

Approved Feb. 26, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:07 a.m./~~p.m.~~ on February 15, 1989 in room 423-S of the Capitol.

All members were present except: Representatives Campbell, Gross, Rezac, and Wells who were excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee: PROPONENTS:

Jack Selzer, Western Retail Implement and Hardware Association
Dick Sheldon, outdoor power equipment dealer from Olathe, Kansas
Bud McClure, outdoor power equipment dealer from Caney, Kansas

OPPONENTS:

Representative Jim Russell, 7th District
K. O. Dixon, Dixon Industries of Coffeyville, Kansas
Don Ferrel, Operations Manager, Grazer Division, M & W Gear Company
Dick Dilsaver, The Coleman Company of Wichita, Kansas.

Chairman Roenbaugh declared hearings open on House Bill 2111.

The Chairman called upon the proponents of the bill to testify first. First on the agenda was Mr. Jack Selzer, representing the Western Retail Implement and Hardware Association. (Attachment 1)

The next conferee in support of this legislation was called upon by Chairman Roenbaugh. Mr. Dick Sheldon is an outdoor power equipment dealer from Olathe, Kansas. (Attachment 2)

Mr. Bud McClure, who is also an outdoor power equipment dealer from Caney, Kansas, was unable to appear in support of the bill because of illness so Mr. Sheldon presented his testimony to the Committee so it might be included in the minutes of the Committee. (Attachment 3)

The Chair call for any other testimony in support of the bill; there being none, she called for opposition testimony.

The first opponent was Representative Jim Russell. (Attachment 4)

Next to appear in opposition to the legislation was Mr. K. O. Dixon, Dixon Industries, Inc., of Coffeyville, Kansas (Attachment 5)

Following Mr. Dixon's testimony, Chairman Roenbaugh acknowledged Mr. Don Ferrel, Operations Manager, Grazer Division, M & W Gear Company of Maple Hill, Kansas. He, too, testified in opposition to the bill. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S Statehouse, at 9:07 a.m./~~p.m.~~ on February 15, 1989.

The last opponent to the bill was Mr. Dick Dilsaver, representing The Coleman Company of Wichita, Kansas. (Attachment 7)

Questions from the members of the Committee of either the proponents or opponents to the bill were called for by the Chairman.

Concluding the question and answer session, the Chair called the hearings on House Bill 2111 closed.

The meeting was adjourned by the Chairman at 9:50 a.m.

The next meeting of the House Committee on Agriculture and Small Business will be on February 16, 1989, at 9:00 a.m. in Room 423-S.

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 Franchise Act.

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. I have attached a sheet which shows how many states have laws that protect dealers.

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.

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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 ninety percent of the current net cost of all new and unused outdoor power equipment and ninety 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, less 10%. 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 is balanced. There are eleven listed exceptions on what the manufacturer must buy back.

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.

The most important feature of the bill is that it makes it unlawful for a manufacturer to terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer without good cause. A real problem in the industry is that a manufacturer under their contract can cancel a dealer at any time for no good reason. There are situations where a dealer has been in business for 20 years or more with several generations in the business. The dealer has done a good job and established the line in the community. One day, he gets up in the morning and is cancelled for no good reason. This is wrong and the statute prevents this.

This part of the statute is also balanced. A manufacturer can cancel a dealer for 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. Also, there are eight listed reasons in the statute that allow cancellation.

If a manufacturer violates this section, it is liable for all special and general damages sustained by the dealer including attorneys fees.

STATE LAWS GOVERNING RELATIONSHIPS

GENERAL	FARM	UTILITY	INDUSTRIAL
23	34	12	17

Based upon a compilation from Business Franchise Guide (CCH) as of December 22, 1988. Reflects laws in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. Every state and the United States enforce laws governing the relationship of motor vehicle manufacturers and dealers.

TO: House Agriculture & Small Business Committee
FROM: Dick Sheldon, Outdoor Power Equipment Dealer
RE: House Bill 2111

Mr. Chairman, members of the committee, my name is Dick Sheldon. I have operated a retail outlet that sells and services outdoor power equipment in Olathe, Kansas for nine years. I'm here today representing over 300 outdoor power equipment dealers who are members of the Western Retail Implement and Hardware Association.

First of all, we appreciate the opportunity to testify and for the committee to consider this most important issue.

This legislation is not unique. Farm equipment dealers in Kansas have the same type of protection that would be afforded power equipment dealers in House Bill 2111. Since 1987, farm equipment dealers in Kansas have been assured if they are doing a good job and are meeting reasonable expectations from their manufacturer/distributor, they will not have their contracts or sales accounts terminated. We are asking for the same protection.

In reality, House Bill 2111 is a "bill of rights" for manufacturers, distributors and dealers. If a retailer is doing a good job, he or she can continue to represent a line of equipment. If the retailer is not doing a good job, then he or she rightfully can lose a franchise contract.

That's all we're asking for, the security to know that if we are doing a good job, we will not have the rug pulled out from under us by a manufacturer or distributor.

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Many of us have invested sizeable sums of money and many years of hard work to build up our retail operations, yet, there are cases where all this investment can be literally wiped out without good cause by a contract termination. That's not fair to us or to our loyal customers.

It is a fact that some Kansas dealers have been forced into unreasonable selling demands, required to carry too much inventory or have had their contract pulled or cancelled for no reasonable cause.

House Bill 2111 would protect reliable dealers. It would also help insure that unreliable dealers aren't in business. This makes sense to all of us.

This legislation would help insure that reliable sales and service dealers remain open to continue serving the consumer with quality and reliable products. There is no doubt in my mind that more security for the dealer would translate into more fair pricing for consumers as well.

House Bill 2111 would help provide the dealer a more equitable bargaining position with manufacturers and distributors. Currently it is a one-way street in most cases. Current dealer agreements are based on a "take it or leave it" offering to the dealer. They are "non-negotiable" agreements.

We are only asking for fairness. It has worked well in Kansas for farm equipment dealers, and it can work for outdoor power equipment retailers as well.

Again, we appreciate your consideration of our views on this matter and we thank you for the opportunity to appear here today. I'd be happy to answer any questions.

TO: House Agriculture & Small Business Committee
FROM: Bud McClure, McClure Equipment Co., Caney, KS
RE: House Bill 2111

Members of the committee, I am Bud McClure. I operate outdoor power equipment dealerships in both Kansas and Oklahoma.

This legislation, House Bill 2111, you are considering today is important to those of us who are in the outdoor power equipment business.

Today, outdoor power equipment dealers can be forced into unwritten, oral contracts with little or no protection whatsoever. It's tough to do business that way, but in many cases we are forced to in order to make a living. We have too much of an investment at stake to chance contract termination without good cause.

In my own case, a company convinced me into accepting an outdoor power equipment franchise just across the border in Oklahoma under an oral contract relationship. The agreement was that I would have the territory exclusively and no sales quotas were mentioned.

However, circumstances quickly changed. Massive flooding and layoffs at major industries in the region caused sales to lag at the dealership. The company soon came in, saying we did not meet their quotas, and opened another dealership in town. If the economic conditions had not hurt our dealership enough, having another dealer in close by also has insured our business there will never be profitable.

Because in our industry there is no buy-back protection, we are stuck with this situation and to return our inventory back to the company at this

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time on their terms would invite financial ruin for our dealership in Kansas as well.

I know House Bill 2111 may not have prevented what happened to me just across the border, but the same situation has and will happen here in Kansas.

It simply is not right for dealers to be forced into unreasonable selling demands, be required to carry too much inventory or have their contract pulled either for no good reasons or because of conditions beyond their control.

Most of us have major investments in our dealerships. We try to do a good job, but we are at the mercy of our manufacturers and distributors without any bargaining rights at all.

This same type of legislation is contained in Kansas law for farm equipment dealerships. I also sell farm equipment and I have found this law, in fact, has given all of us--manufacturers, distributors and dealers--fair rules by which to operate. Those of us who also sell outdoor power equipment would like that same fairness in our industry too.

I urge your support for House Bill 2111. I appreciate the chance to provide testimony.

JIM RUSSELL
 REPRESENTATIVE, SEVENTH DISTRICT
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HOUSE OF
 REPRESENTATIVES

February 15, 1989

COMMITTEE ASSIGNMENTS
 MEMBER COMMERCIAL AND FINANCIAL INSTITUTIONS
 ELECTIONS
 TRANSPORTATION

TO: Members of the House Agriculture and Small
 Business Committee

FROM: Representative Jim Russell

SUBJECT: H.B. 2111

Good morning Madam Chair, and members of the House Agriculture and Small Business Committee. Thank you for the opportunity to appear before you today in opposition to House Bill 2111.

First, I wish to share with you, a little bit about Dixon Industries, Incorporated. Dixon Industries, Incorporated is a sixteen year old firm in Coffeyville that manufactures riding lawn mowers. As you may know, the Coleman Corporation acquired Dixon in 1986...and just last year, Dixon announced an \$800,000 plant expansion in Coffeyville. Steady growth by Dixon has added 40 new jobs in Coffeyville during the past two years.

Job growth is a very welcome and appreciated happening in Coffeyville...you may recall that just a few years back, Coffeyville had the highest unemployment rate in the State of Kansas at 17%. We want job growth to continue in Coffeyville, Kansas!

Having been in the retail business myself, I seriously question the need for H.B. 2111...as it is, in my opinion, unfair to Kansas manufacturers, wholesalers and distributors.

Madam Chair and members of the House Agriculture and Small Business Committee, again I thank you for the opportunity to appear before you today in opposition to H.B. 2111.

Jim

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ATTACHMENT 4



DIXON INDUSTRIES, INC.

A  COMPANY

February 15, 1989

TO: The House Committee on Agriculture and Small Business
Rep. Susan Roenbaugh, Chairperson

RE: HB 2111, which would place regulations on the outdoor power
equipment industry in Kansas

I am K. O. Dixon, founder and president of Dixon Industries, Inc. We are manufacturers of Dixon ZTR riding mowers. I appreciate this opportunity to tell you why the proposed House Bill 2111 would be poor legislation and is not worthy of your approval.

First, a little background about our company. I established Dixon Industries at Coffeyville, Kansas in 1973. At the end of the first year I had about 25 employees. In 1986 when we became a subsidiary of the Coleman Company, Inc. of Wichita, we had about 100 on our payroll. Today, we have about 140 workers and are in the middle of an \$800,000 expansion program that will enable further growth.

The success of Dixon Industries is based on making quality products that are desired and valued by dealers and customers alike and then standing behind those products. We are proud of what we make, of the people who make our mowers and of the dealers who sell the mowers for us.

Dealers are very important to us and we value the excellent relationship we have with our dealer organization. Our dealers provide an important link in a strong and balanced marketing chain.

This proposed legislation, HB 2111, is completely unnecessary. I have seen nothing in my 16 years in this business to warrant this type of intrusive regulation. Business between dealers and manufacturers or distributors will be far better if left to the parties involved without government regulation.

The second thing that is wrong with HB 2111 is that it is one-sided and terribly unfair. It attempts to re-write agreements between dealers and manufacturers or distributors from only the dealers' perspective. That would be extremely inequitable.

Our experience is that cancelling dealers always occurs because of one or more of these three 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 something other than paying the manufacturer or distributor.
2. Sales activity is inadequate because the dealer does not fulfill responsibility for marketing the product.
3. The dealer fails to provide proper after-sale service to the customer.

It is simply sound business practice to cancel a dealer for those reasons. HB 2111 intrudes on this process. I cannot understand why a manufacturer or distributor should be penalized for cancelling a dealer for these reasons.

In each of the instances cited, manufacturers have already suffered economic loss or damage to our reputations. We went to considerable expense with dealers support such as advertising, point-of-purchase materials, visits by territory managers and conducting service

clinics. For a state law to add and impose an arbitrary obligation on us would be completely unjustified and, again, most unfair.

In reality, it usually is the manufacturer instead of the dealer who takes it on the chin in dealer cancellations. HB 2111 would make it easier to take advantage of manufacturers and victimize them in such situations.

This terribly one-sided bill also would not permit a manufacturer to terminate a dealer without "good cause", whatever that might be; yet the dealer could cancel out on us whenever and for whatever reason -- or for no reason at all -- without obligation. That's ridiculously unfair.


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

I could continue at great length citing the multitude of troublesome points in this bill. For instance, I could explain how it would unfairly allow dealers to "double dip" on obsolete parts, or point out how the bill would require certain payments by the manufacturer but fail to allow for offsetting those payments with money owed by the dealer. I could mention the array of ominous and ambiguous terminology such as in Section 5. It would be a lawyer's playground in determining what is meant by such nebulous and undefined items as "substantial change of competitive circumstances," or "essential and reasonable requirements" and "reasonable market penetration."

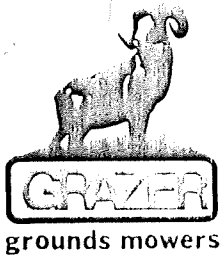
However, I do not wish to impose upon your limited time. I hope it is sufficient to say that this bill is so unnecessary, so unfair and so very bad that you should simply kill it rather than waste time on its many defects.

I urge you not to take action that would make Kansas a more difficult or an unfair place for outdoor power equipment manufacturers, wholesalers and dealers to do business. I urge you to kill House Bill 2111.

Thank you for your attention and consideration.



K. O. Dixon



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**TESTIMONY PREPARED FOR THE KANSAS HOUSE COMMITTEE
ON AGRICULTURE AND SMALL BUSINESS, REPRESENTATIVE SUSAN ROENBAUGH,
CHAIRPERSON, ON FEBRUARY 15, 1989**

Chairperson Roenbaugh and members of the Committee. Good morning, and thank you for this opportunity to tell why the proposed House Bill 2111 could be unfair to Kansas manufacturers of Outdoor Power Equipment.

I am Don Ferrell, Operations Manager for the Grazer Grounds Mower Plant of Maple Hill, Kansas. We have been manufacturing grounds mowing equipment since 1980. Today we provide employment for about 50 people and are a Division of M & W Gear Company of Gibson City, Illinois. We have been successful by making quality products and providing solid support to our dealers and customers.

We believe this proposed bill to be completely one-sided. It has been our experience that cancellations of retail dealers by manufacturers always occurs because of one or more of the following reasons:

1. The retailer has defaulted under the terms of his contract.
2. The retailer has failed to meet reasonable market penetration.

Cancellations under these circumstances are only good business and would be for "good cause" under the proposed bill. On the other hand, a retailer could cancel out on the manufacturer at any time and for no reason. The manufacturer has gone to considerable time and expense to set up a dealer, such as providing



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advertising and service clinics. This proposed bill would ignore this and impose additional penalties on us at the mere whim of a dealer.

We further believe that the requirement, in the proposed bill, that manufacturers shall execute security agreements and financing statements in connection with inventory returns is grossly unfair. Such requirements are not imposed by law upon the dealer when he purchases said inventory.

Lets not make it more difficult or unfair for Outdoor Power Equipment manufacturers to do business in Kansas. On behalf of Grazer Division, M & W Gear Company and other Kansas Manufacturers of Outdoor Power Equipment, I urge you to Vote against House Bill 2111.

Thank You for your consideration.



The COLEMAN COMPANY, INC.

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February 15, 1989

TESTIMONY PREPARED FOR THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
CONCERNING HOUSE BILL 2111 REGULATING THE OUTDOOR POWER EQUIPMENT BUSINESS

Thank you for this opportunity to urge you to vote against House Bill 2111. I am Dick Dilsaver of The Coleman Company, Inc., at Wichita. I bring you information provided by the director of our legal department, who wanted to address you but is unable to be here. I also am speaking on behalf of two other mower manufacturers, The Grasshopper Company at Moundridge and Excel Industries at Hesston, who could not send company officials here today.

Last year, a bill on this subject was introduced in the Senate. I believe the reason it died there is because the bill was clearly shown to be quite unnecessary and unfair. Last month, when you were asked to introduce this bill, you were told that it includes modifications to "make it more palatable to manufacturers." We firmly believe that it fails to do so and that it still is as unnecessary and unfair as before.

You also were told this bill would function "in much the same fashion as the current legislation regulating franchise agreements for farm implement dealers." We take exception to that, too, for it misrepresents the nature of this bill. It isn't just a matter of comparing an apple to an orange, it's like comparing an apple to an onion.

We simply do not see a need for House Bill 2111. Why impose regulation where normal business practices are working fairly? Or as the adage goes, if it's not broke, why fix it?

This bill would not improve the business climate. It is anti-competitive. The only ones helped by it are dealers who don't want to be terminated although they deserve to be, dealers who are willing to be terminated but want a going-away present, and the dealer attorneys who have designed this bill in such a way that it assures litigation. Except for those trying to shield the status quo, it could be anti-dealer for those who want to add a line, open a new facility or move. And it could be anti-consumer by protecting dealers who do not provide good service but cannot be dealt with by the manufacturer under this bill.

The Legislature should be doing things to encourage competitive vigor and a good economic climate where independent business people, whether they be dealers or manufacturers, have an opportunity to structure their business relationships free of unreasonable interference by the government. This bill has the opposite effect. In summary, House Bill 2111 is a good example of the protectionist and anti-competitive forces that damage competitive vigor in our society.

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ATTACHMENT 7