

Approved April 6, 1989
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:09 a.m./~~p.m.~~ on March 30, 1989 in room 423-S of the Capitol.

All members were present except: Senator McClure (excused)

Committee staff present: Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: Senator Ben Vidricksen
Kenneth W. Wasserman, Attorney,

Senator Allen called the committee to order; called attention to HB 2510; called on Senator Vidricksen to comment.

Senator Vidricksen explained that HB 2510 had been requested to help implement dealers be able to receive payment for parts returned at a time when a manufacturer goes bankrupt after the returned parts have been returned but before payment has been received. This bill would require the dealer be allowed to collect. Senator Vidricksen introduced Kenneth Wasserman to testify.

Mr. Wasserman gave the committee copies of his testimony (attachment 1) and expressed support for HB 2510 and requested the committee to request passage.

The Chairman turned committee attention to HB 2541 and Kenneth Wasserman to testify.

Mr. Wasserman gave copies of his testimony to the committee (attachment 2) and expressed support for HB 2541. Mr. Wasserman explained that he would like for HB 2541 to be effective so as to include manufacturers who are presently in bankruptcy and not just manufacturers that will go bankrupt after the effective date of this bill being published in the Kansas register.

Committee discussion centered around how to make the effective date for HB 2541 so that it would include bankruptcies that are still pending without being considered a bill that was being made effective retroactively.

The Chairman called for committee action on HB 2510.

Senator Sallee made a motion the committee recommend HB 2510 favorably for passage; seconded by Senator Karr; motion carried.

The Chairman called for committee action on HB 2541.

Committee discussion continued on wanting HB 2541 to include bankruptcies that are pending in a way that the courts could not determine the effects of the bill to be unconstitutional. The concern was expressed that if the bill would be declared unconstitutional that that would be worse then having no bill at all.

Senator Francisco made a motion the committee recommend HB 2541 favorably for passage; seconded by Senator Lee.

Senator Harder made a substitute motion that staff amend HB 2541 by rewriting the effective date section so that bankruptcies that are pending would be included in HB 2541. Seconded by Senator Daniels. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:09 a.m.~~p.m.~~ on March 30, 1989.

Senator Sallee moved the committee recommend HB 2541 favorably for passage as amended. Senator Frahm seconded the motion. Motion carried.

The Chairman called for committee action on committee minutes.

Senator Montgomery made a motion the committee minutes of March 28 be approved; Senator Francisco seconded the motion; motion carried.

Senator Allen announced the committee would meet sometime during the next week to discuss and accept suggestions for summer interim study and then adjourned the committee at 10:47 a.m.

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March 30, 1989

AGRICULTURAL COMMITTEE, KANSAS SENATE
HOUSE BILL NO. 2510
KENNETH W. WASSERMAN

I appear before you and give this testimony as a representative of numerous implement dealer clients in Central Kansas and as a former owner of a dealership in Salina, Kansas. In terminating the dealer contract of the dealership of which I was a part owner and in assisting dealer clients in terminating their dealerships I have frequently had to deal with K.S.A. 16-1003 (a). Most major manufacturers use the referenced statutory section as a basis for the absolute refusal to repurchase seals, seal kits, hydraulic hoses, radiator hoses, belts and batteries. Manufacturers consistently construe that section to mean that they do not have to buy back any repair parts within the above referenced categories.

With todays modern equipment being propelled and controlled with hydraulic driven transmissions, hydraulic steering and other hydraulic operated implements the need for dealers to stock large inventories of rubber goods amounting to many thousands of dollars has increased dramatically and constitutes a significant percentage of the dealers parts inventory.

When these parts are deemed to be nonreturnable, that financial investment is then lost to the dealer.

I am presently representing two dealers, one of which has \$41,000 invested in rubber goods and the other which has nearly \$60,000 invested in rubber goods or 20% and 28% of total parts inventories respectively. In both cases, the manufacturers have refused to accept these for return.

These items are stored in a climate controlled building and are not exposed to sunlight or temperature controls with would impact on the quality of the parts if they were to be returned. These items are sold daily, even under warranty, however immediately upon contract termination they are deemed to be deteriorated and not fit to be returned, only because our statute permits this.

*Senate Agriculture
3-30-89
attachment 1*

In many instances, the dealer parts inventory is the only source of revenue available to the dealer once his business has been terminated, which may then be used to retire debt or return investment to the dealer.

In the past five years I have been directly involved with the closing of six dealerships and have had to fight the same battle in every instance. I believe the present law, as it now exists is grossly unfair to the dealers. Manufacturers are protected because they have the right to reject any repair part because of conditions as provided in paragraph (d). Why grant them the further right to reject all rubber goods unilaterally and without exception.

Any person contemplating a new dealership who was fully aware of the fact that a full 20% to 30% of his parts inventory may not be returnable upon closing of the dealership would probably have second thoughts about such an investment.

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AGRICULTURAL COMMITTEE, KANSAS SENATE
HOUSE BILL NO. 2541
KENNETH W. WASSERMAN, ESQ.

I represent a Central Kansas Implement Dealer who gave notice to terminate his contract with the manufacturer in August of 1987. In February of 1988 the manufacturer was ready to accept and did receive a shipment of the dealers parts totaling approximately \$60,000.00. In March of 1988 that manufacturer filed for protection under Chapter 11 Bankruptcy. At the time of the filing of the bankruptcy, the dealer had not received payment for the \$60,000.00 worth of parts returned.

Upon the filing of the bankruptcy the dealer became a general creditor, there are no funds available to pay general creditors and, therefore, the dealer has lost his \$60,000.00 investment.

The bill being considered would eliminate that gross inequity. The attorney representing the trustee in bankruptcy has made it very clear that under the present Kansas law the dealer which I represent has no protection and based on that fact will receive no payment.

Dealers' parts inventories represent an investment of, in some cases, several hundred thousand dollars and are frequently the only asset which a dealer has, at the time of termination, which will be of any benefit to him either as a way of returning his debt to his banker, the manufacturer, or other creditors. This current inequity under Kansas law not only adversely affects the dealers but everyone in the community who is depending on the dealers ability to return parts and receive payment therefore for satisfaction of a debt that the dealership may owe them.

The bill in it's original form, would have protected the dealer which I represent as well as all other dealers currently in that situation and any dealers who subsequently face that situation. The House amendment would afford the protection of the bill to dealers subsequently finding themselves in this position but does not protect existing dealers and therefore, it is imperative that with the passage of the bill the bill be amended to include the original House wording.

*Senate agriculture
3-30-89
attachment 2*

To me, it is inconceivable that dealers should be exposed to a climate where the value of their parts return is totally lost for the benefit of a large manufacturing conglomerate, in the present case, a foreign conglomerate and the value of those parts are then used to pay the creditors of the large conglomerate while that dealer and the local community creditors of the dealer suffer the consequences.