

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 6, 2002, in Room 423-S of the Capitol.

All members were present except: Representative Flora - excused  
Representative O'Brien - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:  
Alan Alderson, Legislative Counsel, Western Association

Others attending: See attached list

Minutes of the January 16, 23, and 28 meetings were distributed. Chairman Johnson asked members to notify the committee secretary of any corrections or additions prior to 5:00 p.m. February 7, or the minutes will be considered approved as presented.

Representative Feuerborn requested introduction of a committee bill concerning agricultural liens filed on statements of harvesting to extend the filing time from 15 days to 30 days after completion of services. Seconded by Representative Thimesch, the motion carried.

**Hearing on HB 2660 - Repurchase of machinery, equipment and parts upon termination of dealership franchise agreements.**

Alan Alderson, Legislative Counsel, Western Association, appeared in support of **HB 2660** requested by their association to amend the buy-back laws which regulate the obligations of manufacturers of farm equipment, outdoor power equipment, and lawn and garden equipment to repurchase equipment and parts when a dealership contract has been terminated.

Mr. Alderson noted that a large manufacturer had expressed concern with the wording of the bill. The association offered an amendment to limit the exception to items which are "...ordered through the manufacturer,...or wholesale financed by the manufacturer," to make sure the manufacturer was actually a part of the transaction in which the dealer purchased the parts or equipment. (Attachment 1)

As there were no other conferees, the Chairman closed the hearing on **HB 2660**.

**Discussion and action on HB 2700 - Regulation of plant pests, plants and plant products and plant dealers and certain agriculture commodities.**

Chairman Johnson opened **HB 2700** for discussion and asked Raney Gilliland to review the bill for the committee.

Representative Schwartz offered an amendment to **HB 2700** on page 5, lines 31-34, proposing a maximum fee of \$50 per inspection of a plant, plant product or commodity; deleting the mileage charge; and limiting the certificate fee to \$50. Representative Feuerborn seconded the motion. (Attachment 2)

Following much discussion, Representative Schwartz, with Representative Feuerborn's consent, withdrew her amendment.

CONTINUATION SHEET

Representative Schwartz offered another amendment to **HB 2700** on page 5, lines 31-34, to limit the inspection fee to \$30 per hour; leave the mileage charge in; and cap the certificate fee at \$50. Seconded by Representative Hutchins, the motion carried.

Representative Freeborn moved to recommend **HB 2700**, as amended, favorable for passage. The motion was seconded by Representative Schwartz. The motion failed.

The meeting adjourned at 4:30 p.m. The next meeting is scheduled for February 11, 2002.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 6, 2002

NAME	REPRESENTING
ALAN ANDERSON	WESTERN ASSOCIATION
Jamie Clover Adams	KDA
Tom Sim	Kansas Dept. of Agriculture
Doug Wareham	KGFA / KARA
Tom TUNNELL	KGFA / KARA
<del>Rele...</del>	KDA
Ann Waylan	KSU
Ronald J. Duis	KMPA
LARRY Schuetz	KMPA
BETH RIFFEL	Grass & Grain
Diane Albert	KDOR-DMV
Janet Mpherson	Ks Farm Bureau
Jedd Johnson	KLA
Matt Bertholf	Ks. Co-op Council
CREG A. FOLEY	KDA

ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.  
ALAN F. ALDERSON\*  
JOSEPH M. WEILER  
DARIN M. CONKLIN  
MARK A. BURGHART\*  
DANIEL W. CROW\*\*  
LESLIE M. MILLER  
MICHELLE L. MILLER

2101 S.W. 21ST STREET  
TOPEKA, KANSAS 66604-3174  
MAILING ADDRESS: P.O. BOX 237  
TOPEKA, KANSAS 66601-0237

—  
(785)232-0753  
FACSIMILE: (785)232-1866  
WEB SITE: www.aldersonlaw.com

OF COUNSEL:  
BRIAN FROST  
THOMAS C. HENDERSON  
JOHN E. JANDERA (RETIRED)

—  
LL.M., TAXATION  
\*LICENSED TO PRACTICE IN  
KANSAS AND MISSOURI

**MEMORANDUM**

TO: Members, House Agriculture Committee  
FROM: Alan F. Alderson, Legislative Counsel, Western  
Association  
DATE: February 6, 2002  
RE: House Bill No. 2660

Mr. Chairman and members of the House Agriculture Committee I thank you for the opportunity to allow me to appear to present testimony in support of House Bill No. 2660. This bill would make some simple amendments to the so-called buy-back laws which regulate the obligations of manufacturers of farm equipment, outdoor power equipment, and lawn and garden equipment to repurchase equipment and parts when a dealership contract has been terminated. I appear today on behalf of Western Association, an association which manages several different associations and represents farm machinery and equipment, construction equipment and lawn and garden equipment dealers in several midwestern states.

Recently, as a result of dealership terminations which have already occurred, the Association has become aware that some manufacturers have taken the position that, when a dealership contract is terminated, they are not obligated by Kansas law to repurchase parts and equipment which have been purchased from other than the manufacturer or distributor. A strict reading of the three (3) laws which regulate repurchases of parts and equipment excludes from the repurchase requirement any equipment, attachment or repair parts which were acquired by the retailer from any source other than the wholesaler, manufacturer or distributor.

However, there are instances in which the dealer has acquired the parts from other sources at the direction or by the authorization of the manufacturer or distributor, and other instances in which the manufacturer or distributor arranges for the equipment or parts to be acquired and drop shipped from another source arranged for by the manufacturer or distributor. It is under these circumstances that we believe  
House Agriculture Committee  
February 6, 2002  
Attachment 1

the manufacturer or distributor should be required to repurchase these pieces of equipment and parts on the same terms as would be required if the dealer had obtained the equipment or parts directly from the manufacturer or distributor.

Our proposed amendments to the three (3) applicable Kansas statutes simply make an exception to the provisions which do not require repurchase of these parts or equipment.

Given the present economy and the rapidly declining number of equipment dealerships in Kansas, it is important that we protect our local Kansas businesses before they go out of business. Once a dealership franchise is terminated, it is often too late. Unless Kansas law on the books at the time a dealership goes out of business fairly protects the dealer, there may not be an opportunity to properly compensate our Kansas dealers for equipment and parts they have in stock.

Current Kansas law attempts to fairly apportion the liability for remaining parts and equipment by excluding from the repurchase requirement equipment and parts which either have no value to the manufacture or which, for some other reason, would make it inequitable for the manufacture to pay for that equipment or parts. Where a manufacture arranges for parts from another source to be stocked by the dealer, either by authorization or by shipment from a third-party source, the dealer should not be stuck with those pieces of equipment or parts therefor. Basic principles of fairness dictate that the manufacturer should repurchase those parts or equipment.

I am not prepared to present you with specific instances where a dealer has already been left "holding the bag" because of current law. Some of the problems have been negotiated satisfactorily. However, our law should not put a manufacturer in a position to avoid this responsibility when a dealership franchise is terminated.


This bill has been reviewed by at least two major manufacturers -- John Deere and Case New Holland, Inc. John Deere has indicated it has no problem with the bill, and Case New Holland has agreed with it in principle, but has asked that there be a clarifying amendment to insure its application does not include what they refer to as "approved attachments" -- those manufactured by third party sources that Case IH or New Holland tests for engineering compliance and approve for use with their equipment. Information about these attachments may have been obtained through company-sponsored dealer meetings or trade shows, and literature may have been sent to the dealers by the equipment manufacturer. However, the manufacturer does not want these items treated as if they were

"acquired from any source authorized or arranged for by the .  
. . . manufacturer."

Western Association is sympathetic to this concern and would offer an amendment to limit the exception we are requesting to items which are ". . . ordered through the manufacturer, . . . or wholesale financed by the manufacturer," to make sure the manufacturer was actually a part of the transaction in which the dealer purchased the parts or equipment.

I will try to answer any questions you might have.

Sincerely,

A handwritten signature in dark ink that reads "Alan F. Alderson". The signature is written in a cursive style with some capital letters.

Alan F. Alderson  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.

AFA:tmm\tla

1 ~~adopts rules and regulations fixing a different fee therefor under this~~  
2 ~~subsection.~~

3 ~~—(b) Such certificate shall be valid until the first day of September of~~  
4 ~~the year of issuance, except where the inspection is made after the first~~  
5 ~~day of May the certificate shall be valid until the first day of September~~  
6 ~~of the following year, unless sooner revoked.~~

7 ~~—(c) Any person who is not a nursery person but who owns or possesses~~  
8 ~~plants or plant products which such person wishes to have inspected or~~  
9 ~~who owns or possesses plants or plant products which such person wishes~~  
10 ~~to ship into another state or country, may request that the secretary in-~~  
11 ~~spect such plant or plant products with reference to the presence of any~~  
12 ~~plant pests or with reference to the presence of plant pests likely to pre-~~  
13 ~~vent the acceptance of such plants or plant products in such other state~~  
14 ~~or country. The secretary may comply with such request as soon as it is~~  
15 ~~conveniently practicable and shall issue a certificate setting forth the facts~~  
16 ~~of the inspection. The secretary shall charge and collect fees for such~~  
17 ~~inspection and certificate which shall be fixed by rules and regulations~~  
18 ~~adopted by the secretary so that the fee is the larger of the amount de-~~  
19 ~~termined on a rate per hour plus the mileage expenses incurred by the~~  
20 ~~inspector, which shall be at the mileage allowance rate prescribed by rules~~  
21 ~~and regulations adopted under K.S.A. 75-3203a, and amendments~~  
22 ~~thereto, or a dollar amount plus an amount per certificate, except that~~  
23 ~~such fees and amounts shall not exceed fees at the rates of \$20 per hour~~  
24 ~~plus such mileage expenses incurred by the inspector or \$50 plus \$50 per~~  
25 ~~certificate, whichever is the larger amount. Upon request the secretary~~  
26 ~~may provide inspection services for certification purposes of regulated~~  
27 ~~articles intended for shipment interstate or internationally. Upon payment~~  
28 ~~of the appropriate fee as established by rule and regulation and as in-~~  
29 ~~spection personnel are available, the inspection shall be conducted and a~~  
30 ~~report or certificate setting forth the inspection results shall be issued if~~

31 ~~requested. Inspection fees shall not exceed \$100 per hour. Mileage in-~~ \$50 per inspection of a plant, plant product or commodity.  
32 ~~curring shall also be paid by the person requesting the inspection at the~~  
33 ~~rate established by regulation. If certificate is requested an additional fee~~

34 ~~not to exceed \$100 shall be assessed.~~ The fees for such inspection and \$50  
35 certificate in effect on the day preceding the effective date of this act  
36 shall continue in effect until the secretary adopts rules and regulations  
37 fixing a different fee therefor under this subsection except that on and  
38 after July 1, 1996, the certificate fee shall be \$5 for certificates issued for  
39 plant and plant products shipped into another state and \$20 for plants  
40 and plant products shipped into another country until the secretary adopts  
41 rules and regulations fixing a different fee therefor under this subsection.  
42 In any case where any intended receiving state or country requires or  
43 authorizes the certification of nursery stock, plants or plant products, *bees*