

Approved March 19, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

The meeting was called to order by Representative Lee Hamm at
Chairperson

9:05 a.m./~~p.m.~~ on Thursday, March 7, 1991 in room 423-S of the Capitol.

All members were present ~~except~~

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

Conferees appearing before the committee: Jack Selzer, Counsel for Western Retail
Implement and Hardware Association,
Kansas City, Missouri
Donald H. Defoe, Manager, State Governmental
Affairs, Caterpillar Inc., Springfield,
Illinois
Jerry Parkin, Director, State Government
Affairs, Deere & Company, Des Moines, Iowa
Dick Dilsaver, representing Kansas Lawn
Mower Manufacturers

Chairman Hamm opened hearings on HB 2379 - an act concerning certain contracts to maintain stocks of outdoor power equipment and regulating the business relations between independent retailers and outdoor power equipment suppliers.

Jack Selzer, Attorney, representing Western Retail Implement and Hardware Association testified in support of HB 2379. Mr. Selzer presented the committee with a revision to HB 2379 which reflects compromises made at pre-negotiations between the dealers association and two major manufacturers, Caterpillar and John Deere. He stated the outdoor power equipment dealers of Kansas seek the same protection which has already been given to the Kansas farm implement dealers, in similar Kansas statutes that prevents, among other things, cancellation, termination or non renewal of a dealership agreement unless there is reasonable justification. (Attachment 1).

Donald Defoe, Caterpillar Inc., testified in favor of HB 2379. He stated the legislation is a fair and balanced bill which provides a regulatory framework for supplier/dealer agreements. Further, the framework will, they believe, provide necessary protections for dealers and, at the same time, maintain the right of a manufacturer to determine who can best represent its product in the marketplace. (Attachment 2).

Jerry Parkin, Deere & Company, testified on HB 2379 informing the committee his company had no objections to a favorable action on HB 2379, with the amendment. (Attachment 3).

Dick Dilsaver, representing Kansas Lawn Mower Manufacturers, testified before the committee in opposition to HB 2379. He stated the bill is unnecessary, is unfair and does not deserve the committee's approval. (Attachment 4).

K. O. Dixon, President, Dixon Industries, Inc. furnished the committee with a copy of written testimony in opposition to HB 2379. (Attachment 5).

Chairman Hamm requested that Mr. Dilsaver and Mr. Selzer try to reach an agreement on the proposed legislation and the committee will take

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

room 423-S Statehouse, at 9:05 a.m. ~~p.m.~~ on Thursday, March 7, 1991

some kind of action at the next committee meeting. The two parties agreed they would try to reach an agreement.

The meeting adjourned at 9:50 a.m. The next meeting of the House Agriculture Committee will be Friday, March 8, 1991 at 9:00 a.m. in room 423-S, State Capitol.

KANSAS OUTDOOR POWER EQUIPMENT FAIR DEALERSHIP STATUTE

This explanation of House Bill No. 2379 was prepared by attorney Jack Selzer, counsel for the Western Retail Implement and Hardware Association, with headquarters in Kansas City, Missouri.

The membership of the Association passed a resolution directing sponsorship of this Bill which would balance the rights and duties of outdoor power equipment dealers and manufacturers in Kansas.

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 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. Quite the contrary--it is very common. Attached to this explanation is a summary of state legislation showing that most states have similar legislation. Furthermore, the outdoor power equipment dealers of Kansas seek the same protection which you have already given to the Kansas farm implement dealers, in similar a similar Kansas statutes that prevents, among other things, cancellation, termination or non renewal of a dealership agreement unless there is reasonable justification.

Furthermore, many midwestern states have statutes protecting equipment dealers. In particular, Illinois, Missouri, Indiana, Michigan, Minnesota, Wisconsin all have broad statutes affecting the manufacturer/dealer relationship.

The outdoor power equipment dealers of Kansas would like to avoid any legislation if the dealers could accomplish their goals of basic fairness through contracts with the manufacturers. Unfortunately, manufacturers have a bargaining position far superior to that of the dealers and they use it. The dealership contracts are drafted by skilled attorneys for the manufacturers and are one-sided and unfair. You are not being realistic if you 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. Instead, the manufacturers make the agreement a "take it or leave it" proposition.

With these general comments in mind, we turn to the specifics of House Bill No. 2379. The statute governs the relationship between businesses that sell and repair outdoor power equipment and the manufacturers and distributors of such equipment.

The bill provides that upon termination of a dealership, 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

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cost of all new equipment and ninety percent of the current net price on repair parts at the price listed in the current price list. This repurchase obligation gives the dealer 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 can sell this new equipment and parts for a profit and put these items back in the stream of commerce through its other dealerships. The buyback provision is balanced and fair. There are eleven listed, reasonable exceptions on what the manufacturer must buy back. If the manufacturer does not comply with these 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 protection for the dealer is that the bill makes it unlawful for a manufacturer to terminate, cancel, or fail to renew 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 canceled 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 after notice and a failure to cure 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 upon similarly situated dealers. As you can see, Section 6 of the Bill provides eight listed conditions allowing cancellation by the manufacturer. If a manufacturer violates this section, it is liable for all damages sustained by the dealer including attorneys fees.

Laws for Farm, Utility, and Industrial Equipment

Laws governing manufacturer-dealer relationships cover two major areas. First, the repurchase by a manufacturer of new inventory of a dealer upon termination. Second, fair dealership statutes require good cause for termination and fair treatment of dealerships. Each state and the federal government enforce laws governing the relationship of motor vehicle manufacturers and dealers. Those laws are "specific" to the motor vehicle industry. The following chart, compiled in 1990, identifies industry-specific laws (and several laws of general application) which govern the relationship of power equipment manufacturers and dealers: farm equipment ("F") includes tractors, combines, tillage and other agricultural equipment, accessories, attachments and parts. Utility equipment ("U") includes lawn & garden, outdoor power, and landscape maintenance equipment, accessories, attachments and parts. Industrial equipment ("I") includes heavy equipment, accessories, attachments, and parts used for industrial, maintenance, and construction applications.

State	Statute	Repurchase			Good Cause		
		F	U	I	F	U	I
Alabama	8-22-1 to -14 (1975)	F	FU	I	F	FU	I
Arkansas	4-72-301 to -309 (1979) 4-72-201 to -210 (1977)?	F	FU	I			
California	20000-20043 Bus/Prof Code?						
Colorado	35-38-101 to -110(1984)	F					
Connecticut	42-133e to -133g (1985)				Retailers		Retailers
Delaware	6-2720 to 2727 (1987)	F	U	I	F	U	I
Florida	686.201 to -.418 (1987)	F			F		
Georgia	13-8-11 to -25 (1982) 13-8-31 to -45 (1982) 10-1-730 to -740 (1989)	F F			F F		I
Idaho	28-23-101 to -111 (19__)	F					
Illinois	83 Laws 83-410 (1983) 89 Laws 86-259 (1989)	F		I U			
Indiana	15-7-7-1 to -18 (1989)	F		I			
Iowa	XIII 322D.1 to -.6 (1984)	F					
Kansas	16-1001 to -1006 (1976) 16-1201 to -1208 (1986)	F				F	
Kentucky	XXIX 365.800 to -.840 (1986)	F	U	I			
Louisiana	51-1A-2-481 to -488 (1975)	F	U	I			
Maine	89 Laws 387 (1989)	F	U	I			Notice
Maryland	87 Laws 752-3 (1987)	F		I			Notice
Michigan	84 Laws 341 (1984) 89 Laws 296 (1990)	F	U U	I			
Minnesota	325E.05 (1985;1988)	F					

State	Statute	Repurchase			Good Cause		
		F	U	I	F	U	I
Mississippi	75-77-1 to -19	F	U	I			
Missouri	407.400 407.850 to -.885 (1982; 1987) 407.890 to -.898	F					Notice F U
Montana	30-11-701 to -713 (1985)	F		I			
Nebraska	69-1501 to -1504 (19__)	F					
New Mexico	57-23-1 to -8 (1978)	F		I			
New York	88 Laws 688 (1988)	F					F
North Carolina	66-180 to -188 (1985)	F	U	I			Notice
North Dakota	51-07-01 to -01.1 (1975) 51-20.1 to -20.1-03 (1987)	F					F I
Ohio	87 Laws S/B 157 (1988)	F		I			
Oklahoma	15-5-241 to -251 (1982)	F		I			
Oregon	50 646.415 to -.415 (1987)	F					
Pennsylvania	87 Laws 86 (1987)	F	U				F U
S. Carolina	39-59-10 to -130 (19__)	F	U	I			
S. Dakota	37-5-1 to -9 (1977)	F		I			F I
Tennessee	47-19-101 to -110 (1977) 86 Laws 573 added obsolete parts	F	FU	I			
Texas	83 Laws 337 (1983)	F		I			
Utah	89 Laws S/B 70 (1989)	F	U	I			
Virginia	59.1-344 to -352 (19__) 59.1-353 to -363 (1988)	F					Notice I
Washington	19.98.010 to -.910 (1976)	F					
W. Virginia	47-11F-2 to -8 (1989)	F		I			Notice
Wisconsin	135.01 to -.07 (1983)				Repurchase		Good Cause
Wyoming	40-18-101 to -107 (1987)	F					

Session of 1991

HOUSE BILL No. 2379

By Committee on Agriculture

2-18

8 AN ACT concerning certain contracts to maintain stocks of outdoor
9 power equipment and regulating the business relations between
10 independent retailers and outdoor power equipment suppliers.
11

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

13 Section 1. The purpose of this act is to prevent arbitrary or
14 abusive conduct and to preserve and enhance the reasonable ex-
15 pectations for success in the business of distributing outdoor power
16 equipment. The retail distribution of outdoor power equipment, as
17 defined in this act, utilizing independent retail businesses operating
18 under agreements with suppliers, vitally affects the general economy
19 of the state, public interest, and public welfare, and it is necessary
20 to regulate the business relations between the independent retailers
21 and the outdoor power equipment suppliers.

22 Sec. 2. As used in this act:

23 (a) "Outdoor power equipment" means and includes machinery,
24 equipment, attachments or repair parts therefor, used for industrial,
25 construction, maintenance, utility, lawn, garden, golf course, land-
26 scaping or grounds maintenance.

27 (b) "Retailer" means any person, partnership, firm, corporation,
28 association, or other form of business enterprise engaged in the
29 business of:

30 (1) Selling or leasing outdoor power equipment to the ultimate
31 consumer thereof; and

32 (2) repairing or servicing outdoor power equipment.

33 (c) "Contract" means either a written or parol agreement or ar-
34 rangement for a definite or indefinite period between a retailer and
35 a supplier which provides for the rights and obligations of the parties
36 with respect to the purchase or sale of outdoor power equipment,
37 and which agreement, regardless of the retailer's territorial scope,
38 contemplates the establishment or maintenance by the retailer of a
39 location within the state of Kansas at which outdoor power equipment
40 and services for the same are displayed, and offered or demonstrated
41 for sale.

42 (d) "Net cost" means the amount of money actually paid by a
43 retailer to the supplier.

(e) "Current net price" means the price listed in a supplier's price list or catalogue in effect on the date of termination of a contract, less any applicable trade and cash discounts.

(f) "Supplier" means any person, partnership, corporation, association, or any and all other forms of business enterprise engaged in the business of manufacturing, assembly or wholesale distribution of outdoor power equipment. The term "supplier" and the provisions of this act shall be interpreted liberally, with regard to the equities of the retailer, and in a manner not limited to traditional doctrines of corporate successor liability, and the obligations of a supplier hereunder shall consequently apply to any actual successor in interest to a supplier, including but not limited to, a purchaser of substantial assets or substantial stock, any receiver, trustee or assignee, or any surviving corporation resulting from a merger, liquidation or reorganization of the original or any intermediate successor supplier.

~~(g) "Lease arrangement" means an arrangement whereby a retailer agrees to purchase outdoor power equipment from any supplier of outdoor power equipment, to lease such equipment to the ultimate user thereof, to register the warranty to such ultimate user and to finance the purchase of such outdoor power equipment from such supplier from the retailer's proceeds of leases or by floor plan arrangements with the supplier or affiliates or designees of such supplier.~~

Sec. 3. (a) Whenever any retailer enters into a contract with a supplier and such supplier or retailer terminates, cancels, fails to renew, or in fact substantially discontinues such contract, such supplier shall pay to such retailer, or credit to such retailer's account, if and only to the extent that the retailer has outstanding sums owing the supplier, unless the retailer should desire to keep all or part of such merchandise, a sum equal to 90% of the net cost of all new, unused, undamaged and complete outdoor power equipment, including transportation charges which have been paid by such retailer, and 90% of the current net prices of new, unused and undamaged repair parts which had previously been purchased from such supplier preceding the date of notification of the termination, and held by such retailer on the date of the cancellation of such contract. ~~Such supplier shall repurchase the retailer's inventory of outdoor power equipment in any lease agreement on the date of cancellation for the amount of the outstanding balance due for such inventory between supplier and retailer, unless the retailer should desire to keep any part or all of such inventory. Such supplier shall also repurchase at fair market value or assume future lease responsibilities for any data processing or telecommunication equipment and software which~~

~~such supplier required retailer to obtain to satisfy the minimum equipment and software required and approve by the supplier to communicate with the supplier.~~ Upon the payment of such sum, the title and right of possession of such outdoor power equipment and repair parts and other equipment shall then pass to the supplier making such payment, and such supplier shall then be entitled to the possession of such outdoor power equipment and repair parts. The retailer shall have a continuing security interest in the inventory until such payment by the supplier is received. All payments required to be made under the provisions of this section must be made within 90 days after the return of the outdoor power equipment, repair parts or other equipment. After 90 days, all payments or allowances shall include interest calculated from the date of return at the rate prescribed in K.S.A. 16-204, and amendments thereto.

(b) The provisions of this section shall not be construed to affect in any way any security interest which the supplier may have in the inventory of the retailer, except that any repurchase hereunder shall not be subject to the provisions of the bulk sales law or to the claims of any secured or unsecured creditors of the supplier or any assignee or the supplier until such time the retailer has received payment in full, subject to any offset the retailer may owe to the supplier.

Sec. 4. ~~Except with respect to the provision regarding repurchase of a retailer's inventory of outdoor power equipment in a lease arrangement,~~ The provisions of section 3 shall not require the repurchase from a retailer of any:

- (a) Repair part which is in a broken or damaged package;
- (b) single repair part which is priced as a set of two or more items;
- (c) repair part which, because of its condition, is not resalable as a new part;
- (d) inventory for which the retailer is unable to furnish evidence, satisfactory to the supplier, of title, free and clear of all claims, liens and encumbrances;
- (e) inventory which the retailer desires to keep, and for which the retailer has a contractual right to do so;
- (f) machines, equipment, and attachments which are not in new, unused, undamaged, or complete condition;
- (g) repair parts which are not in new, unused, or undamaged condition;
- (h) machines, equipment or attachments which were purchased 24 months or more prior to notice of termination of the contract;
- (i) inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

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(j) inventory which was acquired by the retailer from any source other than the supplier or transferee of such supplier; or

(k) part that has been removed from an engine or short block or piece of equipment or any part purchased separately that has been mounted or installed by the retailer on an engine or on equipment.

Sec. 5. (a) In the event that any supplier, after such supplier or the retailer terminates, cancels, fails to renew, or in fact substantially discontinues such contract, fails or refuses to make payment to such retailer as required by the provisions of section 3, such supplier shall be liable in a civil action to the retailer for the actual costs of the action, including attorney, paralegal and expert witness fees; for interest as provided in section 3; for 100% of the net cost of such machinery, plus transportation charges which have been paid by the retailer; for 100% of the current net price of the repair parts; ~~for the balance outstanding between the retailer and supplier on inventory in a lease arrangement; and for the fair market value of such other equipment and systems. The retailer also may be granted appropriate declaratory or injunctive relief.~~ In any such action, it shall be the burden of the supplier to establish that the terms of section 4 may apply to except any particular item of outdoor power equipment from the terms of section 3.

Sec. 6. No supplier, directly or through any officer, agent or employee, may terminate, cancel, ~~fail to renew, or substantially change the competitive circumstances of~~ a retailer without good cause. Good cause means failure by a retailer to substantially comply with essential and reasonable requirements imposed upon the retailer by the contract if such requirements are not different from those requirements imposed on similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

(a) The retailer has transferred a controlling interest in the retailer business without the supplier's consent;

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

(c) there has been a change, without the prior written approval of the supplier, in the location of retailer's principal place of business if such approval is required under the retailer's agreement with the supplier;

(d) the retailer has defaulted under any reasonable and essential

term of a chattel mortgage or other security agreement between the retailer and supplier, or there has been a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the supplier;

(e) the retailer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned such retailer's business, except for reasonable and customary closures of business;

(f) the retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and supplier;

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

(h) following receipt of written notices of the supplier's requirements and of written notices of the supplier's determination of the retailer's initial and persisting failures to meet the supplier's requirements, the retailer has consistently failed to meet the supplier's requirements for reasonable market penetration based on the supplier's experience in other identified and comparable market areas.

Sec. 7. Except as otherwise provided in this section, a supplier shall provide a retailer at least 90 days' prior notice of termination, cancellation, or nonrenewal of the contract. The notice shall state all reasons constituting good cause for termination, cancellation or nonrenewal and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice shall be void. The notice and right to cure provisions under this section shall not apply if the reason for termination, cancellation or nonrenewal is for any reason set forth in subsections (a) through (h) of section 6.

Sec. 8. If any supplier violates any provisions of section 6 or 7, a retailer may bring an action in any court of competent jurisdiction for damages sustained by the retailer as a consequence of the supplier's violation. The court may also award court costs and reasonable attorney fees to the prevailing party. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law including proceedings under the Kansas consumer protection act.

Sec. 9. The provisions of this act shall apply to all continuing and nonrenewable contracts, and all other contracts entered into, renewed, amended, assigned or transferred by a supplier to a transferee on or after July 1, 1991, and shall apply only to outdoor power equipment and repair parts purchased after the effective date of this act. Any contract in force and effect on July 1, 1991, which by its own terms will terminate on a date certain subsequent thereto shall

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1 be governed by the law as it existed prior to this act unless renewed,
2 amended, assigned or transferred as described above.

3 Sec. 10. The provisions of this act shall be supplemental to any
4 agreement between the retailer and the supplier. The retailer may
5 elect to pursue either the contract remedy, the remedy provided
6 herein, or any other remedies permitted by law ~~including proceed-~~
7 ~~ings under the Kansas consumer protection act~~ and an election by
8 the retailer to pursue such retailer contract or other remedies shall
9 not bar such retailer's right to any remedy provided herein as to
10 the outdoor power equipment and repair parts not affected by the
11 contract or other remedies.

12 ~~Sec. 11. Any term of a dealership agreement or other agreement,~~
13 ~~such as a security agreement, guaranty or financing agreement, which~~
14 ~~restricts the procedural or substantive rights of a retailer or would~~
15 ~~relieve any supplier from compliance or liability imposed by this act,~~
16 ~~either expressed or implied, and which is inconsistent with the terms~~
17 ~~of this act including, but not limited to, any waiver of damages,~~
18 ~~release, assignment, novation, or estoppel, foreign choice of law or~~
19 ~~a foreign forum selection clause, shall be void and unenforceable~~
20 ~~and shall not waive any rights which are provided to any retailer~~
21 ~~by this act~~

11.

22 Sec. ~~12~~ If any section of this act, or any part of any section
23 thereof, or the application of such provision to any person or cir-
24 cumstance shall be declared invalid or unconstitutional, such dec-
25 laration of invalidity shall not affect the remaining portions thereof
26 and the application of such provision to other persons or
27 circumstances.

12.

28 Sec. ~~13~~ This act may be cited as the Kansas outdoor power
29 equipment dealership act.

13.

30 Sec. ~~14~~ This act shall take effect and be in force from and after
31 its publication in the statute book.

STATEMENT ON HOUSE BILL 2379

Presented by

DONALD H. DEFOE

Manager - State Governmental Affairs

CATERPILLAR INC.

before the

AGRICULTURE COMMITTEE

of the

HOUSE OF REPRESENTATIVES

OF THE

STATE OF KANSAS

Topeka, Kansas

March 7, 1991

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ATTACHMENT 2*

Mr. Chairman and Members of the Committee:

My name is Donald Defoe, and I'm Manager of State Governmental Affairs for Caterpillar Inc. I appreciate the opportunity to present Caterpillar's views on House Bill 2379, which would govern agreements between suppliers and dealers of construction equipment.

Caterpillar Inc. manufactures construction equipment, engines, and material handling equipment. These products are sold through a network of over 200 independent dealers.

Caterpillar considers it its right to select and determine dealers to be the cornerstone of our product distribution system. As the producer, we have an obligation to current and potential owners of Caterpillar products to make sure they receive the best possible service.

Caterpillar has always preferred independent dealers. Generally, we find these dealers bring an entrepreneurial approach to doing business, a personal responsibility for the success or failure of the dealership, and a strong personal commitment to customer satisfaction.

Caterpillar's dealer agreements, like those typically found in dealer relationships, are personal service agreements with individual owners of closely held corporations. In selecting a

dealer for the marketing and distribution of its products, Caterpillar entrusts that dealer with the company's good name and reputation. Accordingly, we believe the choice of who represents our product in the marketplace should be left to the business discretion of Caterpillar.

With this as background, we understand that an amendment will be offered to House Bill 2379. Coupled with this amendment are changes negotiated earlier with Western Association. The product is a fair and balanced bill which provides a regulatory framework for supplier/dealer agreements. The framework will, we believe, provide necessary protections for dealers and, at the same time, maintain the right of a manufacturer to determine who can best represent its product in the marketplace.

Because House Bill 2379 is a reasonable compromise between the interests of manufacturers and dealers, and in appreciation for the cooperation evidenced by the Western Association, we're pleased to express our support for this bill. We urge the Committee to report it out favorably.

Thank you for your time. I'd be happy to answer any questions you might have.

Statement of

Jerry D. Parkin

Director, State Government Affairs

Deere & Company

before the

Agriculture and Small Business Committee

of the

House of Representatives

House Bill 2379

7 March 1991

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My name is Jerry Parkin, and I am Director of State Government Affairs for Deere & Company. I want to thank the Committee for this opportunity to present our views on House Bill 2379, legislation that would regulate agreements between manufacturers and dealers of outdoor power equipment.

Deere & Company manufactures a full line of agricultural equipment, industrial equipment, and lawn and garden equipment under the John Deere name. We have a factory in Coffeyville which manufactures power transmission equipment. Our agricultural and lawn and garden equipment dealers in Kansas are serviced out of our Kansas City Branch, while our industrial equipment dealers here are served from our Western Industrial Region office in Denver.

Legislation affecting the relationship between John Deere and our dealers is something that always concerns us. Given a perfect situation, we naturally prefer that these relationships be governed only by dealership agreements, which are written agreements between John Deere and our dealers. We recognize, however, that perfect situations don't always exist, and that other factors can come into play.

For the past few years we have on many occasions met with representatives of dealer associations and attempted to reach reasonable compromises on this type of legislation. I believe that an amendment is to be offered to House Bill 2379 that reflects a negotiated agreement reached with the Western Association, the organization representing equipment dealers in Kansas. We believe this amendment will result in a bill that is fair to both the dealer and the manufacturer, and that the bill will not create an unnecessary

adversarial situation between a manufacturer and its dealers. The amended bill will provide those protections felt necessary by some dealers, and will, at the same time, maintain the rights of a manufacturer.

We sincerely appreciate the willingness of the Western Association to work with us on this issue, and of the members of this committee to hear our views. I want to let the members of the committee that we have no objections to a favorable action on House Bill 2379, with the amendment.

Again, I thank you for this opportunity, and would be willing to answer any questions that you might have.

KANSAS LAWN MOWER MANUFACTURERS

March 7, 1991

Testimony Prepared for the Kansas House of Representatives Committee on Agriculture, Chaired by Rep. Lee Hamm.

Concerning House Bill 2379 and Regulating the Outdoor Power Equipment Business in Kansas.

Thank you for this opportunity to urge you to vote against House Bill 2379. I am Dick Dilsaver, and I speak on behalf of Kansas Lawn Mower Manufacturers. Many folks are surprised when told that Kansas has at least nine companies that make mowers. They provide Kansans with about 600 jobs that are vital in their rural communities and small cities -- Maple Hill, Cedar Point, Council Grove, Harper, Hesston, Moundridge, Ransom and Quinter, with Coffeyville the metropolis of the group. Our point is that Kansas has been good for the lawn mower business without this type of legislation, and we think the state will be best served without HB 2379.

Another basic point is that this bill is not needed. The last thing these small manufacturers need is more government regulation where normal business practices are working fairly. We contend that is why you have not been deluged with dealers who can show you they were abused. So you do not need to pass a bill that would protect non-performing dealers at the expense of manufacturers.

I commend to you the letter of K.O. Dixon, the founder and president of Dixon Industries, who has asked me to extend his regrets that previous commitments prevent him from speaking to you personally today. He emphasizes that this bill would be unfair. In his long experience, he states, cancelling dealers has always occurred for one or more of these reasons: failure to pay for the merchandise, failure to market the product responsibly and failure to provide proper service after the sale. If HB 2379 were straight forward in recognizing those sound business practices as reasons for dealer termination, perhaps we could see it as having some merit. Instead, it is simply one-sided in protecting dealers who could leave manufacturers holding the bag.

Again, this bill is unnecessary, is unfair and does not deserve your approval.

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DIXON INDUSTRIES, INC.

March 7, 1991

TO: House Committee on Agriculture
Rep. Lee Hamm, Chairperson

RE: HB 2379, which would place regulations on the outdoor power equipment industry in Kansas

I greatly regret that business commitments prevent me from being with you today. Certainly I would rather tell you in person why I feel House Bill 2379 would be poor legislation and is not worthy of your approval.

First, a little background about our company. I established Dixon Industries, which manufactures Dixon ZTR Riding Mowers, at Coffeyville, Kansas in 1973. At the end of the first year there were about twenty-five employees. Today, we have about 150 workers and have recently completed an \$800,000 expansion program to 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 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 2379, is completely unnecessary. We have seen nothing in our 18 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 2379 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.

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ATTACHMENT 5

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 2379 would intrude on this process. A manufacturer or distributor should not 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 have gone 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 arbitrary obligation on us would be completely unjustified and, again, most unfair.

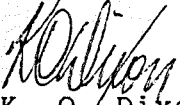
In reality, it usually is the manufacturer instead of the dealer who takes it on the chin in dealer cancellations. HB 2379 would make it easier for dealers to take advantage of manufacturers in such situations.

For example, the bill would require the manufacturer to pay the retailer regardless of the nature of termination of the relationship. A retailer could even voluntarily terminate for virtually any reason, or no reason at all, and impose these obligations on the manufacturer. That's unfair!

Please do not pass such unfair and unnecessary legislation.

Sincerely,

DIXON INDUSTRIES, INC.


K. O. Dixon
President

KOD/jc