TESTIMONY of Chris Curtis, Curtis Lumber Company,
on behalf of the Vermont Retail Lumber Dealers Association

In SUPPORT of H. 388 – the FAIR Act

April 7, 2015

Chairman Botzow, Vice Chairman Marcotte, committee members, my name is Chris Curtis and I am here representing Curtis Lumber Company and the Vermont Retail Lumber Association. The Vermont Retail Lumber Dealers Association (VRLDA), with its 48 members, represents independent lumber and building material dealers throughout Vermont. Employing over 1,100 Vermont residents.

Many VRLDA members are institutions in their communities, having served generations of customers and predominately family owned businesses. As of June of this year I will have been with Curtis Lumber for 14 years covering various positions and responsibilities. Curtis Lumber has been a family owned and operated business since 1823. While the business started in New York, we have been proud to serve the Vermont communities of Burlington and Williston since 2006. VRLDA members help form the foundations of the 39 communities where they are located. From Bennington to Derby, and St. Albans to West Brattleboro, lumber and building materials suppliers are an important presence in the Vermont communities where they do business.

The current litigation system is crushing small retailers and innocent sellers as they are unfairly being swept into product liability lawsuits and being asked to shoulder an unfair and unsustainable burden. Currently, if a retailer is included in a product liability lawsuit, they may be forced to pay the entire settlement, even if they are only liable for 5% of the claim. In other words, if Curtis Lumber is found 5% liable in a suit, but they are the last company standing, meaning we haven't filed for bankruptcy to avoid the suit, we can be forced to pay 100% of the settlement. This burden can stifle or destroy a business such as ours, one that has been built for generations.

Current law imposes liability without wrongdoing on retailers and exposes them to all of the damages allegedly suffered by a plaintiff. Attorneys know this and routinely sue everyone in the chain of distribution of a product, often looking to force settlements out of otherwise innocent retailers. These abusive product liability cases are part of a growing litigation burden on small businesses. Even when the end retailer is found not at fault, the defense costs can run into the tens of thousands of dollars, often forcing the retailer to settle despite the merits of the case.

For example, Curtis Lumber has faced several asbestos cases since 2009; including being named in litigation where the exposure to the product in question occurred before our store in question even existed. Additionally, some of the products in the suits did not contain asbestos fibers at that time either. The products have been standard building components such as roof shingles, Orangeburg pipe (for leach fields), joint compound, floor tile, and ceiling tile.

For these cases we had very few insured years that we could identify policies for in the early 1970s. In each case we had to absorb about 50% or more of the legal fees and settlement costs. To settle or get each case dismissed we had paid from $5,000 to $37,597.

In one case we spent $5,043 to get a case dismissed that was not Curtis Lumber but the previous owner of Gregory Supply. Curtis Lumber had purchased only the assets of the company and not the business itself. In none of these cases was there any significant proof showing that we supplied any of the products named or that they contained asbestos.

In all these cases we resold the product without any changes, installation, or control of manufacturing.

Sadly, the current system creates scenarios where it is cheaper and easier to pay a settlement then have to defend against meritless cases where there was no guilt or liability. Our current formula is to utilize the insurance companies, which are less supportive now than in earlier years, to seek a dismissal of the

case. If we can settle vs. paying more expensive legal fees we feel forced to settle quickly, regardless of the merits of the case. Paying these settlements, along with the dramatic increases in insurance that they bring, drives up the price of building materials; ultimately increasing the cost of construction across the board from residential homes, commercial projects, and public works.

H.388, the Fair Accountability in Retail Act, or FAIR Act, would continue to protect consumers while also relieving an unfair burden on small businesses. The FAIR Act would protect retailers from being included in product liability suits where they have no liability. This means that the retailer did not manufacturer the product, did not have a say in the design of the product, did not alter the product (including the use or limits of the product), did not install the product, and did not sell a product that had a known defect or outstanding recall. As you can see, with those parameters in place, the FAIR Act is meant to protect a retailer that served only as the seller of the product, often times selling a product that is still wrapped in original packaging from the manufacturer's warehouse. If a retailer has taken any of the above actions, they could still be held and found liable under the FAIR Act, but now the liability would be proportional, so that they are held responsible for their own actions, but not the actions of others. As you can see, this does not diminish consumer protections and in no way provides a golden parachute for retailers. Instead, it creates a level playing field where those that are liable for injury are still required to accept that responsibility and pay restitution, but those that are innocent can gain relief from the harassment and unimaginable costs of paying for situations where they had no liability and were forced to pay for the liability of others.

Ten states (Delaware, Georgia, Indiana, Iowa, Michigan, Mississippi, New Hampshire, New Jersey, North Dakota, and Texas) have passed product liability laws that include limits to liability and proportional judgments for retailers. VRLDA believes it is time for Vermont to adopt this common sense solution that alleviates retailers from being forced into burdensome lawsuits when they hold no liability and had no say in the design, construction, or installation of the product. Consumers still get full protection of the law and any retailers who are liable would still be required to pay for their own liability.

VRLDA does not want to ban suits by injured Vermonters nor is VRLDA looking to cap or reduce their settlements. Our association recognizes that product liability suits serve a purpose and in many cases plaintiffs in product liability suits are our customers and neighbors. The goal of the FAIR Act is simply to reduce the harm that these lawsuits have on retailers that had no part in the product and no liability in a product's failure. Removing from these suits retailers who had no hand in the design, production, or installation of these products is common sense. Additionally, VRLDA supports those that are liable having to pay for their actions, but only for their liability, not the liability of others. The FAIR Act strikes a common sense balance that protections consumers while alleviating an unfair burden on small business retailers. VRLDA looks forward to working with interested parties on H. 388. I thank the committee for their time, listening to our small business concerns, and I am happy to answer any questions that members have. Thank you.