

Approved March 6, 1986

Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:10 a.m./~~p.m.~~ on March 3, 1986 in room 423-S of the Capitol.

All members were present except: Senator Karr (excused)

Committee staff present:

Fred Carman, Revisor's Office (excused)
Arden Ensley, Revisor of Statutes
Raney Gilliland, Research Department

Conferees appearing before the committee:

Mr. Jack Selzer, Attorney, Western Retail Implement
and Hardware Association
Mr. Terry Mosier, John Deere

Senator Allen called the Committee to order and turned the Committees' attention to SB 403 for continued Committee discussion and action.

Senator Doyen made a motion the Committee reconsider their action on the substitute motion that was made at the end of the last Committee discussion on February 14 on SB 403, that is, the motion to strike the words, "otherwise than" from the fence law in K.S.A. 29-309 as suggested in amendments offered by the Kansas Association of Wheat Growers. Senator Thiessen seconded the motion. Motion carried.

Committee discussion included that removing "otherwise than" clarified the wording of K.S.A. 29-309. It was stated that agriculture has not had many liability cases and that words should not be changed so that liable cases could become a problem to agriculture. It was stated that this bill states "fence-in" policy and that a person with animals fenced-in should be liable if his fence is not sufficient to keep his animals in. A concern was expressed concerning lines 89 through 95 of the bill because a four wire fence does not work in western Kansas where the wind causes thistles to pile up against that kind of fence. It was also stated that a good three wire fence works as well as a four wire fence.

The Chairman called the Committees' attention back to the substitute motion of Senator Kerr on February 14, 1986 to remove the words "otherwise than" from the amendment, and then called for a vote. The motion failed.

The Chairman then called for Committee attention to the motion made by Senator Norvell and seconded by Senator Karr to accept the amendments as offered by the Kansas Association of Wheat Growers.

Senator Norvell requested his motion be withdrawn and expressed support for a new fence law that will reflect fence needs of 1986 and that will establish a Kansas Fence Law that can be interpreted by our courts.

Senator Gannon offered a substitute motion to strike lines 89 through 95 (subsection b of Section 4) of SB 403. Senator Arasmith seconded the motion. The vote was 4 in favor and 5 against; motion failed.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:10 a.m./~~p.m.~~ on March 3, 1986

Senator Gordon made a substitute motion the Committee recommend SB 403 favorably for passage as amended. Senator Norvell seconded the motion. The vote was 5 in favor and 4 opposed. Motion carried. Senator Fred Kerr and Senator Gannon requested it be recorded that they voted "no" on the motion.

Senator Allen called the Committees' attention to SB 544 for action. The Chairman called on Jack Selzer to comment on discussions between the dealers and the manufacturers since the Committee hearing on SB 544.

Mr. Selzer gave copies of a balloondraft of SB 544 with suggested amendments (attachment 1). He explained these suggested changes were a result of the dealers and the manufacturers talking together and discussing this bill. He explained these bill changes represent compromise on the dealers part. Mr. Selzer called attention to the changes made:

Section 6 which banned company stores has been deleted.
Section 1 lists a new purpose for the bill.
Section 2, the (d) and (e) were deleted and new wording for "Dealership Agreement" was inserted.
Section 3 lists in (a) through (g) new descriptions for dealerships terminations.
Line 97 of the bill allows manufacturers to have immediate cancellation of a dealership agreement for any of the reasons listed in the new wording of Section 3 (a) through (g).

The Chairman called on Terry Mosier to comment on the bill.

Mr. Mosier listed areas that the dealers and the manufacturers are still not in agreement on to be:

Section 4 (c) line 106, manufacturers need to be able to choose dealerships so that they are in the best market areas.

Mr. Mosier stated the manufacturers would like to see Section 4 (c) and Section 5 removed from the bill.

In answer to Committee questions, Mr. Mosier replied he did not know if SB 544 passed if Kansas would be the most regulated farm equipment state in the Union. Mr. Mosier explained this legislation makes it affordable for a local attorney to handle local cases between manufacturers and dealers. Mr. Mosier said this legislation might invite other companies with company stores in our state to come to the Legislature to get disputes between them settled. He said he believed some auto dealers had been to the Legislature with their problems. Mr. Mosier stated that dealers have contracts that provide the dealers with protection; a manufacturer can't just go out and cancel a dealership.

The Chairman thanked Mr. Selzer and Mr. Mosier and announced further action would be taken later; he then adjourned the Committee at 11:00 a.m.

SENATE BILL No. 544

By Committee on Agriculture

2-3

0017 AN ACT to regulate and govern business relations between
0018 manufacturers of agricultural equipment and independent
0019 retail dealers of those products.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. ~~The legislature of this state finds that the retail~~
0022 ~~distribution and sales of farm equipment to the farmer consumer~~
0023 ~~through businesses which are independent from and not affili-~~
0024 ~~ated with or controlled by the manufacturers of such products,~~
0025 ~~benefits the economy of this state by providing services to the~~
0026 ~~farmer which are superior to those which would be provided by~~
0027 ~~manufacturer owned retail outlets and insuring that all manu-~~
0028 ~~facturers of farm equipment will have access to retail outlets,~~
0029 ~~thereby encouraging competition among manufacturers. The~~
0030 ~~purpose of this act is to preserve those economic benefits to the~~
0031 ~~agricultural economy of this state through regulation of the~~
0032 ~~business relations between farm equipment manufacturers and~~
0033 ~~farm equipment dealers.~~

0034 Sec. 2. As used in this act:

0035 (a) "Farm equipment" means equipment including, but not
0036 limited to, tractors, trailers, combines, tillage implements,
0037 bailers and other equipment, including attachments and repair
0038 parts therefor, used in planting, cultivating, irrigation, harvesting
0039 and marketing of agricultural products, excluding self-propelled
0040 machines designed primarily for the transportation of persons or
0041 property on a street or highway.

0042 (b) "Farm equipment manufacturer" means any person,
0043 partnership, corporation, association or other form of business
0044 enterprise engaged in the manufacturing, assembly, or
0045 ~~sale or distribution of farm equipment, including any person,~~

The purpose of this act is to prevent arbitrary or abusive conduct and to preserve and enhance the reasonable expectations for success in the business of distributing farm equipment.

3-3-86
Sen. Ag. 1
attachment

0046 ~~partnership or corporation which acts for or on behalf of such a~~
 0047 ~~manufacturer, assembler, wholesaler or distributor in connection~~
 0048 ~~with the sale of farm equipment.~~

0049 (c) "Farm equipment dealer" or "farm equipment dealer"
 0050 ship" means any person, partnership, corporation, association or
 0051 other form of business enterprise primarily engaged in the retail
 0052 sale or service of farm equipment under a dealership agreement.

0053 ~~(d) "Dealership agreement" means a contract or agreement,~~
 0054 ~~either expressed or implied, whether oral or written, between a~~
 0055 ~~farm equipment manufacturer and a farm equipment dealer by~~
 0056 ~~which the farm equipment dealer is granted the right to sell,~~
 0057 ~~distribute or service the manufacturer's farm equipment regard-~~
 0058 ~~less of whether the farm equipment carries a trade name, trade-~~
 0059 ~~mark, service mark, logotype, advertising or other commercial~~
 0060 ~~symbol, and in which there is a continuing commercial relation-~~
 0061 ~~ship between the farm equipment manufacturer and the farm~~
 0062 ~~equipment dealer.~~

0063 ~~(e) "Continuing commercial relationship" means any rela-~~
 0064 ~~tionship in which the farm equipment dealer has been granted~~
 0065 ~~the right to sell or service farm equipment manufactured by the~~
 0066 ~~farm equipment manufacturer for a period of three or more~~
 0067 ~~consecutive months.~~

0068 Sec. 3. No farm equipment manufacturer, directly or through
 0069 any officer, agent or employee may terminate, cancel, fail to
 0070 renew or substantially change the competitive circumstances of a
 0071 dealership agreement without good cause. For the purposes of
 0072 this subsection, good cause means and includes the failure by a
 0073 farm equipment dealer to substantially comply with essential
 0074 and reasonable requirements imposed upon the dealer by the
 0075 dealership agreement, provided such requirements are not dif-
 0076 ferent from those requirements imposed on other similarly situ-
 0077 ated dealers either by their terms or in the manner of their
 0078 enforcement.

0079 (b) Except as otherwise provided in this section, a farm
 0080 equipment manufacturer shall provide a farm equipment dealer
 0081 at least ninety-days' prior written notice of termination, cancel-
 0082 lation or nonrenewal of the dealership agreement. The notice

(d) "Dealership agreement" means an oral or written agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

In addition, good cause shall exist whenever:

(a) The farm equipment dealer has transferred an interest in the farm equipment dealership with the manufacturer's consent, or there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or there has been a substantial reduction in interest of a partner or major stockholder without the consent of the manufacturer.

(b) The farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement or dissolution or liquidation of the dealer.

(c) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement.

(d) The farm equipment dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of any guarantee of the dealer's present or future obligations to the farm equipment manufacturer.

(e) The farm equipment dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business.

(f) The farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer.

(g) The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare.

Sec. 4.

0083 shall state all reasons constituting good cause for termination,
0084 cancellation or nonrenewal and shall provide that the dealer has
0085 60 days in which to cure any claimed deficiency. If the defi-
0086 ciency is rectified within 60 days the notice shall be void. The
0087 notice and right to cure provisions under this section shall not
0088 apply if the reason for termination, cancellation or nonrenewal is
0089 for: ~~(1) Commission of a felony, reflecting upon the relationship~~
0090 ~~between the dealer and manufacturer; (2) insolvency; (3) the~~
0091 ~~occurrence of an assignment for the benefit of creditors; or (4)~~
0092 ~~bankruptcy of the farm equipment dealer. If the reason for~~
0093 ~~termination, cancellation or nonrenewal is nonpayment of sums~~
0094 ~~due the farm equipment manufacturer, the farm equipment~~
0095 ~~dealer shall be entitled to written notice of such default, and~~
0096 ~~shall have 10 days from the date of delivery of notice in which to~~
0097 ~~remedy the default from the date of delivery of the notice.~~

any reason set forth in subsections (a) through (g) of section 3

0098 (c) It is a violation of this act for any farm equipment dealer to
0099 transfer, assign or sell any interest in a farm equipment dealer-
0100 ship agreement evidenced by a writing to another person, unless
0101 the farm equipment dealer shall first notify any farm equipment
0102 manufacturer who is a party to such written dealership agree-
0103 ment of such intention by written notice, sent certified mail,
0104 stating in the notice of intent: the prospective transferee's name,
0105 address, statement of financial qualification and business expe-
0106 rience during the previous five years. The farm equipment
0107 manufacturer shall, within 120 days after receipt of such notice,
0108 either approve in writing to the farm equipment dealer such sale
0109 to the proposed transferee or, by written notice, advise the farm
0110 equipment dealer of the unacceptability of the proposed trans-
0111 feree, stating material reasons relating to the character, financial
0112 ability or business experience of the proposed transferee, taking
0113 into consideration the interest to be acquired by the transferee.
0114 No farm equipment manufacturer shall refuse to accept the
0115 prospective transferee unless such refusal is based on reason-
0116 able, material grounds relating to the character, financial ability
0117 or business experience of the proposed transferee. If the farm
0118 equipment manufacturer does not reply within the specified 120
0119 days, approval shall be deemed to be granted. No transfer,

0120 assignment or sale of a majority interest in a farm equipment
0121 dealership or dealership agreement shall be valid unless the
0122 transferee agrees in writing to comply with all the requirements
0123 of the dealership agreement then in effect.

0124 Sec. 4- (a) It is a violation of this act for a farm equipment
0125 manufacturer to coerce, or attempt to coerce, any farm equip-
0126 ment dealer to order or accept delivery of any farm equipment,
0127 parts or accessories therefor, which the farm equipment dealer
0128 has not voluntarily ordered.

5.

0129 (b) It is a violation of this act for a farm equipment manufac-
0130 turer: (1) To condition, or attempt to condition, the sale of any
0131 farm equipment or a requirement that the farm equipment dealer
0132 also purchase other goods or services; except that nothing herein
0133 shall prohibit a farm equipment manufacturer from requiring the
0134 dealer to purchase all parts reasonably necessary to maintain the
0135 quality of operation in the field of any farm equipment used in
0136 such dealer's trade area; (2) to coerce or attempt to coerce any
0137 farm equipment dealer into a refusal to purchase the farm
0138 equipment manufactured by another farm equipment manufac-
0139 turer; or (3) to discriminate in the prices charged for farm equip-
0140 ment of like grade and quality sold by the farm equipment
0141 manufacturer to similarly situated farm equipment dealers, ex-
0142 cept that nothing herein shall prevent differentials which make
0143 only due allowance for differences in the cost of manufacture,
0144 sale or delivery resulting from the differing methods or quanti-
0145 ties in which such farm equipment is sold or delivered, by the
0146 farm equipment manufacturer.

6.

0147 Sec. 5- Any term of a dealership agreement, either expressed
0148 or implied, which is inconsistent with the terms of this act shall
0149 be void and unenforceable and shall not waive any rights which
0150 are provided to any person by this act.

0151 ~~Sec. 6- From and after the effective date of this act, no farm~~
0152 ~~equipment manufacturer shall open a retail farm equipment~~
0153 ~~dealership in this state and operate it with company personnel,~~
0154 ~~employees, a subsidiary company, commissioned agent or under~~
0155 ~~a contract with any person, firm or corporation managing a farm~~
0156 ~~equipment dealership on a fee arrangement with the farm~~

0157 equipment manufacturer. The farm equipment dealership shall
0158 be operated by an independent farm equipment dealer who is
0159 neither affiliated with, dominated or controlled by the farm
0160 equipment manufacturer. Notwithstanding the preceding provi-
0161 sions of this section:

0162 (a) ~~A farm equipment manufacturer who currently operates a~~
0163 ~~retail farm equipment dealership in this state with company~~
0164 ~~personnel, employees, a subsidiary company, commissioned~~
0165 ~~agent, or under a contract with any person, firm or corporation~~
0166 ~~managing a store on a fee arrangement with the farm equipment~~
0167 ~~manufacturer may continue to operate such business until July 1,~~
0168 ~~1988.~~

0169 (b) ~~An equipment manufacturer or affiliate may own, manage~~
0170 ~~or operate an equipment dealership for a term not to exceed 18~~
0171 ~~months after the lawful termination or cancellation of a farm~~
0172 ~~equipment dealership pursuant to the terms of this act.~~

0173 (c) ~~An equipment manufacturer may participate in the own-~~
0174 ~~ership, management or operation of an equipment dealership~~
0175 ~~under a written agreement with an independent equipment~~
0176 ~~dealer if, under such an agreement, the independent equipment~~
0177 ~~dealer has made a significant investment in such equipment~~
0178 ~~dealership and has the right to acquire full ownership, manage-~~
0179 ~~ment and operation of such equipment dealership upon satisfac-~~
0180 ~~tion of reasonable terms and conditions.~~

0181 (d) ~~A farm equipment manufacturer may own and operate a~~
0182 ~~retail farm equipment dealership in any trade area for such time~~
0183 ~~period as such manufacturer cannot find an independent farm~~
0184 ~~equipment dealer to own and operate a retail farm equipment~~
0185 ~~dealership to represent such manufacturer.~~

0186 Sec. 7. If any farm equipment manufacturer violates any
0187 provision of this act, a farm equipment dealer may bring an
0188 action against such manufacturer in any court of competent
0189 jurisdiction for damages sustained by the dealer as a conse-
0190 quence of the manufacturer's violation, together with the actual
0191 costs of the action, including reasonable attorney fees, and the
0192 dealer also may be granted injunctive relief against unlawful
0193 termination, cancellation, nonrenewal or substantial change of

0194 competitive circumstances. The remedies set forth in this section
0195 shall not be deemed exclusive and shall be in addition to any
0196 other remedies permitted by law. The attorney general is also
0197 empowered to enforce compliance with this act by institution of
0198 a civil suit for injunctive relief.

0199 Sec. 8. This act may be cited as the Kansas agricultural
0200 equipment dealership act.

0201 Sec. 9. This act shall take effect and be in force from and
0202 after its publication in the statute book.