

Approved Feb. 18, 1992
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

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

9:15 a.m./~~p.m.~~ on Wednesday, February 12, 1992 in room 423-S of the Capitol.

All members were present except: Representative Correll, Representative Wempe,
Representative Bryant, Representative Gatlin,
Representative Jennison (all were excused)

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

Conferees appearing before the committee: Alan Alderson, Attorney, Western Retail
Implement and Hardware Association
Jack Selzer, Counsel for the Western
Retail Implement and Hardware Association
Mark Files, Membership Director, Western
Association
Richard Sheldon, Owner, Sheldon Suburban
Equipment Co., Inc.
Representative Jim Garner, District 11,
Coffeyville, Kansas

Chairman Hamm opened hearings on **HB 2737** - concerning outdoor power
equipment; relating to the definition thereof.

Alan Alderson, Attorney representing Western Retail Implement and Hardware
Association, introduced conferees Jack Selzer, Mark Files, and Richard
Sheldon.

Jack Selzer, Counsel for the Western Retail Implement and Hardware
Association, testified before the committee in favor of **HB 2737**. Mr.
Selzer explained to the committee that the 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 lawn and garden equipment dealers and manufacturers. More
particularly, they approved the amendment of the Kansas Outdoor Power
Equipment Fair Dealership Statute to include lawn and garden equipment
dealers. (Attachment 1).

Mark Files, Membership Director, Western Association, appeared before
the committee representing Gerald E. Cole, the owner of Shawnee Repair
Inc., Merriam, Kansas. Mr. Cole regrets that he can not attend this
hearing and asks the committee to accept his written statement as his
testimony in favor of **HB 2737**. (Attachment 2).

Richard Sheldon, Owner, Sheldon Suburban Equipment Co., Inc., Olathe,
Kansas, testified in favor of **HB 2737**. Mr. Sheldon encouraged the
committee to pass House Bill 2737. This bill would allow outdoor power
equipment dealers to have the same level of bargaining power as those
in the agricultural and industrial equipment industry. (Attachment 3).

Representative Jim D. Garner, District 11, Coffeyville, Kansas, appeared
before the committee representing K. O. Dixon, President, Dixon Industries,
Inc. in opposition to **HB 2737**. Mr. Dixon was unable to attend the
committee meeting and Representative Garner provided the committee with
his written testimony. (Attachment 4).

Hearings were closed on **HB 2737**. The meeting adjourned at 9:50 a.m.

The next meeting of the House Agriculture Committee will be on Thursday,
February 13, 1992, at 9:00 a.m. in room 423-S, State Capitol.

HOUSE BILL NO. 2737

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

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 lawn and garden equipment dealers and manufacturers. More particularly, they approved the amendment of the Kansas Outdoor Power Equipment Fair Dealership Statute to include lawn and garden equipment dealers.

The association represents the interest of over 600 equipment dealers in the state of Kansas and Missouri and 900 hardware dealers located in the midwest. In Kansas, there are approximately 200 hardware dealers and 340 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 the association.

This legislation is not unique. Indeed, the lawn and garden equipment dealers of Kansas seek protection which this legislature has given to the Kansas farm implement dealers, automobile dealers, and of course, outdoor power equipment dealers, in similar statutes that prevent, among other things, cancellation, termination or nonrenewal of a dealership agreement unless there is reasonable justification. 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 relationships.

The lawn and garden 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.

Many lawn and garden dealers are very small businesses with less than ten employees. These businesses cannot stand up to the larger manufacturers and their attorneys.

With these general comments in mind, we turn to the specifics of the amendment. The statute is amended to include businesses that sell and repair outdoor power equipment used for lawn, garden, golf course, landscaping or ground maintenance and manufacturers and distributors of such equipment.

The bill provides that upon termination of a dealership agreement, 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 90% of the actual net cost of all new and unused outdoor power equipment and 90% of the current net price on repair parts at the price listed in the current price list. This repurchase obligation provides the dealer with a market for the equipment and repair parts upon termination. In general, the dealer would be paid 10% less than the amount it had previously paid the manufacturer for the equipment and repair parts. The manufacturer then would have the ability to place this equipment and repair parts in the stream of commerce through its other dealerships.

The bill lists eleven exceptions to the required buy back. For example, manufacturers aren't required to buy back damaged repair parts or parts that a dealer bought from another dealer. The bill also provides that if a manufacturer does not comply with the buy back obligations, it is liable for attorneys fees and 100% of the net cost of such machinery and repair parts.

The bill also provides that a manufacturer cannot terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer without 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 dealership agreement so long as the requirements of the contract are not different from those requirements imposed at similarly situated dealers.

In general, this prevents the arbitrary termination of a dealership. The bill, however, allows the manufacturer to terminate a dealer if the dealer violated the dealership agreement. The bill also gives eight situations that constitute good cause for termination.

STATEMENT REPRESENTING JERRY COLE
WEDNESDAY, 2/12/92 HEARING
SUBJECT: HOUSE BILL 2737

TO: THE COMMITTEE CHAIR AND MEMBERS OF THE HOUSE AGRICULTURAL
COMMITTEE IN THE STATE OF KANSAS

FROM: MARK FILES, MEMBERSHIP DIRECTOR, WESTERN ASSOCIATION

I will be reading a statement and representing Gerald E. Cole, the
owner of Shawnee Repair Inc., 5943 Merriam Drive, Merriam, KS 66203

Shawnee Repair does a sales volume of \$500,000 per year in
equipment, parts and service. My company has employed as many as
six people during the past five years.

Due to current economic conditions, I have since released my
employees and am running all aspects of the business.

In order for me to attend a hearing of this nature, I would have to
close my business during the normal working hours which, in turn,
would reduce my monthly revenue during February. I regret not
being able to attend in person, but I ask that you accept this
statement as my testimony in favor of House Bill #2737.

Shawnee Repair offers six lines of outdoor power equipment to our
retail market. We carry three lines of certified repair parts in
addition to the manufacturers lines represented.

I am currently in a situation where one of the manufacturers is
trying to cancel my contact to sell their line of equipment. As of
January 1, the local distributor will only provide repair parts to
my company. They will not provide any new equipment to me.

Shawnee Repair does about \$125,000 per year in sales volume with
this company (approximately 25 percent of my Shawnee Repair's total
revenue). As the current situation exists, I am stuck with several
new units and about \$10,000 worth of repair parts that I cannot get
rid of at market value.

If I were to liquidate this part of my inventory, I would only be
able to get \$.20 on the dollar for the repair parts and, as far as
the unit, if I don't have a contact I can't actually sell them;
therefore, I would have to find a buyer for them as well. Those
would go at \$.30 to \$.35 on the dollar per unit.

If House Bill 2737 is voted in, I would be able to utilize this
legislation which would allow me to return my inventory and parts
and take the money and apply it to a new parts inventory of another
line.

I believe very much in this legislation because it will help small
businesses in the outdoor power equipment industry in the state of
Kansas to maintain a level of bargaining power that would otherwise
not be there without this legislation.

As long as a company like mine maintains a level of professionalism
in representing the manufacturer in the OPE industry, we should be
able to continue in the business practices we see fit.

I would like to thank the committee chair and members of the ag
committee for allowing me to make this statement.

HS. AG.
2-12-92
ATTACHMENT 2

Memorandum

SUBJECT: HOUSE BILL 2737

TO: THE COMMITTEE CHAIR AND MEMBERS OF THE HOUSE
AGRICULTURAL COMMITTEE IN THE STATE OF KANSAS

FROM: RICHARD SHELDON, OWNER
SHELDON SUBURBAN EQUIPMENT CO., INC.

I am the owner/dealer principle of Sheldon Suburban Equipment Co., Inc., 15301 South 169 Highway, Olathe, KS 66062. My company represents to major lines of outdoor power equipment, John Deere and Honda.

House Bill 2737 is positive legislation for both equipment dealers and manufacturers/distributors because it levels the playing field for both sides involved. I have first hand knowledge that this legislation would have benefited several dealers that have recently closed their businesses in the last two years.

The fact that there is no legislation in place means that dealers are subjected to demands and arbitrary quotas established by manufacturers/distributors. This means dealers must buy equipment on manufacturer/distributor terms without any bargaining power. Excepting any equipment contract/agreement also means that a dealer is required to purchase "x" amount of dollars in repair parts.

Manufacturer/distributors are now beginning to introduce segmented contracts. These contracts are for new products that are being introduced into the market place. Only certain dealers are offered this type of contract. The criteria for which dealers get the offered contract is determined by the manufacturer/distributor.

If your company doesn't meet the arbitrary quotas set by the manufacturer/distributor, they can cancel your segmented contract at any time. This is regardless of how your dealership has represented the full line of equipment. When this happens, in most instances, the dealer will be left with an inventory of parts that can not be used in their dealership or sold at market value. HB 2737 will provide bargaining power and a level of protection for dealers in the state of Kansas.

In closing, I would like to encourage the committee to pass House Bill 2737. This would allow Outdoor Power Equipment dealers to have the same level of bargaining power as our friends in the agricultural and industrial equipment industry.

HS. AG.
2-12-92
ATTACHMENT 3

DIXON INDUSTRIES, INC
A BLOUNT COMPANY
AIRPORT INDUSTRIAL PARK
PO BOX 1569
COFFEYVILLE KS 67337 0948
316 251 2000
FAX 316 251 4117

K O DIXON
PRESIDENT

Representative Lee Hamm, Chairperson
House Committee on Agriculture
State of Kansas
Topeka, KS

February 11, 1992

BLOUNT

RE: House Bill No. 2737. An act concerning outdoor power equipment; relating to the definition thereof; amending K.S.A. 1991 Supp. 16-1302 and repealing the existing section.

I regret that business commitments will prevent me from speaking with the committee in person to relate our belief that government should not intrude into the process of dealers and manufacturers making contractual agreements.

However, since House Bill No. 2379 has been enacted and it is now being proposed to include "lawn, garden, golf course, landscaping or grounds maintenance", we offer the following amendments:

To H.B. 2737, Section 3 (a), add phrase "without just cause", and delete phrase "or retailer" as follows:

"Whenever any retailer enters into a contract with a supplier and such supplier *without just cause or-retailer* terminates, cancels, fails to renew..."

"Just cause" would occur whenever a retailer fails to discharge financial obligations to supplier as agreed or fails to provide proper service to consumers of suppliers' products.

Rationale: This change prevents suppliers from being required to make payments or credits to retailers because of voluntary or arbitrary cancellation by dealer. This change makes this section more compatible with the stated purpose of the act.

DIXON

HS. AG.
2-12-92
ATTACHMENT 4

Representative Lee Hamm

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To H.B. 2737, Section 4 (h), change from "24 months or more" to "12 months or more" as follows:

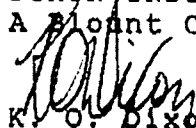
"machines, equipment, and attachments which were purchased 12 24 months or more prior to notice of termination of the contract;"

Rationale: It is burdensome to require manufacturers to repurchase equipment more than one model year old.

We will appreciate you attention to these suggested changes which will enable us to accept it.

Sincerely.

DIXON INDUSTRIES, INC.
A Joint Company


K. O. Dixon
President

KOD/jc

xc: Jim Garner