

2017 SENATE AGRICULTURE

SB 2289

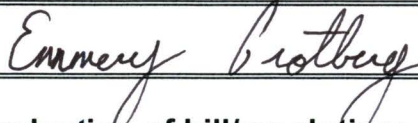
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2289
2/3/2017
Job #27879

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair

Minutes:

Attachment: #1 – 9

Chairman Luick: Opened the hearing on SB 2289.

Senator Armstrong, District 36: Introduced SB 2289. Senator Armstrong said the bill was introduced at the request of ND farm equipment dealers and it is designed to strengthen current state law; specifically, the prohibitive practices under farm equipment dealership contracts.

Matthew Larsgaard, President & CEO, ND Implement Dealers Association: Testified in Support of SB 2289 (See Attachment #1).

(11:05) **Senator Klein:** Would this in any way negate a contract between the dealers and the manufacturers?

Matthew Larsgaard: In no way will it negate a contract. If there is a contract provision contrary to a provision in state law, state law would supersede the contract.

Senator Klein: Is this bill just clarifying existing language?

Matthew Larsgaard: Some of the provisions within the bill are cleanup language or enhancing the intent of the legislation as it was created in 1991. For example, page 1, line 12 we want to add "or require the farm equipment dealer to maintain or stock."

Senator Klein: Isn't that what voluntarily ordered means?

Matthew Larsgaard: According to our attorneys, lines 12-13 of existing language addresses the delivery of the equipment. However, the language that we have added on lines 14-15 addresses the argument that the dealer voluntarily accepts inventory through an annual business plan. To elaborate on that, last year a manufacturer approached our dealers

through contract and they are now requiring our dealers to develop a written business plan and to submit to the manufacturer for their approval. The argument is that they might voluntarily accept this equipment if it is within their business plan. But as we look at the contract, the dealer is required to develop a written business plan and include sales obligations and purchase requirements as deemed necessary by the manufacturer.

Chairman Luick: if production increases and we have an increase in sales are the manufacturers requiring the sales continue at those high numbers or do they make allowances for the ups and downs in the economy?

Matthew Larsgaard: The manufactures set forth the market share expectations and the dealers sales goals.

Mr. Larsgaard read supporting contract language to the committee.

Committee Discussion: The committee discussed with Mr. Larsgaard the word voluntary in current language. Mr. Larsgaard said the manufacturers will require dealers to voluntarily sign contracts but if they do not, they lose value and manufacturer association. In response to a question from Senator Piepkorn, Mr. Larsgaard said he was not aware that there is any impropriety in the distribution of farm equipment by the manufacturers. Chairman Luick asked if dealers had any legal recourse if the manufactures do not produce ordered equipment. Mr. Larsgaard said the dealers have little ability to negotiate with the manufacturers.

(21:00) **Senator Klein:** Are dealers required to have different facilities and personnel for different equipment lines?

Matthew. Larsgaard: State law now prohibits a manufacturer from prohibiting a farm equipment dealer from purchasing farm equipment from another manufacturer. We are seeing contract language where manufactures are changing the intent of that law.

Mr. Larsgaard read supporting contract language to the committee.

Senator Klein: What you are suggesting is that the law is in place but we are now creating additional obstacles for us to comply by the law that is in place.

Matthew Larsgaard: The language enhances the intent of the law.

Senator Klein: So dealers have to comply with the contract that requires division between equipment lines?

Matthew Larsgaard: Correct.

Senator Piepkorn: Did you say the manufacturers are aiming towards running the dealers out of business so they can run them themselves?

Matthew Larsgaard: No. They don't want to own dealerships but they want to reach into operation and essentially manage the dealership. We need to allow these independent business to make decisions based on their customers.

Senator Klein: Are the warranty costs covered by the manfactuer?

Matthew Larsgaard: Under current law, farm equipment manufacturers are required to reimburse dealers for parts, transportation, warranty and repair labor.

Senator Klein: Could you elaborate on the transportation services?

Matthew Larsgaard: Directed the committee to his testimony (See Page 5, Attachment #1).

Chairman Luick: Is that in a case of a warranty repair or any type of repair?

Matthew Larsgaard: In the event of a warranty repair.

Senator Myrdal: Is there parameters in this legislation so local dealerships don't abuse transportation reimbursement?

Matthew Larsgaard: Yes. Page 6, line 16-17. That is one of the fairness provisions I alluded to within my testimony.

Senator Klein: Will you elaborate more on line 18 about the thirty-day approval. Is there an opportunity for the manufacturer to challenge the warranty request? Will you walk through the timing?

Matthew Larsgaard: Page 6 says that the manufacturer shall pay dealer on a claim within 30 days of approval of that claim. Manufacturer shall either approve or disapprove a claim within 30 days after the claim is submitted to the manufacturer. So the manufacturer has the power to disapprove the claim or not. The dealer should be required to justify the claim and provide evidence for the reason for the claim.

Senator Klein: Have there been issues with manufacturers sitting on a payment?

Matthew Larsgaard: We have seen manufacturers delaying their payments. I am not aware of any specific issues where they refused to make a payment that was reasonable and right.

(32:40) **Marc Taylor, Former President, ND Implement Dealers Association & ND Agriculture Association:** Testified in Support of SB 2289 (See Attachment #2).

(40:15) **Senator Klein:** How did it happen that there were unrecovered warranty dollars?
MT I think you have thirty days to submit a warranty claim.

Marc Taylor: When you have a warranty claim, you have 30 days to submit it. The claim is then approved by the manufacturer. Sometimes they will request the parts be returned and they determine that you did not properly assess the situation. I would say there is a 70% recovery rate for warranty throughout all colors of manufactures. Mandan is our best at 78% but we have some that are 50%.

Chairman Luick: Have you ever had lawsuits against the manufacturers against these warranties?

Marc Taylor: We have never been in a lawsuit. In the early 1970s, I recall a lawsuit against the company I worked for because they were favoring some dealers over others with programs but that is the only one I remember.
Mr. Taylor commented on the length of the contracts and how language changes over time.

Chairman Luick: Are those contracts annual?

Marc Taylor: At this time, our business has not seen annual contracts. But we are beginning to see contracts that require dealers to sign within 90 days.

Chairman Luick: That does make a difference.

Marc Taylor: It does say in that particular contract that if you want to bring an action against them you have to file it in a court in PA which runs counter to ND laws. I don't know of a contract from an out of state company that doesn't dictate a different state jurisdiction which is counter to ND law.

Senator Larsen: How do they come up with their flat rate fee on how they do repairs?

Marc Taylor: Each manufacturer is different.

Committee Discussion: The committee discussed flat rate fees with Mr. Taylor. In response to a question from Senator Piepkorn, Mr. Taylor explained the audits the manufacturer can run on each dealership. If the dealership's warranty records do not fit the criteria, the dealer is charged back. Senator Klein asked if the dealers would not be able to sell multiple colors of equipment. Mr. Taylor confirmed that in some cases, that was the case. In response to a question from Senator Klein, Mr. Taylor gave the committee history on manufacturer purchases and merges.

(55:00) **John Swenseth, Farm Equipment Dealer, Harvey & Devils Lake:** Testified in Support of SB 2289 (See Attachment #3).

(59:14) **Senator Klein:** Have you been doing this a while?

John Swenseth: Yes, I started when I was 19 in 1975.

Senator Klein: Has there been a change over the years with these manufacturers? Is the relationship more stress now than it was then?

John Swenseth: Yes. That's a consistent feeling in our industry and we have seen lots of changes and they have been more strained when the prices dropped after the 2012 and 2013 boom.

Committee Discussion: Senator Klein and Mr. Swenseth discussed the dealership in Harvey, ND.

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Senator Piepkorn: Who bears the burden of the cost for sending your technicians to training?

John Swenseth: The costs are all on the dealer.

Senator Larsen: Do you have to have all your technicians certified?

John Swenseth: We have to have a certain percentage of the technicians certified to a certain level and we are able to keep them in their specialty.

Senator Larsen: Certification is expensive, correct?

John Swenseth: Yes, it is a huge expense to keep everyone certified.

(1:08:53) **Jeff Romsdal, Dealer, Jamestown, ND:** Testified in Support of SB 2289. Mr. Romsdal informed the committee about problems he had with his manufacturers. I believe this bill helps us protect the interest of our people.

(1:15:00) **Senator Larsen:** What do the required specialty tools cost and does the manufacturer take the tools back?

Jeff Romsdal: They do not take them back and there is no return value in them whatsoever.

Senator Klein: I heard about your attempt to expand your business. Did they refuse to sell to you because of legitimate concerns or did they make the decision just because they can?

Jeff Romsdal: That is exactly it. I met with the manufacturer about the specific dealerships I was interested in and they said they weren't for sale to me.

(1:19:00) **Pete Hanebutt, ND Farm Bureau:** Testified in Support of SB 2289.

Gary Knutson, ND Agricultural Association: Testified in Support 2289. We look at this as a crop production advocate.

Richard Schlosser, ND Farmers Union: Testified in Support of SB 2289 (See Attachment #4).

Donna Henderson, Farmer: Testified in Support of SB 2289. Miss Henderson shared that in 1993, John Deere took her great grandfathers franchise away because he was not selling enough new equipment. She said If this bill can keep small dealerships operating, it will benefit the farming community.

(1:27:23) **Levi Andrist, Association of Equipment Manufacturers (AEM):** Testified in Opposition to SB 2289. Mr. Andrist presented a letter from Nick Yaksich, Senior Vice President, AEM (See Attachment #5). Mr. Andrist also provided letters from AEM members: CNH, John Deere, and Kubota (See Attachments #6 – 8b).

(1:31:51) **Senator Klein:** I asked earlier if this law would negate the contracts. How do you see that we are going to retroactively negate current and unsigned contracts?

Levi Andrist: For the contracts that are not currently signed, there is no impairment of contract because the state and federal constitution's contracts clauses only prohibit state legislatures from impairing existing contracts. When we are negation and impairment, we are talking about existing agreements that are signed by both parties. The related principal of impairing contracts is under the due process clauses of our federal state constitutions that deal with something called vested rights. If a company or an individual invests in a business and makes substantial investments on a set of rules and then the rules are later changed, the entity that made the investment is often times protected from the new rules under the vested rights doctrine which is based in the due process clauses.

Senator Klein: They are not going to negate the contracts because they are protected by the vested rights clause so it won't cause turmoil if this bill is passed.

Levi Andrist: A court would have to determine if a contract is impaired so there would have to be litigation to make that determination. Again, the negation on impairment of a contract applies only to existing contracts.

Senator Klein: We currently have legislation in place to protect the dealers. A few years ago, we had a bill to help out our auto dealers. Is this any different than trying to bring the implement dealers to the current time?

Levi Andrist: I didn't prepare a side by side analysis of the auto manufacturer dealer protections to this, but I am glad to do that. There is a constant tug and pull as the economic times change. If you look at page 5, lines 17-21 when you talk about impairment of contracts what you often see in legislation and the law is some type of application clause. As you can see back in 2001 when this section was added, it says this chapter applies only to new farm machinery sold after x date. That is the type of language that would indicate this perspective only to new contracts. If the committee wanted this bill to apply only prospectively, it would have to adopt an application clause for the bill.

Senator Klein: So why would we litigate this out of state?

Levi Andrist: This is a fundamental principal of contract law that when parties are making contracts at arm's length level get to determine choice of venue as well as choice of law provisions. As long as choice of law contracts are voluntarily agreed to they are enforceable and are often times enforced.

Senator Klein: So this language would put pressure on the manufacturer but it would be legal?

Levi Andrist: Page 4, line 7. This is the section that says a manufacturer cannot require a farming equipment dealer in the state to enter an agreement with a manufacturer or any other party which requires a law of another jurisdiction to apply to a dispute between the dealer and manufacturer. The question I have which I do not want to overstate is that 12a and 12b (which is the venue provision), is ultimately a public policy decision for you to make whether

or not companies should be able to decide what laws and venue to apply. I do have a concern because I think it could be a potential issue with interstate commerce issue because you have a state regulating commerce between states and whether the state of ND would have the authority to say parties with diverse jurisdictions could be regulated in that way.

Committee Discussion: Senator Piepkorn and Mr. Andrist discussed why AEM was unable to make the hearing.

(1:40:20) **Senator Myrdal:** How do we reconcile the global marketplace when our local dealers are saying that the manufacturers are not respecting our local marketplace.

Levi Andrist: I would prefer to defer that question to someone who is in the market place. But this industry will only be successful if the manufacturers and farm equipment dealers are mutually successful. They depend on one another and under current law without this bill, they feel like that marketplace is adequately supported.

Senator Piepkorn: The bill would only retroactively negate existing agreements if the manufactures insisted on it but it would mandate that those agreements be negated?

Levi Andrist: Ultimately it would be up to a court of competent jurisdiction to decide if a contract has been impaired.

Senator Piepkorn: Who would bring that issue to the court?

Levi Andrist: The grieved party which in this case would be the person whose contract was impaired, the manufactures.

Senator Piepkorn: So it could be up to the manufacturer. If the manufacturer wanted, they could try to settle agreements without going to court.

Levi Andrist: I don't think I have the answer to that question; I believe previous proponent testimony indicated that there have not been any lawsuits except related to termination of contracts. Again, I would defer to the manufactures and I can provide AEM's position with more detail.

Senator Osland: You alluded to a contract agreement with a dealer?

Levi Andrist: Yes, between a manufacturer or a dealer.

Senator Osland: The original contract has to be revisited periodically, correct?

Levi Andrist: I would presume that is correct.

Senator Osland: You implied this bill is going to change those original contracts. Are those contracts still original contracts? For example, do they have a sunset clause?

Levi Andrist: It would be specific to each contract. I'm not sure a perpetual contract is enforceable in ND.

Senator Osland: So contracts are often redone periodically with new conditions?

Levi Andrist: Again, I am not familiar with the individual manufacturers contracts. I could do a survey of the memberships of AEM and provide you with that information. There is no law that specifies the contract duration.

Senator Klein: I think this legislation is trying to encourage manufactures to have good relationships with their dealers. Unfortunately, some feel more signaled out than others because they are. The language in this bill seems reasonable approach how we think the dealers should be treated. We are looking for a reasonable solution to what I hear is a grievance.

Levi Andrist: I appreciate that perspective and I will pass that along to AEM in anticipation of further discussion. There is public policy risk for the state is making a law based on a group of aggrieved people and the broader implications are what needs to be considered and that is the context AEM is trying to provide to the committee.

(1:50:32) **Shane Goettle, Doosan Bob Cat:** Testified in Opposition to SB 2289. Mr. Goettle introduced Laura Ness Ownens to provide testimony to the committee.

Laura Ness Owens, Director of Marketing, Doosan Bobcat North America: Testified in Opposition to SB 2289 (See Attachment #9).

(1:56:30) **Chairman Luick:** Have you lost any dealerships in ND because of overreach or because you pushed them to have excess inventory in their lots?

Laura Ness Owens: I don't believe so, but I will confer with my colleague Mike Ballweber.

Mike Ballweber, Senior Vice President of the Commercial Business, Bobcat: Testified in Opposition to SB 2289. We do not have any dealers in ND that we have ever terminated due to that issue.

Senator Klein: It would appear this language would work with what you are doing. Everything I hear from you are things I would hope every manufacturer is doing with their dealers and under current law, you are. I don't understand where this bill infringes on that.

Laura Ness Owens: We would prefer to continue having those discussions directly with our dealers without the restriction in place. We do need to require some level of stocking requirements to keep our factory running with a steady stream of orders to keep inventory on the lot. We believe this legislation as proposed does put requirements in place that are enhanced that would make it more difficult to do business as we do today.

Senator Klein: You are suggesting that if this bill passed, your dealers would refuse to carry new equipment?

Mike Ballweber: If we go specifically to the warranty clause, here would be my concern. Today, Bobcat does not pay travel or training time for their dealers. We do have an elevator

clause that we allow our dealers to obtain a reimbursement rate over and above their stated shop rate. It is a way for us to reimburse our dealers for some of these costs that we know they have. I have had dealers complain that we weren't paying travel time, so I proposed to pursue paying travel time instead of this elevator and none of my dealers ever took me up on it. If this legislation would pass, I would have a separate set of rules for the state of ND that would say we have to pay travel time. I don't have the ability to control 50 different sets of rules whereas I think the one we have now is working fine. I understand what the intent was in terms of warranty but it ties our hands as manufacturers in terms of what solutions we can provide to our dealers.

Senator Klein: Is ND state law consistent with every state in the union?

Mike Ballweber: We are starting to see this pop up in various states and this is starting to become more widespread which is why it is becoming concerning to us. Up to this point, we have been allowed to have discussions with our dealer and mutually agree with what those terms are going to be. Again, our request would be that it continues to operate that way because it has worked well up to this point.

Senator Piepkorn: Can you explain the elevator clause?

Mike Ballweber: We have performance standards specifically around service that we would hold our dealers too. For example, we want their service technicians to be trained at the appropriate level, we want to make sure they have the correct service tools, we want to make sure that any modifications are complete. We have a score card on how we rate our dealers. The higher they get on the score card, the higher we will reimburse them and it can go up to 20% above their stated shop rate.

Senator Larsen: Do you ever consider giving independent companies access to your proprietary parts?

Mike Ballweber: The machines have become more technical. Some of that is because of innovation in the industry, some of it is being driven by EPA. Our goal is to make sure our customers are taken care of and they have a certified technician working on their piece of equipment, the only way I can assure that is through our dealer network. When it gets beyond that, I have no assurances there is a qualified technician working on that piece of equipment. At the same time, our dealers have invested a lot into their service teams and shops and we want to make sure they can get the benefit of what they have invested in. There are third-party companies that will do work to supplying diagnostic diagrams to our equipment and that will continue to go on. I can't see today that that we are going to be a proponent of that. Again, my ultimate goal is to take care of my customers the best way I can and I think that is through our authorized dealer network.

Chairman Luick: Closed the hearing on SB 2289.

Committee Discussion: The committee discussed future work on the bill.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2289
2/9/2017
Job # 28094

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

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Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair

Minutes:

Attachment: #1

Chairman Luick: Opened the discussion on SB 2289.

Senator Klein: This amendment is to give us a clear description of what we mean when we are talking about farm equipment so we don't have a cross over into construction equipment. I believe the language is taken out of the tax code because in the tax code, we tax farm implements differently than we tax construction equipment. The amendments here are an attempt to relieve a manufacturer of their concerns. Although when they spoke about all the efforts they make with their dealers, I struggle to see why they wouldn't want this in code because they are doing it already but I can understand why they have some concerns (See Attachment #1).

Senator Klein: Moved to adopt amendment 17.0394.03001.

Senator Myrdal: Seconded the motion.

Senator Klein: I did run this amendment by Mr. Larsgaard. At the beginning, he didn't think construction equipment was in. But this language and using tax code language, he is comfortable with what we have.

Senator Osland: A lot of dealers are mixed with construction and farm implements; will this have any effect on that?

Chairman Luick: I think the determination is going to have to be made at the time of purchase.

Senator Klein: Our sole intention is to deal with implement dealers who are working with our producers every day. We are not looking to affect anyone else. The bill with the amendment is trying to help your local implement dealer on main street.

Senator Piepkorn: Is there a sales tax difference between farm and construction equipment?

Senator Klein: Yes. That is why the language out of the tax code was very helpful in determining how to classify that.

Committee Discussion: The committee discussed farm and construction equipment.

A Roll Call Vote Was Taken: 6 yeas; 0 nays; 0 absent.

Motion carried.

Senator Myrdal: Moved Do Pass As Amended.

Senator Larsen: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Senator Klein will carry the bill.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2289
2/10/2017
Job # 28227

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Emmery Piottler

Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair

Minutes:

Attachment: #1

Chairman Luick: Opened the discussion on SB 2289.

Senator Klein: Provided the committee with new amendments (See Attachment #1).

Senator Klein: The amendments we passed yesterday had a couple of issues as it related to one of the manufactures in ND. The parties went back to look for some language that would make them more comfortable. As you can see, it hasn't been changed a lot but the words "primary" have been added and all seem to be in agreement at this time.

Senator Klein: Moved to Reconsider Actions on SB 2289.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Klein: Moved to Adopt Amendment 17.0394.03002.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Klein: Moved Do Pass As Amended.

Senator Myrdal: Seconded the motion.

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.
Motion Carried.**

Senator Klein will carry the bill to the floor.

February 9, 2017

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1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

Page 1, line 8, after "A" insert:

"1."

Page 1, line 12, overstrike "1." and insert immediately thereafter "a."

Page 1, line 15, replace "subsection 2" with "subdivision b"

Page 1, line 16, overstrike "2." and insert immediately thereafter "b."

Page 1, line 23, overstrike "3." and insert immediately thereafter "c."

Page 2, line 1, overstrike "4." and insert immediately thereafter "d."

Page 2, line 9, replace "5." with "e."

Page 2, line 17, replace "6." with "f."

Page 2, line 25, replace "7." with "g."

Page 3, line 3, replace "8." with "h."

Page 3, line 12, replace "9." with "i."

Page 3, line 18, replace "10." with "j."

Page 4, line 1, replace "11." with "k."

Page 4, line 7, replace "12." with "l."

Page 4, line 9, replace "a." with "(1)"

Page 4, line 11, replace "b." with "(2)"

Page 4, line 13, replace "c." with "(3)"

Page 4, line 15, replace "d." with "(4)"

Page 4, line 17, replace "e." with "(5)"

Page 4, after line 22, insert:

"2. As used in this section "farm equipment" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power."

Page 4, after line 25, insert:

"1."

Page 5, line 3, after "refusal" insert:

"2."

Page 5, after line 14, insert:

"3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

OK
2/8/17
2 of 2

Page 6, after line 24, insert:

"4. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Renumber accordingly

February 10, 2017

ET
2-10-17
p. 1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

Page 1, line 8, after "A" insert:

"1."

Page 1, line 12, overstrike "1." and insert immediately thereafter "a."

Page 1, line 15, replace "subsection 2" with "subdivision b"

Page 1, line 16, overstrike "2." and insert immediately thereafter "b."

Page 1, line 23, overstrike "3." and insert immediately thereafter "c."

Page 2, line 1, overstrike "4." and insert immediately thereafter "d."

Page 2, line 4, replace "subsection" with "subdivision"

Page 2, line 9, replace "5." with "e."

Page 2, line 12, replace "subsection" with "subdivision"

Page 2, line 17, replace "6." with "f."

Page 2, line 19, overstrike "subsection" and insert immediately thereafter "subdivision"

Page 2, line 22, replace "subsection" with "subdivision"

Page 2, line 25, replace "7." with "g."

Page 3, line 3, replace "8." with "h."

Page 3, line 12, replace "9." with "i."

Page 3, line 18, replace "10." with "j."

Page 3, line 24, replace "subsection" with "subdivision"

Page 4, line 1, replace "11." with "k."

Page 4, line 7, replace "12." with "l."

Page 4, line 9, replace "a." with "(1)"

Page 4, line 11, replace "b." with "(2)"

Page 4, line 13, replace "c." with "(3)"

Page 4, line 15, replace "d." with "(4)"

Page 4, line 17, replace "e." with "(5)"

Page 4, after line 22, insert:

"2. As used in this section "farm equipment" and "farm implements" means all vehicular implements and attachment units, designed and used primarily for planting, cultivating, or harvesting farm products or used primarily in connection with the production of agricultural produce or products.

livestock, or poultry on farms, and which are operated, drawn, or propelled by motor or animal power."

ET
2-10-17
p. 2 of 2

Page 4, after line 25, insert:

"1."

Page 5, line 3, after "refusal" insert:

"2."

Page 5, line 8, overstrike "section" and insert immediately thereafter "subsection"

Page 5, line 10, overstrike "section" and insert immediately thereafter "subsection"

Page 5, after line 14, insert:

"3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Page 6, after line 24, insert:

"4. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Renumber accordingly

Date: 2/2/17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: 17.0394.03001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	<input checked="" type="checkbox"/>		Senator Piepkorn	<input checked="" type="checkbox"/>	
Senator Myrdal	<input checked="" type="checkbox"/>				
Senator Klein	<input checked="" type="checkbox"/>				
Senator Larsen	<input checked="" type="checkbox"/>				
Senator Osland	<input checked="" type="checkbox"/>				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/9
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Myrdal Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Senator Piepkorn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Myrdal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Klein	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Larsen	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Osland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Klein

If the vote is on an amendment, briefly indicate intent:

Date: 2/10/17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☒ Reconsider ☐ _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Piepkorn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Myrdal	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Klein	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Larsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Osland	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/10/17
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: 17.0394.03002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Senator Piepkorn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Myrdal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Klein	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Larsen	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Osland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2289: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEARS, 0 DAYS, 0 ABSENT AND NOT VOTING). SB 2289 was placed on the Sixth order on the calendar.

Page 1, line 8, after "A" insert:

"1."

Page 1, line 12, overstrike "1." and insert immediately thereafter "a."

Page 1, line 15, replace "subsection 2" with "subdivision b"

Page 1, line 16, overstrike "2." and insert immediately thereafter "b."

Page 1, line 23, overstrike "3." and insert immediately thereafter "c."

Page 2, line 1, overstrike "4." and insert immediately thereafter "d."

Page 2, line 4, replace "subsection" with "subdivision"

Page 2, line 9, replace "5." with "e."

Page 2, line 12, replace "subsection" with "subdivision"

Page 2, line 17, replace "6." with "f."

Page 2, line 19, overstrike "subsection" and insert immediately thereafter "subdivision"

Page 2, line 22, replace "subsection" with "subdivision"

Page 2, line 25, replace "7." with "g."

Page 3, line 3, replace "8." with "h."

Page 3, line 12, replace "9." with "i."

Page 3, line 18, replace "10." with "j."

Page 3, line 24, replace "subsection" with "subdivision"

Page 4, line 1, replace "11." with "k."

Page 4, line 7, replace "12." with "l."

Page 4, line 9, replace "a." with "(1)"

Page 4, line 11, replace "b." with "(2)"

Page 4, line 13, replace "c." with "(3)"

Page 4, line 15, replace "d." with "(4)"

Page 4, line 17, replace "e." with "(5)"

Page 4, after line 22, insert:

"2. As used in this section "farm equipment" and "farm implements" means all vehicular implements and attachment units, designed and used primarily for planting, cultivating, or harvesting farm products or used

primarily in connection with the production of agricultural produce or products, livestock, or poultry on farms, and which are operated, drawn, or propelled by motor or animal power."

Page 4, after line 25, insert:

"1."

Page 5, line 3, after "refusal" insert:

"2."

Page 5, line 8, overstrike "section" and insert immediately thereafter "subsection"

Page 5, line 10, overstrike "section" and insert immediately thereafter "subsection"

Page 5, after line 14, insert:

"3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Page 6, after line 24, insert:

"4. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Renumber accordingly

2017 HOUSE AGRICULTURE

SB 2289

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2289
3/2/2017
Job #28611

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.

Minutes:

Attachment 1

Senator Kelly Armstrong, Sponsor: (Attachment 1)

Chairman Dennis Johnson: We have some that couldn't be here today so we are scheduling additional time next week.

Mathew Larsgaard, North Dakota Implement Dealers Association: Will present testimony next week.

Pete Hanebutt, North Dakota Farm Bureau: Will present testimony next week.

Opposition:

George Whitaker, CNH Industrial: We are a large manufacturer in Fargo. We produce Case IH and New Holland farm equipment.

Representative Kiefert: Can you give an idea what the objections are to the bill?

George Whitaker: Major brands have expectations with brands they have built over time. Titan Equipment's annual report shows how they view their relationship with Case IH and CNH Industrial. It is much different with a minor manufacturer.

One of the problems of the bill is one size fits all. That is not the reality of the marketplace. The customer pays for the warranty in the price. Dealers have warranty expense that is lost built into their pricing. The real issue is demand decline. Farmers are less able to purchase equipment. If you want to protect dealers, help farmers raise their income.

We have a common interest with the dealers.

Representative Kiefert: The biggest problem we are seeing in a distressed market is that dealerships are being forced to hold inventory that they can't sell. Is that the issue?

George Whitaker: We have under produced the market for about 12 quarters. The dealers are saying we are loading them with inventory they can't sell. We have a \$225 million investment in Fargo that is producing at half of its capacity.

We floor plan an inventory. Titan has a \$450 million line of credit with us. We have a big stake in their success.

Representative Hogan: This seems like a lot of regulation. Usually we hear that we need more free enterprise and less regulation.

George Whitaker: If our dealers don't succeed, we don't succeed. They are feeling pain because the market is bad. To incent the dealer on warranty, we pay 10-20% more than the shop rate. That is to help the dealer train technicians to make the right investment in shop and equipment.

Representative Hogan: Is this an issue in other states?

George Whitaker: There has been some aggressive dealer law in the Northeastern part of the country. Not a significant issue in other states.

Representative McWilliams: What is your position on minimum purchases?

George Whitaker: We deploy minimum order quantities on whole machines when it is a shipping economic order quantity.

Representative McWilliams: Are you allowing dealers who want to purchase one tractor, that they can pick up the extra expense?

George Whitaker: The consumer wants to see an array of models. In that category we give longer floor plan terms. We expect a dealer to turn that inventory slower on smaller tractors so we give them a longer time to pay.

Representative Skroch: Would you be agreeable to this legislation if the most concerning portions are removed?

George Whitaker: We would like to introduce some amendments. We want the dealers to feel that we are dealing with them fairly. We want to discuss the amendments with the proponents.

Chairman Dennis Johnson: We will continue next week.

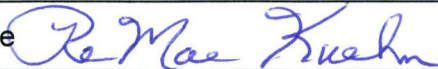
2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2289—Hearing continued a.m.
3/9/2017
Job #28973

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.

Minutes:

Attachments #1-6

Matthew Larsgaard, North Dakota Implement Dealers Association: (Attachment #1)
Example of warranty costs not reimbursed given at (10:00).

(12:30)

Our farmers and many agricultural organizations have signed on in support of this bill. Flyer on page 7 & 8 of attachment #1. This is about our entire agriculture sector.

Page 9, attachment #1 shows map of North Dakota farm equipment dealers.

(13:30)

Representative Satrom: You talked about North Dakota current law provides for fair reimbursement. You asked for consideration for parts and transportation as well. Do you have an amendment or is that in the bill?

Matthew Larsgaard: Current law reimburses dealers for warranty labor at their door rate. We are requesting parts and transportation be added.

Representative Satrom: They are not paying for that?

Matthew Larsgaard: Reimbursement for parts has been a problem. Some manufacturers will cap the amount to reimburse for parts.

Representative Headland: The customer has a warranty provided through the manufacturer. How does that work for a dealer?

Matthew Larsgaard: Many times our dealers have to take a loss to make the repair. There is no reimbursement for transportation to go get the piece of equipment to the shop.

Representative Satrom: (Refers to the map.) What is the significance of the map?

Matthew Larsgaard: These are our state's farm equipment dealers. The impact of this bill will be on many communities in North Dakota.

Representative Howe: We have received hundreds of emails from manufacturers that Bobcat is not included. Can you explain that?

Matthew Larsgaard: I don't know if the manufacturers understand what took place on the Senate side. The only manufacturer at that hearing was Bobcat. There is no carve out for Bobcat. The Senate amended to create a definition of what is farm equipment. Bobcat's concern was that construction equipment was included in the bill. Construction equipment is not included in the bill. Also John Deere and Case produce construction equipment which is not included in this bill. They have construction stores which are not affected by this legislation. Skid steers, pickup trucks, cattle trailers, track hoes, four wheelers, etc. are not classified as farm equipment. When farm equipment dealers sell other products that are not farm equipment, it is not included in this bill.

Representative Kiefert: Looking at the map, how many dealerships were lost in the last five years because they couldn't meet the standards? In our district we lost three dealers.

Matthew Larsgaard: There has been attrition in our dealer ranks over the last several decades. In 1980 we had 306 dealerships. Today we have 125. Some closures were because the dealership couldn't be profitable. In 2015 a major manufacturer terminated two of our stores because they weren't meeting their market share expectations.

In the State of Wisconsin, a major manufacturer terminated a dealership based on market share. The dealer sued and went to court. The manufacturer lost. The court said what the manufacturer was requiring was not fair and reasonable. They had to give the franchise back.

Representative Headland: We have competing manufacturer/dealers within the same area. What percentage of sales is expected by the manufacturer in that area?

Matthew Larsgaard: John Deere's goal is 65% market share. If other manufacturers require the same, it adds up to more than 100%. Someone has to lose. The two stores that we lost in 2015 were terminated for market share.

Representative Headland: What percentage of sales did the ones have who were terminated?

Matthew Larsgaard: One hit a 40% market share and had \$30 million in sales the year before. That wasn't good enough and they were terminated.

Representative Headland: That would have an impact on the town where the dealer is located. Is it unfair for us to assume if one manufacturer has a 65% requirement, that the other manufacturers would have the same requirement?

Matthew Larsgaard: That is the problem. The expectations placed on our dealers are not reasonable. This is a national issue.

Representative Headland: The trend in sales is multiunit discount deals. That is difficult for a small farmer. Are these types of deals being forced on local dealers? Is that part of the market share philosophy?

Matthew Larsgaard: There are discounts for large deals.

Representative McWilliams: This bill is aimed at large manufacturers. Where do the other manufacturers sit?

Matthew Larsgaard: On the Senate side we heard from AEM (Association of Equipment Manufacturers). They represent John Deere, Case IH and others. There is another national association, FEMA (Farm Equipment Manufacturers Association). This organization represents more than 700 manufacturers. They object to efforts by multinational tractor corporations to pressure their independent dealers to remove FEMA members' equipment from the lots. It is a disservice to the farmers and ranchers who value the specialized pieces of equipment. Should the dealer offer several equipment brands, the farmer gains the benefit of competition in the market place. FEMA is in a neutral position. Summers Manufacturing is in support of this bill.

Representative Magrum: If this bill would have been in place, would the two Titan Shops in my district have been able to stay open?

Matthew Larsgaard: Dealerships are closed for one of two reasons. The manufacturer terminates them or they close because they can't turn a profit. If the manufacturer is imposing restrictions, undue financial hardships, requiring them to accept inventory that they can't sell and will have to pay interest on it, we will see more store closures. I think the bill will help.

Vice Chair Trottier: We are discussing dealers and manufacturers. It boils down to the farmers. If they can't get service and sales, it makes it costlier and more difficult. I wish we had more farmers in here.

Matthew Larsgaard: We agree.

Representative Kiefert: To help nonfarmers understand, we buy equipment because we can get the service and the parts. Our area dealership closed and it costs more to get service because there is more mileage. Now that the area service is gone, some farmers are switching to different brands where they can get closer service. That doesn't help John Deere or Case sales. Would you agree?

Matthew Larsgaard: Yes. Competition breeds better quality and lower price.

Representative McWilliams: You referred to an area of responsibility. Does a neighboring dealership's area of responsibility grow?

Matthew Larsgaard: Yes. The area size will be divided up to the other existing dealers.

Representative McWilliams: Then when they are not being reimbursed for travel, the surrounding dealership's cost would then go up also?

Matthew Larsgaard: Absolutely. Now they are driving further to make warranty repairs.

Representative McWilliams: So we put that dealership into jeopardy.

Matthew Larsgaard: That is right. Reads from a contract from a major manufacturer. "Warranty service and other required service--Dealer shall provide warranty service for any product regardless of whether dealer sold that product. Dealer shall also provide other service required as directed by the manufacturer in its sole discretion. May use only the manufacturer's sourced parts."

Chairman Dennis Johnson: As a custom harvester over the years I have seen from Oklahoma the dealerships that have closed in 25 years. At the end of the day we all need each other. We are still sitting with \$4 wheat. We are heading for a train wreck in trying to make this all work. We want to take care of everyone involved: farmers, dealers, and manufacturers.

(36:20)

Matthew Larsgaard: We agree. We have the best manufacturers in the world right here in the U.S. but they are not always good at retailing the products.

Travis Zabloutney, from Minot, Magic City Implement: I am the dealer in which Matthew was referring to that was terminated for market share with an unreasonable standard. I lost my dream because of a manufacturer. They put the pressure on us for some time. I was a territory representative for Case IH and New Holland before coming back to our dealership. There are fewer and fewer dealer/owners. It lowers the manufacturer's cost to do business.

I am now a farmer. The farmer loses. There is better service with local owners.

We had \$30 million in sales and was very profitable. Case IH told us we needed make less and sell more because we weren't accomplishing their goal of market share. When they establish an area of responsibility, it has no basis on what the competitive marketplace looks like. In our case there were several in our area of responsibility for John Deere. We were one of the only for Case IH. We were 1 to 20. We were expected to perform at a market share level that would have been an average for Case IH in the state of North Dakota. They take all the counties and come up with a market share for each of their product lines. One of the flaws in that measurement was the fact that if I sold something out of my AOR (Area of Responsibility) I didn't get credit for it and neither did the dealer that had the area. Just the company got the credit.

We represented both Case IH and New Holland. Case IH said we sold too much for New Holland. They were able to finally force us out to accomplish their agenda of less owners.

Also important is that when selling our dealership, we were told who the buyer would be. There were other interested parties but they were not allowed.

Many of the protections in this bill are necessary to keep the manufacturer from placing undue hardship and pressure on a dealership.

This is about the quality of life for the citizens in our state. These multinational corporations have unlimited checkbooks and attorneys that force us out.

Representative Headland: When looking at the map, a lot of dealers have the same names. We are narrowing the competition and the locations. I understand your pain.

Chairman Dennis Johnson: You were limited who you could sell to. Did they have an appraisal that you had to sell if for?

Travis Zablutney: It was negotiated. One-option negotiations don't go that well.

Representative McWilliams: If there are multiple dealerships in an area, do they have separate contracts? Do they have greater influence over the manufacturer?

Travis Zablutney: When we were in business, it was one contract for multiple locations. The more business you do, the bigger player you are. The small guy gets the shorter end. When there are multiple dealerships with the same name they are not going to compete against each other.

Representative Kiefert: There was a time when things were easy to fix. Now we are dependent to have the dealer come out.

Travis Zablutney: I am in that position now. Had the closed dealers been allowed to remain as independents, they would be here today. Our dealership was profitable because we focused on service.

Representative Skroch: When purchasing an implement, we look for a good warranty. How did reimbursement for warranty work impact you?

Travis Zablutney: The farmer pays for it in the end. We would honor those commitments. There were many times when transportation was not reimbursed. We had to make some money up front knowing that those costs will come. The fairer way is for the manufacturer, who controls the quality, take responsibility for the cost.

(58:00)

Marc Taylor, Past President of North Dakota Implement Dealers Association:
(Attachment #2)

(1:11:30)

Representative Satrom: You have a contract on your desk. How often do you negotiate contracts?

Marc Taylor: It varies by manufacturer. Most contracts are two or three years old.

Representative Satrom: Do have any contracts hanging over your head? I am asking whether an emergency clause would be in order?

Marc Taylor: Yes. We have two or three. The current contract doesn't have the 90-day sign it or you are out. March 7 was the last one received. It says if the contract is not signed by the end of October, we will lose our fourth quarter volume bonus. The volume bonus is a large part of our profitability today.

Representative Howe: When was the last time you signed a contract?

Marc Taylor: We purchased additional locations. Generally speaking, it was 2012 and later. One manufacturer we signed with in the last year

Representative Howe: Is the manufacturer changing the rules in the middle of the game?

Marc Taylor: Yes. The one contract states that you have 90 days or it is cause for termination.

Chairman Dennis Johnson: The investment you have in your technicians, is it good retention?

Marc Taylor: Outside the Bakken has been good. It was extremely costly to keep good people or you have those that made mistakes.

Representative McWilliams: When you sign a contract, is there a length of time that it is good for? Or is it open ended until you are sent a new one that supersedes the old one?

Marc Taylor: I can't speak to all products. Some are annual. Most are open ended. When they want to bring one forward, they expect you to sign it.

Representative McWilliams: You have multiple dealerships?

Marc Taylor: Correct.

Representative McWilliams: The contract language is just as onerous for those who own multiple dealerships as it is for single dealerships.

Marc Taylor: It is more so because of the investment we have.

Representative Schreiber-Beck: Other than the market share for your multiple dealerships, is there a lot of variability in the contracts? Or is it one contract for all the dealerships that you own?

Marc Taylor: The Area of Responsibility is spelled out for each location. The market share is looked at by location. Sometimes multiple locations work better and sometimes not.

They prefer one contract. That is why the language in the new contract says they can cancel a given store in that contract.

(1:19)

Jeff Romsdal, Equipment Dealer General Manager, Central Sales, Jamestown:
(Attachment #3)

Gave an example of a service call that required 6 trips at \$160 per trip. The total bill for parts, labor, and trips was at \$5,000. They received credit for \$2,400. A squeeze was put to the dealers to protect their stock price.

(1:24:40)

Continues with Attachment #3

(1:27)

Representative Skroch: You have to keep the staff on hand and they have to be up to date with the latest certifications and models. You take the risk and provide jobs. This makes you susceptible to manufacturers' contracts.

Jeff Romsdal: Over half of my bottom line is unreimbursed warranty costs. Of that I hope to collect half. The pressure is huge from the manufacturer. The manufacturers say they want less dealers.

Representative Satrom: Do you have contracts hanging over your head now?

Jeff Romsdal: The company I love to do business with is Bobcat. The answer is "No" as they are not affected by this bill.

(1:30:20)

Bruce Uglem, Northwood: (Attachment #4)

Pete Hanebutt, North Dakota Farm Bureau: This bill mirrors what was done with auto manufacturers. We may not have auto dealers in small towns if we hadn't made that change.

Kayla Pulvermacher, North Dakota Farmers Union: (Attachment #5)

Julie Ellingson, North Dakota Stockmen's Association: Also in support.

Donna Henderson: Also in support. In 1927 my great grandfather started Schuler Hardware and Implement Company in Munich, North Dakota. It sold John Deere equipment, did repairs, service, and had a hardware store. It survived the depression. My dad purchased it from my grandfather and we all worked as a family.

It was the saddest day when John Deere took the franchise away, not only for us but the whole community. The farmers had to go to the next town. That was the beginning of the end of the town. The hardware store employed five families. A few years after that we started to see other colors of equipment.

The reason there aren't more farmers here, the farmers don't know this is going on. We have farmed over 30 years. We farm 2000 acres. We have five boys and one girl. The boys love farming. We need to keep the little dealerships open so they can get the parts and service they need. What are we doing for the next generation of farmers?

Chairman Dennis Johnson: What is the closest John Deere dealer?

Donna Henderson: The closest is Langdon. We can call about a tractor down and they will be there in the morning.

(1:39)

Opposition:

Levi Andrist, Association of Equipment Manufacturers: (Attachment #6)
Amendments (page 4)

(1:44)

Representative Howe: You say it violates constitutional protections. This bill is identical to the auto dealers law. How are they getting through this?

Levi Andrist: The state and federal constitutions have a contracts clause that says legislation cannot retroactively impair existing contracts between private parties. If a law comes after the fact to modify what is in the already signed agreements, that would violate the contracts clause. Prospective applications would not impair existing contracts. That is a timing issue. The basis is an opinion from an 8th circuit court of appeals case called Janklow out of South Dakota.

Representative Headland: The testimony talks about mutually agreed upon contracts. Everything we've heard contradicts that. A contract with a dealer stipulates that they lose their bonus. That doesn't sound mutual.

Levi Andrist: That is better suited for John Deere.

Representative Schreiber-Beck: Your testimony says AEM members support 10,872 jobs in North Dakota. Who are those employees?

Levi Andrist: I would have to find out.

Representative Schreiber-Beck: You made a statement that both parties need to be committed to work out isolated disagreements rather than seeking legislative solutions. I understand there has been an effort by dealerships to try to work it out and there has been no workout in over a year and a half. Is there more information that you may have?

Levi Andrist: There is an effort on the national level to work out a disagreement. The question is the role of the legislative branch to intervene.

Representative Schreiber-Beck: I agree, but there doesn't seem to be a resolve. You also read in your testimony that the bill would negate existing agreements the parties have reached to arbitration. Have there been agreements reached that we are unaware of?

Levi Andrist: It is common in business contracts to have arbitration clauses. If you have existing contracts that have arbitration clauses that say, "if there is a dispute with the contract we will go to arbitration." If this bill would be enacted and say you can't have arbitration clauses, that would negate the existing contract which says to dissolve disputes through arbitration.

Representative McWilliams: Can you define the difference between an isolated case and an epidemic?

Levi Andrist: That is a philosophical question. I am not in a capacity to answer.

Representative Kiefert: It seems the service to the customer isn't the concern. When do I lose my dealership in Valley City?

Levi Andrist: I can't provide specifics for Barnes County.

Vice Chair Trottier: If this is retroactive, it will be challenged in court?

Levi Andrist: If a manufacturer or dealer would bring it to court and a court would determine that it does violate constitutional contract law provisions.

Representative McWilliams: In regards to this law applying retroactively to contracts, how does that apply to open ended contracts that don't have an expiration date?

Levi Andrist: To have a contract means you have a meeting of the minds. If you have a meeting of the minds, you have a bargain for agreement. If you have a bargain for agreement, that is protected under the contracts clause of the state and federal constitutions. There are various business arrangements in contracts.

Representative Hogan: In your proposed amendments, do you have one to take out the retroactive clause?

Levi Andrist: That is up to this committee. It depends on how you interpret the bill.

Representative Oliver: It is difficult to find that retroactive section in the bill.

Levi Andrist: North Dakota law provides that bills are prospective unless there is a clause of retroactivity which is not in the bill. The North Dakota Supreme Court said retroactivity can be implied by the court regardless of the clause. Without a court, we must assume that it will be implied to be retroactive.

Representative Oliver: Page 4, line 18, subparagraph I, item 5, says "the dealer to agree to arbitration or waive their rights to bring a cause of action against the manufacturer, unless done in connection with a settlement agreement to resolve a matter between a

manufacturer and the dealer. The settlement agreement must be entered voluntarily for separate and valuable consideration.” That is the only spot I see. I don’t think there is anything that impairs manufacturers’ pre-existing agreements.

Levi Andrist: I appreciate your interpretation of the bill.

Representative Schreiber-Beck: How many AEM members are considered equipment manufacturers? Which ones are affected by this bill?

Levi Andrist: You have to look at the definition, page 6, line 3. The key word is used “primarily” for farm purposes. “Primarily” is a lawyer’s dream word. Is it on a time basis or task basis?

Representative Headland: The bill sponsor said that North Dakota already is creating laws to protect dealers from unfair burdens placed on them by manufacturers. How would further strengthening that be troublesome?

Was retroactive application litigated in Maine to the Supreme Court with John Deere?

Levi Andrist: Yes, it has been litigated in the 8th Circuit Court of Appeals in South Dakota.

Representative Headland: What about the Supreme Court in New Hampshire, Maine, Connecticut?

Levi Andrist: Those are different courts with different jurisdictions. You look to the courts that are binding over you before you look to decisions from other states.

Chairman Dennis Johnson: We will continue this afternoon after floor session.


2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Peace Garden Room, State Capitol

SB 2289—Hearing continued p.m.
3/9/2017
Job #29002

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.

Minutes:

Attachments 1-3

Opposition: (Continued)

Thomas Iles, Public Affairs, John Deere Corporation: (Attachment #1)

If John Deere did a small portion of what was alleged this morning, we wouldn't be celebrating 180 years in business this year. We are the world's largest manufacturer of agricultural equipment. We are also the world's largest manufacturer of forestry equipment. We have a full line of construction equipment, commercial and consumer equipment, along with a lending arm on various pieces of equipment.

The two manufacturing facilities in North Dakota over the last two years have done expansions. We have 45 dealers in the state.

Position Statement (page 2 of Attachment #1)

If they want to sell competitive lines, we ask that they be in a separate facility, with a separate set of books, and a separate sales staff. We also allow compatible pieces of equipment. We allow it in the dealership if we don't manufacture it.

This legislation limits our ability to approve who our dealers are and where our dealerships are located. We cannot hold dealerships responsible for market share. We don't rip the dealership out from that owner. If we have a concern on market share, we sit down with that dealer and do a business improvement plan. Over a three-year period, we identify benchmarks that we hope to accomplish. The only time we would close a dealership is for fraudulent activity. Our contract lays out the process we have to go through in regard to terminating our dealerships.

The legislation says we can't use a mutually agreed upon arbitration process. It also dictates our warranty process and reimbursement rates.

The provisions in this legislation are confusing and will lead to an increase in litigation. What is Substantial? Unreasonable? Unfair? Arbitrarily? Primarily? Material terms? What is it that says we can't refuse to approve? Why have an approval process if you can't refuse the approval?

If you went into a John Deere dealership, do you think it would be beneficial as a customer to sit on a piece of John Deere equipment? The legislation would prohibit us from having to have our equipment in a John Deere dealership.

Manufacturers are not the only entities opposing this legislation. There are two John Deere dealers opposed to the legislation. Leading Edge Equipment, with 90 employees, is opposed to this bill. This third generation family-owned dealership serves customers out of Michigan, Devils Lake, Hampton, and Carrington. (page 4 of Attachment #1)

Representative Headland: It was my belief that Leading Edge was a proponent of the bill in the other chamber. Now they are not. What occurred that changed their decision?

Tom Iles: I had heard John Deere was paying our dealers to oppose the legislation in North Dakota. That is not true. We sat down with our dealers and discussed the ramifications in the legislation. Leading Edge Equipment was initially supportive of this bill and is now opposed.

Representative Headland: It was a conversation that got them to reconsider. In the other chamber there were several John Deere dealers at the Senate hearing that are not here today. Is it proper to assume you had the same conversation with those other dealers as well?

Tom Iles: We had conversations with about five different dealer principal groups. We did not intimidate. We did not threaten to close them down. We did not bribe them. We didn't give them any money. We talked about the legislation.

Tom Iles: Senate Bill 2289 has shocked our John Deere management at the highest levels in our company. North Dakota has been an important state for our company. John Deere has significantly invested in this state. We have developed manufacturing facilities and enhanced them through expansions. There 850 employees with John Deere manufacturing. Our employees and our foundations have provided contributions in the communities where the facilities are located (Fargo and Valley City). Our foundation put in \$289,000 in those two communities this last year.

This legislation is like a mean slap in the face to John Deere. Remember the word "primarily." The Senate added "primarily" on page 5, line 5. The reason that was added was for Bobcat. Bobcat wins—John Deere loses. We all compete in the same marketplace. They now have an advantage if they are exempt from the legislation.

Make it clear whether Bobcat is in or out. Read testimony from Doosan Bobcat given to Senate Agriculture committee. "We largely serve the construction industry. However, because we also serve the agricultural industry, we believe the legislation as written will

have adverse effects on our business as well. They got an amendment and were carved out. They then get a competitive advantage over the other manufacturers.

I Googled Lillegard Bobcat in Wahpeton. If you look under new inventory, they sell agricultural products. Are they in this legislation or not?

Here is what Leading Edge says about the exemption "The farm equipment dealers' language enables other brand dealers whose primary sales are not farm equipment to sell competing equipment without the same restrictions.

Is Butler Cat in or not? They have five locations in North Dakota. Under new inventory they have 13 categories of agriculture equipment. They are known as a construction and forestry and mining dealership. You could do an amendment to clear up that question. If these provisions are that important, they should be good for everybody.

You have amendments given out this morning by Levi Andrist. (Attachment #2)
I have gone through John Deere's concerns with Matthew Larsgaard and suggestions for amendments. He said he got direction from his board to not entertain any amendments.

Donna and Paul Henderson, Schuler Implements—was closed in 1985. That was the farm crisis of the 80's. John Deere was close to going out of business. We had to make some tough decisions.

There were a couple of reasons dealerships were given in regards to how they go out of business.

1. Breach of contract
2. Market share
3. Fraud
4. They retire—voluntarily go out of business

There was mention of manipulation of our contracts because we had our eye on our stock price. John Deere can't be responsible for everything that goes south. We are trying to work with our dealers to get them through these tough times. From the comments this morning it sounds like when we negotiate a contract we come in with a shotgun and they have to sign it. That is not the case. It is a true negotiation for John Deere.

This bill fractures our partnership with our dealers. It tarnishes our John Deere brand. It requires John Deere to allow inferior products to be sold under a John Deere logo. We lose the ability to select our dealers and locations.

All manufacturers are opposed to the legislation except for those carved out with the Senate amendment. Not all dealers are supportive of this legislation.

(32:40)

Representative Howe: Why were these amendments rejected in the Senate?

Tom Iles: I don't think they were offered in the Senate.

Representative Howe: We heard testimony about dealerships are limited on who they can sell their dealership to. Can you address that?

Tom Iles: The sale of a dealership is a negotiation. There may be certain people who are not the best person for a John Deere dealership.

Representative Headland: I asked Levi about contracts and mutual agreement. We heard the manufacturers are using a heavy handed approach and withholding bonuses.

Tom Iles: We do not do that.

Representative Headland: It appears there is a manufacturer that is willing to do it. I have a friend that was the General Manager of a John Deere store that was closed. I know it was because they couldn't meet their sales volume. The store was in Wimbledon.

Tom Iles: I am not familiar with the reasons in the Wimbledon situation. I would hope we sat down with them with our business improvement plan.

Representative Headland: It was Cooperstown as well. They were owned by the same people and both stores were closed. That created a big gap.

Tom Iles: I am not familiar with the Cooperstown situation. We can follow that up with our management. The perception that we rip our stores out from our dealerships is the furthest thing from the truth. A business improvement plan takes three years to do.

(39:46)

Representative Skroch: One of the greatest impacts to dealerships is the reimbursement for warranty repair work. They are suffering losses due to the reimbursement amount. Have there been negotiations to make changes to the contracts to accommodate better reimbursement for warranty repair work?

Tom Iles: Yes. There have been numerous discussions with John Deere and our Dealer Advisory Council. The council is made up of dealers of all sizes and sits down on a quarterly basis to discuss problems. With reference to warranty, we have the best warranty backup for our equipment in the industry. In our contract it is spelled out as to what is covered. On a case by cases basis in negotiation with the dealer we talk about if they should be reimbursed. Parts are paid the full cost plus 20%. 98% of every part that John Deere manufactures can be at that dealership within 24 hours. When you have competitive lines, you can't have all the parts.

Representative Skroch: I am asking for examples of contracts that have been changed for dealers knowing they are having difficulty covering their cost?

Tom Iles: I cannot answer that. I can get in touch with management and get an answer.

Representative McWilliams: Could you outline the financial stake that John Deere has in dealer locations?

Tom Iles: We have a significant stake in having successful dealerships. We provide a quality product at the lowest cost to the dealer.

Representative McWilliams: Would you outline the financial stake that John Deere as a manufacturer has in the physical business of a dealership? Do you pay for the land, taxes, building?

Tom Iles: We do not pay for the land, building, or taxes. We ask our dealerships to put up a John Deere logo. The dealership should be accommodating and safe for customers. We offer technical expertise.

Representative Satrom: You say all the things that you have done for North Dakota. How much has John Deere benefited? You talk about what John Deere has invested in North Dakota. You are not invested. Maybe your shareholders are. The families that own these dealerships are the ones that are invested. You gave \$289,000. What is the price of a combine? How many combines have been sold in North Dakota? We are going to kill the small towns and I love the small towns in North Dakota.

Tom Iles: The 850 employees in Valley City and Fargo sense a commitment from John Deere to their communities and livelihood. We have facilities in 19 states. I am never going to apologize working for a successful company that started 180 years ago with one person and now we have 56,000 employees. We have to work with our shareholders. We feel we have invested in this state. \$289,000 is a good amount of money for Fargo and Valley City as well as the commitment. We are not threatening to move out of Valley City or Fargo because of this legislation.

Representative Satrom: When you have a family owned business, they are putting it all on the line. If you lose 20% on the value of your stock, you will survive.

Representative Magrum: You don't want different lines. What is wrong with different lines? Some customers can't afford the more expensive line. They may come back someday and trade it in for the higher quality product. When I go to Lowes I see John Deere as well as other brands. Why won't you work with some of the smaller dealers to help out our rural areas?

Tom Iles: Home Depot and Lowes have an arrangement to sell the small residential lawn tractor. You will see it next to the other competitors. It added to the dealerships because they receive set up costs, logo, delivery charge, and \$35 for calling and introducing themselves to that customer. Dealerships are not open Saturday nights and Sundays. This is the only thing we sell at Home Depot and Lowes. It is at the same price point as what you can buy it for at the dealership.

We know some dealerships are struggling. If you have all of these competitive lines in the dealership, you won't have all the parts and expertise.

Representative Magrum: I did business with a John Deere dealer that used to sell Bobcat. They provided local service. They no longer can take in Bobcat for service. Now I

go to Bismarck or Fargo. If you could have at least one competing brand with John Deere in these rural areas.

Representative McWilliams: Small dealers are looking for a little flexibility to handle their market.

Tom Iles: There can't be an equipment dealer on every corner. We try to develop a dealer network that gives the best opportunity to that dealer. We have had consolidation of dealer ownership groups. For the most part our dealer retail stores have not diminished drastically.

Chairman Dennis Johnson: Do you have any dealers that sell Mahindra?

Tom Iles: There is one dealership in Pennsylvania, they were able to get a Mahindra tractor into that dealership.

Chairman Dennis Johnson: I am not going to a John Deere store to buy a foreign tractor.

Tom Iles: But with this legislation you could. We would have to allow it.

Chairman Dennis Johnson: You could, but I don't believe one would.

Tom Iles: Then why don't we leave it alone?

Chairman Dennis Johnson: I am proud of the dealers that got up here this morning and dared to speak in front of the manufacturers. They are caught in a dilemma. All of our John Deere dealers are noticeably absent that were here before.

Tom Iles: John Deere dealers from North Dakota and across the United States are in Mexico for a dealers' meeting. We thought this hearing would be next week.

Representative Headland: You can't change the fact that they were in the Senate on the other side of the issue.

Representative Skroch: If you have that great of a relationship with your dealers, why are you concerned?

Tom Iles: Because this legislation, if passed, becomes our contract. There are provisions in here that are not negotiable.

Representative Skroch: The dealers have designed this bill to address issues that have been unresolved. If there had been an answer to those concerns, we wouldn't be here. A John Deere dealer has a farmer trade in a Case IH because he wants a John Deere. Now the dealer has a Case IH on the lot that he has to move. Another brand name is what might make the deal.

Tom Iles: Our position on competitive lines is clear. In all of this legislation it is the most important element.

Representative Kiefert: I can appreciate your vision. Are you willing to decrease dealerships to accomplish this? We are getting emails from dealers asking us to do something. They are saying they can't afford to stock the equipment and they are getting burned on the warranty work. What is John Deere offering to do for them?

Tom Iles: During these tough times we have met with our dealerships and tried to work through the situation. We are hoping the sales will go back up.

(1:23)

Shane Goettle, Representing Bobcat: This situation in the Senate begged for a definition of what is farm equipment. Bobcat sells predominately in the construction market. Some Bobcat equipment ends up on farms and ranches. So do ATVs, trailers, etc. We are neutral on this bill. It isn't a Bobcat carve out. It is a definition of farm equipment.

Representative Howe: Before the bill was amended in the Senate, Bobcat wasn't included anyway. This is just clarifying language.

Shane Goettle: This was a clarification. Bobcat equipment is not seen in the field as tillage equipment, etc.

Representative Vigesaa, Cooperstown, Chrysler, Dodge, Jeep, Ram Dealership: We had similar legislation four years ago. Much of the same concerns were expressed by the manufacturers. The bill did pass. Some of the provisions are the same such as warranty reimbursement. The manufacturers have had to make some adjustments. Our business is now requesting a warranty labor rate increase. There is a process to apply for that. The manufacturer should pay the retail rate for repair. We have been a dealership for 57 years. We are getting along fine with the manufacturers.

Chairman Dennis Johnson: Were there any repercussions after the bill was passed?

Rep. Vigesaa: There were some unpleasant conversations for some. I felt no adversarial reaction in my business

Representative Kiefert: John Deere wants to have only their equipment in the store. We have dealerships in trouble. We are not hearing any proposals from John Deere to make amends. That puts our committee in a difficult spot.

Dan Gorder, TrueNorth Equipment: (Attachment #3) Provided testimony in opposition but was not present.

Chairman Dennis Johnson: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2289—Committee Work
3/10/2017
Job #29021

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Debbie Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair.

Minutes:

Representative Headland: Moved Do Pass

Representative Kiefert: Seconded the motion

A Roll Call vote was taken: Yes 13, No 0, Absent 1.

Do Pass carries.

Representative Satrom will carry the bill.

Date: 3/10/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2289**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation

:

- ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Headland Seconded By Rep. Kiefert

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Bosch	X	
Vice Chairman Wayne Trottier	X		Rep. Kathy Hogan	AB	
Rep. Jake Blum	X				
Rep. Craig Headland	X				
Rep. Michael Howe	X				
Rep. Dwight Kiefert	X				
Rep. Jeffery Magrum	X				
Rep. Aaron McWilliams	X				
Rep. Bill Oliver	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				

Total **Yes** 13 **No** 0

Absent 1

Floor Assignment Rep. Satrom

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2289, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2289 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2289

#1

Senate Bill 2289
Testimony before Senate Agriculture
Matthew C. Larsgaard, MBA
North Dakota Implement Dealers Association

9:00 a.m., February 3, 2017

1/27/17

Mr. Chairman, members of the committee. My name is Matthew Larsgaard and I am appearing in SUPPORT of Senate Bill 2289 on behalf of the North Dakota Implement Dealers Association (NDIDA) which represents our state's 125 farm equipment dealers.

NDIDA members generate approximately \$5 Billion in annual retail sales in North Dakota. We employ almost 3,800 people with an annual statewide payroll of over \$225 Million dollars.

This bill was introduced at the request of North Dakota's farm equipment dealers and is designed to strengthen current state law, specifically the "Prohibited practices under farm equipment dealership contracts." This section of code was originally created in 1991 to help promote equity and fairness in business dealings between farm equipment manufacturers and dealers. This type of law is not unique to North Dakota, it is quite common in that most states have dealer protection statutes.

One of the reasons why the law was originally created was to protect dealers from manufacturer overreach and unfair business practices. In the past, individuals entered into contractual relationships with manufacturers to become dealers. In many cases, those individuals began by investing much of what they owned into purchasing a building, buying inventory, establishing a customer base, building the brand, etc. As time marched on, the manufacturers would often change the terms of the existing contracts and then "require" dealers to adhere to the new stipulations. These new agreements are called "Contracts of Adhesion" which are a take-it or leave-it arrangement under which the dealer has no choice but to sign the contract or not be a dealer. It is important to understand that dealers have no bargaining power or ability to negotiate the terms of these contracts. This is why the vast majority of states, if not all, have dealer protection laws.

Why the need for this legislation?

We take the opportunity to have legislation introduced very seriously and approached Senator Armstrong only after carefully deliberating the need for this bill over the last 1.5 years.

One of the major reasons for this legislation is an attempt to add stability for North Dakota dealers following a recent and fundamental shift in the demands placed upon dealers by the manufacturers. For example, during 2015, a major farm equipment manufacturer developed a new dealer agreement that contains several quite onerous, one-sided provisions that we had never seen before. Our national dealer association made multiple attempts to find a compromise with the manufacturer and negotiate out some of the most onerous provisions. However, the manufacturer would not make material changes to the contract and, as a result, our significant concerns remain. The following are just four examples of those concerns:

Equipment/Parts Purchase Requirements. A requirement within the new contract states “Dealer shall order...new equipment...at the level deemed necessary by [the manufacturer] to meet dealer’s equipment sales obligations....” This provision allows the manufacturer to require the dealer to purchase from the manufacturer a minimum number of tractors, combines, parts, etc. Mandatory equipment purchase orders, which may or may not consist of products that farmers will purchase, could present a significant and unfair financial burden on North Dakota’s farm equipment dealers who are forced to pay for and stock such equipment.

Payment Chargebacks. Another provision within the new contract would allow the manufacturer to charge back to the dealer all payments (sales incentives/programs, warranty, etc.) made to a dealer during the previous two years if the dealer fails to meet certain performance requirements such as maintaining “...a substantial amount of the required records....” This provision could be extremely harmful to multiple store dealers, as a failure at a single store location may create company-wide exposure for all payments associated with all of the rest of the dealer’s locations. This provision could be devastating to a dealer.

Manufacturers’ Attempt to Eliminate Competition. In many cases, a main line manufacturer may not produce a particular line of product that has demand in a given region, or they may have a significantly inferior product relative to their competitors.

As such, in an effort to fulfill farmers’ needs, dealers often must establish relationships with other manufacturers in an attempt to fill product gaps and fulfill farmers’ expectations. Dealers may expend a substantial amount of time, treasure, and talent in an effort to develop a market for any given non-main line product.

Under North Dakota law, it is currently illegal for a manufacturer to restrict a dealer from purchasing farm equipment that was made by another manufacturer. However, we are seeing some manufacturers attempt to include provisions in their contracts that would require dealers to separate both their personnel and facilities in such a manner “as is satisfactory to the manufacturer.” Dealers need the ability to choose, display, and offer for sale the products and equipment that North Dakota farmers demand.

Dealership Location Termination. Current ND state law (57-07-01.1) prohibits a manufacturer from terminating a dealership contract except for “good cause”. Good cause is defined as the “*failure by the retailer to substantially comply with those essential and reasonable requirements imposed by the contract...*” In today’s economy, most dealers operate multiple stores in an effort to try to turn a profit. Typically, multiple stores or branch locations are operated under one dealership contract. We have seen another new contract provision that would allow the manufacturer to terminate a branch location “*for ANY breach by the dealer*” of the contract. This provision is particularly troubling because it appears to allow the manufacturer to change the intent of North Dakota’s termination for “good cause” statute, which apply to contracts, not single locations. Thus, a manufacturer could terminate a branch location and not be in violation of the law.

In our rural state, the loss of a branch location would be harmful to not only the dealer but, the farmers that count on that location for prompt service; especially during harvest.

SB 2289 addresses several concerns, including the ones we just reviewed. While some provisions are new, others would simply provide the same protection for farm equipment dealers that have already been granted to automobile dealers in North Dakota.

Explanation of SB 2289

Page 1, **Subsection 1**, lines 12-15, enhances current law by protecting a dealer from being required to purchase farm equipment, parts or accessories that the dealer does not voluntarily order.

Subsection 2, lines 16-22, further protects dealers from being required to purchase additional, unwanted inventory as a condition of filling an order.

Page 2, **Subsections 4 & 5**, lines 1-16 further expands upon existing subsection 3 by protecting dealers from being required to separate service areas, different brand products, etc. within their dealerships or to maintain exclusive facilities, personnel, or display space in order to renew a dealer agreement or participate in a program discount, sales incentive, etc.

Subsection 7, lines 25-31, and Page 3, lines 1-2, protects dealers from the arbitrary termination of their dealership contract and the unreasonable removal of authorization for a branch location or product line.

Page 3, **Subsection 8**, lines 3-11, protects dealers from being forced to move their dealership to another location or to make unreasonable changes to the dealership building or property. *This is current law for auto dealers.*

Subsection 9, lines 12-17, allows a dealer to move to another location as long as the location and site plan are reasonable. The manufacturer may approve or deny the request within 60 days. *This is current law for auto dealers.*

Subsection 10, lines 18-31, prohibits a manufacturer from conducting an audit or chargeback on warranty or incentive payments made more than 1 year after payment.

Lines 20-23: Protects both manufacturers and dealers in that a manufacturer may not charge back a dealer for an incentive or warranty payment unless the dealer's claim was false, fraudulent, or the dealer did not comply with the manufacturer's written procedures for turning in a claim.

Lines 23-31 state that the provisions of this subsection apply to all incentive and reimbursement programs that are subject to audit by a manufacturer. Also, before imposing a chargeback, the manufacturer must be transparent and identify each claim at issue. They may not charge back an amount that exceeds the total direct compensation received by the dealer for the applicable

claim and must provide the dealer with at least 45 days to present additional information regarding any claim at issue.

Page 4, **Subsection 11**, lines 1-6, requires the performance standards placed on dealers to be reasonable, fair, and transparent.

Subsection 12, lines 7-22, protects dealers from being required to sign an agreement that requires a dealer to: a) be subject to another state's law b) conduct legal proceedings outside of North Dakota c) give up the dealer's rights under ND state law or to settle a disagreement in a state or federal court in ND d) agree to arbitration or e) give up the dealer's right to bring a legal proceeding against a manufacturer unless a voluntary settlement agreement has been reached. *This is current law for auto dealers.*

Dealership Transfers

Page 4, lines 26-31 and page 5, lines 1-14. North Dakota state law currently sets forth the conditions under which an automobile or truck dealership may be sold. The conditions are fair and equitable to both the manufacturers and the dealers.

A dealer who intends to sell their dealership must provide written notice to the manufacturer. The manufacturer then has the opportunity to approve or deny the dealer's request within 60 days. The manufacturer may deny the request only if the proposed buyer does not meet the manufacturer's financial or business experience requirements.

Our amendment simply adds farm equipment dealers to existing law that already applies to automobile and truck dealers.

Warranty Repair

Page 5, lines 15-31 and page 6 address warranty service reimbursement. Manufacturers contractually require dealers to provide warranty repair...regardless of whether the dealer sold that specific piece of equipment or not. Furthermore, dealers are typically required to use only parts that are purchased from the manufacturers for warranty repairs.

Manufacturers have been reimbursing dealers for warranty parts at a rate that is arbitrarily set by the manufacturer. These rates are not consistent with the dealer's parts markup rate for non-warranty repair work. The problem is worsened when the dealer is required to travel to a field where a piece of equipment may be broken down. For example, a combine may be out in the field harvesting and suffer a breakdown that can only be repaired back at the dealership. The dealer would be required to send their semi-tractor and trailer to load the combine, bring it back to the dealership, repair it, haul it back to the field to drop it off, and then drive back to the dealership. In this situation it would not be unusual for a dealer to receive absolutely no reimbursement for the numerous trips required to repair the combine. As a result, the dealer could incur significant financial losses to fulfill a promise made by the manufacturer to an individual that may not even be the dealer's customer.

Current ND law, and the vast majority of states, require automobile manufacturers to reimburse dealers for warranty labor and parts at the dealer's regular, non-warranty rate. MN and SD also require farm equipment manufacturers to reimburse their dealers for warranty labor and parts. In addition, SD also requires reimbursement for transportation of equipment. As you can see, warranty reimbursement laws are not a unique concept. Furthermore, current ND law provides for fair reimbursement for farm equipment warranty labor, however we respectfully request that consideration be made for parts and transportation as well.

Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with manufacturers. It is important to note that we have also built protections into this bill for the manufacturers....we want fairness for both parties.

Given the farm economy over the last several years, many of our state's farmers and farm equipment dealers are struggling to survive. Farmers, and the dealers that serve them, need this bill to help protect one of the most vital components of our economy; the dealerships that repair and service our state's farm equipment.

Matthew C. Larsgaard, MBA
President & CEO
North Dakota Implement Dealers Association

2/3/17

#2

pg. 1

Senate Bill 2289

Mr. Chairman, members of the committee.

My name is Marc Taylor and I am appearing in support of Senate Bill 2289. I am a past president of the North Dakota Implement Dealers Association and a past president of the North Dakota Ag Association. I have been involved in the farm equipment business since 1976. My career began as a representative for a major farm equipment manufacturer; for the last 30 some years as a dealer.

2017 is going to be a challenging year. We have seen the sales volume for the Mandan store's Area Of Responsibility (AOR) drop from ~\$63.5 million in 2013 to \$24.8 million in 2016 with further declines expected. (Based on manufacturer's estimate of all agricultural whole goods sales in the AOR for Mandan-The Counties of Emmons, Kidder, Burleigh, Sheridan, McLean, Mercer, Oliver, Morton, Sioux and Grant {several counties are shared with another dealership}).

One industry consultant estimates that 40% of the dealerships in the country will change ownership or cease before dealers adjust to the "new normal". Why? Because of the tremendous inventory costs that we face-interest costs and price adjustments. In the 2000 to 2006 business climate, which was considered "normal", the difference between a "highly profitable" dealership and a dealership that lost money was 3%. It appears 2017 may be even narrower.

There are two overriding expenses that must be managed to be a financially healthy dealership in 2017. First, inventory-the interest and the cost to get that inventory to a manageable level. Second is people. If we can manage our inventory, we can maintain our employees at or near our current level. However, if we are unable to control our inventory completely, we are forced to make other, less appealing adjustments. We need to be in control of our inventory, not required to order by a manufacturers guideline that may have been set up a year earlier.

Recently, some manufacturers have presented new contracts, some with little regard for the disastrous effect the contract can have on a dealer. Because dealers have resisted signing the new contract, those manufacturers have published programs that state the dealer has until a given date to sign the contract or lose certain incentives such as volume bonuses. Some years the volume bonus is the difference between being profitable and unprofitable.

Something new to the contracts is the manufacturer expressly states they can cancel a single store in a company complex (multiple store dealership) if that single store is under-performing by the manufacturer's requirements, while the overall company is meeting the manufacturer's requirements. This could be very devastating to both the customers and the owners of a store.

Several contracts have a clause that states if a dealer has not "executed" (signed and returned) within a time, specified in the governing contract (usually 90 days), it is "good cause" for termination.

Warranty is always a concern for the customer, the dealer and the manufacturer. Every customer deserves to receive the productivity from equipment they purchase. Dealers work hard to earn and keep the trust of the customer by responding to and repairing equipment that experiences a failure. Dealers are not always rewarded for their hard work-our Mandan store lost \$41,998.25 in 2016 in unrecovered warranty. Plus, another \$41,414.86 in travel and transportation expenses. These costs add to the challenge of keeping the doors open in tough times.

Compounding the warranty compensation issue is the requirement by manufacturers that "Dealer shall provide Warranty Service for any Product, regardless of whether Dealer sold that specific Product." Further, I have a contract on my desk the manufacturer expects me to sign that dictates I can no longer sell to commercial accounts, (we have represented that brand since about 2000), but that manufacturer expects us to provide warranty for the sale of that product in our area, if the farmer/customer chooses our dealership over the dealer they appoint to sell to that account. That manufacturer, which markets

the identical machine, under a different brand name, except for paint color and model number, to sell to commercial accounts.

Another troubling section of a contract states the manufacturer can charge back programs and warranty claims if they find an irregularity. I believe a manufacturer needs to be able to protect themselves. However, the current program bundle from one manufacturer is nearly 100 pages, with up to 10 different programs that may or may not apply to a unit. We base our decisions on which programs apply solely on our interpretation and the consultation of the manufacturer's representative, which occasionally have not been the interpretation of the manufacturers auditor. The manufacturer does not have a means for a dealer to test which program is applicable for a given unit-we find out when we complete the settlement. One of the contracts specifies the manufacturer can charge back all programs and warranty for the past two years. In the 2012, that would have literally driven us to the point of bankruptcy.

I believe Senate Bill 2289 gives the farm equipment dealers of North Dakota a better, more level playing field and would also benefit the farming community of North Dakota with stable, local dealerships. Please give Senate Bill 2289 a do pass recommendation.

Mr. Chairman, members of the committee, my name is John Swenseth and I am a farm equipment dealer with locations in Harvey and Devils Lake North Dakota and I am appearing in support of Senate Bill 2289.

The code that was enacted in the early 90's has been adequate and has served us for a generation but with the new requirements in the dealer contracts, it is time to consider the updates that Mr. Larsgaard has explained. Just as the Auto Dealers were dealt a new level of Contracts when that industry was going through all of their changes, we Farm Equipment Dealers are now facing much of the same.

One of my main concerns with our new contract as it is written is that the Manufacturer will determine what our inventory stocking levels will be. As we have progressed through the last 2 years with excessive inventory and overproduction in the industry, we have had ongoing order writing programs with required levels that earned you the ability to use sales programs offered by the Manufacturer, sort of a pay to play if you will. It works like this, the dealer takes a certain value of equipment from the company inventory list and then is allowed to use special marketing programs to make their new and used inventory more attractive for the farmer to purchase. Sales programs have been in place in some shape or form for a long time but through the past 2 years the order levels of company inventory have been required to be able to offer the better retail programs. So to be competitive with what other dealers were able to offer, you had to participate in the order process. The order levels were based on what inventory and production was available from the "Company list" and had nothing to do with inventory turnover guidelines or anything that made good business sense for the Dealer, only what the "company" had available and needed to move into dealer possession.

Another section of the new "Contract" says that the dealer submits itself to the jurisdiction of the federal court in the Manufacturer's home district rather than in the dealer's home state. If there is a dispute it would be preferable for the dealer to go through these proceedings at "home", in North Dakota.

One thing that has changed over the past 30 years is the size of our farms and dealerships and the distance between. Back when I started in the business, there were in-line dealerships every 20-30 miles up and down the road. Now it is not uncommon to travel 50 to 80 miles to perform warranty repairs or to retrieve a machine that needs to come into the shop to complete a "warranty" repair or company required modification. When these instances come up, the farmer expects that it will be taken care of totally by the manufacturer and the dealer and even though the manufacturer may allow minimal travel time, they do not reimburse the dealer for either mileage or trucking. Given the AG economy over the years, Dealers have had to grow and take on larger trade areas and putting the burden for hauling and service calls into the code will move some of that responsibility back to where it belongs, with the manufacturers.

The implement dealers have put a lot of thought into these changes and I think the time is right to put these updates into the code. I hope you agree and that you vote in support of this bill.

Thank You:

John Swenseth
Owner
High Plains Equipment

2/1/17



#4

February 3, 2017
SB 2289
Senate Agriculture Committee

Chairman Luick and members of the Committee,

My name is Richard Schlosser and I'm here to represent the members of North Dakota Farmers Union. We support SB 2289.

SB 2289 establishes protections for equipment dealers that ultimately ensures farmers continue to receive a level of service that they need in order to be successful. Equipment orders mandated by manufacturers only serves to consolidate dealerships in the state, resulting in more miles and longer travel time between producers and the parts and equipment they need.

Finally, it is important to note that this sort of legislation is nothing new for North Dakota; similar safeguards have been put in place for automobile dealers.

I can take any questions that you may have.





ASSOCIATION OF
EQUIPMENT MANUFACTURERS

SB 2289

2/3/17

#5

pg. 1

AGRICULTURE
CONSTRUCTION
FORESTRY
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February 2, 2017

Senator Larry Luick
Chairman, Senate Agriculture Committee
17945 101st Street SE
Fairmount, ND 58030
lluick@nd.gov

Re: Opposition to North Dakota SB 2289 relating to prohibited practices under farm equipment dealership contracts, dealership transfers and reimbursement for warranty repair

Dear Chairman Luick and members of the Senate Agriculture Committee:

I write you on behalf of the Association of Equipment Manufacturers, the North American-based international trade association representing over 950 companies in the off-highway machinery market. AEM members support 10,872 jobs in North Dakota, and contribute \$1.63 billion to the state economy. The industry in North Dakota generates \$191 million annually in tax revenue.

AEM opposes SB 2289. SB 2289 is an unnecessary intrusion into the business relationship between a farm equipment manufacturer and the farm equipment dealer. This is bad public policy that offers no benefits to users of our members' products in North Dakota - in fact, the restrictions could adversely affect our members' ability to service the end user's equipment through their dealer networks.

Almost all equipment manufacturers distribute their products through independent dealers located throughout the world. Over the decades these manufacturers and their dealers have developed close business relations that have stood the test of time and the marketplace. The contracts that have evolved are a function of the type of products, the nature of their markets and their combined experience.

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WWW.AEM.ORG
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ASSOCIATION OF
EQUIPMENT MANUFACTURERS

pg 2
AGRICULTURE
CONSTRUCTION
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UTILITY

These mutually agreed upon contracts are balanced to share the duties and responsibilities in such a way that both parties can make their best contributions toward a long term relationship that will succeed in supporting and serving the product users. Both parties need to be committed to work out isolated disagreements and conflicts that may arise and not seek wide sweeping legislative solutions.

This legislation would interfere with the contractual relationship between the farm equipment manufacturer and its dealers with respect to the terms they have agreed to. The bill would retroactively negate existing agreements concerning maintenance of parts inventory, warranty repair reimbursement terms, dealing with another manufacturer, change in competitive circumstances, and maintenance of dedicated facilities or personnel. The bill also would negate existing agreements the parties have reached to arbitration as a means to resolve dealership issues. These proposed changes have sweeping implications to hundreds of existing private contracts between farm equipment manufacturers and their dealers. The provisions would impair manufacturers' pre-existing agreements with their farm equipment dealers and thus appear to violate the Constitutional protections against legislative impairment of private contracts and agreements to arbitrate.

We respectfully urge you to reject this legislation which is an overreaching interference in the contractual business relationship between a manufacturer and the farm equipment dealer and let the marketplace determine the established business relationship.

Respectfully submitted,

Nick Yaksich

Senior Vice President, Government and Industry Affairs

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SB 2289

2/3/17

#6

pg. 1

SENT VIA EMAIL: lluick@nd.gov

February 1, 2016

Senator Larry Luick
Chairman, Agriculture Committee
North Dakota State Senate
North Dakota State Capitol
Bismark, ND



Re: Opposition to Senate Bill 2289 – Amendment to the North Dakota Century Code related to prohibited practices under farm equipment dealership contracts.



Dear Chairman Luick:



On behalf of CNH Industrial America LLC (CNHI) we write to you and the Agriculture Committee in **opposition to SB 2289** being heard in committee on February 3rd.



CNH Industrial is a global manufacturer of Case IH and New Holland brands of agricultural equipment as well as Case and New Holland brands of construction equipment.

We currently have North Dakota operations at the CNHI Plant in Fargo where we employ approximately 750 people. During the last ten-years CNHI has invested over \$75 million in our Fargo operations and tens-of-millions of dollars in product research and development.

The CNHI Fargo Plant is the center-of-excellence for the design and manufacture of large four-wheel drive agricultural tractors, large rubber-track agricultural crawler tractors and high production wheel loaders marketed under the respective brands identified above.

The CNHI brands have a long history of successful relationships with North Dakota farm equipment dealerships. In fact, our largest US dealer is headquartered in West Fargo and has a history with our company dating back to the early 1900s. SB 2289 unreasonably interferes with the existing contracts with our largest dealer as well as all other CNHI farm equipment dealers located in the State of North Dakota.

As currently written, SB 2289 is bad policy for North Dakota farmer and rancher consumers and bad policy for North Dakota farm equipment manufacturers.

We wish to point to four specific areas of the bill that are particularly troubling:

Representation in the marketplace – consumer’s right to a competitive market:

- SB2289 thwarts the basic premise of a dealer agreement in which the dealership agrees to stock, promote, sell, and support the manufacturer’s products. The bill seeks to prohibit manufacturers from requiring dealers to stock inventory, even of the type commonly sold in the dealer’s area of sales responsibility.
- SB2289 is anti-consumer and anti-competitive market. The bill seeks to allow, without manufacturer influence, a dealer to take-on representation of any product line-make of their choosing regardless of the competitive implications. This provision will reduce competition, adversely influence consumer pricing, and negatively impact the value of our brands in the eye of consumers.
- Consumer choice is suppressed and the competitive marketplace suffers in an environment where a dealer can lawfully refuse to stock any of a manufacturer’s products.

Dealership Transfers –a manufacturer’s right to select authorized dealers:

- Provisions within SB 2289 allow dealers to transfer ownership to anyone that meets “financial qualifications and business experience” of the manufacturer. This is mandated without the manufacturer’s evaluation of the many other criteria related to a potential dealership buyer that are specific and reasonable to consider when evaluating a dealer transfer. **This provision undermines the manufacturer’s contractual right to determine who is appointed an authorized dealer to sell and service its products in the State.**
- Our dealer qualifications, standards and selection criteria are vital to help ensure that consumers’ needs are met, dealership business values are upheld and the promises of CNHI brands are met in the marketplace.

Dealership Facilities – undermines our brand’s investment in market leadership

- SB 2289 seeks to greatly restrict a manufacturer’s reasonable and contractual right to influence the location and to promote commonly applied dealership facility standards. This interference on the part of the State confiscates our brand’s ability to implement qualifications, standards and selection criteria which are vital to help ensure that consumers’ needs are met, dealership business values are upheld and the vast investments CNHI brands have made to achieve marketplace leadership are beneficial.



§51-20.1-03 "Good Cause" defined –

- SB 2289 substantially undermines the "good cause" meaning language found in the existing statute. In essence the bill seeks to mitigate the basic premise of a dealer agreement by severely restricting the manufacturer's ability to enforce the requirements of the contract between the dealer and manufacturer.

SB 2289 will not be beneficial for North Dakota farm and ranch consumers, and, it de-values the investment our employees and CNHI have made in North Dakota.

Further, we believe in the right to contract between two approving private parties without legislative intervention on existing contracts. SB 2289 greatly interferes with this private right.

It is for these reasons that we strongly encourage the committee to table this legislation for further review and discussion of the facts.

Thank you for your leadership and please feel free to call upon us for any additional input.

Sincerely,

Aditya Garg
Whitaker

George

Aditya Garg
Plant Manager - Fargo
CNH Industrial America LLC
3401 1st Avenue North
Fargo, ND 58102.

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

Office: 701-293-4695
Email: aditya.garg@cnhind.com

Office: 262-636-6004
Email: george.whitaker@cnhind.com

c: Sent via email –

Vice Chairman – Senator Janne Myrdal
Senator Jerry Klein
Senator Oley Larson
Senator Arne Osland
Senator Merrill Piepkorn

CNHI Fargo Plant - ND State Representatives:

Senator Carolyn Nelson – District 21

Representative Mary Schneider – District 21

Representative Kathy Hogan – District 21

CNHI Representatives:

Bret Lieberman

VP – New Holland Brand

NAFTA

Shawn Boone

Director, Regional Sales – Midwest

New Holland NAFTA

Jim Walker

VP - Case IH Brand

NAFTA

Ryan Schaefer

Regional Sales Director

Case IH



Kubota Tractor Corporation
1000 Kubota Drive
Grapevine, TX 76051

January 31, 2017

Senator Larry Luick
Chairman, Senate Agriculture Committee
17945 101st Street SE
Fairmount, ND 58030

Via email: lluick@nd.gov

Re: Opposition to North Dakota SB 2289 relating to prohibited practices under farm equipment dealership contracts, dealership transfers and reimbursement for warranty repair

Dear Chairman Luick and members of the Senate Agriculture Committee:

On behalf of Kubota Tractor Corporation, we are writing to share our opposition to SB 2289. SB 2289 is an unnecessary intrusion into and impairment of the current and ongoing business relationship between a farm equipment manufacturer and their farm equipment dealer. SB 2289 creates public policy that offers no benefits to the end users of KTC's products in North Dakota - in fact, the restrictions and modifications to dealer contracts would adversely affect KTC's ability to service the end user's equipment through our dealer networks.

KTC has historically distributed its farm equipment, like most manufacturers, through local independent dealers, many of whom are multiline dealers. KTC has always worked closely with, and is well known as having excellent relationships with its dealers. These relationships often go back many years.

The proposed legislation would impair the contractual relationship between the farm equipment manufacturer and its dealers with respect to the terms they have agreed to. The bill would retroactively negate existing agreements concerning maintenance of parts inventory, warranty repair reimbursement terms, dealing with another manufacturer, change in competitive circumstances, and maintenance of dedicated facilities or personnel.

The statute restricts a manufacturer's ability to terminate, cancel, or fail to renew dealerships. It restricts a manufacturer's ability to add a new franchise to an existing franchise's "relevant market area" or to change the coverage of that area. It requires manufacturers to sell or offer to sell all models manufactured for a line make to all franchisees of that line make.

Prior statutory requirements imposed no restrictions on manufacturers with respect to adding new dealerships or selling only certain segments of a line make to certain dealers. It permitted manufacturer-owned dealerships without restriction. It allowed for pre-dispute mandatory arbitration agreements.

Because the contracts at issue in this case were entered into against the backdrop of the prior statutory framework, they provided negotiated answers to the statute's open questions. Manufacturers and dealers provided by contract how termination would be handled, how new dealerships would be added, which models of a line make would be sold to which dealers, and whether conflicts arising under the contract's provisions would be resolved by mandatory arbitration. The provisions would impair manufacturers' pre-existing agreements with their farm equipment dealers and thus appear to violate the Constitutional protections against legislative impairment of private contracts and agreements to arbitrate. Article I, Section 10, Clause 1 of the U.S. Constitution provides, in relevant part: "No State shall * * * pass any * *
* Law impairing the Obligation of Contracts, or grant any Title of Nobility."

We respectfully urge you to reject this legislation which is an overreaching interference in the contractual business relationship between a manufacturer and the farm equipment dealer and let the marketplace determine the established business relationship.

Sincerely,



Todd Stucke
Sr. Vice President Sales Marketing & Product Support
Kubota Tractor Corporation

**JOHN DEERE****Deere & Company**

801 17th Street, NW, Suite 200
Washington, D.C. 20006 USA
Phone: 202-423-2271 Mobile: 202-997-9022
Fax: 202-296-0011
Email: llesThomasE@JohnDeere.com

Thomas E. Iles

Director, State Public Affairs
Public Affairs Worldwide

SB 2289: Farm Equipment Dealer Agreements

Position: John Deere opposes the enactment of SB 2289 which would amend and reenact sections 51-07-01.2, 51-07-02.2 and 51-26-06 of the North Dakota Century Code

Background: For 180 years, John Deere has committed itself to providing quality, innovative products and services to meet our customers' needs. For over a century, we have distributed these products through independent dealers who are authorized to sell John Deere equipment through a contractual arrangement. If SB 2289 is enacted, the proposed legislative language would significantly fracture our existing contractual process.

Rationale for Opposition:

- **Private Right to Contract:** Deere supports the private right to contract between two approving parties without legislative intervention. SB 2289 interferes with this private right.
- **Competitive Lines:** The competitive lines language in SB 2289 would allow a competing manufacturer to sell its equipment in a Deere dealership. Under our current contractual arrangement, Deere permits competitive lines of equipment to be sold under our John Deere logo and roof if that competitive line compliments John Deere's current line of equipment. We also allow competitive lines under a separate roof, with separate financing and separate sales force, if that competitive line supplants John Deere's current line of equipment. SB 2289 would allow a dealer to locate, represent and sell a competitive product under the John Deere Dealership's roof (i.e. John Deere / Kubota / Mahindra etc.) even if the equipment would supplant ours. If ultimately enacted, this provision of the legislation would destroy the competitive lines aspect which actually John Deere customers currently benefit from. Under the John Deere approach, we require our dealers to focus on our equipment. The product, parts supply, services support, sales and operator training and machine optimization support enhances the customers' benefits from the expertise that our brand focus delivers.

- **Equipment Customers:** With the proposed modifications to the Warranty current law provisions, SB 2289 could ultimately increase costs for equipment purchasers.
- **Market Coverage:** SB 2289 precludes a manufacturer from making necessary adjustments to market coverage when dealers enter or exit the business or to adjust for market demand for certain products. With this provision, SB 2289 is detrimental to the customer and their overall purchasing experience.
- **SB 2289 Provisions:** Certain contained provisions are confusing, increasing the likelihood of litigation.

Summary: John Deere has developed a superior product, invested heavily in marketing their brand, and has driven business to dealer locations as promised in the contract. In their contract, the dealers promise John Deere to make their best efforts to sell and service Deere's products and services. The proposed legislation would significantly impair the contractual relationships between manufacturers and their dealers in complicated ways. A manufacturers' current dealer distribution network would be eroded. Litigation costs would increase, equipment purchase costs would increase and consumers could negatively be impacted. To date, a critical public policy reason has not been identified for injecting government into business to business contractual relationships. Consequently, John Deere opposes the legislation.

Thank you for your time and consideration on this important legislation.

For additional information, please contact:

Thomas E. Iles, Director of John Deere State Public Affairs

Cell: 202-997-9022

E-Mail: ilesthomase@johndeere.com

SB2289

2/3/17

#86

Pg. 1

From: Iles Thomas E [<mailto:IlesThomasE@JohnDeere.com>]

Sent: Thursday, February 2, 2017 12:19 PM

To: lluick@nd.gov; jmyrdal@nd.gov; jklein@nd.gov; olarsen@nd.gov; aosland@nd.gov; mpiepkorn@nd.gov

Subject: North Dakota SB 2289: Farm Equipment Dealer Contracts

Dear Chairman Luick and Members of the North Dakota Senate Agriculture

Committee: First and foremost, thanks for your public service and leadership for North Dakota. On behalf of my management, **John Deere is opposed to the passage of SB 2289: Farm Equipment Dealer Contracts which is scheduled for consideration by your Senate Agriculture Committee on Friday, February 3, 2017.** John Deere highly values our relationship with our North Dakota dealership network and work with them to enhance their productivity, profitability, overall business strategy, sustainability and market share performance. We also encourage our dealers to provide high quality customer service on the John Deere products and services that they provide so that each customer can have an exceptional buying experience. In brief, if SB 2289 is enacted the proposed legislative language would significantly fracture our existing contractual process with our North Dakota dealers in complicated ways.

John Deere is opposed to SB 2289 because a manufacturers' current dealer distribution network in North Dakota would be significantly eroded with the passage of SB 2289. Litigation costs would increase, equipment purchase costs would increase and consumers could negatively be impacted. To date, a critical public policy reason has not been identified for injecting government into business to business contractual relationships. Consequently, John Deere opposes the legislation. I have attached the full John Deere Position Paper in opposition to SB 2289 for your consideration. **Please also note John Deere's presence in North Dakota as follows:**

North Dakota Locations:

- **Fargo:** John Deere Electronic Solutions – Electronic Design and Manufacturing Design
- **Valley City:** John Deere Seeding Group – Air Seeding Equipment

Employees: 850 work as part of John Deere's major business operations. There are also 90 John Deere retirees in the state

Suppliers: 125 contracts with North Dakota companies at over \$38 million

Dealers: 45 dealerships

John Deere Foundation: Invested more than \$289,000 in the Fargo and Valley City Communities in FY 2016

Going forward, please advise if I can ever be of further assistance on this legislation during your legislative deliberations. Thank you very much for your time and consideration of John Deere's position in opposition to SB 2289. Best wishes!

Thom Iles

Director, State Public Affairs
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Testimony to Senate Agriculture Committee on SB 2289
Laura Ness Owens, Doosan Bobcat North America
February 3, 2017

Mr. Chairman and members of the committee, thank you for the opportunity to speak with you today about SB 2289, relating to prohibited practices under farm equipment dealership contracts, dealership transfers and reimbursement for warranty repair.

For the record, I am Laura Ness Owens, Director of Marketing and lead on government relations and corporate communications for Doosan Bobcat North America, better known in North Dakota as Bobcat Company. My colleague, Mike Ballweber, our Senior Vice President of our Commercial Business for North America, is with me today as well.

We understand that this proposed legislation was not intended to affect Bobcat Company – as we largely serve the construction industry. However, because we also serve the agriculture industry, we believe that the legislation, as written, will have adverse effects on our business as well.

As a member of the Association of Equipment Manufacturers (AEM), we join our fellow manufacturers in opposition to this proposed legislation. To best use your time this morning, I will refrain from further detailing the concerns shared by AEM; rather, note that we concur with the issues raised relative to prohibiting stocking requirements, exclusivity requirements, and separate facility requirements; as well as hampering our ability to terminate for performance, limiting our ability to deny a dealership transfer, and requiring changes to our warranty reimbursement. In submitted testimony, I've provided detail on how Bobcat works with our dealers in all of these areas for our mutual benefit. We put immense value on our relationship with our dealer network, and respectfully ask that you consider our request to continue that relationship without unnecessary restrictions.

With respect to time, I would like to take a few minutes to speak briefly, not as a global equipment manufacturer, but a North Dakota equipment manufacturer, in order to share perspective on how legislation such as this, can affect a North Dakota business.

Many of you are familiar with Bobcat Company and our history in North Dakota. We've been doing business here for more than 50 years. We started the compact equipment industry – and remain the worldwide leader today. We are headquartered in West Fargo, and we have manufacturing and research facilities located in Bismarck, Wahpeton, and Gwinner. Since 2014 – we have invested nearly \$50 million in our facilities, which we believe is a testament to our commitment to the state of North Dakota.

Directly, we employ more than 2700 people in North Dakota – and are the largest manufacturer in the state. Indirectly, through more than 600 partnering suppliers, vendors and related businesses across the state, countless more are employed downstream. We employ individuals in professional, technical and manufacturing roles. We have forged strategic partnerships, developed scholarship programs and offer internship opportunities with multiple higher education institutions across the state that allow us to assist



in development and recruitment of talent for our business and others in a variety of roles. We're proud to foster talent in North Dakota – and keep it here.

As noted, our dealer network is a significant part of our story. Today, we have more than 550 Bobcat dealers in North America – 20 alone in the state of North Dakota, with partnerships spanning up to 50 years working together.

As a manufacturer, we are focused on producing the most durable and versatile compact equipment and attachments in the industry. To do this, we count on a large number of our employees to manufacture equipment day in and day out in our facilities. We work hard to manage our facilities to maximum capacity, putting the best people in place at these facilities, providing them with competitive salaries and benefits, and employing them as part of our Bobcat family for as long as we can. But to do that, we need to be able to build equipment. And to do that – we need orders – both retail, which are already sold to a customer, and stock, which is equipment on the dealer's lot, awaiting purchase.

Like many industries, the equipment industry is seasonal. For instance, we sell three times as much equipment in the spring, as we do in the fall. With our current facilities and employees, there is simply no way that we could build as much equipment as we sell in the spring months, so we count on dealers to plan ahead and have stock inventory on the ground to meet customer demand during this busy time, as it may take several months to receive a retail order. At the same time, in the fall, when business is slower, if we rely on retail orders alone, there is no way that we could keep our factories churning and all of those employees working, so we count on our dealers to order stock inventory at this time as well. Now to help them manage this stock inventory at slower times, we provide generous floorplan programs that allow them to carry the equipment at no cost to them for a period of time. This is what allows manufacturing businesses, such as ours, to cater to seasonal industries – while providing our factory with a steady stream of orders to keep our facilities operating and our employees working. And with our partnerships with numerous suppliers and like businesses across the state, it allows them to continue operating at full capacity as well. For these reasons, our ability to negotiate stocking requirements with our dealers is extremely important.

Moreover, we've worked incredibly hard to build the iconic Bobcat brand to be something we can all be proud of. Having equipment on the ground and good, strong, customer focused dealerships are critical to the long term health of the Bobcat brand. We believe that our brand's ability to continue to grow in our state and beyond is at risk, when presented with factors that will limit our ability to manage our dealer relationships effectively, in determining who and how our brand is represented.

I'd like to finish by thanking the committee for the opportunity to speak today. Again, we understand that the proposed legislation was not intended to affect our business as we believe it will. We do oppose the legislation as proposed, but would welcome clarification of it as appropriate.

Thank you

Additional Information and Specific Concerns

This bill, as written, assumes a “one size fits all” approach for a manufacturer’s dealer relationships. This does not reflect the reality of how we work with our dealers. In our business, we collaborate with our dealers on every significant decision that impacts them - decisions that would, instead, be determined by the law and not business objectives if this bill passes. In short, we feel that this bill is an unnecessary intrusion into a relationship that has worked well for both parties.

Like most businesses, each year, our team continually reviews our long range plan, while working specifically on our annual operating plan for the year ahead. Because our business operates through a distribution channel, our field staff then meets with each of our dealers to review their contract and develop commitments for the upcoming year. These commitments may be based on market share goals, stocking levels, coverage, marketing focus – and more. They are mutually agreed upon, and do not go into effect unless both Bobcat Company and the dealer agree. Together, we form the plan for the upcoming year. We work together throughout the year to provide dealers updates on their progress – and ours - and to adjust and amend the plans as necessary.

Further, we engage multiple times through the year with our Dealer Advisory Council for feedback and input on products, services, the dealer relationship and other business activities. This council is formed by the dealers and serves to ensure the best interests of our dealer network are represented in the decision making process. This relationship is critical in holding both us as the manufacturer and our dealer body accountable.

In addition, we maintain regular communications with our dealer network, through phone calls, emails and in person visits from our nationwide field staff. Our dealers — from the smallest to the largest — are empowered to provide feedback and input at any time, and we maintain an open-door policy for our dealers right up to our executive level. We succeed when our dealers succeed. There is no way we could maintain a strong dealer network without working in our dealers’ best interest.

With that in mind, I’d like to point out a few items in this bill that would hamper our ability to collaborate with our North Dakota dealers, if passed.

First: the prohibition of a stocking requirement in yearly commitments or having an automatic restocking requirement upon the sale of a piece of equipment. Stocking requirements are in place for several reasons.

- To ensure equipment is readily available for customers when they come in the door. Inventory on the ground is inventory available for a customer – whether in farm equipment, construction, landscape or otherwise. Our requirements ensure a dealer can best serve a customer who needs a piece of equipment in an acceptable amount of time.
- To ensure the dealer is positioned best to promote and sell equipment, to achieve their annual goals and commitments – and to make money. Inventory on the ground shows customers they are in the business, prepared for the industry need - and committed to providing their customers with equipment

when they need it.

- To ensure that we, as the manufacturer, are well represented in delivering on our brand's promise - and can maintain a steady build schedule in our factories to serve the industry forecast. Despite the industry being up in the spring and down in the summer, our factories across the state are open 365 days a year, 24 hours a day, delivering steady quantities of machines.
- Our stocking requirements are considered the minimum needed to support and grow the business. We base these requirements on industry forecasts, market share commitments and inventory turns.
- We also make sure these requirements are agreed upon by the dealer, taking into consideration circumstances they may be dealing with.
- In addition, we support dealer stocking with floor plan programs that meet, and in many cases, exceed industry requirements.

Properly managing inventory levels is key to the profitability and mutual success of both the manufacturer and dealer. We feel that a law that prohibits specific stocking requirements is a law that unnecessarily intrudes on business decisions made between manufacturer and dealer, and impacts the end consumer.

Second: the prohibition of exclusivity requirements for new dealers and the prohibition of the company from requiring dealers to maintain separate facilities for competing equipment.

- We want new dealers to focus on the Bobcat brand. That's why we want them selling Bobcat equipment, and not competing equipment. We believe that when a dealer focuses on the Bobcat brand at their locations and for their business generally, we are both more successful. We've worked very hard to build the Bobcat brand, and want to ensure that we can deliver to our customers in North Dakota - and beyond - that we are committed to delivering a Bobcat experience to them wherever they are.

Third: making it more difficult to terminate a dealer based on a failure to meet performance requirements.

- Bobcat dealers have commitments in place because we want both the dealer and us to be successful by providing excellent sales, service, and support to end customers, here in North Dakota and across the country.
- We measure dealer performance based on whether or not a given dealer consistently meets their commitments over a period of time, usually several years.
- We do not make the decision to terminate a dealer hastily, or by a universal performance metric. Instead, we have a process where we work with struggling dealers to help them succeed, if at all possible. As a result, if one of our dealer agreements eventually does end, it is generally by mutual agreement between Bobcat and the dealer.
- Putting unnecessary regulations on the ability to end business relationships benefits neither dealer nor manufacturer, and in many cases it may bring financial harm to both.

Fourth: significantly limit the reasons a company could assert for not approving a proposed transferee of a

farm equipment dealership.

- This could have significant unintended consequences.
- We have selection criteria we use to approve or deny an ownership transfer. By not allowing the manufacturer to properly vet and approve ownership transfer, this could cause customer disruptions, operational challenges, future cash flow and viability issues, and it could negatively impact Bobcat's business success in the market.
- In addition, it could increase the risk for the manufacturer if a significant portion of the business is under one ownership.
- And what if a competitive brand dealer is purchasing the dealership? This would significantly impact our ability to promote and grow Bobcat business in a particular market.
- Moreover, we're in a unique time right now in the cycle of our partnerships with our dealers, where many of our dealers are in the process of turning over their businesses to sons and daughters, long time employees – or selling outright to new business owners. We work extremely close with these individuals to select the best purchaser for both of us – oftentimes offering counsel directly or indirectly through financial partners for our dealerships who help them one on one with their specific situation. We want them to succeed – as business owners and retirees.

Protecting our brand is critical to the success of our business long term. Limiting our ability to protect our brand through transfer of dealerships makes it extremely disadvantageous to do business in North Dakota.

Lastly, the required reimbursement for costs that are not currently covered under our standard warranty — including costs for transportation of the product — that would supersede the suggested service times we currently use for reimbursing for warranty repairs by a dealer.

- This would be a significant departure from current industry standards.
- Our warranty reimbursement and coverage is in line with the rest of our competitors. No manufacturer that we are aware of is paying travel costs as part of their standard warranty.
- However, in our business specifically, we exceed industry standards by providing additional coverage based on dealer performance within a Dealer Service Review, as well as reimbursing dealers in excess of 100% for parts on warranty claims and within 5-10 days of submitting said claim. These excess payments allow dealers to cover warranty and travel costs, in a model that is preferred to direct travel cost reimbursement.
- We feel this is just not an area that requires government regulation, and if passed, runs the risk of raising the cost of doing business as a North Dakota company.

February 8, 2017

#1
2/9/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

Page 1, after line 8, insert:

"1."

Page 1, line 12, overstrike "1." and insert immediately thereafter "a."

Page 1, line 16, overstrike "2." and insert immediately thereafter "b."

Page 1, line 23, overstrike "3." and insert immediately thereafter "c."

Page 2, line 1, overstrike "4." and insert immediately thereafter "d."

Page 2, line 9, replace "5." with "e."

Page 2, line 17, replace "6." with "f."

Page 2, line 25, replace "7." with "g."

Page 3, line 3, replace "8." with "h."

Page 3, line 12, replace "9." with "i."

Page 3, line 18, replace "10." with "j."

Page 4, line 1, replace "11." with "k."

Page 4, line 7, replace "12." with "l."

Page 4, line 9, replace "a." with "(1)"

Page 4, line 11, replace "b." with "(2)"

Page 4, line 13, replace "c." with "(3)"

Page 4, line 15, replace "d." with "(4)"

Page 4, line 17, replace "e." with "(5)"

Page 4, after line 22, insert:

"2. As used in this section "farm equipment" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power."

Page 4, after line 25, insert:

"1."

Page 5, line 3, after "refusal" insert:

"2."

Page 5, after line 14, insert:

"3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Page 6, after line 24, insert:

"4. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Renumber accordingly

February 10, 2017

#/

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

Page 1, line 8, after "A" insert:

"1."

Page 1, line 12, overstrike "1." and insert immediately thereafter "a."

Page 1, line 15, replace "subsection 2" with "subdivision b"

Page 1, line 16, overstrike "2." and insert immediately thereafter "b."

Page 1, line 23, overstrike "3." and insert immediately thereafter "c."

Page 2, line 1, overstrike "4." and insert immediately thereafter "d."

Page 2, line 4, replace "subsection" with "subdivision"

Page 2, line 9, replace "5." with "e."

Page 2, line 12, replace "subsection" with "subdivision"

Page 2, line 17, replace "6." with "f."

Page 2, line 19, overstrike "subsection" and insert immediately thereafter "subdivision"

Page 2, line 22, replace "subsection" with "subdivision"

Page 2, line 25, replace "7." with "g."

Page 3, line 3, replace "8." with "h."

Page 3, line 12, replace "9." with "i."

Page 3, line 18, replace "10." with "j."

Page 3, line 24, replace "subsection" with "subdivision"

Page 4, line 1, replace "11." with "k."

Page 4, line 7, replace "12." with "l."

Page 4, line 9, replace "a." with "(1)"

Page 4, line 11, replace "b." with "(2)"

Page 4, line 13, replace "c." with "(3)"

Page 4, line 15, replace "d." with "(4)"

Page 4, line 17, replace "e." with "(5)"

Page 4, after line 22, insert:

"2. As used in this section "farm equipment" and "farm implements" means all vehicular implements and attachment units, designed and used primarily for planting, cultivating, or harvesting farm products or used primarily in connection with the production of agricultural produce or products.

livestock, or poultry on farms, and which are operated, drawn, or propelled by motor or animal power."

Page 4, after line 25, insert:

"1."

Page 5, line 3, after "refusal" insert:

"2."

Page 5, line 8, overstrike "section" and insert immediately thereafter "subsection"

Page 5, line 10, overstrike "section" and insert immediately thereafter "subsection"

Page 5, after line 14, insert:

"3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Page 6, after line 24, insert:

"4. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2."

Renumber accordingly

#1
3/2/17

SB 2289 TESTIMONY
House Agriculture
March, 2017

Mr. Chairman, members of the committee. For the record, my name is Kelly Armstrong, State Senator District 36.

SB 2289 was introduced at the request of North Dakota's Farm equipment dealers and is intended to strengthen current law, specifically the "Prohibited practices under farm equipment dealership contracts." Our law was originally created in 1991 to promote equity and fairness in business dealings between farm equipment manufacturers and dealers. This type of law is not unique to North Dakota. Many other states have dealer protection statutes.

The law was originally created to protect dealers from manufacturer overreach and unfair business practices. When individuals enter into contractual relationships with manufacturers to become dealers they oftentimes invest much of what they own into purchasing buildings, buying inventory, establishing a customer base, etc. Now imagine that as time goes by a manufacturer changes the terms of the existing contract and requires the dealer to adhere to new stipulations. Under these circumstances the dealers have no bargaining power or any real ability to negotiate the terms of these contracts. These arrangements are contracts of adhesion. This is why it is important to have strong dealer protection laws.

#1
3/9/17

Senate Bill 2289

Testimony before House Agriculture

Matthew C. Larsgaard, MBA

North Dakota Implement Dealers Association

10:00 a.m., March 2, 2017

2/23/17

Mr. Chairman, members of the committee. My name is Matthew Larsgaard and I am appearing in SUPPORT of Senate Bill 2289 on behalf of the North Dakota Implement Dealers Association (NDIDA) which represents our state's 125 farm equipment dealers.

NDIDA members generate approximately \$5 Billion in annual retail sales in North Dakota. We employ almost 3,800 people with an annual statewide payroll of over \$225 Million dollars.

This bill was introduced at the request of North Dakota's farm equipment dealers and is designed to strengthen current state law, specifically the "Prohibited practices under farm equipment dealership contracts." This section of code was originally created in 1991 to help promote equity and fairness in business dealings between farm equipment manufacturers and dealers. This type of law is not unique to North Dakota, it is quite common in that most states have dealer protection statutes.

One of the reasons why the law was originally created was to protect dealers from manufacturer overreach and unfair business practices. In the past, individuals entered into contractual relationships with manufacturers to become dealers. In many cases, those individuals began by investing much of what they owned into purchasing a building, buying inventory, establishing a customer base, building the brand, etc. As time marched on, the manufacturers would often change the terms of the existing contracts and then "require" dealers to adhere to the new stipulations. These new agreements are called "Contracts of Adhesion" which are a take-it or leave-it arrangement under which the dealer has no choice but to sign the contract or not be a dealer. It is important to understand that dealers have no bargaining power or ability to negotiate the terms of these contracts. This is why the vast majority of states, if not all, have dealer protection laws.

continued...

Why the need for this legislation?

We take the opportunity to have legislation introduced very seriously and approached Senator Armstrong only after carefully deliberating the need for this bill over the last 1.5 years.

One of the major reasons for this legislation is an attempt to add stability for North Dakota dealers following a recent and fundamental shift in the demands placed upon dealers by the manufacturers. For example, during 2015, a major farm equipment manufacturer developed a new dealer agreement that contains several quite onerous, one-sided provisions that we had never seen before. Our national dealer association made multiple attempts to find a compromise with the manufacturer and negotiate out some of the most onerous provisions. However, the manufacturer would not make material changes to the contract and, as a result, our significant concerns remain. The following are just four examples of those concerns:

Equipment/Parts Purchase Requirements. A requirement within the new contract states “Dealer shall order...new equipment...at the level deemed necessary by [the manufacturer] to meet dealer’s equipment sales obligations....” This provision allows the manufacturer to require the dealer to purchase from the manufacturer a minimum number of tractors, combines, parts, etc. Mandatory equipment purchase orders, which may or may not consist of products that farmers will purchase, could present a significant and unfair financial burden on North Dakota’s farm equipment dealers who are forced to pay for and stock such equipment.

Payment Chargebacks. Another provision within the new contract would allow the manufacturer to charge back to the dealer all payments (sales incentives/programs, warranty, etc.) made to a dealer during the previous two years if the dealer fails to meet certain performance requirements such as maintaining “...a substantial amount of the required records....” This provision could be extremely harmful to multiple store dealers, as a failure at a single store location may create company-wide exposure for all payments associated with all of the rest of the dealer’s locations. This provision could be devastating to a dealer.

Manufacturers’ Attempt to Eliminate Competition. In many cases, a main line manufacturer may not produce a particular line of product that has demand in a given region, or they may have a significantly inferior product relative to their competitors.

As such, in an effort to fulfill farmers' needs, dealers often must establish relationships with other manufacturers in an attempt to fill product gaps and fulfill farmers' expectations. Dealers may expend a substantial amount of time, treasure, and talent in an effort to develop a market for any given non-main line product.

Under North Dakota law, it is currently illegal for a manufacturer to restrict a dealer from purchasing farm equipment that was made by another manufacturer. However, we are seeing some manufacturers attempt to include provisions in their contracts that would require dealers to separate both their personnel and facilities in such a manner "as is satisfactory to the manufacturer." Dealers need the ability to choose, display, and offer for sale the products and equipment that North Dakota farmers demand.

Dealership Location Termination. Current ND state law (57-07-01.1) prohibits a manufacturer from terminating a dealership contract except for "good cause". Good cause is defined as the "*failure by the retailer to substantially comply with those essential and reasonable requirements imposed by the contract...*" In today's economy, most dealers operate multiple stores in an effort to try to turn a profit. Typically, multiple stores or branch locations are operated under one dealership contract. We have seen another new contract provision that would allow the manufacturer to terminate a branch location "*for ANY breach by the dealer*" of the contract. This provision is particularly troubling because it appears to allow the manufacturer to change the intent of North Dakota's termination for "good cause" statute, which apply to contracts, not single locations. Thus, a manufacturer could terminate a branch location and not be in violation of the law. In our rural state, the loss of a branch location would be harmful to not only the dealer but, the farmers that count on that location for prompt service; especially during harvest.

SB 2289 addresses several concerns, including the ones we just reviewed. While some provisions are new, others would simply provide the same protection for farm equipment dealers that have already been granted to automobile dealers in North Dakota.

Explanation of SB 2289

Page 1, **Subdivision a**, lines 13-17, enhances current law by protecting a dealer from being required to purchase farm equipment, parts or accessories that the dealer does not voluntarily order.

Subdivision b, lines 18-21, further protects dealers from being required to purchase additional, unwanted inventory as a condition of filling an order.

Page 2, **Subdivisions d & e**, lines 6-21 further expands upon existing subdivision c by protecting dealers from being required to separate service areas, different brand products, etc. within their dealerships or to maintain exclusive facilities, personnel, or display space in order to renew a dealer agreement or participate in a program discount, sales incentive, etc.

Page 3, **Subdivision g**, lines 1-10, protects dealers from the arbitrary termination of their dealership contract and the unreasonable removal of authorization for a branch location or product line.

Subdivision h, lines 11-20, protects dealers from being forced to move their dealership to another location or to make unreasonable changes to the dealership building or property. *This is current law for auto dealers.*

Subdivision i, lines 21-26, allows a dealer to move to another location as long as the location and site plan are reasonable. The manufacturer may approve or deny the request within 60 days. *This is current law for auto dealers.*

Subdivision j, lines 27-29, prohibits a manufacturer from conducting an audit or chargeback on warranty or incentive payments made more than 1 year after payment.

Lines 29-31 and Page 4 line 1: Protects both manufacturers and dealers in that a manufacturer may not charge back a dealer for an incentive or warranty payment unless the dealer's claim was false, fraudulent, or the dealer did not comply with the manufacturer's written procedures for turning in a claim.

Page 4, Lines 2-10 state that the provisions of this subsection apply to all incentive and reimbursement programs that are subject to audit by a manufacturer. Also, before imposing a chargeback, the manufacturer must be transparent and identify each claim at issue. They may not charge back an amount that exceeds the total direct compensation received by the dealer for the applicable claim and must provide the dealer with at least 45 days to present additional information regarding any claim at issue.

Subdivision k, lines 11-17, requires the performance standards placed on dealers to be reasonable, fair, and transparent.

Subdivision l, lines 18-31 and page 5 lines 1-2, protects dealers from being required to sign an agreement that requires a dealer to: a) be subject to another state's law b) conduct legal proceedings outside of North Dakota c) give up the dealer's rights under ND state law or to settle a disagreement in a state or federal court in ND d) agree to arbitration or e) give up the dealer's right to bring a legal proceeding against a manufacturer unless a voluntary settlement agreement has been reached. *This is current law for auto dealers.*

Subsection 2, lines 3-7, creates a definition for farm equipment and farm implements.

Dealership Transfers

Page 5, lines 11-30 and page 6, lines 1-2. North Dakota state law currently sets forth the conditions under which an automobile or truck dealership may be sold. The conditions are fair and equitable to both the manufacturers and the dealers.

A dealer who intends to sell their dealership must provide written notice to the manufacturer. The manufacturer then has the opportunity to approve or deny the dealer's request within 60 days. The manufacturer may deny the request only if the proposed buyer does not meet the manufacturer's financial or business experience requirements. Our amendment simply adds farm equipment dealers to existing law that already applies to automobile and truck dealers.

Warranty Repair

Page 6, lines 7-30 and page 7 address warranty service reimbursement.

Manufacturers contractually require dealers to provide warranty repair...regardless of whether the dealer sold that specific piece of equipment or not. Furthermore, dealers are typically required to use only parts that are purchased from the manufacturers for warranty repairs.

Manufacturers have been reimbursing dealers for warranty parts at a rate that is arbitrarily set by the manufacturer. These rates are not consistent with the dealer's parts markup rate for non-warranty repair work. The problem is worsened when the

dealer is required to travel to a field where a piece of equipment may be broken down. For example, a combine may be out in the field harvesting and suffer a breakdown that can only be repaired back at the dealership. The dealer would be required to send their semi-tractor and trailer to load the combine, bring it back to the dealership, repair it, haul it back to the field to drop it off, and then drive back to the dealership. In this situation it would not be unusual for a dealer to receive absolutely no reimbursement for the numerous trips required to repair the combine. As a result, the dealer could incur significant financial losses to fulfill a promise made by the manufacturer to an individual that may not even be the dealer's customer.

Current ND law, and the vast majority of states, require automobile manufacturers to reimburse dealers for warranty labor and parts at the dealer's regular, non-warranty rate. MN and SD also require farm equipment manufacturers to reimburse their dealers for warranty labor and parts. In addition, SD also requires reimbursement for transportation of equipment. As you can see, warranty reimbursement laws are not a unique concept. Furthermore, current ND law provides for fair reimbursement for farm equipment warranty labor, however we respectfully request that consideration be made for parts and transportation as well.

Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with manufacturers. It is important to note that we have also built protections into this bill for the manufacturers....we want fairness for both parties.

Given the farm economy over the last several years, many of our state's farmers and farm equipment dealers are struggling to survive. Farmers, and the dealers that serve them, need this bill to help protect one of the most vital components of our economy; the dealerships that repair and service our state's farm equipment.

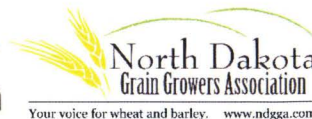
Matthew C. Larsgaard, MBA
President & CEO
North Dakota Implement Dealers Association

North Dakota Implement Dealers Association

Serving ND Implement Dealers for 117 years!

Partnering with:

North Dakota Agriculture Association ■ North Dakota Farm Bureau
North Dakota Grain Growers Association ■ North Dakota Farmers Union
North Dakota Stockmen's Association



SUPPORT SENATE BILL 2289

PASSED SENATE 46 – 0

Strengthens ND Farm Equipment Dealer Protections & Free Market Principles

One of the major reasons for this legislation is an attempt to add stability for North Dakota farm equipment dealers following a recent and fundamental shift in new demands placed upon dealers by farm equipment manufacturers. For example, **in 2016 a new contract** was presented to many dealers which contains provisions that are unreasonably demanding, one-sided, and **non-negotiable** – dealers have no choice but to sign the contract or not be a dealer. Several the provisions have the capability to impose significant financial burdens on dealers... possibly bankruptcy.

Senate Bill 2289 accomplishes the following (see reverse):

1. Addresses contract issues where unfair and **unreasonable manufacturer demands** have placed dealers at a distinct disadvantage with no recourse or ability to negotiate. These issues include **mandatory equipment and parts purchases**, payment chargebacks, unfair performance requirements, dealership terminations, and reimbursement for warranty service.
2. Allows a dealer to sell their dealership provided that the proposed buyer meets the manufacturer's financial and business experience requirements.

Why the need?

1. A new contract provision allows the manufacturer to require the dealer to purchase a minimum number of tractors, combines, parts, etc. Mandatory equipment purchase orders, which may or may not consist of products that farmers will purchase, could present a significant and unfair financial burden on ND's dealers who are forced to pay for and stock such equipment.
2. Some dealerships have been unfairly terminated under the guise that they are "not achieving required market share." In 2015 we lost at least 2 dealerships. **Farmers in those areas now have a greater distance to travel for service, which is especially difficult during harvest.**
3. Manufacturers contractually require dealers to perform warranty repair... regardless of whether the dealer sold that specific piece of equipment or not. Manufacturers then reimburse dealers at a rate that is arbitrarily set by the manufacturer. In some cases dealers are experiencing significant losses to fulfill a promise made by the manufacturer!
4. This legislation is not unique. **Many of the exact concepts within this bill already exist within ND state law for automobile dealers.** Most other states have similar laws. It is fair to make these concepts apply to farm equipment dealers as well.

North Dakota Implement Dealers Association

SUPPORT SB 2289

Strengthens ND Farm Equipment Dealer Protections

"Farmers need SB 2289 to help protect one of the most vital components of our economy; the dealerships that repair and service our state's farm equipment." Pete Hanebutt, Director of Public Policy, North Dakota Farm Bureau

SENATE BILL 2289:

1. **Protects dealers from being required to purchase farm equipment**, parts or accessories that the dealer does not voluntarily order.
2. **Protects dealers from being required to purchase additional, unwanted inventory** as a condition of filling an order.
3. **Protects dealers from being required to separate product brands**, service areas, facilities, personnel, or display space in order to renew a dealer agreement or participate in a program discount or sales incentive.
4. **Protects dealers from the arbitrary termination of their dealership contract** and unreasonable removal of authorization for a branch location or product line.
5. **Protects dealers from being forced to move their dealership to another location** or to make unreasonable changes to the dealership building or property. *This is current law for auto dealers.*
6. **Allows a dealer to move to another location** as long as the location and site plan are reasonable. The manufacturer may approve or deny the request within 60 days. *This is current law for auto dealers.*
7. **Requires the performance standards placed on dealers** to be reasonable, fair, and transparent.
8. **Protects dealers from being required to sign an agreement** that requires a dealer to: a) be subject to another state's law b) conduct legal proceedings outside of North Dakota c) give up the dealer's rights under ND state law or settle a disagreement in a federal court in ND d) agree to arbitration or e) give up the dealer's right to

bring a legal proceeding against a manufacturer unless a voluntary settlement agreement has been reached. *This is current law for auto dealers.*

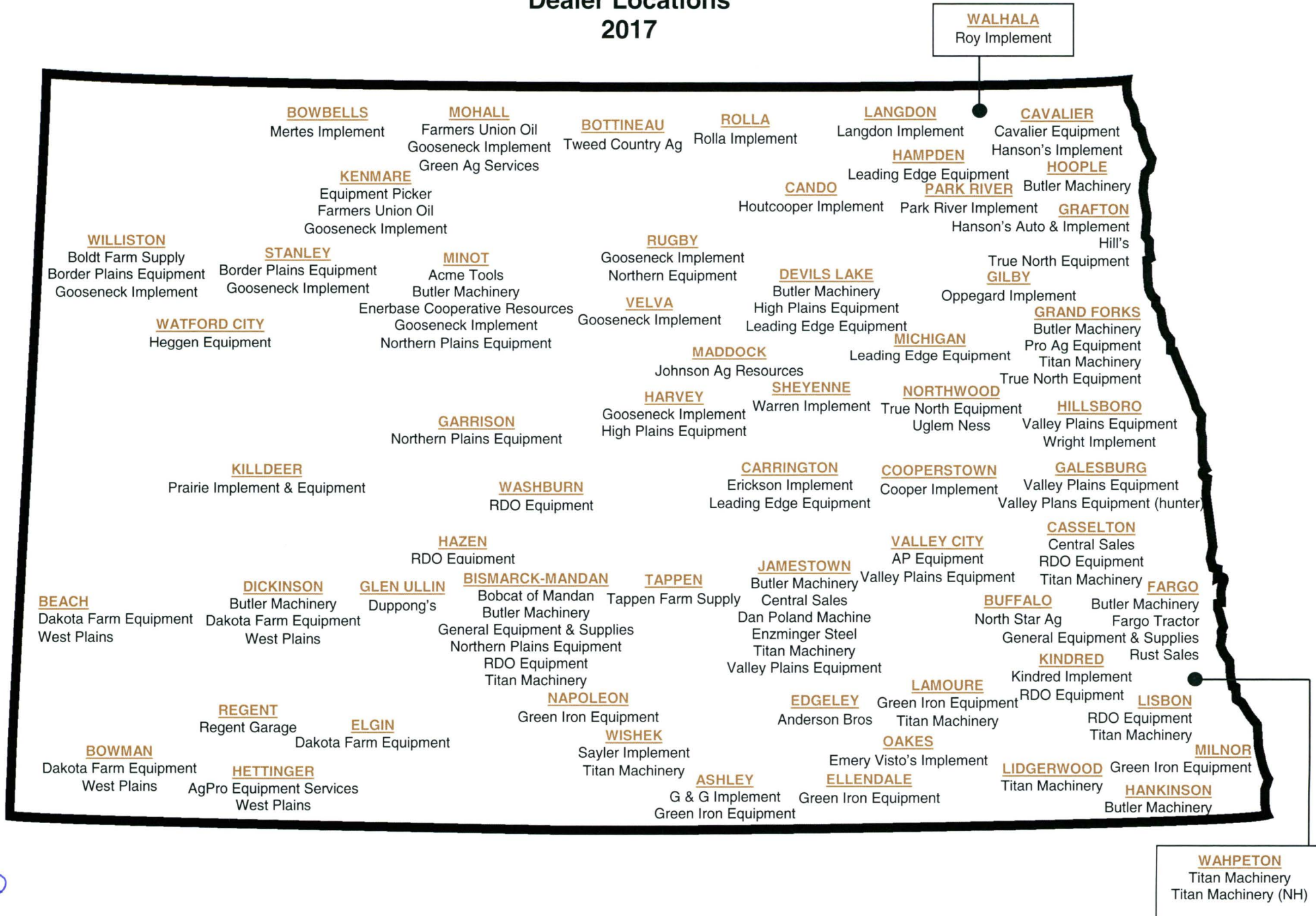
9. **Adds farm equipment dealers** to existing North Dakota state law that sets forth the conditions for selling an automobile or truck dealership. A manufacturer has 60 days to approve or deny a dealer's request. The manufacturer may deny the request only if the proposed buyer does not meet financial or business experience requirements set by the manufacturer.

WARRANTY & INCENTIVE CLAIMS

1. **Prohibits a manufacturer from conducting an audit or chargeback** on warranty or incentive payments made more than 1 year after payment.
2. **Protects both manufacturers and dealers** in that a manufacturer may not charge back a dealer for an incentive or warranty payment unless the dealer's claim was false, fraudulent, or the dealer did not comply with the manufacturer's written procedures for turning in a claim.
3. **Requires the manufacturer to be transparent** and identify each claim at issue before imposing a chargeback. Manufacturers may not chargeback an amount that exceeds the total direct compensation received by the dealer for the applicable claim and must provide the dealer with at least 45 days to present additional information regarding any claim at issue.
4. **Adds parts and transportation** to current ND law, providing fair reimbursement of farm equipment warranty labor

NORTH DAKOTA IMPLEMENT DEALERS ASSOCIATION

Dealer Locations 2017



#2
3/9/17

Senate Bill 2289

Mr. Chairman, members of the committee.

My name is Marc Taylor and I am appearing in support of Senate Bill 2289. I am a past president of the North Dakota Implement Dealers Association and a past president of the North Dakota Ag Association. I have been involved in the farm equipment business since 1976. My career began as a representative for a major farm equipment manufacturer; for the last 30 some years as a dealer.

I would like to provide a background for my testimony. The farm equipment industry is unique in one aspect-we deal with large ticket items and relatively low unit volumes. As an example, the 2013 sales peak for the industry saw a total of 13,700 combines sold in North America. In 2016, the sale of combines in North America dropped to an estimated 6,000 units. If you divide out the units sold per dealership, this level of sales requires dealerships to employ service technicians that are qualified (and certified) to repair multiple models, multiple components such as engine, transmission, electrical components, precision farming software, etc. and meet a manufacturers' flat rate for warranty work.

The low volume in terms of units also provides a challenge when a dealership is establishing a base line for inventory levels both new and used. A top of the line four-wheel drive tractor lists for about \$550,000. You can guess what a dealer will need to invest in a one year old trade. I'm not here to blame manufacturers for the rise in equipment costs-a substantial factor was the EPA requirement for Tier 4 B emissions standards, but also the demand for technologically advanced equipment to improve farming efficiencies. However, meeting the inventory stocking goals has become more critical, given the inventory costs. As an

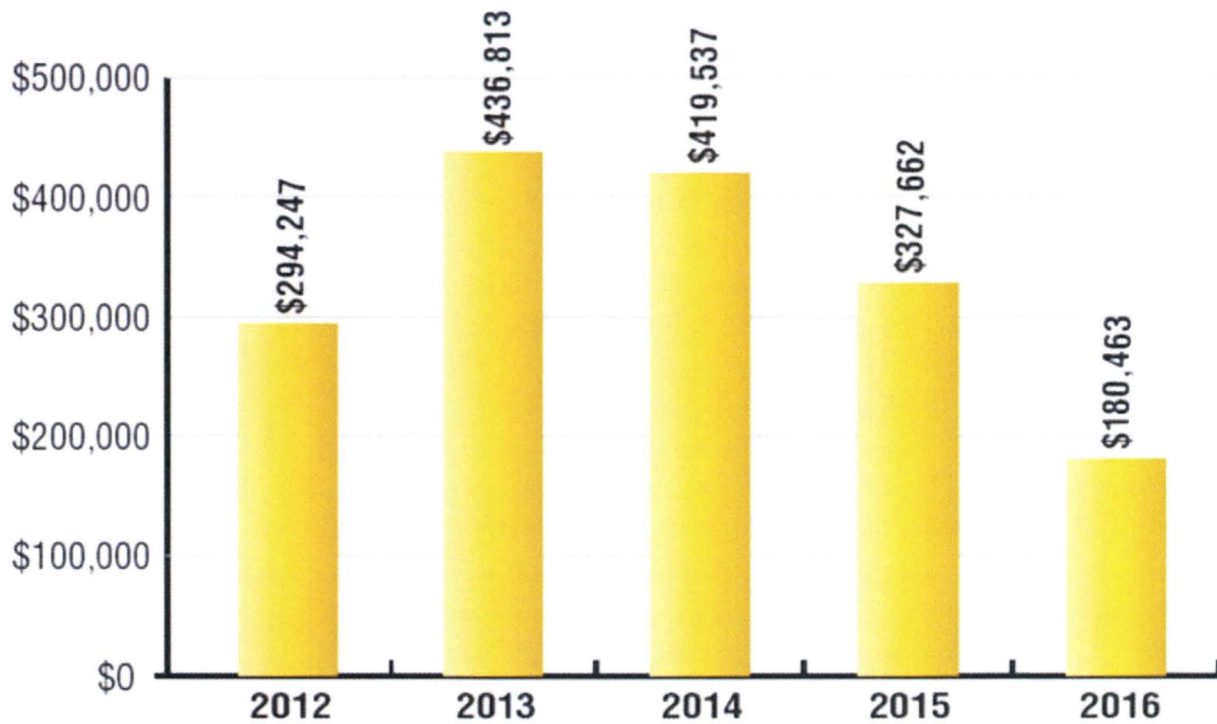
example, when I started a dealership in 1984, our total cash outlay was \$260,000. That does not cover a single late model trade.

The next several years will be challenging years. We have seen the sales volume for the Mandan store's Area Of Responsibility (AOR) drop from ~\$63.5 million in 2013 to \$24.8 million in 2016 with further declines expected. *(Based on manufacturer's estimate of all agricultural whole goods sales in the AOR for Mandan-The Counties of Emmons, Kidder, Burleigh, Sheridan, McLean, Mercer, Oliver, Morton, Sioux and Grant {several counties are shared with another dealership}).*

One industry consultant estimates that 40% of the dealerships in the country will change ownership or cease before dealers adjust to the "new normal". Why? Because of the tremendous inventory costs that we face-interest costs and price adjustments to move aged inventory. In the 2000 to 2006 business climate, which was considered "normal", the difference between a "highly profitable" dealership and a dealership that lost money was 3%. It appears 2017 may be even narrower.

The Federal Reserve Chairman recently announced the probability of (3) interest rate hikes in 2017, which will put additional pressure on farm equipment dealers' inventories and increase interest expense.

Total Profit from Operations – 2012-16



Since peaking in 2013, dealers' profit from operations have declined by 59% leaving a margin of only 1.32% of total revenues in the 2016 study.

Source: WEDA 2016 Cost of Doing Business study

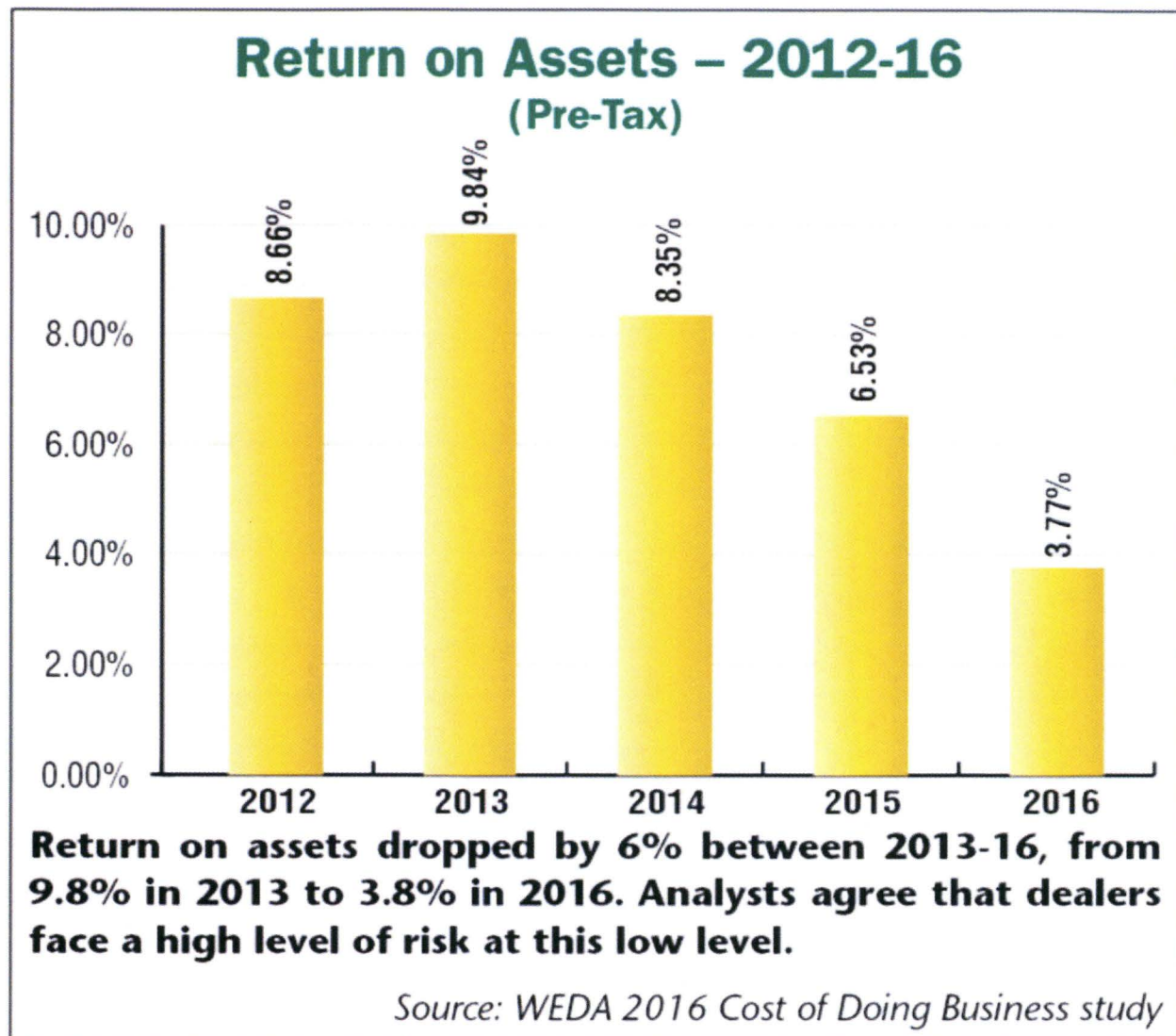
We asked the consultant that I have used for over 20 years to review our financials and give our company a no-nonsense opinion. His recommendation was continued and aggressive inventory reduction or become a statistic. He commented that our company was also in "much better condition, financially" than many of the companies they are working with, but supported the statement of 40% of the dealerships ownership will or has changed before the inventory correction is complete because of the urgent need to reduce inventory, both new and used.

There are two overriding expenses that must be managed to be a financially healthy dealership in 2017. First, as previously stated, inventory-the interest and the cost to get that inventory to a manageable level. Second is people. If we can manage our inventory, we can maintain our employees at or near our current level. However, if we are unable to control our inventory completely, we are forced to make other, less appealing adjustments. We need to be in control of our inventory, not required to order by a manufacturer's guideline that may have been set up a year earlier.

"We must figure out how to improve our inventory turnover. This is the thing that's hamstringing us most right now. We all know this is more difficult to accomplish when sales are harder to come by. We're down close to 2 turns on used and we're also contending with low margins.

"We always used to say that turns needed to be 3 times to be successful. I would advocate that it now needs to be 4 times.

Source: WEDA 2016 Cost of Doing Business Study



Recently, some manufacturers have presented new contracts, some with little regard for the disastrous effect the contract can have on a dealer. Because dealers have resisted signing the new contract, some manufacturers have programs that state the dealer has until a given date to sign the contract or lose certain incentives, such as volume bonuses. Some years the volume bonus is the difference between being profitable and unprofitable.

Further analysis reveals that profits from dealer operations (\$180,463) would actually be in the red if volume discounts (\$204,427) weren't included.

Thompson says when he was a dealer, this situation is the one that he most wanted to avoid. "I scratched like crazy to keep my sales department profitable without volume discounts because [they] are

somewhat at the whim of the manufacturer. And you can't forecast what it's going to be for the coming year. We can't totally hang our hat on that as a business model, so let's figure out how to make money without it." (Page 7, WEDA Cost of Doing Business)

Something new to the contracts is a manufacturer expressly states they can cancel a single store in a company complex (multiple store dealership) if that single store is under-performing by the manufacturer's requirements, while the overall company is meeting the manufacturer's requirements. This could be very devastating to both the farmers and the owners of a store.

Some contracts have a clause that states if a dealer has not "executed" (signed and returned) within a time, specified in the governing contract (usually 90 days), it is "good cause" for termination.

Warranty is always a concern for the farmers, the dealer and the manufacturer. Every farmer deserves to receive the productivity from equipment they purchase. Dealers work hard to earn and keep the trust of farmers by responding to and repairing equipment that experiences a failure. Dealers are not always rewarded for their hard work-Our Mandan store lost \$41,998.25 in 2016 in unrecovered warranty, plus another \$41,414.86 in travel and transportation expenses. These costs add to the challenge of keeping the doors open in tough times.

Many warranty parts are ordered as a "breakdown" order, for two reasons-the unit down is a "new" model without a parts history and the urgency of the repairs. "Breakdown" orders have higher costs associated with them-typically additional freight and a surcharge, which is not reimbursed. For the manufacturer we represent, the reimbursement level on warranty parts is about 20%. The breakeven point on a part is about 24% industry wide.

As to travel time, North Dakota is a large state geographically. As stated earlier in my testimony, the AOR assigned just to the Mandan store covers part or all of 10 counties. Several years ago, when a new product experienced a software problem, our "Precision Technology" technician was unable to get the software updates installed for all farmers before he would be starting over with a new version, on nearly a daily basis until the fix was finally available. He was driving

hundreds of miles every day. This is an expense a dealer has no way of planning for-the dealer just sees a lower or negative return on their investment.

The investment required by a dealership to meet the manufacturer's requirements for service certification continue to rise. The Mandan dealership spent \$10,130 for technician training (all manufacturer's) in 2014. In 2016, that figure rose to \$19,182.

Compounding the warranty compensation issue is the requirement by manufacturers that "Dealer shall provide Warranty Service for any Product, regardless of whether the Dealer sold that specific Product." So, when the dealer is, by contract, required to repair equipment the dealership did not sell, we have not figured out how to recover our expenses...we end up losing money. When all associated costs are considered, dealers average about a 75% "recovery" of warranty expenses.

Further, I have a contract on my desk the manufacturer expects me to sign that dictates I can no longer sell to commercial accounts, even though we have represented that brand since about 2000. But that manufacturer expects us to provide warranty for the sale of that product in our area, if the farmer chooses our dealership over the dealer they appoint to sell to that account.

Another troubling section of a contract states the manufacturer can charge back programs and warranty claims if they find an irregularity. I believe a manufacturer needs to be able to protect themselves. However, the current program bundle from one manufacturer is nearly 100 pages, with up to 10 different programs that may or may not apply to a unit. We base our decisions on which programs apply on our interpretation and with the consultation of the manufacturer's representative, which occasionally have not been the interpretation of the manufacturers' auditor. The manufacturer does not have a means for a dealer to test which program is applicable for a given unit-we find out when we complete the settlement. One of the contracts specifies the manufacturer can charge back all programs and warranty for the past two years. A charge back of that magnitude would bankrupt our company.

To summarize; dealers not only invest their money in their dealerships, we sign a personal guarantee that we will pay the manufacturer-period and they want first position on UCC1 filings. As a dealer, we want to have a strong relationship with our manufacturers. But, we also want a contract that is “fair” to both parties. Many of the current contracts we are expected to sign can put our dealerships in a position which lets the manufacturer have de facto control over many aspects of our business. (We cannot alter one paragraph, sentence, word or letter of a contract). Senate bill 2289 addresses some of the contract inequities we face in the dealerships. The answers are easy: manufacture a product that requires no repairs (or pay for all associated cost of repairs under warranty), don’t charge interest on the equipment dealers do not want to order and remove the language from the contracts that give the manufacturer an extreme amount of leverage over the dealership.

I believe Senate Bill 2289 gives the farm equipment dealers of North Dakota a better, more level playing field and would also benefit the farming community of North Dakota with stable, local dealerships. Please give Senate Bill 2289 a do pass recommendation.



How Dealers are Measuring Up

By Dave Kanicki (/authors/121-dave-kanicki) posted on February 11, 2017 |
Posted in Best Practices (/topics/391-best-practices), Data & Forecasts
(/topics/392-data-forecasts), Operations & Finance (/topics/393-operations-finance)

The 2016 Cost of Doing Business study reveals areas where dealers must up their performance to get back to being profitable.

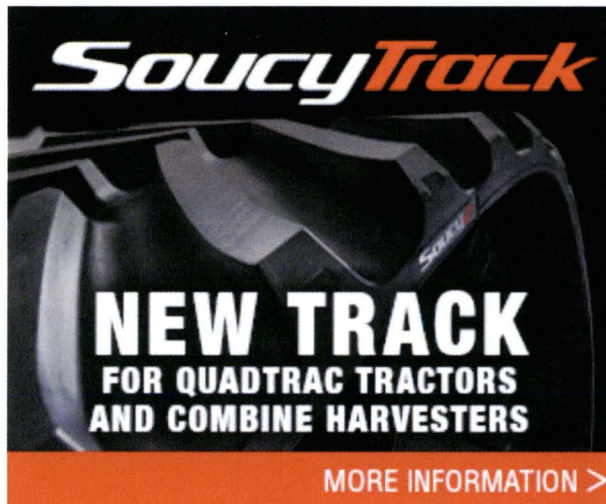
Continued from page 1 >>

Profitable Parts & Service

Thompson and Charbonneau both highlighted the increase to 16.2% of total revenue from parts sales as one of the positive trends emerging from the 2016 CODB study. This is up from 14.6% in 2015 and 13.5% in 2014. At the same time, the gross margin on parts sales also rose from 29.4% in 2015 to 30.6% in 2016. In total, parts sales grew by an average of \$123,000 in 2016 vs. the year before.

"I congratulate dealers on this because it's difficult to grow sales and margin at the same time and they've done both in the past year," Thompson says. "But dealers shouldn't be content at 30.6% margin because I believe we should be at about 33%. But the improvement this year is a nice move in that direction."

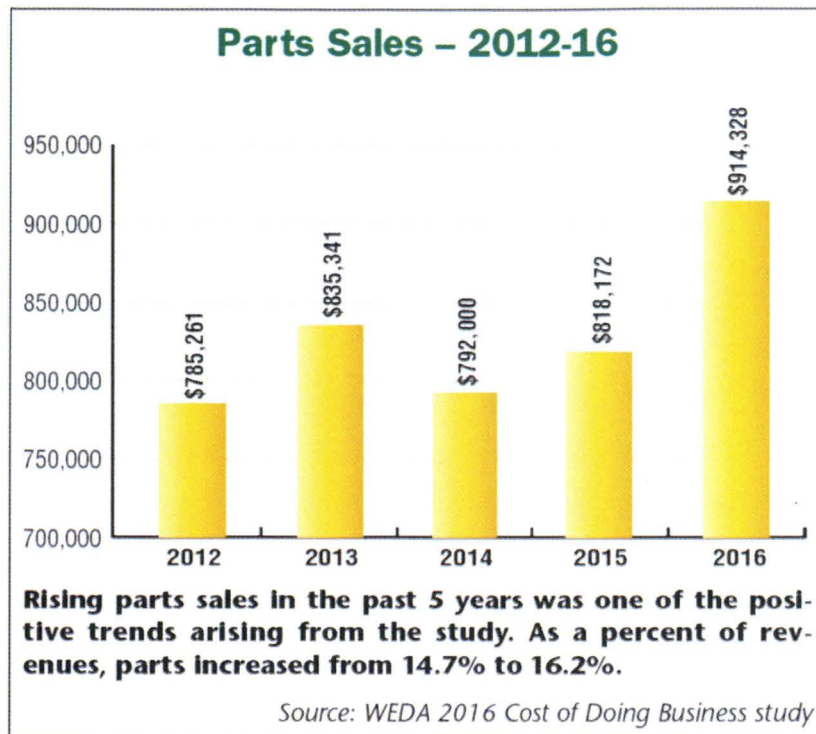
While total service dollars increased by nearly \$130,000 in the 5 years between 2012-16 — with \$100,000 of this occurring between 2015-16 — its percent of total revenue grew from 6.1% to 6.7%, which Charbonneau and Thompson called "very good."



During this period, the gross margin on service slipped from 65% in 2012 to about 62% in 2016, but improved from 2014 (61%) and 2015 (61.2%). "This is pretty good, but below where it needs to be," says Charbonneau.

At the same time, Thompson says, dealers should focus on the service dollars more so than its percent of total revenue. "More is better to a point. We used to have a saying that you don't buy your kid

new shoes with gross margin percentages. You buy them with gross margin dollars. So a 62% margin isn't bad, but the idea is sell more of it to take advantage of the high margins available with service sales."



Charbonneau suggests that dealers take a hard look at shop rates to ensure they're charging what they should be. "Farm equipment is getting very sophisticated and you need more qualified people to work on this very high dollar equipment. The market will determine what you can do, but dealers at least need to look at it."

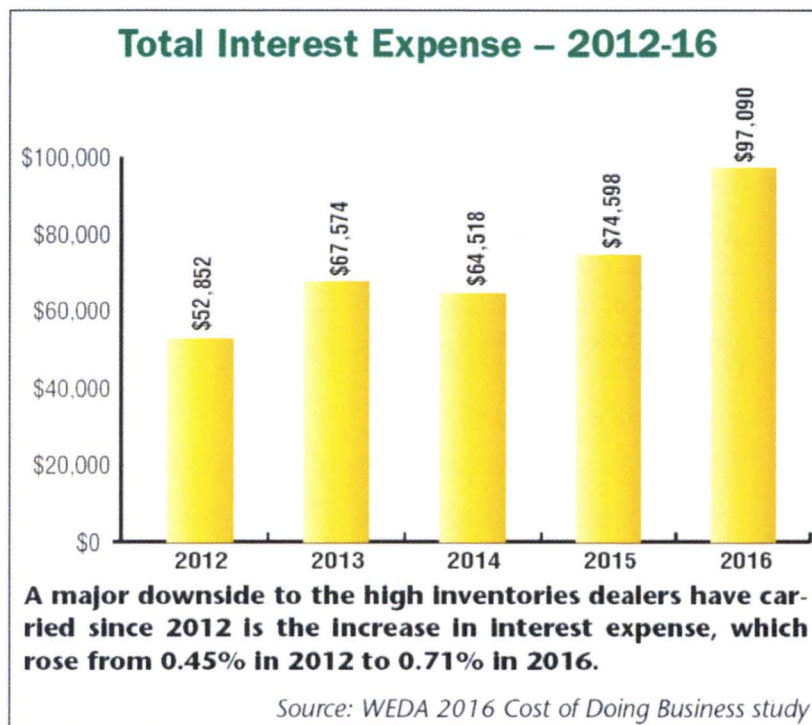
Thompson adds, "We tend to be shy about adjusting [our rates] because customers are vocal about it, but to some extent I think they've done a great job of training us. The big new equipment takes 3 times the space in our shops today than what it did when I started in this business."

The investment in these big new shops alone is worth something, he says. In the space where a dealer was able to fit 3 pieces of equipment with 3 techs working, today that space will only accom-

moderate one piece of equipment and one tech. "And relative to what others charge in industries comparable to ours, I think we're pretty modest in what we do charge," says Thompson.

Interest & Total Expenses

With the exception of 2014, dealers' interest expense has risen steadily since 2012. In that year and the following year, interest was 0.45% of expenses. This declined to 0.44% in 2014 but increased to 0.52% in 2015 and 0.71% in 2016. The increase in dollars during the last 2 years was \$22,492, or up by 30%.



"Even though interest expense was up, it wasn't up as much as you might expect relative to the inventory increase over the same period," says Thompson.

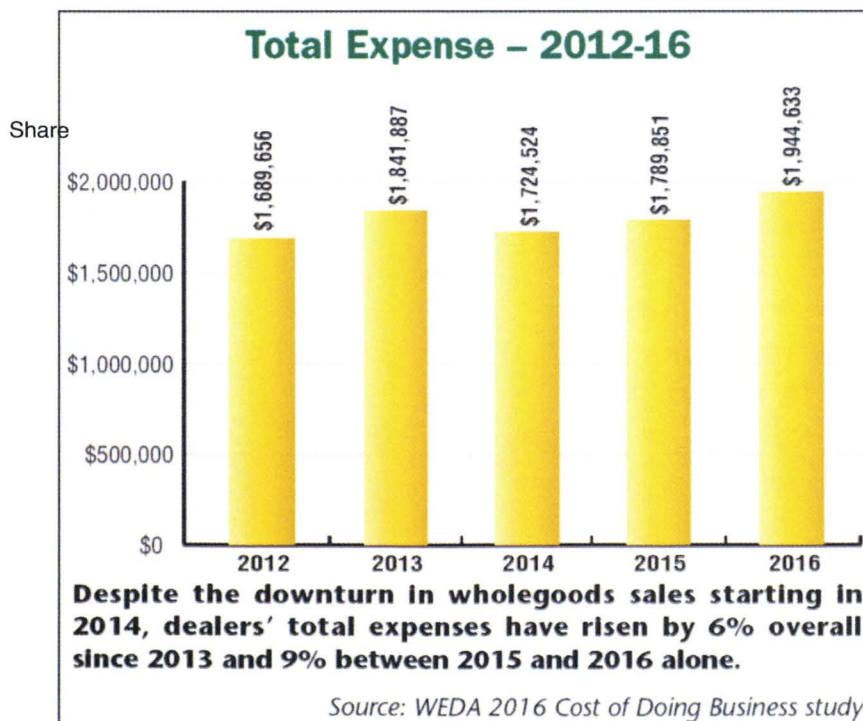
He goes on to say that the reason interest expense is significant for dealers is that much of it goes into floorplaning. "Money spent on floorplan interest doesn't do anything to help the equipment sell faster, run better or make the end buyer any happier. So it's not like

you've spruced the equipment up, it's just dead money out the door, so again it gives dealers a reason to manage their inventories as well as they possibly can."

In addition to the year-over-year increase in interest expense dealers experienced in 2015 and 2016, if interest rates rise, as expected, in the next few years, this could become a bigger issue than it is currently, according to Charbonneau. This should lend additional urgency to dealers' efforts to better manage their inventories.

Overall, total dealership expenses have risen about 6%, or a little over \$100,000, since 2013. "When you compare total expenses and margins, they are about the same across the board during this period," says Charbonneau.

According to Thompson, it can be difficult to adjust expenses during a period of declining sales. "Not everything is tied directly to sales," he says. "For example, you don't get to decrease your rent just because your sales are down.



"When Bob and I studied the numbers, we were a little surprised that expenses increased as much as they did during this period of declining sales. We would have thought that there would have been some pretty serious pressure on expenses to mitigate the falling sales."

Between the 2015 and 2016 studies, overall expenses increased by 9%. An examination of the numbers revealed that the single biggest increase dealers saw was in rent.

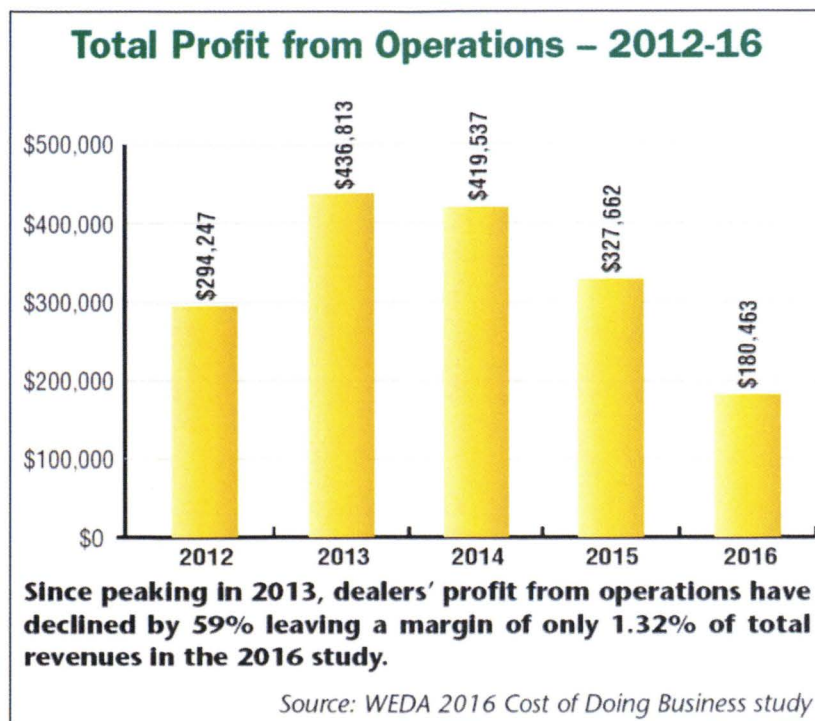
According to Thompson, without additional detail, it's difficult to pinpoint exactly why this occurred. "Are owners charging more for an existing building or is it the result of new facilities that have significantly higher costs associated with them? Whatever the reason, the increase is significant," he says.

Thompson suggests that dealer-principals work with department managers to carefully scrutinize all expense accounts to justify each and put in place zero budgeting. "Let's not say we're going to spend 5% less. We need to figure out where we are spending it and determine if it's being spent wisely. I really believe that a strong budgeting effort and follow-up going forward is paramount because we sustain expense increases like this in the environment we're in."

Declining Profits

Not a very pretty picture is how Charbonneau described dealers' profits from operations in the past year. "It went from nearly \$437,000 in 2013 to about \$180,500 in 2016," he says. "That's about a \$256,00 decrease in total dollars and is 59% lower than operations profits dealers saw in 2013."

Year-over-year, dealers' profits from operations fell by 45% in the 2016 study. "At 1.32% [of revenues] dealers are still in the black, but that's a real thin margin," says Thompson. "It doesn't let you ride out any surprises or make a significant investment where it's needed. It really needs to be in the 3% range for a dealership to be successful and make it work."



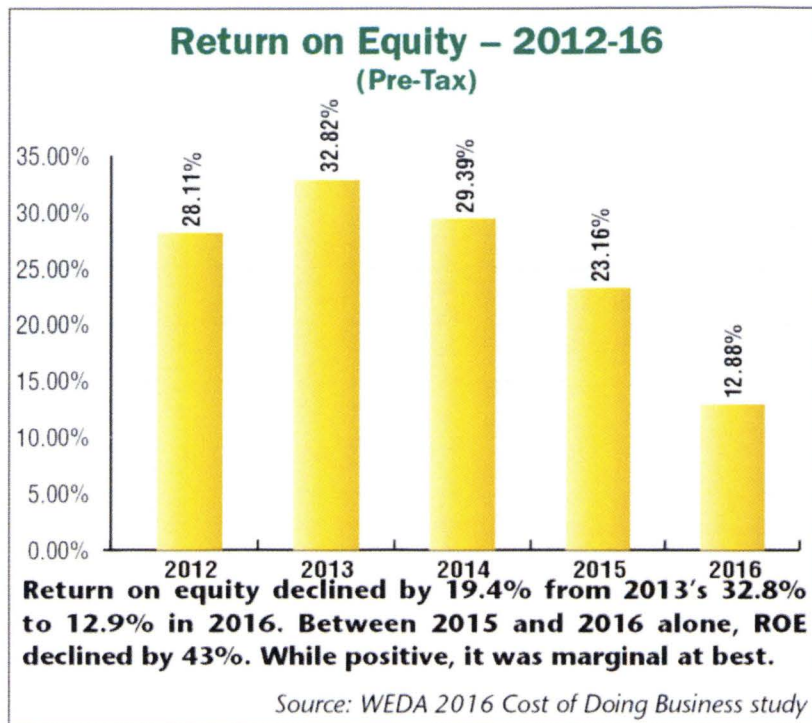
Further analysis reveals that profits from dealer operations (\$180,463) would actually be in the red if volume discounts (\$204,427) weren't included.

Thompson says when he was a dealer, this situation is the one that he most wanted to avoid. "I scratched like crazy to keep my sales department profitable without volume discounts because [they] are somewhat at the whim of the manufacturer. And you can't forecast what it's going to be for the coming year. We can't totally hang our hat on that as a business model, so let's figure out how to make money without it."

Slumping ROE & ROA

Ultimately, the annual overall performance of a business comes down to net income, but there are other measures that dealer-principals must watch closely. These are return on equity and return on assets. Both of these are also important to lenders the dealership works with.

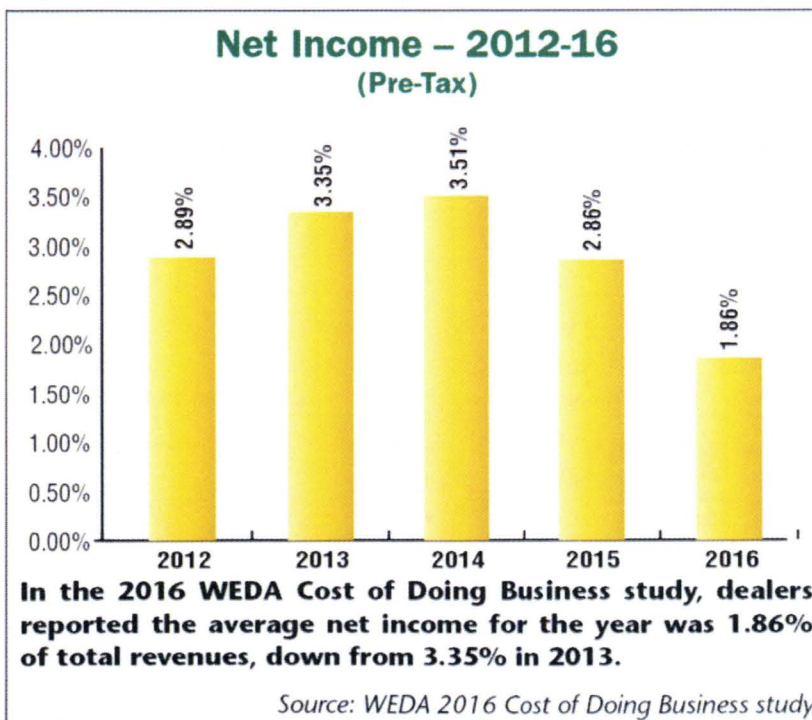
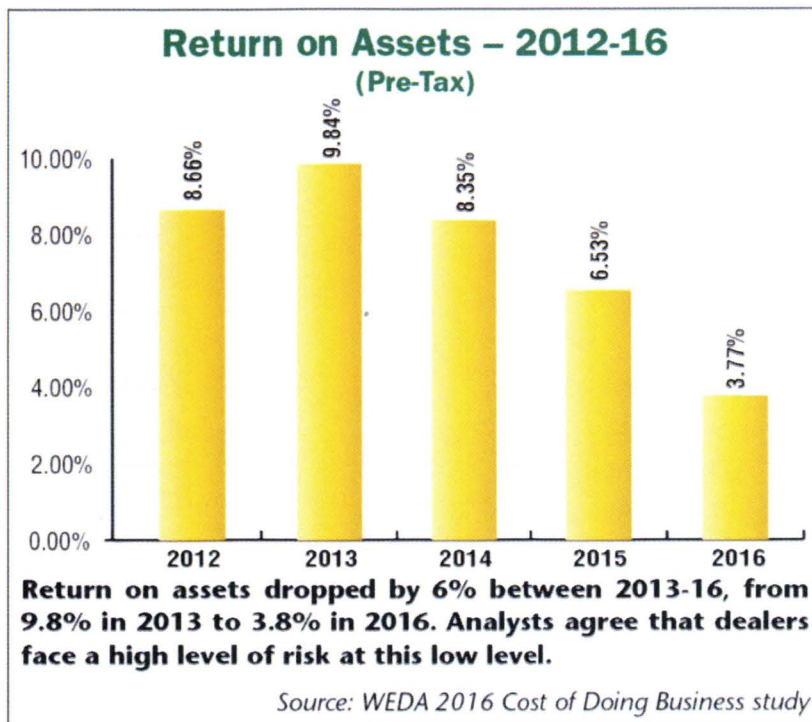
Unfortunately, Charboneau says, neither fared too well in 2016. "Re-



turn on equity declined by 19.4% from 2013's 32.8% to 12.9% in 2016. Return on assets followed suit, dropping by 6% during the same period, from 9.8% in 2013 to 3.8% in 2016."

Between 2015 and 2016, ROE declined by 43%. "It's still positive, but it's marginal at best," says Thompson. "At that level it takes a lot of fun out of the business. Everybody from your manufacturer to your banker to potential investors wants to know what this number is and with good reason. It is a measurement of net income before taxes divided by average net worth. The productivity of the owner's investment is what it measures.

"This year we have two things working against us. We saw that as-sets have gone up because we've sold less equipment, and our equipment inventories have risen. Our equity has also risen be-cause we haven't been able to extract the cash, perhaps it's tied up in that equipment, and then we've had declining income. So this one's getting hammered on both ends, income's down, average net worth is up because of inventory and equity. If I was a potential in-vestor, this is the first number I would look at."



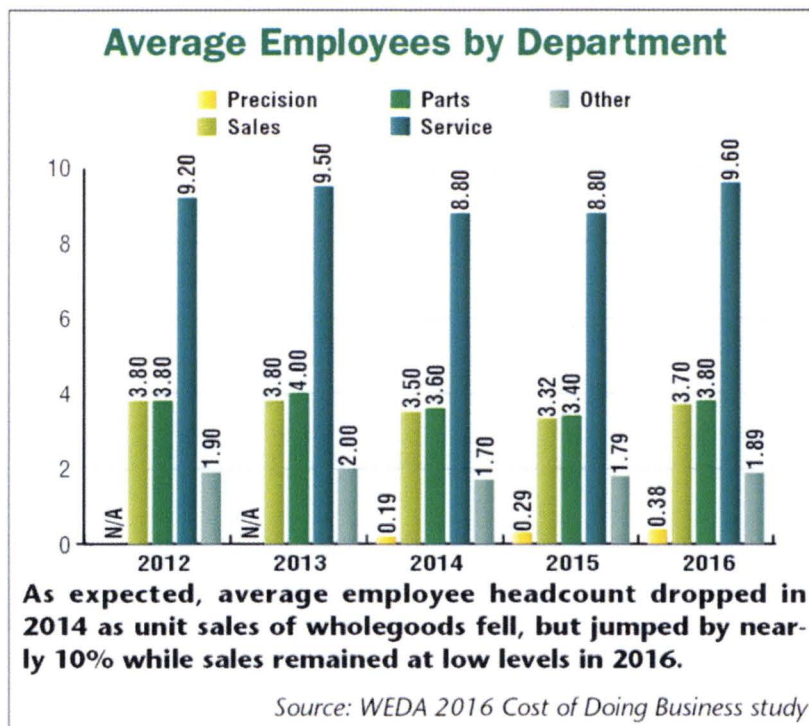
Return on assets is another measurement tool that lenders and investors zero in on. It's calculated by dividing net income before taxes by average assets. Dealerships posted a 3.77% ROA in the 2016

study, which is down significantly from the 9.84% level achieved in 2013.

"You take a lot of risk for that 3.8%. We need to have it in the 6-8% range. As is the case with ROE, we're getting drilled on both sides of it on ROA because income's down and assets are up. It measures the company's ability to utilize its assets to earn a net profit. This really cuts to the chase of why we're in business."

It all boils down to net income. In the 2016 WEDA Cost of Doing Business study, dealers reported their net income for the year was 1.86% of total revenues. This is down by a full percentage point from the 2015 study and down by 1.5% from the 3.35% net income posted in 2013.

Employee Head Count Rises



As equipment unit sales began to decline starting in 2014, farm equipment dealerships, on average reduced their employee rosters by about 1.5 people (8%) from 19.4 in 2013 to 17.8 in 2014.

"Overall, our workforce stayed pretty constant from 2013-16, but it's went up quite a bit from 2015-16 from 17.6 up to 19.4, which is about a 10% increase in employees even as profits decreased," says Charbonneau.

"I found that surprising, too," adds Thompson. "Perhaps dealers had to add specialists in their service department to deal with all the complicated technology that we sell now. But along with the increase in overall expenses, it was surprising to see an increase in average number of employees."

WEDA added the category of Precision Ag/IT Technician to their survey in 2014. While the average number of employees in this category doubled from 2014-16, from 0.19 to 0.38, this would not account for the 10% increase in overall headcount during this period.

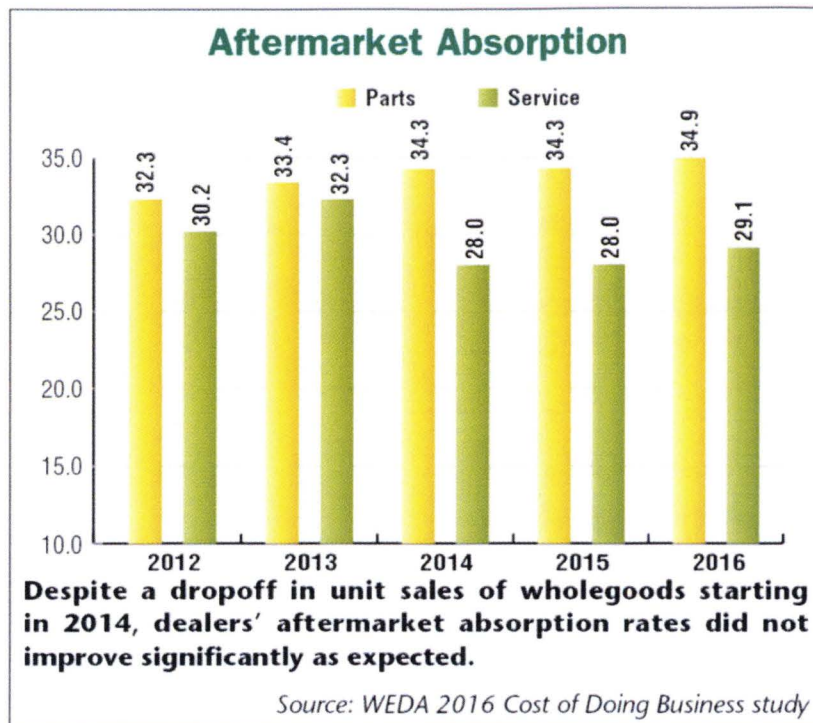
"I'm not hearing dealers say that they're adding employees and yet that's what the numbers tell us. Could be a result of some mergers and acquisitions, otherwise we're struggling a bit to explain this," says Thompson. "My goal was always to do a million dollars in sales per employee and generally we did. We're now down to about \$700,000 and it just gets a lot tougher to generate a bottom line that works for everybody at that level."

Aftermarket Absorption Needs to Improve

For many farm equipment dealers, aftermarket absorption is a critical measurement. It is calculated by dividing parts and service gross margins by total expenses. The higher the absorption rate, the more fixed costs are covered. This tends to take on more importance during periods when unit sales decline.

WEDA indicates that the benchmark or target for farm equipment dealers for parts and service absorption is 80%-plus.

While total absorption crept up somewhat between 2012-16, from 62.5% to 64%, it would appear that, on average, dealers remain highly dependent on new and used wholegood sales to remain solvent.



Parts absorption improved slightly (2.6%) during this period, service absorption actually declined from a peak of 32.3% in 2013 to 28% in 2015 before recovering somewhat to 29.1% in 2016.

Dealer Takeaways

After scrutinizing the 2016 study, Thompson offered his closing thoughts.

Takeaway #1: "We must figure out how to improve our inventory turnover. This is the thing that's hamstringing us most right now. We all know this is more difficult to accomplish when sales are harder to come by. We're down close to 2 turns on used and we're also contending with low margins."

"We always used to say that turns needed to be 3 times to be successful. I would advocate that it now needs to be 4 times. We have to get our people to understand why it's important that that piece of used equipment doesn't sit behind the shop for a month before you make it suitable to sell; why your sales department has to do a better job of finding homes for equipment before it comes in the door."

"It seems we've lost the urgency we used to have about moving used. It's gotten away from us. I think it's a carryover from the 'good times' when we got used to equipment finding its own home instead of us going out and finding a home for it. This has to be the single biggest thing we focus on."

Takeaway #2: "I would say we've made a great start in parts and service, but we're only about a third or a quarter of the way to where we need to be. We don't have a lot of upside in our service gross margin, but we have a little bit of upside in parts gross margin. If we can get just 2 more points in parts gross margin, it's amazing what sticks to the bottom line. So kudos to what you've done there, but don't stop."

Takeaway #3: "The other thing that jumped out at me is we need to figure out how to better control expenses. This is a tough one, and I'm not going to underestimate what's involved. But necessity is the mother of invention, and we're in a situation where we have to figure out how we're going to make the changes to make this work for us. I would do a really thorough budget analysis and I would have all my people involved."

PREVIOUS ARTICLE ([HTTP://WWW.FARM-EQUIPMENT.COM/ARTICLES/13634](http://www.farm-equipment.com/articles/13634))

NEXT ARTICLE ([HTTP://WWW.FARM-EQUIPMENT.COM/ARTICLES/13639](http://www.farm-equipment.com/articles/13639))

FEBRUARY 2017 ISSUE CONTENTS ([HTTP://WWW.FARM-EQUIPMENT.COM/PUBLICATIONS/1/EDITIONS/66](http://www.farm-equipment.com/publications/1/editions/66))

1 ([/ARTICLES/13638-HOW-DEALERS-ARE-MEASURING-UP?PAGE=1](http://www.farm-equipment.com/articles/13638-how-dealers-are-measuring-up?page=1))

2



Dave Kanicki

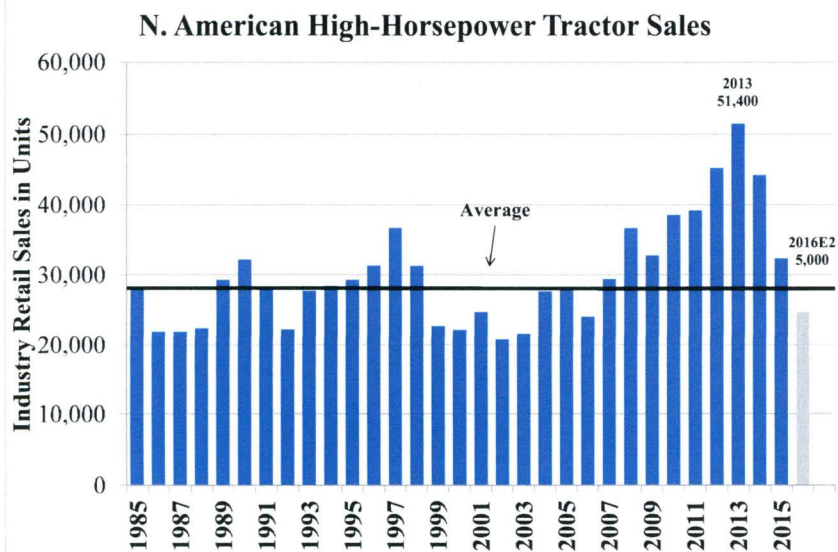
Dave Kanicki is the Executive Editor of *Farm Equipment* and Editor/Publisher of *Ag Equipment Intelligence* (AEI) and its related research, reports and broadcast channels. He joined Lessiter Publications in 2005 after decades of experience as an Editor/Publisher of metals manufacturing titles. His *Farm Equipment* and *AEI* work

has been nationally recognized by both trade business and business press associations. He is a graduate of Central Michigan University.

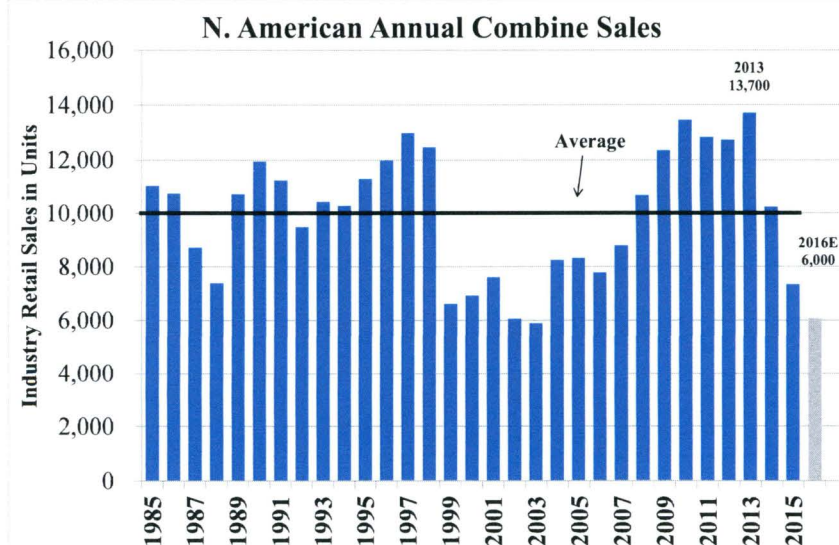
Contact: dkanicki@lessitermedia.com

(<mailto:dkanicki@lessitermedia.com>)

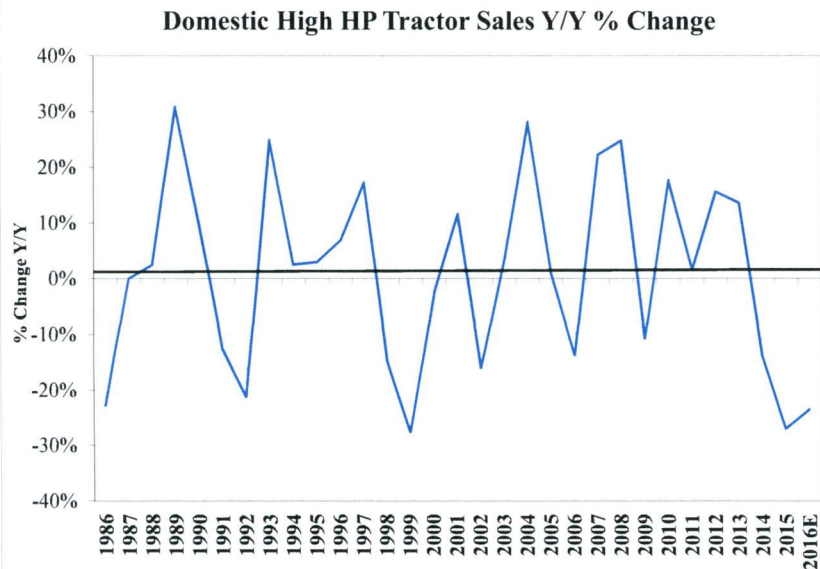
Annual Agricultural Equipment Industry Sales (1985 - 2015)



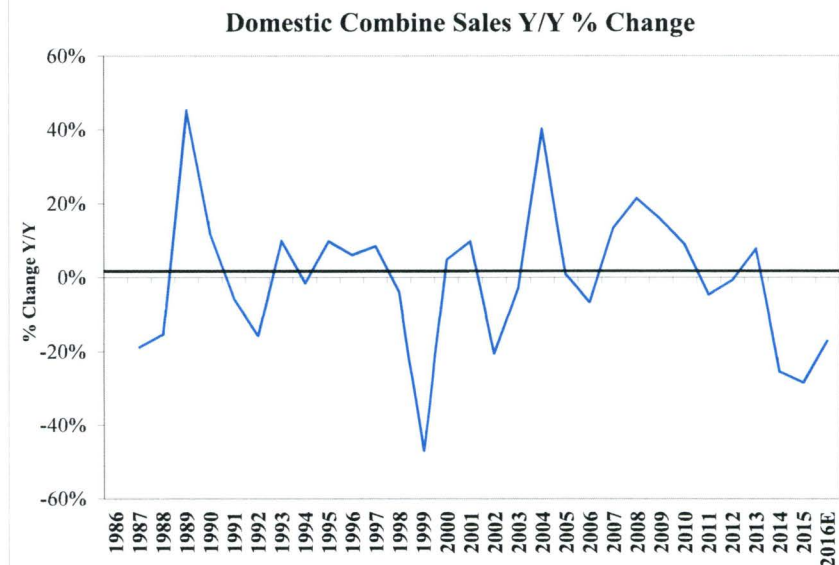
Source: AEM, Cleveland Research, Row Crop & 4-Wheel Drive



Source: AEM, Cleveland Research estimates



Source: AEM, Cleveland Research estimates



Source: AEM, Cleveland Research estimates

#3
3/9/17
SB 2289

My name is Jeff Romsdal and I am appearing in support of SB 2289. I am a 3rd generation farm equipment dealer from Jamestown, ND. First, thank you very much for your service and efforts to help move our state forward. I am very proud to do business and reside in our great state!

Many farm equipment dealers across our state are struggling to survive. As costs of doing business continue to rise every year, it's becoming increasingly unreasonable for manufacturers to require us dealers to subsidize their warranty repair obligations on the products that they produce. Dealers can't control what a manufacturer builds or how the machine is built.

The sophistication of the equipment that the manufacturers build is growing at an ever increasing rate. Our technicians are required to attend factory training at our expense in order to be "authorized" to work on this equipment. Like many in our industry, our technicians are paid on commission. For the last couple decades one of our industry's biggest challenges is finding and retaining qualified technicians. This problem is worsened when our technicians' compensation is cut short by the manufacturers' unfair warranty reimbursement policies. The manufacturers build the machines and are also the ones who make the promise to fix the machines if they break down during the warranty period. However, the cost to fix the machines is not fully borne by the manufacturers.....it's shifted on to us dealers and our technicians. Our technicians work hard and should not be required to take a pay cut just for working on warranty jobs. The manufacturers' current reimbursement policies are similar to an unfunded mandate.

As dealers, we have gained our identity and our very existence through the products we sell. We cannot just simply change brands because we don't agree with our manufacturer or the requirements they place on us. As with the issues of costs associated with warranty, we can also be tied up by our manufacturers by who they allow us to sell our businesses to thru generational change and sometimes even within the family. This has been proven in the inability to sell a dealership to someone who's qualified & able to purchase a farm equipment dealership yet such sale is halted & nullified for bias reasons by our suppliers. The supplier simply doesn't allow the chosen buyer to hold a new contract by that supplier. This bill would protect the free enterprise of selling our business to more than 1 predetermined buyer who's been selected by our supplier.

We have seen several other unreasonable and burdensome contract terms. Believe it or not, some manufacturers are now dictating what equipment a dealer must order and try to sell; regardless of market conditions such as the down farm economy we are experiencing now. Or, they may produce an inferior product or a product which for geographical or competitive reasons doesn't fit our business models. Some manufacturers are now writing into their contracts a requirement that dealers must purchase and stock equipment that we may not be able to sell. Just one combine could cost a half million dollars....can you imagine being required to purchase and pay interest on a number of these that you don't want to order and can't even sell?!

As you see there are some very strong foundational and fundamental values we are striving to protect through this bill. Our automobile dealer counterparts have already obtained similar laws which protect them. This bill is greatly needed in order to protect ND farm equipment dealers and the farmers that count on us to be there for them.

Again, I appreciate all you do. I ask you for your YES vote for SB 2289.
Thanks,

Jeff Romsdal
President, GM
Central Sales, Inc.

#4
3/9/17

SENATE BILL 2289

Mr. Chairman and members of the committee:

I am Bruce Uglem from Northwood, ND and I am appearing in support of Senate Bill 2289.

You have heard from the previous presenters our concerns about manufacturers' contracts with too much control. I agree with all of their concerns and information presented.

I have been involved with our dealership since 1978 in sales, service and management. There has been drought, too much rain, high and low interest rates, high and low commodity prices, all not controllable. These factors are what a dealer needs to base his decisions on inventory, employees, margins, market share, warranty, and manufacturer update work on products they produce.

The new demands by manufacturers remove the ability of dealers to manage their businesses as market and weather conditions change. Demands and contract stipulations cannot be one-sided to favor manufacturers.

The manufacturers are moving more expense and responsibility for their product without any compensation to the dealer. They are making more restrictions to our volume bonus dollars that have been used previously to cover extra expenses. These expenses have been transferred to dealers with fewer benefits or financial reimbursement. Warranty reimbursements have been reduced as well, with more product repair expectation from us.

SENATE BILL 2289:

- Protects dealers from being required to purchase farm equipment, parts or accessories that the dealer does not voluntarily order.
- Protects dealers from being required to purchase additional, unwanted inventory as a condition of filling an order.

- Protects dealers from being required to separate product brands, service areas, facilities, personnel, or display space in order to renew a dealer agreement or participate in a program discount or sales incentive. Short line equipment are a fill in for equipment a manufacturer may not offer or be inferior for the area.
- Protects dealers from the arbitrary termination of their dealership contract and unreasonable removal of authorization for a branch location or product line.
- Protects dealers from being forced to move their dealership to another location or to make unreasonable changes to the dealership building or property.
- Requires the performance standards placed on dealers to be reasonable, fair and transparent.
- Protects dealers from being required to sign an agreement that requires a dealer to:
 - be subject to another state's law
 - conduct legal proceedings outside of North Dakota
 - give up the dealer's rights under ND state law or settle a disagreement in a federal court in ND
 - agree to arbitration or
 - give up the dealer's right to bring a legal proceeding against a manufacturer unless a voluntary settlement agreement has been reached
- Adds farm equipment dealers to existing North Dakota state law that sets forth the conditions for selling an automobile or truck dealership.

Concerning warranty payments, this bill prohibits a manufacturer from conducting an audit or chargeback on warranty or incentive payments made more than 1 year after payment. Manufacturers have rework programs on new equipment that fall under warranty but fair time and transportation compensation fall short of costs to do work.

This bill protects dealers in that a manufacturer may not charge back a dealer for an incentive or warranty payment unless the dealer's claim was false, fraudulent, or the dealer did not comply with the manufacturer's written procedures for turning in a claim.

It requires the manufacturer to be transparent and identify each claim at issue before imposing a chargeback. Plus it adds parts and transportation to current ND law, providing fair reimbursement of farm equipment warranty labor.

We have provided tractors and combines to farmers when the manufacturer has no solution to repair the unit or there is an unreasonable delay in obtaining parts to repair a unit. We, at times, have received some compensation for use of equipment, other times not.

For one of the manufacturers with a new contract, the Dealer Council pointed out concerns and disagreed how the contract was written. After a few minor changes, the council was informed that they now had the final draft with no changes or negotiation.

Agriculture is important to ND. Independent farm equipment dealers are important to communities, farmers and the state. Approving SB2289 will give stability to the agricultural businesses and communities.

We would appreciate your support of SB2289.



#5
3/9/17
SB 2289

March 2, 2017
SB 2289
House Agriculture Committee

Chairman Johnson and members of the Committee,

My name is Kayla Pulvermacher and I'm here to represent the members of North Dakota Farmers Union. We support SB 2289.

SB 2289 establishes protections for equipment dealers that ultimately ensures farmers continue to receive a level of service that they need in order to be successful. Equipment orders mandated by manufacturers only serves to consolidate dealerships in the state, resulting in more miles and longer travel time between producers and the parts and equipment they need.

Finally, it is important to note that this sort of legislation is nothing new for North Dakota; similar safeguards have been put in place for automobile dealers.

I can take any questions that you may have.



SB 2289

#6
3/9/17
AGRICULTURE
CONSTRUCTION
FORESTRY
MINING
UTILITY



ASSOCIATION OF
EQUIPMENT MANUFACTURERS

March 1, 2017

Representative Dennis Johnson
Chairman, House Agriculture Committee
7871 45th Street NE
Devils Lake, ND 58301-9089
djohnson@nd.gov

Re: Opposition to North Dakota SB 2289 relating to prohibited practices under farm equipment dealership contracts, dealership transfers and reimbursement for warranty repair

Dear Chairman Johnson and members of the House Agriculture Committee:

I write you on behalf of the Association of Equipment Manufacturers, the North American-based international trade association representing over 950 companies in the off-highway machinery market. AEM members support 10,872 jobs in North Dakota, and contribute \$1.63 billion to the state economy. The industry in North Dakota generates \$191 million annually in tax revenue.

AEM opposes SB 2289. SB 2289 is an unnecessary intrusion into the business relationship between a farm equipment manufacturer and the farm equipment dealer. This is bad public policy that offers no benefits to users of our members' products in North Dakota - in fact, the restrictions could adversely affect our members' ability to service the end user's equipment through their dealer networks.

Almost all equipment manufacturers distribute their products through independent dealers located throughout the world. Over the decades these manufacturers and their dealers have developed close business relations that have stood the test of time and the marketplace. The contracts that have evolved are a function of the type of products, the nature of their markets and their combined experience.

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ASSOCIATION OF
EQUIPMENT MANUFACTURERS

AGRICULTURE
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These mutually agreed upon contracts are balanced to share the duties and responsibilities in such a way that both parties can make their best contributions toward a long term relationship that will succeed in supporting and serving the product users. Both parties need to be committed to work out isolated disagreements and conflicts that may arise and not seek wide sweeping legislative solutions.

This legislation would interfere with the contractual relationship between the farm equipment manufacturer and its dealers with respect to the terms they have agreed to. The bill would retroactively negate existing agreements concerning maintenance of parts inventory, warranty repair reimbursement terms, dealing with another manufacturer, change in competitive circumstances, and maintenance of dedicated facilities or personnel. The bill also would negate existing agreements the parties have reached to arbitration as a means to resolve dealership issues. These proposed changes have sweeping implications to hundreds of existing private contracts between farm equipment manufacturers and their dealers. The provisions would impair manufacturers' pre-existing agreements with their farm equipment dealers and thus appear to violate the Constitutional protections against legislative impairment of private contracts and agreements to arbitrate.

We respectfully urge you to reject this legislation which is an overreaching interference in the contractual business relationship between a manufacturer and the farm equipment dealer and let the marketplace determine the established business relationship.

Respectfully submitted,

Nick Yaksich
Senior Vice President, Government and Industry Affairs

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NORTH DAKOTA EQUIPMENT MANUFACTURING INDUSTRY PROFILE

AEM MEMBERS IN NORTH DAKOTA

Trail King West Fargo Plant

Doosan Bobcat

Paladin Light
Construction (ND)

Promersberger
Company (The)

John Deere Electronic
Solutions

Lura Enterprises Inc

IRONCLAD Marketing Inc

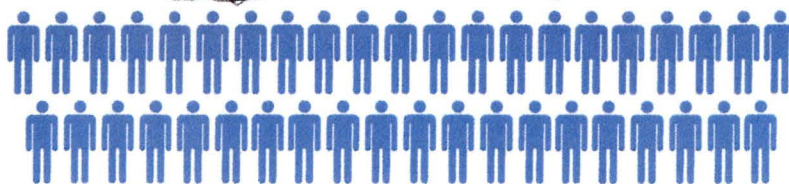
Challenger
Manufacturing LLC

Horsch LLC

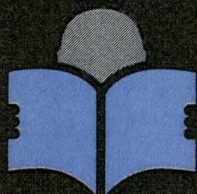
Amity Technology LLC

Appareo Systems LLC

The equipment manufacturing industry supports **10,872 jobs** in North Dakota

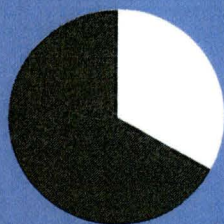


Directly supports **4,607 jobs**



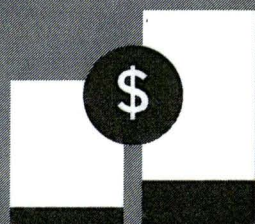
The tax revenue generated by equipment manufacturers in North Dakota supports textbook, supplies and instruction for **8,948 students** each year.

NORTH DAKOTA GDP



The equipment manufacturing industry in North Dakota contributes **\$1.6 billion** to the state's GDP each year.

STATE WAGES



The equipment manufacturing industry generates **\$647 million** in wages in North Dakota each year.

TAX REVENUE



The equipment manufacturing industry in North Dakota generates **\$191 million** in tax revenue each year.

Exports support **111,100 jobs** in North Dakota. 1-in-5 jobs in North Dakota depend on international trade.

Infrastructure investment supports over **13,258 jobs** in North Dakota each year.

Agriculture is vital for equipment manufacturers. North Dakota agriculture contributes **\$9.8 billion** to the economy each year.

www.imakeamerica.com



ASSOCIATION OF EQUIPMENT MANUFACTURERS

1. Preserve Arbitration as Agreed to in a Dealer Agreement.

- * Amend SB 2289, page 4, line 28, by deleting "arbitration or".

AEM Substantiation: To the extent that this provision could void an arbitration provision in an existing dealer agreement, this change avoids the Supremacy Clause constitutional questions, and also steers clear of an unnecessary interference with the contract rights of the parties.

2. Failure to Comply with Terms in Dealer Agreement

- * Amend SB 2289, page 3, line 3, by deleting "substantially" and "material".

AEM Substantiation: Insertion of these vague terms in the existing statute (which has been in effect for years with no apparent need for any change) merely invites unnecessary ambiguity and potential for unwarranted litigation that the parties to the agreement should not want.

3. Transfer of Dealerships

- * Amend SB 2289, page 6, line 5 by adding a new subsection 4 to read as follows:

"4. A denial of a proposed transferee based upon the failure of the proposed transferee to meet the reasonable requirements consistently imposed by the manufacturer or distributor in determining whether to approve a transfer or a new dealership shall be presumed reasonable."

AEM Substantiation: A transfer of a dealership should be subject to no less than the requirements consistently applied by the manufacturer to grant a person a new dealership. These factors include an evaluation of the transferee's marketing plan, management team, character and reputation, business experience and other criteria. This provision is adopted from Iowa Code, Section 322F.5A.

4. Minimum Inventory of Equipment, Parts and Accessories

- * Amend SB 2289, page 2, line 2, insert the following before the period: "and stock the type of farm equipment and accessories sold in the dealer's assigned area of sales responsibility in quantities reasonably necessary to achieve share of market targets in the dealer's assigned area of sales responsibility."

AEM Substantiation: The farm equipment dealer is more than a manufacturer's sales agent or order-taker. To achieve customer service and to perform the promotion and marketing of the manufacturer's equipment, a dealer must stock a reasonable inventory of whole goods and accessories. This responsibility and role is clear to both parties to a dealership agreement. For North Dakota law to intrude and dictate that a dealer need not stock any equipment, parts and accessories if he elects will destroy the business purpose and success of the dealership and is in

direct conflict with the essential role the dealer has agreed to perform in promoting the product line.

5. New Definition

* Add new subsection 3 at SB 2289, page 5, line 8, to read as follows:

" 3. As used in this section 51-07-01.2, 'require a farm equipment dealer' means an unreasonable requirement unilaterally imposed by the farm equipment manufacturer."

AEM Substantiation: Clarification of a manufacturer's requirement compared with coercion.

6. Dealer Reimbursement for Warranty Repair

* Amend SB 2289, at page 6, lines 25 and 28, by deleting "charged" and substitute "collected".

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AEM Substantiation: A minimum reimbursement amount for a dealer's labor and parts should be based on the average amount collected, not charged or the posted rate, for non-warranty work. On bullet #2, allowing the parties to agree on transportation costs for warranty work allows for flexibility to tailor terms to meet a specific transaction. Also, this text already appears in the current statute for warranty reimbursement terms, see page 6, lines 28-30.

7. Exclusive Facilities

* Amend SB 2289, page 2, line 17, by deleting "or to participate in any program discount, credit, rebate, or sales incentive."

* Amend SB 2289, page 2, line 19, by deleting "for separate and valuable consideration. The issuance, re-issuance, or extension of a dealership contract alone is not separate and valuable consideration."

* Amend SB 2289, page 2, line 11, by deleting "if the agreement was supported by separate and valuable consideration. The issuance, re-issuance, or extension of a dealership contract alone is not separate and valuable consideration."

AEM Substantiation: A manufacturer's programs, discounts, sales incentives and other promotions are designed to increase equipment sales - a mutual benefit to the dealer as well. These are not dictates that are adverse or harmful to the dealer. The efforts are mutually beneficial to the parties and there is no reason to prohibit them. On bullets #2 and #3, any agreement requires adequate consideration to be legally enforceable. The deleted text is in conflict with this principle. Also, the statute should not prohibit the parties from agreeing to exclusive facilities, personnel and display space if the terms of that agreement are acceptable.



SENT VIA EMAIL: djohnson@nd.gov

March 5, 2016

Representative Dennis Johnson
Chairman, Agriculture Committee
North Dakota State House
North Dakota State Capitol
Bismarck, ND

Re: Opposition to Senate Bill 2289 – Amendment to the North Dakota Century Code related to prohibited practices under farm equipment dealership contracts.



Dear Chairman Johnson:

On behalf of CNH Industrial America LLC (CNHI) we write to you and the Agriculture Committee in **opposition to SB 2289** being heard in committee on March 8th.

CNH Industrial is a global manufacturer of Case IH and New Holland brands of agricultural equipment as well as Case and New Holland brands of construction equipment.

We currently have North Dakota operations at the CNHI Plant in Fargo where we conduct engineering, manufacturing and R&D activities. Annually the CNHI – Fargo Plant generates over \$100 million in economic impact in the State of North Dakota

The CNHI brands have a long history of successful relationships with North Dakota farm equipment dealerships. Our largest US dealer is headquartered in West Fargo and has a history with our company dating back to the early 1900s.

SB 2289 unreasonably interferes with the existing contracts between CNHI and its farm equipment dealers located in the State of North Dakota.

We wish to point to four specific areas of the bill that are particularly troubling:

Representation in the marketplace – consumer's right to a competitive market:

- SB2289 thwarts the basic premise of a dealer agreement in which the dealership agrees to stock, promote, sell, and support the manufacturer's products. The bill seeks to prohibit manufacturers from requiring dealers to stock inventory, even of the type commonly sold in the dealer's area of sales responsibility.

- SB2289 is anti-consumer and anti-competitive market. The bill seeks to allow, without manufacturer influence, a dealer to take-on representation of any product line-make of their choosing regardless of the competitive implications. This provision will reduce competition, adversely influence consumer pricing, and negatively impact the value of our brands in the eye of consumers.
- Consumer choice is suppressed and the competitive marketplace suffers in an environment where a dealer can lawfully refuse to stock any of a manufacturer's products.

Dealership Transfers –a manufacturer's right to select authorized dealers:

- Provisions within SB 2289 allow dealers to transfer ownership to anyone that meets "financial qualifications and business experience" of the manufacturer. This is mandated without the manufacturer's evaluation of the many other criteria related to a potential dealership buyer that are specific and reasonable to consider when evaluating a dealer transfer. **This provision undermines the manufacturer's contractual right to determine who is appointed an authorized dealer to sell and service its products in the State.**
- Our dealer qualifications, standards and selection criteria are vital to help ensure that consumers' needs are met, dealership business values are upheld and the promises of CNHI brands are met in the marketplace.

Dealership Facilities – undermines our brand's investment in market leadership

- SB 2289 seeks to greatly restrict a manufacturer's reasonable and contractual right to influence the location and to promote commonly applied dealership facility standards. This interference on the part of the State confiscates our brand's ability to implement qualifications, standards and selection criteria which are vital to help ensure that consumers' needs are met, dealership business values are upheld and the vast investments CNHI brands have made to achieve marketplace leadership are beneficial.

§51-20.1-03 "Good Cause" defined –

- SB 2289 substantially undermines the "good cause" meaning language found in the existing statute. In essence the bill seeks to mitigate the basic premise of a dealer agreement by severely restricting the manufacturer's ability to enforce the requirements of the contract between the dealer and manufacturer.



SB 2289 will not be beneficial for North Dakota farm and ranch consumers, and, it de-values the investment our employees and CNHI have made in North Dakota.

Further, we believe in the right to contract between two approving private parties without legislative intervention. SB 2289 greatly interferes with this private right.

It is for these reasons that we strongly encourage the committee to table this legislation for further review and discussion of the facts among the principal parties

Thank you for your leadership and please feel free to call upon us for any additional input.

Sincerely,

Aditya Garg

Aditya Garg
Plant Manager - Fargo
CNH Industrial America LLC
3401 1st Avenue North
Fargo, ND 58102.

Office: 701-293-4695
Email: aditya.garg@cnhind.com

George Whitaker

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

Office: 262-636-6004
Email: george.whitaker@cnhind.com

c: Sent via email –

Rep. Wayne Trottier – Vice Chair

Rep. Jake Blum

Rep. Joshua Boschee

Rep. Kathy Hogan

Rep. Michael Howe

Rep. Dwight Kiefert

Rep. Jeffery Magrum

Rep. Aaron McWilliams

Rep. Bill Oliver

Rep. Bernie Satrom

Rep. Cynthia Schreiber-Beck

Rep. Kath Skroch

CNHI Representatives:

Bret Lieberman

VP – New Holland Brand

NAFTA

Jim Walker

VP - Case IH Brand

NAFTA

Ryan Schaefer

Regional Sales Director - Case IH



AGCO

4205 River Green Parkway Duluth, GA 30096-2563 USA
www.AGCOcorp.com

(770) 813-6170

Robert B. Crain

Senior Vice President & General Manager, Americas

March 9, 2017

Hearing on SB 2289
House Agriculture Committee
Chairman Dennis Johnson

Dear Chairman Johnson and members of the House Agriculture Committee,

Re: Opposition to North Dakota SB 2289, relating to prohibited practices under farm equipment dealership contracts, dealership transfers, and reimbursement for warranty repair

I am writing to set forth AGCO's opposition to SB 2289. AGCO believes that current North Dakota law (NDCC § 51-07-01.2; § 51-26-06) effectively and fairly sets forth the obligations of manufacturers and dealers. That law, while setting forth certain requirements, still provides manufacturers and dealers sufficient leeway to enter into contracts that address issues that may vary depending upon the characteristics of a particular manufacturer, dealer, products, market, etc. The law allows the manufacturers and dealers to address areas of concern between themselves for their particular relationship without unnecessary statutory restrictions.

AGCO, like other manufacturers, has existing dealer agreements in North Dakota which were freely negotiated and entered into and which have established a successful framework upon which the parties rely. Enactment of the proposed legislation, which is retroactive in its application, sets forth new requirements in a variety of different areas from warranty service, arbitration, change in competitive circumstances, to inventory levels, that conflict with and improperly impair these existing contracts. This would not only upset the existing framework upon which AGCO and its dealers have successfully relied but raises questions as to the constitutionality of the legislation.

Even if the legislation were to withstand judicial scrutiny, it is AGCO's belief that the proposed legislation would not benefit the consuming public. Besides causing confusion and turmoil by imparting new rules to the existing manufacturer-dealer relationship, it would restrict the ability of manufacturers to distinguish their products and services from one another and interfere with the ability of manufacturers and dealers to resolve issues between themselves. The end result likely being less service and increased prices for the consumer.

For the above reasons, AGCO opposes SB 2289.

Sincerely,

John Deere Presence in North Dakota



JOHN DEERE

SB 2289

#1
3/9/17 P.M.

Deere & Company (NYSE: DE) is committed to the success of customers throughout the world whose work is linked to the land. Since 1837, John Deere has delivered innovative products of superior quality, built on a tradition of integrity. For more information, visit www.JohnDeere.com.

WHO WE ARE IN NORTH DAKOTA

EMPLOYEES

>850

work as part of John Deere's major business operations

>800

live in the state

>90 retirees

SUPPLIERS & DEALERS

>125 contracts

Approx. \$38 million;
45 dealerships

JOHN DEERE FOUNDATION

Invested more than **\$289,000**
in Fargo and Valley City communities
in FY2016

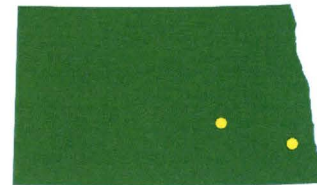
North Dakota locations

Fargo:

John Deere Electronic Solutions (JDES) Electronics Design & Mfg.

Valley City:

John Deere Seeding Group Air Seeding Equipment



ABOUT DEERE & COMPANY

Protecting the environment

John Deere is committed to reducing our environmental footprint worldwide. The company established enterprise eco-efficiency goals designed to encourage improved performance and innovation, as well as raise internal and public awareness of our environmental stewardship. These goals are:



Reduce Greenhouse gas emissions and energy consumption per ton of production 15% from 2012 through 2018.



Reduce water consumption per ton of production 15% from 2012 through 2018.



Increase amount of enterprise waste recycled to 75% of total waste by 2018.

Use life cycle engineering to create products and services that meet customer needs and reduce their environmental

Promoting alternative energy

John Deere supports utilization of biofuels as a method of increasing energy stability and independence, reducing greenhouse gas emissions, and generating agricultural and other rural economic opportunities throughout the world.

John Deere is a Power for Good

We help improve living standards for people in ways beyond what we produce in our factories, research centers, and financing offices. In fiscal 2016, Deere & Company and the John Deere Foundation made charitable contributions totaling over \$31 million, improving the lives of more than 18 million people worldwide. John Deere employees strengthened the impact of these contributions by offering nearly 160,000 volunteer hours—a new annual record.



NET SALES & REVENUES

>\$26 billion*

EMPLOYEES

>56,000*
U.S. & Canada >28,000

FACILITIES

19 States
30 Countries

R&D

>\$1.3 billion*
\$3.5 million/day



JOHN DEERE

Deere & Company

801 17th Street, NW, Suite 200
Washington, D.C. 20006 USA
Phone: 202-423-2271 Mobile: 202-997-9022
Fax: 202-296-0011
Email: llesThomasE@JohnDeere.com

Thomas E. Iles

Director, State Public Affairs
Public Affairs Worldwide

SB 2289: Farm Equipment Dealer Agreements

Position: John Deere opposes the enactment of SB 2289 which would amend and reenact sections 51-07-01.2, 51-07-02.2 and 51-26-06 of the North Dakota Century Code

Background: For 180 years, John Deere has committed itself to providing quality, innovative products and services to meet our customers' needs. For over a century, we have distributed these products through independent dealers who are authorized to sell John Deere equipment through a contractual arrangement. If SB 2289 is enacted, the proposed legislative language would significantly fracture our existing contractual process.

Rationale for Opposition:

- **Private Right to Contract:** Deere supports the private right to contract between two approving parties without legislative intervention. SB 2289 interferes with this private right.
- **Competitive Lines:** The competitive lines language in SB 2289 would allow a competing manufacturer to sell its equipment in a Deere dealership. Under our current contractual arrangement, Deere permits competitive lines of equipment to be sold under our John Deere logo and roof if that competitive line compliments John Deere's current line of equipment. We also allow competitive lines under a separate roof, with separate financing and separate sales force, if that competitive line supplants John Deere's current line of equipment. SB 2289 would allow a dealer to locate, represent and sell a competitive product under the John Deere Dealership's roof (i.e. John Deere / Kubota / Mahindra etc.) even if the equipment would supplant ours. If ultimately enacted, this provision of the legislation would destroy the competitive lines aspect which actually John Deere customers currently benefit from. Under the John Deere approach, we require our dealers to focus on our equipment. The product, parts supply, services support, sales and operator training and machine optimization support enhances the customers' benefits from the expertise that our brand focus delivers.

- **Equipment Customers:** With the proposed modifications to the Warranty current law provisions, SB 2289 could ultimately increase costs for equipment purchasers.
- **Market Coverage:** SB 2289 precludes a manufacturer from making necessary adjustments to market coverage when dealers enter or exit the business or to adjust for market demand for certain products. With this provision, SB 2289 is detrimental to the customer and their overall purchasing experience.
- **SB 2289 Provisions:** Certain contained provisions are confusing, increasing the likelihood of litigation.

Summary: John Deere has developed a superior product, invested heavily in marketing their brand, and has driven business to dealer locations as promised in the contract. In their contract, the dealers promise John Deere to make their best efforts to sell and service Deere's products and services. The proposed legislation would significantly impair the contractual relationships between manufacturers and their dealers in complicated ways. A manufacturers' current dealer distribution network would be eroded. Litigation costs would increase, equipment purchase costs would increase and consumers could negatively be impacted. To date, a critical public policy reason has not been identified for injecting government into business to business contractual relationships. Consequently, John Deere opposes the passage of SB 2289.

Thank you for your time and consideration on this important legislation.

For additional information, please contact:

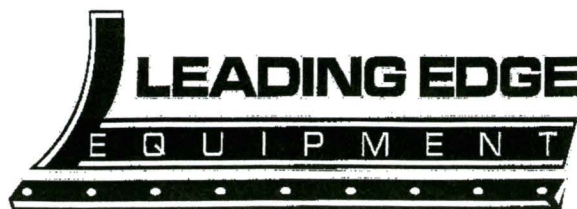
Thomas E. Iles, Director of John Deere State Public Affairs

Cell: 202-997-9022

E-Mail: ilesthomase@johndeere.com



JOHN DEERE



On behalf of our 90 North Dakota employees of Leading Edge Equipment, I am writing in opposition to the passage of SB 2289, regarding equipment dealer agreements. Based out of Michigan, ND we are a 3rd Generation Family-Owned John Deere dealership serving customers out of Michigan, Devils Lake, Hampden, and Carrington. For over 53 years, we have provided high quality agriculture and turf products and services for our customers. Today, those customers include large agriculture operations, commercial customers, land owners, small ag producers and governments.

We support the private right to contract between two approving parties without legislative intervention. If enacted, North Dakota SB 2289 would disrupt the partnership that we have built with John Deere and nurtured over many decades. Through this partnership and our ability to resolve business issues, we have together delivered enormous value to North Dakota's farmers and ranchers, and its economy, and have established John Deere as a preeminent brand in the marketplace. We've been able to grow our business and thrive in this relationship. In the past our dealership was a multi-line operation also offering Versatile/New Holland. That being the case we can say with confidence our experience with John Deere is distinctive, unique, and does create unrivaled customer value.

Leading Edge Equipment is also concerned that this legislative intervention into private dealer-manufacturer contracts will have unintended consequences. Not the least of these could be increased costs to comply with the bill's various provisions. These costs will be spread among dealers and manufacturers, but ultimately will be transferred to farmers and ranchers in North Dakota. This would be especially problematic in the current agriculture economy.

This legislation erodes several advantages that we have worked hard to develop. We've made significant investments in our facilities and services in order to better serve our North Dakota customers. First, we feel a commitment to a single line gives our customers a benefit that our dealer brand and manufacturer brand can deliver. Relaxing the competitive lines provision will diminish the ability of the manufacturer to ensure a strong brand through single line committed dealers. The John Deere customer experience in North Dakota is built on our single-brand commitment to product sales, inventory, parts supply, service support, and training. Our customers currently benefit from the expertise that our brand focus delivers. And, our dealer organization benefits from the administrative efficiencies of a single line and we are able to pass along those efficiencies to our customers. Second, we have invested heavily to attain the standards established by John Deere. Relaxing or eliminating the ability for John Deere to enforce standards puts our investments in jeopardy as non-complying dealers could then be able to offer products or services without a similar investment in facilities, tools or personnel. Finally, we rely on manufacturer's to enforce dealer trade areas and location strategies that complement and protect our investment. By relaxing or eliminating the ability of manufacturers to safeguard trade areas through location approvals and transfers it threatens and diminishes our investments of capital and people resources.

PO BOX 48
MICHIGAN, ND 58259
701-259-2115

PO BOX 1108
DEVILS LAKE, ND 58301
701-662-4948

PO BOX 107
HAMPDEN, ND 58338
701-868-3261

PO BOX 300
CARRINGTON, ND 58421
701-652-3144

www.leadingedgeequip.com

4

The "farm equipment dealers" language enables other brand dealers whose primary sales are not farm equipment to sell competing equipment without the same restrictions this legislation would impose on us. This clearly gives advantages to these dealers with whom we compete in many products for commercial, work sites and governmental customers.

Thank you very much for your consideration of Leading Edge Equipment's opposition to SB 2289. Please contact me if I can be of further assistance on this important legislation. I also sincerely appreciate your public service on behalf of the citizens of North Dakota and wish you the very best in your legislative deliberations.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Vasichuk", with a stylized flourish extending from the end.

Jim Vasichuk

#2
3/9/17 p.m.
SB 2289

Proposed Amendments to North Dakota SB 2289

ASSOCIATION OF EQUIPMENT MANUFACTURERS

1. Preserve Arbitration as Agreed to in a Dealer Agreement.

- * Amend SB 2289, page 4, line 28, by deleting "arbitration or".

AEM Substantiation: To the extent that this provision could void an arbitration provision in an existing dealer agreement, this change avoids the Supremacy Clause constitutional questions, and also steers clear of an unnecessary interference with the contract rights of the parties.

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3. Transfer of Dealerships

- * Amend SB 2289, page 6, line 5 by adding a new subsection 4 to read as follows:

"4. A denial of a proposed transferee based upon the failure of the proposed transferee to meet the reasonable requirements consistently imposed by the manufacturer or distributor in determining whether to approve a transfer or a new dealership shall be presumed reasonable."

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4. Minimum Inventory of Equipment, Parts and Accessories

- * Amend SB 2289, page 2, line 2, insert the following before the period: "and stock the type of farm equipment and accessories sold in the dealer's assigned area of sales responsibility in quantities reasonably necessary to achieve share of market targets in the dealer's assigned area of sales responsibility."

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* Add new subsection 3 at SB 2289, page 5, line 8, to read as follows:

" 3. As used in this section 51-07-01.2, 'require a farm equipment dealer' means an unreasonable requirement unilaterally imposed by the farm equipment manufacturer."

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#3
3/9/17 p.m.
SB 2289

Dear Sirs:

On behalf of our 96 North Dakota employees of True North Equipment, I am writing in opposition to the passage of SB 2289, regarding equipment dealer agreements. True North Equipment's trade area includes the Northern Red River Valley and for over 50 years, we have provided high quality agriculture and turf products and services for our customers. Today, those customers include large agriculture operations, commercial customers, land owners, small ag producers and governments.

We support the private right to contract between two approving parties without legislative intervention. If enacted, North Dakota SB 2289 would disrupt the partnership that we have built with John Deere and nurtured over many decades. Through this partnership and our ability to resolve business issues, we have together delivered enormous value to North Dakota's farmers and ranchers, and its economy, and have established John Deere as a preeminent brand in the marketplace. We've been able to grow our business and thrive in this relationship.

True North Equipment is also concerned that this legislative intervention into private dealer-manufacturer contracts will have unintended consequences. Not the least of these could be increased costs to comply with the bill's various provisions. These costs will be spread among dealers and manufacturers, but ultimately will be transferred to farmers and ranchers in North Dakota. This would be especially problematic in the current agriculture economy.

This legislation erodes several advantages that we have worked hard to develop. We've made significant investments in our facilities and services to better serve our North Dakota customers. First, we feel a commitment to a single line gives our customers a benefit that our dealer brand and manufacturer brand can deliver. Relaxing the competitive lines provision will diminish the ability of the manufacturer to ensure a strong brand through single line committed dealers. The John Deere customer experience in North Dakota is built on our single-brand commitment to product sales, inventory, parts supply, service support, and training. Our customers currently benefit from the expertise that our brand focus delivers. And, our dealer organization benefits from the administrative efficiencies of a single line and we are able to pass along those efficiencies to our customers. Second, we have invested heavily to attain the standards established by John Deere. Relaxing or eliminating the ability for John Deere to enforce standards puts our investments in jeopardy as non-complying dealers could then be able to offer products or services without a similar investment in facilities, tools or personnel. Finally, we rely on manufacturers to enforce dealer trade areas and location strategies that complement and protect our investment. By relaxing or eliminating the ability of manufacturers to safeguard trade areas through location approvals and transfers it threatens and diminishes our investments of capital and people resources.

The "farm equipment dealers" language enables other brand dealers whose primary sales are not farm equipment to sell competing equipment without the same restrictions this legislation would impose on

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701-352-1401
888-756-7278

5101 Gateway Dr.
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888-456-0240

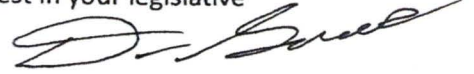
1460 US Hwy 75 S
Kennedy, MN 56733
218-674-4111
888-268-0444

2905 5th Ave. NE
Northwood, ND 58267
701-587-5050
800-893-5051



us. This clearly gives advantages to these dealers with whom we compete in many products for commercial, work sites and governmental customers.

Thank you very much for your consideration of True North Equipment's opposition to SB 2289. Please contact me if I can be of further assistance on this important legislation. I also sincerely appreciate your public service on behalf of the citizens of North Dakota and wish you the very best in your legislative deliberations.



Dan Gorder

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Grafton, ND 58237

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888-456-0240

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