

By the Committees on Transportation; Agriculture; Commerce, Economic Opportunities, and Consumer Services; and Senators Alexander, Lynn and Bullard

306-2633-04

1   A bill to be entitled

2           An act relating to agricultural equipment;

3           amending s. 686.40, F.S.; providing a popular

4           name; amending s. 686.401, F.S.; clarifying

5           intent of the Agricultural Equipment

6           Manufacturers and Dealers Act to provide for

7           regulation of the conduct of manufacturers,

8           distributors, and dealers of equipment

9           primarily designed for or used in agriculture;

10          amending s. 686.402, F.S.; revising and adding

11          definitions; amending s. 686.403, F.S.;

12          clarifying provisions relating to application;

13          amending s. 686.405, F.S.; providing that it is

14          unlawful to deny, delay payment for, or

15          restrict warranty claims under certain

16          circumstances; providing for audit of warranty

17          claims; amending s. 686.406, F.S.; clarifying

18          provisions relating to surplus parts; amending

19          s. 686.407, F.S.; providing requirements for

20          the establishment of a new dealership or

21          relocation of a current dealership within a

22          certain area; providing requirements for the

23          sale or lease of new equipment; amending s.

24          686.409, F.S.; clarifying provisions relating

25          to compensation for inventory under certain

26          circumstances; amending s. 686.413, F.S.;

27          providing additional unlawful acts and

28          practices in the conduct of the manufacturing,

29          distribution, wholesaling, franchising, sale,

30          and advertising of equipment; providing

31          requirements for termination of a franchise or

1 selling agreement under certain circumstances;  
2 amending s. 686.418, F.S.; clarifying  
3 provisions relating to the effect of the act on  
4 local ordinances; amending s. 316.515, F.S.;  
5 revising the criteria for determining whether  
6 agricultural equipment qualifies for an  
7 exemption from maximum width and length limits;  
8 providing an effective date.  
9

10 Be It Enacted by the Legislature of the State of Florida:  
11

12 Section 1. Section 686.40, Florida Statutes, is  
13 amended to read:

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

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

20 686.401 Legislative finding and intent; construction  
21 of ss. 686.40-686.418.--

22 (1) The Legislature finds and declares that the  
23 distribution and sale of ~~tractors and farm~~ equipment primarily  
24 designed for or used in agriculture in this state vitally  
25 affects the general economy of the state, the public interest,  
26 and the public welfare and that, in the exercise of its police  
27 power, it is necessary to regulate the conduct of ~~tractor and~~  
28 ~~farm equipment~~ manufacturers, distributors, and dealers of  
29 such equipment, and their representatives, doing business in  
30 this state in order to prevent fraud, unfair business  
31

1 | practices, unfair methods of competition, impositions, and  
2 | other abuses upon its citizens.

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

5 |       686.402 Definitions of terms used in ss.  
6 | 686.40-686.418.--In construing ss. 686.40-686.418, unless the  
7 | context otherwise requires, the word, phrase, or term:

8 |       ~~(1)(16)~~ "Tractor or farm equipment Dealer" means a  
9 | person who sells, solicits, or advertises the sale of new and  
10 | used ~~tractors and farm~~ equipment to the consuming public, but  
11 | does not include:

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

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

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

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

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

23 |       (e) A mass-market retailer.

24 |       (2) "Dealership" means the business of selling or  
25 | attempting to effect the sale by a dealer of new equipment or  
26 | the right conferred by written or oral agreement with the  
27 | manufacturer, distributor, or wholesaler, for a definite or  
28 | indefinite period of time, to sell or attempt to effect the  
29 | sale of new equipment.

30 |       ~~(3)(1)~~ "Distributor" or "wholesaler" means any person,  
31 | firm, association, corporation, or company that sells or

1 distributes new ~~tractors and farm~~ equipment to ~~tractor or farm~~  
2 ~~equipment~~ dealers and that maintains distributor  
3 representatives within this state.

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

8       (5)(3) "Distributor representative" means a  
9 representative employed by a distributor, distributor branch,  
10 or wholesaler.

11       (6) "~~Farm~~ Equipment" means those tractors or farm  
12 implements which are primarily designed for or used ~~use~~ in  
13 agriculture. Equipment designed for or used in off-road  
14 construction, mining, utility, and industrial purposes is not  
15 included in this definition.

16       (7)(4) "Factory branch" means a branch office  
17 maintained by a manufacturer which manufactures and assembles  
18 ~~tractors and farm~~ equipment for sale to distributors ~~of~~  
19 ~~tractors~~ or ~~to farm equipment~~ dealers or which is maintained  
20 for directing and supervising the representatives of the  
21 manufacturer.

22       (8)(5) "Factory representative" means a representative  
23 employed by a manufacturer or factory branch for the purpose  
24 of making or promoting the sale of ~~tractors and farm~~ equipment  
25 or for supervising, servicing, introducing, or contracting  
26 with ~~tractor or farm equipment~~ dealers or prospective dealers.

27       (9)(7) "Franchise" means a contract or agreement,  
28 either expressed or implied, whether oral or written, for a  
29 definite or indefinite period of time in which a manufacturer,  
30 distributor, or wholesaler grants to a ~~tractor or farm~~  
31 ~~equipment~~ dealer permission to use a trade name, service mark,

1 | trademark, or related characteristic and in which there is a  
2 | common interest or community of interest in the marketing of  
3 | ~~tractors or farm~~ equipment or services related thereto at  
4 | wholesale or retail, whether by leasing, sale, or otherwise.

5 |       (10)~~(8)~~ "Franchisee" means a ~~tractor or farm equipment~~  
6 | dealer to whom a franchise is offered or granted.

7 |       (11)~~(9)~~ "Franchisor" means a manufacturer,  
8 | distributor, or wholesaler who grants a franchise to a ~~tractor~~  
9 | ~~or farm equipment~~ dealer.

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

13 |           (a) A misrepresentation in any manner, whether  
14 | intentionally false or arising from gross negligence, of a  
15 | material fact.

16 |           (b) A promise or representation not made honestly and  
17 | in good faith.

18 |           (c) An intentional failure to disclose a material  
19 | fact.

20 |           (d) Any artifice employed to deceive another.

21 |       (13)~~(11)~~ "Manufacturer" means any person engaged in  
22 | the business of manufacturing or assembling new and unused  
23 | ~~tractors and farm~~ equipment.

24 |       (14)~~(12)~~ "New ~~tractor or farm~~ equipment" means a  
25 | ~~tractor or item of farm~~ equipment which has not been  
26 | previously sold to and put into regular use or service by any  
27 | person, except a distributor, wholesaler, or ~~tractor or farm~~  
28 | ~~equipment~~ dealer for resale.

29 |       (15)~~(13)~~ "Person" means a natural person, corporation,  
30 | association, partnership, trust, or other business entity and,  
31 | in the case of a business entity, includes any other entity in

1 | which the business entity has a majority interest or which it  
2 | effectively controls, as well as the individual officers,  
3 | directors, and other persons in active control of the  
4 | activities of each such entity.

5 |       (16) "Relevant market area" means the geographic area  
6 | for which a dealer is assigned responsibility for selling or  
7 | soliciting or advertising the sale of equipment under the  
8 | terms of a franchise.

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

18 |       (18) "Termination" means the termination,  
19 | cancellation, nonrenewal, or noncontinuation of a contract or  
20 | agreement.

21 |       ~~(19)(15)~~ "Tractor" means a vehicle that is operated  
22 | principally upon a farm, grove, or orchard in connection with  
23 | agriculture ~~agricultural or horticultural pursuits.~~

24 |       Section 4. Section 686.403, Florida Statutes, is  
25 | amended to read:

26 |       686.403 Application of ss. 686.40-686.418.--

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

1 | this state for violations of such sections in accordance with  
2 | the provisions of the laws of this state.

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

14 |         (3) Sections 686.40-686.418 apply to all ~~continuing~~  
15 | ~~contracts now in effect which have no expiration date and to~~  
16 | ~~all~~ other contracts entered into, ~~or~~ renewed, or amended after  
17 | July 1, 2004 ~~1984~~.

18 |         Section 5. Section 686.405, Florida Statutes, is  
19 | amended to read:

20 |         686.405 Warranty agreements; claims; compensation of  
21 | dealers.--

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

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

1 approval. Each such claim shall be either approved or  
2 disapproved within 30 days after its receipt. When any such  
3 claim is disapproved, the ~~tractor or farm equipment~~ dealer who  
4 submitted it shall be notified in writing of such disapproval  
5 within such period, and such notice shall state the specific  
6 grounds upon which the disapproval is based.

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

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

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

31



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

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

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

19           Section 6. Section 686.406, Florida Statutes, is  
20 amended to read:

21           686.406 Parts; availability; return.--

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

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

30           (3) Every manufacturer or distributor shall provide to  
31 each of its ~~her or his~~ dealers, annually, an opportunity to

1 return a portion of ~~its~~ ~~their~~ surplus parts inventories for  
2 credit. The surplus procedure shall be administered as  
3 follows:

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

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

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

29 (d) No obsolete or superseded part may be returned,  
30 but any part listed in the manufacturer's, distributor's, or  
31 wholesaler's current returnable parts list at the date of

1 notification of the surplus parts return program by the  
2 manufacturer or distributor to the dealer, or the date of the  
3 dealer's parts return request, whichever is applicable, is  
4 eligible for return and credit specified. However, returned  
5 parts must be in new and unused condition and must have been  
6 purchased from the manufacturer, distributor, or wholesaler to  
7 whom they are returned.

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

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

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

22 Section 7. Section 686.407, Florida Statutes, is  
23 amended to read:

24 686.407 Repurchase of inventory upon termination of  
25 franchise agreement; establishment or relocation of  
26 dealership; sale or lease of new equipment.--

27 (1) Whenever any ~~tractor or farm equipment~~ dealer  
28 enters into a franchise agreement with a manufacturer,  
29 distributor, or wholesaler in which agreement the dealer  
30 agrees to maintain an inventory of ~~tractors, farm equipment,~~  
31 or repair parts and the franchise is subsequently terminated,

1 | the manufacturer, distributor, or wholesaler shall repurchase  
2 | the inventory as provided in this section. However, the dealer  
3 | may keep the inventory if he or she desires. If the dealer has  
4 | any outstanding debts to the manufacturer, distributor, or  
5 | wholesaler, then the repurchase amount may be credited to the  
6 | dealer's account.

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

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

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

1 available to the manufacturer, distributor, or wholesaler, at  
2 the dealer's address or at the places at which the ~~tractors~~  
3 ~~and~~ equipment is ~~are~~ located, all ~~tractors and items of farm~~  
4 equipment previously purchased by the dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           ~~(a) The specific location of the additional or~~  
29 relocated dealership.  
30  
31

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

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

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

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

28           Section 8. Section 686.409, Florida Statutes, is  
29 amended to read:

30           686.409 Compensation for inventory upon refusal to  
31 renew, termination of, or restriction on transfer of a

1 franchise.--It is unlawful for the manufacturer, distributor,  
2 wholesaler, or franchisor, without due cause, to fail to renew  
3 a franchise on terms then equally available to all of its her  
4 ~~or his tractor or farm equipment~~ dealers, to terminate a  
5 franchise, or to restrict the transfer of a franchise unless  
6 the franchisee receives fair and reasonable compensation for  
7 the inventory of the business. As used in this section, the  
8 term "due cause" shall be construed in accordance with the  
9 definition of due cause contained in s. 686.413(3)(c)2.

10 Section 9. Section 686.413, Florida Statutes, is  
11 amended to read:

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

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

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

30 (a) To order or accept delivery of any ~~tractor or item~~  
31 ~~of farm~~ equipment, parts or accessories therefor, or other



1 commodity or commodities which such ~~tractor or farm equipment~~  
2 dealer has not voluntarily ordered.

3 (b) To order or accept delivery of any ~~tractor or farm~~  
4 equipment with special features, accessories, or equipment not  
5 included in the base list price of such ~~tractor or farm~~  
6 equipment as publicly advertised by the manufacturer of the  
7 ~~tractor or~~ equipment.

8 (3) It is deemed a violation of this section for a  
9 manufacturer, factory branch or division, distributor,  
10 distributor branch or division, wholesaler, or wholesale  
11 branch or division, or officer, agent, or other representative  
12 thereof:

13 (a) To refuse to deliver to any ~~tractor or farm~~  
14 ~~equipment~~ dealer having a franchise or contractual agreement  
15 for the retail sale of new ~~tractors and farm~~ equipment sold or  
16 distributed by such manufacturer, factory branch or division,  
17 distributor branch or division, or wholesale branch or  
18 division, in reasonable quantities and within a reasonable  
19 time after receipt of the dealer's order, any ~~tractor or item~~  
20 ~~of farm~~ equipment covered by such franchise or contract  
21 specifically advertised or represented by such manufacturer,  
22 factory branch or division, distributor, distributor branch or  
23 division, wholesaler, or wholesale branch or division to be  
24 available for immediate delivery. However, the failure to  
25 deliver any such ~~tractor or item of farm~~ equipment is not  
26 considered a violation of this section if such failure is due  
27 to a prudent and reasonable restriction on the extension of  
28 credit by the franchisor to the dealer, an act of God, a work  
29 stoppage or delay due to a strike or labor difficulty, a bona  
30 fide shortage of materials, a freight embargo, or another  
31

1 cause over which the manufacturer, distributor, or wholesaler,  
2 or any agent thereof, has no control whatsoever.

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

23 (c)1. To terminate ~~or cancel~~ the franchise or selling  
24 agreement of any ~~tractor or farm equipment~~ dealer without due  
25 cause, as defined in subparagraph 2. The termination  
26 ~~nonrenewal~~ of a franchise or selling agreement, without due  
27 cause, constitutes an unfair termination ~~or cancellation~~,  
28 regardless of the specified time period of such franchise or  
29 selling agreement. Except when the ground for such termination  
30 ~~or cancellation~~ falls within sub-subparagraph 2.c., such  
31 manufacturer, factory branch or division, distributor,

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

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

24           a. Has transferred an ownership interest in the  
25 dealership without the manufacturer's or distributor's  
26 consent;

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

29           c. Has filed a voluntary petition in bankruptcy or has  
30 had an involuntary petition in bankruptcy filed against her or  
31 him which has not been discharged within 60 days after the

1 filing, is in default under the provisions of a security  
2 agreement in effect with the manufacturer or distributor, or  
3 is in receivership;

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

5 e. Has inadequately represented the manufacturer's or  
6 distributor's products with respect to sales, service, or  
7 warranty work;

8 f. Has inadequate and insufficient sales and service  
9 facilities and personnel;

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

12 h. Has been convicted of a crime, the effect of which  
13 would be detrimental to the manufacturer, distributor, or  
14 dealership;

15 i. Has failed to operate in the normal course of  
16 business for 10 consecutive business days or has terminated  
17 her or his business;

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

20 k. Has failed to comply with the terms that are not in  
21 conflict with this chapter or the terms of the dealership or  
22 franchise agreement.

23 3. Before termination of the franchise or selling  
24 agreement because of the dealer's failure to meet marketing  
25 criteria or market penetration, the manufacturer, factory  
26 branch or division, distributor, distributor branch or  
27 division, wholesaler, or wholesale branch or division, or  
28 officer, agent, or other representative thereof, shall provide  
29 written notice of such intention at least 1 year in advance.  
30 After such notice, the manufacturer or other entity issuing  
31 the notice shall make good faith efforts to work with the

1 dealer to gain the desired market share, including, without  
2 limitation, reasonably making available to the dealer an  
3 adequate inventory of new equipment and parts and competitive  
4 marketing programs. The manufacturer or other entity, at the  
5 end of the 1-year notice period, may terminate or elect not to  
6 renew the agreement only upon further written notice  
7 specifying the reasons for determining that the dealer failed  
8 to meet reasonable marketing criteria or market penetration.  
9 Such written notice must specify that termination is effective  
10 90 days from the date of the notice. Either party may petition  
11 the court pursuant to subparagraph (c)1. for the relief  
12 specified in such subparagraph. Should a dealer cure the  
13 claimed deficiency within the 90-day period, the franchise or  
14 selling agreement shall not be terminated.

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

21 (e) To offer to sell or to sell any new ~~tractor or~~  
22 ~~item of farm~~ equipment, or parts or accessories therefor, to  
23 any other ~~tractor or farm equipment~~ dealer at a lower actual  
24 price therefor than the actual price offered to any other  
25 ~~tractor or farm equipment~~ dealer for the same model ~~tractor or~~  
26 ~~farm~~ equipment identically equipped or to utilize any device,  
27 including, but not limited to, sales promotion plans or  
28 programs, which results in such lesser actual price or results  
29 in a fixed price predetermined solely by the manufacturer or  
30 distributor. However, the provisions of this paragraph do not  
31 apply to sales to a ~~tractor or farm equipment~~ dealer for

1 resale to any unit or agency of the United States Government,  
2 the state or any of its political subdivisions, or any  
3 municipality located within this state. Further, the  
4 provisions of this paragraph do not apply so long as a  
5 manufacturer, distributor, or wholesaler, or any agent  
6 thereof, sells or offers to sell such new ~~tractor or farm~~  
7 equipment, parts, or accessories to all of its ~~her or his~~  
8 franchised ~~tractor or farm equipment~~ dealers at an equal  
9 price.

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

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

25 (h) To prevent or attempt to prevent, by contract or  
26 otherwise, any ~~tractor or farm equipment~~ dealer or any  
27 officer, member partner, or stockholder of any ~~tractor or farm~~  
28 ~~equipment~~ dealer from selling or transferring any part of the  
29 interest of any of them to any other person or persons or  
30 party or parties. However, no dealer, officer, partner, or  
31 stockholder has the right to sell, transfer, or assign the

1 franchise or power of management or control thereunder without  
2 the written consent of the manufacturer, distributor, or  
3 wholesaler, except that such consent may not be unreasonably  
4 withheld.

5 (i) To impose, directly or indirectly, unreasonable  
6 restrictions on the dealer relative to transfer, renewal,  
7 termination, location, or site control.

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

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

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

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

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

1 manufacturer, distributor, or wholesaler of such ~~tractor or~~  
2 equipment.

3 (b) To represent and sell as new and unused any  
4 ~~tractor or item of farm~~ equipment which has been used and  
5 operated for demonstration or other purposes without stating  
6 to the purchaser prior to the sale the approximate amount of  
7 use the equipment ~~tractor or item of farm machinery~~ has  
8 experienced or undergone.

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

12 Section 10. Section 686.418, Florida Statutes, is  
13 amended to read:

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

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

22 316.515 Maximum width, height, length.--

23 (5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS,  
24 SAFETY REQUIREMENTS.--Notwithstanding any other provisions of  
25 law, straight trucks, agricultural tractors, and cotton module  
26 movers, not exceeding 50 feet in length, or any combination of  
27 up to and including three implements of husbandry including  
28 the towing power unit, and any single agricultural trailer,  
29 with a load thereon or any agricultural implements attached to  
30 a towing power unit not exceeding 130 inches in width, or a  
31 self-propelled agricultural implement or an agricultural



1 tractor not exceeding 130 inches in width, is authorized for  
2 the purpose of transporting peanuts, grains, soybeans, cotton,  
3 hay, straw, or other perishable farm products from their point  
4 of production to the first point of change of custody or of  
5 long-term storage, and for the purpose of returning to such  
6 point of production, or for the purpose of moving such  
7 tractors, movers, and implements from one point of  
8 agricultural production to another, by a person engaged in the  
9 production of any such product or custom hauler, if such  
10 vehicle or combination of vehicles otherwise complies with  
11 this section. Such vehicles shall be operated in accordance  
12 with all safety requirements prescribed by law and Department  
13 of Transportation rules. The Department of Transportation may  
14 issue overlength permits for cotton module movers greater than  
15 50 feet but not more than 55 feet in overall length.

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

17  
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
19 COMMITTEE SUBSTITUTE FOR  
20 CS/CS/SB 2480

21 This committee substitute revises the definitions of "Dealer"  
22 and "Equipment". The application of certain sections of the  
23 act is made prospective. The time period within which a  
24 manufacturer must complete certain audits is increased to 12  
25 months. The minimum sales commission paid to dealers in  
26 direct sales is decreased to 7 percent.  
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