

SENT VIA EMAIL: Jan Nordlund: jan.nordlund@state.or.us

March 13, 2015

The Honorable Paul Holvey
Chair, House Business and Labor Committee
900 Court Street NE, H-277
Salem, OR 97301

Re: Opposition to Oregon HB 3164 - "Equipment Dealer Agreements Related to Competitive Circumstances Changes"

Dear Chair Holvey and members of the House Business and Labor Committee,

On behalf of CNH Industrial America LLC (CNH Industrial) I am respectfully writing in opposition to HB 3164: "Equipment Dealer Agreements Related to Competitive Circumstances Changes"

CNH Industrial is a global manufacturer of CaseIH and New Holland brands of agricultural equipment, Case and New Holland brands of construction equipment and the FPT brand of engines and powertrains. Our brands have dealers and customers in all fifty states and over 160 countries around the globe.

CNH Industrial opposes HB 3164 on the following basis:

- We believe the language addressing "change in a retailer's competitive circumstances" could nullify and /or impair the existing agreements we have in place with our Oregon dealers.

The language "*whether or not a retailer agreement allows or provides for the event, act, or omission*" has the effect of saying: "it does not matter what is stipulated in the dealership agreement, manufacturers may not take certain, lawful, actions that were negotiated as part of a private contract". This language interferes with the right to contract between parties without legislative interference.

We believe this language would have a "chilling" effect on the approach to dealer relations in our industry and potentially other industries that utilize negotiated dealer agreements in Oregon.

We also wish to point to the fact that no other states have statutes, guiding equipment dealer agreements, contain language as far- reaching as proposed in this section.





- We submit that the bill is ambiguous in its use of certain key terminology: As an example, the often used term “marketing criteria” is exceptionally broad and ambiguous. It is reasonable and customary for a dealer and manufacturer to agree that a dealer will perform, to a high standard, the marketing actions of the dealership in representation its own brand and the brand of the manufacturer. The term is extremely difficult to interpret and, using factual data, it will be nearly impossible to determine what may actually trigger actions per the statute.
- It is our belief that the cure period terms proposed in the bill are excessive. Under the terms of the bill, a manufacturer must provide an eighteen-month notice of “its intent to terminate, cancel or not renew the retail agreement of for effecting a change in competitive circumstance.” If in fact a dealer fails to cure a deficiency, claimed by a manufacturer, within the following allotted one-year time frame, the cancellation should take place within ninety-days. A six-month cancellation period, following a one-year cure period does not serve either party in this circumstance.
- Further, we find the terms of Section 3 to be unfair and potentially unconstitutional. Under Section 3, a party to a retailer agreement may seek arbitration that is binding to both parties. However, notwithstanding the binding arbitration, “a retailer has a civil cause of action in circuit court against a supplier for damages sustained by the retailer as a consequence of the supplier’s violation”. Meanwhile, the supplier has no stated recourse in the bill. We find these terms unfair and will ultimately have a chilling effect on how manufacturers do business in Oregon.

We very much appreciate your consideration and would welcome any opportunity to participate in development of solutions that effectively meet the needs of Oregon dealers, consumers and the many manufacturers that support the Oregon agricultural equipment marketplace.

Sincerely,

George Whitaker

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Copy:

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