

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

29 effect of the act on local ordinances; amending s.  
 30 316.515, F.S.; revising agricultural equipment qualifying  
 31 for maximum width and length exemption; providing an  
 32 effective date.

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

36 Section 1. Section 686.40, Florida Statutes, is amended to  
 37 read:

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

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

44 686.401 Legislative finding and intent; construction of  
 45 ss. 686.40-686.418.--

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

57 Section 3. Section 686.402, Florida Statutes, is amended  
58 to read:

59 686.402 Definitions of terms used in ss. 686.40-  
60 686.418.--In construing ss. 686.40-686.418, unless the context  
61 otherwise requires, the word, phrase, or term:

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

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

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

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

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

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

77 (e) A mass-market retailer.

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

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

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

93            (5)~~(3)~~ "Distributor representative" means a representative  
 94 employed by a distributor, distributor branch, or wholesaler.

95            (6) "~~Farm~~ Equipment" means those tractors or farm  
 96 implements which are primarily designed for or used ~~use~~ in  
 97 agriculture. Equipment designed for or used in off-road  
 98 construction, mining, utility, and industrial purposes is not  
 99 included in this definition.

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

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

110           (9)~~(7)~~ "Franchise" means a contract or agreement, either  
 111 expressed or implied, whether oral or written, for a definite or

112 indefinite period of time in which a manufacturer, distributor,  
113 or wholesaler grants to a ~~tractor or farm equipment~~ dealer  
114 permission to use a trade name, service mark, trademark, or  
115 related characteristic and in which there is a common interest  
116 or community of interest in the marketing of ~~tractors or farm~~  
117 equipment or services related thereto at wholesale or retail,  
118 whether by leasing, sale, or otherwise.

119 (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~  
120 dealer to whom a franchise is offered or granted.

121 (11)~~(9)~~ "Franchisor" means a manufacturer, distributor, or  
122 wholesaler who grants a franchise to a ~~tractor or farm equipment~~  
123 dealer.

124 (12)~~(10)~~ "Fraud" means and includes actual fraud or  
125 constructive fraud as normally defined, in addition to the  
126 following:

127 (a) A misrepresentation in any manner, whether  
128 intentionally false or arising from gross negligence, of a  
129 material fact.

130 (b) A promise or representation not made honestly and in  
131 good faith.

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

133 (d) Any artifice employed to deceive another.

134 (13)~~(11)~~ "Manufacturer" means any person engaged in the  
135 business of manufacturing or assembling new and unused ~~tractors~~  
136 ~~and farm~~ equipment.

137 (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a ~~tractor~~  
138 ~~or item of farm~~ equipment which has not been previously sold to  
139 and put into regular use or service by any person, except a

140 distributor, wholesaler, or ~~tractor or farm equipment~~ dealer for  
 141 resale.

142 (15)~~(13)~~ "Person" means a natural person, corporation,  
 143 association, partnership, trust, or other business entity and,  
 144 in the case of a business entity, includes any other entity in  
 145 which the business entity has a majority interest or which it  
 146 effectively controls, as well as the individual officers,  
 147 directors, and other persons in active control of the activities  
 148 of each such entity.

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

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

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

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

166 Section 4. Section 686.403, Florida Statutes, is amended  
 167 to read:

168 686.403 Application of ss. 686.40-686.418.--

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

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

186 (3) Sections 686.40-686.418 apply to all ~~continuing~~  
 187 ~~contracts now in effect which have no expiration date and to all~~  
 188 other contracts entered into, renewed, or amended after July 1,  
 189 2004 ~~or renewed after July 1, 1984.~~

190 Section 5. Section 686.405, Florida Statutes, is amended  
 191 to read:

192 686.405 Warranty agreements; claims; compensation of  
 193 dealers.--

194 (1) Every manufacturer, distributor, wholesaler, factory  
 195 branch or division, distributor branch or division, or wholesale

196 | branch or division shall provide a fair and reasonable warranty  
197 | agreement on any new ~~tractor or item of farm~~ equipment which it  
198 | sells and shall fairly compensate each of its ~~tractor or farm~~  
199 | ~~equipment~~ dealers for labor and parts used in fulfilling such  
200 | warranty agreements.

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

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

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



223 notify the applicable manufacturer, distributor, or wholesaler  
224 of his or her hourly retail labor rate.

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

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

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

243 (6) Any audit of a dealer by or on behalf of a  
244 manufacturer, distributor, or wholesaler for sales incentives,  
245 service incentives, rebates, or other forms of incentive  
246 compensation shall be completed not later than 12 months after  
247 the date of termination of such incentive compensation program.  
248 However, this limitation shall not apply in any case of  
249 fraudulent claims.

250 Section 6. Section 686.406, Florida Statutes, is amended  
251 to read:

252 686.406 Parts; availability; return.--

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

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

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

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

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

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

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

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

305 distributor to the dealer, or the date of the dealer's parts  
 306 return request, whichever is applicable.

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

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

313 Section 7. Section 686.407, Florida Statutes, is amended  
 314 to read:

315 686.407 Repurchase of inventory upon termination of  
 316 franchise agreement; establishment or relocation of dealership;  
 317 sale or lease of new equipment.--

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

329 (2) If the dealer decides not to keep the inventory, the  
 330 manufacturer, distributor, or wholesaler shall repurchase that  
 331 inventory previously purchased from such manufacturer,  
 332 distributor, or wholesaler ~~him or her~~ and held by the dealer on

333 the date of termination of the contract. The manufacturer,  
334 distributor, or wholesaler shall pay:

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

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

358 (3) Upon payment within a reasonable time of the  
359 repurchase amount to the dealer, the title and right of  
360 possession to the repurchased inventory shall transfer or be

361 transferred to the manufacturer, distributor, or wholesaler, as  
 362 the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

402        (6) A manufacturer, distributor, or wholesaler that  
403 intends to establish a new dealership or to relocate a current  
404 dealership for a particular product line or make of equipment  
405 within the relevant market area of an existing dealership of the  
406 same product line or make of equipment shall give written notice  
407 of such intent by certified mail or overnight delivery, return  
408 receipt requested, to such existing dealership. The notice shall  
409 be delivered at least 180 days prior to establishment of a new  
410 dealership or relocation of a current dealership. The notice  
411 shall include:

412        (a) The specific location of the additional or relocated  
413 dealership.

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

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

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

421 (7) A manufacturer, distributor, or wholesaler may sell or  
422 lease new equipment for use within the state. If the  
423 manufacturer, distributor, or wholesaler makes a direct sale or  
424 lease of equipment, the manufacturer, distributor, or wholesaler  
425 shall pay to the dealer located within the relevant market area  
426 a commission of not less than 7 percent of the sale or lease  
427 price of the equipment. This payment shall cover any  
428 compensation to the dealer for the cost of customary preparation  
429 and delivery as well as any commission on the sale or lease.  
430 This compensation must be paid or credited in the same manner as  
431 provided in this section. The manufacturer, distributor, or  
432 wholesaler, if practicable, shall utilize the dealer in the  
433 relevant market area for preparation and delivery. For purposes  
434 of this subsection, equipment is considered to be used primarily  
435 within a dealer's relevant market area if the new equipment is  
436 located or housed at a user's facility located within the  
437 relevant market area. This subsection shall not be applicable to  
438 any liquidation or sale of equipment which has been ordered by  
439 any court.

440 Section 8. Section 686.409, Florida Statutes, is amended  
441 to read:



442           686.409 Compensation for inventory upon refusal to renew,  
 443 termination of, or restriction on transfer of a franchise.--It  
 444 is unlawful for the manufacturer, distributor, wholesaler, or  
 445 franchisor, without due cause, to fail to renew a franchise on  
 446 terms then equally available to all of its ~~her or his tractor or~~  
 447 ~~farm equipment~~ dealers, to terminate a franchise, or to restrict  
 448 the transfer of a franchise unless the franchisee receives fair  
 449 and reasonable compensation for the inventory of the business.  
 450 As used in this section, the term "due cause" shall be construed  
 451 in accordance with the definition of due cause contained in s.  
 452 686.413(3)(c)2.

453           Section 9. Section 686.413, Florida Statutes, is amended  
 454 to read:

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

460           (1) It is deemed a violation of this section for any  
 461 manufacturer, factory branch, factory representative,  
 462 distributor, distributor branch, distributor representative,  
 463 wholesaler, or ~~tractor or farm equipment~~ dealer to engage in any  
 464 action which is arbitrary, capricious, in bad faith, or  
 465 unconscionable and which causes damage in terms of law or equity  
 466 to any of the parties or to the public.

467           (2) It is deemed a violation of this section for a  
 468 manufacturer, factory branch or division, distributor,  
 469 distributor branch or division, wholesaler, or wholesale branch

470 or division, or officer, agent, or other representative thereof,  
471 to coerce, compel, or attempt to coerce or compel any ~~tractor or~~  
472 ~~farm equipment~~ dealer:

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

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

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

486 (a) To refuse to deliver to any ~~tractor or farm equipment~~  
487 dealer having a franchise or contractual agreement for the  
488 retail sale of new ~~tractors and farm~~ equipment sold or  
489 distributed by such manufacturer, factory branch or division,  
490 distributor branch or division, or wholesale branch or division,  
491 in reasonable quantities and within a reasonable time after  
492 receipt of the dealer's order, any ~~tractor or item of farm~~  
493 equipment covered by such franchise or contract specifically  
494 advertised or represented by such manufacturer, factory branch  
495 or division, distributor, distributor branch or division,  
496 wholesaler, or wholesale branch or division to be available for  
497 immediate delivery. However, the failure to deliver any such

498 ~~tractor or item of farm~~ equipment is not considered a violation  
499 of this section if such failure is due to a prudent and  
500 reasonable restriction on the extension of credit by the  
501 franchisor to the dealer, an act of God, a work stoppage or  
502 delay due to a strike or labor difficulty, a bona fide shortage  
503 of materials, a freight embargo, or another cause over which the  
504 manufacturer, distributor, or wholesaler, or any agent thereof,  
505 has no control whatsoever.

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

525 (c)1. To terminate ~~or cancel~~ the franchise or selling  
526 agreement of any ~~tractor or farm equipment~~ dealer without due  
527 cause, as defined in subparagraph 2. The termination ~~nonrenewal~~  
528 of a franchise or selling agreement, without due cause,  
529 constitutes an unfair termination ~~or cancellation~~, regardless of  
530 the specified time period of such franchise or selling  
531 agreement. Except when the ground for such termination ~~or~~  
532 ~~cancellation~~ falls within sub-subparagraph 2.c., such  
533 manufacturer, factory branch or division, distributor,  
534 distributor branch or division, wholesaler, or wholesale branch  
535 or division, or officer, agent, or other representative thereof,  
536 shall notify a ~~tractor or farm equipment~~ dealer in writing of  
537 the termination ~~or cancellation~~ of the franchise or selling  
538 agreement of such dealer at least 180 ~~90~~ days before the  
539 effective date of the termination ~~or cancellation~~, stating the  
540 specific ground for such termination ~~or cancellation~~. In no  
541 event shall the contractual term of any such franchise or  
542 selling agreement expire, without the written consent of the  
543 ~~tractor or farm equipment~~ dealer involved, prior to the  
544 expiration of at least 180 ~~90~~ days following such written  
545 notice. During the 180-day ~~90-day~~ period, either party may, in  
546 appropriate circumstances, petition a court of competent  
547 jurisdiction to modify such 180-day ~~90-day~~ stay or to extend it  
548 pending a final determination of such proceeding on the merits.  
549 The court shall have authority to grant temporary, preliminary,  
550 and final injunctive relief. Should a dealer cure the claimed  
551 deficiency within the 180-day period, the franchise or selling  
552 agreement shall not be terminated.

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

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

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

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

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

568           e. Has inadequately represented the manufacturer's or  
569 distributor's products with respect to sales, service, or  
570 warranty work;

571           f. Has inadequate and insufficient sales and service  
572 facilities and personnel;

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

575           h. Has been convicted of a crime, the effect of which  
576 would be detrimental to the manufacturer, distributor, or  
577 dealership;

578           i. Has failed to operate in the normal course of business  
579 for 10 consecutive business days or has terminated her or his  
580 business;

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

583           k. Has failed to comply with the terms that are not in  
584 conflict with this chapter or the terms of the dealership or  
585 franchise agreement.

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

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

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

632 (f) To willfully discriminate, either directly or  
 633 indirectly, in price, programs, or terms of sale offered to  
 634 franchisees, when the effect of such discrimination may be to  
 635 substantially lessen competition or to give to one holder of a

636 franchise any economic, business, or competitive advantage not  
637 offered to all holders of the same or similar franchise.

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

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

657 (i) To impose, directly or indirectly, unreasonable  
658 restrictions on the dealer relative to transfer, renewal,  
659 termination, location, or site control.

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



663 separate facilities for competing product lines or makes of  
664 equipment.

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

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

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

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

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

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

694 Section 10. Section 686.418, Florida Statutes, is amended  
 695 to read:

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

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

704 316.515 Maximum width, height, length.--

705 (5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS, SAFETY  
 706 REQUIREMENTS.--Notwithstanding any other provisions of law,  
 707 straight trucks, agricultural tractors, and cotton module  
 708 movers, not exceeding 50 feet in length, or any combination of  
 709 up to and including three implements of husbandry including the  
 710 towing power unit, and any single agricultural trailer, with a  
 711 load thereon or any agricultural implements attached to a towing  
 712 power unit not exceeding 130 inches in width, or a self-  
 713 propelled agricultural implement or an agricultural tractor not  
 714 exceeding 130 inches in width, is authorized for the purpose of  
 715 transporting peanuts, grains, soybeans, cotton, hay, straw, or  
 716 other perishable farm products from their point of production to  
 717 the first point of change of custody or of long-term storage,  
 718 and for the purpose of returning to such point of production, or

719 | for the purpose of moving such tractors, movers, and implements  
720 | from one point of agricultural production to another, by a  
721 | person engaged in the production of any such product or custom  
722 | hauler, if such vehicle or combination of vehicles otherwise  
723 | complies with this section. Such vehicles shall be operated in  
724 | accordance with all safety requirements prescribed by law and  
725 | Department of Transportation rules. The Department of  
726 | Transportation may issue overlength permits for cotton module  
727 | movers greater than 50 feet but not more than 55 feet in overall  
728 | length.

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

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