

House Bill 728 (COMMITTEE SUBSTITUTE)

By: Representatives Porter of the 143rd, Ray of the 128th, Floyd of the 138th, Purcell of the 147th, Parham of the 122nd and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal and void contracts generally, so as to change certain provisions relating to regulation of equipment primarily designed for or used in agriculture; to define certain terms; to regulate sales of certain equipment primarily designed for or used in agriculture; to regulate the establishment, relocation, and termination of dealerships; to prohibit certain unfair competition with equipment dealers; to make editorial changes; to provide for applicability; to provide for severability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal and void contracts generally, is amended by striking Article 2 and inserting in lieu thereof the following:

"ARTICLE 2

13-8-11.

The General Assembly finds that the distribution of ~~tractors and farm~~ equipment primarily designed for or used in agriculture in the State of Georgia vitally affects the general economy of the state and the public interest and public welfare and, in the exercise of its police power, it is necessary to regulate ~~tractor and farm~~ equipment primarily designed for or used in agriculture and related equipment manufacturers, distributors, dealers, and their representatives doing business in Georgia in order to prevent frauds, unfair business practices, unfair methods of competition, impositions, and other abuses upon its citizens.

13-8-12.

As used in this article, the term:

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~~(15)(1)~~ 'Tractor or farm equipment dealer Dealer' means any person who sells, maintains, solicits, or advertises the sale of new and used ~~tractors and farm~~ equipment to the consuming public. It shall not include ~~(A) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree, or order of any court;~~ ~~(B)~~ (A) public officers while performing their duties as such officers; ~~(C)~~ (B) persons making casual sales of their own ~~tractor or item of farm~~ equipment not subject to sales tax under the laws of the State of Georgia; ~~(D)~~ (C) persons engaged in the auction sale of ~~tractors and farm~~ equipment; or ~~(E)~~ (D) dealers in used ~~tractor and farm~~ equipment.

(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.

~~(1)~~ (3) 'Distributor' or 'wholesaler' means any person, company, or corporation who sells or distributes new ~~tractors and farm~~ equipment to ~~tractor or farm equipment~~ dealers and who maintains distributor representatives within the state.

~~(2)~~ (4) '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.

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

~~(14)~~ (6) ~~'Tractors or farm equipment'~~ Equipment' means ~~those tractors, and other farm implements~~ farm equipment, or equipment primarily designed for ~~use~~ or used in agriculture, horticulture, irrigation for agriculture or horticulture, and other such equipment which is considered tax exempt and sold by the franchised equipment dealer.

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

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

~~(6)~~ (9) 'Franchise' means an oral or written agreement 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, or related characteristic, and in which there is a community of interest in the marketing of ~~tractors and farm~~

1 equipment or services related thereto at wholesale; or retail, whether by leasing, sale, or
2 otherwise.

3 ~~(7)~~(10) 'Franchisee' means a ~~tractor and farm equipment~~ dealer to whom a franchise is
4 offered or granted.

5 ~~(8)~~(11) 'Franchisor' means a manufacturer, distributor, or wholesaler who grants a
6 franchise to a ~~tractor and farm equipment~~ dealer.

7 ~~(9)~~(12) 'Fraud' means, in addition to its normal legal connotation, the following: a
8 misrepresentation in any manner, whether intentionally false or arising from gross
9 negligence, of a material fact; a promise or representation not made honestly and in good
10 faith; or an intentional failure to disclose a material fact.

11 ~~(10)~~(13) 'Manufacturer' means any person engaged in the business of manufacturing or
12 assembling new and unused ~~tractors and farm~~ equipment.

13 ~~(11)~~(14) 'New ~~tractor and farm~~ equipment' means a ~~tractor or~~ unit of ~~farm~~ equipment
14 which has not been previously sold to and put into regular use or service by any person
15 except a distributor or wholesaler or ~~tractor and farm equipment~~ dealer for resale.

16 ~~(12)~~(15) 'Person' means a natural person, corporation, partnership, trust, or other business
17 entity; and, in case of a business entity, it shall include any other entity in which it has a
18 majority interest or effectively controls as well as the individual officers, directors, and
19 other persons in active control of the activities of each such entity.

20 (16) 'Relevant market area' means the geographic area for which a dealer is assigned
21 responsibility for selling or soliciting or advertising the sale of equipment under the terms
22 of a franchise.

23 ~~(13)~~(17) 'Sale' means the issuance, transfer, agreement for transfer, exchange, pledge,
24 hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any
25 ~~tractor or~~ unit of ~~farm~~ equipment or interest therein or of any franchise related thereto;
26 any option, subscription or other contract, or solicitation, looking to a sale, or offer or
27 attempt to sell in any form, whether in oral or written form.

28 (18) 'Termination' of a contract or agreement means the termination, cancellation,
29 nonrenewal, or noncontinuation of the contract or agreement.

30 13-8-13.

31 Any person who engages directly or indirectly in purposeful contacts within this state in
32 connection with the offering or advertising for sale of new ~~tractors and farm machinery~~
33 equipment and parts shall be subject to the provisions of this article and shall be subject to
34 the jurisdiction of the courts of this state upon service of process in accordance with the
35 provisions of the laws of the State of Georgia.

1 13-8-14.

2 Unfair methods of competition and unfair or deceptive acts or practices as defined in Code
3 Section 13-8-15 are declared to be unlawful.

4 13-8-15.

5 (a) It shall be deemed a violation of Code Section 13-8-14 for any manufacturer, factory
6 branch, factory representative, distributor, or wholesaler, distributor branch, distributor
7 representative, or ~~tractor and farm equipment~~ dealer to engage in any action which is
8 arbitrary, in bad faith, or unconscionable and which causes damage in terms of law or
9 equity to any of the parties or to the public.

10 (b) It shall be deemed a violation of Code Section 13-8-14 for a manufacturer, a
11 distributor, a wholesaler, a distributor branch or division, a factory branch or division, or
12 a wholesale branch or division, or officer, agent, or other representative thereof, to coerce,
13 or attempt to coerce, any ~~tractor and farm equipment~~ dealer:

14 (1) To order or accept delivery of any ~~tractor or~~ unit of ~~farm~~ equipment, parts or
15 accessories therefor, or any other commodity or commodities which such ~~tractor and farm~~
16 ~~equipment~~ dealer has not voluntarily ordered; or

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

20 (c) It shall be deemed a violation of Code Section 13-8-14 for a manufacturer, a
21 distributor, a wholesaler, a distributor branch or division, a factory branch or division, or
22 a wholesale branch or division, or officer, agent, or other representative thereof:

23 (1) To refuse to deliver in reasonable quantities and within a reasonable time after receipt
24 of dealer's order to any ~~tractor and farm equipment~~ dealer having a franchise or
25 contractual agreement for the retail sale of new ~~tractors and farm~~ equipment sold or
26 distributed by such manufacturer, distributor branch or division, factory branch or
27 division, or wholesale branch or division any ~~tractor or~~ item of ~~farm~~ equipment covered
28 by such franchise or contract specifically advertised or represented by such manufacturer,
29 distributor, wholesaler, distributor branch or division, factory branch or division, or
30 wholesale branch or division to be available for immediate delivery; provided, however,
31 that the failure to deliver any such ~~tractor or~~ unit of ~~farm~~ equipment shall not be
32 considered a violation of this article if such failure is due to prudent and reasonable
33 restriction on extension of credit by the franchisor to the dealer, an act of God, work
34 stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials,
35 freight embargo, or other cause over which the manufacturer, distributor, or wholesaler,
36 or any agent thereof, shall have no control;

1 (2) To coerce, or attempt to coerce, any ~~tractor and farm equipment~~ dealer to enter into
2 any agreement, whether written or oral, supplementary to an existing franchise with such
3 manufacturer, distributor, wholesaler, distributor branch or division, factory branch or
4 division, or wholesale branch or division, or officer, agent, or other representative
5 thereof; or to do any other act prejudicial to such dealer by threatening to cancel any
6 franchise or any contractual agreement existing between such manufacturer, distributor,
7 wholesaler, distributor branch or division, factory branch or division, or wholesale branch
8 or division, and such dealer; provided, however, that notice in good faith to any ~~tractor~~
9 ~~and farm equipment~~ dealer of such dealer's violation of any terms or provisions of such
10 franchise or contractual agreement shall not constitute a violation of this article if such
11 notice is in writing mailed by registered or certified mail or statutory overnight delivery
12 to such dealer at his or her current business address;

13 (3)(A) To terminate ~~or cancel~~ the franchise or selling agreement of any such dealer
14 without due cause, as defined in subparagraph ~~(B)~~ (C) of this paragraph. The
15 ~~nonrenewal~~ termination of a franchise or selling agreement, without due cause, shall
16 constitute an unfair termination ~~or cancellation~~, regardless of the specified time period
17 of such franchise or selling agreement. Except where the grounds for such termination
18 ~~or cancellation~~ fall within division (iii) of subparagraph ~~(B)~~ (C) of this paragraph, such
19 manufacturer, distributor, wholesaler, distributor branch or division, factory branch or
20 division, or wholesale branch or division, or officer, agent, or other representative
21 thereof, shall notify a ~~tractor and farm equipment~~ dealer in writing of the termination
22 ~~or cancellation~~ of the franchise or selling agreement of such dealer at least ~~60~~ 90 days
23 before the effective date thereof, stating the specific grounds for such termination ~~or~~
24 ~~cancellation~~; and in no event shall the contractual term of any such franchise or selling
25 agreement expire, without the written consent of the ~~tractor and farm equipment~~ dealer
26 involved, prior to the expiration of at least ~~60~~ 90 days following such written notice.
27 During the ~~60~~ 90 day period, either party may, in appropriate circumstances, petition
28 a court to modify such ~~60~~ 90 day stay or to extend it pending a final determination of
29 such proceedings on the merits. The court shall have authority to grant preliminary and
30 final injunctive relief. Should the dealer cure the claimed deficiency within the 90 day
31 period, then the franchise or selling agreement shall not be terminated.

32 (B) Before termination of the franchise or selling agreement because of the dealer's
33 failure to meet reasonable marketing criteria or market penetration, the manufacturer,
34 distributor, wholesaler, distributor branch or division, factory branch or division, or
35 wholesale branch or division, or officer, agent, or other representative thereof, shall
36 provide written notice of such intention at least one year in advance. After such notice,
37 the manufacturer or other entity issuing the notice shall make good faith efforts to work

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

11 ~~(B)~~(C) As used in this paragraph, tests for determining what constitutes due cause for
12 a manufacturer or distributor to terminate, ~~cancel, or refuse to renew~~ a franchise
13 agreement shall include whether the dealer:

14 (i) Has transferred an ownership interest in the dealership without the manufacturer's
15 or distributor's consent;

16 (ii) Has made a material misrepresentation in applying for or acting under the
17 franchise agreement;

18 (iii) Has filed a voluntary petition in bankruptcy or has had an involuntary petition
19 in bankruptcy filed against the dealer which has not been discharged within 30 days
20 after the filing, is in default under the provisions of a security agreement in effect with
21 the manufacturer or distributor, or is in receivership;

22 (iv) Has engaged in an unfair business practice;

23 (v) Has inadequately represented the manufacturer's or distributor's products with
24 respect to sales, service, or warranty work;

25 (vi) Has engaged in conduct which is injurious or detrimental to the public welfare;

26 (vii) Has inadequate sales and service facilities and personnel;

27 (viii) Has failed to comply with an applicable licensing law;

28 (ix) Has been convicted of a crime, the effect of which would be detrimental to the
29 manufacturer, distributor, or dealership;

30 (x) Has failed to operate in the normal course of business for seven consecutive
31 business days;

32 (xi) Has relocated the dealer's place of business without the manufacturer's or
33 distributor's consent; or

34 (xii) Has failed to comply with the terms of the dealership or franchise agreement;

35 (4) To resort to or use any false or misleading advertisement in connection with ~~his~~ its
36 business as such manufacturer, distributor, wholesaler, distributor branch or division,

1 factory branch or division, or wholesale branch or division, or officer, agent, or other
2 representative thereof;

3 (5) To offer to sell or to sell any new ~~tractor or unit of farm~~ equipment, or parts or
4 accessories therefor, to any other ~~tractor or farm equipment~~ dealer at a lower actual price
5 therefor than the actual price offered to any other ~~tractor or farm equipment~~ dealer for the
6 same model ~~tractor or farm~~ equipment identically equipped; or to utilize any device
7 including, but not limited to, sales promotion plans or programs which result in such
8 lesser actual price; provided, however, that the provisions of this paragraph shall not
9 apply to sales to a ~~tractor or farm equipment~~ dealer for resale to any unit of the United
10 States government, the state, or any of its political subdivisions; and provided, further,
11 that the provisions of this paragraph shall not apply so long as a manufacturer, distributor,
12 or wholesaler, or any agent thereof, sells or offers to sell such new ~~tractor or farm~~
13 equipment, parts, or accessories to all their franchised ~~tractor or farm equipment~~ dealers
14 at an equal price;

15 (6) To discriminate willfully, either directly or indirectly, in price, programs, or terms
16 of sale offered to franchisees, where the effect of such discrimination may be to lessen
17 competition substantially or to give to one holder of a franchise any business or
18 competitive advantage not offered to all holders of the same or similar franchise;

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

25 (8) To prevent or attempt to prevent, by contract or otherwise, any ~~tractor and farm~~
26 ~~equipment~~ dealer or any officer, partner, or stockholder of any ~~tractor and farm~~
27 ~~equipment~~ dealer from selling or transferring any part of the interest of any of them to
28 any other person or persons or party or parties; provided, however, that no dealer, officer,
29 partner, or stockholder shall have the right to sell, transfer, or assign the franchise or
30 power of management or control thereunder without the consent of the manufacturer,
31 distributor, or wholesaler, except that such consent shall not be unreasonably withheld;

32 (8.1) To prevent a dealer from having an investment in or holding a dealership contract
33 for the sale of competing product lines or makes of equipment, or to require a dealer to
34 provide separate facilities for competing product lines or makes of equipment;

35 (8.2) To impose, directly or indirectly, unreasonable restrictions on the dealer relative
36 to transfer, sale, renewal, termination, location, or site control;

(9) To obtain money, goods, services, anything of value, or any other benefit from any other person with whom the ~~tractor and 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; or

(10) To require a ~~tractor and farm equipment~~ dealer to assent to a release, assignment, notation, waiver, or estoppel which would relieve any person from liability imposed by this article.

(d) It shall be deemed a violation of Code Section 13-8-14 for a ~~tractor and farm equipment~~ dealer:

(1) To require a retail purchaser of a new ~~tractor or~~ unit of ~~farm~~ equipment, as a condition of sale and delivery thereof, also to purchase special features, appliances, equipment, parts, or accessories not desired or requested by the purchaser; provided, however, that this prohibition shall not apply to special features, appliances, equipment, parts, or accessories which are already installed when the ~~tractor or~~ unit of ~~farm~~ equipment is received by the dealer from the manufacturer, distributor, or wholesaler thereof;

(2) To represent and sell as new and unused any ~~tractor or~~ unit of ~~farm~~ equipment which has been used and operated for demonstration or other purposes without stating to the purchaser the approximate amount of use the ~~tractor or~~ unit of ~~farm machinery equipment~~ has experienced; or

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

13-8-15.1.

Any manufacturer, distributor, or wholesaler which 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 90 day notice of such intent by certified mail or statutory overnight delivery, return receipt requested, to such existing dealership. The notice shall include:

(1) The specific location of the additional or relocated dealership;

(2) The date on or after which the additional or relocated dealership will commence operation at the new location;

(3) The identity of all existing dealerships in whose relevant market area the new or relocated dealership is to be located; and

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

1 13-8-15.2.

2 (a) A manufacturer, distributor, or wholesaler may sell or lease new equipment for use
 3 within this state. If the equipment is prepared for delivery or serviced by a dealer, the
 4 manufacturer, distributor, or wholesaler shall reasonably compensate the dealer for the
 5 preparation and delivery of the new equipment and pay to the dealer a reasonable
 6 commission on the sale or lease of the new equipment which shall be not less than
 7 8 percent of the sale price of the equipment. The manufacturer, distributor, or wholesaler,
 8 if practicable, shall utilize the dealer in the relevant market area described in subsection (b)
 9 of this Code section for preparation and delivery. This compensation must be paid or
 10 credited in the same manner as provided in Code Section 13-8-17. This subsection shall
 11 not be applicable to any liquidation or sale of equipment which has been ordered by any
 12 court.

13 (b) For purposes of this Code section, equipment is considered to be used primarily within
 14 a dealer's relevant market area if the new equipment is located or housed at a user's facility
 15 located within that relevant market area.

16 13-8-16.

17 (a) Every manufacturer shall specify and every dealer shall provide and fulfill reasonable
 18 predelivery and preparation obligations for its ~~tractors and farm~~ equipment prior to delivery
 19 of same to retail purchasers.

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

22 (c) Every manufacturer or distributor shall provide to ~~his~~ each of its dealers, on an annual
 23 basis, an opportunity to return a portion of ~~his~~ such dealer's surplus parts inventory for
 24 credit. The surplus parts return procedure shall be administered as follows:

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

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

32 (3) Pursuant to the provisions of this subsection, a manufacturer or distributor must allow
 33 surplus parts return authority on a dollar value of parts equal to 8 percent of the total
 34 dollar value of parts purchased by the dealer from the manufacturer or distributor during
 35 the 12 month period immediately preceding the notification to ~~the~~ such dealer by the
 36 manufacturer or distributor of the surplus parts return program, or the month ~~the~~ such

1 dealer's return request is made, whichever is applicable; provided, however, that ~~the~~ such
2 dealer may, at his or her option, elect to return a dollar value of his or her surplus parts
3 less than 8 percent of the total dollar value of parts purchased by ~~the~~ such dealer from the
4 manufacturer or distributor during the preceding 12 month period as provided in this
5 subsection;

6 (4) No obsolete or superseded part may be returned, but any part listed in the
7 manufacturer's, wholesaler's, or distributor's current parts price list at the date of
8 notification to the dealer by the manufacturer or distributor of the surplus parts return
9 program, or the date of a dealer's parts return request, whichever is applicable, shall be
10 eligible for return and credit as specified in this subsection; provided, however, that
11 returned parts must be in new and unused condition and must have been purchased from
12 the manufacturer, wholesaler, or distributor to whom they are returned;

13 (5) The minimum lawful credit to be allowed for returned parts shall be 85 percent of the
14 wholesale cost thereof as listed in the manufacturer's, wholesaler's, or distributor's
15 current parts price list at the date of the notification to the dealer by the manufacturer,
16 wholesaler, or distributor of the surplus parts return program, or the date of a dealer's
17 parts return request, whichever is applicable;

18 (6) Applicable credit pursuant to this subsection must be issued to the dealer within 30
19 days after receipt of his or her returned parts by the manufacturer or distributor; or

20 (7) Packing and return freight expense incurred in any return of surplus parts pursuant
21 to the terms of this Code section shall be borne by the dealer.

22 13-8-17.

23 (a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory
24 branch or division, or wholesale branch or division shall provide a fair and reasonable
25 warranty agreement on any new ~~tractor or unit of farm~~ equipment which it sells and shall
26 fairly compensate each of its ~~tractor or farm equipment~~ dealers for labor and parts used in
27 fulfilling such warranty agreement. All claims for payment under such warranty
28 agreements made by ~~tractor and farm equipment~~ dealers under this subsection for such
29 labor and parts shall be paid within 30 days following their approval. All such claims shall
30 be either approved or disapproved within 30 days after their receipt; and, when any such
31 claim is disapproved, the ~~tractor or farm equipment~~ dealer who submits it shall be notified
32 in writing of its disapproval within such period; and each such notice shall state the specific
33 grounds upon which the disapproval is based. Any special handling of claims required of
34 the dealer by the manufacturer, distributor, wholesaler, distributor branch or division,
35 factory branch or division, or wholesale branch or division, and not uniformly required of

1 all dealers of that make, may be enforced only after 30 days' notice in writing to the dealer
2 and upon good and sufficient reason.

3 (b) The minimum lawful basis for compensating said dealer for warranty work as provided
4 for in this subsection shall be calculated for labor in accordance with the reasonable and
5 customary amount of time required to complete such work, expressed in hours and
6 fractions of hours multiplied by the dealer's established hourly retail labor rate. Prior to
7 filing a claim for reimbursement for warranty work, the dealer must notify the applicable
8 manufacturer, wholesaler, or distributor of his or her hourly retail labor rate. The minimum
9 lawful basis for compensation to the dealer for parts used in fulfilling said warranty work
10 shall be at the dealer's costs thereof, including all freight and handling charges applicable
11 thereto, plus 15 percent of said sum to reimburse the dealer's reasonable costs of doing
12 business and providing such warranty service on the manufacturer's behalf.

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

17 (d) A manufacturer, distributor, or wholesaler may audit warranty claims submitted by its
18 dealers only for a period of up to one year following payment of such claims and may
19 charge back to its dealers only those amounts based upon paid claims shown by audit to be
20 invalid; provided, however, that this limitation shall not apply in any case of fraudulent
21 claims.

22 13-8-17.1.

23 Any audit of a dealer by or on behalf of a manufacturer, distributor, or wholesaler for sales
24 incentives, service incentives, rebates, or other forms of incentive compensation shall be
25 completed not later than six months after the date of the termination of such incentive
26 compensation program; provided, however, that this limitation shall not apply in any case
27 of fraudulent claims.

28 13-8-18.

29 The provisions of this article shall apply to all written or oral agreements between a
30 manufacturer, wholesaler, or distributor with a ~~tractor or farm equipment~~ dealer including,
31 but not limited to, the franchise offering, the franchise agreement, sales of goods, services
32 and advertising, leases or mortgages of real or personal property, promises to pay, security
33 interests, pledges, insurance contracts, advertising contracts, construction or installation
34 contracts, servicing contracts, and all other such agreements in which the manufacturer,
35 wholesaler, or distributor has any direct or indirect interest.

1 13-8-19.

2 It shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor, without due
3 cause, to fail to renew on terms then equally available to all its ~~tractor and farm equipment~~
4 dealers, to terminate a franchise, or to restrict the transfer of a franchise unless the
5 franchisee shall receive fair and reasonable compensation for the inventory of the business.
6 As used in this Code section, 'due cause' shall be construed in accordance with the
7 definition of same as contained in subparagraph (c)(3)(~~B~~)(C) of Code Section 13-8-15.

8 13-8-20.

9 (a) In addition to temporary or permanent injunctive relief as provided in subparagraph
10 (c)(3)(A) of Code Section 13-8-15, any person who shall be injured in his or her business
11 or property by reason of anything forbidden ~~in~~ by or in noncompliance with the
12 requirements of this article may bring an action therefor in the appropriate superior court
13 of this state and shall recover the actual damages sustained and the costs of such action,
14 including a reasonable attorney's fee.

15 (b) When such action is one of common or general interest to many persons or when the
16 parties are numerous and it is impracticable to bring them all before the court, one or more
17 may bring a class action for the benefit of the whole, including actions for injunctive relief.

18 (c) In an action for money damages, if the jury finds that the defendant acted maliciously,
19 the jury may award punitive damages as permitted by Georgia law.

20 13-8-21.

21 Any contract or franchise agreement or part thereof or practice thereunder in violation of
22 any provision of this article shall be deemed against public policy and shall be void and
23 unenforceable.

24 13-8-22.

25 (a) Whenever any ~~tractor or farm equipment~~ dealer enters into a franchise agreement with
26 a manufacturer, distributor, or wholesaler wherein the dealer agrees to maintain an
27 inventory of ~~tractors, farm~~ equipment; or repair parts and the franchise is subsequently
28 terminated, the manufacturer, distributor, or wholesaler shall repurchase the inventory as
29 provided in this article. The dealer may keep the inventory if he or she desires. If the dealer
30 has any outstanding debts to the manufacturer, distributor, or wholesaler, then the
31 repurchase amount may be credited to the dealer's account.

32 (b) The manufacturer, distributor, or wholesaler shall repurchase that inventory previously
33 purchased from ~~him~~ it and held by the dealer on the date of termination of the contract. The
34 manufacturer, distributor, or wholesaler shall pay 100 percent of the actual dealer cost,

1 including freight, of all new, unsold, undamaged, and complete ~~tractors, or other~~ units of
2 ~~farm~~ equipment which are resalable and 100 percent of the current wholesale price of all
3 new, unused, undamaged repair parts and accessories which are listed in the manufacturer's
4 current parts price list. The manufacturer, distributor, or wholesaler shall pay the dealer 5
5 percent of the current wholesale price on all new, unused, and undamaged repair parts
6 returned to cover the cost of handling, packing, and loading. The manufacturer, distributor,
7 or wholesaler shall have the option of performing the handling, packing, and loading in lieu
8 of paying the 5 percent sum imposed by this subsection for these services.

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

12 (d) The provisions of this article shall not require the repurchase from a dealer of:

13 ~~(1) Any repair part which has a limited storage life or is otherwise subject to~~
14 ~~deterioration;~~

15 ~~(2)~~(1) Any single repair part which is priced as a set of two or more items;

16 ~~(3)~~(2) Any repair part which, because of its condition, is not resalable as a new part
17 without repackaging or reconditioning;

18 ~~(4)~~(3) Any inventory for which the dealer is unable to furnish evidence, reasonably
19 satisfactory to the manufacturer, distributor, or wholesaler, of good title, free and clear
20 of all claims, liens, and encumbrances;

21 ~~(5)~~(4) Any inventory which the dealer desires to keep, provided the dealer has a
22 contractual right to do so;

23 ~~(6)~~(5) Any ~~tractor or unit of farm~~ equipment which is not in new, unused, undamaged,
24 complete condition;

25 ~~(7)~~(6) Any repair parts which are not in new, unused, undamaged condition;

26 ~~(8)~~(7) Any inventory which was ordered by the dealer on or after the date of receipt of
27 the notification of termination of the franchise; or

28 ~~(9)~~(8) Any inventory which was acquired by the dealer from any source other than the
29 manufacturer, distributor, or wholesaler.

30 (e) If any manufacturer, distributor, or wholesaler shall fail or refuse to repurchase any
31 inventory covered under the provisions of this article within 60 days after termination of
32 a dealer's contract, ~~he~~ it shall be civilly liable for 100 percent of the current wholesale price
33 of the inventory plus any freight charges paid by the dealer, ~~the~~ such dealer's reasonable
34 attorney's fees, court costs, and interest on the current wholesale price computed at the
35 legal interest rate from the sixty-first day after termination.

1 13-8-23.

2 In the event of the death or incapacity of the dealer or the majority stockholder of a
3 corporation operating as a dealer, the manufacturer, distributor, or wholesaler shall, at the
4 option of the heirs at law, if the dealer died intestate, or the devisees or transferees under
5 the terms of the deceased dealer's last will and testament, if said dealer died testate,
6 repurchase the inventory from said heirs or devisees as aforesaid as if the manufacturer,
7 distributor, or wholesaler had terminated the contract, and the inventory repurchase
8 provisions of Code Section 13-8-22 are made expressly applicable hereto. The heirs or
9 devisees as aforesaid shall have one year from the date of the death of the retailer or
10 majority stockholder to exercise their option under this article; provided, however, that
11 nothing in this article shall require the repurchase of inventory if the heirs or devisees as
12 aforesaid and the manufacturer, distributor, or wholesaler enter into a new franchise
13 agreement to operate the retail dealership.

14 13-8-24.

15 A manufacturer, distributor, or wholesaler, as the case may be, will fully indemnify and
16 hold harmless its dealer against any losses including, but not limited to: court costs and
17 reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits
18 including, but not limited to, strict liability, negligence, misrepresentation, express or
19 implied warranty, or rescission of the sale where the complaint, claim, or lawsuit relates
20 to the manufacture, assembly, or design of new items covered by this article, parts or
21 accessories, or other functions by the manufacturer, distributor, or wholesaler which are
22 beyond the control of the dealer.

23 13-8-25.

24 The provisions of this article shall apply to all contracts now in effect which have no
25 expiration date and are a continuing contract and all other contracts entered into or renewed
26 on or after November 1, 1982 July 1, 2002. Any contract in force and effect ~~on November~~
27 ~~1, 1982~~ prior to July 1, 2002, which by its own terms will terminate on a date subsequent
28 thereto shall be governed by the law as it existed prior to ~~this article~~ July 1, 2002."

29 SECTION 2.

30 If any provision of this Act or the application of such provision to any person or
31 circumstance is held invalid, the remainder of this Act and the application of such provision
32 to other persons or circumstances shall not be affected by such holding.

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- 2
- SECTION 3.
- All laws and parts of laws in conflict with this Act are repealed.