

Approved March 23, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Sen. Don Montgomery at
Chairperson

10:00 a.m./~~pm~~ on March 18, 1992 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research
Jill Wolters, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Jack Selzer, Western Retail Implement and Hardware Association
Mark Files, Western Association

The minutes of March 17 were approved.

Substitute for HB 2737 - Concerning contracts to maintain stocks of lawn and garden maintenance equipment; providing for the regulation of business relations between independent retailers and suppliers thereof.

Jack Selzer, counsel for Western Retail Implement and Hardware Association, testified in support of the bill. (Attachment 1).

Mr. Selzer confirmed that the manufacturer would not be required to repurchase machines which were purchased 12 months or more prior to the notice of termination of the contract. The dealer would have to find another market.

Sen. Brady asked if the dealer could sell equipment after the contract had been terminated by the manufacturer. Mr. Selzer answered the dealer can still sell the brand, however, that brand could not be advertized by the dealer. The chairman confirmed that when the manufacturer cancels a dealer's contract, it cannot demand a return of equipment, but the dealer is prohibited from using the manufacturer's name in its advertisement.

Mark Files, Western Association, presented testimony on behalf of Jerry Cole, owner of Shawnee Repair, Inc., in support of the bill. (Attachment 2).

Mr. Files agreed with the chairman that this bill would not help companies such as Mr. Cole's which have already experienced cancellations of contracts. However, Mr. Cole felt this bill would be of future help to those who have contracts cancelled.

Sen. Daniels asked Mr. Files if perhaps it would be an advantage to dealers if the bill were to be made effective upon publication in the Register rather than taking effect July 1. Mr. Files said it would be helpful.

Sen. Brady began a discussion where it was determined that a lack of contract by the dealer presents a service and warranty problem if left over equipment is sold after the contract with the manufacturer is cancelled.

Sen. Webb spoke for Richard Sheldon, Sheldon Suburban Equipment Company of Olathe, who is in support of Substitute for HB 2737. A copy of Mr. Sheldon's written testimony was distributed. (Attachment 3).

Sen. Webb made a motion to amend Substitute for HB 2737 to make it effective upon publication in the Register and to report it favorable for passage, Sen. Daniels seconded, and the motion carried.

The meeting was adjourned at 10:40 a.m.

SUBSTITUTE FOR 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 legislation. A bill passed by the 1990 legislature on the Outdoor Power Equipment Dealers had an earlier version which included lawn and garden dealers. However, the enacted bill deleted lawn and garden dealers. In 1992, House Bill 2737 amended the Outdoor Power Equipment

*Senate Agriculture
3-18-92
Attachment 1*

STATEMENT REPRESENTING JERRY COLE
WEDNESDAY, 3/18/92 HEARING
SUBJECT: SUBSTITUTE HOUSE BILL 2737

TO: THE COMMITTEE CHAIR AND MEMBERS OF THE SENATE 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 March. I regret not being
able to attend in person, but I ask that you accept this statement
as my testimony in favor of Substitute 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 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 Substitute HB 2737 is voted in, dealers like myself, would be
able to utilize this legislation which would allow us to return our
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.

Senate Agriculture
3-18-92
Attachment 2

Memorandum

SUBJECT: SUBSTITUTE HOUSE BILL 2737

TO: THE COMMITTEE CHAIR AND MEMBERS OF THE SENATE
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 two major lines of outdoor power equipment, John Deere and Honda.

Substitute HB 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. Substitute 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 Substitute 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.

Senate Agriculture
3-18-92
Attachment 3