

GEORGIA FRANCHISE LAW

13-8-11. Legislative findings

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

13-8-12. Definitions

As used in this article, the term:

- (1) “Dealer” means any person who sells, maintains, solicits, or advertises the sale of new and used equipment to the consuming public. It shall not include (A) public officers while performing their duties as such officers; (B) persons making casual sales of their own equipment not subject to sales tax under the laws of the State of Georgia; (C) persons engaged in the auction sale of equipment; or (D) dealers in used equipment.
- (2) “Dealership” means the business of selling or attempting to effect the sale by a dealer of new equipment or the right conferred by written or oral agreement with the manufacturer, distributor, or wholesaler for a definite or indefinite period of time to sell or attempt to effect the sale of new equipment.
- (3) “Distributor” or “wholesaler” means any person, company, or corporation who sells or distributes new equipment to dealers and who maintains distributor representatives within the state.
- (4) “Distributor branch” means a branch office maintained by a distributor or wholesaler which sells or distributes new equipment to dealers.
- (5) “Distributor representative” means a representative employed by a distributor branch, distributor, or wholesaler.
- (6) “Equipment” means tractors, farm equipment, or equipment primarily designed for or used in agriculture, horticulture, irrigation for agriculture or horticulture, and other such equipment which is considered tax exempt and sold by the franchised equipment dealer.
- (7) “Factory branch” means a branch office maintained by a manufacturer which manufactures and assembles equipment.

13-8-13. Persons subject to provisions of article

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

13-8-14. Unfair competition; unfair or deceptive acts

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

13-8-15. Unfair methods of competition and unfair or deceptive acts or practices

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

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

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

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

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

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

(2) To coerce, or attempt to coerce, any dealer to enter into any agreement, whether written or oral, supplementary to an existing franchise with such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, 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 any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, and such dealer; provided, however, that notice in good faith to any dealer of such dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article if such notice is in writing mailed by registered or certified mail or statutory overnight delivery to such dealer at his or her current business address;

(3)(A) To terminate the franchise or selling agreement of any such dealer without due cause, as defined in subparagraph (C) of this paragraph. The termination of a franchise or selling agreement, without due cause, shall constitute an unfair termination, regardless of the specified time period of such franchise or selling agreement. Except where the grounds for such termination fall within division (iii) of subparagraph (C) of this paragraph, such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent, or other representative thereof, shall notify a dealer in writing of the termination of the franchise or selling agreement of such dealer at least 90 days before the effective date thereof, stating the specific grounds for such termination; and in no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the 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 to modify such 90 day stay or to extend it pending a final determination of such proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief. Should the dealer cure the claimed deficiency within the 90 day period, then the franchise or selling agreement shall not be terminated.

(B) Before termination of the franchise or selling agreement because of the dealer's failure to meet reasonable marketing criteria or market penetration, the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent, or other representative thereof, shall provide written notice of such intention at least one year in advance. After such 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, reasonably 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. Such written notice must specify that termination is effective 90 days from the date of the notice. Either party may petition the court pursuant to subparagraph (A) of this paragraph for the relief specified therein. Should the dealer cure the claimed deficiency within the 90 day period, then the franchise or selling agreement shall not be terminated.

(C) As used in this paragraph, tests for determining what constitutes due cause for a manufacturer or distributor to terminate a franchise agreement shall include whether the dealer:

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

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

(iii) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within 30 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;

(iv) Has engaged in an unfair business practice;

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

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

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

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

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

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

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

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

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

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

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

(7) To prevent or attempt to prevent, by contract or otherwise, any dealer from changing the capital structure of his or her dealership or the means by or through which he or she finances the operation of his or her dealership, provided such 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;

(8) To prevent or attempt to prevent, by contract or otherwise, any dealer or any officer, partner, or stockholder of any dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties; provided, however, that no dealer, officer, partner, or stockholder shall have the right to sell, transfer, or assign the franchise or power of management or control thereunder

without the consent of the manufacturer, distributor, or wholesaler, except that such consent shall not be unreasonably withheld;

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

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

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

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

(d) It shall be deemed a violation of Code Section 13-8-14 for a dealer:

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

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

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

13-8-15.1. Notice to competitors within market area

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

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

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

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

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

13-8-15.2. Use of dealership by manufacturers, distributors, and wholesalers

(a) 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 be not less than 8 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 subsection (b) of this Code section for preparation and delivery. This compensation must be paid or credited in the same manner as provided in Code Section 13-8-17. This subsection shall not be applicable to any liquidation or sale of equipment which has been ordered by any court.

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

13-8-16. Predelivery and preparation obligations; repair parts availability; return of surplus parts inventory

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

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

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

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

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

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

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

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

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

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

13-8-17. Warranty agreements; disapproval of claims under warranty agreements; special handling of claims; calculation of compensation to dealer for warranty work; amounts owed to a dealer; audit of warranty claims

(a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall provide a fair and reasonable warranty agreement on any new unit of equipment which it sells and shall fairly compensate each of its dealers for labor and parts used in fulfilling such warranty agreement. All claims for payment under such warranty agreements made by dealers under this subsection for such labor and parts shall be paid within 30 days following their approval. All such claims shall be either approved or disapproved within 30 days after their receipt; and, when any such claim is disapproved, the dealer who submits it shall be notified in writing of its disapproval within such period; and each such notice shall state the specific grounds upon which the disapproval is based. Any special handling of claims required of the dealer by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or

division, and 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.

(b) The minimum lawful basis for compensating said dealer for warranty work as provided for in this subsection 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, wholesaler, or distributor of his or her hourly retail labor rate. The minimum lawful basis for compensation to the dealer for parts used in fulfilling said warranty work shall be at the dealer's costs thereof, including all freight and handling charges applicable thereto, plus 15 percent of said sum to reimburse the dealer's reasonable costs of doing business and providing such warranty service on the manufacturer's behalf.

(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 such claims and may charge back to its dealers only those amounts based upon paid claims shown by audit to be invalid; provided, however, that this limitation shall not apply in any case of fraudulent claims.

13-8-17.1. Time for audits of dealerships

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 such incentive compensation program; provided, however, that this limitation shall not apply in any case of fraudulent claims.

13-8-18. Agreements to which article applies

The provisions of this article shall apply to all written or oral agreements between a manufacturer, wholesaler, or distributor with a 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, wholesaler, or distributor has any direct or indirect interest.

13-8-19. Failure to renew, termination of, or restriction on transfer of franchise without due cause

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

13-8-20. Damages recoverable for injuries sustained by violations; class actions; punitive damages

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

(b) 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 actions for injunctive relief.

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

13-8-21. Contracts and agreements in violation of article deemed void

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

13-8-22. Repurchase of inventory upon termination of franchise; payment for inventory repurchased; title to repurchased inventory; exempt inventory items; civil liability for failure to repurchase inventory

(a) Whenever any dealer enters into a franchise agreement with a manufacturer, distributor, or wholesaler wherein the dealer agrees to maintain an inventory of equipment or repair parts and the franchise is subsequently terminated, the manufacturer, distributor, or wholesaler shall repurchase the inventory as provided in this article. The dealer may keep the inventory if he or she 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.

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

(c) 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 to the manufacturer, distributor, or wholesaler, as the case may be.

(d) The provisions of this article shall not require the repurchase from a dealer 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 repackaging or reconditioning;
- (3) 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;
- (4) Any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;
- (5) Any unit of equipment which is not in new, unused, undamaged, complete condition;
- (6) Any repair parts which are not in new, unused, undamaged condition;
- (7) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise; or
- (8) Any inventory which was acquired by the dealer from any source other than the manufacturer, distributor, or wholesaler.

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

13-8-23. Repurchase of inventory upon death or incapacity of dealer or majority stockholder of corporate dealer

In the event of the death or incapacity of the 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 said dealer died testate, repurchase the inventory from said heirs or devisees as aforesaid as if the manufacturer, distributor, or wholesaler had terminated the contract, and the inventory repurchase provisions of Code Section 13-8-22 are made expressly applicable hereto. The heirs or devisees as aforesaid shall have one year from the date of the death of the retailer or majority stockholder to exercise their option under this article; provided, however, that nothing in this article shall require the repurchase of inventory if the heirs or devisees as aforesaid and the manufacturer, distributor, or wholesaler enter into a new franchise agreement to operate the retail dealership.

13-8-24. Indemnification of dealer for losses relating to manufacture, assembly, design, or functions beyond control of dealer

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

13-8-25. Applicability of article to existing contracts without expiration dates and to contracts entered or renewed on or after July 1, 2002

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