

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Holland**

# A Bill

**HOUSE BILL 1542**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§4-72-301, 4-72-  
9 307, AND 4-72-310 TO EXPAND THE FARM EQUIPMENT RETAILER  
10 FRANCHISE PROTECTION ACT TO COVER OTHER TYPES OF EQUIPMENT  
11 DEALERSHIPS; AND FOR OTHER PURPOSES."

12  
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

14  
15 SECTION 1. Arkansas Code §4-72-301 is hereby amended to read as  
16 follows:

17 "4-72-301. Definitions.

18 As used in this subchapter, unless the context otherwise requires:

19 (1) 'Current model' means a model listed in the wholesaler's,  
20 manufacturer's, or distributor's current sales manual or any supplements  
21 thereto;

22 (2) 'Current net price' means the price listed in the wholesaler's,  
23 manufacturer's, or distributor's price list or catalogue in effect at the time  
24 the contract is canceled or discontinued, less any applicable trade and cash  
25 discounts;

26 (3) 'Retailer' means any person, firm, or corporation engaged in the  
27 business of selling and retailing farm implements, machinery, utility and  
28 industrial equipment, lawn and garden outdoor powered machinery and equipment,  
29 attachments, or repair parts but shall not include retailers of petroleum and  
30 motor vehicle and related automobile care and replacement products normally  
31 sold by those retailers;

32 (4) 'Inventory' means farm implements, machinery, utility and  
33 industrial equipment, lawn and garden outdoor powered machinery and equipment,  
34 attachments, and repair parts;

35 (5) 'Net cost' means the price the retailer paid for the merchandise

1 to the wholesaler, manufacturer, or distributor, less all applicable discounts  
2 allowed;

3       (6) 'Manufacturer, wholesaler, or distributor' means a person,  
4 partnership, corporation, association or other form of business enterprise  
5 engaged in the manufacturing, assembly, or wholesale distribution of farm  
6 implements, machinery, utility and industrial equipment, lawn and garden  
7 outdoor powered machinery and equipment, and attachments. The term also  
8 includes any successor in interest of the farm implements, machinery, utility  
9 and industrial equipment, lawn and garden outdoor powered machinery and  
10 equipment, and attachments manufacturer, including any purchaser of assets or  
11 stock, any surviving corporation resulting from merger or liquidation, any  
12 receiver or assignee, or any trustee of the original farm implements,  
13 machinery, utility and industrial equipment and attachments manufacturer;

14       (7) 'Dealership agreement' means an oral or written agreement of  
15 definite or indefinite duration between a farm implements, machinery, utility  
16 and industrial equipment and attachments manufacturer, and a dealer which  
17 provides for the rights and obligations of the parties with respect to the  
18 purchase or sale of such equipment."

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20       SECTION 2. Arkansas Code Annotated §4-72-307 is hereby amended to read  
21 as follows:

22       "4-72-307. Inventory not required to be repurchased.

23       The provisions of this subchapter shall not require the repurchase from  
24 a retailer of:

25       (1) Any repair part which has a limited storage life or is otherwise  
26 subject to deterioration, such as rubber items, gaskets, or batteries;

27       (2) Any repair part which is in a broken or damaged package;

28       (3) Any single repair part which is priced as a set of two (2) or more  
29 items;

30       (4) Any repair part which because of its condition is not resalable as  
31 a new part without repackaging or reconditioning;

32       (5) Any inventory for which the retailer is unable to furnish  
33 satisfactory evidence to the wholesaler, manufacturer, or distributor, of  
34 clear title, free and clear of all claims, liens, and encumbrances;

35       (6) Any inventory which the retailer desires to keep, provided the

1 retailer has a contractual right to do so;

2 (7) Any farm implements, machinery, utility and industrial equipment,  
3 lawn and garden outdoor powered machinery and equipment, and attachments which  
4 are not current models or which are not in new, unused, undamaged, complete  
5 condition;

6 (8) Any repair parts which are not in new, unused, undamaged condition;  
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8 (9) Any farm implements, machinery, utility and industrial equipment,  
9 lawn and garden outdoor powered machinery and equipment, or attachments which  
10 were purchased twenty-four (24) months or more prior to notice of termination  
11 of the contract;

12 (10) Any inventory which was ordered by the retailer on or after the  
13 date of notification of termination of the contract;

14 (11) Any inventory which was acquired by the retailer from any source  
15 other than the wholesaler, manufacturer, or distributor."  
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17 SECTION 3. Arkansas Code Annotated §4-72-310 is hereby amended by  
18 adding a new section to read as follows:

19 "4-72-310. Violations.

20 (a) It is a violation of this subchapter for a manufacturer,  
21 wholesaler, or distributor to coerce a dealer to accept delivery of parts,  
22 accessories or specialized tools which the dealer has not voluntarily ordered.

23 (b) It is a violation of this subchapter for a manufacturer to:

24 (1) Condition or attempt to condition the sale of farm  
25 implements, machinery, utility and industrial equipment, lawn and garden  
26 outdoor powered machinery and equipment, and attachments on a dealer also  
27 purchasing other goods or services; except that a manufacturer may require the  
28 dealer to purchase those parts reasonably necessary to maintain the quality of  
29 operation in the field of the equipment used in the trade area and to purchase  
30 or lease such telecommunication equipment, including computer software, as is  
31 substantially and reasonably necessary to communicate with the manufacturer  
32 provided, however, that upon termination, nonrenewal, or cancellation of an  
33 equipment dealer franchise, the equipment manufacturer must reimburse the  
34 equipment dealer for all telecommunications equipment, including computer  
35 software, purchased by the equipment dealer in order to comply with the

1 requirements of the equipment manufacturer that the dealer returns or offers  
2 to return to the equipment manufacturer, subject to a reasonable reduction for  
3 depreciation.

4 (2) Coerce or attempt to coerce a dealer into refusing to  
5 purchase the equipment manufactured by another equipment manufacturer.

6 (3) Discriminate in the prices charged for equipment of like  
7 grade and quality sold by the equipment manufacturer to similarly-situated  
8 equipment dealers. This does not prevent the use of *volume discount* or a  
9 differential which makes only due allowance for differences in the cost of  
10 manufacture, sale, or delivery or for the differing methods by which or  
11 quantities in which the equipment is sold or delivered, by the equipment  
12 manufacturer; or

13 (4) Attempt or threaten to terminate, cancel, fail to renew, or  
14 substantially change the competitive circumstances of the dealership agreement  
15 based on the result of a natural disaster, including a sustained drought in  
16 the dealership market area, labor dispute, or other circumstances beyond the  
17 dealer's control."

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19 SECTION 4. All provisions of this act of a general and permanent nature  
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
21 Revision Commission shall incorporate the same in the Code.

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23 SECTION 5. If any provision of this act or the application thereof to  
24 any person or circumstance is held invalid, such invalidity shall not affect  
25 other provisions or applications of the act which can be given effect without  
26 the invalid provision or application, and to this end the provisions of this  
27 act are declared to be severable.

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29 SECTION 6. All laws and parts of laws in conflict with this act are  
30 hereby repealed.

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32 SECTION 7. EMERGENCY. It is hereby found and determined by the  
33 Seventy-Eighth General Assembly that the present laws are not clear as to the  
34 rights and responsibilities of certain retailers of farm equipment when a  
35 contract or franchise is terminated; that certain terms should be defined for

1 clarity; that this act is needed to clearly define the rights and  
2 responsibilities when terminating a contract or franchise and should be  
3 effective immediately. Therefore, an emergency is hereby declared to exist  
4 and this act being necessary for the immediate preservation of the public  
5 peace, health and safety shall be in full force and effect from and after its  
6 passage and approval.

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*/s/J. Holland*