

House Bill 529

By: Representatives West of the 101st, Stallings of the 100th, Walker of the 141st, Hudson of the 156th, Pinholster of the 15th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal
2 and void contracts generally, so as to change certain provisions relating to regulation of farm
3 tractor or farm equipment manufacturers, distributors, and dealers; to define certain terms;
4 to regulate sales of certain farm tractors or farm equipment; to regulate the establishment and
5 relocation of dealerships; to prohibit certain unfair competition with farm tractor or farm
6 equipment dealers; to make editorial changes; to provide for applicability; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

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

13 style="text-align:center">"ARTICLE 2

14 13-8-11.

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

1 13-8-12.

2 As used in this article, the term:

3 (0.1) 'Dealer' means a farm tractor or farm equipment dealer.

4 (0.2) 'Dealership' means the business of selling or attempting to effect the sale by a
5 dealer of new farm tractors or farm equipment or the right conferred by written or oral
6 agreement with a manufacturer, distributor, or wholesaler, for a definite or indefinite
7 period of time, to sell or attempt to effect the sale of new farm tractors or farm
8 equipment.

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

12 (2) 'Distributor branch' means a branch office maintained by a distributor or wholesaler
13 which sells or distributes new farm tractors ~~and~~ or farm equipment to farm tractor or farm
14 equipment dealers.

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

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

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

25 (5.1) 'Farm tractors or farm equipment' means those farm tractors and other farm
26 implements primarily designed for use in agriculture.

27 (5.2) 'Farm tractor or farm equipment dealer' means any person who sells, solicits, or
28 advertises the sale of new and used farm tractors or farm equipment to the consuming
29 public, except that such term shall not include (A) receivers, trustees, administrators,
30 executors, guardians, or other persons appointed by or acting under judgment, decree, or
31 order of any court; (B) public officers while performing their duties as such officers; (C)
32 persons making casual sales of their own farm tractor or item of farm equipment not
33 subject to sales tax under the laws of the State of Georgia; (D) persons engaged in the
34 auction sale of farm tractors or farm equipment; (E) dealers in used farm tractors or farm
35 equipment; or (F) any dealer which does not derive the majority of its revenue from the
36 sale of farm tractors or farm equipment.

1 (6) 'Franchise' means an oral or written agreement for a definite or indefinite period of
2 time in which a manufacturer, distributor, or wholesaler grants to a farm tractor or farm
3 equipment dealer permission to use a trade name, service mark, or related characteristic,
4 and in which there is a community of interest in the marketing of farm tractors ~~and~~ or
5 farm equipment or services related thereto at wholesale, retail, whether by leasing, sale,
6 or otherwise.

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

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

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

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

17 (10.1) 'National account customer' means a user of new farm tractors or farm equipment
18 which has multiple locations in two or more relevant market areas serviced by dealers of
19 the same product line or make of such farm tractor or farm equipment and which
20 purchases or leases new farm tractors or farm equipment directly from a manufacturer,
21 distributor, wholesaler, distributor branch or division, factory branch or division, or
22 wholesale branch or division.

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

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

31 (12.1) 'Relevant market area' means any county or counties within this state in which a
32 farm tractor or farm equipment dealer actually sells or solicits or advertises the sale of
33 new or used farm tractors or farm equipment to the consuming public or the geographic
34 area for which such dealer is assigned responsibility for selling or soliciting or advertising
35 the sale of farm tractors or farm equipment under the terms of a franchise, whichever is
36 greater.

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

6 ~~(14) "Tractors or farm equipment" means those tractors and other farm implements~~
 7 ~~primarily designed for use in agriculture.~~

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

16 13-8-13.

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

22 13-8-14.

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

25 13-8-15.

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

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

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

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

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

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

24 (2) To coerce, or attempt to coerce, any farm tractor ~~and~~ or farm equipment dealer to
25 enter into any agreement, whether written or oral, supplementary to an existing franchise
26 with such manufacturer, distributor, wholesaler, distributor branch or division, factory
27 branch or division, or wholesale branch or division, or officer, agent, or other
28 representative thereof; or to do any other act prejudicial to such dealer by threatening to
29 cancel any franchise or any contractual agreement existing between such manufacturer,
30 distributor, wholesaler, distributor branch or division, factory branch or division, or
31 wholesale branch or division, and such dealer; provided, however, that notice in good
32 faith to any farm tractor ~~and~~ or farm equipment dealer of such dealer's violation of any
33 terms or provisions of such franchise or contractual agreement shall not constitute a
34 violation of this article if such notice is in writing mailed by registered or certified mail
35 or statutory overnight delivery to such dealer at his or her current business address;

36 (3)(A) To terminate or cancel the franchise or selling agreement of any such dealer
37 without due cause, as defined in subparagraph (B) of this paragraph. The nonrenewal

1 of a franchise or selling agreement, without due cause, shall constitute an unfair
2 termination or cancellation, regardless of the specified time period of such franchise or
3 selling agreement. Except where the grounds for such termination or cancellation fall
4 within division (iii) of subparagraph (B) of this paragraph, such manufacturer,
5 distributor, wholesaler, distributor branch or division, factory branch or division, or
6 wholesale branch or division, or officer, agent, or other representative thereof, shall
7 notify a farm tractor ~~and~~ or farm equipment dealer in writing of the termination or
8 cancellation of the franchise or selling agreement of such dealer at least 60 days before
9 the effective date thereof, stating the specific grounds for such termination or
10 cancellation; and in no event shall the contractual term of any such franchise or selling
11 agreement expire, without the written consent of the farm tractor ~~and~~ or farm equipment
12 dealer involved, prior to the expiration of at least 60 days following such written notice.
13 During the 60 day period, either party may, in appropriate circumstances, petition a
14 court to modify such 60 day stay or to extend it pending a final determination of such
15 proceedings on the merits. The court shall have authority to grant preliminary and final
16 injunctive relief.

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

- 20 (i) Has transferred an ownership interest in the dealership without the manufacturer's
21 or distributor's consent;
- 22 (ii) Has made a material misrepresentation in applying for or acting under the
23 franchise agreement;
- 24 (iii) Has filed a voluntary petition in bankruptcy or has had an involuntary petition
25 in bankruptcy filed against the dealer which has not been discharged within 30 days
26 after the filing, is in default under the provisions of a security agreement in effect with
27 the manufacturer or distributor, or is in receivership;
- 28 (iv) Has engaged in an unfair business practice;
- 29 (v) Has inadequately represented the manufacturer's or distributor's products with
30 respect to sales, service, or warranty work;
- 31 (vi) Has engaged in conduct which is injurious or detrimental to the public welfare;
- 32 (vii) Has inadequate sales and service facilities and personnel;
- 33 (viii) Has failed to comply with an applicable licensing law;
- 34 (ix) Has been convicted of a crime, the effect of which would be detrimental to the
35 manufacturer, distributor, or dealership;
- 36 (x) Has failed to operate in the normal course of business for seven consecutive
37 business days;

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

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

4 (4) To resort to or use any false or misleading advertisement in connection with his its
5 business as such manufacturer, distributor, wholesaler, distributor branch or division,
6 factory branch or division, or wholesale branch or division, or officer, agent, or other
7 representative thereof;

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

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

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

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

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

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

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

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

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

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

23 13-8-15.1.

24 (a) Any manufacturer, distributor, or wholesaler which intends to establish a new farm
 25 tractor or farm equipment dealership or to relocate a current dealership for a particular
 26 product line or make of farm tractor or farm equipment within the relevant market area of
 27 an existing dealership of the same product line or make of farm tractor or farm equipment
 28 shall give written notice of such intent by certified mail or statutory overnight delivery to
 29 such existing dealership. The notice shall include:

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

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

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

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

1 (b) Any existing dealership in whose relevant market area a manufacturer, distributor, or
2 wholesaler intends to establish a new dealership or to relocate a current dealership may
3 within 60 days of the receipt of the notice petition a superior court to enjoin or prohibit the
4 establishment of the new or relocated dealership within the relevant market area of the
5 existing dealership. The court or other tribunal of competent jurisdiction shall enjoin or
6 prohibit the establishment of the new or relocated dealership within the relevant market
7 area of the existing dealership unless the manufacturer, distributor, or wholesaler can prove
8 by a preponderance of the evidence that the existing dealership is not providing adequate
9 representation of the product line or make of farm tractor or farm equipment in the existing
10 dealership's relevant market area and that the new or relocated dealership is necessary to
11 provide the public with reliable and convenient sales and service within the relevant market
12 area. The burden of proof in establishing adequate representation shall be on the
13 manufacturer, distributor, or wholesaler. In determining whether the existing dealership is
14 providing adequate representation and whether the new or relocated dealership is
15 necessary, the court or other tribunal may consider, but is not limited to considering, the
16 following:

17 (1) The impact that the establishment of the new or relocated dealership will have on
18 consumers, the public interest, and the existing dealership; provided, however, that
19 financial impact may be considered only with respect to the existing dealership;

20 (2) The size and permanency of investment reasonably made and the reasonable
21 obligations incurred by the existing dealership to perform its obligations under the
22 dealership's franchise agreement;

23 (3) The reasonably expected market penetration of the product line or make of farm
24 tractor or farm equipment for the relevant market area involved, after consideration of all
25 factors which may affect such penetration, including, but not limited to, demographic
26 factors, product popularity, retail lease transactions, and other factors affecting sales to
27 consumers in the relevant market area;

28 (4) Any actions by the manufacturer, distributor, or wholesaler in denying its existing
29 dealership of the same product line or make the opportunity for reasonable growth,
30 market expansion, or relocation, including the availability of the product line or make of
31 farm tractor or farm equipment in keeping with the reasonable expectations of the
32 manufacturer, distributor, or wholesaler in providing an adequate number of dealerships
33 in the relevant market area;

34 (5) Any attempts by the manufacturer, distributor, or wholesaler to coerce the existing
35 dealership into consenting to an additional or relocated dealership of the same product
36 line or make in the relevant market area;

1 (6) Distance, travel time, traffic patterns, and accessibility between the existing
2 dealership of the same product line or make and the location of the proposed new or
3 relocated dealership;

4 (7) Whether benefits to consumers will likely occur from the establishment or relocation
5 of the dealership which benefits cannot be obtained by other geographic or demographic
6 changes or expected changes in the relevant market area;

7 (8) Whether the existing dealership is in substantial compliance with its franchise
8 agreement;

9 (9) Whether there is adequate interbrand and intrabrand competition with respect to the
10 product line or make of farm tractor or farm equipment, including the adequacy of sales
11 and service facilities;

12 (10) Whether the establishment or relocation of the proposed dealership appears to be
13 warranted and justified based on economic and market conditions pertinent to dealerships
14 competing in the relevant market area, including anticipated changes; and

15 (11) The volume of registrations and service business transacted by the existing
16 dealership and in which would be the relevant market area of the proposed dealership.

17 (c) Subsections (a) and (b) of this Code section shall not apply:

18 (1) To the addition of a new dealership at a location which is within a three-mile radius
19 of a former dealership of the same product line or make which has been closed for less
20 than two years;

21 (2) To the relocation of an existing dealership to a new location which is farther away
22 from the protesting dealer's location than the relocated dealer's prior location; or

23 (3) To the relocation of an existing dealership to a new location which is within a
24 three-mile radius of such dealership's current location and it has been at such current
25 location at least ten years.

26 (d)(1) Except as otherwise provided in this subsection, any manufacturer, distributor, or
27 wholesaler shall not sell or lease or offer to sell or lease, directly or indirectly, any new
28 farm tractor or farm equipment to a consumer in this state, except through a new farm
29 tractor or farm equipment dealer holding a franchise for the product line or make
30 covering such new farm tractor or farm equipment.

31 (2)(A)(i) This subsection shall not apply to manufacturer, distributor, or wholesaler
32 sales of any new farm tractor or farm equipment for use within this state to any
33 department, agency, or authority of federal, state, or local government or any national
34 account customer, if such farm tractor or farm equipment is prepared for delivery and
35 serviced by a franchisee the relevant market area of which includes in whole or in part
36 the geographic area in which the farm tractor or farm equipment is to be used
37 primarily. The manufacturer, distributor, or wholesaler shall compensate the dealer

1 reasonably for the preparation and delivery of such farm tractor or farm equipment
 2 and pay to the dealer a commission on the sale or lease of the farm tractor or farm
 3 equipment equal to ten percent of the cost of the equipment if the dealer had
 4 purchased it for sale or lease to its customers. Such commission shall be
 5 compensation for the dealer's direct or indirect investment made and obligations
 6 incurred to perform its duties under the franchise agreement including, without
 7 limitation, marketing and demonstrating new equipment where appropriate, making
 8 installation and necessary mechanical adjustments and repairs, both at the time of
 9 delivery and later as may be desirable, ensuring proper and efficient operation of the
 10 new farm tractor or farm equipment in compliance with standard policies and
 11 practices of such manufacturer, distributor, or wholesaler which are in effect,
 12 maintaining an adequate inventory of parts and trained technical staff in the dealer's
 13 relevant market area, fulfilling warranty obligations, and providing all other necessary
 14 postdelivery services as may be required of the dealer. Such compensation shall be
 15 paid or credited in the same manner as that provided in Code Section 13-8-17.

16 (ii) Any manufacturer, distributor, or wholesaler shall not, in connection with any
 17 sale of farm tractors or farm equipment authorized under this subparagraph, offer a
 18 discount, refund, or other similar type of inducement to a dealer without giving notice
 19 of and making the same offer or offers available to all of its dealers which have
 20 relevant market areas encompassing in whole or in part the geographic area in which
 21 the farm tractor or farm equipment is to be used primarily and have requested notice
 22 of any such inducement.

23 (B) For purposes of this paragraph, any farm tractor or farm equipment shall be
 24 considered to be used primarily within a dealer's relevant market area if such farm
 25 tractor or farm equipment is located or housed at a user's facility located within such
 26 relevant market area. If such farm tractor or farm equipment is located or housed
 27 within the relevant market area of more than one franchised dealer or not within the
 28 relevant market area of any franchised dealer for such product line or make, the
 29 amounts payable pursuant to this paragraph shall be payable to the franchised dealer
 30 having service facilities closest to the location of such equipment.

31 13-8-16.

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

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

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

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

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

11 (3) Pursuant to the provisions of this subsection, a manufacturer or distributor must allow
12 surplus parts return authority on a dollar value of parts equal to 8 percent of the total
13 dollar value of parts purchased by the dealer from the manufacturer or distributor during
14 the 12 month period immediately preceding the notification to the dealer by the
15 manufacturer or distributor of the surplus parts return program, or the month the dealer's
16 return request is made, whichever is applicable; provided, however, that the dealer may,
17 at his or her option, elect to return a dollar value of his or her surplus parts less than 8
18 percent of the total dollar value of parts purchased by the dealer from the manufacturer
19 or distributor during the preceding 12 month period as provided in this subsection;

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

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

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

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

1 13-8-17.

2 (a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory
3 branch or division, or wholesale branch or division shall provide a fair and reasonable
4 warranty agreement on any new farm tractor or unit of farm equipment which it sells and
5 shall fairly compensate each of its farm tractor or farm equipment dealers for labor and
6 parts used in fulfilling such warranty agreement. All claims for payment under such
7 warranty agreements made by farm tractor ~~and~~ or farm equipment dealers under this
8 subsection for such labor and parts shall be paid within 30 days following their approval.
9 All such claims shall be either approved or disapproved within 30 days after their receipt;
10 and, when any such claim is disapproved, the farm tractor or farm equipment dealer who
11 submits it shall be notified in writing of its disapproval within such period; and each such
12 notice shall state the specific grounds upon which the disapproval is based. Any special
13 handling of claims required of the dealer by the manufacturer, distributor, wholesaler,
14 distributor branch or division, factory branch or division, or wholesale branch or division,
15 and not uniformly required of all dealers of that make, may be enforced only after 30 days'
16 notice in writing to the dealer and upon good and sufficient reason.

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

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

31 13-8-17.1.

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

1 13-8-18.

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

9 13-8-19.

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

16 13-8-20.

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

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

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

28 13-8-21.

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

1 13-8-22.

2 (a) Whenever any farm tractor or farm equipment dealer enters into a franchise agreement
3 with a manufacturer, distributor, or wholesaler wherein the dealer agrees to maintain an
4 inventory of farm tractors, farm equipment, or repair parts and the franchise is subsequently
5 terminated, the manufacturer, distributor, or wholesaler shall repurchase the inventory as
6 provided in this article. The dealer may keep the inventory if he or she desires. If the dealer
7 has any outstanding debts to the manufacturer, distributor, or wholesaler, then the
8 repurchase amount may be credited to the dealer's account.

9 (b) The manufacturer, distributor, or wholesaler shall repurchase that inventory previously
10 purchased from him and held by the dealer on the date of termination of the contract. The
11 manufacturer, distributor, or wholesaler shall pay 100 percent of the actual dealer cost,
12 including freight, of all new, unsold, undamaged, and complete farm tractors, or other units
13 of farm equipment which are resalable and 100 percent of the current wholesale price of
14 all new, unused, undamaged repair parts and accessories which are listed in the
15 manufacturer's current parts price list. The manufacturer, distributor, or wholesaler shall
16 pay the dealer 5 percent of the current wholesale price on all new, unused, and undamaged
17 repair parts returned to cover the cost of handling, packing, and loading. The manufacturer,
18 distributor, or wholesaler shall have the option of performing the handling, packing, and
19 loading in lieu of paying the 5 percent sum imposed by this subsection for these services.

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

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

24 (1) Any repair part which has a limited storage life or is otherwise subject to
25 deterioration;

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

27 (3) Any repair part which, because of its condition, is not resalable as a new part without
28 repackaging or reconditioning;

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

32 (5) Any inventory which the dealer desires to keep, provided the dealer has a contractual
33 right to do so;

34 (6) Any farm tractor or unit of farm equipment which is not in new, unused, undamaged,
35 complete condition;

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

1 (8) Any inventory which was ordered by the dealer on or after the date of receipt of the
2 notification of termination of the franchise; or

3 (9) Any inventory which was acquired by the dealer from any source other than the
4 manufacturer, distributor, or wholesaler.

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

11 13-8-23.

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

24 13-8-24.

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

1 13-8-25.
2 The provisions of this article shall apply to all contracts now in effect which have no
3 expiration date and are a continuing contract and all other contracts entered into or renewed
4 on or after November 1, 1982 July 1, 2001. Any contract in force and effect ~~on November~~
5 ~~1, 1982~~ prior to July 1, 2001, which by its own terms will terminate on a date subsequent
6 thereto shall be governed by the law as it existed prior to ~~this article~~ July 1, 2001."

7 **SECTION 2.**

8 All laws and parts of laws in conflict with this Act are repealed.