

CHAMBER ACTION

1 The Committee on Commerce 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

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.

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

81 (e) A mass-market retailer.

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

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

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

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

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

104 (7)~~(4)~~ "Factory branch" means a branch office maintained
 105 by a manufacturer which manufactures and assembles ~~tractors and~~
 106 ~~farm~~ equipment for sale to distributors ~~of tractors~~ or ~~to farm~~

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

109 (8)~~(5)~~ "Factory representative" means a representative
 110 employed by a manufacturer or factory branch for the purpose of
 111 making or promoting the sale of ~~tractors and farm~~ equipment or
 112 for supervising, servicing, introducing, or contracting with
 113 ~~tractor or farm equipment~~ dealers or prospective dealers.

114 (9)~~(7)~~ "Franchise" means a contract or agreement, either
 115 expressed or implied, whether oral or written, for a definite or
 116 indefinite period of time in which a manufacturer, distributor,
 117 or wholesaler grants to a ~~tractor or farm equipment~~ dealer
 118 permission to use a trade name, service mark, trademark, or
 119 related characteristic and in which there is a common interest
 120 or community of interest in the marketing of ~~tractors or farm~~
 121 equipment or services related thereto at wholesale or retail,
 122 whether by leasing, sale, or otherwise.

123 (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~
 124 dealer to whom a franchise is offered or granted.

125 (11)~~(9)~~ "Franchisor" means a manufacturer, distributor, or
 126 wholesaler who grants a franchise to a ~~tractor or farm equipment~~
 127 dealer.

128 (12)~~(10)~~ "Fraud" means and includes actual fraud or
 129 constructive fraud as normally defined, in addition to the
 130 following:

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

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

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

137 (d) Any artifice employed to deceive another.

138 (13)~~(11)~~ "Manufacturer" means any person engaged in the
139 business of manufacturing or assembling new and unused ~~tractors~~
140 ~~and farm~~ equipment.

141 (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a ~~tractor~~
142 ~~or item of farm~~ equipment which has not been previously sold to
143 and put into regular use or service by any person, except a
144 distributor, wholesaler, or ~~tractor or farm equipment~~ dealer for
145 resale.

146 (15)~~(13)~~ "Person" means a natural person, corporation,
147 association, partnership, trust, or other business entity and,
148 in the case of a business entity, includes any other entity in
149 which the business entity has a majority interest or which it
150 effectively controls, as well as the individual officers,
151 directors, and other persons in active control of the activities
152 of each such entity.

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

157 (17)~~(14)~~ "Sale" means and includes the issuance, transfer,
158 agreement for transfer, exchange, pledge, hypothecation, or
159 mortgage in any manner or form, whether by transfer in trust or
160 otherwise, of any ~~tractor or item of farm~~ equipment or interest
161 therein, or of any franchise related thereto, for a

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

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

167 (19)~~(15)~~ "Tractor" means a vehicle that is operated
 168 principally upon a farm, grove, or orchard in connection with
 169 agricultural or horticultural pursuits or in connection with
 170 irrigation.

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

173 686.403 Application of ss. 686.40-686.418.--

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

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

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

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

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

196 | 686.405 Warranty agreements; claims; compensation of
197 | dealers.--

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

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

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

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

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

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

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

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

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

247 (6) Any audit of a dealer by or on behalf of a
 248 manufacturer, distributor, or wholesaler for sales incentives,
 249 service incentives, rebates, or other forms of incentive
 250 compensation shall be completed not later than 9 months after
 251 the date of termination of such incentive compensation program.
 252 However, this limitation shall not apply in any case of
 253 fraudulent claims.

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

256 686.406 Parts; availability; return.--

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

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

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

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

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

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

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

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

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

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

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

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

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

319 686.407 Repurchase of inventory upon termination of
320 franchise agreement; establishment or relocation of dealership;
321 sale or lease of new equipment.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

445 686.409 Compensation for inventory upon refusal to renew,
 446 termination of, or restriction on transfer of a franchise.--It
 447 is unlawful for the manufacturer, distributor, wholesaler, or
 448 franchisor, without due cause, to fail to renew a franchise on
 449 terms then equally available to all of its ~~her or his tractor or~~
 450 ~~farm equipment~~ dealers, to terminate a franchise, or to restrict
 451 the transfer of a franchise unless the franchisee receives fair
 452 and reasonable compensation for the inventory of the business.
 453 As used in this section, the term "due cause" shall be construed
 454 in accordance with the definition of due cause contained in s.
 455 686.413(3)(c)2.

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

458 686.413 Unlawful acts and practices.--Unfair methods of
 459 competition and unfair or deceptive acts or practices in the
 460 conduct of the manufacturing, distribution, wholesaling,
 461 franchising, sale, and advertising of ~~tractors and farm~~
 462 equipment are declared to be unlawful.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

699 686.418 Effect of act on other remedies.--Sections 686.40-
700 686.418 are supplemental to and do not preempt local ordinances
701 dealing with prohibited or unlawful conduct in the
702 manufacturing, distribution, wholesaling, advertising, or sale
703 of ~~tractors and other items of farm~~ equipment if such ordinances
704 are not inconsistent with such sections.

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

707 316.515 Maximum width, height, length.--

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

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

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