

CHAMBER ACTION

1 The Committee on Agriculture recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to agricultural equipment manufacturers,
7 distributors, and dealers; amending s. 686.40, F.S.;
8 providing a popular name; amending s. 686.401, F.S.;
9 clarifying intent of the Agricultural Equipment
10 Manufacturers and Dealers Act to provide for regulation of
11 the conduct of manufacturers, distributors, and dealers of
12 equipment primarily designed for or used in agriculture;
13 amending s. 686.402, F.S.; revising and adding
14 definitions; amending s. 686.403, F.S.; clarifying
15 provisions relating to application; amending s. 686.405,
16 F.S.; providing that it is unlawful to deny, delay payment
17 for, or restrict warranty claims under certain
18 circumstances; providing for audit of warranty claims;
19 amending s. 686.406, F.S.; clarifying provisions relating
20 to surplus parts; amending s. 686.407, F.S.; providing
21 requirements for the establishment of a new dealership or
22 relocation of a current dealership within a certain area;
23 providing requirements for the sale or lease of new

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24 equipment; amending s. 686.409, F.S.; clarifying
 25 provisions relating to compensation for inventory under
 26 certain circumstances; amending s. 686.413, F.S.;
 27 providing additional unlawful acts and practices in the
 28 conduct of the manufacturing, distribution, wholesaling,
 29 franchising, sale, and advertising of equipment; providing
 30 requirements for termination of a franchise or selling
 31 agreement under certain circumstances; amending s.
 32 686.418, F.S.; clarifying provisions relating to the
 33 effect of the act on local ordinances; amending s.
 34 316.515, F.S.; revising agricultural equipment qualifying
 35 for maximum width and length exemption; providing an
 36 effective date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

40 Section 1. Section 686.40, Florida Statutes, is amended to
 41 read:

42 686.40 Agricultural ~~Farm~~ Equipment Manufacturers and
 43 Dealers Act; ~~short title.~~ Sections 686.40-686.418 shall be
 44 known by the popular name ~~and may be cited as~~ the "Agricultural
 45 ~~Farm~~ Equipment Manufacturers and Dealers Act."

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

48 686.401 Legislative finding and intent; construction of
 49 ss. 686.40-686.418.--

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

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52 | designed for or used in agriculture in this state vitally
 53 | affects the general economy of the state, the public interest,
 54 | and the public welfare and that, in the exercise of its police
 55 | power, it is necessary to regulate the conduct of ~~tractor and~~
 56 | ~~farm equipment~~ manufacturers, distributors, and dealers of such
 57 | equipment, and their representatives, doing business in this
 58 | state in order to prevent fraud, unfair business practices,
 59 | unfair methods of competition, impositions, and other abuses
 60 | upon its citizens.

61 | Section 3. Section 686.402, Florida Statutes, is amended
 62 | to read:

63 | 686.402 Definitions of terms used in ss. 686.40-
 64 | 686.418.--In construing ss. 686.40-686.418, unless the context
 65 | otherwise requires, the word, phrase, or term:

66 | (1)~~(16)~~ "~~Tractor or farm equipment~~ Dealer" means a person
 67 | who sells, solicits, or advertises the sale of new and used
 68 | ~~tractors and farm~~ equipment to the consuming public, or who
 69 | maintains such equipment, but does not include:

70 | ~~(a) A receiver, trustee, administrator, executor, personal~~
 71 | ~~representative, guardian, or other person appointed by or acting~~
 72 | ~~under judgment, decree, or order of any court.~~

73 | (a)~~(b)~~ A public officer while performing her or his duties
 74 | as such officer.

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

78 | (c)~~(d)~~ A person engaged in the auction sale of ~~tractors~~
 79 | ~~and farm~~ equipment.

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

81 (2) "Dealership" means the business of selling or
82 attempting to effect the sale by a dealer of new equipment or
83 the right conferred by written or oral agreement with the
84 manufacturer, distributor, or wholesaler, for a definite or
85 indefinite period of time, to sell or attempt to effect the sale
86 of new equipment.

87 (3)(1) "Distributor" or "wholesaler" means any person,
88 firm, association, corporation, or company that sells or
89 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~
90 ~~equipment~~ dealers and that maintains distributor representatives
91 within this state.

92 (4)(2) "Distributor branch" means a branch office
93 maintained by a distributor or wholesaler which sells or
94 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~
95 ~~equipment~~ dealers.

96 (5)(3) "Distributor representative" means a representative
97 employed by a distributor, distributor branch, or wholesaler.

98 (6) "~~Farm~~ Equipment" means those tractors, farm
99 implements, or items which are primarily designed for or used
100 use in agriculture, including horticulture. Equipment designed
101 for or used in irrigation for agriculture or horticulture is
102 included in this definition. Equipment designed for or used in
103 off-road construction, forestry, mining, utility, and industrial
104 purposes is not included in this definition.

105 (7)(4) "Factory branch" means a branch office maintained
106 by a manufacturer which manufactures and assembles ~~tractors and~~
107 ~~farm~~ equipment for sale to distributors ~~of tractors~~ or ~~to farm~~

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

110 (8)~~(5)~~ "Factory representative" means a representative
111 employed by a manufacturer or factory branch for the purpose of
112 making or promoting the sale of ~~tractors and farm~~ equipment or
113 for supervising, servicing, introducing, or contracting with
114 ~~tractor or farm equipment~~ dealers or prospective dealers.

115 (9)~~(7)~~ "Franchise" means a contract or agreement, either
116 expressed or implied, whether oral or written, for a definite or
117 indefinite period of time in which a manufacturer, distributor,
118 or wholesaler grants to a ~~tractor or farm equipment~~ dealer
119 permission to use a trade name, service mark, trademark, or
120 related characteristic and in which there is a common interest
121 or community of interest in the marketing of ~~tractors or farm~~
122 equipment or services related thereto at wholesale or retail,
123 whether by leasing, sale, or otherwise.

124 (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~
125 dealer to whom a franchise is offered or granted.

126 (11)~~(9)~~ "Franchisor" means a manufacturer, distributor, or
127 wholesaler who grants a franchise to a ~~tractor or farm equipment~~
128 dealer.

129 (12)~~(10)~~ "Fraud" means and includes actual fraud or
130 constructive fraud as normally defined, in addition to the
131 following:

132 (a) A misrepresentation in any manner, whether
133 intentionally false or arising from gross negligence, of a
134 material fact.

135 (b) A promise or representation not made honestly and in
136 good faith.

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

138 (d) Any artifice employed to deceive another.

139 (13)~~(11)~~ "Manufacturer" means any person engaged in the
140 business of manufacturing or assembling new and unused ~~tractors~~
141 ~~and farm~~ equipment.

142 (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a ~~tractor~~
143 ~~or item of farm~~ equipment which has not been previously sold to
144 and put into regular use or service by any person, except a
145 distributor, wholesaler, or ~~tractor or farm equipment~~ dealer for
146 resale.

147 (15)~~(13)~~ "Person" means a natural person, corporation,
148 association, partnership, trust, or other business entity and,
149 in the case of a business entity, includes any other entity in
150 which the business entity has a majority interest or which it
151 effectively controls, as well as the individual officers,
152 directors, and other persons in active control of the activities
153 of each such entity.

154 (16) "Relevant market area" means the geographic area for
155 which a dealer is assigned responsibility for selling or
156 soliciting or advertising the sale of equipment under the terms
157 of a franchise.

158 (17)~~(14)~~ "Sale" means and includes the issuance, transfer,
159 agreement for transfer, exchange, pledge, hypothecation, or
160 mortgage in any manner or form, whether by transfer in trust or
161 otherwise, of any ~~tractor or item of farm~~ equipment or interest
162 therein, or of any franchise related thereto, for a

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

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

168 (19)~~(15)~~ "Tractor" means a vehicle that is operated
 169 principally upon a farm, grove, or orchard in connection with
 170 agricultural or horticultural pursuits or in connection with
 171 irrigation.

172 Section 4. Section 686.403, Florida Statutes, is amended
 173 to read:

174 686.403 Application of ss. 686.40-686.418.--

175 (1) Any person who engages directly or indirectly in
 176 purposeful agreements or contracts within this state in
 177 connection with the sale or advertising for sale of new
 178 equipment ~~tractors and farm machinery~~ and parts is subject to
 179 ss. 686.40-686.418 and to the jurisdiction of the courts of this
 180 state for violations of such sections in accordance with the
 181 provisions of the laws of this state.

182 (2) Sections 686.40-686.418 apply to all written or oral
 183 agreements between a manufacturer, distributor, or wholesaler
 184 with a ~~tractor or farm equipment~~ dealer, including, but not
 185 limited to, the franchise offering; the franchise agreement;
 186 sales of goods, services, and advertising; leases or mortgages
 187 of real or personal property; promises to pay; security
 188 interests; pledges; insurance contracts; advertising contracts;
 189 construction or installation contracts; servicing contracts; and

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190 all other such agreements in which the manufacturer,
191 distributor, or wholesaler has any direct or indirect interest.

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

195 Section 5. Section 686.405, Florida Statutes, is amended
196 to read:

197 686.405 Warranty agreements; claims; compensation of
198 dealers.--

199 (1) Every manufacturer, distributor, wholesaler, factory
200 branch or division, distributor branch or division, or wholesale
201 branch or division shall provide a fair and reasonable warranty
202 agreement on any new ~~tractor or item of farm~~ equipment which it
203 sells and shall fairly compensate each of its ~~tractor or farm~~
204 ~~equipment~~ dealers for labor and parts used in fulfilling such
205 warranty agreements.

206 (2)(a) Each claim for payment under such warranty
207 agreements made by a ~~tractor or farm equipment~~ dealer for such
208 labor and parts shall be paid within 30 days following its
209 approval. Each such claim shall be either approved or
210 disapproved within 30 days after its receipt. When any such
211 claim is disapproved, the ~~tractor or farm equipment~~ dealer who
212 submitted it shall be notified in writing of such disapproval
213 within such period, and such notice shall state the specific
214 grounds upon which the disapproval is based.

215 (b) Any special handling of claims required of the dealer
216 by the manufacturer, distributor, wholesaler, factory branch or
217 division, distributor branch or division, or wholesale branch or

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218 | division, which handling is not uniformly required of all
219 | dealers of that make, may be enforced only after 30 days' notice
220 | in writing to the dealer and upon good and sufficient reason.

221 | (3)(a) The minimum lawful basis for compensating a dealer
222 | for warranty work, as provided for in this section, shall be
223 | calculated for labor in accordance with the reasonable and
224 | customary amount of time required to complete such work,
225 | expressed in hours and fractions of hours multiplied by the
226 | dealer's established hourly retail labor rate. Prior to filing a
227 | claim for reimbursement for warranty work, the dealer must
228 | notify the applicable manufacturer, distributor, or wholesaler
229 | of his or her hourly retail labor rate.

230 | (b) The minimum lawful basis for compensation to the
231 | dealer for parts used in fulfilling such warranty work shall be
232 | at the dealer's costs for such parts, including all freight and
233 | handling charges applicable to such parts, plus 15 percent of
234 | the sum of such costs and charges to reimburse the dealer's
235 | reasonable cost of doing business and providing such warranty
236 | service on behalf of the manufacturer.

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

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

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

248 (6) Any audit of a dealer by or on behalf of a
 249 manufacturer, distributor, or wholesaler for sales incentives,
 250 service incentives, rebates, or other forms of incentive
 251 compensation shall be completed not later than 6 months after
 252 the date of termination of such incentive compensation program.
 253 However, this limitation shall not apply in any case of
 254 fraudulent claims.

255 Section 6. Section 686.406, Florida Statutes, is amended
 256 to read:

257 686.406 Parts; availability; return.--

258 (1) Every manufacturer shall specify, and every dealer
 259 shall provide and fulfill, reasonable predelivery and
 260 preparation obligations for its ~~tractors and farm~~ equipment
 261 prior to delivery of the ~~tractors and~~ equipment to retail
 262 purchasers.

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

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

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

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274 | return the ~~their~~ surplus parts to the manufacturer or
275 | distributor.

276 | (b) If a manufacturer or distributor has not notified a
277 | dealer of a specific time period for returning surplus parts
278 | within the preceding 12 months, the manufacturer or distributor
279 | ~~she or he~~ shall authorize and allow the dealer's surplus parts
280 | return request within 30 days after receipt of such request from
281 | such ~~the~~ dealer.

282 | (c) A manufacturer or distributor must allow surplus parts
283 | return authority on a dollar value of parts equal to 6 percent
284 | of the total dollar value of parts purchased from the
285 | manufacturer or distributor by the dealer during the 12-month
286 | period immediately preceding the notification to such ~~the~~ dealer
287 | by the manufacturer or distributor of the surplus parts return
288 | program, or the month such ~~the~~ dealer's return request is made,
289 | whichever is applicable. However, the dealer may, at her or his
290 | option, elect to return a dollar value of her or his surplus
291 | parts equal to less than 6 percent of the total dollar value of
292 | parts purchased by such ~~the~~ dealer from the manufacturer or
293 | distributor during the preceding 12-month period as provided
294 | herein.

295 | (d) No obsolete or superseded part may be returned, but
296 | any part listed in the manufacturer's, distributor's, or
297 | wholesaler's current returnable parts list at the date of
298 | notification of the surplus parts return program by the
299 | manufacturer or distributor to the dealer, or the date of the
300 | dealer's parts return request, whichever is applicable, is
301 | eligible for return and credit specified. However, returned

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

305 (e) The minimum lawful credit to be allowed for returned
306 parts is 85 percent of the wholesale cost of the parts as listed
307 in the manufacturer's, distributor's, or wholesaler's current
308 returnable parts list at the date of the notification of the
309 surplus parts return program by the manufacturer, wholesaler, or
310 distributor to the dealer, or the date of the dealer's parts
311 return request, whichever is applicable.

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

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

318 Section 7. Section 686.407, Florida Statutes, is amended
319 to read:

320 686.407 Repurchase of inventory upon termination of
321 franchise agreement; establishment or relocation of dealership;
322 sale or lease of new equipment.--

323 (1) Whenever any ~~tractor or farm equipment~~ dealer enters
324 into a franchise agreement with a manufacturer, distributor, or
325 wholesaler in which agreement the dealer agrees to maintain an
326 inventory of ~~tractors, farm equipment,~~ or repair parts and the
327 franchise is subsequently terminated, the manufacturer,
328 distributor, or wholesaler shall repurchase the inventory as
329 provided in this section. However, the dealer may keep the

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330 inventory if he or she desires. If the dealer has any
 331 outstanding debts to the manufacturer, distributor, or
 332 wholesaler, then the repurchase amount may be credited to the
 333 dealer's account.

334 (2) If the dealer decides not to keep the inventory, the
 335 manufacturer, distributor, or wholesaler shall repurchase that
 336 inventory previously purchased from such manufacturer,
 337 distributor, or wholesaler ~~him or her~~ and held by the dealer on
 338 the date of termination of the contract. The manufacturer,
 339 distributor, or wholesaler shall pay:

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

346 (b) Eighty-five percent of the current wholesale price of
 347 all new, unused, and undamaged repair parts and accessories
 348 which are listed in the manufacturer's, distributor's, or
 349 wholesaler's current returnable parts list. The manufacturer,
 350 distributor, or wholesaler shall also pay the dealer 6 percent
 351 of the current wholesale price on all new, unused, and undamaged
 352 repair parts returned to cover the cost of handling, packing,
 353 and loading. However, the manufacturer, distributor, or
 354 wholesaler shall have the option of performing the handling,
 355 packing, and loading in lieu of paying the 6-percent sum imposed
 356 in this subsection for these services; and, in this event, after
 357 receipt by the dealer of the full repurchase amount as provided

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358 | in this section, the dealer shall make available to the
 359 | manufacturer, distributor, or wholesaler, at the dealer's
 360 | address or at the places at which the ~~tractors and~~ equipment is
 361 | ~~are~~ located, all ~~tractors and items of farm~~ equipment previously
 362 | purchased by the dealer.

363 | (3) Upon payment within a reasonable time of the
 364 | repurchase amount to the dealer, the title and right of
 365 | possession to the repurchased inventory shall transfer or be
 366 | transferred to the manufacturer, distributor, or wholesaler, as
 367 | the case may be.

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

370 | ~~(a) Any repair part which has a limited storage life or is~~
 371 | ~~otherwise subject to deterioration.~~

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

374 | (b)~~(e)~~ Any repair part which because of its condition is
 375 | not resalable as a new part without repackaging or
 376 | reconditioning.

377 | (c)~~(d)~~ Any inventory for which the dealer is unable to
 378 | furnish evidence, reasonably satisfactory to the manufacturer,
 379 | distributor, or wholesaler, of good title, free and clear of all
 380 | claims, liens, and encumbrances.

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

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

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

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

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

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

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

407 (6) A manufacturer, distributor, or wholesaler that
 408 intends to establish a new dealership or to relocate a current
 409 dealership for a particular product line or make of equipment
 410 within the relevant market area of an existing dealership of the
 411 same product line or make of equipment shall give written notice
 412 of such intent by certified mail or overnight delivery, return

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413 receipt requested, to such existing dealership. The notice shall
414 be delivered at least 180 days prior to establishment of a new
415 dealership or relocation of a current dealership. The notice
416 shall include:

417 (a) The specific location of the additional or relocated
418 dealership.

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

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

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

426 (7) A manufacturer, distributor, or wholesaler may sell or
427 lease new equipment for use within the state. If the equipment
428 is prepared for delivery or serviced by a dealer, the
429 manufacturer, distributor, or wholesaler shall reasonably
430 compensate the dealer for the preparation and delivery of the
431 new equipment and pay to the dealer a reasonable commission on
432 the sale or lease of the new equipment which shall not be less
433 than 8 percent of the sale price of the equipment. This
434 compensation must be paid or credited in the same manner as
435 provided in this section. The manufacturer, distributor, or
436 wholesaler, if practicable, shall utilize the dealer in the
437 relevant market area for preparation and delivery. For purposes
438 of this subsection, equipment is considered to be used primarily
439 within a dealer's relevant market area if the new equipment is
440 located or housed at a user's facility located within the

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441 relevant market area. This subsection shall not be applicable to
 442 any liquidation or sale of equipment which has been ordered by
 443 any court.

444 Section 8. Section 686.409, Florida Statutes, is amended
 445 to read:

446 686.409 Compensation for inventory upon refusal to renew,
 447 termination of, or restriction on transfer of a franchise.--It
 448 is unlawful for the manufacturer, distributor, wholesaler, or
 449 franchisor, without due cause, to fail to renew a franchise on
 450 terms then equally available to all of its ~~her or his tractor or~~
 451 ~~farm equipment~~ dealers, to terminate a franchise, or to restrict
 452 the transfer of a franchise unless the franchisee receives fair
 453 and reasonable compensation for the inventory of the business.
 454 As used in this section, the term "due cause" shall be construed
 455 in accordance with the definition of due cause contained in s.
 456 686.413(3)(c)2.

457 Section 9. Section 686.413, Florida Statutes, is amended
 458 to read:

459 686.413 Unlawful acts and practices.--Unfair methods of
 460 competition and unfair or deceptive acts or practices in the
 461 conduct of the manufacturing, distribution, wholesaling,
 462 franchising, sale, and advertising of ~~tractors and farm~~
 463 equipment are declared to be unlawful.

464 (1) It is deemed a violation of this section for any
 465 manufacturer, factory branch, factory representative,
 466 distributor, distributor branch, distributor representative,
 467 wholesaler, or ~~tractor or farm equipment~~ dealer to engage in any
 468 action which is arbitrary, capricious, in bad faith, or

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469 unconscionable and which causes damage in terms of law or equity
470 to any of the parties or to the public.

471 (2) It is deemed a violation of this section for a
472 manufacturer, factory branch or division, distributor,
473 distributor branch or division, wholesaler, or wholesale branch
474 or division, or officer, agent, or other representative thereof,
475 to coerce, compel, or attempt to coerce or compel any ~~tractor or~~
476 ~~farm equipment~~ dealer:

477 (a) To order or accept delivery of any ~~tractor or item of~~
478 ~~farm~~ equipment, parts or accessories therefor, or other
479 commodity or commodities which such ~~tractor or farm equipment~~
480 dealer has not voluntarily ordered.

481 (b) To order or accept delivery of any ~~tractor or farm~~
482 equipment with special features, accessories, or equipment not
483 included in the base list price of such ~~tractor or farm~~
484 equipment as publicly advertised by the manufacturer of the
485 ~~tractor or~~ equipment.

486 (3) It is deemed a violation of this section for a
487 manufacturer, factory branch or division, distributor,
488 distributor branch or division, wholesaler, or wholesale branch
489 or division, or officer, agent, or other representative thereof:

490 (a) To refuse to deliver to any ~~tractor or farm equipment~~
491 dealer having a franchise or contractual agreement for the
492 retail sale of new ~~tractors and farm~~ equipment sold or
493 distributed by such manufacturer, factory branch or division,
494 distributor branch or division, or wholesale branch or division,
495 in reasonable quantities and within a reasonable time after
496 receipt of the dealer's order, any ~~tractor or item of farm~~

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

510 (b) To coerce, compel, or attempt to coerce or compel any
511 ~~tractor or farm equipment~~ dealer to enter into any agreement,
512 whether written or oral, supplementary to an existing franchise
513 with such manufacturer, factory branch or division, distributor,
514 distributor branch or division, wholesaler, or wholesale branch
515 or division, or officer, agent, or other representative thereof;
516 or to do any other act prejudicial to such dealer by threatening
517 to cancel any franchise or contractual agreement existing
518 between such manufacturer, factory branch or division,
519 distributor, distributor branch or division, wholesaler, or
520 wholesale branch or division and such dealer. However, notice in
521 good faith to any ~~tractor or farm equipment~~ dealer of such
522 dealer's violation or breach of any terms or provisions of such
523 franchise or contractual agreement does not constitute a
524 violation of this section if such notice is in writing and is

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525 mailed by registered or certified mail to such dealer at her or
526 his current business address and such notice contains the
527 specific facts as to the dealer's violation or breach of such
528 franchise or contractual agreement.

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

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553 | The court shall have authority to grant temporary, preliminary,
 554 | and final injunctive relief. Should a dealer cure the claimed
 555 | deficiency within the 180-day period, the franchise or selling
 556 | agreement shall not be terminated.

557 | 2. As used in this subparagraph, tests for determining
 558 | what constitutes due cause for a manufacturer or distributor to
 559 | ~~terminate, cancel, or refuse to renew~~ a franchise agreement
 560 | include whether the dealer:

561 | a. Has transferred an ownership interest in the dealership
 562 | without the manufacturer's or distributor's consent;

563 | b. Has made a material misrepresentation in applying for
 564 | or in acting under the franchise agreement;

565 | c. Has filed a voluntary petition in bankruptcy or has had
 566 | an involuntary petition in bankruptcy filed against her or him
 567 | which has not been discharged within 60 days after the filing,
 568 | is in default under the provisions of a security agreement in
 569 | effect with the manufacturer or distributor, or is in
 570 | receivership;

571 | d. Has engaged in unfair business or trade practices;

572 | e. Has inadequately represented the manufacturer's or
 573 | distributor's products with respect to sales, service, or
 574 | warranty work;

575 | f. Has inadequate and insufficient sales and service
 576 | facilities and personnel;

577 | g. Has failed to comply with an applicable federal, state,
 578 | or local licensing law;

579 h. Has been convicted of a crime, the effect of which
580 would be detrimental to the manufacturer, distributor, or
581 dealership;

582 i. Has failed to operate in the normal course of business
583 for 10 consecutive business days or has terminated her or his
584 business;

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

587 k. Has failed to comply with the terms that are not in
588 conflict with this chapter or the terms of the dealership or
589 franchise agreement.

590 3. Before termination of the franchise or selling
591 agreement because of the dealer's failure to meet marketing
592 criteria or market penetration, the manufacturer, factory branch
593 or division, distributor, distributor branch or division,
594 wholesaler, or wholesale branch or division, or officer, agent,
595 or other representative thereof, shall provide written notice of
596 such intention at least 1 year in advance. After such notice,
597 the manufacturer or other entity issuing the notice shall make
598 good faith efforts to work with the dealer to gain the desired
599 market share, including, without limitation, reasonably making
600 available to the dealer an adequate inventory of new equipment
601 and parts and competitive marketing programs. The manufacturer
602 or other entity, at the end of the 1-year notice period, may
603 terminate or elect not to renew the agreement only upon further
604 written notice specifying the reasons for determining that the
605 dealer failed to meet reasonable marketing criteria or market
606 penetration. Such written notice must specify that termination

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

612 (d) To resort to or use any false or misleading
 613 advertisement in connection with its ~~her or his~~ business as such
 614 manufacturer, factory branch or division, distributor,
 615 distributor branch or division, wholesaler, or wholesale branch
 616 or division, or officer, agent, or other representative thereof.

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

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

636 | (f) To willfully discriminate, either directly or
637 | indirectly, in price, programs, or terms of sale offered to
638 | franchisees, when the effect of such discrimination may be to
639 | substantially lessen competition or to give to one holder of a
640 | franchise any economic, business, or competitive advantage not
641 | offered to all holders of the same or similar franchise.

642 | (g) To prevent or attempt to prevent, by contract or
643 | otherwise, any ~~tractor or farm equipment~~ dealer from changing
644 | the capital structure of her or his dealership or the means by
645 | or through which the dealer finances the operation of her or his
646 | dealership, provided the dealer at all times meets any
647 | reasonable capital standards agreed to between the dealership
648 | and the manufacturer, distributor, or wholesaler and provided
649 | such change by the dealer does not result in a change in the
650 | executive management of the dealership.

651 | (h) To prevent or attempt to prevent, by contract or
652 | otherwise, any ~~tractor or farm equipment~~ dealer or any officer,
653 | member partner, or stockholder of any ~~tractor or farm equipment~~
654 | dealer from selling or transferring any part of the interest of
655 | any of them to any other person or persons or party or parties.
656 | However, no dealer, officer, partner, or stockholder has the
657 | right to sell, transfer, or assign the franchise or power of
658 | management or control thereunder without the written consent of
659 | the manufacturer, distributor, or wholesaler, except that such
660 | consent may not be unreasonably withheld.

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661 (i) To impose, directly or indirectly, unreasonable
 662 restrictions on the dealer relative to transfer, renewal,
 663 termination, location, or site control.

664 (j) To prevent a dealer from having an investment in or
 665 holding a dealership contract for the sale of competing product
 666 lines or makes of equipment, or to require a dealer to provide
 667 separate facilities for competing product lines or makes of
 668 equipment.

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

674 (l)(j) To require a ~~tractor and farm equipment~~ dealer to
 675 assent to a release, assignment, novation, waiver, or estoppel
 676 which would relieve any person from liability imposed by ss.
 677 686.40-686.418.

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

680 (a) To require a retail purchaser of a new ~~tractor or item~~
 681 ~~of farm~~ equipment, as a condition of sale and delivery of the
 682 ~~tractor or~~ equipment, also to purchase special features,
 683 appliances, equipment, parts, or accessories not desired or
 684 requested by the purchaser. However, this prohibition does not
 685 apply to special features, appliances, equipment, parts, or
 686 accessories which are already installed when the ~~tractor or item~~
 687 ~~of farm~~ equipment is received by the dealer from the

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688 manufacturer, distributor, or wholesaler of such ~~tractor or~~
689 equipment.

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

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

698 Section 10. Section 686.418, Florida Statutes, is amended
699 to read:

700 686.418 Effect of act on other remedies.--Sections 686.40-
701 686.418 are supplemental to and do not preempt local ordinances
702 dealing with prohibited or unlawful conduct in the
703 manufacturing, distribution, wholesaling, advertising, or sale
704 of ~~tractors and other items of farm~~ equipment if such ordinances
705 are not inconsistent with such sections.

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

708 316.515 Maximum width, height, length.--

709 (5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS, SAFETY
710 REQUIREMENTS.--Notwithstanding any other provisions of law,
711 straight trucks, agricultural tractors, and cotton module
712 movers, not exceeding 50 feet in length, or any combination of
713 up to and including three implements of husbandry including the
714 towing power unit, and any single agricultural trailer, with a
715 load thereon or any agricultural implements attached to a towing

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716 | power unit not exceeding 130 inches in width, or a self-
717 | propelled agricultural implement or an agricultural tractor not
718 | exceeding 130 inches in width, is authorized for the purpose of
719 | transporting peanuts, grains, soybeans, cotton, hay, straw, or
720 | other perishable farm products from their point of production to
721 | the first point of change of custody or of long-term storage,
722 | and for the purpose of returning to such point of production, or
723 | for the purpose of moving such tractors, movers, and implements
724 | from one point of agricultural production to another, by a
725 | person engaged in the production of any such product or custom
726 | hauler, if such vehicle or combination of vehicles otherwise
727 | complies with this section. Such vehicles shall be operated in
728 | accordance with all safety requirements prescribed by law and
729 | Department of Transportation rules. The Department of
730 | Transportation may issue overlength permits for cotton module
731 | movers greater than 50 feet but not more than 55 feet in overall
732 | length.

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