

Approved: February 18, 2000
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 17, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:

Alan Alderson, Western Retail Implement & Hardware Ass'n.
Jack R. Selzer, Legal Counsel, Western Retail Implement &
Hardware Association

Others attending: See attached list

Upon motion by Senator Gooch, seconded by Senator Jordan, the Minutes of the February 15th meeting were unanimously approved.

SB 586 - Reimbursement for warranty work on farm equipment, outdoor power equipment and lawn and garden equipment

Alan Alderson, Legislative Counsel for Western Retail Implement and Hardware Association, stated the Association requested the legislation in **SB 586** and **SB 588** and introduced Jack Selzer, Legal Counsel, Western Retail Implement and Hardware Association, testified.

Mr. Selzer explained **SB 586** the legislation requires manufacturers to pay equipment dealers a fair hourly labor rate for repair work done on equipment that is under warranty by the manufacturer. **SB 586** ensures that manufacturers provide sufficient labor reimbursement and pay the true cost for equipment defects for which the manufacturer has given the consumer a written or implied warranty, and assures consumers that equipment dealers will give the same priority to warranty work as to non-warranty work. (Attachment 1)

Mr. Selzer requested an amendment to **SB 586, on Page 1, at Line 38 to insert a new subsection as follows: “(d) The provisions of this section shall not apply to a manufacturer who provides a written dealer agreement for compensation to a dealer for warranty labor costs either as (i) a discount in the pricing of the equipment to the dealer or, (ii) a lump sum payment to the dealer, provided such payment is not less than 5 percent of the suggested retail price of the equipment.”** (Attachment 2)

Senator Ranson raised a question as to the phrase “or greater than” at Line 32. Mr. Selzer responded he did not know why it was included and agreed that it should be deleted.

SB 588 - Contracts for farm equipment, outdoor power equipment and lawn and garden equipment

Mr. Selzer testified that the purpose of **SB 588** is to make adjustments and bring conformity among existing “buyback” statutes applicable to farm equipment repair parts, outdoor power equipment repair parts, and lawn and garden equipment repair parts and establish the manufacturer’s buyback at 95%. The increase in the buyback percentage allows dealers to recover actual cost in repair parts when closing out a dealership, and encourages dealers to carry adequate repair parts by assuring a fair price for any excess repair parts in inventory upon termination of dealership. A manufacturer is not required to

CONTINUATION SHEET

repurchase parts from a retailer under several conditions, including an amended section that would increase from 12 to 24 months those purchased prior to notice of termination.

The hearings on **SB 586** and **SB 588** were concluded.

The Committee discussed the proposed legislation, noted manufacturers had agreed to the legislation, and that there were no opponents to the legislation.

Senator Barone moved, seconded by Senator Donovan that SB 588 be recommended favorably for passage. The recorded vote was unanimous in favor of the motion.

Senator Barone moved, seconded by Senator Donovan that SB 586 be amended on Page 1, at Line 32 by striking the words “or greater than”, and inserting the word “as”; and at Line 39 by inserting the following new subsection: “(d) The provisions of this section shall not apply to a manufacturer who provides a written dealer agreement for compensation to a dealer for warranty labor costs either as (i) a discount in the pricing of the equipment to the dealer or, (ii) a lump sum payment to the dealer, provided such payment is not less than 5 percent of the suggested retail price of the equipment.” and SB 586 be recommended favorably for passage as amended. The recorded vote was in favor of the motion by a vote of: Yea - 7, No - 4.

The Chair informed the Committee it would consider **SCR 1641 - Formation of Enhanced 911 Tas Force** and **SB 521 - Enterprise Zone Act; eligibility for firms which construct or remodel only a portion of a business facility**, at the meeting scheduled for tomorrow. Bob Nugent, Revisor of Statutes advised the Committee that the Department of Commerce and Housing and the Department of Revenue had agreed on an amendment to **SB 521, as follows: On Page 1, at Line 16 strike “the sales tax exemption may be claimed” and insert “a project exemption certificate may be granted; at Line 19 add an “s” to the word “sale”; and on Line 22 before the “period (.)” add the following “as such person may elect.”**

The Committee adjourned at 9:00 a.m.

The next meeting is scheduled for February 18, 2000.

Testimony of Jack R. Selzer
Attorney with Seigfreid Bingham Levy Selzer and Gee
Kansas City, Missouri
On behalf of Western Retail Implement and Hardware Association
In support of Senate Bills Nos. 586 and 588

February 17, 2000

My name is Jack Selzer and I am an attorney for the Western Retail Implement & Hardware Association located in Kansas City. This is an association of farm equipment, industrial equipment, construction equipment, outdoor power equipment, lawn and garden equipment dealers as well as hardware and lumber dealers in the states of Kansas and Missouri. There are over 300 businesses in Kansas that are members of this association.

The Board of Directors for the Western Association requested that Senate Bill Nos. 586 and 588 be drafted, introduced and passed during this legislative session. It is for this purpose that I am before you today.

SENATE BILL 586—WARRANTY LABOR REIMBURSEMENT

Turning to Senate Bill No. 586, this Bill has as its goal the fair compensation to Kansas equipment dealers for warranty work performed on new equipment that is warranted by equipment manufacturers. In a nutshell, this Bill requires manufacturers to pay equipment dealers an hourly labor rate which is at least the hourly labor rate that the dealer currently charges consumers for non warranty repair work. That is, this Bill requires the manufacture to pay the equipment dealer a fair hourly labor rate for repair work done on equipment that is under warranty by the manufacture.

REASONS WHY THIS LEGISLATION IS NEEDED

Equipment manufacturers give various written and implied warranties on equipment that they manufacture and sell in your state. When this new equipment breaks down during the warranty period, the equipment dealer is required by contract-and by Kansas's statutes and common law-- to fix the equipment. This statute is needed because--

- It prevents the field testing of equipment at the expense of equipment dealers. Equipment dealers do not design or manufacture the equipment. If there are design or manufacturing defects, the equipment dealer should not bear the financial costs of repairing the equipment. Many equipment manufacturers do not provide sufficient labor reimbursement to their equipment dealers. If manufacturers pay the true cost for their equipment defects, the equipment will be better designed and manufactured. Consumers will benefit from this.
- It assures consumers that equipment dealers will give the same priority and devote the same energy and resources to warranty work as to non-warranty work. The dealer will be receiving the same compensation from manufacturers as it receives from consumers.

OTHER FEATURES

This Bill would apply to warranty work performed after July1, 2000 by farm equipment dealers, outdoor power equipment dealers and lawn and garden dealers. This legislation is similar to legislation that is in effect in many other states. Your neighboring state, Missouri, has such a

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statute. The law would not apply to situations in which the manufacturer has already accounted for appropriate dealer labor warranty compensation in its dealer agreement through dealer discounts or payments that are not less than 5% of the suggested retail cost of the equipment.

In summary, this Bill should lead to better-manufactured equipment while providing for fair labor compensation to Kansas equipment dealers.

SENATE BILL NO. 588

Turning now to Senate Bill No. 588, this Bill does some fine-tuning or adjustments to several long-standing Kansas statutes known as the “buyback statutes.” In general, these statutes require farm, outdoor power, and lawn and garden equipment manufacturers to buyback the new inventory of a dealer at the time of a dealership termination. Here are the adjustments—

- Farm equipment repair parts—the manufacturer will pay 95% rather than 85% of the current net price on repair parts.
- Outdoor power equipment repair parts—the manufacturer will pay 95% rather than 90% of the current net price on repair parts.
- Lawn and garden equipment repair parts—the manufacturer will pay 95% rather than 90% of the current net price on repair parts. The buyback obligation will apply if the dealer terminates the dealership agreement.

REASON FOR CHANGE

These buyback statutes have been law in Kansas for many years. The statute applicable to farm equipment manufacturers has been in effect since 1976. There has not been any litigation under these statutes and the manufacturers have complied with them. The increase in the buyback percentage allows the dealers to recover their actual cost in the repair parts when they are closing out their dealership. This change encourages a dealer to carry adequate repair parts by assuring the dealer a fair price for any excess repair parts in inventory upon dealership termination.

The changes also bring parity to the various types of dealerships. Under this Bill, no longer are the outdoor power equipment dealers or lawn and garden equipment dealers favored more than the farm equipment dealers in terms of the repurchase price. All three types of dealers will be entitled to 95%.

The Western Association sent copies of the proposed legislation to manufacturers, including John Deere, Case and Caterpillar for their comments and review. Several manufacturers did respond with comments and suggestions for change. Both Senate Bills reflect this process and incorporate changes requested by them.

SENATE BILL No. 586

By Committee on Agriculture

2-7

9 AN ACT concerning reimbursement for warranty work on certain
10 equipment.

11

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

13 Section 1. (a) As used in this section:

14 (1) "Contract" has the meaning provided by K.S.A. 16-1302 or 16-
15 1402, and amendments thereto.

16 (2) "Dealer" includes farm equipment dealers, as defined in K.S.A.
17 16-1202, and amendments thereto, or retailers, as defined in K.S.A. 16-
18 1302 or 16-1402, and amendments thereto.

19 (3) "Dealership agreement" has the meaning provided by K.S.A. 16-
20 1202, and amendments thereto.

21 (4) "Equipment" includes farm equipment, as defined in K.S.A. 16-
22 1202, and amendments thereto, outdoor power equipment, as defined in
23 K.S.A. 16-1302, and amendments thereto, or equipment, as defined in
24 K.S.A. 16-1402, and amendments thereto.

25 (5) "Manufacturer" includes farm equipment manufacturers as de-
26 fined in K.S.A. 16-1202, and amendments thereto, or suppliers, as defined
27 in K.S.A. 16-1302 or 16-1402, and amendments thereto.

28 (b) With respect to any equipment sold on or after July 1, 2000, any
29 warranty repair work performed for a consumer by a dealer under the
30 provisions of a manufacturer's express warranty, shall require the manu-
31 facturer to reimburse the dealer at an hourly labor rate which is the same
32 or greater than the hourly labor rate the dealer currently charges con-
33 sumers for nonwarranty repair work.

34 (c) Nothing in this act shall apply to, or operate or be construed to
35 invalidate, impair or otherwise infringe upon the specific requirements
36 of any contract or dealership agreement between a dealer and a manu-
37 facturer entered into prior to the effective date of this act, if such contract
38 or dealership agreement is in effect on the effective date of this act.

39 Sec. 2. This act shall take effect and be in force from and after its
40 publication in the statute book.

"(d) The provisions of this section shall not apply to a manufacturer who provides in a written dealer agreement for compensation to a dealer for warranty labor costs either as (i) a discount in the pricing of the equipment to the dealer or, (ii) a lump sum payment to the dealer, provided such payment is not less than 5 percent of the suggested retail price of the equipment."