

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

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.

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