



Our Members Bring Choice, Value and Innovation to Agriculture

March 12, 2018

Senator Mike Petersen, Chair
Senate Committee on Transportation
Kansas State Capitol
300 SW 10th Street - Room 546-S
Topeka, Kansas 66612

Re: Opposition to Kansas Senate Bill 426 related to dealership agreements for farm equipment

Dear Chairman Petersen:

The Farm Equipment Manufacturers Association represents more than 700 manufacturers, suppliers and distributors of farm implements. The vast majority of our members are small, family-owned companies providing good manufacturing jobs in rural communities across North America. In the state of Kansas, we have more than 50 member companies, and we have identified 27 additional small Kansas manufacturers we believe would be affected by this proposed change.

It is on behalf of these implement manufacturers that I respectfully ask you to consider our opposition to SB 426 as it was introduced.

In its current form, SB 426 includes substantial revisions of current Kansas law that would: (1) significantly expand manufacturers' warranty reimbursement obligations, (2) prohibit manufacturers from expanding their dealership footprint or effectively managing their dealership networks in Kansas, and (3) rewrite (or even void) key provisions of now-existing, arm's-length negotiated dealer agreements, and undercut a manufacturer's right to determine who sells its products in the state. More specifically:

- SB 426 purports to impose a 15% surcharge on manufacturers for all warranty reimbursement work conducted by dealers in Kansas. This 15% surcharge is not remuneration for work performed by dealers; dealers are already compensated for the hourly labor devoted to warranty work and for the repair parts utilized in performing that work. Instead, SB 426 imposes what amounts to a manufacturer-specific tax for conducting business in the state of Kansas.
- SB 426 drastically limits the manner in which manufacturers manage their dealership networks by introducing an exceedingly broad definition for what constitutes a "change in competitive circumstances" which includes "approval of a new authorized retail dealership location or relocation of an existing retail dealership location." Ostensibly, this definition prohibits manufacturers from appointing additional dealers *anywhere in the state of Kansas* without first establishing good cause, regardless of whether the manufacturers' current dealers are non-exclusive. In addition, SB 426 purports to apply retroactively to all dealer agreements, working to legislatively modify long-standing, bargained-for agreements negotiated at arm's length.

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- SB 426 removes a provision in current law allowing manufacturers and independent dealers to build a portion of future warranty repair costs into a discount on equipment sold to dealers.
- It declares that manufacturers' warranty reimbursement policies and procedures shall be deemed "unreasonable" to the extent they conflict with provisions of this proposed legislation.
- Finally, SB 426 removes a manufacturers' ability to analyze "the issuance or transfer of a non-controlling ownership interest in a farm equipment dealer." This troubles our members because SB 426 does not define "non-controlling interest," which means Kansas law would prohibit our members from analyzing and approving the transfer of significant portions of their dealers (presumably up to 49.9% of stake in said dealers) regardless of to whom the dealers are selling their business interests. This raises the potential that our members' dealers could sell large stakes in their business to competing manufacturers who would then have access to competitive information relating to our members' dealership networks and strategic business plans. Our members invest significant sums of money in their dealership networks and have a vested interest in how their dealerships are run. Because of this, our members should have a say in any transfer of a dealer's ownership, regardless of how much of the dealership is being transferred.

It is not hyperbolic to say that SB 426 threatens the economic viability of our members' businesses. Our members often do not have the financial wherewithal to absorb a 15% uptick in monetary warranty reimbursement expenses, or the luxury to rely on statewide, single-dealer networks, especially when any of their in-state dealers persistently underperform. And, certainly, our members cannot be expected to make significant investments in a state whose laws undermine their ability to control how their products get to market.

It is for these reasons we cannot support SB 426 in its current form.

We appreciate your consideration, and look forward to working with Kansas dealers and you to address any issues that you may have relating to our opposition.

Respectfully submitted,



Vernon F. Schmidt
Executive Vice President
Farm Equipment Manufacturers Association