

Approved April 1, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Jim Allen at
Chairperson

10:06 a.m. ~~PM~~ on March 26, 1991 in room 423-S of the Capitol.

All members were present except: Senator Harder (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: Alan Alderson, Western Retail Implement and Hardware Association
Jack Selzer, Western Retail Implement and Hardware Association
Bruce Coleman, Coleman Implement Company, Bonner Springs, Kansas
Bob Foreman, Victor L. Phillips Company, Wichita, Kansas

Senator Allen called the Committee to order and attention to HB 2379; he then called on the following to testify.

Alan Alderson explained that HB 2379 had been requested by the Western Retail Implement and Hardware Association. Mr. Alderson stated that the bill had been amended in the House Committee so that small equipment such as is used for lawns is not included in HB 2379. Mr. Alderson stated that larger equipment companies such as Caterpillar and the Deere Company testified in favor of HB 2379 in the House Committee. Mr. Alderson introduced Jack Selzer to testify.

Mr. Selzer gave the Committee copies of his testimony (attachment 1) and requested passage of HB 2379.

Mr. Selzer answered that in case of repurchase by a manufacturer that current prices for parts are used, also that discontinued parts must also be repurchased by the manufacturer and that this kind of protection as is proposed in HB 2379 is provided other kinds of businesses. Mr. Selzer explained that the amendment was added to HB 2379 because the small lawn and garden equipment suppliers did not want to be a part of the proposed legislation in HB 2379.

Bruce Coleman gave the Committee copies of his testimony (attachment 2) and requested passage of HB 2379. Mr. Coleman noted that the provisions of HB 2379 would provide assurances that a manufacturer can not just decide to not sell to a business.

Bob Foreman expressed support for HB 2379 stating that HB 2379 would provide security for a dealer in working with suppliers for his business. Mr. Foreman provided copies of his testimony (attachment 3).

During Committee discussion it was noted that HB 2379 would become effective upon publication in the statute book and that maybe it should become effective upon publication in the 'Register'. No problem was foreseen so no action was taken.

The Chairman declared the hearing closed for HB 2379 and called for action on Committee minutes.

Senator Montgomery made a motion the Committee minutes of March 21 be approved; Senator Doyen seconded the motion; motion carried.

Senator Allen announced the Committee meeting for the following day to be cancelled and that the 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. Committee will next meet on the following Monday and Tuesday, if needed. page 1
The Chairman adjourned the Committee at 10:32 a.m.

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 used for industrial, construction,

Senate Agriculture Committee

3-26-91

attachment 1

maintenance or utility purposes 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 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.

An 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 any reason or 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	U	I			
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					

TESTIMONY OF BRUCE COLEMAN

Good morning. My name is Bruce Coleman. I am from Coleman Implement Co., located in Bonner Springs, Kansas. This company is a family company. It is owned by my dad, Jim; mother, Golden; brother, Del and myself. Our dealership wants this statute passed and there are many other dealerships in the state of Kansas who want this legislation.

Let me give you some background on our dealership. We have been in business for 51 years. We have 25 employees and we have sales of about \$7 million a year. Our most important line is the Case/International Utility Line. We also carry approximately 10 other lines of utility equipment. If Case were to take from us our dealership contract we would probably go out of business. We are a good Case dealer and give this company good representation and we will continue to do so. We do not want to be canceled by any of our equipment manufacturers or distributors. Moreover, we have never been canceled.

However, over the years we have heard from time to time from Case that they intend to take away our dealership contact. There is a good chance they will never do this but they could. We live in constant fear that someday someone from Case will decide to terminate our dealership. This arbitrary termination and cancellation of our dealership is permitted under their contract. All they need to do is give us 90 days notice. We have been a Case dealer for over 45 years and we think it is unfair that they can arbitrarily cancel us and put us out of business and take away the jobs of 25 people. It is for these reasons that I ask you today for your support and vote on House Bill 2379. We do not have the ability to negotiate on our contracts. The manufacturers make it a take it or leave it proposition. This statute provides for some basic fairness. I appreciate your support.

Senate Agriculture Committee

3-26-91

attachment 2

MARCH 26, 1991

KANSAS HOUSE BILL # 2379
COMMITTEE ON AGRICULTURE

GOOD MORNING. MY NAME IS BOB FOREMAN. I WORK FOR THE VICTOR L. PHILLIPS COMPANY.

THE VICTOR L. PHILLIPS COMPANY IS A CONSTRUCTION EQUIPMENT DEALER. OUR COMPANY HAS BEEN SERVING KANSAS AND MISSOURI CONTRACTORS SINCE 1911.

WE HAVE DEALERSHIPS IN TOPEKA AND WICHITA AS WELL AS KANSAS CITY AND JOPLIN.

WE ARE A FAMILY BUSINESS.

MY FATHER, JIM FOREMAN, ASKED THAT I SPEAK ON BEHALF OF OUR COMPANY IN SUPPORT OF HOUSE BILL # 2379.

THE RELATIONSHIP BETWEEN EQUIPMENT DEALERS AND THEIR MANUFACTURERS HAS CERTAINLY CHANGED OVER THE YEARS.

IN THE OLD DAYS AND EVEN UP INTO THE LATE 1960'S, MANY DEALER/MANUFACTURER RELATIONSHIPS WERE BASED ON A GOOD FIRM HANDSHAKE. CONTRACTS WERE NOT NEEDED BECAUSE A MAN'S WORD WAS GOLDEN AND BOTH PARTIES WERE ON A PERSONAL BASIS WITH EACH OTHER.

IN TODAY'S WORLD OF CORPORATE TAKE-OVERS, LEVERAGED BUY-OUTS, AND M.B.A. MANAGEMENT----THE EQUIPMENT DEALER IS MEASURED NOT BY THE YEARS OF CUSTOMER SERVICE HE/SHE HAS PROVIDED OR LOYALTY SHOWN TO THE MANUFACTURERS' PRODUCTS, BUT RATHER----BUDGET NUMBERS ARE THE BENCH MARK----SET BY PEOPLE WHO ARE MORE CONCERNED WITH CORPORATE DIVIDENDS THAN WITH THE PEOPLE WHO SERVE AND TAKE CARE OF OUR KANSAS CONTRACTORS.

THE DAYS OF A HANDSHAKE AND INDUSTRY FRIENDSHIP ARE LONG SINCE GONE. CONTRACTS ARE ALL WE HAVE TODAY.

YES, CONTRACTS ARE GOOD BUSINESS. MOST OF US DEPEND ON CONTRACTS TO CONDUCT OUR BUSINESSES. A HANDSHAKE IS NOT ENOUGH. TODAY, EVERYONE NEEDS TO KNOW WHERE THEY STAND.

WE ARE NOT OPPOSED TO CONTRACTS, IN FACT WE WELCOME THE SECURITY THEY SHOULD PROVIDE.

THE PROBLEM IS THAT OUR CONTRACTS ARE DRAWN UP BY HIGH-PRICED LAWYERS HIRED BY THE MANUFACTURER. I WOULD VENTURE TO GUESS THAT THE FEE PAID BY THE MANUFACTURER TO RETAIN THESE "HIGH POWERED" ATTORNEYS WOULD HUMBLE OUR BEST EFFORTS SINCE 1911.

Senate Agriculture Committee

3-26-91

attachment 3

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3-26-91*

MANUFACTURERS' CONTRACTS ARE SET BEFORE US...THERE IS NO NEGOTIATION, NO GIVE-AND-TAKE, NO DISCUSSION WHAT-SO-EVER. THE DEALER MUST EITHER SIGN THE CONTRACT "AS-IS" OR FIND A DIFFERENT MANUFACTURER.

IT IS NOT AS EASY AS SIGNING YOUR NAME ON THE DOTTED LINE. THEY NOT ONLY HAVE A ONE-SIDED CONTRACT WRITTEN EXCLUSIVELY AROUND THE MANUFACTURER...THEY ALSO SECURE A BLANKET LIEN ON YOUR BUSINESS.

A PERSONAL GUARANTEE IS PART OF THE CONTRACT WHICH ASSURES THEM OF YOUR HOME, PERSONAL POSSESSIONS, AND THE ASSETS SAVED FOR YOUR SON'S

~~SON'S~~ AND DAUGHTER'S COLLEGE EDUCATIONS.

I CRINGE EVERY TIME I SIGN THESE DOCUMENTS....THE OLD SAYING THAT "YOU SIGN YOUR LIFE AWAY" IS A TRUE AND YEARLY RITUAL FOR AN EQUIPMENT DEALER.

WHY WOULD WE RISK SO MUCH IN SIGNING THESE CONTRACTS?

OUR DEALERSHIP, LIKE MANY OTHERS, DEPENDS HEAVILY ON ONE OR TWO MANUFACTURERS. WE HAVE BUILT OUR LIVES AND BUSINESSES AROUND THEM. NEARLY ONE-HUNDRED (100) FAMILIES DEPEND ON OUR ABILITY TO SUCCEED WITH THESE MANUFACTURERS.

OUR SHELVES ARE FILLED WITH THEIR PARTS AND ACCESSORIES. WE CURRENTLY HAVE OVER 1.1 MILLION DOLLARS INVESTED IN GENUINE FACTORY PARTS TO ENSURE OUR CUSTOMERS CAN KEEP THEIR EQUIPMENT RUNNING. THESE PARTS DO NOT FIT ANY OTHER MANUFACTURERS' EQUIPMENT.

DEALERS ARE REQUIRED TO PURCHASE THOUSANDS OF DOLLARS WORTH OF SPECIALIZED TOOLS AND SPEND THOUSANDS MORE TO SEND OUR SERVICE PEOPLE TO MANUFACTURERS' SCHOOLS. NONE OF THESE TOOLS OR SCHOOLS ARE OF VALUE WITH ANY OTHER MANUFACTURER.

DEALERS HAVE TO INVEST IN SIGNS, SERVICE TRUCKS, FACILITY IMPROVEMENTS, AND HUGE AMOUNTS OF "REQUIRED" INVENTORY THAT ARE ALL BASED ON WHAT THE MANUFACTURER HAS DECIDED THEIR DEALERS WILL STOCK AND CARRY.

THEY DEMAND THAT WE PURCHASE THESE ASSETS, YET, THEY CAN CANCEL US WITH NO REASON. A NEW DEALER CAN BE SIGNED UP AND OPERATING WITHIN NINETY (90) DAYS.

THE ANSWER TO "WHY" IS SIMPLE BUT AGONIZING.....

DEALERS HAVE TO "SIGN THEIR LIVES AWAY" IF THEY ARE TO ENSURE SECURITY AND STABILITY FOR THEIR FAMILIES, THEIR EMPLOYEES AND THEIR FAMILIES, THE CUSTOMERS THEY SERVE, AND OF COURSE, THE FUTURE OF THEIR BUSINESSES'.

I MENTIONED THE M.B.A. ATTITUDE THAT PREVAILS THE MANUFACTURING TEMPLE.....AN EXAMPLE IS IN ORDER.....

OUR LARGEST MANUFACTURER REPRESENTS 75-80% OF OUR SALES. THIS COMPANY IS A LONG TIME BUILDER OF CONSTRUCTION EQUIPMENT.

THEY WERE ONCE A STABLE AND CONSISTENT MANUFACTURER WHOM WE COULD DEPEND ONDURING THE PAST THREE-FOUR YEARS THEIR MANAGEMENT HAS TURNED OVER AT LEAST TWICE.....IN A FRANTIC ATTEMPT TO BOOST PROFITABILITY THEY HAVE SHUFFLED IN M.B.A.'S FROM OUTSIDE THE CONSTRUCTION INDUSTRY. CANDY BAR M.B.A.'S, PANTY HOSE M.B.A.'S, AUTOMOTIVE M.B.A.'S, AND MUFFLER M.B.A.'S NOW FILL THE RANKS OF THE HEAD OFFICE OF ONE OF THE LARGEST CONSTRUCTION EQUIPMENT MANUFACTURERS IN THE WORLD.....

IS IT ANY WONDER THAT DEALERS ARE CONCERNED THAT OUR "CONTRACTS" MAY NOT BE ENOUGH?

LADIES AND GENTLEMEN, EQUIPMENT DEALERS ALL ACROSS THE STATE OF KANSAS NEED YOUR HELP!

THE PROPOSED LEGISLATION IN HOUSE BILL #2379 IS NEEDED NOW TO HELP ELEVATE THE DEALER IN RELATION TO THE MANUFACTURER.

WE ARE NOT IN A POSITION TO DEAL DIRECTLY WITH OUR MANUFACTURERS IN ORDER TO GAIN THIS TYPE OF PROTECTION. ALTHOUGH I ASSURE YOU WE HAVE TRIED FOR YEARS AND HAVE FAILED. EQUIPMENT DEALERS DO NOT HOLD THE "ACES".

HOUSE BILL # 2379 WILL PROVIDE US SECURITY FROM ARBITRARY CANCELLATION WITHOUT GOOD CAUSE. IT WILL ENSURE THAT DEALERS WHO HAVE BEEN CANCELED ARE TREATED MORE FAIRLY IN TERMS OF THEIR REMAINING INVENTORY. IT WILL MAKE MANUFACTURERS THINK BEFORE THEY DROP THE AXE.

LASTLY, AND MOST IMPORTANTLY, THIS BILL WILL SERVE THE STATE OF KANSAS BY ESTABLISHING A DOCTRINE OF FAIRNESS.

FAIRNESS TO ENSURE CONTINUITY..... STABILITY..... AND A MORAL FOUNDATION SHIELDING KANSAS CITIZENS FROM INJUSTICE AND UNRESTRICTED POWER.

THANK YOU FOR YOUR TIME.