



Our Members Bring Choice, Value & Innovation To Agriculture

February 24, 2016

Vermont Committee on Economic Development, Housing and General Affairs

Senator Kevin Mullin, Chairman
Senator Philip Doyle, Vice Chairman
Senator Bill Doyle
Senator Ann Cummings
Senator Becca Blint

Opposition to S 244 relating to warranty obligations of equipment dealers and suppliers

The Farm Equipment Manufacturers Association represents over 725 manufacturers, suppliers and distributors of farm implements. The vast majority of our members are small, family-owned companies providing good manufacturing jobs in rural communities across North America.

It is on their behalf that I respectfully ask the members of this committee to consider our opposition to S 244 in its current form.

Our Association and our members have the greatest respect for the independent dealers, who are the backbone of the farm equipment distribution network. Our members fully appreciate the fact that they compete on a daily basis to earn space for their equipment in the dealer's local facility. If they do not treat their dealers fairly, competitors will stand in line for the chance to take their place on the lot.

Free market competition for the dealer's business has and will continue to do more than any amount of legislation to "prevent frauds, impositions, and other abuses ... and to protect and preserve the investments and properties of the citizens of this State," which language in the bill implies would occur without state intervention. We urge you to remove this inflammatory language from the bill.

I assure you that when it comes to negotiating contractual agreements, any "inequality of bargaining power" lies with the independent dealer and not our members. Any "unfair or arbitrary treatment of equipment dealers by our members would not be tolerated, and would rightly result in the dealer terminating the relationship.

Because of the unique relationship between the small implement manufacturer and the independent dealer, we have suggested a carveout for any supplier who makes up less than 10% of a dealer's annual sales. We have been told by representatives of the dealers' trade association that while the legislation provides an exemption for one very large multi-national corporation, they could not support our request to carveout the smallest implement suppliers.

The long-term effect of this legislation will be to drive jobs and investment out of the state. Unless the dealers can show that there really is "unequal bargaining power," including the hard evidence to back up the claim, the entire findings section should be stricken.

We also have serious concerns regarding specific language in several sections of the bill:

The definition of “fraud” should include only “intentional” or “negligent” misrepresentations, not simply a “misrepresentations, in any manner”. That language could arguably encompass completely innocent errors or miscommunications by either party. It is blackletter law that a simple error or miscommunication is not “fraud.”

Notice of Termination of Dealer Agreements contains more ambiguity. The current definition of “cause” (failure by the dealer to comply with the requirements of the dealer agreement, provided that the requirements are not substantially different from those requirements imposed upon other similarly situated equipment dealers) is consistent with the standard definition used in the vast majority of other states. The injection of “justifiable in light of the current economic conditions” does nothing more than impose an ambiguous standard for courts to puzzle through. What “economic conditions”? Those of the specific manufacturer? Those of the industry in general? Those of the economy of the entire state? The country? This language is far too imprecise. It does not aid in the interpretation of the statute, or create reasonable business expectations or predictability for either party.

As to immediate termination, we strongly believe that any felony conviction should constitute grounds for immediate termination, as such a conviction inevitably reflects poorly upon the manufacturer’s brand. In the alternative, we suggest your committee consider a catch-all provision, such as when “the dealer has engaged in conduct that is injurious to or otherwise detrimental to (a) the dealer’s customers, (b) the public welfare, or (c) the representation or reputation of the manufacturer’s product.”

Under Prohibited Acts, Subsection (5) should include failure to meet performance requirements as “good cause” for changing a dealer’s relevant market area. If not, a dealer can sit on a territory indefinitely and make no attempt to sell a manufacturer’s products, and the manufacturer has no recourse short of attempting to terminate the dealer.

The amendment to 4079 would prohibit arbitration clauses in contracts. This violates the Federal Arbitration Act, and therefore the Supremacy Clause of the Constitution.

The last sentence of 4083 is a violation of the presumption against retroactivity, and therefore potentially violates the Contracts Clause of the Constitution.

We truly appreciate your thoughtful consideration of our concerns and want to express our eagerness to work with the independent farm equipment dealers of Vermont to address any issues they may have in their dealings with our members.

Respectfully submitted,



Vernon F Schmidt, Executive Vice President

cc: Cheryl Ewen, Committee Staff