CNH Industrial America LLC
700 State St.
Racine, WI 53404

Corporate Headquarters:
Burr Ridge, IL

January 21, 2016

Vermont Senate Committee on Economic Development, Housing and General Affairs

State Senator Kevin Mullin, Chairman
State Senator Philip Doyle, Vice Chairman
State Senator Bill Doyle
State Senator Ann Cummings
State Senator Becca Balint - Clerk

Subject: Opposition to S. 224 - Equipment and Machinery Dealerships

On behalf of CNH Industrial, I am respectfully writing to request the Senate Committee on Economic Development and Housing and General Affairs Committee consider our opposition to S. 224: The Equipment and Machinery Dealer bill.

If enacted as currently written, the bill will negatively alter the relationship between dealers and suppliers and weaken the equipment distribution infrastructure noted as critical to Vermont. Further, the bill will negatively impact consumer pricing and access to the broad range of products in the marketplace.

CNH Industrial is a global manufacturer of the Case IH and New Holland brands of agricultural equipment; and the Case and New Holland brands of construction equipment. Our brands have dealers and customers in all fifty states and over 160 countries around the globe.

We are proud to say we have dealers in the State of Vermont with whom we have had dealer agreements dating back four decades and have a history of good relationships without the type of governmental intervention contemplated by S. 224.

First and foremost, CNH Industrial supports the right to contract between two approving parties without legislative intervention. S. 224 interferes with this private right.

Our opposition to the proposed bill is based on the following:

Section 4:

- § 4072 Notice of Termination of Dealer Agreements. Paragraph (a) inserts the words "economically viable" to qualify cause related to failure by the dealer to comply with requirements imposed by the dealer agreement. This term not found in any other state statute with regards to "cause". The term "economically viable" leads to less clarity in supplier / dealer relationships, not more.

- § 4072 Notice of Termination of Dealer Agreements. Paragraph (a) inserts the "failure to meet market share requirements does not alone constitute cause for termination."

  Achieving market share targets is a critical measurement in the evaluation of dealer performance. It is entirely possible for a dealer to "freeze" a supplier's products in the marketplace by failing to order products and failing to achieve market share targets.

  The Vermont marketplace is populated with dealers that hold multiple brands of the same product-type; those affected suppliers must have the opportunity, for cause, to alter, cure, or terminate the dealer relationship in order to establish dealer representation that will stock and sell their products.

  Dealers selling multiple brands of the same product type do in-fact strongly influence the market - - most often at the expense of consumer pricing and access to products.

- § 4072 Notice of Termination of Dealer Agreements. Paragraph (b): the six (6) events cited in this paragraph as cause for termination, cancellation, or failure to renew a dealership agreement do not include key elements found in similar sections of thirty-two (32) other state statutes. These elements include, among others: felony convictions, failure to operate under the normal course of business, and detrimental conduct to customers.

Section 5:

- § 4074 Repurchase Terms. Specialized tools repurchase terms should have an end-date on the obligation to repurchase. Very few states have no imposed time limit. Many states allow for a depreciation schedule of special tools i.e. of 20% per year to a maximum of 25% of the net cost repurchase obligation. A "lifetime" 75% repurchase obligation is too high.

- § 4077a Prohibited Acts. The current statute utilizes the word "coerce" to guide supplier conduct in the areas of involuntary equipment shipments to dealers. In Paragraphs (1) and (3) the bill seeks to introduce the words "or attempt to coerce".

Manufacturer experience, in the few states that utilize the term "or attempt to coerce", is the term is intentionally broad and sweeping and serves only to add ambiguity to the relationship for the benefit of plaintiff attorneys. Insertion of the term "or attempt to coerce" will place undue limitations on supplier's ability to conduct business with Vermont dealers.

We strongly encourage adding the following language to this section: "this subsection does not prohibit a supplier from requiring a dealer to stock equipment which the dealer is obligated to stock, market and sell under the terms of the dealer agreement". This maintains the original purpose of the business relationship.

- § 4077a Prohibited Acts. Paragraph (5) proposes that the following prohibited act be inserted into the law: No supplier shall: modify a dealer's assigned area of responsibility without the dealer's written consent.

  The dealer's assigned area of responsibility (AOR) is critical because it is the basis for calculating market share. The AOR is not an exclusive sales and trade area.

  Proponents of the bill have reported that some thirty (30) states include language limiting a manufacturer's ability to change a dealer's competitive circumstances. This is a true statement. However, the overwhelming majority of those states allow the manufacturer / supplier to initiate a change in competitive circumstance based on cause, in most states defined as: failure to comply with the requirements of the dealer agreement.

  Further, in most states a cure opportunity process exists whereby the dealer and supplier can work out the differences.

  The proposed language is incomplete as a stand-alone provision, miss-aligned with other U.S. statutes, and will induce a chilling effect on the equipment business in Vermont as suppliers will have little or no ability to adjust sales areas based on shifting market demands, dealer performance and dealer investment characteristics.

- § 4077a Prohibited Acts. Paragraph (6). The proposed language is vague and would be greatly enhanced by inserting the words "from that dealer" at the end of the sentence.

Section 7:

- § 4078 Warranty Obligations. Paragraph (a) inserts the language "if the dealer does not comply with excessive obligations placed on the dealer by the supplier pursuant to this section, the supplier is not relieved from compliance with the

requirements of this chapter". This language is unclear and can be interpreted to leave the definition of "excessive" to the sole discretion of the dealer.

It is common experience that dealers who fail to invest in technical training, proper tooling and facilities, and best practices service management invariably deem warranty performance expectations "excessive".

Further, this section fails to provide suppliers with adequate notice, cure and recovery plan options with a dealer that refuses to perform warranty work based on a unilateral assessment of performance expectations.

- § 4078 Warranty Obligations. Paragraph (b) *proposes that suppliers shall "compensate dealers for parts used to fulfill warranty and recall obligations of repair and servicing at a rate not less than the rate charged by the dealer to its retail customers for like parts for non-warranty work.*

  Suppliers do not mandate the dealer selling price for parts. Therefore, the proposed reimbursement rate is not based upon a common published price, rather, it is a price unknown to suppliers and unique to each dealer location in the State.

  The common practice for warranty parts reimbursement is dealer net price (DNET) plus an "uplift" factor. DNET is a number that is known to both parties. This process is efficiently managed in forty-eight (48) other states.

- This proposal is impractical for suppliers and dealers. To achieve this provision, suppliers would incur significant cost to develop and maintain data systems to comply with the exponentially large data field created by the combination of hundreds of thousands of parts and dealer-by-dealer unique pricing of each part.

  The potential cost is disproportionate to the size of the Vermont equipment marketplace. The cost would ultimately be passed to the Vermont market and damage dealers and consumers. Likewise, the proposal incents dealers to raise parts prices to consumers based on the percentage of warranty work done by the dealer.

- § 4078 Warranty Obligations. The Warranty Obligations section fails to confirm the right to suppliers to conduct post-approval audits of dealer submitted warranty claims. Over half of the state statutes allow a post-approval warranty claim(s) audit. We submit, particularly in light of the proposed language in Paragraph (b) of § 4078, that Vermont should as well.

The proposed legislation significantly, and adversely, alters the contractual relationships between equipment manufacturers and their dealers. Consumer pricing, access to

products in the market and ultimately service levels would be negatively impacted as manufacturers, not exempted from the statute, are compelled to navigate the difficult and costly business climate the bill invokes.

We thank you for your consideration and look forward to the opportunity to improve S 224 for all parties concerned.

Thank you -

George Whitaker
CNH Industrial, LLC
621 State St.
Racine, WI 53404

Office: 262-636-4959
Email: george.whitaker@cnhind.com