

ALABAMA FRANCHISE LAW

Section 1.

This chapter may be cited as “The Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act.”

Section 2.

As used in this chapter, the following terms shall have the ascribed meanings unless the context indicates a different meaning:

(1) **CONTINUING COMMERCIAL RELATIONSHIP.** Any relationship in which the equipment dealer has been granted the right to sell and/or service equipment manufactured by the supplier.

(2) **COST or NET COST.** The actual price paid by the dealer to the manufacturer, distributor, or wholesaler, plus freight costs paid by or charged to the dealer.

(3) **CURRENT NET PRICE.** The dealer’s price as listed in the supplier’s effective price list and/or catalog.

(4) **DEALER CONTRACT, DEALER AGREEMENT, or FRANCHISE.** An agreement or contract, expressed or implied, oral or written, by and between a supplier and a dealer by which the dealer is granted the right to purchase, sell, distribute and/or service the supplier’s equipment, and in which there is a community of interest in the marketing of farm tractors, lawn and garden equipment, light industrial equipment or services related thereto.

(5) **EQUIPMENT.** Machines designed for or adapted and used for agriculture, horticulture, irrigation for agriculture or horticulture, livestock, grazing, lawn and garden, and/or light industrial purposes.

(6) **EQUIPMENT DEALER, TRACTOR DEALER, DEALER, LIGHT INDUSTRIAL DEALER, DEALERSHIP, EQUIPMENT DEALERSHIP.** Any person, partnership, corporation, association or other business entity engaged primarily in the business of selling, retailing, and/or leasing and servicing farm tractors, machines, implements, lawn and garden tractors and equipment, and light industrial tractors and equipment, along with attachments and related repair parts. This does not include lawn and garden dealers or light industrial dealers that are not primarily engaged in the farm equipment business. This does not include persons or companies primarily engaged in the sales of heavy duty industrial tractors and equipment used in road construction or maintenance, or forestry equipment. This does not include persons primarily engaged in the auction sale of tractors and farm equipment and light industrial equipment nor dealers in exclusively used tractors, farm equipment and light industrial equipment.

(7) **GOOD CAUSE.** Failure of the dealer to substantially comply with requirements of the dealer agreement, provided such requirements are not different from, nor enforced differently than those requirements imposed on similarly situated dealers.

(8) **INVENTORY.** Tractors, farm implements, machinery, equipment, lawn and garden tractor and equipment, light industrial tractors and equipment, and repair parts held by the dealer.

(9) MANUFACTURER, DISTRIBUTOR, or WHOLESALER. Any person, company, or corporation who sells or distributes new tractors, lawn and garden equipment, and light industrial equipment to dealers or any branch or division, or any officer, agent, or representative thereof.

(10) RELEVANT MARKET AREA. The geographic area for which a dealer is assigned responsibility for selling or soliciting or advertising the sale of equipment under the terms of a franchise.

(11) SUPPLIER. The manufacturer, wholesaler or distributor of the tractor, equipment, lawn and garden equipment, light industrial tractors and equipment, and/or repair parts to be sold by the dealer.

(12) TERMINATION. The termination, cancellation, nonrenewal, or noncontinuation of the contract or agreement.

(13) WRITTEN NOTICE. In addition to a delivered written notice, such notice shall include notice by any other accepted means including, but not limited to, notice by “electronic mail” or its equivalent.

Section 3.

It shall be a violation of this act for a supplier to do any of the following:

(1) To coerce, compel or require any dealer to order or accept delivery of any equipment or parts with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the dealer has not voluntarily ordered.

(2) To coerce, compel or require any dealer to enter into any agreement, whether written or oral, as a supplement to an existing dealer agreement with such supplier unless such supplemental agreement is imposed on all other dealers in the state doing business with that same supplier.

(3) To discriminate in the delivery of equipment to any dealer in reasonable quantities and within a reasonable time after receipt of the equipment dealer’s order, if such equipment covered by the dealer agreement was specifically represented by the supplier to be available for immediate delivery. However, the failure to deliver the equipment shall not be considered a violation of this chapter if such failure is due to prudent and reasonable restriction on the extension of credit by the supplier to the dealer, an act of God, work stoppage or delay due to a strike or a labor difficulty, a bona fide shortage of materials, freight embargo, or other causes over which the supplier has no control.

(4) To terminate, cancel, or fail to renew a dealer’s agreement or substantially alter that dealer’s competitive circumstances without good cause.

(5) To condition the renewal or extension of a dealer agreement on the dealer’s substantial renovation of the dealer’s place of business or on the construction, purchase, acquisition, or rental of a new place of business by the dealer, unless:

- a. the dealer is given at least 12 months notice in advance;
- b. the supplier’s demand is shown to be reasonable; and

c. the supplier can demonstrate an actual need or necessity for such a change in the place of business in order that the dealer be in a position to adequately serve the public's needs in his or her trade area at that particular time.

(6) To discriminate in the offering of net prices, sale promotion plans, or any and all other devices or programs that affect the ultimate net price paid by the dealer for any item of equipment offered to the dealer by the supplier. "Item of equipment" shall include, but not be limited to, tractors, any equipment or attachments, garden tractors, lawn and garden equipment, or any other items offered by supplier to their dealer. This subdivision shall not apply to the sales to an 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, and provided further that there is no violation of this subdivision so long as a supplier sells or offers to sell its products to all of its dealers at an equal price.

(7) To prevent or attempt to prevent, by contract or otherwise, any dealer from changing the capital structure of his dealership or the means or sources through which he or she finances the operation of his dealership so long as the dealer continues to meet the reasonable capital requirements which have previously been agreed upon by dealer and supplier and the change does not result in a change of controlling interest, or in the executive management of the dealership.

(8) To prevent or attempt to prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any dealer from selling or transferring any part of the interest of any one of them to any other person or persons or party or parties. However, no dealer, officer, partner, member, or stockholder shall have the right to sell, transfer, or assign the dealership and/or the dealer agreement without the written consent of the supplier, provided however that such consent shall not be unreasonably withheld.

(9) To require the dealer to agree to a release, agreement, waiver or any other modification that would relieve supplier or dealer from liability imposed by this chapter.

(10) a. To unreasonably withhold consent, in the event of the death of a dealer or the principal owner of the dealership, to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership or to another qualified individual if the family member or other qualified individual meets the reasonable requirements, business experience and character standards required of all dealers at that time by the supplier. In the event the supplier determines that the designated family member or other qualified individual is not acceptable, the supplier shall provide the dealer or his or her family with written notice of its objections and specific reasons for withholding its consent. Frivolous or capricious reasons will not be acceptable to satisfy the requirements of this section. A supplier shall have 30 days in which to consider and make a determination on a dealer's request to make a transfer to a family member or other qualified individual. As used herein, "family" means a spouse, parents, siblings, children, stepchildren, sons-in-law, daughters-in-law, and lineal descendants including those by adoption of the dealer or principal owner of the dealership.

b. Notwithstanding the foregoing, in the event that a supplier and dealer have previously duly executed an agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked, such agreement shall be observed, even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

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

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

(13) Notwithstanding the provisions of this section, the supplier may determine that a dealer's area of responsibility or trade area does not afford sufficient sale potential to continue to reasonably support a dealer.

Section 4.

(a) Except as provided in subsection (d), notwithstanding any dealer agreement, sales contract, franchise agreement, or other agreement by and between dealer and supplier except where grounds for determination or non renewal of a dealer's agreement or a change in his or her competitive position are contained in subdivision paragraphs (1), (2), (3), (4), (5), or (6) of subdivision (b), a supplier shall give a dealer at least 90 days' written notice of the supplier's intent to terminate, cancel or not renew a dealer agreement or change the dealer's competitive circumstances. The notice shall state all reasons relied upon by supplier to show good cause for the action and shall provide the dealer with a reasonable time in which to correct any claimed deficiency with a minimum of at least six months. Once mutually agreeable steps have been outlined, agreed upon and implemented, then the notice of termination shall be void. The contractual terms of the dealer agreement shall not expire or a change be made in the dealer's competitive circumstances, without the written consent of the dealer, prior to the expiration of at least 90 days following the notice.

(b) As used in this chapter, a termination by a supplier of a dealer's agreement or a change by the supplier in dealer's competitive circumstances, shall be with good cause when the dealer has done any of the following:

(1) Transferred a controlling ownership interest in the dealership without the supplier's consent.

(2) Made a material misrepresentation to the supplier when applying for the dealer agreement.

(3) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer 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 supplier; or is insolvent or in receivership.

(4) Been convicted of a felony.

(5) Failed to operate in the normal course of business for seven consecutive business days or has terminated the business.

(6) Relocated the dealer's place of business without the supplier's consent.

(7) Consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, failure to provide service and replacement parts or perform warranty obligations.

(8) Consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf.

(c) No supplier shall base its decision to terminate, cancel or not renew a dealer agreement or to change the dealer's competitive circumstances on any of the subdivisions of subsection (b) except subdivisions (1), (2), (3), (4), (5), or (6) thereof unless such supplier can demonstrate through written documentation and clear and convincing evidence, the alleged lack of sales

demand to support a dealership, alleged misconduct and/or lack of performance or other deficiency of the dealer. Furthermore, supplier shall also show that the reason for the decision to terminate, cancel or not renew the dealer agreement or change the dealer's competitive circumstances was in no way caused by supplier's actions.

(d) Before termination of the franchise or selling agreement because of the failure of a dealer to meet reasonable marketing criteria or market penetration, the manufacturer, distributor, or wholesaler shall provide written notice of that intention at least one year in advance. After notice, the manufacturer or other entity issuing the notice shall make good faith efforts to work with the dealer to gain the desired market share including, without limitation, reasonable making available to the dealer an adequate inventory of new equipment and parts and competitive marketing programs. The manufacturer or other entity, at the end of the one-year notice period, may terminate or elect not to renew the agreement only upon further written notice specifying the reasons for determining that the dealer failed to meet reasonable criteria or market penetration. The written notice shall specify that termination is effective 90 days from the date of the notice. If the dealer cures the claimed deficiency within the 90-day period, the franchise or selling agreement shall not be terminated.

(e) Any manufacturer, distributor, or wholesaler which intends to establish a new dealership or to relocate a current dealership for a particular product line or make of equipment within the relevant market area of an existing dealership of the same product line or make of equipment shall give a written 90-day notice of that intent by certified mail or statutory overnight delivery, return receipt requested, to the existing dealership. The notice shall include all of the following:

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

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

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

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

(f) A manufacturer, distributor, or wholesaler may sell or lease new equipment for use within this state. If the equipment is prepared for delivery or serviced by a dealer, the manufacturer, distributor, or wholesaler shall reasonably compensate the dealer for the preparation and delivery of the new equipment and pay to the dealer a reasonable commission on the sale or lease of the new equipment which shall not be less than eight percent of the sale price of the equipment. The manufacturer, distributor, or wholesaler, if practicable, shall utilize the dealer in the relevant market area described in this subsection for preparation and delivery. This compensation shall be paid or credited in the same manner as provided in Section 8-21A-10. This subsection shall not be applicable to any liquidation or sale of equipment which has been ordered by any court. For purposes of this subsection, equipment is considered to be used primarily within the relevant market area of a dealer if the new equipment is located or housed at a facility of the use located within that relevant market area.

Section 5.

(a) Every supplier shall provide for the availability of repair parts throughout the reasonable useful life of any equipment sold by such supplier or dealer.

(b) Every supplier shall give written notice to and provide to its dealers, on at least an annual basis, an opportunity to return a portion of dealer's surplus parts inventory for credit. This surplus procedure shall be administered as follows:

(1) The supplier must notify its equipment dealers of a time period, in no event less than 90 days duration, during which time equipment dealers may submit their surplus parts lists and return their surplus parts to the supplier.

(2) Pursuant to this subdivision, a supplier must allow surplus parts return authority on a dollar value of parts equal to 10 percent of the total dollar value of parts purchased on stock order by the dealer from the supplier during the twelve month period immediately preceding the notification to the dealer by the supplier or the surplus parts return program, or the month the dealer's return request is made, whichever is applicable. However, the dealer may wish to return less than 10 percent of the total value of stock order parts purchased by the dealer from supplier during the preceding twelve month period as provided above. This has no effect on the validity of this section or the dealer's rights hereunder.

(c) This chapter shall not require the repurchase from a dealer of any of the following:

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

(2) Any repair part which, because of the condition, is not resalable as a new part without repackaging or reconditioning;

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

(4) Any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so. No obsolete or superseded part may be returned, but any part listed in the supplier's current parts price list or any superseded part that has not been the subject of the supplier's parts return program at the date of notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable shall be eligible for return for the credit specified.

(d) The minimum lawful credit to be allowed for returned parts shall be 85 percent of the dealer's cost thereof as listed in the supplier's current parts list at the date of the notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable.

(e) Applicable credit hereunder must be issued to the dealer within 60 days after receipt of the dealer's returned parts by the supplier.

(f) All packing and return freight expenses incurred in the return of surplus parts under the terms of this section shall be the obligation of and borne by the dealer.

(g) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of farm equipment, attachments, and repair parts which provides the equipment dealer with greater protection. The dealer can elect to pursue either his or her dealer agreement remedy or the remedy provided by state law, and an election by the dealer to pursue his agreement remedy shall not bar the right to the remedy provided herein as to those repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a supplier to charge back to the dealer's account previously paid or credited as a discount incident to the dealer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law.

Section 6.

(a) Whenever any dealer enters into a dealer agreement with a supplier wherein the dealer agrees to maintain an inventory of equipment and/or repair parts and the dealer agreement is subsequently terminated or not renewed, whether by either party or mutual consent of both, the supplier shall repurchase the inventory as provided in this section. Further, supplier shall repurchase at its fair market value or assume the lease responsibilities of any specific data processing hardware and/or software that the supplier required the dealer to purchase to satisfy the minimum requirements of the dealer agreement and repurchase at 75 percent of the current net price any merchandising tools, accessories, and specialized repair tools, previously purchased pursuant to requirements of the supplier and held by the dealer on the date of termination. Dealer may, at his option, elect to retain such tools if it is not in violation of any contract terms held by the supplier.

(b) If the dealer decides not to keep the inventory, supplier shall repurchase the inventory, specific data processing hardware and software, merchandising equipment, tools, and accessories, and specialized repair tools previously purchased by dealer and held by dealer on the date of termination of the dealer agreement. Supplier shall pay 100 percent of the net cost of all new, unsold, undamaged and complete tractors and equipment, 100 percent of the current net price of all new, unused, undamaged repair parts and accessories which are listed in the supplier's effective price list or catalog. The supplier shall also pay the dealer six percent of the current net price of all new, unused and undamaged repair parts returned as payment for the cost of handling, packing, and loading. Supplier shall have the option of performing the handling, packing, and loading and paying 100 percent of the current net price of parts in lieu of paying the additional 6 percent sum imposed herein for these services and in this case, the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer, after a satisfactory repurchase amount has been negotiated. Provided, however, that merchandising tools and accessories and specialized repair tools must have been purchased within the last three years, and must be complete, usable and unique to the product line.

(c) Upon payment or credit of the repurchase amount to the dealer, the title and right to possession of the repurchased inventory shall transfer or be transferred to the supplier and, notwithstanding the provisions for the state's Uniform Commercial Code to file notice of a security interest, the dealer shall have a continuing security interest in the inventory until payment or the issuance of credit against any undisputed account balance claimed against dealer by supplier.

(d) The provisions of this chapter shall not require the repurchase from the dealer by supplier of:

- (1) Any single repair part which is priced as a set of two or more items;
- (2) Any repair part which, because of its condition, is not resalable as a new part without reconditioning or repairing;
- (3) Any inventory from which the dealer is unable to furnish evidence, reasonably satisfactory to the supplier, of good title, free and clear of all claims, liens, and encumbrances;
- (4) Any inventory which the equipment dealer desires to keep, provided dealer has a contractual right to do so;
- (5) Any equipment or repair parts which are not in new, unused, undamaged condition;
- (6) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination or nonrenewal of the dealer agreement; or

(7) Any inventory which was acquired by the dealer from any source other than the supplier, other than a successor in interest as provided in Section 12-21A-9.

(e) If any supplier shall fail or refuse to repurchase any inventory covered under the provisions of this chapter within ninety days after termination or nonrenewal of dealer agreement, the supplier shall be civilly liable to the dealer for the total amount of 115 percent of the current net price of the inventory, plus any freight charges paid by the dealer, plus all cost of financing such repurchase, including court costs, and reasonable attorney's fee as awarded by court or statute.

Section 7.

(a) In the event of the death or incapacity of the dealer or majority stockholder of a corporation operating as an equipment dealer, the supplier shall, at the option of the heirs at law, if dealer died intestate, or the executor or executrix under the terms of deceased dealer's will, if dealer died testate, repurchase the inventory from the estate the same as if the supplier had terminated the dealer agreement with good cause. The inventory repurchase provisions of Section 8-21A-6 are made expressly applicable hereto. The heirs or executor shall have nine months from the date of death of the dealer or majority stockholder to exercise the option hereunder. Nothing in this chapter shall require the repurchase of deceased dealer's inventory if the heirs or the executor and supplier subsequently enter into a new dealer agreement, or if a successor to the deceased dealer is agreed upon in accordance with the provisions of this chapter.

(b) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of farm equipment, attachments, and/or repair parts which provide the dealer with greater protection. The heirs or executor can elect to pursue either the contract remedy or the remedy provided herein, and an election by the heirs or executor to pursue contract remedy shall not bar such heirs or executor's right to the remedy provided herein as to the farm equipment, attachments and/or repair parts not affected by the contract remedy. Any repurchase hereunder is not to be subject to the bulk sales law of this state. Further, nothing shall preclude a price for return parts which is greater than the total allowance for parts allowed herein and the shipping allowance; in such case, the packing, freight and handling expense shall not be borne by the supplier as to such overage.

Section 8.

Any dealer may bring an action against a supplier in court of competent jurisdiction for damages sustained by the dealer as a result of supplier's violation of any part of this act, together with the actual costs of the action, including but not limited to, reasonable attorney's fees along with any consequential damages sustained by the dealer. Dealer may also be granted injunctive relief against the unlawful termination, cancellation, nonrenewal or change in competitive circumstances by the supplier. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.

Section 9.

The obligation of any supplier is applied to and made an obligation of any successor in interest or assignee of the supplier. A successor in interest includes, but is not limited to, any purchaser of the assets or stock, any surviving entity resulting from merger or liquidation, any receiver or any trustee of the original supplier.

Section 10.

(a) Every supplier shall provide a fair and reasonable warranty agreement on any new equipment which it sells and shall fairly compensate each of its dealers for parts and labor used in fulfilling the warranty agreement. All claims for paying under such warranty agreement made by dealers hereunder for such parts and labor shall be paid within 30 days following their approval by supplier. All claims shall be either approved or disapproved within 60 days after their receipt by supplier. Upon disapproval of any claim submitted by the dealer, and within the time periods set forth in this section, the dealer shall be notified in writing of disapproval, along with specific reasons for the disapproval and curative steps required.

(b) All warranty work performed by the dealer under this section shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof multiplied by the dealer's established customer hourly labor rate, which shall have previously been made known to supplier. All parts used by dealer in such warranty work shall be paid to dealer in the amount of dealer's net price for such parts, plus 15 percent of that sum or the supplier's current reimbursement program for warranty work, whichever is greater. The payment is to reimburse the dealer for dealer's reasonable costs of doing business and providing such warranty service on the supplier's behalf. The supplier shall have the right to adjust errors discovered during audit and if necessary to adjust claims collected in error.

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

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

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

Section 11.

The Supplier will fully indemnify and hold harmless its dealer against any losses, including but not limited to: court costs, reasonable attorney's fees, any damages arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty either express or implied, or recession of the sale where the complaint, claim or lawsuit relates to the manufacture, assembly or design of new items covered by this chapter, parts or accessories or other matters relating to the manufacturer, beyond the control of the dealer.

Section 12.

Notwithstanding the terms, provisions or conditions of any dealer franchise or dealer agreement or the terms or provisions of any waiver, and notwithstanding any other legal remedies available, any person who is injured in his business or property by a violation of this chapter, by the commission of any unfair and/or deceptive trade practices, or because he refuses to accede to a

proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in a court of competent jurisdiction to enjoin further violations, to recover any damages sustained by him, together with the costs of the suit, including a reasonable attorney's fee. This section applies equally to both manufacturers and dealers.

Section 13.

Except as otherwise provided, any civil action commenced under the provisions of this chapter must be brought within four years after the cause of action has accrued. The cause of action shall not accrue until constituting a violation of the provisions of this chapter.