

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Poppell offered the following:

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3 **Amendment (with title amendment)**

4 Remove the entire body and insert:

5 Section 1. Section 686.40, Florida Statutes, is amended to
6 read:

7 686.40 Agricultural ~~Farm~~ Equipment Manufacturers and
8 Dealers Act; ~~short title.~~--Sections 686.40-686.418 shall be
9 known by the popular name ~~and may be cited as~~ the "Agricultural
10 ~~Farm~~ Equipment Manufacturers and Dealers Act."

11 Section 2. Subsection (1) of section 686.401, Florida
12 Statutes, is amended to read:

13 686.401 Legislative finding and intent; construction of
14 ss. 686.40-686.418.--

15 (1) The Legislature finds and declares that the
16 distribution and sale of ~~tractors and farm~~ equipment primarily

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17 designed for or used in agriculture in this state vitally
18 affects the general economy of the state, the public interest,
19 and the public welfare and that, in the exercise of its police
20 power, it is necessary to regulate the conduct of ~~tractor and~~
21 ~~farm equipment~~ manufacturers, distributors, and dealers of such
22 equipment, and their representatives, doing business in this
23 state in order to prevent fraud, unfair business practices,
24 unfair methods of competition, impositions, and other abuses
25 upon its citizens.

26 Section 3. Section 686.402, Florida Statutes, is amended
27 to read:

28 686.402 Definitions of terms used in ss. 686.40-
29 686.418.--In construing ss. 686.40-686.418, unless the context
30 otherwise requires, the word, phrase, or term:

31 (1)~~(16)~~ "~~Tractor or farm equipment~~ Dealer" means a person
32 who sells, solicits, or advertises the sale of new and used
33 ~~tractors and farm~~ equipment to the consuming public, but does
34 not include:

35 ~~(a) A receiver, trustee, administrator, executor, personal~~
36 ~~representative, guardian, or other person appointed by or acting~~
37 ~~under judgment, decree, or order of any court.~~

38 (a)~~(b)~~ A public officer while performing her or his duties
39 as such officer.

40 (b)~~(e)~~ A person making casual or isolated sales of her or
41 his own ~~tractors or items of farm~~ equipment ~~not subject to sales~~
42 ~~tax under the laws of this state.~~

43 (c)~~(d)~~ A person engaged in the auction sale of ~~tractors~~
44 ~~and farm~~ equipment.

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45 (d)(e) A dealer in used ~~tractors and farm~~ equipment.

46 (e) A mass-market retailer.

47 (2) "Dealership" means the business of selling or
48 attempting to effect the sale by a dealer of new equipment or
49 the right conferred by written or oral agreement with the
50 manufacturer, distributor, or wholesaler, for a definite or
51 indefinite period of time, to sell or attempt to effect the sale
52 of new equipment.

53 (3)(1) "Distributor" or "wholesaler" means any person,
54 firm, association, corporation, or company that sells or
55 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~
56 ~~equipment~~ dealers and that maintains distributor representatives
57 within this state.

58 (4)(2) "Distributor branch" means a branch office
59 maintained by a distributor or wholesaler which sells or
60 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~
61 ~~equipment~~ dealers.

62 (5)(3) "Distributor representative" means a representative
63 employed by a distributor, distributor branch, or wholesaler.

64 (6) "Farm Equipment" means those tractors or farm
65 implements which are primarily designed for or used use in
66 agriculture. Equipment designed for or used in off-road
67 construction, mining, utility, and industrial purposes is not
68 included in this definition.

69 (7)(4) "Factory branch" means a branch office maintained
70 by a manufacturer which manufactures and assembles ~~tractors and~~
71 ~~farm~~ equipment for sale to distributors ~~of tractors~~ or ~~to farm~~

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72 ~~equipment~~ dealers or which is maintained for directing and
73 supervising the representatives of the manufacturer.

74 (8)~~(5)~~ "Factory representative" means a representative
75 employed by a manufacturer or factory branch for the purpose of
76 making or promoting the sale of ~~tractors and farm~~ equipment or
77 for supervising, servicing, introducing, or contracting with
78 ~~tractor or farm equipment~~ dealers or prospective dealers.

79 (9)~~(7)~~ "Franchise" means a contract or agreement, either
80 expressed or implied, whether oral or written, for a definite or
81 indefinite period of time in which a manufacturer, distributor,
82 or wholesaler grants to a ~~tractor or farm equipment~~ dealer
83 permission to use a trade name, service mark, trademark, or
84 related characteristic and in which there is a common interest
85 or community of interest in the marketing of ~~tractors or farm~~
86 equipment or services related thereto at wholesale or retail,
87 whether by leasing, sale, or otherwise.

88 (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~
89 dealer to whom a franchise is offered or granted.

90 (11)~~(9)~~ "Franchisor" means a manufacturer, distributor, or
91 wholesaler who grants a franchise to a ~~tractor or farm equipment~~
92 dealer.

93 (12)~~(10)~~ "Fraud" means and includes actual fraud or
94 constructive fraud as normally defined, in addition to the
95 following:

96 (a) A misrepresentation in any manner, whether
97 intentionally false or arising from gross negligence, of a
98 material fact.

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99 (b) A promise or representation not made honestly and in
100 good faith.

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

102 (d) Any artifice employed to deceive another.

103 (13)~~(11)~~ "Manufacturer" means any person engaged in the
104 business of manufacturing or assembling new and unused ~~tractors~~
105 ~~and farm~~ equipment.

106 (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a ~~tractor~~
107 ~~or item of farm~~ equipment which has not been previously sold to
108 and put into regular use or service by any person, except a
109 distributor, wholesaler, or ~~tractor or farm equipment~~ dealer for
110 resale.

111 (15)~~(13)~~ "Person" means a natural person, corporation,
112 association, partnership, trust, or other business entity and,
113 in the case of a business entity, includes any other entity in
114 which the business entity has a majority interest or which it
115 effectively controls, as well as the individual officers,
116 directors, and other persons in active control of the activities
117 of each such entity.

118 (16) "Relevant market area" means the geographic area for
119 which a dealer is assigned responsibility for selling or
120 soliciting or advertising the sale of equipment under the terms
121 of a franchise.

122 (17)~~(14)~~ "Sale" means and includes the issuance, transfer,
123 agreement for transfer, exchange, pledge, hypothecation, or
124 mortgage in any manner or form, whether by transfer in trust or
125 otherwise, of any ~~tractor or item of farm~~ equipment or interest
126 therein, or of any franchise related thereto, for a

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127 consideration and any option, subscription or other contract, or
128 solicitation, looking to a sale, or offer or attempt to sell in
129 any form, whether in oral or written form for a consideration.

130 (18) "Termination" means the termination, cancellation,
131 nonrenewal, or noncontinuation of a contract or agreement.

132 (19)~~(15)~~ "Tractor" means a vehicle that is operated
133 principally upon a farm, grove, or orchard in connection with
134 agriculture ~~agricultural or horticultural pursuits.~~

135 Section 4. Section 686.403, Florida Statutes, is amended
136 to read:

137 686.403 Application of ss. 686.40-686.418.--

138 (1) Any person who engages directly or indirectly in
139 purposeful agreements or contracts within this state in
140 connection with the sale or advertising for sale of new
141 equipment ~~tractors and farm machinery~~ and parts is subject to
142 ss. 686.40-686.418 and to the jurisdiction of the courts of this
143 state for violations of such sections in accordance with the
144 provisions of the laws of this state.

145 (2) Sections 686.40-686.418 apply to all written or oral
146 agreements between a manufacturer, distributor, or wholesaler
147 with a ~~tractor or farm equipment~~ dealer, including, but not
148 limited to, the franchise offering; the franchise agreement;
149 sales of goods, services, and advertising; leases or mortgages
150 of real or personal property; promises to pay; security
151 interests; pledges; insurance contracts; advertising contracts;
152 construction or installation contracts; servicing contracts; and
153 all other such agreements in which the manufacturer,
154 distributor, or wholesaler has any direct or indirect interest.

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155 (3) Sections 686.40-686.418 apply to all ~~continuing~~
156 ~~contracts now in effect which have no expiration date and to all~~
157 other contracts entered into, renewed, or amended after July 1,
158 2004 ~~or renewed after July 1, 1984.~~

159 Section 5. Section 686.405, Florida Statutes, is amended
160 to read:

161 686.405 Warranty agreements; claims; compensation of
162 dealers.--

163 (1) Every manufacturer, distributor, wholesaler, factory
164 branch or division, distributor branch or division, or wholesale
165 branch or division shall provide a fair and reasonable warranty
166 agreement on any new ~~tractor or item of farm~~ equipment which it
167 sells and shall fairly compensate each of its ~~tractor or farm~~
168 ~~equipment~~ dealers for labor and parts used in fulfilling such
169 warranty agreements.

170 (2)(a) Each claim for payment under such warranty
171 agreements made by a ~~tractor or farm equipment~~ dealer for such
172 labor and parts shall be paid within 30 days following its
173 approval. Each such claim shall be either approved or
174 disapproved within 30 days after its receipt. When any such
175 claim is disapproved, the ~~tractor or farm equipment~~ dealer who
176 submitted it shall be notified in writing of such disapproval
177 within such period, and such notice shall state the specific
178 grounds upon which the disapproval is based.

179 (b) Any special handling of claims required of the dealer
180 by the manufacturer, distributor, wholesaler, factory branch or
181 division, distributor branch or division, or wholesale branch or
182 division, which handling is not uniformly required of all

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183 dealers of that make, may be enforced only after 30 days' notice
184 in writing to the dealer and upon good and sufficient reason.

185 (3)(a) The minimum lawful basis for compensating a dealer
186 for warranty work, as provided for in this section, shall be
187 calculated for labor in accordance with the reasonable and
188 customary amount of time required to complete such work,
189 expressed in hours and fractions of hours multiplied by the
190 dealer's established hourly retail labor rate. Prior to filing a
191 claim for reimbursement for warranty work, the dealer must
192 notify the applicable manufacturer, distributor, or wholesaler
193 of his or her hourly retail labor rate.

194 (b) The minimum lawful basis for compensation to the
195 dealer for parts used in fulfilling such warranty work shall be
196 at the dealer's costs for such parts, including all freight and
197 handling charges applicable to such parts, plus 15 percent of
198 the sum of such costs and charges to reimburse the dealer's
199 reasonable cost of doing business and providing such warranty
200 service on behalf of the manufacturer.

201 (4) It shall be unlawful to deny, delay payment for, or
202 restrict a claim by a dealer for warranty service or parts,
203 incentives, hold-backs, or other amounts owed to a dealer unless
204 the denial, delay, or restriction is the direct result of a
205 material defect in the claim that affects its validity.

206 (5) A manufacturer, distributor, or wholesaler may audit
207 warranty claims submitted by its dealers only for a period of up
208 to 1 year following payment of such claims and may charge back
209 to its dealers only those amounts based upon paid claims shown

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210 by the audit to be invalid. However, this limitation shall not
211 apply in any case of fraudulent claims.

212 (6) Any audit of a dealer by or on behalf of a
213 manufacturer, distributor, or wholesaler for sales incentives,
214 service incentives, rebates, or other forms of incentive
215 compensation shall be completed not later than 12 months after
216 the date of termination of such incentive compensation program.
217 However, this limitation shall not apply in any case of
218 fraudulent claims.

219 Section 6. Section 686.406, Florida Statutes, is amended
220 to read:

221 686.406 Parts; availability; return.--

222 (1) Every manufacturer shall specify, and every dealer
223 shall provide and fulfill, reasonable predelivery and
224 preparation obligations for its ~~tractors and farm~~ equipment
225 prior to delivery of the ~~tractors and~~ equipment to retail
226 purchasers.

227 (2) Every manufacturer shall provide for the availability
228 of repair parts throughout the reasonable useful life of any
229 ~~tractor or farm~~ equipment sold.

230 (3) Every manufacturer or distributor shall provide to
231 each of its ~~her or his~~ dealers, annually, an opportunity to
232 return a portion of its ~~their~~ surplus parts inventories for
233 credit. The surplus procedure shall be administered as follows:

234 (a) The manufacturer or distributor may specify, and
235 thereupon notify each of its ~~her or his~~ dealers of, a time
236 period of at least 60 days' duration during which each of its
237 ~~the~~ dealers may submit its ~~their~~ surplus parts list ~~lists~~ and

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238 return the ~~their~~ surplus parts to the manufacturer or
239 distributor.

240 (b) If a manufacturer or distributor has not notified a
241 dealer of a specific time period for returning surplus parts
242 within the preceding 12 months, the manufacturer or distributor
243 ~~she or he~~ shall authorize and allow the dealer's surplus parts
244 return request within 30 days after receipt of such request from
245 such ~~the~~ dealer.

246 (c) A manufacturer or distributor must allow surplus parts
247 return authority on a dollar value of parts equal to 6 percent
248 of the total dollar value of parts purchased from the
249 manufacturer or distributor by the dealer during the 12-month
250 period immediately preceding the notification to such ~~the~~ dealer
251 by the manufacturer or distributor of the surplus parts return
252 program, or the month such ~~the~~ dealer's return request is made,
253 whichever is applicable. However, the dealer may, at her or his
254 option, elect to return a dollar value of her or his surplus
255 parts equal to less than 6 percent of the total dollar value of
256 parts purchased by such ~~the~~ dealer from the manufacturer or
257 distributor during the preceding 12-month period as provided
258 herein.

259 (d) No obsolete or superseded part may be returned, but
260 any part listed in the manufacturer's, distributor's, or
261 wholesaler's current returnable parts list at the date of
262 notification of the surplus parts return program by the
263 manufacturer or distributor to the dealer, or the date of the
264 dealer's parts return request, whichever is applicable, is
265 eligible for return and credit specified. However, returned

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266 parts must be in new and unused condition and must have been
267 purchased from the manufacturer, distributor, or wholesaler to
268 whom they are returned.

269 (e) The minimum lawful credit to be allowed for returned
270 parts is 85 percent of the wholesale cost of the parts as listed
271 in the manufacturer's, distributor's, or wholesaler's current
272 returnable parts list at the date of the notification of the
273 surplus parts return program by the manufacturer, wholesaler, or
274 distributor to the dealer, or the date of the dealer's parts
275 return request, whichever is applicable.

276 (f) Applicable credit must be issued or furnished by the
277 manufacturer or distributor to the dealer within 60 days after
278 receipt of her or his returned parts.

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

282 Section 7. Section 686.407, Florida Statutes, is amended
283 to read:

284 686.407 Repurchase of inventory upon termination of
285 franchise agreement; establishment or relocation of dealership;
286 sale or lease of new equipment.--

287 (1) Whenever any ~~tractor or farm equipment~~ dealer enters
288 into a franchise agreement with a manufacturer, distributor, or
289 wholesaler in which agreement the dealer agrees to maintain an
290 inventory of ~~tractors, farm equipment,~~ or repair parts and the
291 franchise is subsequently terminated, the manufacturer,
292 distributor, or wholesaler shall repurchase the inventory as
293 provided in this section. However, the dealer may keep the

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294 inventory if he or she desires. If the dealer has any
295 outstanding debts to the manufacturer, distributor, or
296 wholesaler, then the repurchase amount may be credited to the
297 dealer's account.

298 (2) If the dealer decides not to keep the inventory, the
299 manufacturer, distributor, or wholesaler shall repurchase that
300 inventory previously purchased from such manufacturer,
301 distributor, or wholesaler ~~him or her~~ and held by the dealer on
302 the date of termination of the contract. The manufacturer,
303 distributor, or wholesaler shall pay:

304 (a) One hundred percent of the actual dealer cost,
305 including freight, of all new, unsold, undamaged, and complete
306 ~~tractors, or other items of farm~~ equipment which is are
307 resalable, less a reasonable allowance for depreciation due to
308 usage by the dealer and deterioration directly attributable to
309 weather conditions at the dealer's location; and

310 (b) Eighty-five percent of the current wholesale price of
311 all new, unused, and undamaged repair parts and accessories
312 which are listed in the manufacturer's, distributor's, or
313 wholesaler's current returnable parts list. The manufacturer,
314 distributor, or wholesaler shall also pay the dealer 6 percent
315 of the current wholesale price on all new, unused, and undamaged
316 repair parts returned to cover the cost of handling, packing,
317 and loading. However, the manufacturer, distributor, or
318 wholesaler shall have the option of performing the handling,
319 packing, and loading in lieu of paying the 6-percent sum imposed
320 in this subsection for these services; and, in this event, after
321 receipt by the dealer of the full repurchase amount as provided

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322 in this section, the dealer shall make available to the
323 manufacturer, distributor, or wholesaler, at the dealer's
324 address or at the places at which the ~~tractors and~~ equipment is
325 ~~are~~ located, all ~~tractors and items of farm~~ equipment previously
326 purchased by the dealer.

327 (3) Upon payment within a reasonable time of the
328 repurchase amount to the dealer, the title and right of
329 possession to the repurchased inventory shall transfer or be
330 transferred to the manufacturer, distributor, or wholesaler, as
331 the case may be.

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

334 ~~(a) Any repair part which has a limited storage life or is~~
335 ~~otherwise subject to deterioration.~~

336 (a)~~(b)~~ Any single repair part which is priced as a set of
337 two or more items.

338 (b)~~(e)~~ Any repair part which because of its condition is
339 not resalable as a new part without repackaging or
340 reconditioning.

341 (c)~~(d)~~ Any inventory for which the dealer is unable to
342 furnish evidence, reasonably satisfactory to the manufacturer,
343 distributor, or wholesaler, of good title, free and clear of all
344 claims, liens, and encumbrances.

345 (d)~~(e)~~ Any inventory which the dealer desires to keep, if
346 the dealer has a contractual right to keep it.

347 (e)~~(f)~~ Any ~~tractor or item of farm~~ equipment which is not
348 in new, unused, undamaged, and complete condition.

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349 ~~(f)(g)~~ Any ~~tractor or item of farm~~ equipment which has
350 been used by the dealer or has deteriorated because of weather
351 conditions at the dealer's location unless the manufacturer,
352 distributor, or wholesaler receives a reasonable allowance for
353 such usage or deterioration.

354 ~~(g)(h)~~ Any repair parts which are not in new, unused, and
355 undamaged condition.

356 ~~(h)(i)~~ Any inventory which was ordered by the dealer on or
357 after the date of receipt of the notification of termination of
358 the franchise or contractual agreement.

359 ~~(i)(j)~~ Any inventory which was acquired by the dealer from
360 any source other than the manufacturer, distributor, or
361 wholesaler.

362 (5) If any manufacturer, distributor, or wholesaler fails
363 or refuses to repurchase any inventory covered under the
364 provisions of this section within 60 days after termination of a
365 dealer's contract, he or she is civilly liable for 100 percent
366 of the current wholesale price of the inventory plus any freight
367 charges paid by the dealer, such ~~the~~ dealer's reasonable
368 attorney's fees, court costs, and interest on the current
369 wholesale price computed at the legal interest rate provided in
370 s. 687.01 from the 61st day after termination.

371 (6) A manufacturer, distributor, or wholesaler that
372 intends to establish a new dealership or to relocate a current
373 dealership for a particular product line or make of equipment
374 within the relevant market area of an existing dealership of the
375 same product line or make of equipment shall give written notice
376 of such intent by certified mail or overnight delivery, return

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377 receipt requested, to such existing dealership. The notice shall
378 be delivered at least 180 days prior to establishment of a new
379 dealership or relocation of a current dealership. The notice
380 shall include:

381 (a) The specific location of the additional or relocated
382 dealership.

383 (b) The date on or after which the additional or relocated
384 dealership will commence operation at the new location.

385 (c) The identity of all existing dealerships in whose
386 relevant market area the new or relocated dealership is to be
387 located.

388 (d) The names of the dealer and principals in the new or
389 relocated dealership.

390 (7) A manufacturer, distributor, or wholesaler may sell or
391 lease new equipment for use within the state. If the
392 manufacturer, distributor, or wholesaler makes a direct sale or
393 lease of equipment, the manufacturer, distributor, or wholesaler
394 shall pay to the dealer located within the relevant market area
395 a commission of not less than 7 percent of the sale or lease
396 price of the equipment. This payment shall cover any
397 compensation to the dealer for the cost of customary preparation
398 and delivery as well as any commission on the sale or lease.
399 This compensation must be paid or credited in the same manner as
400 provided in this section. The manufacturer, distributor, or
401 wholesaler, if practicable, shall utilize the dealer in the
402 relevant market area for preparation and delivery. For purposes
403 of this subsection, equipment is considered to be used primarily
404 within a dealer's relevant market area if the new equipment is

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405 located or housed at a user's facility located within the
406 relevant market area. This subsection shall not be applicable to
407 any liquidation or sale of equipment which has been ordered by
408 any court.

409 Section 8. Section 686.409, Florida Statutes, is amended
410 to read:

411 686.409 Compensation for inventory upon refusal to renew,
412 termination of, or restriction on transfer of a franchise.--It
413 is unlawful for the manufacturer, distributor, wholesaler, or
414 franchisor, without due cause, to fail to renew a franchise on
415 terms then equally available to all of its ~~her or his tractor or~~
416 ~~farm equipment~~ dealers, to terminate a franchise, or to restrict
417 the transfer of a franchise unless the franchisee receives fair
418 and reasonable compensation for the inventory of the business.
419 As used in this section, the term "due cause" shall be construed
420 in accordance with the definition of due cause contained in s.
421 686.413(3)(c)2.

422 Section 9. Section 686.413, Florida Statutes, is amended
423 to read:

424 686.413 Unlawful acts and practices.--Unfair methods of
425 competition and unfair or deceptive acts or practices in the
426 conduct of the manufacturing, distribution, wholesaling,
427 franchising, sale, and advertising of ~~tractors and farm~~
428 equipment are declared to be unlawful.

429 (1) It is deemed a violation of this section for any
430 manufacturer, factory branch, factory representative,
431 distributor, distributor branch, distributor representative,
432 wholesaler, or ~~tractor or farm equipment~~ dealer to engage in any

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433 | action which is arbitrary, capricious, in bad faith, or
434 | unconscionable and which causes damage in terms of law or equity
435 | to any of the parties or to the public.

436 | (2) It is deemed a violation of this section for a
437 | manufacturer, factory branch or division, distributor,
438 | distributor branch or division, wholesaler, or wholesale branch
439 | or division, or officer, agent, or other representative thereof,
440 | to coerce, compel, or attempt to coerce or compel any ~~tractor or~~
441 | ~~farm equipment~~ dealer:

442 | (a) To order or accept delivery of any ~~tractor or item of~~
443 | ~~farm~~ equipment, parts or accessories therefor, or other
444 | commodity or commodities which such ~~tractor or farm equipment~~
445 | dealer has not voluntarily ordered.

446 | (b) To order or accept delivery of any ~~tractor or farm~~
447 | equipment with special features, accessories, or equipment not
448 | included in the base list price of such ~~tractor or farm~~
449 | equipment as publicly advertised by the manufacturer of the
450 | ~~tractor or~~ equipment.

451 | (3) It is deemed a violation of this section for a
452 | manufacturer, factory branch or division, distributor,
453 | distributor branch or division, wholesaler, or wholesale branch
454 | or division, or officer, agent, or other representative thereof:

455 | (a) To refuse to deliver to any ~~tractor or farm equipment~~
456 | dealer having a franchise or contractual agreement for the
457 | retail sale of new ~~tractors and farm~~ equipment sold or
458 | distributed by such manufacturer, factory branch or division,
459 | distributor branch or division, or wholesale branch or division,
460 | in reasonable quantities and within a reasonable time after

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461 receipt of the dealer's order, any ~~tractor or item of farm~~
462 equipment covered by such franchise or contract specifically
463 advertised or represented by such manufacturer, factory branch
464 or division, distributor, distributor branch or division,
465 wholesaler, or wholesale branch or division to be available for
466 immediate delivery. However, the failure to deliver any such
467 ~~tractor or item of farm~~ equipment is not considered a violation
468 of this section if such failure is due to a prudent and
469 reasonable restriction on the extension of credit by the
470 franchisor to the dealer, an act of God, a work stoppage or
471 delay due to a strike or labor difficulty, a bona fide shortage
472 of materials, a freight embargo, or another cause over which the
473 manufacturer, distributor, or wholesaler, or any agent thereof,
474 has no control whatsoever.

475 (b) To coerce, compel, or attempt to coerce or compel any
476 ~~tractor or farm equipment~~ dealer to enter into any agreement,
477 whether written or oral, supplementary to an existing franchise
478 with such manufacturer, factory branch or division, distributor,
479 distributor branch or division, wholesaler, or wholesale branch
480 or division, or officer, agent, or other representative thereof;
481 or to do any other act prejudicial to such dealer by threatening
482 to cancel any franchise or contractual agreement existing
483 between such manufacturer, factory branch or division,
484 distributor, distributor branch or division, wholesaler, or
485 wholesale branch or division and such dealer. However, notice in
486 good faith to any ~~tractor or farm equipment~~ dealer of such
487 dealer's violation or breach of any terms or provisions of such
488 franchise or contractual agreement does not constitute a

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489 violation of this section if such notice is in writing and is
490 mailed by registered or certified mail to such dealer at her or
491 his current business address and such notice contains the
492 specific facts as to the dealer's violation or breach of such
493 franchise or contractual agreement.

494 (c)1. To terminate ~~or cancel~~ the franchise or selling
495 agreement of any ~~tractor or farm equipment~~ dealer without due
496 cause, as defined in subparagraph 2. The termination ~~nonrenewal~~
497 of a franchise or selling agreement, without due cause,
498 constitutes an unfair termination ~~or cancellation~~, regardless of
499 the specified time period of such franchise or selling
500 agreement. Except when the ground for such termination ~~or~~
501 ~~cancellation~~ falls within sub-subparagraph 2.c., such
502 manufacturer, factory branch or division, distributor,
503 distributor branch or division, wholesaler, or wholesale branch
504 or division, or officer, agent, or other representative thereof,
505 shall notify a ~~tractor or farm equipment~~ dealer in writing of
506 the termination ~~or cancellation~~ of the franchise or selling
507 agreement of such dealer at least 180 ~~90~~ days before the
508 effective date of the termination ~~or cancellation~~, stating the
509 specific ground for such termination ~~or cancellation~~. In no
510 event shall the contractual term of any such franchise or
511 selling agreement expire, without the written consent of the
512 ~~tractor or farm equipment~~ dealer involved, prior to the
513 expiration of at least 180 ~~90~~ days following such written
514 notice. During the 180-day ~~90-day~~ period, either party may, in
515 appropriate circumstances, petition a court of competent
516 jurisdiction to modify such 180-day ~~90-day~~ stay or to extend it

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517 pending a final determination of such proceeding on the merits.
518 The court shall have authority to grant temporary, preliminary,
519 and final injunctive relief. Should a dealer cure the claimed
520 deficiency within the 180-day period, the franchise or selling
521 agreement shall not be terminated.

522 2. As used in this subparagraph, tests for determining
523 what constitutes due cause for a manufacturer or distributor to
524 terminate, ~~cancel, or refuse to renew~~ a franchise agreement
525 include whether the dealer:

526 a. Has transferred an ownership interest in the dealership
527 without the manufacturer's or distributor's consent;

528 b. Has made a material misrepresentation in applying for
529 or in acting under the franchise agreement;

530 c. Has filed a voluntary petition in bankruptcy or has had
531 an involuntary petition in bankruptcy filed against her or him
532 which has not been discharged within 60 days after the filing,
533 is in default under the provisions of a security agreement in
534 effect with the manufacturer or distributor, or is in
535 receivership;

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

537 e. Has inadequately represented the manufacturer's or
538 distributor's products with respect to sales, service, or
539 warranty work;

540 f. Has inadequate and insufficient sales and service
541 facilities and personnel;

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

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544 h. Has been convicted of a crime, the effect of which
545 would be detrimental to the manufacturer, distributor, or
546 dealership;

547 i. Has failed to operate in the normal course of business
548 for 10 consecutive business days or has terminated her or his
549 business;

550 j. Has relocated her or his place of business without the
551 manufacturer's or distributor's consent; or

552 k. Has failed to comply with the terms that are not in
553 conflict with this chapter or the terms of the dealership or
554 franchise agreement.

555 3. Before termination of the franchise or selling
556 agreement because of the dealer's failure to meet marketing
557 criteria or market penetration, the manufacturer, factory branch
558 or division, distributor, distributor branch or division,
559 wholesaler, or wholesale branch or division, or officer, agent,
560 or other representative thereof, shall provide written notice of
561 such intention at least 1 year in advance. After such notice,
562 the manufacturer or other entity issuing the notice shall make
563 good faith efforts to work with the dealer to gain the desired
564 market share, including, without limitation, reasonably making
565 available to the dealer an adequate inventory of new equipment
566 and parts and competitive marketing programs. The manufacturer
567 or other entity, at the end of the 1-year notice period, may
568 terminate or elect not to renew the agreement only upon further
569 written notice specifying the reasons for determining that the
570 dealer failed to meet reasonable marketing criteria or market
571 penetration. Such written notice must specify that termination

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572 is effective 90 days from the date of the notice. Either party
573 may petition the court pursuant to subparagraph (c)1. for the
574 relief specified in such subparagraph. Should a dealer cure the
575 claimed deficiency within the 90-day period, the franchise or
576 selling agreement shall not be terminated.

577 (d) To resort to or use any false or misleading
578 advertisement in connection with its ~~her or his~~ business as such
579 manufacturer, factory branch or division, distributor,
580 distributor branch or division, wholesaler, or wholesale branch
581 or division, or officer, agent, or other representative thereof.

582 (e) To offer to sell or to sell any new ~~tractor or item of~~
583 ~~farm~~ equipment, or parts or accessories therefor, to any other
584 ~~tractor or farm equipment~~ dealer at a lower actual price
585 therefor than the actual price offered to any other ~~tractor or~~
586 ~~farm equipment~~ dealer for the same model ~~tractor or farm~~
587 equipment identically equipped or to utilize any device,
588 including, but not limited to, sales promotion plans or
589 programs, which results in such lesser actual price or results
590 in a fixed price predetermined solely by the manufacturer or
591 distributor. However, the provisions of this paragraph do not
592 apply to sales to a ~~tractor or farm equipment~~ dealer for resale
593 to any unit or agency of the United States Government, the state
594 or any of its political subdivisions, or any municipality
595 located within this state. Further, the provisions of this
596 paragraph do not apply so long as a manufacturer, distributor,
597 or wholesaler, or any agent thereof, sells or offers to sell
598 such new ~~tractor or farm~~ equipment, parts, or accessories to all

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599 | ~~of its her or his~~ franchised ~~tractor or farm equipment~~ dealers
600 | at an equal price.

601 | (f) To willfully discriminate, either directly or
602 | indirectly, in price, programs, or terms of sale offered to
603 | franchisees, when the effect of such discrimination may be to
604 | substantially lessen competition or to give to one holder of a
605 | franchise any economic, business, or competitive advantage not
606 | offered to all holders of the same or similar franchise.

607 | (g) To prevent or attempt to prevent, by contract or
608 | otherwise, any ~~tractor or farm equipment~~ dealer from changing
609 | the capital structure of her or his dealership or the means by
610 | or through which the dealer finances the operation of her or his
611 | dealership, provided the dealer at all times meets any
612 | reasonable capital standards agreed to between the dealership
613 | and the manufacturer, distributor, or wholesaler and provided
614 | such change by the dealer does not result in a change in the
615 | executive management of the dealership.

616 | (h) To prevent or attempt to prevent, by contract or
617 | otherwise, any ~~tractor or farm equipment~~ dealer or any officer,
618 | member partner, or stockholder of any ~~tractor or farm equipment~~
619 | dealer from selling or transferring any part of the interest of
620 | any of them to any other person or persons or party or parties.
621 | However, no dealer, officer, partner, or stockholder has the
622 | right to sell, transfer, or assign the franchise or power of
623 | management or control thereunder without the written consent of
624 | the manufacturer, distributor, or wholesaler, except that such
625 | consent may not be unreasonably withheld.

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626 (i) To impose, directly or indirectly, unreasonable
627 restrictions on the dealer relative to transfer, renewal,
628 termination, location, or site control.

629 (j) To prevent a dealer from having an investment in or
630 holding a dealership contract for the sale of competing product
631 lines or makes of equipment, or to require a dealer to provide
632 separate facilities for competing product lines or makes of
633 equipment.

634 (k)~~(i)~~ To obtain money, goods, services, anything of
635 value, or any other benefit from any other person with whom the
636 ~~tractor or farm equipment~~ dealer does business or employs on
637 account of or in relation to the transactions between the
638 dealer, the franchisor, and such other person.

639 (l)~~(j)~~ To require a ~~tractor and farm equipment~~ dealer to
640 assent to a release, assignment, novation, waiver, or estoppel
641 which would relieve any person from liability imposed by ss.
642 686.40-686.418.

643 (4) It is deemed a violation of this section for a ~~tractor~~
644 ~~or farm equipment~~ dealer:

645 (a) To require a retail purchaser of a new ~~tractor or item~~
646 ~~of farm~~ equipment, as a condition of sale and delivery of the
647 ~~tractor or~~ equipment, also to purchase special features,
648 appliances, equipment, parts, or accessories not desired or
649 requested by the purchaser. However, this prohibition does not
650 apply to special features, appliances, equipment, parts, or
651 accessories which are already installed when the ~~tractor or item~~
652 ~~of farm~~ equipment is received by the dealer from the

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653 manufacturer, distributor, or wholesaler of such ~~tractor or~~
654 equipment.

655 (b) To represent and sell as new and unused any ~~tractor or~~
656 ~~item of farm~~ equipment which has been used and operated for
657 demonstration or other purposes without stating to the purchaser
658 prior to the sale the approximate amount of use the equipment
659 ~~tractor or item of farm machinery~~ has experienced or undergone.

660 (c) To resort to or use any false or misleading
661 advertisement in connection with her or his business as such
662 ~~tractor or farm equipment~~ dealer.

663 Section 10. Section 686.418, Florida Statutes, is amended
664 to read:

665 686.418 Effect of act on other remedies.--Sections 686.40-
666 686.418 are supplemental to and do not preempt local ordinances
667 dealing with prohibited or unlawful conduct in the
668 manufacturing, distribution, wholesaling, advertising, or sale
669 of ~~tractors and other items of farm~~ equipment if such ordinances
670 are not inconsistent with such sections.

671 Section 11. Subsection (5) of section 316.515, Florida
672 Statutes, is amended to read:

673 316.515 Maximum width, height, length.--

674 (5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS, SAFETY
675 REQUIREMENTS.--Notwithstanding any other provisions of law,
676 straight trucks, agricultural tractors, and cotton module
677 movers, not exceeding 50 feet in length, or any combination of
678 up to and including three implements of husbandry including the
679 towing power unit, and any single agricultural trailer, with a
680 load thereon or any agricultural implements attached to a towing

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681 power unit not exceeding 130 inches in width, or a self-
682 propelled agricultural implement or an agricultural tractor not
683 exceeding 130 inches in width, is authorized for the purpose of
684 transporting peanuts, grains, soybeans, cotton, hay, straw, or
685 other perishable farm products from their point of production to
686 the first point of change of custody or of long-term storage,
687 and for the purpose of returning to such point of production, or
688 for the purpose of moving such tractors, movers, and implements
689 from one point of agricultural production to another, by a
690 person engaged in the production of any such product or custom
691 hauler, if such vehicle or combination of vehicles otherwise
692 complies with this section. Such vehicles shall be operated in
693 accordance with all safety requirements prescribed by law and
694 Department of Transportation rules. The Department of
695 Transportation may issue overlength permits for cotton module
696 movers greater than 50 feet but not more than 55 feet in overall
697 length.

698 Section 12. This act shall take effect July 1, 2004.

700 ===== T I T L E A M E N D M E N T =====

701 Remove the entire title and insert:

702 A bill to be entitled

703 An act relating to agricultural equipment manufacturers,
704 distributors, and dealers; amending s. 686.40, F.S.;
705 providing a popular name; amending s. 686.401, F.S.;
706 clarifying intent of the Agricultural Equipment

707 Manufacturers and Dealers Act to provide for regulation of
708 the conduct of manufacturers, distributors, and dealers of

HOUSE AMENDMENT

Bill No. HB 1187 CS

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709 equipment primarily designed for or used in agriculture;
710 amending s. 686.402, F.S.; revising and adding
711 definitions; amending s. 686.403, F.S.; clarifying
712 provisions relating to application; amending s. 686.405,
713 F.S.; providing that it is unlawful to deny, delay payment
714 for, or restrict warranty claims under certain
715 circumstances; providing for audit of warranty claims;
716 amending s. 686.406, F.S.; clarifying provisions relating
717 to surplus parts; amending s. 686.407, F.S.; providing
718 requirements for the establishment of a new dealership or
719 relocation of a current dealership within a certain area;
720 providing requirements for the sale or lease of new
721 equipment; amending s. 686.409, F.S.; clarifying
722 provisions relating to compensation for inventory under
723 certain circumstances; amending s. 686.413, F.S. ;
724 providing additional unlawful acts and practices in the
725 conduct of the manufacturing, distribution, wholesaling,
726 franchising, sale, and advertising of equipment; providing
727 requirements for termination of a franchise or selling
728 agreement under certain circumstances; amending s.
729 686.418, F.S.; clarifying provisions relating to the
730 effect of the act on local ordinances; amending s.
731 316.515, F.S.; revising agricultural equipment qualifying
732 for maximum width and length exemption; providing an
733 effective date.

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