

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:  
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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  
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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

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;

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

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

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

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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.

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.

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

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  
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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,

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

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           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

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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

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