

Approved March 16, 1992
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

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

9:07 a.m./~~p.m.~~ on Thursday, March 5, 1992 in room 423-S of the Capitol.

All members were present except: Representative Mollenkamp, excused

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

Conferees appearing before the committee:

Discussion was continued on **HB 3082** - limited liability agriculture companies.

A motion was made and seconded on Wednesday, March 4, 1992 to amend HB 3082 as previously stated. Motion failed on amendment.

Discussion was opened on **HB 2737** - outdoor power equipment.

Representative Garner presented to the committee a copy of a substitute for **HB 2737**. Discussion was held. (Attachment 1).

Representative Garner made a motion to amend HB 2737 with the substitute bill. Representative White seconded. Motion carried.

Representative Garner moved to pass as amended with substitute bill. Representative Correll seconded. Motion carried.

Representative Neufeld and Representative Jennison asked to be recorded as voting "no" on **HB 2737**.

Discussion was opened on **HB 3046** - Kansas dairy stabilization act.

Representative Reinhardt offered a conceptual amendment to HB 3046 pertaining to a check off program. Representative Neufeld seconded.

Representative Wisdom made a conceptual substitute motion to include 85 and 115. Representative Neufeld seconded.

Representative Reinhardt made a motion to clarify the amendment. Seconded by Representative Rezac. Motion carried.

Representative Gatlin made a motion to have a sunset review in three years. Representative Lloyd seconded. Motion carried.

Representative Reinhardt made a motion to pass HB 3046. Representative Garner seconded. Motion passed.

The next meeting of the House Agriculture Committee will be Friday, March 6, 1992, in room 423-S, State Capitol.

Substitute for HOUSE BILL NO. 2737

By Committee on Agriculture

AN ACT concerning contracts to maintain stocks of lawn and garden maintenance equipment; providing for the regulation of business relations between independent retailers and suppliers thereof.

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

Section 1. The purpose of this act is to prevent arbitrary or abusive conduct and to preserve and enhance the reasonable expectations for success in the business of distributing lawn and garden equipment. The retail distribution of lawn and garden equipment, as defined in this act, utilizing independent retail businesses operating under agreements with suppliers, vitally affects the general economy of the state, public interest, and public welfare, and it is necessary to regulate the business relations between the independent retailers and the lawn and garden equipment suppliers.

Sec. 2. As used in this act:

(a) "Equipment" means and includes machinery, equipment, attachments or repair parts therefor, used for lawn, garden, golf course, landscaping or grounds maintenance purposes.

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

(1) Selling or leasing lawn and garden equipment to the ultimate consumer thereof; and

(2) repairing or servicing lawn and garden equipment.

(c) "Contract" means either a written or parol agreement or arrangement for a definite or indefinite period between a retailer and a supplier which provides for the rights and obligations of the parties with respect to the purchase or sale

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ATTACHMENT 1

of lawn and garden equipment, and which agreement, regardless of the retailer's territorial scope, contemplates the establishment or maintenance by the retailer of a location within the state of Kansas at which lawn and garden equipment and services for the same are displayed, and offered or demonstrated for sale.

(d) "Net cost" means the amount of money actually paid by a 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 lawn and garden 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.

Sec. 3. (a) Whenever any retailer enters into a contract with a supplier and such supplier 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 lawn and garden 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. Upon the payment of such sum, the title and right of possession of such lawn and garden 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 lawn and garden equipment and repair parts. All payments required to be made under the provisions of this section must be made within 90 days after the return of the lawn and garden 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. 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 12 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;

(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. In the event that any supplier, after such supplier 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; and for 100% of the net cost of such machinery, plus transportation charges which have been paid by the retailer; and for 100% of the current net price of the repair parts. 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 lawn and garden equipment from the terms of section 3.

Sec. 6. No supplier, directly or through any officer, agent or employee, may terminate, cancel or fail to renew 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, 1992, and shall apply only to lawn and garden equipment and repair parts purchased after the effective date of this act. Any contract in force and effect on July 1, 1992, which by its own terms will terminate on a date certain subsequent thereto shall be governed by the law as it existed prior to this act unless renewed, amended, assigned or transferred as described above.

Sec. 10. The provisions of this act shall be supplemental to

any agreement between the retailer and the supplier. The retailer may elect to pursue either the contract remedy, the remedy provided herein, or any other remedies permitted by law, and an election by the retailer to pursue such retailer contract or other remedies shall not bar such retailer's right to any remedy provided herein as to the lawn and garden equipment and repair parts not affected by the contract or other remedies.

Sec. 11. If any section of this act, or any part of any section thereof, or the application of such provision to any person or circumstance shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the remaining portions thereof and the application of such provision to other persons or circumstances.

Sec. 12. This act may be cited as the Kansas lawn and garden equipment dealership act.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.