

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./p.m. on February 11, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Langworthy, Parrish, Steineger, Talkington, and Winter.

Committee staff present:

Gordon Self, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Alan Alderson, Western Retail Implement and Hardware Association  
Jack R. Selzer, Kansas City, Western Retail Implement and Hardware Association  
Theron Harper, Lawrence, Western Retail Implement and Hardware Association  
John Mowder, Dixon Industries, Inc. Coffeyville  
Roy Worthington, Kansas Land Title, Manhattan  
John Wine, Office of Secretary of State

The chairman introduced three guests who were present from Seward County Community College.

The chairman requested a bill be introduced as a committee bill concerning Johnson and Sedgwick County Courts. Senator Feleciano moved to introduce the bill. Senator Hoferer seconded the motion. The motion carried.

Senate Bill 522 - Contracts to maintain stocks of outdoor power equipment by retailers.

Alan Alderson, Western Retail Implement and Hardware Association, presented background to the bill. He explained they requested the bill through the Senate Agriculture Committee. This legislation is similar to a Missouri bill. He said they have a proposed amendment as a result of hearings conducted on the bill in Missouri regarding certain concerns by manufacturers in Missouri.

Jack R. Selzer, Kansas City, testified the bill provides that upon termination of a dealership agreement, the manufacturer has the obligation of repurchasing the equipment and repair parts on hand at the date of termination. A copy of his statement is attached (See Attachment I).

Theron Harper, Lawrence, testified the agreement is a bound document that is handed to you and gives you a place to sign. We felt safe as of two years ago under the Agriculture Implement Dealers Act. We would ask at this time to have this same thing in our outdoor power equipment. He added we are in our 39th year as a dealer.

John Mowder, Dixon Industries, Inc., Coffeyville, appeared in opposition to the bill. He stated, in reality, we find it usually is the manufacturer, not the retailer, who takes it on the chin in dealer cancellations. This bill would make it easier to take advantage of manufacturers and cause them to be the victims in such situations. A copy of his statement is attached (See Attachment II).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 11, 1988.

Senate Bill 522 - continued

During committee discussion, a committee member inquired if this is interfering in interstate commerce? Mr. Selzer replied not in my opinion. Another committee member inquired what is the problem? Mr. Selzer replied this legislation is needed so you can have a family business that has been in business for 39 years. There is a problem with cancellations in the farm equipment side. They are not meeting manufacturer's quota. The committee member inquired, if this is not specified in the contract? Mr. Selzer replied you can terminate it without cause. The contract says it can be cancelled without cause. Another committee member inquired, aren't most of these between manufacturers and distributor fairly clear what happens upon termination? Mr. Selzer replied some provide for buy back for some of their equipment. In general it is very selective.

Mr. Selzer then explained the proposed amendments to the bill. A copy of the proposal is attached (See Attachment III). He explained the proposed amendments provide additional good cause cancellation of dealership. It spells them out. In the dealership the manufacturer can state what good cause is.

Senate Bill 546 - Uniform federal lien registration act.

Roy Worthington, Kansas Land Title, Manhattan, explained this is a uniform act that has been passed by several states already. Any federal tax lien that affects title to real estate filed in county register of deeds office where piece of real estate is located. By filing in federal district court they have trouble finding this information. The chairman explained you can continue to file in federal courts, but if you want any impact in land outside of federal court, you have to file in jurisdiction where it is located.

John Wine, Office of Secretary of State, explained Carol Beard from their office is present and can explain how tax liens are filed currently. He testified the office supports in concept the substantive changes from existing law that are contained in this bill. However, there are several practical aspects of this bill that do concern our office. A copy of statement is attached (See Attachment IV).

Following the hearings on Senate Bill 522 and Senate Bill 546, Senator Steineger moved to amend the bill as explained by Mr. Wine. Senator Burke seconded the motion. The motion carried. Senator Steineger moved to report the bill favorably as amended. Senator Burke seconded the motion. The motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-11-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Roy WORTH INEYON	Manhattan	Ko Land Title
Aran F. Anderson	Topeka	WESTERN RETAIL COMPLEMENT; HARDWARE ASSN
JACK R SELZER	KANSAS CITY	" "
THERON HARPER	LAWRENCE KS	" "
Danie DeVore	Coffeyville, Ks	Leadership Coffeyville
John P Mowder	Coffeyville, Ks	Leadership Coffeyville
Steven D. Waage	Coffeyville, KS	" "
John Nordin	Coffeyville, Ks	Leadership Coffeyville
Atomy D. Roberts	Coffeyville, Ks	Leadership Coffeyville
Ken Bastow	Coffeyville Ks.	Leadership Coffeyville
Steve Core	Coffeyville KS	Leadership Coffeyville
Judy Hiner	Coffeyville	Leadership Coffeyville
Rubena Watten	"	"
John Wine	Topeka	Sec. of St.
Dennis Upcub	Coffeyville	LEADERSHIP COFFEYVILLE
Al Buffington	Coffeyville	Leadership Coffeyville
Wendy Belot	Coffeyville	Leadership Coffeyville
Phil Schlotter	Coffeyville	Leadership Coffeyville
Beth A7	Coffeyville	Leadership Coffeyville
Wynne Campbell	Manhattan	State clatter
Karol Beard	Sec of State Topeka	Sec of State
James P. Tentsch	Liberal	SCCC
Michael B. Barnett	Liberal	SCCC
Tim Loderback	Liberal	SCCC
Jeri Kraus	Civil Ks.	LEADERSHIP COFFEYVILLE

Attach. V



2-11-88  
Selzer

KANSAS OUTDOOR POWER EQUIPMENT  
FAIR DEALERSHIP STATUTE

This explanation was prepared by attorney Jack Selzer, counsel for the Western Retail Implement and Hardware Association.

Membership of the Western Retail Implement and Hardware Association passed a resolution directing the association to sponsor legislation which would balance the rights and duties of outdoor power equipment dealers and manufacturers. More particularly, they approved the sponsorship of the Kansas Outdoor Power Equipment Fair Dealership Statute.

The association represents the interest of over 600 equipment dealers in the states of Kansas and Missouri and 900 hardware dealers located in the midwest. In Kansas, there are approximately 200 hardware dealers and 340 equipment dealers who are members of the association. Every county in Kansas has either a hardware dealer or equipment dealer who is a member of Western Retail Implement and Hardware Association.

This legislation is not unique. Indeed, the outdoor power equipment dealers of Kansas seek protection which this legislature has given to the Kansas farm implement dealers and automobile dealers in similar statutes that prevent, among other things, cancellation, termination or non renewal of a dealership agreement unless there is reasonable justification. Furthermore, there are many states near Kansas which have statutes protecting equipment dealers. In particular, Illinois, Indiana, Michigan, Minnesota, Wisconsin all have broad statutes affecting the manufacturers/dealer relationship.

The outdoor power equipment dealer would like to avoid any legislation if the dealer could accomplish his goals through a contract with the manufacturer. Unfortunately, manufacturers have a bargaining position far superior to that of the dealer. Moreover, manufacturers use this superior bargaining position to force upon the dealer contract terms which are unfair. It is not realistic to think that a dealer can sit across the table from a manufacturer and negotiate fair and equal terms in the dealership agreement, reflecting give and take. Rather, the dealership agreement is a take it or leave it proposition.

With these general comments in mind, we turn to the specifics of the legislation. The statute governs the relationship between businesses that sell and repair outdoor power equipment used for lawn, garden, golf course, landscaping or ground maintenance and manufacturers and distributors of such equipment.

Attch. I

The bill provides that upon termination of a dealership agreement, the manufacturer has the obligation of repurchasing the equipment and repair parts on hand at the date of termination. Under the bill the manufacturer would pay the current net cost of all new and unused outdoor power equipment and ninety five percent of the current net price on repair parts at the price listed in the current price list. This repurchase obligation provides the dealer with a market for the equipment and repair parts upon termination. In general, the dealer would be paid the amount it had previously paid the manufacturer for the equipment and the repair parts. The manufacturer then would have the ability to place this equipment and repair parts in the stream of commerce through its other dealerships.

The bill also allows the dealer to also pursue its contract remedies as well as the statutory remedies provided in the bill. Furthermore, the bill provides that if a manufacturer does not comply with the buy back obligations, it is liable for the attorneys fees and one hundred percent of the net cost of such machinery and repair parts.

Most importantly, the bill provides that a manufacturer cannot terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer without good cause. Good cause means the failure by the dealer to substantially comply with the essential and reasonable requirements imposed upon the dealer by the contract so long as the requirements of the contract are not different from those requirements imposed and similarly situated dealers. If a manufacturer violates this section, it is liable for all special and general damages sustained by the dealer including litigation and attorneys fees. The bill provides that the obligations of a manufacturer apply to any successor in interest of the manufacturer.



DIXON INDUSTRIES, INC.



TESTIMONY PREPARED FOR THE KANSAS SENATE JUDICIARY COMMITTEE, SEN. ROBERT FREY, CHAIRMAN, ON FEBRUARY 11, 1988

Chairman Frey and members of the Committee. Good morning, and thank you for this opportunity to tell you why the proposed Senate Bill 522 could be unfair to Kansas manufacturers of outdoor power equipment. It does not merit your approval.

I am John Mowder, Marketing Manager for Dixon Industries, Inc., of Coffeyville, Kansas. We have been manufacturing zero-turning-radius mowers there since 1973. Today, we have about 140 employees, and we are a subsidiary of The Coleman Company, Inc. of Wichita. Our success is based on making - and standing behind - quality products that are valued by dealers and customers alike. Our experience is that cancelling retail dealers always occurs because of one or more of the following reasons:

1. The dealer does not pay the account when due, or sells the merchandise out of trust - meaning that the proceeds are used for some purpose other than paying the manufacturer.
2. Sales activity is lacking because the dealer does not fulfill responsibility for marketing the product.
3. The retailer fails to provide proper after-sale service to the customer.

Such cancellations are simply sound business practices. But S.B. 522 would enable the dealer to evade them. Why should a manufacturer be exposed to an unjust penalty for using them?

This proposed bill is terribly one-sided. Under it, we could not terminate a dealer without "good cause", but the dealer could cancel out on us whenever and for no reason at all.

In each of the instances cited, we the manufacturer have already suffered economic loss or damage to our reputation. We went to considerable expense with such dealer support as advertising, point-of-purchase materials, visits by territory managers and conducting service clinics, yet we were jilted. For a State law to add and impose an arbitrary obligation on us would be unjustified and unfair.

*Attach. II*

In reality, we find it usually is the manufacturer, not the retailer, who takes it on the chin in dealer cancellations. S.B. 522 would make it easier to take advantage of manufacturers and cause them to be the victims in such situations.

Furthermore, nothing in this proposal limits it to Kansas dealers, and it would damage Kansas manufacturers like us. We can't use Kansas as choice of law in contracts.

Let's not cause Kansas to be a more difficult or an unfair place for outdoor power equipment manufacturers to do business. On behalf of Dixon Industries, the Coleman Company and other Kansas manufacturers of outdoor power equipment, I urge you to vote against S.B. 522.

Thank you for your consideration.



PROPOSED AMENDMENT TO SB 522

On page 1, following line 40, by inserting the following:

"'Good cause' shall also mean and include:

(1) The transfer of an interest in the retailer's business without the manufacturer's, wholesaler's or distributor's written consent; or a withdrawal from the retailer's business of an individual proprietor, partner, major shareholder, or manager of the retailer's business; or a substantial reduction in interest of a partner or major stockholder without the written consent of the manufacturer, wholesaler, or distributor;

(2) the filing by the retailer of a voluntary petition in bankruptcy or the filing of an involuntary petition in bankruptcy against the retailer which has not been discharged within thirty days after the filing, or a closeout or sale of a substantial part of the retailer's assets related to the retailer's business; or a commencement or dissolution or liquidation of the retailer's business;

(3) a change, without the prior written approval of the manufacturer, wholesaler, or distributor, in the location of the retailer's principal place of business under the retailer's agreement with the manufacturer, wholesaler, or distributor;

(4) the retailer's default under any chattel mortgage or other security agreement between the retailer and the manufacturer, wholesaler, or distributor, or a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the manufacturer, wholesaler, or distributor;

(5) the retailer's failure to operate in the normal course of business for seven consecutive days; or an abandonment otherwise of the retailer's business;

Attch. III

(6) the retailer's guilty plea to or conviction of a felony affecting the relationship between the retailer and the manufacturer, wholesaler, or distributor;

(7) conduct engaged in by the retailer which is injurious or detrimental to the retailer's customers or the public welfare; or

(8) the consistent failure by the retailer to meet the manufacturer's, wholesaler's, or distributor's requirements for reasonable market penetration based on the manufacturer's, wholesaler's, or distributor's experience in other comparable marketing areas."

On page 3, in line 97, by striking all after the period; by striking all of lines 98 through 110, inclusive;

On page 4, following line 126, by inserting a new section to read as follows:

"Sec. 8. If a manufacturer, wholesaler or distributor violates any provisions of sections 5 through 7, inclusive a retailer may bring any action against such manufacturer, wholesaler, or distributor in any court of competent jurisdiction for damages sustained by the retailer as a consequence of the violation, together with the actual costs of the action, including reasonable attorneys fees, and the retailer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.";

and by renumbering existing sections 8 and 9 as sections 9 and 10, respectively.



Bill Graves  
Secretary of State

2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

# STATE OF KANSAS

## TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE ON SENATE BILL 546

Danton B. Rice - Legal Counsel  
Deputy Assistant Secretary of State

February 11, 1988

Senate Bill 546 deals with the method of filing and indexing federal lien notices in a manner similar to the provisions of K.S.A. 84-9-403 (Supp. 1987). The secretary of state's office supports in concept the substantive changes from existing law that are contained in this bill. However, there are several practical aspects of this bill that do concern our office.

Our office has prepared a bill draft (attached) that addresses our concerns with these practical aspects. The first suggested amendment is the addition of language at line 61 to prevent federal liens from lapsing after 5 years as do filing statements under K.S.A. 84-9-403 (Supp. 1987).

The second suggested amendment in this draft is the deletion of lines 75 and 76. The current language would require information on any federal lien filed against an individual to be maintained on our computerized system forever, regardless of whether a termination or release had been filed. Such a result would not only be undesirable from an administrative standpoint, but could result in the release of misleading and damaging information. This change would allow our office to remove the lien record from our files once terminated.

As a companion to such a change, this draft also deletes lines 83, beginning with the word "permanently," 84, ending with the word "and," 86, beginning with "on," and 87. These changes would be required because the current section requires the filing officer to attach any refiled notice to the original notice. If the suggestion above is adopted the original documents will not be available.

Additional changes are made on lines 96, 106, 107 and 108. These changes were made to make the fees for filing these liens the same as those for the filings under K.S.A. 84-903 (1987 Supp.). In addition, the fee for the filing of a certificate of release or nonattachment has been deleted based upon the longstanding policy that financial burdens should never prevent the release of liens.

*Attach. IV*

The final change contained in our proposed draft is the deletion of lines 110 through 112. This section directs filing officers to bill the internal revenue service on a monthly basis for services rendered. This change from the current prepaid system would cause unnecessary delays and bookkeeping functions.

**SENATE BILL No. 546**

By Committee on Judiciary

2-1

0016 AN ACT concerning federal liens; relating to places of filing;  
0017 duties of filing officer; establishing fees; repealing K.S.A.  
0018 79-2607, 79-2608, 79-2609, 79-2610, 79-2611 and 79-2612.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. This act applies only to federal tax liens and to  
0021 other federal liens' notices of which under any act of congress or  
0022 any regulation adopted pursuant thereto are required or permit-  
0023 ted to be filed in the same manner as notices of federal tax liens.

0024 Sec. 2. (a) Notices of liens, certificates and other notices  
0025 affecting federal tax liens or other federal liens must be filed in  
0026 accordance with the provisions of this act.

0027 (b) Notices of liens upon real property for obligations pay-  
0028 able to the United States and certificates and notices affecting  
0029 the liens shall be filed in the office of the register of deeds of the  
0030 county in which the real property subject to the liens is situated.

0031 (c) Notices of federal liens upon personal property, whether  
0032 tangible or intangible, for obligations payable to the United  
0033 States and certificates and notices affecting the liens shall be  
0034 filed as follows:

0035 (1) If the person against whose interest the lien applies is a  
0036 corporation or a partnership whose principal executive office is  
0037 in this state, as these entities are defined in the federal internal  
0038 revenue code of 1986 as in effect on December 31, 1987, in the  
0039 office of the secretary of state;

0040 (2) if the person against whose interest the lien applies is a  
0041 trust that is not covered by paragraph (1), in the office of the  
0042 secretary of state;

0043 (3) if the person against whose interest the lien applies is the  
0044 estate of a decedent, in the office of the secretary of state; and

0045 (4) in all other cases, in the office of the register of deeds of  
 0046 the county where the person against whose interest the lien  
 0047 applies resides at the time of filing of the notice of lien.

0048 Sec. 3. Certification of notices of liens, certificates or other  
 0049 notices affecting federal liens by the secretary of the treasury of  
 0050 the United States or the secretary's designee, or by any official or  
 0051 entity of the United States responsible for filing or certifying of  
 0052 notice of any other lien, entitles them to be filed and no other  
 0053 attestation, certification or acknowledgment is necessary.

0054 Sec. 4. (a) If a notice of federal lien, a refiling of a notice of  
 0055 federal lien or a notice of revocation of any certificate described  
 0056 in subsection (b) is presented to a filing officer who is:

0057 (1) The secretary of state, the secretary shall cause the notice  
 0058 to be marked, held and indexed in accordance with the provi-  
 0059 sions of subsection (4) of K.S.A. 84-9-403 and amendments  
 0060 thereto as if the notice were a financing statement within the  
 0061 meaning of the uniform commercial code; or

0062 (2) any other officer described in section 2, the officer shall  
 0063 endorse thereon the officer's identification and the date and time  
 0064 of receipt and file it alphabetically or enter it in an alphabetical  
 0065 index showing the name and address of the person named in the  
 0066 notice; the date and time of receipt, the title and address of the  
 0067 official or entity certifying the lien and the total amount appear-  
 0068 ing on the notice of lien.

0069 (b) If a certificate of release, nonattachment, discharge or  
 0070 subordination of any lien is presented to the secretary of state for  
 0071 filing, the secretary shall:

0072 (1) Cause a certificate of release or nonattachment to be  
 0073 marked, held and indexed as if the certificate were a termination  
 0074 statement within the meaning of the uniform commercial code,  
 0075 ~~but the notice of lien to which the certificate relates may not be~~  
 0076 ~~removed from the files; and~~

0077 (2) cause a certificate of discharge or subordination to be  
 0078 marked, held and indexed as if the certificate were a release of  
 0079 collateral within the meaning of the uniform commercial code.

0080 (c) If a refiled notice of federal lien referred to in subsection  
 0081 (a) or any of the certificates or notices referred to in subsection

except the notice  
 shall remain filed  
 for 6 years from  
 the date of filing,  
 and liens filed prior  
 to the effective  
 date of this act  
 shall remain on file  
 for a period of 6  
 years from the  
 effective date of  
 this act

0082 (b) is presented for filing to any other filing officer specified in  
0083 section 2, such officer shall permanently attach the refiled notice  
0084 or the certificate to the original notice of lien and enter the  
0085 refiled notice or the certificate with the date of filing in any  
0086 alphabetical lien index on the line where the original notice of  
0087 lien is entered.

0088 (d) Upon request of any person, the filing officer shall issue a  
0089 certificate showing whether there is on file, on the date and hour  
0090 stated therein, any notice of lien or certificate or notice affecting  
0091 any lien filed pursuant to this act or pursuant to the uniform  
0092 federal tax lien registration act, K.S.A. 79-2608 et seq., as it  
0093 existed prior to the effective date of this act, naming a particular  
0094 person, and if a notice or certificate is on file, giving the date and  
0095 hour of filing of each notice or certificate. The fee for a certificate

\$5

0096 is \$1. Upon request, the filing officer shall furnish a copy of any  
0097 notice of federal lien, or notice or certificate affecting a federal  
0098 lien, for a fee of \$.25 per page, unless the filing officer is the  
0099 secretary of state, in which case, the fee shall be an amount fixed  
0100 by the secretary of state and approved by the director of accounts  
0101 and reports pursuant to K.S.A. 45-204 and amendments thereto.

0102 Sec. 5. (a) The fee for filing and indexing each notice of lien  
0103 or certificate or notice affecting the lien is:

\$5

0104 (1) For a lien on real estate, \$5;  
0105 (2) for a lien on tangible and intangible personal property,  
0106 \$5;

0107 (3) for a certificate of discharge or subordination, \$2; and  
0108 (4) for all other notices, including a certificate of release or  
0109 nonattachment, \$2.

except for

0110 (b) ~~The officer shall bill the district directors of internal~~  
0111 ~~revenue or other appropriate federal officials on a monthly basis~~  
0112 ~~for fees for documents filed by them:~~

0113 Sec. 6. This act shall be applied and construed to effectuate  
0114 its general purpose to make uniform the law with respect to the  
0115 subject of this act among states enacting it.

0116 Sec. 7. This act may be cited as the uniform federal lien  
0117 registration act.

0118 Sec. 8. K.S.A. 79-2607, 79-2608, 79-2609, 79-2610, 79-2611

\$5

0119 and 79-2612 are hereby repealed.  
0120 Sec. 9. This act shall take effect and be in force from and  
0121 after its publication in the Kansas register.