

Approved: 3/11/98
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on February 23, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Tom Whitaker, Kansas Motor Carriers
Brad Smoot, AIA

Others attending: See attached list

C. Steven Rarrick, Deputy Attorney General, sent copies of the Federal Trade Commission's Cooling Off Rule that he referred to while testifying against HB 2745 on Friday. (See Attachment 1)

Continued Hearing on: HB 2742 - Limitations on equipment dealership agreements.

A letter from Jerry D. Parkin, Deere & Company, supporting HB 2742 was passed out to the committee. (See Attachment 2)

Chairman Lane asked the audience for persons who wanted to address the bill. No others were present and he closed the hearing on the bill.

Action on: HB 2742 - Limitations on equipment dealership agreements.

A motion was made by Rep. Empson to pass out the bill favorably. It was seconded by Rep. Pauls. Rep. Pauls made a motion to amend on line 31 after "receiving the request", "if no response is received, such request shall be deemed approved." It was seconded by Rep. Crow. The motion to amend carried. Rep. Empson changed her motion to read as amended. Rep. Pauls concurred with the change. The motion to pass out the bill favorably as amended passed.

Action on: HB 2745 - Consumer protection act concerning door-to-door sales would not apply to the annual Kansas state fair.

Bob Nugent, Revisor, talked with the Chief of Litigation at the Federal Trade Commission on Friday. He stated that if the bill was passed and the federal law preempted the act, the enforcement would be undertaken by the Federal Trade Commission.

Rep. Mason made a motion to pass out the bill favorably. The motion was seconded by Rep. Pauls. Rep. Empson posed the question that if the bill passed, would the FTC be rougher than the Attorney General enforcing the law? The motion carried and the bill passed out of committee favorably. Rep. Storm and Rep. Crow requested that their no votes be recorded.

Hearing on: HB 2831 - Workers compensation; motor carriers.

Tom Whitaker, director of governmental relations and membership services for the Kansas Motor Carriers Association, appeared as a supporter of the bill. The bill makes the following changes to Kansas' law governing independent owner-operators leased to licensed motor carriers: 1) removes language in K.S.A. 44-503(h) concerning owner-operators and places current law in a new section of the Kansas statutes, 2) amends the current definition of "licensed motor carrier", and 3) affirms in Kansas' law the current industry practice of charging back workers compensation insurance premiums to an owner-operator when so stated in a lease agreement or contract. (See Attachment 3)

No others were present to testify for or against the bill and Chairman Lane closed the hearing on HB 2831.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:05 a.m. on February 23, 1998.

Hearing on: **HB 2799 - Workers compensation insurance deductibles; permitting addition of allocated loss adjustment expenses.**

Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), appeared in support of the bill which he had requested the committee to introduce. The bill is designed to correct an old interpretation of K.S.A. 44-559a. The bill would change the narrow interpretation of "benefits", that limited deductibles to "benefits" paid for disability or medical expenses only. In surrounding states and the industry at large "benefits" usually include allocated loss adjustment expenses (ALAE) which is nothing more than costs directly associated with a particular claim. The bill did not have a hearing before the Workers Compensation Advisory Council. (See Attachment 4)

Dick Cook, Insurance Department, stated from the audience that they are not opposed to the bill and it would have no major effect one way or another on workers compensation.

Phil Harness, Director of Workers Compensation, also spoke from the audience. The department has no problem with the bill but he did suggest that an explanation of ALAE be part of the context of the bill or it could be added to regulations.

Mr. Smoot suggested that the definition be done by regulation as it is quite lengthy and would triple the size of the bill.

No others were present to testify on the bill and Chairman Lane closed the hearing.

Action on: **HB 2799 - Workers compensation insurance deductibles; permitting addition of allocated loss adjustment expenses.**

Rep. Grant made a motion to pass out the bill favorably and place it on the Consent Calendar. It was seconded by Rep. McCreary. The motion carried.

Action on: **HB 2831 - Workers compensation; motor carriers.**

A motion was made by Rep. Geringer to pass out the bill favorably and place it on the Consent Calendar. A second was made by Rep. Empson. The motion passed.

Chairman Lane adjourned the meeting at 9:32 a.m.

The next meeting is scheduled for February 24, 1998.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

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February 20, 1998

CONSUMER HOTLINE
1-800-432-2310

Representative Al Lane
Chairperson, House Business, Commerce & Labor Committee
State Capitol, Room 115-S
Topeka, Kansas 66612

RE: HB 2745

Dear Representative Lane:

During the hearing this morning on HB 2745, you indicated that you wished the Committee to have a copy of the Federal Trade Commission's Cooling Off Rule. Please find enclosed with this letter twenty (20) copies of the Rule.

Thank you for your consideration of this matter. If there is anything further our office can provide, please let me know.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

C. Steven Rarrick
Deputy Attorney General
Chief, Consumer Protection Division

CSR:GEB
Enclosure

*House Business, Commerce
& Labor Committee
2/23/98
Att. 1*

which a form must be mailed by a subscriber to prevent shipment of the selection.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)
(38 FR 4896; Feb. 22, 1973; 38 FR 6991, Mar. 15, 1973)

PART 429—RULE CONCERNING COOLING-OFF PERIOD FOR SALES MADE AT HOMES OR AT CERTAIN OTHER LOCATIONS

Sec.

429.0 Definitions.

429.1 The Rule.

429.2 Effect on State laws and municipal ordinances.

429.3 Exemptions.

AUTHORITY: Sections 1-23, FTC Act, 15 U.S.C. 41-58.

§ 429.0 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). The term *door-to-door sale* does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate

personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

(b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*—Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of Business*—The main or permanent branch office or local address of a seller.

(e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*—Any calendar day except Sunday or any federal holiday (e.g., New Year's Day, Presidents' Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day,

Thanksgiving Day, and Christmas Day.)

[60 FR 54186, Oct. 20, 1995]

§ 429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, *provided however*, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

(b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [Name of seller], at [address of seller's place of business] NOT LATER THAN MIDNIGHT OF [date].

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically the buyer's right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

[37 FR 22934, Oct. 26, 1972, as amended at 38 FR 30105, Nov. 1, 1973; 38 FR 31823, Nov. 19, 1973; 53 FR 45459, Nov. 10, 1988; 60 FR 54186, Oct. 20, 1995]

§ 429.2 Effect on State laws and municipal ordinances.

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws that provide the buyer the right to cancel a door-to-door sales transaction. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws and the ordinances of the political subdivisions of the various States. The rulemaking record in this proceeding supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be

accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.

(b) This part will not be construed to annul, or exempt any seller from complying with, the laws of any State or the ordinances of a political subdivision thereof that regulate door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this part. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale that is substantially the same or greater than that provided in this part, which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer a notice of the right to cancel the transaction in substantially the same form and manner provided for in this part, are among those which will be considered directly inconsistent.

[60 FR 54187, Oct. 20, 1995]

§ 429.3 Exemptions.

(a) The requirements of this part do not apply for sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller of vehicles with a permanent place of business.

(b) The requirements of this part do not apply for sellers of arts or crafts sold at fairs or similar places.

[60 FR 54187, Oct. 20, 1995]

PART 432—POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

- Sec.
- 432.1 Scope.
- 432.2 Required disclosures.
- 432.3 Standard test conditions.
- 432.4 Optional disclosures.
- 432.5 Prohibited disclosures.
- 432.6 Liability for violation.

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41-58).

SOURCE: 39 FR 15387, May 3, 1974, unless otherwise noted.

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DEERE & COMPANY

TWO RUAN CENTER, SUITE 325, 601 LOCUST STREET, DES MOINES, IOWA 50309-2586

JERRY D. PARKIN
Director
State Government Affairs



16 February 1998

The Honorable Al Lane, Chairman
Business, Commerce and Labor Committee
House of Representatives
Statehouse
300 SW 10th Avenue
Topeka, KS 66612-1504

Dear Mr. Chairman and Members of the Committee:

My sincere apologies for not being able to attend the hearing on House Bill 2742, which would amend existing Kansas law dealing with equipment dealerships and manufacturer agreements. I appreciate the chance to submit these brief written comments on the legislation.

I've had the opportunity to review House Bill 2742, both in my role as Chair of the Equipment Manufacturers Institute's State Government Relations Committee, and as the Director of State Government Affairs for Deere & Company. This bill would amend the existing Kansas laws to include a provision addressing the right to transfer the dealership.

We have no objections to House Bill 2742 in its current form.

Sincerely,

Jerry D. Parkin

cc Alan Alderson
Jeff Flora
Emmett Barker, Equipment Manufacturers Institute

*House Business, Commerce
& Labor Committee
2/23/98
Att. 2*



KANSAS MOTOR CARRIERS ASSOCIATION

P.O. Box 1673 ■ Topeka, Kansas 66601-1673 ■ 2900 S. Topeka Blvd. ■ Topeka, Kansas 66611-2121
Telephone: 785.267.1641 ■ FAX: 785.266.6551 ■ e mail: kmca@kmca.org

"If you've got it, a truck driver brought it!"



LEGISLATIVE TESTIMONY

by the

Kansas Motor Carriers Association

**Supporting House Bill No. 2831 – An act concerning workers
compensation; relating to subcontracting by licensed motor carriers.**

**Presented to the House Business, Commerce and Labor Committee
Rep. Al Lane, Chairman
Monday, February 23, 1998**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Tom Whitaker, director of governmental relations and membership services for the Kansas Motor Carriers Association. We appear here this morning representing our more than 1,350 member firms and the Kansas trucking industry. We ask for your support of House Bill No. 2831.

In July of 1997, the Division of Workers Compensation published a *News & Views Article* concerning the provisions of House Bill No. 2011. This publication indicated that it would be unlawful for a general contractor to charge back workers compensation insurance premiums to an independent subcontractor. The prohibition against the ability to "charge back" premiums also was published in the Kansas Association of Insurance Agent's *Technical Advisory, 1997 No. 3*. This determination sent a shock wave throughout the motor carrier industry.

*House Business, Commerce
& Labor Committee
2/23/98
Att. 3*

DARRELL ROSE
Dillon Stores Company
President

MICHAEL J. MAIER, II
Consolidated Freightways
Chairman of the Board

LESLIE J. UNRUH
Unruh Grain, Inc.
First Vice President

JERRY ARENSDORF
Arensdorf Trucking, Inc.
Second Vice President

JOHN LAHTROP
Roadway Express
Treasurer

LARRY "DOC" CRIQUI
Bailey Moving & Storage Co.
Corporate Secretary

HAROLD HESS
Magill Truck Line
ATA State Vice President

KELLY RECTOR
WSKT, Inc.
Alternate to ATA State Vice President

MIKE KELLEY
Executive Director

The ability to “charge back” premiums for workers compensation insurance to independent owner-operators has been a long-standing business practice for the trucking industry. In late August of 1997, the Division of Workers Compensation issued a revised *News and Views Article* reversing its earlier decision. The uncertainty created because of these advisory opinions is the reason the Kansas Motor Carriers Association requested House Bill No. 2831.

Our industry has relied on quality, independent owner-operators for many years. These independent businessmen have invested substantial resources to earn a living leasing to a licensed motor carrier under a long-term lease to transport freight. These independent owner-operators are not employees.

Such owner-operators are not paid a salary. They establish contracts with a licensed motor carrier for a percentage of the freight revenue. Owner – operators also pay the costs of insurance, fuel, license fees, federal heavy vehicle use tax and related costs incurred by the operation of their individually owned over-the-road equipment.

H.B. 2831 will not change current coverage requirements for owner-operators who elect not to be covered by an occupational accident insurance policy. The bill makes the following changes to Kansas’s law governing independent owner-operators leased to licensed motor carriers:

- Removes language in K.S.A. 44-503(h) concerning owner-operators and places current law in a new section of the Kansas statutes.

- Amends the current definition of “licensed motor carrier” by adding, “certificate of public service” to the list of necessary authorities. This provision reflects congressional amendments to section 211 of the Airport Improvement Bill of 1994.
- Affirms in Kansas’ law the current industry practice of charging back workers compensation insurance premiums to an owner-operator when so stated in a lease agreement or contract.

H.B. 2831 is a straightforward approach to guarantee that relationships between licensed motor carriers and independent owner-operators remain unchanged. We respectfully request your favorable consideration of H.B. 2831.

Thank you for the opportunity to appear before you today. We would be pleased to respond to any questions you may have.

BRAD SMOOT

ATTORNEY AT LAW

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STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL THE AMERICAN INSURANCE ASSOCIATION

KANSAS HOUSE
BUSINESS, COMMERCE & LABOR COMMITTEE
1998 HOUSE BILL 2799
FEBRUARY 23, 1998

I am Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), a trade association representing more than 270 companies providing property and casualty insurance, including workers compensation, to Kansas and the nation. We appreciate the opportunity to address H 2799.

H 2799 was graciously introduced by this Committee at our request. In 1991, Kansas enacted this provision to permit employers and insurers to negotiate large deductible workers compensation policies. Such policies add to the variety of coverage options employers otherwise have available, namely traditional first dollar coverage, self-insurance and group funded pool coverage. High deductible policies enable large employers to control their claims and losses without assuming all the risk associated with self-insurance.

The bill is designed to correct an old interpretation of K.S.A. 44-559a. The law refers to "benefits," (see line 18) and early interpretations of this term limited deductibles to "benefits" paid for disability or medical expenses only. This narrow interpretation is contrary to practice in the insurance industry and interpretations of the similar language in deductible laws in surrounding states, e.g., Colorado, Iowa and Arkansas.

In these states and the industry at large, "benefits" usually includes allocated loss adjustment expenses (ALAE) which is nothing more than costs directly associated with a particular claim. Such expenses might include legal and medical expenses incurred for the benefit of the carrier or employer in defense of the claim, expert witness fees, arbitration fees, copying charges, utilization review expenses and appeals fees. For employers who take direct responsibility for claims management, there are two advantages of including ALAE in the deductible: First, the employer can control the

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costs of defending the claim and assess the effectiveness of its loss control programs, and second, the employer can negotiate substantial premium discounts from the carrier. Of course, the workers compensation system benefits because employers are encouraged to settle claims promptly and fairly since the costs of defending the claim are paid by the employer.

The Workers Compensation Division and the Kansas Insurance Department have reviewed this proposal and it appears that this change does not affect any aspect of workers compensation system's pricing, assessments or other calculations.

AIA member companies would like to offer high deductible policies to Kansas employers which include ALAE expenses within the deductible and correspondingly, Kansas employers would like to have that option. We can find no reason why that option should be denied them. On behalf of AIA carriers and the employers they serve, we would ask that you act favorably on the modest change proposed in House Bill 2799.