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1 A bill to be entitled

2 An act relating to agricultural equipment manufacturers,
3 distributors, and dealers; amending s. 686.40, F.S.;
4 providing a popular name; amending s. 686.401, F.S.;
5 clarifying intent of the Agricultural Equipment
6 Manufacturers and Dealers Act to provide for regulation of
7 the conduct of manufacturers, distributors, and dealers of
8 equipment primarily designed for or used in agriculture;
9 amending s. 686.402, F.S.; revising and adding
10 definitions; amending s. 686.403, F.S.; clarifying
11 provisions relating to application; amending s. 686.405,
12 F.S.; providing that it is unlawful to deny, delay payment
13 for, or restrict warranty claims under certain
14 circumstances; providing for audit of warranty claims;
15 amending s. 686.406, F.S.; clarifying provisions relating
16 to surplus parts; amending s. 686.407, F.S.; providing
17 requirements for the establishment of a new dealership or
18 relocation of a current dealership within a certain area;
19 providing requirements for the sale or lease of new
20 equipment; amending s. 686.409, F.S.; clarifying
21 provisions relating to compensation for inventory under
22 certain circumstances; amending s. 686.413, F.S.;
23 providing additional unlawful acts and practices in the
24 conduct of the manufacturing, distribution, wholesaling,
25 franchising, sale, and advertising of equipment; providing
26 requirements for termination of a franchise or selling
27 agreement under certain circumstances; amending s.
28 686.418, F.S.; clarifying provisions relating to the

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29 effect of the act on local ordinances; providing an
 30 effective date.

31
 32 Be It Enacted by the Legislature of the State of Florida:

33
 34 Section 1. Section 686.40, Florida Statutes, is amended to
 35 read:

36 686.40 Agricultural Farm Equipment Manufacturers and
 37 Dealers Act; ~~short title.~~--Sections 686.40-686.418 shall be
 38 known by the popular name ~~and may be cited as~~ the "Agricultural
 39 ~~Farm~~ Equipment Manufacturers and Dealers Act."

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

42 686.401 Legislative finding and intent; construction of
 43 ss. 686.40-686.418.--

44 (1) The Legislature finds and declares that the
 45 distribution and sale of ~~tractors and farm~~ equipment primarily
 46 designed for or used in agriculture in this state vitally
 47 affects the general economy of the state, the public interest,
 48 and the public welfare and that, in the exercise of its police
 49 power, it is necessary to regulate the conduct of ~~tractor and~~
 50 ~~farm equipment~~ manufacturers, distributors, and dealers of such
 51 equipment, and their representatives, doing business in this
 52 state in order to prevent fraud, unfair business practices,
 53 unfair methods of competition, impositions, and other abuses
 54 upon its citizens.

55 Section 3. Section 686.402, Florida Statutes, is amended
 56 to read:

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57 686.402 Definitions of terms used in ss. 686.40-
 58 686.418.--In construing ss. 686.40-686.418, unless the context
 59 otherwise requires, the word, phrase, or term:

60 (1)~~(16)~~ "~~Tractor or farm equipment~~ Dealer" means a person
 61 who sells, solicits, or advertises the sale of new and used
 62 ~~tractors and farm~~ equipment to the consuming public, or who
 63 maintains such equipment, but does not include:

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

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

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

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

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

75 (2) "Dealership" means the business of selling or
 76 attempting to effect the sale by a dealer of new equipment or
 77 the right conferred by written or oral agreement with the
 78 manufacturer, distributor, or wholesaler, for a definite or
 79 indefinite period of time, to sell or attempt to effect the sale
 80 of new equipment.

81 (3)~~(1)~~ "Distributor" or "wholesaler" means any person,
 82 firm, association, corporation, or company that sells or
 83 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~
 84 ~~equipment~~ dealers and that maintains distributor representatives
 85 within this state.

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86 (4)~~(2)~~ "Distributor branch" means a branch office
 87 maintained by a distributor or wholesaler which sells or
 88 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~
 89 ~~equipment~~ dealers.

90 (5)~~(3)~~ "Distributor representative" means a representative
 91 employed by a distributor, distributor branch, or wholesaler.

92 (6) "~~Farm~~ Equipment" means those tractors, farm
 93 implements, or items which are primarily designed for or used
 94 use in agriculture, including horticulture. Equipment designed
 95 for or used in irrigation for agriculture or horticulture is
 96 included in this definition.

97 (7)~~(4)~~ "Factory branch" means a branch office maintained
 98 by a manufacturer which manufactures and assembles ~~tractors and~~
 99 ~~farm~~ equipment for sale to distributors ~~of tractors~~ or ~~to farm~~
 100 ~~equipment~~ dealers or which is maintained for directing and
 101 supervising the representatives of the manufacturer.

102 (8)~~(5)~~ "Factory representative" means a representative
 103 employed by a manufacturer or factory branch for the purpose of
 104 making or promoting the sale of ~~tractors and farm~~ equipment or
 105 for supervising, servicing, introducing, or contracting with
 106 ~~tractor or farm equipment~~ dealers or prospective dealers.

107 (9)~~(7)~~ "Franchise" means a contract or agreement, either
 108 expressed or implied, whether oral or written, for a definite or
 109 indefinite period of time in which a manufacturer, distributor,
 110 or wholesaler grants to a ~~tractor or farm equipment~~ dealer
 111 permission to use a trade name, service mark, trademark, or
 112 related characteristic and in which there is a common interest
 113 or community of interest in the marketing of ~~tractors or farm~~

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114 equipment or services related thereto at wholesale or retail,
 115 whether by leasing, sale, or otherwise.

116 (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~
 117 dealer to whom a franchise is offered or granted.

118 (11)~~(9)~~ "Franchisor" means a manufacturer, distributor, or
 119 wholesaler who grants a franchise to a ~~tractor or farm equipment~~
 120 dealer.

121 (12)~~(10)~~ "Fraud" means and includes actual fraud or
 122 constructive fraud as normally defined, in addition to the
 123 following:

124 (a) A misrepresentation in any manner, whether
 125 intentionally false or arising from gross negligence, of a
 126 material fact.

127 (b) A promise or representation not made honestly and in
 128 good faith.

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

130 (d) Any artifice employed to deceive another.

131 (13)~~(11)~~ "Manufacturer" means any person engaged in the
 132 business of manufacturing or assembling new and unused ~~tractors~~
 133 ~~and farm~~ equipment.

134 (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a ~~tractor~~
 135 ~~or item of farm~~ equipment which has not been previously sold to
 136 and put into regular use or service by any person, except a
 137 distributor, wholesaler, or ~~tractor or farm equipment~~ dealer for
 138 resale.

139 (15)~~(13)~~ "Person" means a natural person, corporation,
 140 association, partnership, trust, or other business entity and,
 141 in the case of a business entity, includes any other entity in
 142 which the business entity has a majority interest or which it

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143 effectively controls, as well as the individual officers,
 144 directors, and other persons in active control of the activities
 145 of each such entity.

146 (16) "Relevant market area" means the geographic area for
 147 which a dealer is assigned responsibility for selling or
 148 soliciting or advertising the sale of equipment under the terms
 149 of a franchise.

150 (17)~~(14)~~ "Sale" means and includes the issuance, transfer,
 151 agreement for transfer, exchange, pledge, hypothecation, or
 152 mortgage in any manner or form, whether by transfer in trust or
 153 otherwise, of any ~~tractor or item of farm~~ equipment or interest
 154 therein, or of any franchise related thereto, for a
 155 consideration and any option, subscription or other contract, or
 156 solicitation, looking to a sale, or offer or attempt to sell in
 157 any form, whether in oral or written form for a consideration.

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

160 (19)~~(15)~~ "Tractor" means a vehicle that is operated
 161 principally upon a farm, grove, or orchard in connection with
 162 agricultural or horticultural pursuits or in connection with
 163 irrigation.

164 Section 4. Section 686.403, Florida Statutes, is amended
 165 to read:

166 686.403 Application of ss. 686.40-686.418.--

167 (1) Any person who engages directly or indirectly in
 168 purposeful agreements or contracts within this state in
 169 connection with the sale or advertising for sale of new
 170 equipment ~~tractors and farm machinery~~ and parts is subject to
 171 ss. 686.40-686.418 and to the jurisdiction of the courts of this

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172 state for violations of such sections in accordance with the
 173 provisions of the laws of this state.

174 (2) Sections 686.40-686.418 apply to all written or oral
 175 agreements between a manufacturer, distributor, or wholesaler
 176 with a ~~tractor or farm equipment~~ dealer, including, but not
 177 limited to, the franchise offering; the franchise agreement;
 178 sales of goods, services, and advertising; leases or mortgages
 179 of real or personal property; promises to pay; security
 180 interests; pledges; insurance contracts; advertising contracts;
 181 construction or installation contracts; servicing contracts; and
 182 all other such agreements in which the manufacturer,
 183 distributor, or wholesaler has any direct or indirect interest.

184 (3) Sections 686.40-686.418 apply to all continuing
 185 contracts now in effect which have no expiration date and to all
 186 other contracts entered into or renewed after July 1, 1984.

187 Section 5. Section 686.405, Florida Statutes, is amended
 188 to read:

189 686.405 Warranty agreements; claims; compensation of
 190 dealers.--

191 (1) Every manufacturer, distributor, wholesaler, factory
 192 branch or division, distributor branch or division, or wholesale
 193 branch or division shall provide a fair and reasonable warranty
 194 agreement on any new ~~tractor or item of farm~~ equipment which it
 195 sells and shall fairly compensate each of its ~~tractor or farm~~
 196 ~~equipment~~ dealers for labor and parts used in fulfilling such
 197 warranty agreements.

198 (2)(a) Each claim for payment under such warranty
 199 agreements made by a ~~tractor or farm equipment~~ dealer for such
 200 labor and parts shall be paid within 30 days following its

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201 approval. Each such claim shall be either approved or
 202 disapproved within 30 days after its receipt. When any such
 203 claim is disapproved, the ~~tractor or farm equipment~~ dealer who
 204 submitted it shall be notified in writing of such disapproval
 205 within such period, and such notice shall state the specific
 206 grounds upon which the disapproval is based.

207 (b) Any special handling of claims required of the dealer
 208 by the manufacturer, distributor, wholesaler, factory branch or
 209 division, distributor branch or division, or wholesale branch or
 210 division, which handling is not uniformly required of all
 211 dealers of that make, may be enforced only after 30 days' notice
 212 in writing to the dealer and upon good and sufficient reason.

213 (3)(a) The minimum lawful basis for compensating a dealer
 214 for warranty work, as provided for in this section, shall be
 215 calculated for labor in accordance with the reasonable and
 216 customary amount of time required to complete such work,
 217 expressed in hours and fractions of hours multiplied by the
 218 dealer's established hourly retail labor rate. Prior to filing a
 219 claim for reimbursement for warranty work, the dealer must
 220 notify the applicable manufacturer, distributor, or wholesaler
 221 of his or her hourly retail labor rate.

222 (b) The minimum lawful basis for compensation to the
 223 dealer for parts used in fulfilling such warranty work shall be
 224 at the dealer's costs for such parts, including all freight and
 225 handling charges applicable to such parts, plus 15 percent of
 226 the sum of such costs and charges to reimburse the dealer's
 227 reasonable cost of doing business and providing such warranty
 228 service on behalf of the manufacturer.

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

234 (5) A manufacturer, distributor, or wholesaler may audit
 235 warranty claims submitted by its dealers only for a period of up
 236 to 1 year following payment of such claims and may charge back
 237 to its dealers only those amounts based upon paid claims shown
 238 by the audit to be invalid. However, this limitation shall not
 239 apply in any case of fraudulent claims.

240 (6) Any audit of a dealer by or on behalf of a
 241 manufacturer, distributor, or wholesaler for sales incentives,
 242 service incentives, rebates, or other forms of incentive
 243 compensation shall be completed not later than 6 months after
 244 the date of termination of such incentive compensation program.
 245 However, this limitation shall not apply in any case of
 246 fraudulent claims.

247 Section 6. Section 686.406, Florida Statutes, is amended
 248 to read:

249 686.406 Parts; availability; return.--

250 (1) Every manufacturer shall specify, and every dealer
 251 shall provide and fulfill, reasonable predelivery and
 252 preparation obligations for its ~~tractors and farm~~ equipment
 253 prior to delivery of the ~~tractors and~~ equipment to retail
 254 purchasers.

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

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

262 (a) The manufacturer or distributor may specify, and
 263 thereupon notify each of its ~~her or his~~ dealers of, a time
 264 period of at least 60 days' duration during which each of its
 265 ~~the~~ dealers may submit its ~~their~~ surplus parts list ~~lists~~ and
 266 return the ~~their~~ surplus parts to the manufacturer or
 267 distributor.

268 (b) If a manufacturer or distributor has not notified a
 269 dealer of a specific time period for returning surplus parts
 270 within the preceding 12 months, the manufacturer or distributor
 271 ~~she or he~~ shall authorize and allow the dealer's surplus parts
 272 return request within 30 days after receipt of such request from
 273 such ~~the~~ dealer.

274 (c) A manufacturer or distributor must allow surplus parts
 275 return authority on a dollar value of parts equal to 6 percent
 276 of the total dollar value of parts purchased from the
 277 manufacturer or distributor by the dealer during the 12-month
 278 period immediately preceding the notification to such ~~the~~ dealer
 279 by the manufacturer or distributor of the surplus parts return
 280 program, or the month such ~~the~~ dealer's return request is made,
 281 whichever is applicable. However, the dealer may, at her or his
 282 option, elect to return a dollar value of her or his surplus
 283 parts equal to less than 6 percent of the total dollar value of
 284 parts purchased by such ~~the~~ dealer from the manufacturer or
 285 distributor during the preceding 12-month period as provided
 286 herein.

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287 (d) No obsolete or superseded part may be returned, but
 288 any part listed in the manufacturer's, distributor's, or
 289 wholesaler's current returnable parts list at the date of
 290 notification of the surplus parts return program by the
 291 manufacturer or distributor to the dealer, or the date of the
 292 dealer's parts return request, whichever is applicable, is
 293 eligible for return and credit specified. However, returned
 294 parts must be in new and unused condition and must have been
 295 purchased from the manufacturer, distributor, or wholesaler to
 296 whom they are returned.

297 (e) The minimum lawful credit to be allowed for returned
 298 parts is 85 percent of the wholesale cost of the parts as listed
 299 in the manufacturer's, distributor's, or wholesaler's current
 300 returnable parts list at the date of the notification of the
 301 surplus parts return program by the manufacturer, wholesaler, or
 302 distributor to the dealer, or the date of the dealer's parts
 303 return request, whichever is applicable.

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

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

310 Section 7. Section 686.407, Florida Statutes, is amended
 311 to read:

312 686.407 Repurchase of inventory upon termination of
 313 franchise agreement; establishment or relocation of dealership;
 314 sale or lease of new equipment.--

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315 (1) Whenever any ~~tractor or farm equipment~~ dealer enters
 316 into a franchise agreement with a manufacturer, distributor, or
 317 wholesaler in which agreement the dealer agrees to maintain an
 318 inventory of ~~tractors, farm~~ equipment, or repair parts and the
 319 franchise is subsequently terminated, the manufacturer,
 320 distributor, or wholesaler shall repurchase the inventory as
 321 provided in this section. However, the dealer may keep the
 322 inventory if he or she desires. If the dealer has any
 323 outstanding debts to the manufacturer, distributor, or
 324 wholesaler, then the repurchase amount may be credited to the
 325 dealer's account.

326 (2) If the dealer decides not to keep the inventory, the
 327 manufacturer, distributor, or wholesaler shall repurchase that
 328 inventory previously purchased from such manufacturer,
 329 distributor, or wholesaler ~~him or her~~ and held by the dealer on
 330 the date of termination of the contract. The manufacturer,
 331 distributor, or wholesaler shall pay:

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

338 (b) Eighty-five percent of the current wholesale price of
 339 all new, unused, and undamaged repair parts and accessories
 340 which are listed in the manufacturer's, distributor's, or
 341 wholesaler's current returnable parts list. The manufacturer,
 342 distributor, or wholesaler shall also pay the dealer 6 percent
 343 of the current wholesale price on all new, unused, and undamaged

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344 repair parts returned to cover the cost of handling, packing,
 345 and loading. However, the manufacturer, distributor, or
 346 wholesaler shall have the option of performing the handling,
 347 packing, and loading in lieu of paying the 6-percent sum imposed
 348 in this subsection for these services; and, in this event, after
 349 receipt by the dealer of the full repurchase amount as provided
 350 in this section, the dealer shall make available to the
 351 manufacturer, distributor, or wholesaler, at the dealer's
 352 address or at the places at which the ~~tractors and~~ equipment is
 353 ~~are located, all tractors and items of farm~~ equipment previously
 354 purchased by the dealer.

355 (3) Upon payment within a reasonable time of the
 356 repurchase amount to the dealer, the title and right of
 357 possession to the repurchased inventory shall transfer or be
 358 transferred to the manufacturer, distributor, or wholesaler, as
 359 the case may be.

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

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

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

366 (b)(e) Any repair part which because of its condition is
 367 not resalable as a new part without repackaging or
 368 reconditioning.

369 (c)(d) Any inventory for which the dealer is unable to
 370 furnish evidence, reasonably satisfactory to the manufacturer,
 371 distributor, or wholesaler, of good title, free and clear of all
 372 claims, liens, and encumbrances.

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

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

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

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

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

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

390 (5) If any manufacturer, distributor, or wholesaler fails
 391 or refuses to repurchase any inventory covered under the
 392 provisions of this section within 60 days after termination of a
 393 dealer's contract, he or she is civilly liable for 100 percent
 394 of the current wholesale price of the inventory plus any freight
 395 charges paid by the dealer, such ~~the~~ dealer's reasonable
 396 attorney's fees, court costs, and interest on the current
 397 wholesale price computed at the legal interest rate provided in
 398 s. 687.01 from the 61st day after termination.

399 (6) A manufacturer, distributor, or wholesaler that
 400 intends to establish a new dealership or to relocate a current
 401 dealership for a particular product line or make of equipment

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402 within the relevant market area of an existing dealership of the
403 same product line or make of equipment shall give written notice
404 of such intent by certified mail or overnight delivery, return
405 receipt requested, to such existing dealership. The notice shall
406 be delivered at least 180 days prior to establishment of a new
407 dealership or relocation of a current dealership. The notice
408 shall include:

409 (a) The specific location of the additional or relocated
410 dealership.

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

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

416 (d) The names and addresses of the dealer and principals
417 in the new or relocated dealership.

418 (7) A manufacturer, distributor, or wholesaler may sell or
419 lease new equipment for use within the state. If the equipment
420 is prepared for delivery or serviced by a dealer, the
421 manufacturer, distributor, or wholesaler shall reasonably
422 compensate the dealer for the preparation and delivery of the
423 new equipment and pay to the dealer a reasonable commission on
424 the sale or lease of the new equipment which shall not be less
425 than 8 percent of the sale price of the equipment. This
426 compensation must be paid or credited in the same manner as
427 provided in this section. The manufacturer, distributor, or
428 wholesaler, if practicable, shall utilize the dealer in the
429 relevant market area for preparation and delivery. For purposes
430 of the this subsection, equipment is considered to be used

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431 primarily within a dealer's relevant market area if the new
 432 equipment is located or housed at a user's facility located
 433 within the relevant market area. This subsection shall not be
 434 applicable to any liquidation or sale of equipment which has
 435 been ordered by any court.

436 Section 8. Section 686.409, Florida Statutes, is amended
 437 to read:

438 686.409 Compensation for inventory upon refusal to renew,
 439 termination of, or restriction on transfer of a franchise.--It
 440 is unlawful for the manufacturer, distributor, wholesaler, or
 441 franchisor, without due cause, to fail to renew a franchise on
 442 terms then equally available to all of its ~~her or his tractor or~~
 443 ~~farm equipment~~ dealers, to terminate a franchise, or to restrict
 444 the transfer of a franchise unless the franchisee receives fair
 445 and reasonable compensation for the inventory of the business.
 446 As used in this section, the term "due cause" shall be construed
 447 in accordance with the definition of due cause contained in s.
 448 686.413(3)(c)2.

449 Section 9. Section 686.413, Florida Statutes, is amended
 450 to read:

451 686.413 Unlawful acts and practices.--Unfair methods of
 452 competition and unfair or deceptive acts or practices in the
 453 conduct of the manufacturing, distribution, wholesaling,
 454 franchising, sale, and advertising of ~~tractors and farm~~
 455 equipment are declared to be unlawful.

456 (1) It is deemed a violation of this section for any
 457 manufacturer, factory branch, factory representative,
 458 distributor, distributor branch, distributor representative,
 459 wholesaler, or ~~tractor or farm equipment~~ dealer to engage in any

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460 action which is arbitrary, capricious, in bad faith, or
 461 unconscionable and which causes damage in terms of law or equity
 462 to any of the parties or to the public.

463 (2) It is deemed a violation of this section for a
 464 manufacturer, factory branch or division, distributor,
 465 distributor branch or division, wholesaler, or wholesale branch
 466 or division, or officer, agent, or other representative thereof,
 467 to coerce, compel, or attempt to coerce or compel any ~~tractor or~~
 468 ~~farm equipment~~ dealer:

469 (a) To order or accept delivery of any ~~tractor or item of~~
 470 ~~farm~~ equipment, parts or accessories therefor, or other
 471 commodity or commodities which such ~~tractor or farm equipment~~
 472 dealer has not voluntarily ordered.

473 (b) To order or accept delivery of any ~~tractor or farm~~
 474 equipment with special features, accessories, or equipment not
 475 included in the base list price of such ~~tractor or farm~~
 476 equipment as publicly advertised by the manufacturer of the
 477 ~~tractor or~~ equipment.

478 (3) It is deemed a violation of this section for a
 479 manufacturer, factory branch or division, distributor,
 480 distributor branch or division, wholesaler, or wholesale branch
 481 or division, or officer, agent, or other representative thereof:

482 (a) To refuse to deliver to any ~~tractor or farm equipment~~
 483 dealer having a franchise or contractual agreement for the
 484 retail sale of new ~~tractors and farm~~ equipment sold or
 485 distributed by such manufacturer, factory branch or division,
 486 distributor branch or division, or wholesale branch or division,
 487 in reasonable quantities and within a reasonable time after
 488 receipt of the dealer's order, any ~~tractor or item of farm~~

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489 equipment covered by such franchise or contract specifically
490 advertised or represented by such manufacturer, factory branch
491 or division, distributor, distributor branch or division,
492 wholesaler, or wholesale branch or division to be available for
493 immediate delivery. However, the failure to deliver any such
494 ~~tractor or item of farm~~ equipment is not considered a violation
495 of this section if such failure is due to a prudent and
496 reasonable restriction on the extension of credit by the
497 franchisor to the dealer, an act of God, a work stoppage or
498 delay due to a strike or labor difficulty, a bona fide shortage
499 of materials, a freight embargo, or another cause over which the
500 manufacturer, distributor, or wholesaler, or any agent thereof,
501 has no control whatsoever.

502 (b) To coerce, compel, or attempt to coerce or compel any
503 ~~tractor or farm equipment~~ dealer to enter into any agreement,
504 whether written or oral, supplementary to an existing franchise
505 with such manufacturer, factory branch or division, distributor,
506 distributor branch or division, wholesaler, or wholesale branch
507 or division, or officer, agent, or other representative thereof;
508 or to do any other act prejudicial to such dealer by threatening
509 to cancel any franchise or contractual agreement existing
510 between such manufacturer, factory branch or division,
511 distributor, distributor branch or division, wholesaler, or
512 wholesale branch or division and such dealer. However, notice in
513 good faith to any ~~tractor or farm equipment~~ dealer of such
514 dealer's violation or breach of any terms or provisions of such
515 franchise or contractual agreement does not constitute a
516 violation of this section if such notice is in writing and is
517 mailed by registered or certified mail to such dealer at her or

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518 his current business address and such notice contains the
 519 specific facts as to the dealer's violation or breach of such
 520 franchise or contractual agreement.

521 (c)1. To terminate ~~or cancel~~ the franchise or selling
 522 agreement of any ~~tractor or farm equipment~~ dealer without due
 523 cause, as defined in subparagraph 2. The termination ~~nonrenewal~~
 524 of a franchise or selling agreement, without due cause,
 525 constitutes an unfair termination ~~or cancellation~~, regardless of
 526 the specified time period of such franchise or selling
 527 agreement. Except when the ground for such termination ~~or~~
 528 ~~cancellation~~ falls within sub-subparagraph 2.c., such
 529 manufacturer, factory branch or division, distributor,
 530 distributor branch or division, wholesaler, or wholesale branch
 531 or division, or officer, agent, or other representative thereof,
 532 shall notify a ~~tractor or farm equipment~~ dealer in writing of
 533 the termination ~~or cancellation~~ of the franchise or selling
 534 agreement of such dealer at least 180 ~~90~~ days before the
 535 effective date of the termination ~~or cancellation~~, stating the
 536 specific ground for such termination ~~or cancellation~~. In no
 537 event shall the contractual term of any such franchise or
 538 selling agreement expire, without the written consent of the
 539 ~~tractor or farm equipment~~ dealer involved, prior to the
 540 expiration of at least 180 ~~90~~ days following such written
 541 notice. During the 180-day ~~90-day~~ period, either party may, in
 542 appropriate circumstances, petition a court of competent
 543 jurisdiction to modify such 180-day ~~90-day~~ stay or to extend it
 544 pending a final determination of such proceeding on the merits.
 545 The court shall have authority to grant temporary, preliminary,
 546 and final injunctive relief. Should a dealer cure the claimed

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547 deficiency within the 180-day period, the franchise or selling
 548 agreement shall not be terminated.

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

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

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

557 c. Has filed a voluntary petition in bankruptcy or has had
 558 an involuntary petition in bankruptcy filed against her or him
 559 which has not been discharged within 60 days after the filing,
 560 is in default under the provisions of a security agreement in
 561 effect with the manufacturer or distributor, or is in
 562 receivership;

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

564 e. Has inadequately represented the manufacturer's or
 565 distributor's products with respect to sales, service, or
 566 warranty work;

567 f. Has inadequate and insufficient sales and service
 568 facilities and personnel;

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

571 h. Has been convicted of a crime, the effect of which
 572 would be detrimental to the manufacturer, distributor, or
 573 dealership;

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574 i. Has failed to operate in the normal course of business
 575 for 10 consecutive business days or has terminated her or his
 576 business;

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

579 k. Has failed to comply with the terms that are not in
 580 conflict with this chapter or the terms of the dealership or
 581 franchise agreement.

582 3. Before termination of the franchise or selling
 583 agreement because of the dealer's failure to meet marketing
 584 criteria or market penetration, the manufacturer, factory branch
 585 or division, distributor, distributor branch or division,
 586 wholesaler, or wholesale branch or division, or officer, agent,
 587 or other representative thereof, shall provide written notice of
 588 such intention at least 1 year in advance. After such notice,
 589 the manufacturer or other entity issuing the notice shall make
 590 good faith efforts to work with the dealer to gain the desired
 591 market share, including, without limitation, reasonably making
 592 available to the dealer an adequate inventory of new equipment
 593 and parts and competitive marketing programs. The manufacturer
 594 or other entity, at the end of the 1-year notice period, may
 595 terminate or elect not to renew the agreement only upon further
 596 written notice specifying the reasons for determining that the
 597 dealer failed to meet reasonable marketing criteria or market
 598 penetration. Such written notice must specify that termination
 599 is effective 90 days from the date of the notice. Either party
 600 may petition the court pursuant to subparagraph (c)1. for the
 601 relief specified in such subparagraph. Should a dealer cure the

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602 claimed deficiency within the 90-day period, the franchise or
 603 selling agreement shall not be terminated.

604 (d) To resort to or use any false or misleading
 605 advertisement in connection with its ~~her or his~~ business as such
 606 manufacturer, factory branch or division, distributor,
 607 distributor branch or division, wholesaler, or wholesale branch
 608 or division, or officer, agent, or other representative thereof.

609 (e) To offer to sell or to sell any new ~~tractor or item of~~
 610 ~~farm~~ equipment, or parts or accessories therefor, to any other
 611 ~~tractor or farm equipment~~ dealer at a lower actual price
 612 therefor than the actual price offered to any other ~~tractor or~~
 613 ~~farm equipment~~ dealer for the same model ~~tractor or farm~~
 614 equipment identically equipped or to utilize any device,
 615 including, but not limited to, sales promotion plans or
 616 programs, which results in such lesser actual price or results
 617 in a fixed price predetermined solely by the manufacturer or
 618 distributor. However, the provisions of this paragraph do not
 619 apply to sales to a ~~tractor or farm equipment~~ dealer for resale
 620 to any unit or agency of the United States Government, the state
 621 or any of its political subdivisions, or any municipality
 622 located within this state. Further, the provisions of this
 623 paragraph do not apply so long as a manufacturer, distributor,
 624 or wholesaler, or any agent thereof, sells or offers to sell
 625 such new ~~tractor or farm~~ equipment, parts, or accessories to all
 626 of its ~~her or his~~ franchised ~~tractor or farm equipment~~ dealers
 627 at an equal price.

628 (f) To willfully discriminate, either directly or
 629 indirectly, in price, programs, or terms of sale offered to
 630 franchisees, when the effect of such discrimination may be to

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631 substantially lessen competition or to give to one holder of a
 632 franchise any economic, business, or competitive advantage not
 633 offered to all holders of the same or similar franchise.

634 (g) To prevent or attempt to prevent, by contract or
 635 otherwise, any ~~tractor or farm equipment~~ dealer from changing
 636 the capital structure of her or his dealership or the means by
 637 or through which the dealer finances the operation of her or his
 638 dealership, provided the dealer at all times meets any
 639 reasonable capital standards agreed to between the dealership
 640 and the manufacturer, distributor, or wholesaler and provided
 641 such change by the dealer does not result in a change in the
 642 executive management of the dealership.

643 (h) To prevent or attempt to prevent, by contract or
 644 otherwise, any ~~tractor or farm equipment~~ dealer or any officer,
 645 member partner, or stockholder of any ~~tractor or farm equipment~~
 646 dealer from selling or transferring any part of the interest of
 647 any of them to any other person or persons or party or parties.
 648 However, no dealer, officer, partner, or stockholder has the
 649 right to sell, transfer, or assign the franchise or power of
 650 management or control thereunder without the written consent of
 651 the manufacturer, distributor, or wholesaler, except that such
 652 consent may not be unreasonably withheld.

653 (i) To impose, directly or indirectly, unreasonable
 654 restrictions on the dealer relative to transfer, renewal,
 655 termination, location, or site control.

656 (j) To prevent a dealer from having an investment in or
 657 holding a dealership contract for the sale of competing product
 658 lines or makes of equipment, or to require a dealer to provide

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659 separate facilities for competing product lines or makes of
 660 equipment.

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

666 (l)(j) To require a ~~tractor and farm equipment~~ dealer to
 667 assent to a release, assignment, novation, waiver, or estoppel
 668 which would relieve any person from liability imposed by ss.
 669 686.40-686.418.

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

672 (a) To require a retail purchaser of a new ~~tractor or item~~
 673 ~~of farm~~ equipment, as a condition of sale and delivery of the
 674 ~~tractor or~~ equipment, also to purchase special features,
 675 appliances, equipment, parts, or accessories not desired or
 676 requested by the purchaser. However, this prohibition does not
 677 apply to special features, appliances, equipment, parts, or
 678 accessories which are already installed when the ~~tractor or item~~
 679 ~~of farm~~ equipment is received by the dealer from the
 680 manufacturer, distributor, or wholesaler of such ~~tractor or~~
 681 equipment.

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

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

690 Section 10. Section 686.418, Florida Statutes, is amended
 691 to read:

692 686.418 Effect of act on other remedies.--Sections 686.40-
 693 686.418 are supplemental to and do not preempt local ordinances
 694 dealing with prohibited or unlawful conduct in the
 695 manufacturing, distribution, wholesaling, advertising, or sale
 696 of ~~tractors and other items of farm~~ equipment if such ordinances
 697 are not inconsistent with such sections.

698 Section 11. This act shall take effect July 1, 2004.