

Approved March 19, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

The meeting was called to order by Representative Lee Hamm  
Chairperson

9:05 a.m. ~~p.m.~~ on Friday, March 8, 1991 in room 423-S of the Capitol.

All members were present except: Representative Wisdom, excused  
Representative Freeman  
Representative Heinemann

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

Conferees appearing before the committee:

Chairman Hamm presented the committee with copies of the amended version of HB 2379. This amendment would omit lawn, garden, golf course, landscaping or grounds maintenance. (Attachment 1).

Discussion was held.

Representative Rezac made a motion to amend HB 2379. Representative Neufeld seconded the motion. The motion passed.

Representative Rezac moved to pass HB 2379 as amended. Representative Neufeld seconded. Motion carried.

Representative Flower voted "no" and requested that her vote be recorded.

Representative Rock made a motion to approve minutes of March 4, 1991. Representative Bryant seconded the motion. Motion passed.

The meeting adjourned at 9:20 a.m. The next meeting of the House Agriculture Committee will be Thursday, March 14, 1991, at 9:00 a.m. in room 423-S, State Capitol.



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-~~ or  
26 ~~scaping or grounds maintenance.~~ purposes

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.

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ATTACHMENT 1

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

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

16 ~~(g) "Lease arrangement" means an arrangement whereby a re-~~  
17 ~~tailer agrees to purchase outdoor power equipment from any supplier~~  
18 ~~of outdoor power equipment, to lease such equipment to the ultimate~~  
19 ~~user thereof, to register the warranty to such ultimate user and to~~  
20 ~~finance the purchase of such outdoor power equipment from such~~  
21 ~~supplier from the retailer's proceeds of leases or by floor plan ar-~~  
22 ~~rangements with the supplier or affiliates or designees of such~~  
23 ~~supplier.~~

24 Sec. 3. (a) Whenever any retailer enters into a contract with a  
25 supplier and such supplier or retailer terminates, cancels, fails to  
26 renew, or in fact substantially discontinues such contract, such sup-  
27 plier shall pay to such retailer, or credit to such retailer's account,  
28 if and only to the extent that the retailer has outstanding sums owing  
29 the supplier, unless the retailer should desire to keep all or part of  
30 such merchandise, a sum equal to 90% of the net cost of all new,  
31 unused, undamaged and complete outdoor power equipment, in-  
32 cluding transportation charges which have been paid by such retailer,  
33 and 90% of the current net prices of new, unused and undamaged  
34 repair parts which had previously been purchased from such supplier  
35 preceding the date of notification of the termination, and held by  
36 such retailer on the date of the cancellation of such contract. ~~Such~~  
37 ~~supplier shall repurchase the retailers's inventory of outdoor power~~  
38 ~~equipment in any lease agreement on the date of cancellation for~~  
39 ~~the amount of the outstanding balance due for such inventory be-~~  
40 ~~tween supplier and retailer, unless the retailer should desire to keep~~  
41 ~~any part or all or such inventory. Such supplier shall also repurchase~~  
42 ~~at fair market value or assume future lease responsibilities for any~~  
43 ~~data processing or telecommunication equipment and software which~~

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1 such supplier required retailer to obtain to satisfy the minimum  
2 equipment and software required and approve by the supplier to  
3 ~~commitment with the supplier.~~ Upon the payment of such sum,  
4 the title and right of possession of such outdoor power equipment  
5 and repair parts and other equipment shall then pass to the supplier  
6 making such payment, and such supplier shall then be entitled to  
7 the possession of such outdoor power equipment and repair parts.

8 ~~The retailer shall have a continuing security interest in the inventory~~  
9 ~~until such payment by the supplier is received.~~ All payments re-  
10 quired to be made under the provisions of this section must be made  
11 within 90 days after the return of the outdoor power equipment,  
12 repair parts or other equipment. After 90 days, all payments or  
13 allowances shall include interest calculated from the date of return  
14 at the rate prescribed in K.S.A. 16-204, and amendments thereto.

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

22 Sec. 4. ~~Except with respect to the provision regarding repur-~~  
23 ~~chase of a retailer's inventory of outdoor power equipment in a lease~~  
24 ~~arrangement,~~ the provisions of section 3 shall not require the re-  
25 purchase from a retailer of any:

- 26 (a) Repair part which is in a broken or damaged package;  
27 (b) single repair part which is priced as a set of two or more  
28 items;  
29 (c) repair part which, because of its condition, is not resalable  
30 as a new part;  
31 (d) inventory for which the retailer is unable to furnish evidence,  
32 satisfactory to the supplier, of title, free and clear of all claims, liens  
33 and encumbrances;  
34 (e) inventory which the retailer desires to keep, and for which  
35 the retailer has a contractual right to do so;  
36 (f) machines, equipment, and attachments which are not in new,  
37 unused, undamaged, or complete condition;  
38 (g) repair parts which are not in new, unused, or undamaged  
39 condition;  
40 (h) machines, equipment or attachments which were purchased  
41 24 months or more prior to notice of termination of the contract;  
42 (i) inventory which was ordered by the retailer on or after the  
43 date of notification of termination of the contract;

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

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

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

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

31 (a) The retailer has transferred a controlling interest in the re-  
32 tailer business without the supplier's consent;

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

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

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

1 term of a chattel mortgage or other security agreement between the  
2 retailer and supplier, or there has been a revocation or discontin-  
3 uance of any guarantee of the retailer's present or future obligations  
4 to the supplier;

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

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

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

13 (h) following receipt of written notices of the supplier's require-  
14 ments and of written notices of the supplier's determination of the  
15 retailer's initial and persisting failures to meet the supplier's re-  
16 quirements, the retailer has consistently failed to meet the supplier's  
17 requirements for reasonable market penetration based on the sup-  
18 plier's experience in other identified and comparable market areas.

19 Sec. 7. Except as otherwise provided in this section, a supplier  
20 shall provide a retailer at least 90 days' prior notice of termination,  
21 cancellation, or nonrenewal of the contract. The notice shall state  
22 all reasons constituting good cause for termination, cancellation or  
23 nonrenewal and shall provide that the dealer has 60 days in which  
24 to cure any claimed deficiency. If the deficiency is rectified within  
25 60 days, the notice shall be void. The notice and right to cure  
26 provisions under this section shall not apply if the reason for ter-  
27 mination, cancellation or nonrenewal is for any reason set forth in  
28 subsections (a) through (h) of section 6.

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

37 Sec. 9. The provisions of this act shall apply to all continuing  
38 and nonrenewable contracts, and all other contracts entered into,  
39 renewed, amended, assigned or transferred by a supplier to a trans-  
40 feree on or after July 1, 1991, and shall apply only to outdoor power  
41 equipment and repair parts purchased after the effective date of this  
42 act. Any contract in force and effect on July 1, 1991, which by its  
43 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.~~

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.

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

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

renumber sections accordingly