

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1203

2001 HOUSE AGRICULTURE

HB 1203

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1203

House Agriculture Committee

Conference Committee

Hearing Date 1-25-2001

Tape Number	Side A	Side B	Meter #
THREE	A		1780 TO 5184
Committee Clerk Signature <i>[Handwritten Signature]</i>			

Minutes:

1A:1780 CHAIRMAN NICHOLAS: We will open to hearing on HB 1203.

1A: OLE AARSVOLD: For the record my name is Ole Aarsvold. I appear before you as a sponsor of HB 1203. In this age of incredibly costly machinery and very narrow farm margins, it is essential that the farmers of this state and our local dealers have the protection afforded by HB 1203. I solicit your favorable recommendation.

1A:2175 CHAIRMAN NICHOLAS: Who would like to testify next?

BOB LAMP: I represent the ND Dealers Association. We support HB 1203. It is important to point out to the committee that what is really driving this Legislation is a current law that we are asking to be repealed. The ND CENTURY CODE BILL 510707. It relates to the purchaser being able to return equipment. It gives the purchaser the ability to rescind the sale. What is a reasonable time to return the equipment after time of sale. What is reasonable fit?

That is not pointed out in the Bill. In todies world the implement dealer is there to satisfy the warranty. Take care of there farm customers. The problem with the code is leaves it up to what an individuals perception is. We need a new approach. The lemon law come in etc. We have run this Bill past several manufactures and they do not have any problem with this Bill. HB 1203 it self points out the importance of the Bill. I do have a couple of dealers that would like to testify.

1A:2694 REPRESENTATIVE LEMIEUX: When we talk warranties. This Bill is predominately for new machinery.

1A:2747 BOB LAMP: This Bill would not effect that circumstance at all.

1A: CHAIRMAN NICHOLAS: I will take additional testimony.

JOHN SCHABERT I am the John Deere dealer from Dickinson, ND.

I am here to speak in favor of HB 1203. My big interest in the Bill is that I have had some problems that we would like to repeal. I sold a tractor to a purchaser. During the course of the sale we negotiated a warranty that was acceptable to both of us. The warranty was for a period of through the planting season of the next year. During that time frame he did invoke the warranty once. He told me what it cost him to repair the machine and I reimbursed him for it. He sent a note and told me that the tractor was working fine and he was real happy with it. Later on that fall after he had used the machine all summer and into the fall work. He had some problems with the tractor and took it to another dealership which I was not aware of. I had lived up to our negotiated dealership. He had had the tractor for nearly two years and the tractor was know thirteen years old. The end result of that: He ended up suing me and in the trial the judge sited this section 510707. He held me responsible to the tune of sixteen thousand dollars.

for the repairs that was done to the used tractor. Even though I did not do it in my shop. He had the work done somewhere else. The judge overruled the express warranty that we negated at time of purchase. I think that HB 1203 will be a remedy to the problem. The Bill give time limits so that everyone know what the limits are right from the start.

This warranty would preclude the machinery from being taken to to home repair shop. Most of the machinery is take back to the seller of the machinery for warranty work. A custom combined would be a different situation. The machine would be taken to a licensed authorized dealer.

1A: REPRESENTATIVE BERG: This new Bill would not help you in your present dispute.

1A: JOHN SCHABERT: That's right.

1A: REPRESENTATIVE LEMIEUX: I have always thought that what was sold was buyer be ware.

1A: JOHN SCHABERT: I have been told by a judge that you can't sell something "as is" It has to be fit for something. It has to serve a purpose. Unless you bought it for parts.

1A:4444 CHAIRMAN NICHOLAS: What you are telling us is that if you have an implied warranty. This was a used equipment that you are being sued for. You had an implied warranty. Sometimes you buy used equipment and the dealer says I will warrant for ninety days or whatever. I will put this writing, etc.

1A:4476 JOHN SCHABERT: There are two different warranties. There is the express warranty which everything is written out. It tells what the customer gets at the time of the sale.

The implied warrant is what basically addressed by 510707. The implied warranty is that the

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House Agriculture Committee

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equipment is fit to do what is for what it is purchased. The warranty on used equipment must be negotiated by the dealer and the customer at the time of the sale.

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House Agriculture Committee

Conference Committee

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Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 1021
Committee Clerk Signature <i>Edward Ellyson</i>			

Minutes:

CONTINUED:

A customer of example; you buy a use tractor from me and you are paying \$25,000.00 for it. That's a lot of money and you might ask for some kind of a warranty. If something goes wrong with the machine and it needs to be hauled, we will split it fifty fifty. If we both agree to that then you are covered. At least you know what your share is going to be if something goes wrong but if you come into me and I tell you I want \$25,000.00 for the machine. The purchaser says he will pay \$20,000.00 for the machine. Then, as the dealer, I would say O.K. but then you are buying the tractor AS IS. Then the purchaser is taking \$5,000.00 of the purchase price. Then you know that you the purchaser is taking the risk. That should all be negotiated between the dealer and the customer. I don't think that it should be written into a law that favors either party.

1A:88 CHAIRMAN NICHOLAS: Any other questions committee members?

REPRESENTATIVE LEMIEUX: When I refer back to Bob Lambs testimony where he has the statues sighted in which and we go down to the line where it says if it dose not prove to be reasonable fit for the purpose for which it was purchased. Where dose it imply that the dealer is liable and not the manufacture.

MR CHAIRMAN AND REPRESENTATIVE LEMIEUX: It dose not imply that. In fact what it says is that the recourse is to rescind the contract and that is why the case that I'm involved in is in the Supreme Court now. Because the customer that I'm dealing with had no intention of giving up the tractor. He did not want to give it back to me and even take the case back for what he paid for it. He wanted to keep the tractor. He just wanted me to pay to pay the repairs and the judge agreed with him. That why were in court. The part about this law that is so vague is the reasonable amount of time.

1A:253 CHAIRMAN NICHOLAS: Any other questions committee members. O.K. Thank you sir. Who else would like to offer testimony.

OUT GOING PRESIDENT OF THE N.D. IMPLEMENT DEALER ASSOCIATION: Fran? We have two dealerships. Central Sales and we are a silver seder dealer in Jamestown and Casselton. I would like to speak in behalf of the Dealers in N.D. also in favor of this new legislation....perposed legislation. We feel the manufactures are liable and we want to honor and work on behalf of our customers. Make sure the manufacture is taking care of them and the product. We can sell with a warranty or without one. We suggest that the purchaser visit with the previous owner.

1A:465 CHAIRMAN NICHOLAS Any other questions committee members.

REPRESENTATIVE LEMIEUX: Fran, what about the situation were manufactures put those lemons out there. For example these new machines with the electronic components. We get out here five years and you take a \$100,000.00 dollar machine that has an electrical bug in it, it can cost you thousands of dollars. Loss of time. Should we address that issue in this law. That the manufacture has to stand behind the machine for a longer period. Should we force the manufacture to stand behind there equipment. ANSWER: Manufactures do a lot to help the customer. They ask manufactures for help in situations. We dealers that are left want to keep a customer happy. We provide loners. We trade. We want to keep our image so that we can continue in business. I think this bill put enough teeth in this bill. We don't need to ask the manufactures for anymore then they have promised but they should follow through on there warranties

1A:758 CHAIRMAN NICHOLAS: Any other questions committee members.

JOHN OLSON: Good morning Mr. Chairman and committee members: My name is John Olson. I here today on behalf of Caterpillar. One manufacture that does business in the state. I am going to hand out an amendment which really kind of explains our position. It is a pretty simple amendment. Caterpillar, is the only of Butler Machinery I believe is the only dealer in N.D. for Caterpillar Equipment. Am I correct on that. On section six the last half of the section is says if warranty work repair work is performed under a manufacture's express warranty. The manufacture shall reimburse at the hourly labor rate that is the same or greater then the dealer presently charges consumers for non-warranty work. This section really defines the term of the contract between the dealer and the manufacture. My understanding is that caterpillar had a different arrangement with its dealers. It will discount the machine at the

time of the sale by manufacture to dealer and that discount reflects the warranty work labor that is being performed as warranty service of that machine. So this amendment simply allows the dealer the option, not the manufacture but the dealer the option to have that right to negotiate that separate manufactures required reimbursement. In association with the warranty. The terms of the warranty work. I have spoken to Mr Lamp, I don't believe the dealers of any objection to this. I don't know why they would because they still maintain the right to dictate the terms of the warranty repair work. I would be happy to answer any questions.

1A:980: CHAIRMAN NICHOLAS: Any questions from committee members. Thank you John. Anyone else wishing to appear in option to the bill. The committee will close the hearing on this Bill. HB1203

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1203

House Agriculture Committee

Conference Committee

Hearing Date Feb. 9, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-8.75
Committee Clerk Signature <i>Edward [unclear]</i>			

Minutes:

Robert Lamp: Written testimony.

Jennifer Clark: Written testimony.

Chairman Nicholas: Close the hearing.

Rep Lloyd: I move the amendmets.

Rep Mueller: I second.

Rep Berg: I move a do pass as amended.

Rep Pietsch: I second.

12 yea, 2 nay, 1 absent Carrier Rep Lemieux

Prepared by Caterpillar Inc.

PROPOSED AMENDMENTS TO HB 1203

Page 5, line 8, after "work." insert "In addition, the dealer shall have the right to accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above."

Renumber accordingly

10315.0102
Title.0200

Adopted by the Agriculture Committee
February 9, 2001

VR
2/9/01

HOUSE AMENDMENTS TO HB1203 HOUSE AGR. 2-9-01
Page 5, line 8, after the period insert "The dealer may accept the manufacturer's or supplier's
warranty labor reimbursement terms and conditions in lieu of the above."

Renumber accordingly

2-9-01

Date:
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~203~~

House AGRICULTURE Committee

Subcommittee on _____

or
 Conference Committee LLOYD - MUELLER

Legislative Council Amendment Number 10315.0100 Amend # 10315.0102 title 0200

Action Taken DO PASS

Motion Made By BERG Seconded By PIETSCH

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller		✓
Michael Brandenburg	✓		Kenton Onstad		✓
Joyce Kingsbury	✓		Sally M. Standvig	✓	
Myron Koppang	✓		Dennis J. Renner		
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes) 12 No 2

Absent 1

Floor Assignment LEMIEUX

If the vote is on an amendment, briefly indicate intent:

