

Committee Substitute for Committee Substitute for
Committee Substitute for Senate Bill No. 2480

An act relating to agricultural equipment; amending s. 686.40, F.S.; providing a popular name; amending s. 686.401, F.S.; clarifying intent of the Agricultural Equipment Manufacturers and Dealers Act to provide for regulation of the conduct of manufacturers, distributors, and dealers of equipment primarily designed for or used in agriculture; amending s. 686.402, F.S.; revising and adding definitions; amending s. 686.403, F.S.; clarifying provisions relating to application; amending s. 686.405, F.S.; providing that it is unlawful to deny, delay payment for, or restrict warranty claims under certain circumstances; providing for audit of warranty claims; amending s. 686.406, F.S.; clarifying provisions relating to surplus parts; amending s. 686.407, F.S.; providing requirements for the establishment of a new dealership or relocation of a current dealership within a certain area; providing requirements for the sale or lease of new equipment; amending s. 686.409, F.S.; clarifying provisions relating to compensation for inventory under certain circumstances; amending s. 686.413, F.S.; providing additional unlawful acts and practices in the conduct of the manufacturing, distribution, wholesaling, franchising, sale, and advertising of equipment; providing requirements for termination of a franchise or selling agreement under certain circumstances; amending s. 686.418, F.S.; clarifying provisions relating to the effect of the act on local ordinances; amending s. 316.515, F.S.; revising the criteria for determining whether agricultural equipment qualifies for an exemption from maximum width and length limits; providing an effective date.

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

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

686.40 Agricultural Farm Equipment Manufacturers and Dealers Act; ~~short title.~~—Sections 686.40-686.418 shall be known by the popular name and may be cited as the “Agricultural Farm Equipment Manufacturers and Dealers Act.”

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

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

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

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

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

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

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

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

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

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

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

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

~~(e) A mass-market retailer.~~

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

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

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

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

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

~~(7)(4)~~ “Factory branch” means a branch office maintained by a manufacturer which manufactures and assembles tractors and farm equipment for

sale to distributors of tractors or to farm equipment dealers or which is maintained for directing and supervising the representatives of the manufacturer.

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

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

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

~~(11)~~⁽⁹⁾ “Franchisor” means a manufacturer, distributor, or wholesaler who grants a franchise to a ~~tractor or farm equipment~~ dealer.

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

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

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

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

(d) Any artifice employed to deceive another.

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

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

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

~~(16)~~ “Relevant market area” means the geographic area for which a dealer is assigned responsibility for selling or soliciting or advertising the sale of equipment under the terms of a franchise.

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

(18) “Termination” means the termination, cancellation, nonrenewal, or noncontinuation of a contract or agreement.

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

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

686.403 Application of ss. 686.40-686.418.—

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

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

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

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

686.405 Warranty agreements; claims; compensation of dealers.—

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

(2)(a) Each claim for payment under such warranty agreements made by a ~~tractor or farm equipment~~ dealer for such labor and parts shall be paid

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

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

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

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

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

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

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

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

686.406 Parts; availability; return.—

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

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

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

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

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

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

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

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

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

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

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

686.407 Repurchase of inventory upon termination of franchise agreement; establishment or relocation of dealership; sale or lease of new equipment.—

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

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

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

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

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

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

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

- ~~(a)~~(b) Any single repair part which is priced as a set of two or more items.
- (b)~~(c)~~ Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.
- ~~(c)~~(d) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the manufacturer, distributor, or wholesaler, of good title, free and clear of all claims, liens, and encumbrances.
- ~~(d)~~(e) Any inventory which the dealer desires to keep, if the dealer has a contractual right to keep it.
- ~~(e)~~(f) Any ~~tractor or item of farm~~ equipment which is not in new, unused, undamaged, and complete condition.
- ~~(f)~~(g) Any ~~tractor or item of farm~~ equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the manufacturer, distributor, or wholesaler receives a reasonable allowance for such usage or deterioration.
- ~~(g)~~(h) Any repair parts which are not in new, unused, and undamaged condition.
- ~~(h)~~(i) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise or contractual agreement.
- ~~(i)~~(j) Any inventory which was acquired by the dealer from any source other than the manufacturer, distributor, or wholesaler.
- (5) If any manufacturer, distributor, or wholesaler fails or refuses to repurchase any inventory covered under the provisions of this section within 60 days after termination of a dealer's contract, he or she is civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the dealer, such the dealer's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.
- (6) A manufacturer, distributor, or wholesaler that intends to establish a new dealership or to relocate a current dealership for a particular product line or make of equipment within the relevant market area of an existing dealership of the same product line or make of equipment shall give written notice of such intent by certified mail or overnight delivery, return receipt requested, to such existing dealership. The notice shall be delivered at least 180 days prior to establishment of a new dealership or relocation of a current dealership. The notice shall include:
- (a) The specific location of the additional or relocated dealership.
- (b) The date on or after which the additional or relocated dealership will commence operation at the new location.
- (c) The identity of all existing dealerships in whose relevant market area the new or relocated dealership is to be located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Has engaged in unfair business or trade practices;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316.515 Maximum width, height, length.—

(5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS, SAFETY REQUIREMENTS.—Notwithstanding any other provisions of law, straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry including the towing power unit, and any single agricultural trailer, with a load thereon or any agricultural implements attached to a towing power unit not exceeding 130 inches in width, or a self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width, is authorized for the purpose of transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and Department of Transportation rules. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length.

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

Became a law without the Governor's approval May 27, 2004.

Filed in Office Secretary of State May 27, 2004.