

## CHAPTER 686

## SALES, DISTRIBUTION, AND FRANCHISE RELATIONSHIPS

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**686.201 Sales representative contracts involving commissions; requirements; termination of agreement; civil remedies.—**

(1) As used in this act, the term:

(a) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which compensation is expressed as a percentage of the dollar amount of orders or sales.

(b) "Principal" means a person who does not have a permanent or fixed place of business in this state and who:

1. Manufactures, produces, imports, or distributes a product for wholesale, except for fresh commodities;
2. Contracts with a sales representative to solicit orders for the product; and
3. Compensates the sales representative, in whole or in part, by commission.

(c) "Sales representative" means a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission, but does not include a person who places orders for his own account for resale.

(2) When a principal contracts with a sales representative to solicit wholesale orders within this state, the contract shall be in writing and shall set forth the method by which the commission is to be computed and paid. The principal shall provide the sales representative with a signed copy of the contract and shall obtain a signed receipt for the contract from the sales representative.

(3)(a) When the contract between a sales representative and a principal is terminated and the contract was not reduced to writing, all commissions due shall be paid within 30 days of termination.

(b) In the event a principal fails to comply with the provisions of paragraph (a), the sales representative has a cause of action for damages equal to double the amount of commission found to be due. The prevailing party in any such action is entitled to an award of reasonable attorney's fees and court costs.

*History.—s. 1, ch. 84–76.*

**686.40 Farm Equipment Manufacturers and Dealers Act; short title.—**Sections 686.40–686.418 shall be known and may be cited as the "Farm Equipment Manufacturers and Dealers Act."

*History.—s. 1, ch. 84–217.*

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

(1) The Legislature finds and declares that the distribution and sale of tractors and farm equipment in this state vitally affects the general economy of the state, the public interest, and the public welfare and that, in the exercise of its police power, it is necessary to regulate the conduct of tractor and farm equipment manufacturers, distributors, and dealers and their representatives doing business in this state in order to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon its citizens.

(2) In order to promote the intention and policies announced in this section, the provisions of ss. 686.40–686.418 shall be liberally construed.

*History.—s. 2, ch. 84–217.*

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

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

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

(3) "Distributor representative" means a representative employed by a distributor, distributor branch, or wholesaler.

(4) "Factory branch" means a branch office maintained by a manufacturer which manufactures and assembles tractors and farm equipment for sale to dis-

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

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

(6) "Farm equipment" means those farm implements which are primarily designed for use in agriculture.

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

(8) "Franchisee" means a tractor or farm equipment dealer to whom a franchise is offered or granted.

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

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

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

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

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

(d) Any artifice employed to deceive another.

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

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

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

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

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

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

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

(b) A public officer while performing his duties as such officer.

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

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

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

**History.**—s. 3, ch. 84-217.

### **686.403 Application of ss. 686.40-686.418.—**

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

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

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

**History.**—ss. 4, 9, 17, ch. 84-217.

### **686.405 Warranty agreements; claims; compensation of dealers.—**

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

(2)(a) Each claim for payment under such warranty agreements made by a tractor or farm equipment dealer for such labor and parts shall be paid within 30 days following its approval. Each such claim shall be either approved or disapproved within 30 days after its receipt. When any such claim is disapproved, the tractor or farm equipment dealer who submitted it shall be notified in writing of such disapproval within such period, and such notice shall state the specific grounds upon which the disapproval is based.

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

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

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

**History.**—s. 8, ch. 84-217.

#### **686.406 Parts; availability; return.—**

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

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

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

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

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

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

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

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

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

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

**History.**—s. 7, ch. 84-217.

#### **686.407 Repurchase of inventory upon termination of franchise agreement.—**

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

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

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

(b) Eighty-five percent of the current wholesale price of all new, unused, and undamaged repair parts and accessories which are listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list. The manufacturer, distributor, or wholesaler shall also pay the dealer 6 percent of the current wholesale price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. However, the manufacturer, distributor, or wholesaler shall have the option of performing the han-

ding, packing, and loading in lieu of paying the 6-percent sum imposed in this subsection for these services; and, in this event, after receipt by the dealer of the full repurchase amount as provided in this section, the dealer shall make available to the manufacturer, distributor, or wholesaler, at the dealer's address or at the places at which the tractors and equipment are located, all tractors and items of farm equipment previously purchased by the dealer.

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

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

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

(b) Any single repair part which is priced as a set of two or more items.

(c) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.

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

(e) Any inventory which the dealer desires to keep, if the dealer has a contractual right to keep it.

(f) Any tractor or item of farm equipment which is not in new, unused, undamaged, and complete condition.

(g) Any tractor or item of farm equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the manufacturer, distributor, or wholesaler receives a reasonable allowance for such usage or deterioration.

(h) Any repair parts which are not in new, unused, and undamaged condition.

(i) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise or contractual agreement.

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

(5) If any manufacturer, distributor, or wholesaler fails or refuses to repurchase any inventory covered under the provisions of this section within 60 days after termination of a dealer's contract, he is civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the dealer, the dealer's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

**History.**—s. 14, ch. 84-217; s. 42, ch. 85-62.

#### **686.408 Repurchase of inventory upon death or incapacity of dealer.—**

(1) In the event of the death or incapacity of a dealer or the majority stockholder of a corporation operating as a dealer, the manufacturer, distributor, or wholesaler shall, at the option of the heirs at law, if the dealer died

intestate, or the devisees or transferees under the terms of the deceased dealer's last will and testament, if the dealer died testate, repurchase the inventory from such heirs or devisees as if the manufacturer, distributor, or wholesaler had terminated the contract; and the inventory repurchase provisions of s. 686.407 are made expressly applicable to the repurchase under this section. The heirs or devisees shall have 1 year from the date of the death of the dealer or majority stockholder to exercise their option under this section. However, nothing in this section requires the repurchase of inventory if the heirs or devisees and the manufacturer, distributor, or wholesaler enter into a new franchise agreement to operate the retail dealership.

(2) This section is subject to that portion of the manufacturer's, distributor's, or wholesaler's contract or agreement with the dealer pertaining to death of the dealer or succession to the extent such contract or agreement is not inconsistent with this section.

**History.**—s. 15, ch. 84-217.

#### **686.409 Compensation for inventory upon refusal to renew, termination of, or restriction on transfer of a franchise.—**

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

**History.**—s. 10, ch. 84-217.

#### **686.41 Indemnification of dealer with respect to legal actions.—**

A manufacturer, distributor, or wholesaler shall fully indemnify and hold harmless his dealer against any losses including, but not limited to, court costs and reasonable attorney's fees or damages arising out of any complaint, claim, or lawsuit involving, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission of the sale when the complaint, claim, or lawsuit relates to the manufacture, assembly, or design of new items covered by ss. 686.40-686.418, parts or accessories, or other functions by the manufacturer, distributor, or wholesaler which are beyond the control of the dealer.

**History.**—s. 16, ch. 84-217; s. 60, ch. 87-226.

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

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

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

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

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

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

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

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

(c)1. To terminate or cancel the franchise or selling agreement of any tractor or farm equipment dealer without due cause, as defined in subparagraph 2. The nonrenewal of a franchise or selling agreement, without due cause, constitutes an unfair termination or cancellation, regardless of the specified time period of such franchise or selling agreement. Except when the ground for such termination or cancellation falls within subparagraph 2.c., such manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof, shall notify a tractor or farm equipment dealer in writing of the termination or cancellation of the franchise or selling agreement of such dealer at least 90 days before the effective date of the termination or cancellation, stating the specific ground for such termination or cancellation. In no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the tractor or farm equipment dealer involved, prior to the expiration of at least 90 days following such written notice. During the 90-day period, either party may, in appropriate circumstances, petition a court of competent jurisdiction to modify such 90-day stay or to extend it pending a final determination of such proceeding on the merits. The court shall have authority to grant temporary, preliminary, and final injunctive relief.

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

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

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

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

d. Has engaged in unfair business or trade practices;

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

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

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

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

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

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

k. Has failed to comply with the terms of the dealership or franchise agreement.

(d) To resort to or use any false or misleading advertisement in connection with his business as such manu-

facturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof.

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

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

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

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

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

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

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

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

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

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

**History.**—ss. 5, 6, ch. 84-217.

**686.415 Unenforceable contract or franchise agreement.**—Any contract or franchise agreement or part thereof or practice thereunder which is in violation of any provision of ss. 686.40–686.418 is deemed against public policy and is void and unenforceable.

**History.**—s. 13, ch. 84-217.

**686.417 Remedies.**—

(1) In addition to temporary, preliminary, or final injunctive relief as provided in s. 686.413(3)(c)1., any person who is aggrieved or injured in his business or property by reason of anything forbidden in ss. 686.40–686.418 may bring an action therefor in the appropriate circuit court of this state and shall recover the actual damages sustained and the costs of such action, including a reasonable attorney's fee.

(2) Without regard and in addition to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of ss. 686.40–686.418 may bring an action to obtain a declaratory judgment that an act, action, or practice violates such sections and to enjoin a manufacturer, distributor, wholesaler, or dealer who has violated, is violating, or is otherwise likely to violate such sections.

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

(4) In an action for money damages, if a judge or jury finds that the defendant acted maliciously, the judge or jury may award punitive damages as permitted by state law.

(5) The Department of Legal Affairs or the state attorney, if a violation of ss. 686.40–686.418 occurs in his judicial circuit, may bring an action for injunctive or other appropriate civil relief for any violation of ss. 686.40–686.418.

(6) The remedies provided in this section are in addition to any other remedies provided by law or in equity.

**History.**—s. 11, ch. 84-217.

**686.418 Effect of act on other remedies.**—Sections 686.40–686.418 are supplemental to and do not pre-



empt local ordinances dealing with prohibited or unlawful conduct in the manufacturing, distribution, wholesaling, advertising, or sale of tractors and other items of farm equipment if such ordinances are not inconsistent with such sections.

**History.**—s. 12, ch. 84-217.

**686.501 Definitions.**—As used in ss. 686.501-686.506:

(1) "Art" means a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term shall also include a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, but is not limited to, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.

(2) "Artist" means the creator of a work of art or, if he is deceased, the artist's heirs or personal representative.

(3) "Art dealer" means a person engaged in the business of selling works of art, a person who is a consignee of a work of art, or a person who, by occupation, holds himself out as having knowledge or skill peculiar to works of art or rare documents or prints, or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who, by occupation, holds himself out as having such knowledge or skill. The term "art dealer" includes an auctioneer who sells works of art, rare maps, rare documents, or rare prints at public auction as well as the auctioneer's consignor or principal. The term "art dealer" does not include a cooperative which is totally owned by artist members.

(4) "Creditor" means a "creditor" as defined in s. 671.201.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Author" or "authorship" refers to the creator or creation of a work of art or to the period, culture, source, or origin with which the creation of the work is identified in the description of the work.

(7) "Counterfeit" means a work of art made or altered with intent to deceive in such a manner that it appears to have an authorship which it does not in fact possess. The term "counterfeit" includes any work of art made, altered, or copied in such a manner that it appears to have an authorship which it does not in fact possess, even though the work may not have been made with intent to deceive.

(8) "Written instrument" means a written or printed agreement, bill of sale, or any other written or printed note or memorandum of the sale or exchange of a work of art by an art dealer, and includes a written or printed catalog or other prospectus of a forthcoming sale as well as any written or printed corrections or amendments thereof.

(9) "Consignor" means an artist or any person, partnership, firm, association, or corporation which delivers a work of art to an art dealer for the purpose of sale, or exhibition and sale, to the public on a commission, fee, or other basis of compensation.

(10) "Consignee" means an art dealer who receives and accepts a work of art from a consignor for the purpose of sale, or exhibition and sale, to the public on a commission, fee, or other basis of compensation.

**History.**—s. 1, ch. 86-118; s. 19, ch. 91-110.

**686.502 Consignment relationship; notice; proceeds of sales held in trust; contract requirements.**—

(1) Whenever a consignor delivers, or causes to be delivered, a work of art to a consignee for the purpose of sale, or exhibition and sale, to the public on a commission, fee, or other basis of compensation, the delivery to and acceptance thereof by the art dealer is deemed to be "on consignment"; and, with respect to the work of art, such consignee shall thereafter be deemed to be the agent of such consignor.

(2) Whenever a consignor delivers or causes to be delivered a work of art to a consignee, such consignor shall give notice to the public by affixing to such work of art a sign or tag which states that such work of art is being sold subject to a contract of consignment, or such consignee shall post a clear and conspicuous sign in the consignee's place of business giving notice that some works of art are being sold subject to a contract of consignment.

(3) The proceeds of sale of a work of art shall be held in trust by the consignee for the benefit of the consignor. Such proceeds shall be applied first in payment of any amount due to the consignor.

(4) Any provision of a contract or agreement whereby the consignor waives any of the provisions of this section is void.

**History.**—s. 2, ch. 86-118.

**686.503 Contract provisions.**—Whenever a consignee accepts a work of art for the purpose of sale, or exhibition and sale, to the public on a commission, fee, or other basis of compensation, there shall be a written contract or agreement between the consignor and consignee which shall include, but not be limited to, the following provisions:

(1) The proceeds of the sale of the work of art shall be delivered to the consignor at a schedule agreed upon by the consignor and consignee.

(2) The consignee shall be responsible for the stated value of the work of art in the event of the loss of or damage to such work of art while it is in the possession of such consignee.

(3) The work of art shall only be sold by the consignee for an amount at least equal to the amount agreed upon by the consignor in writing.

(4) The work of art may be used or displayed by the consignee or others only with the prior written consent of the consignor and only if the artist is acknowledged in such use or display.

(5) A work of art delivered to an art dealer by an artist for the purpose of exhibition or sale and the artist's share of the proceeds of the sale of the work by the dealer, whether to the dealer on his own account or to a third person, shall create a priority in favor of the artist over the claims, liens, or security interests of the creditors of the art dealer, notwithstanding any provisions of the Uniform Commercial Code.

**History.**—s. 3, ch. 86-118.

**686.504 Warranties by art dealers; written statement; terminology.**—Any provision in any other law to the contrary notwithstanding:

(1) When an art dealer, in selling or changing a work of art, furnishes to a buyer of such work who is not an art dealer a written instrument which, in describing the work, identifies it with any authorship, the description shall be presumed to be part of the basis of the transaction and shall create an express warranty of the authenticity of the authorship as of the date of the sale or exchange. The warranty shall not be negated or limited because the art dealer in the written instrument did not use formal words such as "warrant" or "guarantee," because the art dealer did not have a specific intention or authorization to make the warranty, or because any statement relevant to authorship is, reports to be, or is capable of being, merely the art dealer's opinion.

(2) In construing the degree of authenticity of authorship warranted, due regard shall be given to the terminology used in describing the authorship and the meaning accorded to such terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place. A written instrument delivered pursuant to a sale which took place in this state which, in describing the work, states, for example:

(a) That the work is by a named author or has a named authorship without any other limiting words: means unequivocally that the work is by the named author or has the named authorship.

(b) That the work is attributed to a named author: means a work of the period of the author, attributed to him, but not with certainty by him.

(c) That the work is of a school of a named author: means a work of the period of the author, by a pupil or close follower of the author but not by the author.

(d) That the rare map, rare print, sculpture, drawing, or other work of art is of the authorship or from the period or date attributed to the work of art.

**History.**—s. 4, ch. 86-118.

**686.505 Construction of language.**—Words relevant to the creation of an express warranty of authenticity of authorship of a work of art and words tending to negate or limit warranty shall be construed where reasonable as consistent with each other by parol or extrinsic evidence; negation or limitation is inoperative to the extent that the construction is unreasonable. Subject to the limitations hereinafter set forth, the construction shall be deemed unreasonable in any of the following cases:

(1) The language tending to negate or limit the warranty is not conspicuous, written, and contained in a provision separate and apart from any language relevant to the creation of the warranty, in words which would clearly and specifically apprise the buyer that the seller assumes no risk, liability, or responsibility for the authenticity of the authorship of a work of art. Words of general disclaimer like "all warranties, express or implied, are excluded" are not sufficient to negate or limit express warranty of authenticity of the authorship of a work of art created under s. 686.504 or otherwise.

(2) The work of art is proved to be a counterfeit, and this was not clearly indicated in the description of the work.

(3) The work of art is unqualifiedly stated to be the work of a named author or authorship, or date or period or limited edition, and it is proved that, as of the date of sale or exchange, the statement was false, mistaken, or erroneous.

**History.**—s. 5, ch. 86-118.

**686.506 Rights and liabilities, additional; merchant's liability.**—

(1) The rights and liabilities created by ss. 686.501-686.506 shall be construed to be in addition to and not in substitution, exclusion, or displacement of other rights and liabilities provided by law, including the law of principal and agent except where the construction would, as a matter of law, be unreasonable.

(2) An art dealer who, as buyer, is excluded from obtaining the benefits of an express warranty under ss. 686.501-686.506 shall not be deprived of the benefits of any other provisions of law.

(3) An art dealer whose warranty of authenticity of authorship was made in good faith shall not be liable for damages beyond the return of the purchase price which he received, together with any attorney's fees and costs incurred by reason of the art dealer's refusal to comply with ss. 686.501-686.506.

(4) Any person who violates ss. 686.501-686.506 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Nothing in ss. 686.501-686.506 shall apply to any work of art, when offered for sale or sold at wholesale or retail, framed or unframed, at a price of \$100 or less.

(6) Nothing in ss. 686.501-686.506 shall apply to works of art sold by artists who produce the same directly to a consumer, without the intervention of a wholesale or retail art dealer.

**History.**—s. 6, ch. 86-118, s. 166, ch. 91-224.