

By Senator Alexander

17-1857-04

See HB 1187

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

1 requirements for termination of a franchise or  
2 selling agreement under certain circumstances;  
3 amending s. 686.418, F.S.; clarifying  
4 provisions relating to the effect of the act on  
5 local ordinances; providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. Section 686.40, Florida Statutes, is  
10 amended to read:

11 686.40 Agricultural Farm Equipment Manufacturers and  
12 Dealers Act; ~~short title.~~--Sections 686.40-686.418 shall be  
13 known by the popular name ~~and may be cited as~~ the  
14 "Agricultural Farm Equipment Manufacturers and Dealers Act."

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

17 686.401 Legislative finding and intent; construction  
18 of ss. 686.40-686.418.--

19 (1) The Legislature finds and declares that the  
20 distribution and sale of ~~tractors and farm~~ equipment primarily  
21 designed for or used in agriculture in this state vitally  
22 affects the general economy of the state, the public interest,  
23 and the public welfare and that, in the exercise of its police  
24 power, it is necessary to regulate the conduct of ~~tractor and~~  
25 ~~farm equipment~~ manufacturers, distributors, and dealers of  
26 such equipment, and their representatives, doing business in  
27 this state in order to prevent fraud, unfair business  
28 practices, unfair methods of competition, impositions, and  
29 other abuses upon its citizens.

30 Section 3. Section 686.402, Florida Statutes, is  
31 amended to read:

1           686.402 Definitions of terms used in ss.  
2 686.40-686.418.--In construing ss. 686.40-686.418, unless the  
3 context otherwise requires, the word, phrase, or term:

4           (1)(16) ~~"Tractor or farm equipment Dealer"~~ means a  
5 person who sells, solicits, or advertises the sale of new and  
6 used ~~tractors and farm equipment~~ to the consuming public, or  
7 who maintains such equipment, but does not include:

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

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

13           ~~(b)(c)~~ A person making casual or isolated sales of her  
14 or his own ~~tractors or items of farm equipment~~ not subject to  
15 sales tax under the laws of this state.

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

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

19           (2) "Dealership" means the business of selling or  
20 attempting to effect the sale by a dealer of new equipment or  
21 the right conferred by written or oral agreement with the  
22 manufacturer, distributor, or wholesaler, for a definite or  
23 indefinite period of time, to sell or attempt to effect the  
24 sale of new equipment.

25           ~~(3)(1)~~ "Distributor" or "wholesaler" means any person,  
26 firm, association, corporation, or company that sells or  
27 distributes new ~~tractors and farm equipment~~ to ~~tractor or farm~~  
28 ~~equipment~~ dealers and that maintains distributor  
29 representatives within this state.

30           ~~(4)(2)~~ "Distributor branch" means a branch office  
31 maintained by a distributor or wholesaler which sells or

1 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~  
2 ~~equipment~~ dealers.

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

6       (6) "~~Farm~~ Equipment" means those tractors, farm  
7 implements, or items which are primarily designed for or used  
8 use in agriculture, including horticulture. Equipment designed  
9 for or used in irrigation for agriculture or horticulture is  
10 included in this definition.

11       (7)~~(4)~~ "Factory branch" means a branch office  
12 maintained by a manufacturer which manufactures and assembles  
13 ~~tractors and farm~~ equipment for sale to distributors ~~of~~  
14 ~~tractors~~ or ~~to farm equipment~~ dealers or which is maintained  
15 for directing and supervising the representatives of the  
16 manufacturer.

17       (8)~~(5)~~ "Factory representative" means a representative  
18 employed by a manufacturer or factory branch for the purpose  
19 of making or promoting the sale of ~~tractors and farm~~ equipment  
20 or for supervising, servicing, introducing, or contracting  
21 with ~~tractor or farm equipment~~ dealers or prospective dealers.

22       (9)~~(7)~~ "Franchise" means a contract or agreement,  
23 either expressed or implied, whether oral or written, for a  
24 definite or indefinite period of time in which a manufacturer,  
25 distributor, or wholesaler grants to a ~~tractor or farm~~  
26 ~~equipment~~ dealer permission to use a trade name, service mark,  
27 trademark, or related characteristic and in which there is a  
28 common interest or community of interest in the marketing of  
29 ~~tractors or farm~~ equipment or services related thereto at  
30 wholesale or retail, whether by leasing, sale, or otherwise.

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1           (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~  
2 dealer to whom a franchise is offered or granted.  
3           (11)~~(9)~~ "Franchisor" means a manufacturer,  
4 distributor, or wholesaler who grants a franchise to a ~~tractor~~  
5 ~~or farm equipment~~ dealer.  
6           (12)~~(10)~~ "Fraud" means and includes actual fraud or  
7 constructive fraud as normally defined, in addition to the  
8 following:  
9           (a) A misrepresentation in any manner, whether  
10 intentionally false or arising from gross negligence, of a  
11 material fact.  
12           (b) A promise or representation not made honestly and  
13 in good faith.  
14           (c) An intentional failure to disclose a material  
15 fact.  
16           (d) Any artifice employed to deceive another.  
17           (13)~~(11)~~ "Manufacturer" means any person engaged in  
18 the business of manufacturing or assembling new and unused  
19 ~~tractors and farm~~ equipment.  
20           (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a  
21 ~~tractor or item of farm~~ equipment which has not been  
22 previously sold to and put into regular use or service by any  
23 person, except a distributor, wholesaler, or ~~tractor or farm~~  
24 ~~equipment~~ dealer for resale.  
25           (15)~~(13)~~ "Person" means a natural person, corporation,  
26 association, partnership, trust, or other business entity and,  
27 in the case of a business entity, includes any other entity in  
28 which the business entity has a majority interest or which it  
29 effectively controls, as well as the individual officers,  
30 directors, and other persons in active control of the  
31 activities of each such entity.

1           (16) "Relevant market area" means the geographic area  
2 for which a dealer is assigned responsibility for selling or  
3 soliciting or advertising the sale of equipment under the  
4 terms of a franchise.

5           (17)~~(14)~~ "Sale" means and includes the issuance,  
6 transfer, agreement for transfer, exchange, pledge,  
7 hypothecation, or mortgage in any manner or form, whether by  
8 transfer in trust or otherwise, of any ~~tractor or item of farm~~  
9 equipment or interest therein, or of any franchise related  
10 thereto, for a consideration and any option, subscription or  
11 other contract, or solicitation, looking to a sale, or offer  
12 or attempt to sell in any form, whether in oral or written  
13 form for a consideration.

14           (18) "Termination" means the termination,  
15 cancellation, nonrenewal, or noncontinuation of a contract or  
16 agreement.

17           (19)~~(15)~~ "Tractor" means a vehicle that is operated  
18 principally upon a farm, grove, or orchard in connection with  
19 agricultural or horticultural pursuits or in connection with  
20 irrigation.

21           Section 4. Section 686.403, Florida Statutes, is  
22 amended to read:

23           686.403 Application of ss. 686.40-686.418.--

24           (1) Any person who engages directly or indirectly in  
25 purposeful agreements or contracts within this state in  
26 connection with the sale or advertising for sale of new  
27 equipment ~~tractors and farm machinery~~ and parts is subject to  
28 ss. 686.40-686.418 and to the jurisdiction of the courts of  
29 this state for violations of such sections in accordance with  
30 the provisions of the laws of this state.

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1           (2) Sections 686.40-686.418 apply to all written or  
2 oral agreements between a manufacturer, distributor, or  
3 wholesaler with a ~~tractor or farm equipment~~ dealer, including,  
4 but not limited to, the franchise offering; the franchise  
5 agreement; sales of goods, services, and advertising; leases  
6 or mortgages of real or personal property; promises to pay;  
7 security interests; pledges; insurance contracts; advertising  
8 contracts; construction or installation contracts; servicing  
9 contracts; and all other such agreements in which the  
10 manufacturer, distributor, or wholesaler has any direct or  
11 indirect interest.

12           (3) Sections 686.40-686.418 apply to all continuing  
13 contracts now in effect which have no expiration date and to  
14 all other contracts entered into or renewed after July 1,  
15 1984.

16           Section 5. Section 686.405, Florida Statutes, is  
17 amended to read:

18           686.405 Warranty agreements; claims; compensation of  
19 dealers.--

20           (1) Every manufacturer, distributor, wholesaler,  
21 factory branch or division, distributor branch or division, or  
22 wholesale branch or division shall provide a fair and  
23 reasonable warranty agreement on any new ~~tractor or item of~~  
24 ~~farm~~ equipment which it sells and shall fairly compensate each  
25 of its ~~tractor or farm equipment~~ dealers for labor and parts  
26 used in fulfilling such warranty agreements.

27           (2)(a) Each claim for payment under such warranty  
28 agreements made by a ~~tractor or farm equipment~~ dealer for such  
29 labor and parts shall be paid within 30 days following its  
30 approval. Each such claim shall be either approved or  
31 disapproved within 30 days after its receipt. When any such

1 claim is disapproved, the ~~tractor or farm equipment~~ dealer who  
2 submitted it shall be notified in writing of such disapproval  
3 within such period, and such notice shall state the specific  
4 grounds upon which the disapproval is based.

5 (b) Any special handling of claims required of the  
6 dealer by the manufacturer, distributor, wholesaler, factory  
7 branch or division, distributor branch or division, or  
8 wholesale branch or division, which handling is not uniformly  
9 required of all dealers of that make, may be enforced only  
10 after 30 days' notice in writing to the dealer and upon good  
11 and sufficient reason.

12 (3)(a) The minimum lawful basis for compensating a  
13 dealer for warranty work, as provided for in this section,  
14 shall be calculated for labor in accordance with the  
15 reasonable and customary amount of time required to complete  
16 such work, expressed in hours and fractions of hours  
17 multiplied by the dealer's established hourly retail labor  
18 rate. Prior to filing a claim for reimbursement for warranty  
19 work, the dealer must notify the applicable manufacturer,  
20 distributor, or wholesaler of his or her hourly retail labor  
21 rate.

22 (b) The minimum lawful basis for compensation to the  
23 dealer for parts used in fulfilling such warranty work shall  
24 be at the dealer's costs for such parts, including all freight  
25 and handling charges applicable to such parts, plus 15 percent  
26 of the sum of such costs and charges to reimburse the dealer's  
27 reasonable cost of doing business and providing such warranty  
28 service on behalf of the manufacturer.

29 (4) It shall be unlawful to deny, delay payment for,  
30 or restrict a claim by a dealer for warranty service or parts,  
31 incentives, hold-backs, or other amounts owed to a dealer



1 unless the denial, delay, or restriction is the direct result  
2 of a material defect in the claim that affects its validity.

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

9 (6) Any audit of a dealer by or on behalf of a  
10 manufacturer, distributor, or wholesaler for sales incentives,  
11 service incentives, rebates, or other forms of incentive  
12 compensation shall be completed not later than 6 months after  
13 the date of termination of such incentive compensation  
14 program. However, this limitation shall not apply in any case  
15 of fraudulent claims.

16 Section 6. Section 686.406, Florida Statutes, is  
17 amended to read:

18 686.406 Parts; availability; return.--

19 (1) Every manufacturer shall specify, and every dealer  
20 shall provide and fulfill, reasonable predelivery and  
21 preparation obligations for its ~~tractors and farm~~ equipment  
22 prior to delivery of the ~~tractors and~~ equipment to retail  
23 purchasers.

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

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

1           (a) The manufacturer or distributor may specify, and  
2 thereupon notify each of its ~~her or his~~ dealers of, a time  
3 period of at least 60 days' duration during which each of its  
4 ~~the~~ dealers may submit its ~~their~~ surplus parts list ~~lists~~ and  
5 return the ~~their~~ surplus parts to the manufacturer or  
6 distributor.

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

13           (c) A manufacturer or distributor must allow surplus  
14 parts return authority on a dollar value of parts equal to 6  
15 percent of the total dollar value of parts purchased from the  
16 manufacturer or distributor by the dealer during the 12-month  
17 period immediately preceding the notification to such ~~the~~  
18 dealer by the manufacturer or distributor of the surplus parts  
19 return program, or the month such ~~the~~ dealer's return request  
20 is made, whichever is applicable. However, the dealer may, at  
21 her or his option, elect to return a dollar value of her or  
22 his surplus parts equal to less than 6 percent of the total  
23 dollar value of parts purchased by such ~~the~~ dealer from the  
24 manufacturer or distributor during the preceding 12-month  
25 period as provided herein.

26           (d) No obsolete or superseded part may be returned,  
27 but any part listed in the manufacturer's, distributor's, or  
28 wholesaler's current returnable parts list at the date of  
29 notification of the surplus parts return program by the  
30 manufacturer or distributor to the dealer, or the date of the  
31 dealer's parts return request, whichever is applicable, is

1 eligible for return and credit specified. However, returned  
2 parts must be in new and unused condition and must have been  
3 purchased from the manufacturer, distributor, or wholesaler to  
4 whom they are returned.

5 (e) The minimum lawful credit to be allowed for  
6 returned parts is 85 percent of the wholesale cost of the  
7 parts as listed in the manufacturer's, distributor's, or  
8 wholesaler's current returnable parts list at the date of the  
9 notification of the surplus parts return program by the  
10 manufacturer, wholesaler, or distributor to the dealer, or the  
11 date of the dealer's parts return request, whichever is  
12 applicable.

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

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

19 Section 7. Section 686.407, Florida Statutes, is  
20 amended to read:

21 686.407 Repurchase of inventory upon termination of  
22 franchise agreement; establishment or relocation of  
23 dealership; sale or lease of new equipment.--

24 (1) Whenever any ~~tractor or farm equipment~~ dealer  
25 enters into a franchise agreement with a manufacturer,  
26 distributor, or wholesaler in which agreement the dealer  
27 agrees to maintain an inventory of ~~tractors, farm equipment,~~  
28 or repair parts and the franchise is subsequently terminated,  
29 the manufacturer, distributor, or wholesaler shall repurchase  
30 the inventory as provided in this section. However, the dealer  
31 may keep the inventory if he or she desires. If the dealer has

1 any outstanding debts to the manufacturer, distributor, or  
2 wholesaler, then the repurchase amount may be credited to the  
3 dealer's account.

4 (2) If the dealer decides not to keep the inventory,  
5 the manufacturer, distributor, or wholesaler shall repurchase  
6 that inventory previously purchased from such manufacturer,  
7 distributor, or wholesaler ~~him or her~~ and held by the dealer  
8 on the date of termination of the contract. The manufacturer,  
9 distributor, or wholesaler shall pay:

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

16 (b) Eighty-five percent of the current wholesale price  
17 of all new, unused, and undamaged repair parts and accessories  
18 which are listed in the manufacturer's, distributor's, or  
19 wholesaler's current returnable parts list. The manufacturer,  
20 distributor, or wholesaler shall also pay the dealer 6 percent  
21 of the current wholesale price on all new, unused, and  
22 undamaged repair parts returned to cover the cost of handling,  
23 packing, and loading. However, the manufacturer, distributor,  
24 or wholesaler shall have the option of performing the  
25 handling, packing, and loading in lieu of paying the 6-percent  
26 sum imposed in this subsection for these services; and, in  
27 this event, after receipt by the dealer of the full repurchase  
28 amount as provided in this section, the dealer shall make  
29 available to the manufacturer, distributor, or wholesaler, at  
30 the dealer's address or at the places at which the ~~tractors~~

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1 ~~and~~ is ~~are~~ located, all ~~tractors and items of farm~~  
2 equipment previously purchased by the dealer.

3 (3) Upon payment within a reasonable time of the  
4 repurchase amount to the dealer, the title and right of  
5 possession to the repurchased inventory shall transfer or be  
6 transferred to the manufacturer, distributor, or wholesaler,  
7 as the case may be.

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

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

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

14 (b)~~(c)~~ Any repair part which because of its condition  
15 is not resalable as a new part without repackaging or  
16 reconditioning.

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

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

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

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

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

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

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

7           (5) If any manufacturer, distributor, or wholesaler  
8 fails or refuses to repurchase any inventory covered under the  
9 provisions of this section within 60 days after termination of  
10 a dealer's contract, he or she is civilly liable for 100  
11 percent of the current wholesale price of the inventory plus  
12 any freight charges paid by the dealer, such ~~the~~ dealer's  
13 reasonable attorney's fees, court costs, and interest on the  
14 current wholesale price computed at the legal interest rate  
15 provided in s. 687.01 from the 61st day after termination.

16           (6) A manufacturer, distributor, or wholesaler that  
17 intends to establish a new dealership or to relocate a current  
18 dealership for a particular product line or make of equipment  
19 within the relevant market area of an existing dealership of  
20 the same product line or make of equipment shall give written  
21 notice of such intent by certified mail or overnight delivery,  
22 return receipt requested, to such existing dealership. The  
23 notice shall be delivered at least 180 days prior to  
24 establishment of a new dealership or relocation of a current  
25 dealership. The notice shall include:

26           (a) The specific location of the additional or  
27 relocated dealership.

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

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

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

6           (7) A manufacturer, distributor, or wholesaler may  
7 sell or lease new equipment for use within the state. If the  
8 equipment is prepared for delivery or serviced by a dealer,  
9 the manufacturer, distributor, or wholesaler shall reasonably  
10 compensate the dealer for the preparation and delivery of the  
11 new equipment and pay to the dealer a reasonable commission on  
12 the sale or lease of the new equipment which shall not be less  
13 than 8 percent of the sale price of the equipment. This  
14 compensation must be paid or credited in the same manner as  
15 provided in this section. The manufacturer, distributor, or  
16 wholesaler, if practicable, shall utilize the dealer in the  
17 relevant market area for preparation and delivery. For  
18 purposes of the this subsection, equipment is considered to be  
19 used primarily within a dealer's relevant market area if the  
20 new equipment is located or housed at a user's facility  
21 located within the relevant market area. This subsection shall  
22 not be applicable to any liquidation or sale of equipment  
23 which has been ordered by any court.

24           Section 8. Section 686.409, Florida Statutes, is  
25 amended to read:

26           686.409 Compensation for inventory upon refusal to  
27 renew, termination of, or restriction on transfer of a  
28 franchise.--It is unlawful for the manufacturer, distributor,  
29 wholesaler, or franchisor, without due cause, to fail to renew  
30 a franchise on terms then equally available to all of its her  
31 ~~or his tractor or farm equipment~~ dealers, to terminate a

1 franchise, or to restrict the transfer of a franchise unless  
2 the franchisee receives fair and reasonable compensation for  
3 the inventory of the business. As used in this section, the  
4 term "due cause" shall be construed in accordance with the  
5 definition of due cause contained in s. 686.413(3)(c)2.

6 Section 9. Section 686.413, Florida Statutes, is  
7 amended to read:

8 686.413 Unlawful acts and practices.--Unfair methods  
9 of competition and unfair or deceptive acts or practices in  
10 the conduct of the manufacturing, distribution, wholesaling,  
11 franchising, sale, and advertising of ~~tractors and farm~~  
12 equipment are declared to be unlawful.

13 (1) It is deemed a violation of this section for any  
14 manufacturer, factory branch, factory representative,  
15 distributor, distributor branch, distributor representative,  
16 wholesaler, or ~~tractor or farm equipment~~ dealer to engage in  
17 any action which is arbitrary, capricious, in bad faith, or  
18 unconscionable and which causes damage in terms of law or  
19 equity to any of the parties or to the public.

20 (2) It is deemed a violation of this section for a  
21 manufacturer, factory branch or division, distributor,  
22 distributor branch or division, wholesaler, or wholesale  
23 branch or division, or officer, agent, or other representative  
24 thereof, to coerce, compel, or attempt to coerce or compel any  
25 ~~tractor or farm equipment~~ dealer:

26 (a) To order or accept delivery of any ~~tractor or item~~  
27 ~~of farm~~ equipment, parts or accessories therefor, or other  
28 commodity or commodities which such ~~tractor or farm equipment~~  
29 dealer has not voluntarily ordered.

30 (b) To order or accept delivery of any ~~tractor or farm~~  
31 equipment with special features, accessories, or equipment not



1 included in the base list price of such ~~tractor or farm~~  
2 equipment as publicly advertised by the manufacturer of the  
3 ~~tractor or~~ equipment.

4 (3) It is deemed a violation of this section for a  
5 manufacturer, factory branch or division, distributor,  
6 distributor branch or division, wholesaler, or wholesale  
7 branch or division, or officer, agent, or other representative  
8 thereof:

9 (a) To refuse to deliver to any ~~tractor or farm~~  
10 ~~equipment~~ dealer having a franchise or contractual agreement  
11 for the retail sale of new ~~tractors and farm~~ equipment sold or  
12 distributed by such manufacturer, factory branch or division,  
13 distributor branch or division, or wholesale branch or  
14 division, in reasonable quantities and within a reasonable  
15 time after receipt of the dealer's order, any ~~tractor or item~~  
16 ~~of farm~~ equipment covered by such franchise or contract  
17 specifically advertised or represented by such manufacturer,  
18 factory branch or division, distributor, distributor branch or  
19 division, wholesaler, or wholesale branch or division to be  
20 available for immediate delivery. However, the failure to  
21 deliver any such ~~tractor or item of farm~~ equipment is not  
22 considered a violation of this section if such failure is due  
23 to a prudent and reasonable restriction on the extension of  
24 credit by the franchisor to the dealer, an act of God, a work  
25 stoppage or delay due to a strike or labor difficulty, a bona  
26 fide shortage of materials, a freight embargo, or another  
27 cause over which the manufacturer, distributor, or wholesaler,  
28 or any agent thereof, has no control whatsoever.

29 (b) To coerce, compel, or attempt to coerce or compel  
30 any ~~tractor or farm equipment~~ dealer to enter into any  
31 agreement, whether written or oral, supplementary to an

1 existing franchise with such manufacturer, factory branch or  
2 division, distributor, distributor branch or division,  
3 wholesaler, or wholesale branch or division, or officer,  
4 agent, or other representative thereof; or to do any other act  
5 prejudicial to such dealer by threatening to cancel any  
6 franchise or contractual agreement existing between such  
7 manufacturer, factory branch or division, distributor,  
8 distributor branch or division, wholesaler, or wholesale  
9 branch or division and such dealer. However, notice in good  
10 faith to any ~~tractor or farm equipment~~ dealer of such dealer's  
11 violation or breach of any terms or provisions of such  
12 franchise or contractual agreement does not constitute a  
13 violation of this section if such notice is in writing and is  
14 mailed by registered or certified mail to such dealer at her  
15 or his current business address and such notice contains the  
16 specific facts as to the dealer's violation or breach of such  
17 franchise or contractual agreement.

18 (c)1. To terminate ~~or cancel~~ the franchise or selling  
19 agreement of any ~~tractor or farm equipment~~ dealer without due  
20 cause, as defined in subparagraph 2. The termination  
21 ~~nonrenewal~~ of a franchise or selling agreement, without due  
22 cause, constitutes an unfair termination ~~or cancellation~~,  
23 regardless of the specified time period of such franchise or  
24 selling agreement. Except when the ground for such termination  
25 ~~or cancellation~~ falls within sub-subparagraph 2.c., such  
26 manufacturer, factory branch or division, distributor,  
27 distributor branch or division, wholesaler, or wholesale  
28 branch or division, or officer, agent, or other representative  
29 thereof, shall notify a ~~tractor or farm equipment~~ dealer in  
30 writing of the termination ~~or cancellation~~ of the franchise or  
31 selling agreement of such dealer at least 180 ~~90~~ days before

1 the effective date of the termination ~~or cancellation~~, stating  
2 the specific ground for such termination ~~or cancellation~~. In  
3 no event shall the contractual term of any such franchise or  
4 selling agreement expire, without the written consent of the  
5 ~~tractor or farm equipment~~ dealer involved, prior to the  
6 expiration of at least 180 ~~90~~ days following such written  
7 notice. During the 180-day ~~90-day~~ period, either party may, in  
8 appropriate circumstances, petition a court of competent  
9 jurisdiction to modify such 180-day ~~90-day~~ stay or to extend  
10 it pending a final determination of such proceeding on the  
11 merits. The court shall have authority to grant temporary,  
12 preliminary, and final injunctive relief. Should a dealer cure  
13 the claimed deficiency within the 180-day period, the  
14 franchise or selling agreement shall not be terminated.

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

19 a. Has transferred an ownership interest in the  
20 dealership without the manufacturer's or distributor's  
21 consent;

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

24 c. Has filed a voluntary petition in bankruptcy or has  
25 had an involuntary petition in bankruptcy filed against her or  
26 him which has not been discharged within 60 days after the  
27 filing, is in default under the provisions of a security  
28 agreement in effect with the manufacturer or distributor, or  
29 is in receivership;

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

31

1 e. Has inadequately represented the manufacturer's or  
2 distributor's products with respect to sales, service, or  
3 warranty work;

4 f. Has inadequate and insufficient sales and service  
5 facilities and personnel;

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

8 h. Has been convicted of a crime, the effect of which  
9 would be detrimental to the manufacturer, distributor, or  
10 dealership;

11 i. Has failed to operate in the normal course of  
12 business for 10 consecutive business days or has terminated  
13 her or his business;

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

16 k. Has failed to comply with the terms that are not in  
17 conflict with this chapter or the terms of the dealership or  
18 franchise agreement.

19 3. Before termination of the franchise or selling  
20 agreement because of the dealer's failure to meet marketing  
21 criteria or market penetration, the manufacturer, factory  
22 branch or division, distributor, distributor branch or  
23 division, wholesaler, or wholesale branch or division, or  
24 officer, agent, or other representative thereof, shall provide  
25 written notice of such intention at least 1 year in advance.  
26 After such notice, the manufacturer or other entity issuing  
27 the notice shall make good faith efforts to work with the  
28 dealer to gain the desired market share, including, without  
29 limitation, reasonably making available to the dealer an  
30 adequate inventory of new equipment and parts and competitive  
31 marketing programs. The manufacturer or other entity, at the

1 end of the 1-year notice period, may terminate or elect not to  
2 renew the agreement only upon further written notice  
3 specifying the reasons for determining that the dealer failed  
4 to meet reasonable marketing criteria or market penetration.  
5 Such written notice must specify that termination is effective  
6 90 days from the date of the notice. Either party may petition  
7 the court pursuant to subparagraph (c)1. for the relief  
8 specified in such subparagraph. Should a dealer cure the  
9 claimed deficiency within the 90-day period, the franchise or  
10 selling agreement shall not be terminated.

11 (d) To resort to or use any false or misleading  
12 advertisement in connection with its ~~her or his~~ business as  
13 such manufacturer, factory branch or division, distributor,  
14 distributor branch or division, wholesaler, or wholesale  
15 branch or division, or officer, agent, or other representative  
16 thereof.

17 (e) To offer to sell or to sell any new ~~tractor or~~  
18 ~~item of farm~~ equipment, or parts or accessories therefor, to  
19 any other ~~tractor or farm equipment~~ dealer at a lower actual  
20 price therefor than the actual price offered to any other  
21 ~~tractor or farm equipment~~ dealer for the same model ~~tractor or~~  
22 ~~farm~~ equipment identically equipped or to utilize any device,  
23 including, but not limited to, sales promotion plans or  
24 programs, which results in such lesser actual price or results  
25 in a fixed price predetermined solely by the manufacturer or  
26 distributor. However, the provisions of this paragraph do not  
27 apply to sales to a ~~tractor or farm equipment~~ dealer for  
28 resale to any unit or agency of the United States Government,  
29 the state or any of its political subdivisions, or any  
30 municipality located within this state. Further, the  
31 provisions of this paragraph do not apply so long as a

1 manufacturer, distributor, or wholesaler, or any agent  
2 thereof, sells or offers to sell such new ~~tractor or farm~~  
3 equipment, parts, or accessories to all of its ~~her or his~~  
4 franchised ~~tractor or farm equipment~~ dealers at an equal  
5 price.

6 (f) To willfully discriminate, either directly or  
7 indirectly, in price, programs, or terms of sale offered to  
8 franchisees, when the effect of such discrimination may be to  
9 substantially lessen competition or to give to one holder of a  
10 franchise any economic, business, or competitive advantage not  
11 offered to all holders of the same or similar franchise.

12 (g) To prevent or attempt to prevent, by contract or  
13 otherwise, any ~~tractor or farm equipment~~ dealer from changing  
14 the capital structure of her or his dealership or the means by  
15 or through which the dealer finances the operation of her or  
16 his dealership, provided the dealer at all times meets any  
17 reasonable capital standards agreed to between the dealership  
18 and the manufacturer, distributor, or wholesaler and provided  
19 such change by the dealer does not result in a change in the  
20 executive management of the dealership.

21 (h) To prevent or attempt to prevent, by contract or  
22 otherwise, any ~~tractor or farm equipment~~ dealer or any  
23 officer, member partner, or stockholder of any ~~tractor or farm~~  
24 ~~equipment~~ dealer from selling or transferring any part of the  
25 interest of any of them to any other person or persons or  
26 party or parties. However, no dealer, officer, partner, or  
27 stockholder has the right to sell, transfer, or assign the  
28 franchise or power of management or control thereunder without  
29 the written consent of the manufacturer, distributor, or  
30 wholesaler, except that such consent may not be unreasonably  
31 withheld.

1           (i) To impose, directly or indirectly, unreasonable  
2 restrictions on the dealer relative to transfer, renewal,  
3 termination, location, or site control.

4           (j) To prevent a dealer from having an investment in  
5 or holding a dealership contract for the sale of competing  
6 product lines or makes of equipment, or to require a dealer to  
7 provide separate facilities for competing product lines or  
8 makes of equipment.

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

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

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

20           (a) To require a retail purchaser of a new ~~tractor or~~  
21 ~~item of farm~~ equipment, as a condition of sale and delivery of  
22 the ~~tractor or~~ equipment, also to purchase special features,  
23 appliances, equipment, parts, or accessories not desired or  
24 requested by the purchaser. However, this prohibition does not  
25 apply to special features, appliances, equipment, parts, or  
26 accessories which are already installed when the ~~tractor or~~  
27 ~~item of farm~~ equipment is received by the dealer from the  
28 manufacturer, distributor, or wholesaler of such ~~tractor or~~  
29 equipment.

30           (b) To represent and sell as new and unused any  
31 ~~tractor or item of farm~~ equipment which has been used and

1 operated for demonstration or other purposes without stating  
2 to the purchaser prior to the sale the approximate amount of  
3 use the equipment ~~tractor or item of farm machinery~~ has  
4 experienced or undergone.

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

8 Section 10. Section 686.418, Florida Statutes, is  
9 amended to read:

10 686.418 Effect of act on other remedies.--Sections  
11 686.40-686.418 are supplemental to and do not preempt local  
12 ordinances dealing with prohibited or unlawful conduct in the  
13 manufacturing, distribution, wholesaling, advertising, or sale  
14 of ~~tractors and other items of farm~~ equipment if such  
15 ordinances are not inconsistent with such sections.

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

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