

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

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

9:02 a.m./~~p.m.~~ on February 6, 1990 in room 423-S of the Capitol.

All members were present except: Representative Eckert, excused  
Representative Freeman

Committee staff present: Raney Gilliland, Legislative Research  
Lynne Holt, Legislative Research  
Jill Wolters, Revisor of Statutes Office  
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Dale Amick, Western Retail Implement and Hardware Association  
Jack Selzer, Attorney, Counsel for the Western Retail Implement and Hardware Association  
Mark Files, Kansas City  
Lawrence Theno, Theno Farm Supply, Bonner Springs

Chairman Roenbaugh reminded the committee of upcoming action on HB 2582 - Kansas Seed Law. The Chairman appointed a subcommittee to look at the bill and make needed amendments. Those members appointed to the subcommittee are Representative Aldie Ensminger, Chairman; Representative Richard Reinhardt and Representative Jeff Freeman.

Chairman Roenbaugh opened hearings on HB 2684 - an act concerning certain contracts to maintain stocks of outdoor power equipment. The Chairman then introduced Dale Amick, Western Retail Implement and Hardware Association, to the committee.

Mr. Amick introduced three witnesses testifying before the committee: Jack Selzer, Attorney; Mark Files, Kansas City; and Lawrence Theno, Bonner Springs. Mr. Amick stated their association had asked the committee to consider HB 2684.

Jack Selzer, Counsel for the Western Retail Implement and Hardware Association, testified in support of HB 2684. He stated this legislation is not unique. The outdoor power equipment dealers of Kansas seek the protection which this legislature has given to the Kansas farm implement dealers and automobile dealers in similar statutes. (Attachment I).

Mark Files, Kansas City, appeared before the committee to read the statement of Dick Sheldon, owner of Sheldon Suburban Equipment Co., Olathe, who was scheduled to appear before this committee but because of illness, was unable to do so. Mr. Sheldon endorses the passage of HB 2684. (Attachment II).

Lawrence Theno, Theno Farm Supply, testified in support of HB 2684. (Attachment III). A question and answer period followed his testimony.

Chairman Roenbaugh closed the hearings on HB 2684.

The Chairman, with no objections from the committee, approved committee minutes of January 31 and February 1, 1990.

The meeting was adjourned at 9:27 a.m. The next meeting of the House Agriculture and Small Business Committee is scheduled for Wednesday, February 7, 1990, at 9:00 a.m., Room 423-S.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

*KANSAS HOUSE BILL NO. 2684*  
*OUTDOOR POWER EQUIPMENT BUY BACK BILL*

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

**1. Sponsor of Legislation**

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 House Bill No. 2684.

**2. Western Retail Implement and Hardware Association**

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 240 equipment dealers who are members of the association. Every county in Kansas has either a hardware dealer or equipment dealers who is a member of Western Retail Implement and Hardware Association. Each of these 540 businesses in your state want this law passed.

**3. Many States Have Similar Laws**

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. 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 two schedules showing the many states which have laws that protect dealers.

*AG. SB*  
*2-6-90*  
*ATTACHMENT I*

**4. The Need for this Law**

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.

The bill is designed to stop the following injustice. Manufacturer sells dealer \$100,000 of inventory--for example \$60,000 worth of lawn mowers and \$40,000 worth of repair parts. The manufacturer then cancels the dealer and the dealer is no longer able to advertise as a dealer for the manufacturer. Thus the dealer can't sell the lawn mower or repair parts, except perhaps to another dealer at a big discount. The bill also provides that upon death or retirement at age 62 or older of a dealer or majority stockholder of a corporation operating as a dealer the manufacturer must buy back the inventory if the dealer so elects.

**5. Important Provisions--Buy Back of Inventory**

The bill addresses this problem by requiring the manufacturer--if the manufacturer cancels a dealer or the dealer dies or retires after age 62--to buy back all of the dealers inventory that the dealer bought from the manufacturer.

Here is what the bill specifically provides:

**Buy Back Statute--Kansas: Testimony of Jack Selzer**

The manufacturer must pay the dealer 90% of the net cost of all new, unused and undamaged outdoor power equipment along with the transportation charges paid by the dealer; and

The manufacturer must pay the dealer 90% of the current net price of the new, unused and undamaged repair parts bought within 24 months. If the parts are older than 24 months then the repurchase amount is not the current but the original purchase cost of the repair parts.

**6. Application of the Buy Back Provisions**

So in the example I gave where the manufacturer canceled the dealer, the dealer could require the manufacturer to buy back the inventory. The manufacturer would pay 90% of \$60,000-\$54,000 for the lawn mowers plus the dealer's transportation costs and 90% of \$40,000-\$36,000 for the repair parts.

**7. The Bill Makes Sense**

This type of law has worked in many states for decades without much complaint from the manufacturers. After all they are in a good position to take their inventory back and immediately place it back into the stream of commerce through their dealership network.

**8. The Bill is Fair to the Manufacturers**

The bill shows balance and fairness to the manufacturers by providing exceptions to the buy back requirements. The manufacturer is not required to buy back:

**Buy Back Statute--Kansas: Testimony of Jack Selzer**

- Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;
- Any repair part which is in a broken or damaged package;
- Any single repair part which is priced as a set of two or more items;
- Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;
- Any inventory for which the retailer is unable to furnish evidence, satisfactory to the supplier, or title, free and clear of all claims, liens and encumbrances;
- Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- Any machinery, equipment and attachments which are not in new, unused, undamaged or complete condition;
- Any repair parts which are not in new, unused or undamaged condition;
- Any Machinery, equipment or attachments which were purchased 24 months or more prior to notice of termination of the contract;
- Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

**Buy Back Statute--Kansas: Testimony of Jack Selzer**

- Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract; and
- Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed by the retailer on an engine or on equipment.

**9. Liability of Manufacturer's for Non Compliance**

If the manufacturer fails to comply, the manufacturer is liable for costs of litigation, attorney fees and 100% of the net cost or net current price of the equipment or repair parts.

Do you have questions?

Thank You.

STATE LAWS GOVERNING RELATIONSHIPS

GENERAL	FARM	UTILITY	INDUSTRIAL
23	34	13	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.

STATE	GENERAL		FARM		UTILITY		INDUSTRIAL	
			Re- Purchase	Cause	Re- Purchase	Cause	Re- Purchase	Cause
AL			x	x	x	x	x	x
AK								
AR	x		x	x	x	x	x	x
CA	x							
CO			x					
CT	x							
DE	x		x	x	x	x	x	x
FL			x	x				
GA			x	x				
HI	x							
ID			x	x				
IL	x		x	x				
IN	x							
IA			x	x				
KS			x	x				
KY	x		x		x		x	
LA	x		x		x		x	
ME								
MD	x		x				x	
MA								
MI	x		x		x			
MN	x		x	x				
MS	x		x		x		x	
MO	x		x	x	x	x		
MT			x				x	
NE	x		x					
NV								
NH								
NJ	x							
NY			x	x				
NM			x				x	
NC			x		x		x	
ND	x		x	x			x	x
OH			x				x	
OK			x				x	
OR			x					
PA			x	x	x	x		
RI								
SC			x		x		x	
SD	x		x	x	x	x	x	x
TN			x		x		x	
TX			x					
UT								
VT								
VA	x		x	x				x
WA	x		x					
WV								
WI	x							
WY			x					
DC								
PR	x							
VI	x							

Complied from Business Franchise Guide (CCH) as of December 22, 1988.  
Every state and the United States enforce laws governing the  
relationship of motor vehicle manufacturers and dealers.



My name is Dick Sheldon, owner of Sheldon Suburban Equipment Co., Olathe, Kansas, - established in 1980. I am endorsing the passage of House Bill #2684. Similar and I might add much more protective legislation is currently in place for those retailers in the agricultural equipment business.

As many of you are aware, there exists today no legislation offering fairness of business practices specifically for outdoor power equipment dealers. Sales agreements offered by manufacturers or suppliers to outdoor power equipment dealers are "take it or leave it" sales agreements which are weighted heavily on behalf of the supplier. There is no individual negotiation on their "take it or leave it" sales agreement.

The majority of the hundreds of professional outdoor power equipment dealers in the state of Kansas have invested millions of dollars in both facilities and inventories and are providing hundreds of job opportunities to fellow Kansans. House Bill #2684 is asking for only the very basics of fair business practices. There should be no objection to such legislation. When a supplier requires a dealer to stock parts and whole goods inventories in order to represent a product line, then upon termination of such an agreement, it is only right that the party requiring such an investment would reimburse the dealer for those required parts and whole goods.

Your consideration and passage of House Bill #2684 will be an endorsement of continued fair business practices for hundreds of Kansas retailers, their employees and their customers.

Thank you for the opportunity to endorse this legislation and your positive consideration to its passage.

AG & SB  
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ATTACHMENT II

My name is Lawrence Theno with Theno Farm Supply. I was originally a John Deere dealer; however, I cancelled out. I was left with a lot of new parts and some whole goods that John Deere would not take back.

I wondered why they would not take these items back since it was my understanding, upon cancellation of a contract in the state of Kansas, that they are supposed to take back all returned goods.

I feel the passage of House Bill #2684 is important to help the dealer who is stuck with new parts and equipment he was forced to stock for a particular supplier. After the contract is cancelled he can't do anything with the inventory, and he's out all the money he had invested with that supplier. Passage of this bill would guarantee Outdoor Power Equipment dealers the same opportunity as the Farm Equipment Industry dealers.

I was also associated with Gehl, and they only took back the parts they wanted to take back. Again I was stuck with some of their parts and equipment I couldn't move.

AG. <sup>2</sup> SB  
2-6-90  
ATTACHMENT III