

House Bill 728

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

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
3 tractor or farm equipment manufacturers, distributors, and dealers; to define certain terms;
4 to regulate sales of certain tractors or farm equipment; to regulate the establishment and
5 relocation of dealerships; to prohibit certain unfair competition with tractor or farm
6 equipment dealers; to make editorial changes; to provide for applicability; to provide for
7 severability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **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 "ARTICLE 2

14 13-8-11.

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

21 13-8-12.

22 As used in this article, the term:

1 (0.1) 'Dealership' means the business of selling or attempting to effect the sale by a
2 dealer of new tractors or farm equipment or the right conferred by written or oral
3 agreement with the manufacturer, distributor, or wholesaler, for a definite or indefinite
4 period of time to sell or attempt to effect the sale of new tractors or farm equipment.

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

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

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

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

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

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

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

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

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

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

1 (10.1) 'National account customer' means a user of new tractors or farm equipment
 2 which has multiple locations in two or more relevant market areas serviced by tractor or
 3 farm equipment dealers of the same product line or make of such tractor or farm
 4 equipment and which purchases or leases new tractors or farm equipment directly from
 5 a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or
 6 division, or wholesale branch or division.

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

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

14 (12.1) 'Relevant market area' means any county or counties within this state in which a
 15 tractor or farm equipment dealer actually sells or solicits or advertises the sale of new or
 16 used tractors or farm equipment to the consuming public or the geographic area for which
 17 such tractor or farm equipment dealer is assigned responsibility for selling or soliciting
 18 or advertising the sale of tractors or farm equipment under the terms of a franchise,
 19 whichever is greater.

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

25 (14) 'Tractors or farm equipment' means those tractors and ~~other farm implements~~
 26 equipment primarily designed for ~~use~~ or used in agriculture, horticulture, irrigation for
 27 agriculture or horticulture, lawn and garden, light industrial, or utility, as these terms are
 28 customarily used in the industry.

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

1 13-8-13.

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

7 13-8-14.

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

10 13-8-15.

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

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

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

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

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

29 (1) To refuse to deliver in reasonable quantities and within a reasonable time after receipt
30 of dealer's order to any tractor ~~and~~ or farm equipment dealer having a franchise or
31 contractual agreement for the retail sale of new tractors ~~and~~ or farm equipment sold or
32 distributed by such manufacturer, distributor branch or division, factory branch or
33 division, or wholesale branch or division any tractor or item of farm equipment covered
34 by such franchise or contract specifically advertised or represented by such manufacturer,
35 distributor, wholesaler, distributor branch or division, factory branch or division, or

1 wholesale branch or division to be available for immediate delivery; provided, however,
 2 that the failure to deliver any such tractor or unit of farm equipment shall not be
 3 considered a violation of this article if such failure is due to prudent and reasonable
 4 restriction on extension of credit by the franchisor to the tractor or farm equipment dealer,
 5 an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide
 6 shortage of materials, freight embargo, or other cause over which the manufacturer,
 7 distributor, or wholesaler, or any agent thereof, shall have no control;

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

20 (3)(A) To terminate, ~~or cancel,~~ or fail to renew the franchise or selling agreement of
 21 any such dealer without due cause, as defined in subparagraph ~~(B)~~ (C) of this
 22 paragraph. The termination, cancellation, or nonrenewal of a franchise or selling
 23 agreement, without due cause, shall constitute an unfair termination or cancellation,
 24 regardless of the specified time period of such franchise or selling agreement. Except
 25 where the grounds for such termination or cancellation fall within division (iii) of
 26 subparagraph ~~(B)~~ (C) of this paragraph, such manufacturer, distributor, wholesaler,
 27 distributor branch or division, factory branch or division, or wholesale branch or
 28 division, or officer, agent, or other representative thereof, shall notify a tractor ~~and~~ or
 29 farm equipment dealer in writing of the termination or cancellation of the franchise or
 30 selling agreement of such dealer at least ~~60~~ 180 days before the effective date thereof,
 31 stating the specific grounds for such termination or cancellation; and in no event shall
 32 the contractual term of any such franchise or selling agreement expire, without the
 33 written consent of the tractor ~~and~~ or farm equipment dealer involved, prior to the
 34 expiration of at least ~~60~~ 180 days following such written notice. During the ~~60~~ 180 day
 35 period, either party may, in appropriate circumstances, petition a court to modify such
 36 ~~60~~ 180 day stay or to extend it pending a final determination of such proceedings on the
 37 merits. The court shall have authority to grant preliminary and final injunctive relief.

1 Should the tractor or farm equipment dealer cure the claimed deficiency within the 180
 2 day period, then the franchise or selling agreement shall not be terminated, canceled,
 3 or nonrenewed

4 (B) Before termination, cancellation, or nonrenewal of the franchise or selling
 5 agreement because of the tractor or farm equipment dealer's failure to meet reasonable
 6 marketing criteria or market penetration, the manufacturer, factory branch, factory
 7 representative, distributor, wholesaler, distributor branch, or distributor representative
 8 shall provide written notice of such intention at least one year in advance. After such
 9 notice, the manufacturer or other entity issuing the notice shall make fair and
 10 reasonable efforts to work with the tractor or farm equipment dealer to gain the desired
 11 market share including, without limitation, reasonably making available to the tractor
 12 or farm equipment dealer an adequate inventory of new tractors or farm equipment and
 13 parts and competitive marketing programs. The manufacturer or other entity, at the end
 14 of the one-year notice period, may terminate, cancel, or elect not to renew the
 15 agreement only upon further written notice specifying the reasons for determining that
 16 the tractor or farm equipment dealer failed to meet reasonable criteria or market
 17 penetration. Such written notice must specify that termination, cancellation, or
 18 nonrenewal is effective 180 days from the date of the notice. Either party may petition
 19 the court pursuant to subparagraph (A) of this paragraph for the relief specified therein.

20 Should the tractor or farm equipment dealer cure the claimed deficiency within the 180
 21 day period, then the franchise or selling agreement shall not be terminated, canceled,
 22 or nonrenewed.

23 ~~(B)~~(C) As used in this paragraph, tests for determining what constitutes due cause for
 24 a manufacturer or distributor to terminate, cancel, or refuse to renew a franchise
 25 agreement shall include whether the tractor or farm equipment dealer:

- 26 (i) Has transferred an ownership interest in the dealership without the manufacturer's
 27 or distributor's consent;
- 28 (ii) Has made a material misrepresentation in applying for or acting under the
 29 franchise agreement;
- 30 (iii) Has filed a voluntary petition in bankruptcy or has had an involuntary petition
 31 in bankruptcy filed against the tractor or farm equipment dealer which has not been
 32 discharged within 30 days after the filing, is in default under the provisions of a
 33 security agreement in effect with the manufacturer or distributor, or is in receivership;
- 34 (iv) Has engaged in an unfair business practice;
- 35 (v) Has inadequately represented the manufacturer's or distributor's products with
 36 respect to sales, service, or warranty work;
- 37 (vi) Has engaged in conduct which is injurious or detrimental to the public welfare;

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

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

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

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

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

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

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

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

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

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

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

9 (8.1) To prevent a tractor or farm equipment dealer from having an investment in or
 10 holding a dealership contract for the sale of competing product lines or makes of tractors
 11 or farm equipment, or to require a tractor or farm equipment dealer to provide separate
 12 facilities for competing product lines or makes of tractors or farm equipment;

13 (8.2) To impose, directly or indirectly, unreasonable restrictions on the tractor or farm
 14 equipment dealer relative to transfer, sale, renewal, termination, discipline,
 15 noncompetition, or site control;

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

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

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

26 (1) To own, operate, or control or to participate in the ownership, operation, or control
 27 of a dealership in this state;

28 (2) To establish in this state an additional dealership in which such entity has an interest;

29 (3) To own, operate, or control, directly or indirectly, an interest in a dealership in this
 30 state;

31 (4) To compete unfairly with a new tractor or farm equipment dealer of the same product
 32 line or make of new tractors or farm equipment operating pursuant to a franchise or sales
 33 agreement in this state.

34 (e) Subsection (d) of this Code section shall not be deemed to prohibit the making of a
 35 loan by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a
 36 factory branch or division, or a wholesale branch or division, or officer, agent, or other
 37 representative thereof to any person or entity for the purpose of acquiring a dealership, nor

1 shall it be deemed to prohibit the ownership, operation, or control of a dealership by a
 2 manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch
 3 or division, or a wholesale branch or division, or officer, agent, or other representative
 4 thereof under the following circumstances:

5 (1) For a temporary period, not to exceed three years, during the transition from one
 6 dealership owner to another;

7 (2) If a prospective new tractor or farm equipment dealer is not available to own or
 8 operate the dealership within a geographic market area not serviced by an existing tractor
 9 or farm equipment dealer and the manufacturer, distributor, wholesaler, distributor branch
 10 or division, factory branch or division, or wholesale branch or division, or officer, agent,
 11 or other representative thereof contracts with or employs a third party to open or operate
 12 a dealership owned or controlled by such entity pursuant to a bona fide written agreement
 13 or plan giving a third party ownership of the dealership over time;

14 (3) During the period the dealership is being sold pursuant to a bona fide contract,
 15 shareholder agreement, or purchase option to the operator of the dealership; or

16 (4) If the manufacturer, distributor, wholesaler, distributor branch or division, factory
 17 branch or division, or wholesale branch or division, or officer, agent, or other
 18 representative thereof is an owner, operator, or controller as of January 1, 2001, of a
 19 dealership that has been engaged in the retail sale of new tractor and farm equipment
 20 within the same geographic market area for a continuous two-year period of time
 21 immediately before January 1, 2001, and a prospective new tractor or farm equipment
 22 dealer is not available to own or operate the dealership in a manner consistent with the
 23 public interest.

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

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

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

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

3 13-8-15.1.

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

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

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

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

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

17 (b) Any existing dealership in whose relevant market area a manufacturer, distributor, or
18 wholesaler intends to establish a new dealership or to relocate a current dealership may
19 within 60 days of the receipt of the notice petition a superior court to enjoin or prohibit the
20 establishment of the new or relocated dealership within the relevant market area of the
21 existing dealership. The court or other tribunal of competent jurisdiction shall enjoin or
22 prohibit the establishment of the new or relocated dealership within the relevant market
23 area of the existing dealership unless the manufacturer, distributor, or wholesaler can prove
24 by a preponderance of the evidence that the existing dealership is not providing adequate
25 representation of the product line or make of tractor or farm equipment in the existing
26 dealership's relevant market area and that the new or relocated dealership is necessary to
27 provide the public with reliable and convenient sales and service within the relevant market
28 area. The burden of proof in establishing adequate representation shall be on the
29 manufacturer, distributor, or wholesaler. In determining whether the existing dealership is
30 providing adequate representation and whether the new or relocated dealership is
31 necessary, the court or other tribunal may consider, but is not limited to considering, the
32 following:

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

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

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

9 (4) Any actions by the manufacturer, distributor, or wholesaler in denying its existing
10 dealership of the same product line or make the opportunity for reasonable growth,
11 market expansion, or relocation, including the availability of the product line or make of
12 tractor or farm equipment in keeping with the reasonable expectations of the
13 manufacturer, distributor, or wholesaler in providing an adequate number of dealerships
14 in the relevant market area;

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

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

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

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

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

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

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

34 (c) This Code section shall not apply:

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

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

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

7 13-8-15.2.

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

13 (2)(A)(i) This subsection shall not apply to manufacturer, distributor, or wholesaler
14 sales of any new tractor or farm equipment for use within this state to any department,
15 agency, or authority of federal, state, or local government or any national account
16 customer, if such tractor or farm equipment is prepared for delivery and serviced by
17 a franchisee the relevant market area of which includes in whole or in part the
18 geographic area in which the tractor or farm equipment is to be used primarily. The
19 manufacturer, distributor, or wholesaler shall compensate the tractor or farm
20 equipment dealer reasonably for the preparation and delivery of such tractor or farm
21 equipment and pay to the tractor or farm equipment dealer a commission on the sale
22 or lease of the tractor or farm equipment equal to ten percent of the cost of the
23 equipment if the tractor or farm equipment dealer had purchased it for sale or lease
24 to its customers. Such commission shall be compensation for the tractor or farm
25 equipment dealer's direct or indirect investment made and obligations incurred to
26 perform its duties under the franchise agreement including, without limitation,
27 marketing and demonstrating new equipment where appropriate, making installation
28 and necessary mechanical adjustments and repairs, both at the time of delivery and
29 later as may be desirable, ensuring proper and efficient operation of the new tractor
30 or farm equipment in compliance with standard policies and practices of such
31 manufacturer, distributor, or wholesaler which are in effect, maintaining an adequate
32 inventory of parts and trained technical staff in the dealer's relevant market area,
33 fulfilling warranty obligations, and providing all other necessary postdelivery services
34 as may be required of the tractor or farm equipment dealer. Such compensation shall
35 be paid or credited in the same manner as that provided in Code Section 13-8-17.

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

8 (B) For purposes of this paragraph, any tractor or farm equipment shall be considered
 9 to be used primarily within a tractor or farm equipment dealer's relevant market area
 10 if such tractor or farm equipment is located or housed at a user's facility located within
 11 such relevant market area. If such tractor or farm equipment is located or housed
 12 within the relevant market area of more than one franchised tractor or farm equipment
 13 dealer or not within the relevant market area of any franchised tractor or farm
 14 equipment dealer for such product line or make, the amounts payable pursuant to this
 15 paragraph shall be payable to the franchised tractor or farm equipment dealer having
 16 service facilities closest to the location of such equipment.

17 13-8-16.

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

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

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

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

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

35 (3) Pursuant to the provisions of this subsection, a manufacturer or distributor must allow
 36 surplus parts return authority on a dollar value of parts equal to 8 percent of the total

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

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

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

23 (6) Applicable credit pursuant to this subsection must be issued to the tractor or farm
24 equipment dealer within 30 days after receipt of his or her returned parts by the
25 manufacturer or distributor; or

26 (7) Packing and return freight expense incurred in any return of surplus parts pursuant
27 to the terms of this Code section shall be borne by the tractor or farm equipment dealer.

28 13-8-17.

29 (a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory
30 branch or division, or wholesale branch or division shall provide a fair and reasonable
31 warranty agreement on any new tractor or unit of farm equipment which it sells and shall
32 fairly compensate each of its tractor or farm equipment dealers for labor and parts used in
33 fulfilling such warranty agreement. All claims for payment under such warranty
34 agreements made by tractor ~~and~~ or farm equipment dealers under this subsection for such
35 labor and parts shall be paid within 30 days following their approval. All such claims shall
36 be either approved or disapproved within 30 days after their receipt; and, when any such

1 claim is disapproved, the tractor or farm equipment dealer who submits it shall be notified
2 in writing of its disapproval within such period; and each such notice shall state the specific
3 grounds upon which the disapproval is based. Any special handling of claims required of
4 the tractor or farm equipment dealer by the manufacturer, distributor, wholesaler,
5 distributor branch or division, factory branch or division, or wholesale branch or division,
6 and not uniformly required of all tractor or farm equipment dealers of that make, may be
7 enforced only after 30 days' notice in writing to the tractor or farm equipment dealer and
8 upon good and sufficient reason.

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

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

26 (d) A manufacturer, distributor, or wholesaler may audit warranty claims submitted by its
27 new tractor or farm equipment dealers only for a period of up to one year following
28 payment of such claims, and may charge back to its tractor or farm equipment dealers only
29 those amounts based upon paid claims shown by audit to be false or fraudulent.

30 13-8-17.1.

31 Any audit of a tractor or farm equipment dealer by or on behalf of a manufacturer,
32 distributor, or wholesaler for sales incentives, service incentives, rebates, or other forms
33 of incentive compensation shall be completed not later than three months after the date of
34 the termination of such incentive compensation program; provided, however, that this
35 limitation shall not apply in any case 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 tractor or farm equipment dealer including,
4 but not limited to, the franchise offering, the franchise agreement, sales of goods, services
5 and advertising, leases or mortgages of real or personal property, promises to pay, security
6 interests, pledges, insurance contracts, advertising contracts, construction or installation
7 contracts, servicing contracts, and all other such agreements in which the manufacturer,
8 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 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 tractor or farm equipment dealer enters into a franchise agreement with
3 a manufacturer, distributor, or wholesaler wherein the tractor or farm equipment dealer
4 agrees to maintain an inventory of tractors, farm equipment, or repair parts and the
5 franchise is subsequently terminated, the manufacturer, distributor, or wholesaler shall
6 repurchase the inventory as provided in this article. The tractor or farm equipment dealer
7 may keep the inventory if he or she desires. If the tractor or farm equipment dealer has any
8 outstanding debts to the manufacturer, distributor, or wholesaler, then the repurchase
9 amount may be credited to the tractor or farm equipment dealer's account.

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

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

25 (d) The provisions of this article shall not require the repurchase from a tractor or farm
26 equipment dealer of:

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

29 ~~(2)~~(1) Any single repair part which is priced as a set of two or more items;

30 ~~(3)~~(2) Any repair part which, because of its condition, is not resalable as a new part
31 without repackaging or reconditioning;

32 ~~(4)~~(3) Any inventory for which the tractor or farm equipment dealer is unable to furnish
33 evidence, reasonably satisfactory to the manufacturer, distributor, or wholesaler, of good
34 title, free and clear of all claims, liens, and encumbrances;

35 ~~(5)~~(4) Any inventory which the tractor or farm equipment dealer desires to keep,
36 provided the tractor or farm equipment dealer has a contractual right to do so;

1 ~~(6)~~(5) Any tractor or unit of farm equipment which is not in new, unused, undamaged,
2 complete condition;

3 ~~(7)~~(6) Any repair parts which are not in new, unused, undamaged condition;

4 ~~(8)~~(7) Any inventory which was ordered by the tractor or farm equipment dealer on or
5 after the date of receipt of the notification of termination of the franchise; or

6 ~~(9)~~(8) Any inventory which was acquired by the tractor or farm equipment dealer from
7 any source other than the manufacturer, distributor, or wholesaler.

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

15 13-8-23.

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

29 13-8-24.

30 A manufacturer, distributor, or wholesaler, as the case may be, will fully indemnify and
31 hold harmless its tractor or farm equipment dealer against any losses including, but not
32 limited to: court costs and reasonable attorney's fees or damages arising out of complaints,
33 claims, or lawsuits including, but not limited to, strict liability, negligence,
34 misrepresentation, express or implied warranty, or rescission of the sale where the
35 complaint, claim, or lawsuit relates to the manufacture, assembly, or design of new items

1 covered by this article, parts or accessories, or other functions by the manufacturer,
2 distributor, or wholesaler which are beyond the control of the tractor and farm equipment
3 dealer.

4 13-8-25.

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

10

SECTION 2.

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

14

SECTION 3.

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