 d. Has engaged in unfair business or trade practices;

21 e. Has inadequately represented the manufacturer's,
22 distributor's, or wholesaler's products with respect to sales,
23 service, or warranty work;

24 f. Has inadequate and insufficient sales and service
25 facilities and personnel;

26 g. Has failed to comply with an applicable federal,
27 state, or local licensing law;

28 h. Has been convicted of a crime, the effect of which
29 would be detrimental to the manufacturer, distributor,
30 wholesaler, or dealership;

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1 i. Has failed to operate in the normal course of
2 business for 10 consecutive business days or has terminated
3 the dealer's business;

4 i. Has relocated the dealer's place of business
5 without the manufacturer's, distributor's, or wholesaler's
6 consent; or

7 k. Has failed to comply with the terms of the
8 agreement.

9 (d) To resort to or use any false or misleading
10 advertisement in connection with the dealer's business as such
11 manufacturer, factory branch or division, distributor,
12 distributor branch or division, wholesaler, or wholesale
13 branch or division, or officer, agent, or other representative
14 thereof.

15 (e) To offer to sell or to sell any new outdoor power
16 equipment or item of such equipment, or parts or accessories
17 therefor, to any other dealer at a lower actual price therefor
18 than the actual price offered to any other dealer for the same
19 model outdoor power equipment identically equipped or to
20 utilize any device, including, but not limited to, sales
21 promotion plans or programs, which results in such lesser
22 actual price or results in a fixed price predetermined solely
23 by the manufacturer, distributor, or wholesaler. However, the
24 provisions of this paragraph do not apply to sales to a dealer
25 for resale to any unit or agency of the United States
26 Government, the state or any of its political subdivisions, or
27 any municipality located within this state. Further, the
28 provisions of this paragraph do not apply so long as a
29 manufacturer, distributor, or wholesaler, or any agent
30 thereof, sells or offers to sell such new outdoor power
31 equipment, parts, or accessories to all dealers of such

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1 manufacturer's, distributor's, or wholesaler's dealers at an
2 equal price.

3 (f) To willfully discriminate, either directly or
4 indirectly, in price, programs, or terms of sale offered to
5 dealers, when the effect of such discrimination may be to
6 substantially lessen competition or to give to one holder of
7 an agreement any economic, business, or competitive advantage
8 not offered to all holders of the same or similar agreement.

9 (g) To prevent or attempt to prevent, by contract or
10 otherwise, any dealer from changing the capital structure of
11 the dealership or the means by or through which the dealer
12 finances the operation of the dealership, provided the dealer
13 at all times meets any reasonable capital standards agreed to
14 between the dealership and the manufacturer, distributor, or
15 wholesaler and provided such change by the dealer does not
16 result in a change in the executive management of the
17 dealership.

18 (h) To prevent or attempt to prevent, by contract or
19 otherwise, any dealer or any officer, member partner, or
20 stockholder of any dealer from selling or transferring any
21 part of the interest of any of them to any other person or
22 persons or party or parties. However, no dealer, officer,
23 partner, or stockholder has the right to sell, transfer, or
24 assign the agreement or power of management or control
25 thereunder without the written consent of the manufacturer,
26 distributor, or wholesaler, except that such consent may not
27 be unreasonably withheld.

28 (i) To obtain money, goods, services, anything of
29 value, or any other benefit from any other person with whom
30 the dealer does business or employs on account of or in
31 relation to the transactions between the dealer, the

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1 manufacturer, distributor, or wholesaler, and such other
2 person.

3 (1) To require a dealer to assent to a release,
4 assignment, novation, waiver, or estoppel which would relieve
5 any person from liability imposed by ss. 686.601-686.614.

6 (4) It is deemed a violation of this section for a
7 dealer:

8 (a) To require a retail purchaser of new outdoor power
9 equipment or item of such equipment, as a condition of sale
10 and delivery of the item or equipment, also to purchase
11 special features, appliances, equipment, parts, or accessories
12 not desired or requested by the purchaser. However, this
13 prohibition does not apply to special features, appliances,
14 equipment, parts, or accessories which are already installed
15 when the outdoor power equipment or item of outdoor power
16 equipment is received by the dealer from the manufacturer,
17 distributor, or wholesaler of such equipment or item of such
18 equipment.

19 (b) To represent and sell as new and unused any
20 outdoor power equipment or item of such equipment which has
21 been used and operated for demonstration or other purposes
22 without stating to the purchaser prior to the sale the
23 approximate amount of use the outdoor power equipment or item
24 of such equipment has experienced or undergone.

25 (c) To resort to or use any false or misleading
26 advertisement in connection with the dealer's business as such
27 dealer.

28 686.612 Unenforceable contract or agreement.--Any
29 contract or servicing dealer agreement or part thereof or
30 practice thereunder which is in violation of any provision of
31

1 ss. 686.601-686.614 is deemed against public policy and is
2 void and unenforceable.

3 686.613 Remedies.--

4 (1) In addition to temporary, preliminary, or final
5 injunctive relief as provided in s. 686.611(3)(c)1., any
6 person who is aggrieved or injured in his business or property
7 by reason of anything forbidden in ss. 686.60-686.614 may
8 bring an action therefor in the appropriate circuit court of
9 this state and shall recover the actual damages sustained and
10 the costs of such action, including a reasonable attorney's
11 fee.

12 (2) Without regard and in addition to any other remedy
13 or relief to which a person is entitled, anyone aggrieved by a
14 violation of ss. 686.601-686.614 may bring an action to obtain
15 a declaratory judgment that an act, action, or practice
16 violates such sections and to enjoin a manufacturer,
17 distributor, wholesaler, or dealer who has violated, is
18 violating, or is otherwise likely to violate such sections.

19 (3) When such action is one of common or general
20 interest to many persons or when the parties are numerous and
21 it is impracticable to bring them all before the court, one or
22 more may bring a class action for the benefit of the whole,
23 including an action for injunctive relief.

24 (4) In an action for money damages, if a judge or jury
25 finds that the defendant acted maliciously, the judge or jury
26 may award punitive damages as permitted by state law.

27 (5) The Department of Legal Affairs or the state
28 attorney, if a violation of ss. 686.601-686.614 occurs in his
29 judicial circuit, may bring an action for injunctive or other
30 appropriate civil relief for any violation of ss.
31 686.601-686.614.

1 (6) The remedies provided in this section are in
2 addition to any other remedies provided by law or in equity.

3 686.614 Effect of act on other remedies.--Sections
4 686.601-686.614 are supplemental to and do not preempt local
5 ordinances dealing with prohibited or unlawful conduct in the
6 manufacturing, distribution, wholesaling, advertising, or sale
7 of outdoor power equipment and other items of outdoor power
8 equipment if such ordinances are not inconsistent with such
9 sections.

10 Section 2. This act shall take effect October 1, 1997.

11 *****

12 HOUSE SUMMARY

13
14 Provides for regulation of sales and distribution of
15 outdoor power equipment and dealer relationships of such
16 equipment. See bill for details.

17
18
19 -----
20 This publication was produced at an average cost of 1.12 cents
21 per single page in compliance with the Rules and for the
22 information of members of the Legislature and the public.
23 -----

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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #. HB 801
RELATING TO Outdoor Power Equipment
SPONSOR(S): Representative Mackey and others
STATUTE(S) AFFECTED: ss. 686.60 -- 686 614, F S.
COMPANION BILL(S). SB 1594 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS
(2) GOVERNMENTAL RULES & REGULATIONS
(3) FINANCE & TAXATION
(4)
(5)

I SUMMARY

This bill creates the Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act (Act). For purposes of the Act, outdoor power equipment (OPE) is defined as motorized "equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance." The Act will most directly affect the relationship between an OPE dealer and its respective manufacturer, distributor, or wholesaler. By expanding the present statutory rights held by dealers and consumer users of new outdoor power equipment, the Act is intended to provide added protection against fraud and unfair business practices. This bill creates significant obligations and rights relative to OPE warranties, repurchase of OPE inventories, servicing agreements, and certain acts and practices.

This bill does not appear to have a fiscal impact on state or local revenues.

II SUBSTANTIVE RESEARCH

A PRESENT SITUATION:

According to various sources, approximately 500-600 OPE dealers of varying size conduct business in Florida. These dealers sell to consumers various types of motorized equipment used to maintain residential, commercial and public lawns, gardens, landscaping, golf courses, and forestry. OPE dealers purchase their equipment inventory from a number of sources, including manufacturers, distributors, and wholesalers.

There are presently no state or federal laws which specifically govern the rights and duties of OPE dealers. The business relationship between the OPE dealer and the entity providing the equipment is generally governed by the written agreement between the parties. Relevant provisions of the Uniform Commercial Code (UCC), as codified by chapters 671 (General Provisions) and 672 (Sales), F.S., follow.

- ◆ Every contract or duty imposes an obligation of good faith in its performance or enforcement. s 671.203, F.S. ,
- ◆ Contracts for the sale of goods for a price of \$500 or greater must be in writing. s. 672.201(1), F.S. ;
- ◆ A court may refuse to enforce an unconscionable clause or contract s 672.302(1), F.S. ,
- ◆ A lawful exclusive dealing contract imposes an obligation upon the dealer to use best efforts to supply goods to the buyer s 672.306(2), F.S. ;
- ◆ Unless otherwise agreed, the shipment of goods must be made in a reasonable time s 672.309(1), F.S. ;
- ◆ An implied warranty of merchantability is found in the contract for the sale of goods s 672.314(1), F.S., and
- ◆ A buyer may reject goods if their condition or delivery fails to conform to the contract. s 672.601, F.S.

In addition, the Florida Deceptive and Unfair Trade Practices Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. s 501.204(1), F.S.

Although the UCC provisions found within Florida Statutes provide a framework of reasonable commercial practices, carefully constructed boilerplate clauses can mitigate or entirely eliminate the contract rights of a relatively unsophisticated party. Over the last several years, particularly as OPE manufacturing entities merge or otherwise change ownership, dealers allege that they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases.

B. EFFECT OF PROPOSED CHANGES

The provisions of the Act will have significant effects on the rights of OPE dealers and the corresponding obligations of manufacturers, distributors, and wholesalers. The areas most potentially affected include

◆ Warranties, Claims, and Compensation

Section 686.604, F.S., provides that dealers *will be provided* a fair and reasonable warranty. This is significant in light of the practice of some unscrupulous sellers providing goods with *no* warranties, either express or implied. The section's other provisions likewise create significant rights for the dealer by specifying procedures relating to the prompt processing of warranty claims by the manufacturer, distributor, or wholesaler

◆ Parts Availability and Return

Section 686.605, F.S., creates an obligation for manufacturers, dealers and wholesalers to provide a steady flow of OPE repair parts during the reasonable life of the equipment, and allows for return of excess parts to the seller. These provisions are significant in that they allow OPE dealers to maintain a ready stock of the parts needed to honor warranties extended to the consumer.

◆ Repurchase of Inventory

Sections 686.606 and 686.607, F.S., require the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a servicing dealer agreement is terminated or the dealer dies or becomes incapacitated. These sections will allow the free transfer of inventory to the manufacturer, distributor, or wholesaler when the dealer has no incentive to retain the equipment

◆ Unlawful acts and Unenforceable Contracts

Sections 686.608--686.612, F.S., define a wide array of unlawful or unenforceable acts and practices. These provisions are examined more fully in the section-by-section analysis, but generally make unlawful any unfair or deceptive practice, and contracts or agreements that are violative of public policy

◆ Remedies

Section 686.613, F.S., authorizes a civil action for damages and costs for violations of the Act's provisions. Relief in the form of a declaratory judgment, injunction, or class action is also authorized

C APPLICATION OF PRINCIPLES

1. Less Government

a Does the bill create, increase or reduce, either directly or indirectly.

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No.

b If an agency or program is eliminated or reduced

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No.

d Does the bill reduce total fees, both rates and revenues?

No

e Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility.

a Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4 Individual Freedom

a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill offers the OPE dealer an expanded array of potential legal remedies from which to choose.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5 Family Empowerment:

a. If the bill purports to provide services to families or children

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority?

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D SECTION-BY-SECTION RESEARCH:

Section 1. Creates the following sections within Chapter 686, F.S , governing sales, distribution, and franchise relationships

- ▶ s. 686 60, F S , to provide a short title of the “Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act”,
- ▶ s 686.601, F.S., to create legislative finding and intent that the sale and distribution of OPE vitally affects the state and its citizens, and that the state’s police power is necessary to regulate the entities engaged in the sale and distribution of OPE to prevent abuses on its citizens;
- ▶ s 686 602, F S , to create definitions for dealer, distributor, distributor branch, distributor representative, factory branch, factory representative, fraud, manufacturer, new outdoor power equipment, outdoor power equipment, person, sale, servicing dealer, and servicing dealer agreement,
- ▶ s. 686 603, F S., to specify that any person engaging in contracts or agreements for the sale or advertisement of new OPE is subject to the Act and the jurisdiction of state courts; and provides that the Act applies to all continuing contracts now in effect with no expiration date and to all other contracts entered into after the effective date of the Act,
- ▶ s. 686 604, F S., to provide that fair and reasonable warranty agreements shall be provided on new OPE sold and fair compensation for labor and parts paid by every OPE manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, requires determinations on warranty claims to be made within 30 days of receipt and payment or notice of disapproval within 30 days of determination, requires 30-day written notice and good and sufficient reason for enforcement of special and non-uniform claim handling requirements; and provides minimum basis for compensating dealer for labor costs and parts incurred in performing warranty work;
- ▶ s. 686 605, F S , to provide that reasonable predelivery and preparation obligations shall be specified, provided, and fulfilled prior to delivery of OPE to retail purchasers, provides for the availability of repair parts throughout the reasonable useful life of OPE; and provides that dealers annually be given the opportunity to return surplus parts for credit, subject to certain conditions,
- ▶ s 686 606, F.S., to provide for the repurchase of OPE or parts inventory by a manufacturer, distributor, or wholesaler upon termination of a servicing dealer agreement; provides amounts to be repaid to OPE dealers for return of equipment and parts, provides for title transfer of repurchased inventory within a reasonable time of payment of repurchase amount to dealer, provides that repurchase of specified equipment is not required, and provides certain civil liability in the event that manufacturer, distributor, or wholesaler refuses to repurchase within 60 days of contract termination,

- ▶ s. 686 607, F S., to provide for the repurchase of inventory by the manufacturer, distributor, or wholesaler upon the death or incapacity of a dealer, at the option of the dealer's heirs or devisees and subject to provisions of any contract or agreement consistent with this section and the provisions of s 686.606, F.S.,
- ▶ s 686.608, F.S., to provide for fair and reasonable compensation for business inventory to the dealer in the event that without due cause a manufacturer, distributor, or wholesaler, refuses to renew, terminates, or restricts the transfer of a servicing dealer agreement;
- ▶ s. 686 609, F.S , to provide that a manufacturer, distributor or wholesaler shall indemnify and hold harmless a dealer against losses arising out of any complaint, claim, or lawsuit relating to the manufacture, assembly, or design of items covered by the act or other functions beyond the control of the dealer,
- ▶ s 686 611, F S., to provide that unfair methods of competition and certain unfair acts or practices are unlawful; makes unlawful certain actions engaged in by an OPE entity which damage any of the parties or the public, provides that an OPE entity or its agent violates this section when it coerces or compels a dealer to order or accept certain equipment, makes unlawful certain actions by an OPE entity or its agent relating to equipment delivery, supplementary agreements, selling agreements, advertising, pricing of new OPE and parts, willful discrimination, dealer's capital structure and financing, sale or transfer of a dealer's interest, receiving benefits, and releases of liability, and makes unlawful certain acts by an OPE dealer,
- ▶ s 686 612, F.S., to provide that contracts or servicing dealer agreements violative of the act are void and unenforceable,
- ▶ s. 686 613, F S , to provide a cause of action in circuit court for violations of the act and recovery of actual damages and costs, allows declaratory and injunctive relief; permits class actions; allows punitive damages; and allows the Department of Legal Affairs or state attorney to bring a civil action, and
- ▶ s 686 614, F S , to provide that the provisions of ss 686 601-686 614 are supplemental and do not preempt local ordinances relating to the unlawful conduct of OPE entities, if such ordinances are not inconsistent with this Act

Section 2 Provides an effective date of October 1, 1997.

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects:

None

2. Recurring Effects

None.

3 Long Run Effects Other Than Normal Growth:

None.

4 Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects

None

2 Recurring Effects.

None.

3. Long Run Effects Other Than Normal Growth.

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

1 Direct Private Sector Costs

Indeterminate.

2 Direct Private Sector Benefits

None

3. Effects on Competition, Private Enterprise and Employment Markets:

Because of the increased warranty obligations imposed on manufacturers, distributors, and wholesalers, competition will be restricted as the number of those entities decrease due to increased costs. Those entities that already have existing favorable relationships with OPE dealers will be least affected.

D FISCAL COMMENTS

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION.

A. APPLICABILITY OF THE MANDATES PROVISION

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure

B. REDUCTION OF REVENUE RAISING AUTHORITY

In the aggregate, this bill does not reduce municipality or county authority to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS

This bill is supported by the Southeastern Equipment Dealers Association, an organization that represents OPE dealers. The Act is modeled after the Farm Equipment Manufacturers and Dealers Act, ss 686 40–686 418, F S , which provides farm equipment dealers with analogous contract rights

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director.

Peter M Rodnite

Lucretia Shaw Collins

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Bill No. hb 801

Amendment No. 01 (for drafter's use only)

fa0
4/3/97

COMMITTEE ACTION

1	ADOPTED	<u> </u>	<u> </u>	<u> </u>	:	FAILED TO ADOPT	<u> </u>	<u> </u>	<u> </u>
		<u> </u>	<u> </u>	<u> </u>	:		<u> </u>	<u> </u>	<u> </u>
2	ADOPTED AS AMENDED	<u> </u>	<u> </u>	<u> </u>	:	WITHDRAWN	<u> </u>	<u> </u>	<u> </u>
		<u> </u>	<u> </u>	<u> </u>	:		<u> </u>	<u> </u>	<u> </u>
3	ADOPTED w/o OBJECTION	<u> </u>	<u> </u>	<u> </u>	:	OTHER	<u> </u>	<u> </u>	<u> </u>
		<u> </u>	<u> </u>	<u> </u>	:		<u> </u>	<u> </u>	<u> </u>

4

5

6

7 Committee hearing bill: Business Regulation & Consumer Affairs
 8 Representative(s) Mackey offered the following:

Amendment

11 Remove from the bill: Everything after the enacting clause
 12
 13 and insert in lieu thereof:

14 Section 1. Sections 686.60, 686.601, 686.602, 686.603,
 15 686.604, 686.605, 686.606, 686.607, 686.608, 686.609, 686.611,
 16 686.612, 686.613, and 686.614, Florida Statutes, are created
 17 to read:

18 686.60 Short title.--Sections 686.601-686.614 may be
 19 cited as the "Outdoor Power Equipment Manufacturers,
 20 Distributors, Wholesalers, and Servicing Dealers Act."

21 686.601 Legislative finding and intent;
 22 construction.--

23 (1) The Legislature finds and declares that the
 24 distribution and sale of outdoor power equipment in this state
 25 vitaly affects the general economy of the state, the public
 26 interest, the public safety, the ecology of this state, and
 27 the public welfare and that, in the exercise of its police
 28 power, it is necessary to regulate the conduct of outdoor
 29 power equipment manufacturers, distributors, wholesalers, and
 30 dealers and their representatives doing business in this state
 31 in order to prevent fraud, unfair business practices, unfair

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1 methods of competition, impositions, and other abuses upon its
2 citizens.

3 (2) In order to promote the intention and policies
4 announced in this section, the provisions of ss.

5 686.601-686.614 shall be liberally construed.

6 686.602 Definitions of terms used in ss.

7 686.601-686.614.--In construing ss. 686.601-686.614, unless
8 the context otherwise requires, the word, phrase, or term:

9 (1) "Dealer" or "servicing dealer" means a person who
10 sells, solicits, or advertises the sale of new or used outdoor
11 power equipment to the consuming public and services such
12 equipment or a private business which has contracted with the
13 manufacturer or distributor to sell such equipment at retail
14 and services such equipment and which is required to undergo
15 training in the sale and servicing of such equipment, but does
16 not include:

17 (a) A receiver, trustee, administrator, executor,
18 personal representative, guardian, or other person appointed
19 by or acting under judgment, decree, or order of any court.

20 (b) A public officer while performing his duties as
21 such officer.

22 (c) A person making casual or isolated sales of his
23 own outdoor power equipment not subject to sales tax under the
24 laws of this state.

25 (d) A person engaged in the auction sale of outdoor
26 power equipment.

27 (e) A dealer in used outdoor power equipment.

28 (2) "Dealer agreement" means a contract or agreement,
29 express or implied, oral or written, for a definite or
30 indefinite period of time, in which a manufacturer,
31 distributor, or wholesaler grants to a dealer permission to

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1 use a trade name, service mark, trademark, or a related
2 characteristic and in which there is a common interest or
3 community of interest in the marketing of outdoor power
4 equipment or services related thereto at wholesale or retail,
5 whether leasing, sale, or otherwise.

6 (3) "Distributor" or "wholesaler" means any person,
7 firm, association, corporation, or company that sells or
8 distributes new outdoor power equipment to dealers and that
9 maintains distributor representatives within this state.

10 (4) "Distributor branch" means a branch office
11 maintained by a distributor or wholesaler which sells or
12 distributes new outdoor power equipment to dealers.

13 (5) "Distributor representative" means a
14 representative employed by a distributor, distributor branch,
15 or wholesaler.

16 (6) "Factory branch" means a branch office maintained
17 by a manufacturer which manufactures and assembles outdoor
18 power equipment for sale to distributors of outdoor power
19 equipment or to dealers or which is maintained for directing
20 and supervising the representatives of the manufacturer.

21 (7) "Factory representative" means a representative
22 employed by a manufacturer or factory branch for the purpose
23 of making or promoting the sale of outdoor power equipment or
24 for supervising, servicing, introducing, or contracting with
25 dealers or prospective dealers.

26 (8) "Fraud" means and includes actual fraud or
27 constructive fraud as normally defined, in addition to the
28 following:

29 (a) A misrepresentation in any manner, whether
30 intentionally false or arising from gross negligence, of a
31 material fact.

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1 (b) A promise or representation not made honestly and
2 in good faith.

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

5 (d) Any artifice employed to deceive another.

6 (9) "Manufacturer" means any person engaged in the
7 business of manufacturing or assembling new and unused outdoor
8 power equipment.

9 (10) "New outdoor power equipment" means outdoor power
10 equipment which has not been previously sold to and put into
11 regular use or service by any person, except to a distributor,
12 wholesaler, or dealer for resale.

13 (11) "Outdoor power equipment" means two-cycle and
14 four-cycle gas, diesel, and electric engines and any other
15 type of equipment used to maintain commercial, public, and
16 residential lawns and gardens or used in landscape, turf, golf
17 course, green nursery, or forestry or tree maintenance.

18 (12) "Person" means a natural person, corporation,
19 association, partnership, trust, or other business entity and,
20 in the case of a business entity, includes any other entity in
21 which the business entity has a majority interest or which it
22 effectively controls, as well as the individual officers,
23 directors, and other persons in active control of the
24 activities of each such entity.

25 (13) "Sale" means and includes the issuance, transfer,
26 agreement for transfer, exchange, pledge, hypothecation, or
27 mortgage in any manner or form, whether by transfer in trust
28 or otherwise, of any outdoor power equipment or interest
29 therein, or of any dealer agreement related thereto, for a
30 consideration and any option, subscription or other contract,
31 or solicitation, looking to a sale, or offer or attempt to

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1 sell in any form, whether in oral or written form for a
2 consideration.

3 686.603 Application.--

4 (1) Any person who engages directly or indirectly in
5 purposeful agreements or contracts within this state in
6 connection with the sale or advertising for sale of new
7 outdoor power equipment and parts is subject to ss.
8 686.601-686.614 and to the jurisdiction of the courts of this
9 state for violations of such sections in accordance with the
10 provisions of the laws of this state.

11 (2) Sections 686.601-686.614 apply to all written or
12 oral agreements between a manufacturer, distributor, or
13 wholesaler with a dealer, including, but not limited to, the
14 dealer agreement; sales of goods, services, and advertising;
15 leases or mortgages of real or personal property; promises to
16 pay; security interests; pledges; insurance contracts;
17 advertising contracts; construction or installation contracts;
18 servicing contracts; and all other such agreements in which
19 the manufacturer, distributor, or wholesaler has any direct or
20 indirect interest.

21 (3) Sections 686.601-686.614 apply to all continuing
22 contracts now in effect which have no expiration date and to
23 all other contracts entered into or renewed after October 1,
24 1997.

25 686.604 Warranty agreements; claims; compensation of
26 dealers.--

27 (1) Every manufacturer, distributor, wholesaler,
28 factory branch or division, distributor branch or division, or
29 wholesale branch or division shall provide a fair and
30 reasonable warranty agreement on any new outdoor power
31 equipment which it sells and shall fairly compensate each of

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1 its dealers for labor and parts used in fulfilling such
2 warranty agreements.

3 (2)(a) Each claim for payment under such warranty
4 agreements made by a dealer for such labor and parts shall be
5 paid within 30 days following its approval. Each such claim
6 shall be either approved or disapproved within 30 days after
7 its receipt. When any such claim is disapproved, the dealer
8 who submitted it shall be notified in writing of such
9 disapproval within such period, and such notice shall state
10 the specific grounds upon which the disapproval is based.

11 (b) Any special handling of claims required of the
12 dealer by the manufacturer, distributor, wholesaler, factory
13 branch or division, distributor branch or division, or
14 wholesale branch or division, which handling is not uniformly
15 required of all dealers of that make, may be enforced only
16 after 30 days' notice in writing to the dealer and upon good
17 and sufficient reason.

18 (3)(a) The minimum lawful basis for compensating a
19 dealer for warranty work, as provided for in this section,
20 shall be calculated for labor in accordance with the
21 reasonable and customary amount of time required to complete
22 such work, expressed in hours and fractions of hours
23 multiplied by the dealer's established hourly retail labor
24 rate. Prior to filing a claim for reimbursement for warranty
25 work, the dealer must notify the applicable manufacturer,
26 distributor, or wholesaler of his hourly retail labor rate.

27 (b) The minimum lawful basis for compensation to the
28 dealer for parts used in fulfilling such warranty work shall
29 be at the dealer's costs for such parts, including all freight
30 and handling charges applicable to such parts, plus 15 percent
31 of the sum of such costs and charges to reimburse the dealer's

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1 reasonable cost of doing business and providing such warranty
2 service on behalf of the manufacturer.

3 686.605 Parts; availability; return.--

4 (1) Every manufacturer, distributor, and wholesaler
5 shall specify, and every dealer shall provide and fulfill,
6 reasonable predelivery and preparation obligations for its
7 outdoor power equipment prior to delivery of the outdoor power
8 equipment to retail purchasers.

9 (2) Every manufacturer, distributor, and wholesaler
10 shall provide for the availability of repair parts throughout
11 the reasonable useful life of any outdoor power equipment
12 sold.

13 (3) Every manufacturer, distributor, and wholesaler
14 shall provide to their dealers, annually, an opportunity to
15 return a portion of their surplus parts inventories for
16 credit. The surplus procedure shall be administered as
17 follows:

18 (a) The manufacturer, distributor, or wholesaler may
19 specify, and thereupon notify their dealers of, a time period
20 of at least 60 days' duration during which the dealers may
21 submit their surplus parts lists and return their surplus
22 parts to the manufacturer, distributor, or wholesaler.

23 (b) If a manufacturer, distributor, or wholesaler has
24 not notified a dealer of a specific time period for returning
25 surplus parts within the preceding 12 months, they shall
26 authorize and allow the dealer's surplus parts return request
27 within 30 days after receipt of such request from the dealer.

28 (c) A manufacturer, distributor, or wholesaler must
29 allow surplus parts return authority on a dollar value of
30 parts equal to 6 percent of the total dollar value of parts
31 purchased from the manufacturer, distributor, or wholesaler by

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1 the dealer during the 12-month period immediately preceding
2 the notification to the dealer by the manufacturer,
3 distributor, or wholesaler of the surplus parts return
4 program, or the month the dealer's return request is made,
5 whichever is applicable. However, the dealer may, at his
6 option, elect to return a dollar value of his surplus parts
7 equal to less than 6 percent of the total dollar value of
8 parts purchased by the dealer from the manufacturer,
9 distributor, or wholesaler during the preceding 12-month
10 period as provided herein.

11 (d) No obsolete or superseded part may be returned,
12 but any part listed in the manufacturer's, distributor's, or
13 wholesaler's current returnable parts list at the date of
14 notification of the surplus parts return program by the
15 manufacturer, distributor, or wholesaler to the dealer, or the
16 date of the dealer's parts return request, whichever is
17 applicable, is eligible for return and credit specified.
18 However, returned parts must be in new and unused condition
19 and must have been purchased from the manufacturer,
20 distributor, or wholesaler to whom they are returned.

21 (e) The minimum lawful credit to be allowed for
22 returned parts is 85 percent of the wholesale cost of the
23 parts as listed in the manufacturer's, distributor's, or
24 wholesaler's current returnable parts list at the date of the
25 notification of the surplus parts return program by the
26 manufacturer, wholesaler, or distributor to the dealer, or the
27 date of the dealer's parts return request, whichever is
28 higher.

29 (f) Applicable credit must be issued or furnished by
30 the manufacturer, distributor, or wholesaler to the dealer
31 within 60 days after receipt of the returned parts.

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1 (g) The packing and return freight expense incurred in
2 any return of surplus parts pursuant to the terms of this
3 section shall be borne by the dealer.

4 686.606 Repurchase of inventory upon termination of
5 dealer agreement.--

6 (1) Whenever any dealer enters into a dealer agreement
7 with a manufacturer, distributor, or wholesaler in which
8 agreement the dealer agrees to maintain an inventory of
9 outdoor power equipment or repair parts and the agreement is
10 subsequently voluntarily or involuntarily terminated, the
11 manufacturer, distributor, or wholesaler shall repurchase the
12 inventory as provided in this section. However, the dealer
13 may keep the inventory if he desires. If the dealer has any
14 outstanding debts to the manufacturer, distributor, or
15 wholesaler, then the repurchase amount may be credited to the
16 dealer's account.

17 (2) If the dealer decides not to keep the inventory,
18 the manufacturer, distributor, or wholesaler shall repurchase
19 that inventory previously purchased from him and held by the
20 dealer on the date of termination of the contract. The
21 manufacturer, distributor, or wholesaler shall pay:

22 (a) One hundred percent of the actual dealer cost,
23 including freight, of all new, unsold, undamaged, and complete
24 outdoor power equipment or other items of such equipment which
25 are resalable, less a reasonable allowance for depreciation
26 due to usage by the dealer and deterioration directly
27 attributable to weather conditions at the dealer's location;
28 and

29 (b) Eighty-five percent of the current wholesale price
30 of all new, unused, and undamaged repair parts and accessories
31 which are listed in the manufacturer's, distributor's, or

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1 wholesaler's current returnable parts list. The manufacturer,
2 distributor, or wholesaler shall also pay the dealer 6 percent
3 of the current wholesale price on all new, unused, and
4 undamaged repair parts returned to cover the cost of handling,
5 packing, and loading. However, the manufacturer, distributor,
6 or wholesaler shall have the option of performing the
7 handling, packing, and loading in lieu of paying the 6-percent
8 sum imposed in this subsection for these services; and, in
9 this event, after receipt by the dealer of the full repurchase
10 amount as provided in this section, the dealer shall make
11 available to the manufacturer, distributor, or wholesaler, at
12 the dealer's address or at the places at which the outdoor
13 power equipment is located, all outdoor power equipment
14 previously purchased by the dealer.

15 (3) Upon payment within a reasonable time of the
16 repurchase amount to the dealer, the title and right of
17 possession to the repurchased inventory shall transfer or be
18 transferred to the manufacturer, distributor, or wholesaler,
19 as the case may be.

20 (4) The provisions of this section do not require the
21 repurchase from a dealer of:

22 (a) Any repair part which has a limited storage life
23 or is otherwise subject to deterioration.

24 (b) Any single repair part which is priced as a set of
25 two or more items.

26 (c) Any repair part which because of its condition is
27 not resalable as a new part without repackaging or
28 reconditioning.

29 (d) Any inventory for which the dealer is unable to
30 furnish evidence, reasonably satisfactory to the manufacturer,
31 distributor, or wholesaler, of good title, free and clear of

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1 all claims, liens, and encumbrances.

2 (e) Any inventory which the dealer desires to keep, if
3 the dealer has a contractual right to keep it.

4 (f) Any outdoor power equipment or item of such
5 equipment which is not in new, unused, undamaged, and complete
6 condition.

7 (g) Any outdoor power equipment or item of such
8 equipment which has been used by the dealer or has
9 deteriorated because of weather conditions at the dealer's
10 location unless the manufacturer, distributor, or wholesaler
11 receives a reasonable allowance for such usage or
12 deterioration.

13 (h) Any repair parts which are not in new, unused, and
14 undamaged condition.

15 (i) Any inventory which was ordered by the dealer on
16 or after the date of receipt of the notification of
17 termination of the dealer agreement.

18 (j) Any inventory which was acquired by the dealer
19 from any source other than the manufacturer, distributor, or
20 wholesaler.

21 (5) If any manufacturer, distributor, or wholesaler
22 fails or refuses to repurchase any inventory covered under the
23 provisions of this section within 60 days after termination of
24 a dealer's contract, he is civilly liable for 100 percent of
25 the current wholesale price of the inventory plus any freight
26 charges paid by the dealer, the dealer's reasonable attorney's
27 fees, court costs, and interest on the current wholesale price
28 computed at the legal interest rate provided in s. 687.01 from
29 the 61st day after termination.

30 686.607 Repurchase of inventory upon death or
31 incapacity of dealer.--

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1 (1) In the event of the death or incapacity of a
2 dealer or the majority stockholder of a corporation operating
3 as a dealer, the manufacturer, distributor, or wholesaler
4 shall, at the option of the heirs at law, if the dealer died
5 intestate, or the devisees or transferees under the terms of
6 the deceased dealer's last will and testament, if the dealer
7 died testate, repurchase the inventory from such heirs or
8 devisees as if the manufacturer, distributor, or wholesaler
9 had terminated the contract; and the inventory repurchase
10 provisions of s. 686.606 are made expressly applicable to the
11 repurchase under this section. The heirs or devisees shall
12 have 1 year from the date of the death of the dealer or
13 majority stockholder to exercise their option under this
14 section. However, nothing in this section requires the
15 repurchase of inventory if the heirs or devisees and the
16 manufacturer, distributor, or wholesaler enter into a new
17 agreement to operate the retail dealership.

18 (2) This section is subject to that portion of the
19 manufacturer's, distributor's, or wholesaler's contract or
20 agreement with the dealer pertaining to death of the dealer or
21 succession to the extent such contract or agreement is not
22 inconsistent with this section.

23 686.608 Compensation for inventory upon refusal to
24 renew, termination of, or restriction on transfer of a dealer
25 agreement.--It is unlawful for the manufacturer, distributor,
26 or wholesaler, without due cause, to fail to renew a dealer
27 agreement on terms then equally available to all their
28 dealers, to terminate an agreement, or to restrict the
29 transfer of an agreement unless the dealer receives fair and
30 reasonable compensation for the inventory of the business. As
31 used in this section, the term "due cause" shall be construed

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1 in accordance with the definition of due cause contained in s.
2 686.611(3)(c)2.

3 686.609 Indemnification of dealer with respect to
4 legal actions.--A manufacturer, distributor, or wholesaler
5 shall fully indemnify and hold harmless a dealer against any
6 losses including, but not limited to, court costs and
7 reasonable attorney's fees or damages arising out of any
8 complaint, claim, or lawsuit involving, but not limited to,
9 strict liability, negligence, misrepresentation, express or
10 implied warranty, or rescission of the sale when the
11 complaint, claim, or lawsuit relates to the manufacture,
12 assembly, or design of new items covered by ss.

13 686.601-686.614, parts or accessories, or other functions by
14 the manufacturer, distributor, or wholesaler which are beyond
15 the control of the dealer.

16 686.611 Unlawful acts and practices.--Unfair methods
17 of competition and unfair or deceptive acts or practices in
18 the conduct of the manufacturing, distribution, wholesaling,
19 sale, and advertising of outdoor power equipment are declared
20 to be unlawful.

21 (1) It is deemed a violation of this section for any
22 manufacturer, factory branch, factory representative,
23 distributor, distributor branch, distributor representative,
24 wholesaler, or dealer to engage in any action which is
25 arbitrary, capricious, in bad faith, or unconscionable and
26 which causes damage in terms of law or equity to any of the
27 parties or to the public.

28 (2) It is deemed a violation of this section for a
29 manufacturer, factory branch or division, distributor,
30 distributor branch or division, wholesaler, or wholesale
31 branch or division, or officer, agent, or other representative

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1 thereof, to coerce, compel, or attempt to coerce or compel any
2 dealer:

3 (a) To order or accept delivery of any outdoor power
4 equipment or item of such equipment, parts or accessories
5 therefor, or other commodity or commodities which such dealer
6 has not voluntarily ordered.

7 (b) To order or accept delivery of any outdoor power
8 equipment with special features, accessories, or equipment not
9 included in the base list price of such outdoor power
10 equipment as publicly advertised by the manufacturer of the
11 outdoor power equipment.

12 (3) It is deemed a violation of this section for a
13 manufacturer, factory branch or division, distributor,
14 distributor branch or division, wholesaler, or wholesale
15 branch or division, or officer, agent, or other representative
16 thereof:

17 (a) To refuse to deliver to any dealer having a
18 contractual agreement for the retail sale of new outdoor power
19 equipment sold or distributed by such manufacturer, factory
20 branch or division, distributor branch or division, or
21 wholesale branch or division, in reasonable quantities and
22 within a reasonable time after receipt of the dealer's order,
23 any outdoor power equipment or item of such equipment covered
24 by such agreement specifically advertised or represented by
25 such manufacturer, factory branch or division, distributor,
26 distributor branch or division, wholesaler, or wholesale
27 branch or division to be available for immediate delivery.
28 However, the failure to deliver any such outdoor power
29 equipment or item of such equipment is not considered a
30 violation of this section if such failure is due to a prudent
31 and reasonable restriction on the extension of credit by the

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1 manufacturer, distributor, or wholesaler to the dealer, an act
2 of God, a work stoppage or delay due to a strike or labor
3 difficulty, a bona fide shortage of materials, a freight
4 embargo, or another cause over which the manufacturer,
5 distributor, or wholesaler, or any agent thereof, has no
6 control whatsoever.

7 (b) To coerce, compel, or attempt to coerce or compel
8 any dealer to enter into any agreement, whether written or
9 oral, supplementary to an existing dealer agreement with such
10 manufacturer, factory branch or division, distributor,
11 distributor branch or division, wholesaler, or wholesale
12 branch or division, or officer, agent, or other representative
13 thereof; or to do any other act prejudicial to such dealer by
14 threatening to cancel any contractual agreement existing
15 between such manufacturer, factory branch or division,
16 distributor, distributor branch or division, wholesaler, or
17 wholesale branch or division and such dealer. However, notice
18 in good faith to any dealer of such dealer's violation or
19 breach of any terms or provisions of such contractual
20 agreement does not constitute a violation of this section if
21 such notice is in writing and is mailed by registered or
22 certified mail to such dealer at his current business address
23 and such notice contains the specific facts as to the dealer's
24 violation or breach of such contractual agreement.

25 (c)1. To terminate or cancel the selling agreement of
26 any dealer without due cause, as defined in subparagraph 2.
27 The nonrenewal of a selling agreement, without due cause,
28 constitutes an unfair termination or cancellation, regardless
29 of the specified time period of such selling agreement. Except
30 when the ground for such termination or cancellation falls
31 within sub-subparagraph 2.c., such manufacturer, factory

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1 branch or division, distributor, distributor branch or
2 division, wholesaler, or wholesale branch or division, or
3 officer, agent, or other representative thereof, shall notify
4 a dealer in writing of the termination or cancellation of the
5 selling agreement of such dealer at least 90 days before the
6 effective date of the termination or cancellation, stating the
7 specific ground for such termination or cancellation. In no
8 event shall the contractual term of any such selling agreement
9 expire, without the written consent of the dealer involved,
10 prior to the expiration of at least 90 days following such
11 written notice. During the 90-day period, either party may,
12 in appropriate circumstances, petition a court of competent
13 jurisdiction to modify such 90-day stay or to extend it
14 pending a final determination of such proceeding on the
15 merits. The court shall have authority to grant temporary,
16 preliminary, and final injunctive relief.

17 2. As used in this subparagraph, tests for determining
18 what constitutes due cause for a manufacturer, distributor, or
19 wholesaler to terminate, cancel, or refuse to renew a dealer
20 agreement include whether the dealer:

21 a. Has transferred a majority ownership interest in
22 the dealership without the manufacturer's, distributor's, or
23 wholesaler's consent;

24 b. Has made a material misrepresentation in applying
25 for or in acting under the agreement;

26 c. Has filed a voluntary petition in bankruptcy or has
27 had an involuntary petition in bankruptcy filed against the
28 dealer which has not been discharged within 60 days after the
29 filing, is in default under the provisions of a security
30 agreement in effect with the manufacturer, distributor, or
31 wholesaler, or is in receivership;

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1 d. Has engaged in unfair business or trade practices;

2 e. Has inadequately represented the manufacturer's,
3 distributor's, or wholesaler's products with respect to sales,
4 service, or warranty work;

5 f. Has inadequate and insufficient sales and service
6 facilities and personnel;

7 g. Has failed to comply with an applicable federal,
8 state, or local licensing law;

9 h. Has been convicted of a crime, the effect of which
10 would be detrimental to the manufacturer, distributor,
11 wholesaler, or dealership;

12 i. Has failed to operate in the normal course of
13 business for 10 consecutive business days or has terminated
14 the dealer's business;

15 j. Has relocated the dealer's place of business
16 without the manufacturer's, distributor's, or wholesaler's
17 consent; or

18 k. Has failed to comply with the terms of the
19 agreement.

20 (d) To resort to or use any false or misleading
21 advertisement in connection with the dealer's business as such
22 manufacturer, factory branch or division, distributor,
23 distributor branch or division, wholesaler, or wholesale
24 branch or division, or officer, agent, or other representative
25 thereof.

26 (e) To offer to sell or to sell any new outdoor power
27 equipment or item of such equipment, or parts or accessories
28 therefor, to any other dealer at a lower actual price therefor
29 than the actual price offered to any other dealer for the same
30 model outdoor power equipment identically equipped or to
31 utilize any device, including, but not limited to, sales

Amendment No. 01 (for drafter's use only)

1 promotion plans or programs, which results in such lesser
2 actual price or results in a fixed price predetermined solely
3 by the manufacturer, distributor, or wholesaler. However, the
4 provisions of this paragraph do not apply to sales to a dealer
5 for resale to any unit or agency of the United States
6 Government, the state or any of its political subdivisions, or
7 any municipality located within this state. Further, the
8 provisions of this paragraph do not apply so long as a
9 manufacturer, distributor, or wholesaler, or any agent
10 thereof, sells or offers to sell such new outdoor power
11 equipment, parts, or accessories to all dealers of such
12 manufacturer's, distributor's, or wholesaler's dealers at an
13 equal price.

14 (f) To willfully discriminate, either directly or
15 indirectly, in price, programs, or terms of sale offered to
16 dealers, when the effect of such discrimination may be to
17 substantially lessen competition or to give to one holder of
18 an agreement any economic, business, or competitive advantage
19 not offered to all holders of the same or similar agreement.

20 (g) To prevent or attempt to prevent, by contract or
21 otherwise, any dealer from changing the capital structure of
22 the dealership or the means by or through which the dealer
23 finances the operation of the dealership, provided the dealer
24 at all times meets any reasonable capital standards agreed to
25 between the dealership and the manufacturer, distributor, or
26 wholesaler and provided such change by the dealer does not
27 result in a change in the executive management of the
28 dealership.

29 (h) To prevent or attempt to prevent, by contract or
30 otherwise, any dealer or any officer, member partner, or
31 stockholder of any dealer from selling or transferring any

Amendment No. 01 (for drafter's use only)

1 part of the interest of any of them to any other person or
2 persons or party or parties. However, no dealer, officer,
3 partner, or stockholder has the right to sell, transfer, or
4 assign the agreement or power of management or control
5 thereunder without the written consent of the manufacturer,
6 distributor, or wholesaler, except that such consent may not
7 be unreasonably withheld.

8 (i) To obtain money, goods, services, anything of
9 value, or any other benefit from any other person with whom
10 the dealer does business or employs on account of or in
11 relation to the transactions between the dealer, the
12 manufacturer, distributor, or wholesaler, and such other
13 person.

14 (j) To require a dealer to assent to a release,
15 assignment, novation, waiver, or estoppel which would relieve
16 any person from liability imposed by ss. 686.601-686.614.

17 (4) It is deemed a violation of this section for a
18 dealer:

19 (a) To require a retail purchaser of new outdoor power
20 equipment or item of such equipment, as a condition of sale
21 and delivery of the item or equipment, also to purchase
22 special features, appliances, equipment, parts, or accessories
23 not desired or requested by the purchaser. However, this
24 prohibition does not apply to special features, appliances,
25 equipment, parts, or accessories which are already installed
26 when the outdoor power equipment or item of outdoor power
27 equipment is received by the dealer from the manufacturer,
28 distributor, or wholesaler of such equipment or item of such
29 equipment.

30 (b) To represent and sell as new and unused any
31 outdoor power equipment or item of such equipment which has

Amendment No. 01 (for drafter's use only)

1 been used and operated for demonstration or other purposes
2 without stating to the purchaser prior to the sale the
3 approximate amount of use the outdoor power equipment or item
4 of such equipment has experienced or undergone.

5 (c) To resort to or use any false or misleading
6 advertisement in connection with the dealer's business as such
7 dealer.

8 686.612 Unenforceable contract or agreement.--Any
9 contract or dealer agreement or part thereof or practice
10 thereunder which is in violation of any provision of ss.
11 686.601-686.614 is deemed against public policy and is void
12 and unenforceable.

13 686.613 Remedies.--

14 (1) In addition to temporary, preliminary, or final
15 injunctive relief as provided in s. 686.611(3)(c)1., any
16 person who is aggrieved or injured in his business or property
17 by reason of anything forbidden in ss. 686.60-686.614 may
18 bring an action therefor in the appropriate circuit court of
19 this state and shall recover the actual damages sustained and
20 the costs of such action, including a reasonable attorney's
21 fee.

22 (2) Without regard and in addition to any other remedy
23 or relief to which a person is entitled, anyone aggrieved by a
24 violation of ss. 686.601-686.614 may bring an action to obtain
25 a declaratory judgment that an act, action, or practice
26 violates such sections and to enjoin a manufacturer,
27 distributor, wholesaler, or dealer who has violated, is
28 violating, or is otherwise likely to violate such sections.

29 (3) When such action is one of common or general
30 interest to many persons or when the parties are numerous and
31 it is impracticable to bring them all before the court, one or

Amendment No. 01 (for drafter's use only)

1 more may bring a class action for the benefit of the whole,
2 including an action for injunctive relief.

3 (4) In an action for money damages, if a judge or jury
4 finds that the defendant acted maliciously, the judge or jury
5 may award punitive damages as permitted by state law.

6 (5) The Department of Legal Affairs or the state
7 attorney, if a violation of ss. 686.601-686.614 occurs in his
8 judicial circuit, may bring an action for injunctive or other
9 appropriate civil relief for any violation of ss.
10 686.601-686.614.

11 (6) The remedies provided in this section are in
12 addition to any other remedies provided by law or in equity.

13 686.614 Effect of act on other remedies.--Sections
14 686.601-686.614 are supplemental to and do not preempt local
15 ordinances dealing with prohibited or unlawful conduct in the
16 manufacturing, distribution, wholesaling, advertising, or sale
17 of outdoor power equipment and other items of outdoor power
18 equipment if such ordinances are not inconsistent with such
19 sections.

20 Section 2. This act shall take effect October 1, 1997.
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STORAGE NAME: h0801a brc
DATE: April 3, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 801
RELATING TO Outdoor Power Equipment
SPONSOR(S): Representative Mackey and others
STATUTE(S) AFFECTED ss 686 60 -- 686.614, F.S.
COMPANION BILL(S): SB 1594 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS
- (3) FINANCE & TAXATION
- (4)
- (5)

I. SUMMARY.

This bill creates the Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act (Act) For purposes of the Act, outdoor power equipment (OPE) is defined as motorized "equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance " The Act will most directly affect the relationship between an OPE dealer and its respective manufacturer, distributor, or wholesaler. By expanding the present statutory rights held by dealers and consumer users of new outdoor power equipment, the Act is intended to provide added protection against fraud and unfair business practices. This bill creates significant obligations and rights relative to OPE warranties, repurchase of OPE inventories, servicing agreements, and certain acts and practices.

This bill does not appear to have a fiscal impact on state or local revenues

II. SUBSTANTIVE RESEARCH:

A PRESENT SITUATION

According to various sources, approximately 500-600 OPE dealers of varying size conduct business in Florida. These dealers sell to consumers various types of motorized equipment used to maintain residential, commercial and public lawns, gardens, landscaping, golf courses, and forestry. OPE dealers purchase their equipment inventory from a number of sources, including manufacturers, distributors, and wholesalers.

There are presently no state or federal laws which specifically govern the rights and duties of OPE dealers. The business relationship between the OPE dealer and the entity providing the equipment is generally governed by the written agreement between the parties. Relevant provisions of the Uniform Commercial Code (UCC), as codified by chapters 671 (General Provisions) and 672 (Sales), F.S., follow.

- ◆ Every contract or duty imposes an obligation of good faith in its performance or enforcement. s. 671.203, F.S.;
- ◆ Contracts for the sale of goods for a price of \$500 or greater must be in writing s. 672.201(1), F.S.;
- ◆ A court may refuse to enforce an unconscionable clause or contract s. 672.302(1), F.S.;
- ◆ A lawful exclusive dealing contract imposes an obligation upon the dealer to use best efforts to supply goods to the buyer s. 672.306(2), F.S.;
- ◆ Unless otherwise agreed, the shipment of goods must be made in a reasonable time. s. 672.309(1), F.S.;
- ◆ An implied warranty of merchantability is found in the contract for the sale of goods. s. 672.314(1), F.S., and
- ◆ A buyer may reject goods if their condition or delivery fails to conform to the contract s. 672.601, F.S.

In addition, the Florida Deceptive and Unfair Trade Practices Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. s. 501.204(1), F.S.

Although the UCC provisions found within Florida Statutes provide a framework of reasonable commercial practices, carefully constructed boilerplate clauses can mitigate or entirely eliminate the contract rights of a relatively unsophisticated party. Over the last several years, particularly as OPE manufacturing entities merge or otherwise change ownership, dealers allege that they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases.

B EFFECT OF PROPOSED CHANGES

The provisions of the Act will have significant effects on the rights of OPE dealers and the corresponding obligations of manufacturers, distributors, and wholesalers. The areas most potentially affected include.

◆ Warranties, Claims, and Compensation

Section 686.604, F S , provides that dealers *will be provided* a fair and reasonable warranty. This is significant in light of the practice of some unscrupulous sellers providing goods with *no* warranties, either express or implied. The section's other provisions likewise create significant rights for the dealer by specifying procedures relating to the prompt processing of warranty claims by the manufacturer, distributor, or wholesaler.

◆ Parts Availability and Return

Section 686.605, F S , creates an obligation for manufacturers, dealers and wholesalers to provide a steady flow of OPE repair parts during the reasonable life of the equipment, and allows for return of excess parts to the seller. These provisions are significant in that they allow OPE dealers to maintain a ready stock of the parts needed to honor warranties extended to the consumer.

◆ Repurchase of Inventory

Sections 686.606 and 686.607, F S , require the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a servicing dealer agreement is terminated or the dealer dies or becomes incapacitated. These sections will allow the free transfer of inventory to the manufacturer, distributor, or wholesaler when the dealer has no incentive to retain the equipment.

◆ Unlawful acts and Unenforceable Contracts

Sections 686.608--686.612, F S , define a wide array of unlawful or unenforceable acts and practices. These provisions are examined more fully in the section-by-section analysis, but generally make unlawful any unfair or deceptive practice, and contracts or agreements that are violative of public policy.

◆ Remedies

Section 686.613, F S., authorizes a civil action for damages and costs for violations of the Act's provisions. Relief in the form of a declaratory judgment, injunction, or class action is also authorized.

C APPLICATION OF PRINCIPLES

1. Less Government.

a Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b If an agency or program is eliminated or reduced

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No.

3 Personal Responsibility.

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4 Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill offers the OPE dealer an expanded array of potential legal remedies from which to choose.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5 Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b Does the bill directly affect the legal rights and obligations between family members?

No.

c If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH

Section 1 Creates the following sections within Chapter 686, F S., governing sales, distribution, and franchise relationships.

- ▶ s. 686 60, F.S., to provide a short title of the "Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act",
- ▶ s. 686.601, F.S., to create legislative finding and intent that the sale and distribution of OPE vitally affects the state and its citizens, and that the state's police power is necessary to regulate the entities engaged in the sale and distribution of OPE to prevent abuses on its citizens,
- ▶ s. 686 602, F S., to create definitions for dealer, distributor, distributor branch, distributor representative, factory branch, factory representative, fraud, manufacturer, new outdoor power equipment, outdoor power equipment, person, sale, servicing dealer, and servicing dealer agreement;
- ▶ s. 686.603, F S , to specify that any person engaging in contracts or agreements for the sale or advertisement of new OPE is subject to the Act and the jurisdiction of state courts, and provides that the Act applies to all continuing contracts now in effect with no expiration date and to all other contracts entered into after the effective date of the Act,
- ▶ s 686 604, F.S , to provide that fair and reasonable warranty agreements shall be provided on new OPE sold and fair compensation for labor and parts paid by every OPE manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, requires determinations on warranty claims to be made within 30 days of receipt and payment or notice of disapproval within 30 days of determination, requires 30-day written notice and good and sufficient reason for enforcement of special and non-uniform claim handling requirements, and provides minimum basis for compensating dealer for labor costs and parts incurred in performing warranty work,
- ▶ s. 686 605, F S., to provide that reasonable predelivery and preparation obligations shall be specified, provided, and fulfilled prior to delivery of OPE to retail purchasers, provides for the availability of repair parts throughout the reasonable useful life of OPE; and provides that dealers annually be given the opportunity to return surplus parts for credit, subject to certain conditions,
- ▶ s 686 606, F S , to provide for the repurchase of OPE or parts inventory by a manufacturer, distributor, or wholesaler upon termination of a servicing dealer agreement, provides amounts to be repaid to OPE dealers for return of equipment and parts; provides for title transfer of repurchased inventory within a reasonable time of payment of repurchase amount to dealer; provides that repurchase of specified equipment is not required, and provides certain civil liability in the event that manufacturer, distributor, or wholesaler refuses to repurchase within 60 days of contract termination,

- ▶ s 686.607, F.S., to provide for the repurchase of inventory by the manufacturer, distributor, or wholesaler upon the death or incapacity of a dealer, at the option of the dealer's heirs or devisees and subject to provisions of any contract or agreement consistent with this section and the provisions of s 686 606, F S ;
- ▶ s 686 608, F S , to provide for fair and reasonable compensation for business inventory to the dealer in the event that without due cause a manufacturer, distributor, or wholesaler, refuses to renew, terminates, or restricts the transfer of a servicing dealer agreement,
- ▶ s 686 609, F.S , to provide that a manufacturer, distributor or wholesaler shall indemnify and hold harmless a dealer against losses arising out of any complaint, claim, or lawsuit relating to the manufacture, assembly, or design of items covered by the act or other functions beyond the control of the dealer,
- ▶ s 686 611, F.S , to provide that unfair methods of competition and certain unfair acts or practices are unlawful; makes unlawful certain actions engaged in by an OPE entity which damage any of the parties or the public, provides that an OPE entity or its agent violates this section when it coerces or compels a dealer to order or accept certain equipment, makes unlawful certain actions by an OPE entity or its agent relating to equipment delivery, supplementary agreements, selling agreements, advertising, pricing of new OPE and parts, willful discrimination, dealer's capital structure and financing, sale or transfer of a dealer's interest, receiving benefits, and releases of liability, and makes unlawful certain acts by an OPE dealer,
- ▶ s 686 612, F S , to provide that contracts or servicing dealer agreements violative of the act are void and unenforceable,
- ▶ s. 686 613, F S., to provide a cause of action in circuit court for violations of the act and recovery of actual damages and costs; allows declaratory and injunctive relief; permits class actions, allows punitive damages, and allows the Department of Legal Affairs or state attorney to bring a civil action, and
- ▶ s 686 614, F.S., to provide that the provisions of ss 686 601-686.614 are supplemental and do not preempt local ordinances relating to the unlawful conduct of OPE entities, if such ordinances are not inconsistent with this Act

Section 2 Provides an effective date of October 1, 1997

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects

None

2. Recurring Effects:

None.

3 Long Run Effects Other Than Normal Growth

None.

4 Total Revenues and Expenditures

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1 Non-recurring Effects

None

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs

Indeterminate

2 Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets.

Because of the increased warranty obligations imposed on manufacturers, distributors, and wholesalers, competition will be restricted as the number of those entities decrease due to increased costs. Those entities that already have existing favorable relationships with OPE dealers will be least affected.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION.

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

In the aggregate, this bill does not reduce municipality or county authority to raise revenues

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V COMMENTS.

This bill is supported by the Southeastern Equipment Dealers Association, an organization that represents OPE dealers. The Act is modeled after the Farm Equipment Manufacturers and Dealers Act, ss. 686 40–686 418, F.S., which provides farm equipment dealers with analogous contract rights

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee approved a strike everything after the enacting clause amendment making technical changes throughout the bill, including an amended short title of the "Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act." The amendment has no substantive impact on the bill.

VII. SIGNATURES

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS

Prepared by:

Legislative Research Director

Peter M Rodnite

Lucretia Shaw Collins

STORAGE NAME: h801.grr
DATE: April 10, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 801
RELATING TO: Outdoor Power Equipment
SPONSOR(S) Representative Mackey and others
STATUTE(S) AFFECTED ss 686 60 -- 686 614, F S
COMPANION BILL(S). SB 1594 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
(2) GOVERNMENTAL RULES AND REGULATIONS
(3) FINANCE & TAXATION
(4)
(5)

I. SUMMARY

Presently, manufacturers, distributors, wholesalers and dealers of outdoor power equipment enter into contracts for the sale and service of such equipment. Such contracts typically address warranty agreements, the availability of repair and replacement parts, the return of surplus inventory, and the repurchase of inventory upon termination of a contract or upon the death or incapacity of a dealer. Such contracts are generally governed by the Uniform Commercial Code. Additionally, the Florida Deceptive and Unfair Trade Practices Act provides for the investigation and punishment of unlawful business practices.

HB 801 creates the Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act (Act). Outdoor power equipment (OPE) is defined as motorized "equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance." The Act creates and imposes certain regulations on manufacturers, distributors and wholesalers of outdoor power equipment. The Act is intended to provide added protection against fraud and unfair business practices by implementing specific regulatory requirements with which manufacturers, distributors, wholesalers and dealers of outdoor power equipment must comply. This bill creates significant obligations and rights relative to OPE warranties, repurchase of OPE inventories, servicing agreements, and certain acts and practices.

This bill does not appear to have a fiscal impact on state or local revenues.

This act shall take effective on October 1, 1997.

II. SUBSTANTIVE RESEARCH:

A PRESENT SITUATION

Outdoor Power Equipment dealers sell to consumers various types of motorized equipment used to maintain residential, commercial and public lawns, gardens, landscaping, golf courses, and forestry. OPE dealers purchase their equipment inventory from manufacturers, distributors, and wholesalers. Additionally, outdoor power equipment is also sold by certain retail chains, such as Home Depot, Sears, Wal-Mart, and others

Currently, there are no state or federal laws which specifically govern the rights and responsibilities of OPE manufacturers, distributors, wholesalers or dealers. However, the business relationship between the OPE dealer and the entity providing the equipment is generally governed by a written agreement or contract between the parties

Uniform Commercial Code

Chapter 671, F.S., contains the general provisions of the Uniform Commercial Code and chapter 672, F.S., contains the provisions of the Uniform Commercial Code that govern sales. Some of the relevant provisions of the Uniform Commercial Code are as follows:

- ◆ Every contract or duty imposes an obligation of good faith in its performance or enforcement s. 671.203, F.S.,
- ◆ Contracts for the sale of goods for a price of \$500 or greater must be in writing s. 672.201(1), F.S.,
- ◆ A court may refuse to enforce an unconscionable clause or contract s. 672.302(1), F.S.,
- ◆ A lawful exclusive dealing contract imposes an obligation upon the dealer to use best efforts to supply goods to the buyer s. 672.306(2), F.S.,
- ◆ Unless otherwise agreed, the shipment of goods must be made in a reasonable time. s. 672.309(1), F.S.,
- ◆ An implied warranty of merchantability is found in the contract for the sale of goods. s. 672.314(1), F.S., and
- ◆ A buyer may reject goods if their condition or delivery fails to conform to the contract s. 672.601, F.S.

The UCC provisions found within Florida Statutes provide a framework of reasonable commercial practices. Some OPE dealers allege that, as OPE manufacturing entities merge or otherwise change ownership, they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases

Florida Deceptive and Unfair Trade Practices Act

Chapter 501, F S , contains the Florida Deceptive and Unfair Trade Practices Act, which provides that "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." s. 501 204, F S The Florida Deceptive and Unfair Trade Practices Act authorizes the enforcing authority (the Office of the State Attorney or the Department of Legal Affairs) to investigate violative practices, outlines the remedies available to the enforcing authority, and provides for a civil penalty of up to \$10,000 for each violation

B. EFFECT OF PROPOSED CHANGES

HB 801 creates 14 new sections of Florida Statute, which provide for the regulation of outdoor power equipment manufacturers, distributors, wholesalers and dealers Such regulations include:

◆ Contracts

Section 686 603, F S , provides that any person who sells or advertises new outdoor power equipment in Florida shall be subject to the provisions of this Act Additionally, this Act shall apply to all written or oral agreements between a manufacturer, distributor or wholesaler with a dealer and shall apply to any existing contracts which have no expiration date. Any new contract entered into or renewed after October 1, 1997 will be subject to the Act

◆ Warranties, Claims, and Compensation

Section 686 604, F S , requires OPE manufacturers, distributors or wholesalers to provide a fair and reasonable warranty agreement on all new outdoor power equipment Any claim for warranty payment by a dealer must be approved or disapproved by a manufacturer, distributor or wholesaler within 30 days Approved claims must be paid within 30 days If a claim is disapproved, the manufacturer, distributor or wholesaler denying the request is required to notify the dealer in writing, stating the specific reasons for disapproval. This section also establishes the minimum dealer compensation for parts and labor utilized in any warranty work

◆ Parts Availability and Return

Section 686 605, F.S., creates an obligation for manufacturers, dealers and wholesalers to provide OPE repair parts during the reasonable life of the equipment Additionally, this section requires manufacturers, distributors and wholesalers to allow dealers to return a portion of their surplus parts inventories for credit Manufacturers, distributors and wholesalers may specify a time period of at least 60 days in which dealers may return certain surplus parts If no time period is specified within the 12 months, the manufacturer, distributor or wholesaler must allow a dealer to return certain surplus parts within 30 days after the receipt of the dealer's request.

Furthermore, this section establishes the minimum lawful credit to be allowed for returned parts as 85% of the wholesale cost of a part as listed in the manufacturer's, distributor's or wholesaler's current returnable parts list at the time of such supplier's

parts return program or the date of the dealer's parts return request, whichever is higher. Consequently, any applicable increase in the price of the returnable part would be credited to the dealer

◆ **Repurchase of Inventory upon Termination of the Dealer Agreement**

Section 686 606 F.S , requires the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a dealer agreement is voluntarily or involuntarily terminated. This section requires that such inventory is to be repurchased by the manufacturer, distributor or wholesaler as follows:

- 100% of actual dealer cost, including freight, for all new, unsold and undamaged outdoor power equipment, less a reasonable allowance for depreciation due to dealer usage and deterioration attributable to weather conditions at the dealer's location,
- 85% of the current wholesale price of all new and unused parts. The manufacturer, distributor, or wholesaler must also pay the dealer 6% of the current wholesale price for such parts to cover packing and loading costs, or provide this service themselves.

Any manufacturer, distributor, or wholesaler which fails or refuses to repurchase such inventory within 30 days after termination of the contract is civilly liable for 100% of the current wholesale price of the inventory plus any accrued interest, any freight charges paid by the dealer, and the dealer's reasonable attorney's fees and court costs.

◆ **Repurchase of Inventory upon Death or Incapacity of a Dealer**

Section 686 607, F.S., requires the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a dealer dies or becomes incapacitated. Under this section, the heirs or devisees have one year to exercise their option to have the manufacturer, distributor or wholesaler repurchase the inventory. Any repurchase shall be in the manner described above.

In addition, subsection (2) states that the provisions of this section would override any existing contract that addressed the death or incapacity of a dealer if such contract was inconsistent with this section.

◆ **Compensation for Inventory**

Section 686 606, F.S., states that it is unlawful for a manufacturer, distributor or wholesaler, without due cause, to terminate an agreement, fail to renew an agreement on terms equally available to all their dealers, or to restrict the transfer of an agreement unless the dealer receives fair and reasonable compensation for the inventory of the business. The term "fair and reasonable compensation" is not defined and how it shall be determined is unclear. Also, this section provides compensation for the "inventory of the business". It is unclear whether used equipment or any equipment purchased from another supplier would be included as "inventory of the business".

◆ Indemnification of a Dealer with Respect to Legal Actions

Section 686.609, F.S., provides that a dealer shall be held harmless against any losses or damages arising from a complaint, claim or lawsuit relating to the manufacture, assembly or design of new outdoor power equipment, parts, accessories, or other functions by the manufacturer, distributor, or wholesaler which are beyond the control of the dealer.

◆ Unlawful Acts and Practices

Section 686.611, F.S., states that deceptive and unfair practices and unfair methods of competition relating to the manufacturing, distribution, wholesaling, sale and advertising of outdoor power equipment are unlawful. This section broadly sets forth the various acts which are in violation of this section

◆ Unenforceable Contract or Agreement

Section 686.612, F.S., provides that any contract or dealer agreement or any portion or practice of such an agreement which is in "violation of" this Act is deemed to be against public policy and is void and unenforceable. It is unclear whether this provision is intended to apply to existing contracts or only to those contracts entered into after the effective date. If this provision applies to existing contracts, some presently lawful agreements may become unenforceable.

◆ Remedies

Section 686.613, F.S., authorizes a civil action for damages and costs for violations of the Act's provisions. Relief in the form of a declaratory judgment, injunction, or class action is also authorized

C APPLICATION OF PRINCIPLES

1 Less Government

a. Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Manufacturers, distributors, wholesalers and dealers of outdoor power equipment will be subject to the specific regulations created by this bill

(3) any entitlement to a government service or benefit?

No.

b If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes

a Does the bill increase anyone's taxes?

No.

b Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d Does the bill reduce total fees, both rates and revenues?

No

e Does the bill authorize any fee or tax increase by any local government?

No

3 Personal Responsibility.

- a Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill offers the OPE dealer an expanded array of potential legal remedies from which to choose.

The bill also places various restrictions and regulatory requirements upon manufacturers, distributors, and wholesalers of outdoor power equipment

- b Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, this bill may adversely affect existing contracts which have been lawfully entered into by both parties Section 686 603(3), F S , applies the provisions of this Act to all existing contracts which have no expiration date and all other contracts entered into or renewed after October 1, 1997. Therefore, any existing contract which contains a provision which is in violation of or inconsistent with this Act, is deemed void and unenforceable

5 Family Empowerment

- a. If the bill purports to provide services to families or children

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority?

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH

Section 1. Creates the following sections within Chapter 686, F S , governing sales, distribution, and franchise relationships

- ▶ s. 686.60, F.S., to provide a short title of the "Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act";
- ▶ s. 686.601, F.S., to create legislative finding and intent that the sale and distribution of OPE vitally affects the state and its citizens, and that the state's police power is necessary to regulate the entities engaged in the sale and distribution of OPE to prevent abuses on its citizens,
- ▶ s. 686.602, F S , to create definitions for dealer, distributor, distributor branch, distributor representative, factory branch, factory representative, fraud,

manufacturer, new outdoor power equipment, outdoor power equipment, person, sale, servicing dealer, and servicing dealer agreement,

- ▶ s. 686 603, F S , to specify that any person engaging in contracts or agreements for the sale or advertisement of new OPE is subject to the Act and the jurisdiction of state courts, and provides that the Act applies to all continuing contracts now in effect with no expiration date and to all other contracts entered into after the effective date of the Act;
- ▶ s 686 604, F S , to provide that fair and reasonable warranty agreements shall be provided on new OPE sold and fair compensation for labor and parts paid by every OPE manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division; requires determinations on warranty claims to be made within 30 days of receipt and payment or notice of disapproval within 30 days of determination, requires 30-day written notice and good and sufficient reason for enforcement of special and non-uniform claim handling requirements, and provides minimum basis for compensating dealer for labor costs and parts incurred in performing warranty work,
- ▶ s 686 605, F S , to provide that reasonable predelivery and preparation obligations shall be specified, provided, and fulfilled prior to delivery of OPE to retail purchasers; provides for the availability of repair parts throughout the reasonable useful life of OPE, and provides that dealers annually be given the opportunity to return surplus parts for credit, subject to certain conditions,
- ▶ s. 686 606, F S , to require the repurchase of OPE or parts inventory by a manufacturer, distributor, or wholesaler upon termination of a servicing dealer agreement, provides amounts to be repaid to OPE dealers for return of equipment and parts; provides for title transfer of repurchased inventory within a reasonable time of payment of repurchase amount to dealer, provides that repurchase of certain equipment is not required, and provides for civil liability in the event that a manufacturer, distributor, or wholesaler refuses to repurchase within 60 days of contract termination,
- ▶ s 686 607, F.S , to require the repurchase of inventory by the manufacturer, distributor, or wholesaler upon the death or incapacity of a dealer, at the option of the dealer's heirs or devisees and subject to provisions of any contract or agreement consistent with this section and the provisions of s. 686 606, F S ,
- ▶ s 686 608, F.S , to provide for fair and reasonable compensation for business inventory to the dealer in the event that without due cause a manufacturer, distributor, or wholesaler, refuses to renew, terminates, or restricts the transfer of a servicing dealer agreement,
- ▶ s 686.609, F.S., to provide that a manufacturer, distributor or wholesaler shall indemnify and hold harmless a dealer against losses arising out of any complaint, claim, or lawsuit relating to the manufacture, assembly, or design of items covered by the act or other functions beyond the control of the dealer;
- ▶ s. 686 611, F S , to provide that unfair methods of competition and certain unfair acts or practices are unlawful, makes unlawful certain actions by an OPE entity

which damage any of the parties or the public, provides that an OPE entity or its agent violates this section when it coerces or compels a dealer to order or accept certain equipment; makes unlawful certain actions by an OPE entity or its agent relating to equipment delivery, supplementary agreements, selling agreements, advertising, pricing of new OPE and parts, willful discrimination, dealer's capital structure and financing, sale or transfer of a dealer's interest, receiving benefits, and releases of liability, and makes unlawful certain acts by an OPE dealer,

- ▶ s. 686.612, F.S., to provide that contracts or servicing dealer agreements violative of the act are void and unenforceable,
- ▶ s. 686 613, F.S., to provide a cause of action in circuit court for violations of the act and recovery of actual damages and costs, allows declaratory and injunctive relief; permits class actions; allows punitive damages; and allows the Department of Legal Affairs or state attorney to bring a civil action, and
- ▶ s. 686 614, F S , to provide that the provisions of ss. 686 601-686 614 are supplemental and do not preempt local ordinances relating to the unlawful conduct of OPE entities, if such ordinances are not inconsistent with this Act

Section 2. Provides an effective date of October 1, 1997

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1 Non-recurring Effects:

None

2 Recurring Effects.

None

3. Long Run Effects Other Than Normal Growth

None

4. Total Revenues and Expenditures

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1 Non-recurring Effects

None

2 Recurring Effects.

None

3. Long Run Effects Other Than Normal Growth:

None.

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

1. Direct Private Sector Costs

Indeterminate. Manufacturers, distributors and wholesalers of outdoor power equipment may incur increased costs due to the regulatory requirements created by this bill

2 Direct Private Sector Benefits

OPE dealers are the beneficiaries of this legislation. Dealers will be guaranteed warranty agreements, credit for returned surplus parts and equipment, repurchase of equipment inventory upon termination of a contract or the death of a dealer, compensation for inventory upon termination of or refusal to renew certain dealer agreements, protection from certain legal actions, and an expanded array of potential legal remedies

Consumers of outdoor power equipment will benefit from the mandatory warranty agreements and repair parts availability provisions of this bill

3 Effects on Competition, Private Enterprise and Employment Markets

The regulatory requirements contained in this bill may discourage certain manufacturers, distributors or wholesalers from conducting business with dealers in this state. Alternatively, such manufacturers, distributors, or wholesalers may attempt to expand their business with those retail chains which sell outdoor power equipment, because such agreements would not be subject to the regulatory requirements created by this bill.

D. FISCAL COMMENTS.

None

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION.

STORAGE NAME: h801 grr

DATE: April 10, 1997

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A. APPLICABILITY OF THE MANDATES PROVISION

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B REDUCTION OF REVENUE RAISING AUTHORITY

In the aggregate, this bill does not reduce municipality or county authority to raise revenues.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V COMMENTS

This bill is supported by the Southeastern Equipment Dealers Association (SEDA), an organization that represents OPE dealers. SEDA states that some suppliers are taking advantage of OPE dealers by not honoring their warranty agreements, by terminating or not renewing a dealer's contract without cause, and by discriminating between dealers. The Act is modeled after the Farm Equipment Manufacturers and Dealers Act, ss 686 40--686.418, F.S , which provides farm equipment dealers with analogous contract rights

Mr Jerry Parkin, Government Affairs Director for the John Deere Company, a manufacturer and distributor of outdoor power equipment, indicates that the company has serious concerns with the bill. Mr Parkin points out that outdoor power equipment differs from farm equipment in that it is sold by dealers as well as retail outlets such as Sears, Wal-Mart and Home Depot. The bill would regulate equipment dealers but not large retailers. He suggests that the bill would create unfair competitive situations. Additionally, Mr Parkin suggests that remedies under common law and the Uniform Commercial Code are currently available to all dealers, and that the indemnification provisions, remedies, and injunctive relief provisions contained in the bill are unnecessary.

If HB 801 becomes law, s 686 603(3), F S , states that the bill's provisions would override existing contracts. This section may be problematic with regard to the enforceability of contracts lawfully entered into prior to this Act. It is unclear how such a provision will impact existing agreements.

Also, the bill contains several undefined terms which are unclear and may impair the enforcement of this Act.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted a remove-everything amendment which is traveling with the bill. This amendment makes technical changes throughout the bill, including an amended short title of the "Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act." The amendment has no substantive impact on the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS
Prepared by: Legislative Research Director

Peter M. Rodnite

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:
Prepared by: Legislative Research Director.

Angela Price

David M. Greenbaum

STORAGE NAME: h801a grr
DATE: April 15, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 801
RELATING TO: Outdoor Power Equipment
SPONSOR(S) Representative Mackey and others
STATUTE(S) AFFECTED ss 686.60 -- 686 614, F S
COMPANION BILL(S). SB 1594 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 5 NAYS 1
- (3) FINANCE & TAXATION
- (4)
- (5)

I. SUMMARY

Presently, manufacturers, distributors, wholesalers and dealers of outdoor power equipment enter into contracts for the sale and service of such equipment. Such contracts typically address warranty agreements, the availability of repair and replacement parts, the return of surplus inventory, and the repurchase of inventory upon termination of a contract or upon the death or incapacity of a dealer. Such contracts are generally governed by the Uniform Commercial Code. Additionally, the Florida Deceptive and Unfair Trade Practices Act provides for the investigation and punishment of unlawful business practices.

HB 801 creates the Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act (Act). Outdoor power equipment (OPE) is defined as motorized "equipment used to maintain commercial, public, and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance." The Act creates and imposes certain regulations on manufacturers, distributors and wholesalers of outdoor power equipment. The Act is intended to provide added protection against fraud and unfair business practices by implementing specific regulatory requirements with which manufacturers, distributors, wholesalers and dealers of outdoor power equipment must comply. This bill creates significant obligations and rights relative to OPE warranties, repurchase of OPE inventories, servicing agreements, and certain acts and practices.

This bill does not appear to have a fiscal impact on state or local revenues.

This act shall take effective on October 1, 1997.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION.

Outdoor Power Equipment dealers sell to consumers various types of motorized equipment used to maintain residential, commercial and public lawns, gardens, landscaping, golf courses, and forestry OPE dealers purchase their equipment inventory from manufacturers, distributors, and wholesalers Additionally, outdoor power equipment is also sold by certain retail chains, such as Home Depot, Sears, Wal-Mart, and others

Currently, there are no state or federal laws which specifically govern the rights and responsibilities of OPE manufacturers, distributors, wholesalers or dealers However, the business relationship between the OPE dealer and the entity providing the equipment is generally governed by a written agreement or contract between the parties

Uniform Commercial Code

Chapter 671, F S., contains the general provisions of the Uniform Commercial Code and chapter 672, F S., contains the provisions of the Uniform Commercial Code that govern sales Some of the relevant provisions of the Uniform Commercial Code are as follows

- ◆ Every contract or duty imposes an obligation of good faith in its performance or enforcement s. 671.203, F S.;
- ◆ Contracts for the sale of goods for a price of \$500 or greater must be in writing s 672.201(1), F.S.;
- ◆ A court may refuse to enforce an unconscionable clause or contract s 672.302(1), F S ,
- ◆ A lawful exclusive dealing contract imposes an obligation upon the dealer to use best efforts to supply goods to the buyer s. 672.306(2), F S.;
- ◆ Unless otherwise agreed, the shipment of goods must be made in a reasonable time s 672.309(1), F S ,
- ◆ An implied warranty of merchantability is found in the contract for the sale of goods s 672.314(1), F.S.; and
- ◆ A buyer may reject goods if their condition or delivery fails to conform to the contract. s 672.601, F S

The UCC provisions found within Florida Statutes provide a framework of reasonable commercial practices Some OPE dealers allege that, as OPE manufacturing entities merge or otherwise change ownership, they are left with fewer rights and remedies, particularly in the areas of warranty, parts return, and inventory repurchases

Florida Deceptive and Unfair Trade Practices Act

Chapter 501, F.S., contains the Florida Deceptive and Unfair Trade Practices Act, which provides that "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." s. 501 204, F.S. The Florida Deceptive and Unfair Trade Practices Act authorizes the enforcing authority (the Office of the State Attorney or the Department of Legal Affairs) to investigate violative practices, outlines the remedies available to the enforcing authority, and provides for a civil penalty of up to \$10,000 for each violation

B. EFFECT OF PROPOSED CHANGES.

HB 801 creates 14 new sections of Florida Statute, which provide for the regulation of outdoor power equipment manufacturers, distributors, wholesalers and dealers. Such regulations include:

◆ **Contracts**

Section 686 603, F.S., provides that any person who sells or advertises new outdoor power equipment in Florida shall be subject to the provisions of this Act. Additionally, this Act shall apply to all written or oral agreements between a manufacturer, distributor or wholesaler with a dealer and shall apply to any existing contracts which have no expiration date. Any new contract entered into or renewed after October 1, 1997 will be subject to the Act.

◆ **Warranties, Claims, and Compensation**

Section 686 604, F.S., requires OPE manufacturers, distributors or wholesalers to provide a fair and reasonable warranty agreement on all new outdoor power equipment. Any claim for warranty payment by a dealer must be approved or disapproved by a manufacturer, distributor or wholesaler within 30 days. Approved claims must be paid within 30 days. If a claim is disapproved, the manufacturer, distributor or wholesaler denying the request is required to notify the dealer in writing, stating the specific reasons for disapproval. This section also establishes the minimum dealer compensation for parts and labor utilized in any warranty work.

◆ **Parts Availability and Return**

Section 686 605, F.S., creates an obligation for manufacturers, dealers and wholesalers to provide OPE repair parts during the reasonable life of the equipment. Additionally, this section requires manufacturers, distributors and wholesalers to allow dealers to return a portion of their surplus parts inventories for credit. Manufacturers, distributors and wholesalers may specify a time period of at least 60 days in which dealers may return certain surplus parts. If no time period is specified within the 12 months, the manufacturer, distributor or wholesaler must allow a dealer to return certain surplus parts within 30 days after the receipt of the dealer's request.

Furthermore, this section establishes the minimum lawful credit to be allowed for returned parts as 85% of the wholesale cost of a part as listed in the manufacturer's, distributor's or wholesaler's current returnable parts list at the time of such supplier's

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parts return program or the date of the dealer's parts return request, whichever is higher. Consequently, any applicable increase in the price of the returnable part would be credited to the dealer

◆ **Repurchase of Inventory upon Termination of the Dealer Agreement**

Section 686.606 F.S., requires the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a dealer agreement is voluntarily or involuntarily terminated. This section requires that such inventory is to be repurchased by the manufacturer, distributor or wholesaler as follows.

- 100% of actual dealer cost, including freight, for all new, unsold and undamaged outdoor power equipment, less a reasonable allowance for depreciation due to dealer usage and deterioration attributable to weather conditions at the dealer's location,
- 85% of the current wholesale price of all new and unused parts. The manufacturer, distributor, or wholesaler must also pay the dealer 6% of the current wholesale price for such parts to cover packing and loading costs, or provide this service themselves

Any manufacturer, distributor, or wholesaler which fails or refuses to repurchase such inventory within 30 days after termination of the contract is civilly liable for 100% of the current wholesale price of the inventory plus any accrued interest, any freight charges paid by the dealer, and the dealer's reasonable attorney's fees and court costs

◆ **Repurchase of Inventory upon Death or Incapacity of a Dealer**

Section 686.607, F.S., requires the manufacturer, distributor, or wholesaler to repurchase OPE inventory in the event that a dealer dies or becomes incapacitated. Under this section, the heirs or devisees have one year to exercise their option to have the manufacturer, distributor or wholesaler repurchase the inventory. Any repurchase shall be in the manner described above.

In addition, subsection (2) states that the provisions of this section would override any existing contract that addressed the death or incapacity of a dealer if such contract was inconsistent with this section.

◆ **Compensation for Inventory**

Section 686.606, F.S., states that it is unlawful for a manufacturer, distributor or wholesaler, without due cause, to terminate an agreement, fail to renew an agreement on terms equally available to all their dealers, or to restrict the transfer of an agreement unless the dealer receives fair and reasonable compensation for the inventory of the business. The term "fair and reasonable compensation" is not defined and how it shall be determined is unclear. Also, this section provides compensation for the "inventory of the business". It is unclear whether used equipment or any equipment purchased from another supplier would be included as "inventory of the business".

◆ Indemnification of a Dealer with Respect to Legal Actions

Section 686.609, F.S., provides that a dealer shall be held harmless against any losses or damages arising from a complaint, claim or lawsuit relating to the manufacture, assembly or design of new outdoor power equipment, parts, accessories, or other functions by the manufacturer, distributor, or wholesaler which are beyond the control of the dealer

◆ Unlawful Acts and Practices

Section 686.611, F.S., states that deceptive and unfair practices and unfair methods of competition relating to the manufacturing, distribution, wholesaling, sale and advertising of outdoor power equipment are unlawful. This section broadly sets forth the various acts which are in violation of this section.

◆ Unenforceable Contract or Agreement

Section 686.612, F.S., provides that any contract or dealer agreement or any portion or practice of such an agreement which is in "violation of" this Act is deemed to be against public policy and is void and unenforceable. It is unclear whether this provision is intended to apply to existing contracts or only to those contracts entered into after the effective date. If this provision applies to existing contracts, some presently lawful agreements may become unenforceable.

◆ Remedies

Section 686.613, F.S., authorizes a civil action for damages and costs for violations of the Act's provisions. Relief in the form of a declaratory judgment, injunction, or class action is also authorized

C APPLICATION OF PRINCIPLES

1 Less Government

a. Does the bill create, increase or reduce, either directly or indirectly.

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Manufacturers, distributors, wholesalers and dealers of outdoor power equipment will be subject to the specific regulations created by this bill.

(3) any entitlement to a government service or benefit?

No.

b If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a Does the bill increase anyone's taxes?

No.

b Does the bill require or authorize an increase in any fees?

No.

c Does the bill reduce total taxes, both rates and revenues?

No

d Does the bill reduce total fees, both rates and revenues?

No

e Does the bill authorize any fee or tax increase by any local government?

No.

3 Personal Responsibility.

- a Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom

- a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill offers the OPE dealer an expanded array of potential legal remedies from which to choose

The bill also places various restrictions and regulatory requirements upon manufacturers, distributors, and wholesalers of outdoor power equipment

- b Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, this bill may adversely affect existing contracts which have been lawfully entered into by both parties. Section 686 603(3), F S , applies the provisions of this Act to all existing contracts which have no expiration date and all other contracts entered into or renewed after October 1, 1997. Therefore, any existing contract which contains a provision which is in violation of or inconsistent with this Act, is deemed void and unenforceable.

5 Family Empowerment

- a If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D SECTION-BY-SECTION RESEARCH

Section 1. Creates the following sections within Chapter 686, F.S., governing sales, distribution, and franchise relationships

- ▶ s. 686.60, F.S., to provide a short title of the "Outdoor Power Equipment Servicing Manufacturers, Distributors, Wholesalers, and Dealers Act",
- ▶ s. 686.601, F.S., to create legislative finding and intent that the sale and distribution of OPE vitally affects the state and its citizens, and that the state's police power is necessary to regulate the entities engaged in the sale and distribution of OPE to prevent abuses on its citizens,
- ▶ s. 686.602, F.S., to create definitions for dealer, distributor, distributor branch, distributor representative, factory branch, factory representative, fraud,

manufacturer, new outdoor power equipment, outdoor power equipment, person, sale, servicing dealer, and servicing dealer agreement,

- ▶ s. 686.603, F S , to specify that any person engaging in contracts or agreements for the sale or advertisement of new OPE is subject to the Act and the jurisdiction of state courts, and provides that the Act applies to all continuing contracts now in effect with no expiration date and to all other contracts entered into after the effective date of the Act;
- ▶ s 686 604, F.S , to provide that fair and reasonable warranty agreements shall be provided on new OPE sold and fair compensation for labor and parts paid by every OPE manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, requires determinations on warranty claims to be made within 30 days of receipt and payment or notice of disapproval within 30 days of determination; requires 30-day written notice and good and sufficient reason for enforcement of special and non-uniform claim handling requirements, and provides minimum basis for compensating dealer for labor costs and parts incurred in performing warranty work,
- ▶ s 686 605, F.S , to provide that reasonable predelivery and preparation obligations shall be specified, provided, and fulfilled prior to delivery of OPE to retail purchasers, provides for the availability of repair parts throughout the reasonable useful life of OPE, and provides that dealers annually be given the opportunity to return surplus parts for credit, subject to certain conditions,
- ▶ s 686.606, F S., to require the repurchase of OPE or parts inventory by a manufacturer, distributor, or wholesaler upon termination of a servicing dealer agreement, provides amounts to be repaid to OPE dealers for return of equipment and parts; provides for title transfer of repurchased inventory within a reasonable time of payment of repurchase amount to dealer, provides that repurchase of certain equipment is not required; and provides for civil liability in the event that a manufacturer, distributor, or wholesaler refuses to repurchase within 60 days of contract termination,
- ▶ s 686 607, F S , to require the repurchase of inventory by the manufacturer, distributor, or wholesaler upon the death or incapacity of a dealer, at the option of the dealer's heirs or devisees and subject to provisions of any contract or agreement consistent with this section and the provisions of s 686 606, F S ,
- ▶ s 686.608, F.S., to provide for fair and reasonable compensation for business inventory to the dealer in the event that without due cause a manufacturer, distributor, or wholesaler, refuses to renew, terminates, or restricts the transfer of a servicing dealer agreement;
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STORAGE NAME: h801a grr

DATE: April 15, 1997

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which damage any of the parties or the public, provides that an OPE entity or its agent violates this section when it coerces or compels a dealer to order or accept certain equipment; makes unlawful certain actions by an OPE entity or its agent relating to equipment delivery, supplementary agreements, selling agreements, advertising, pricing of new OPE and parts, willful discrimination, dealer's capital structure and financing, sale or transfer of a dealer's interest, receiving benefits, and releases of liability, and makes unlawful certain acts by an OPE dealer;

- ▶ s 686 612, F S , to provide that contracts or servicing dealer agreements violative of the act are void and unenforceable;
- ▶ s 686 613, F S , to provide a cause of action in circuit court for violations of the act and recovery of actual damages and costs; allows declaratory and injunctive relief; permits class actions, allows punitive damages; and allows the Department of Legal Affairs or state attorney to bring a civil action; and
- ▶ s. 686 614, F S., to provide that the provisions of ss 686 601-686 614 are supplemental and do not preempt local ordinances relating to the unlawful conduct of OPE entities, if such ordinances are not inconsistent with this Act.

Section 2 Provides an effective date of October 1, 1997.

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1 Non-recurring Effects:

None.

2 Recurring Effects.

None.

3 Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects

None

2 Recurring Effects.

None.

3 Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1 Direct Private Sector Costs

Indeterminate Manufacturers, distributors and wholesalers of outdoor power equipment may incur increased costs due to the regulatory requirements created by this bill

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OPE dealers are the beneficiaries of this legislation Dealers will be guaranteed warranty agreements, credit for returned surplus parts and equipment, repurchase of equipment inventory upon termination of a contract or the death of a dealer, compensation for inventory upon termination of or refusal to renew certain dealer agreements, protection from certain legal actions, and an expanded array of potential legal remedies

Consumers of outdoor power equipment will benefit from the mandatory warranty agreements and repair parts availability provisions of this bill.

3 Effects on Competition, Private Enterprise and Employment Markets.

The regulatory requirements contained in this bill may discourage certain manufacturers, distributors or wholesalers from conducting business with dealers in this state Alternatively, such manufacturers, distributors, or wholesalers may attempt to expand their business with those retail chains which sell outdoor power equipment, because such agreements would not be subject to the regulatory requirements created by this bill

D. FISCAL COMMENTS:

None

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A. APPLICABILITY OF THE MANDATES PROVISION.

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure

B. REDUCTION OF REVENUE RAISING AUTHORITY

In the aggregate, this bill does not reduce municipality or county authority to raise revenues

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V. COMMENTS.

This bill is supported by the Southeastern Equipment Dealers Association (SEDA), an organization that represents OPE dealers. SEDA states that some suppliers are taking advantage of OPE dealers by not honoring their warranty agreements, by terminating or not renewing a dealer's contract without cause, and by discriminating between dealers. The Act is modeled after the Farm Equipment Manufacturers and Dealers Act, ss. 686.40--686.418, F.S., which provides farm equipment dealers with analogous contract rights.

Mr. Jerry Parkin, Government Affairs Director for the John Deere Company, a manufacturer and distributor of outdoor power equipment, indicates that the company has serious concerns with the bill. Mr. Parkin points out that outdoor power equipment differs from farm equipment in that it is sold by dealers as well as retail outlets such as Sears, Wal-Mart and Home Depot. The bill would regulate equipment dealers but not large retailers. He suggests that the bill would create unfair competitive situations. Additionally, Mr. Parkin suggests that remedies under common law and the Uniform Commercial Code are currently available to all dealers, and that the indemnification provisions, remedies, and injunctive relief provisions contained in the bill are unnecessary.

If HB 801 becomes law, s. 686.603(3), F.S., states that the bill's provisions would override existing contracts. This section may be problematic with regard to the enforceability of contracts lawfully entered into prior to this Act. It is unclear how such a provision will impact existing agreements.

Also, the bill contains several undefined terms which are unclear and may impair the enforcement of this Act.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted a remove-everything amendment which is traveling with the bill. This amendment makes technical changes throughout the bill, including an amended short title of the "Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Serviceing Dealers Act." The amendment has no substantive impact on the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS.

Prepared by:

Legislative Research Director

Peter M. Rodnite

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS.

Prepared by:

Legislative Research Director

Angela Price

David M. Greenbaum