

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

19266

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La Costa Rickford  
Operator's Signature

10/3/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1266

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1266

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/27/03

Tape Number	Side A	Side B	Meter #
3		x	31.2-end
4	x		0.00-6.7
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Kelser opened the hearing on HB 1266.

Rep. Delzer, District 8, introduced HB 1266. (See attachments 1 & 2) This bill will make changes in return policies for retail implement dealers.

Rep. Ekstrom: Why is gardening machinery included?

Rep. Delzer: This is what the manufacturer has to allow the retailer who is going out of business to return as unsold goods. Currently, lawn and garden equipment is not included in that category of merchandise.

Rep. Froseth: What are Minnesota and South Dakota doing in situations like this?

Rep. Delzer: I can't answer that.

Rep. Severson: Most manufacturers dictate a quota that must be sold or stocked in order to be a distributor for that line. The original isn't out anything because they've been paid for those wholesale goods. Yet an individual who goes out of business with all the parts and tools have no recourse. This law provides an opportunity to reclaim some of what they've paid for but not sold.

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**Rep. Delzer:** Remember, there is a situation where big dealers (Case I-H, John Deere) are tempting to decrease the number of dealers in the state. 51% of a business has to be owned by a family in order for that dealership to stay in business.

**Chairman Keiser:** When you calculated your percentages, did you consider what the original price was to the wholesaler/retailer, restocking fees, or return shipping and transportation costs?

**Rep. Delzer:** Some of the discussion was that it should be half all way across the board, I put this together just so I could get it in front of the IBL committee.

**Elmer Schwartz,** testified in support of HB 1266 ( See attached)

**Rep. Thorpe:** Is this similar to what we did in legislation last session for recreation industry?

Was lawn and garden under a separate merchandising contract from farm contracts?

**Schwartz:** Yes. The lawn & garden in with the agricultural equipment is a good move. We had up to 50 vendors and a franchise contract for the lawn and garden equipment which we were expected to carry in order to support their product.

**Rep. Ruby:** Does this encompass all areas, all the short lines? Is there rewording you can suggest that would improve this bill?

**Schwartz:** Yes, in the last paragraph of my letter there we are requesting a do pass but to include *the suppliers of commodity items* and also dealer discontinuation language needs to be added.

**Rep. Johnson:** In the contracts that you have with a franchising group where you were required to purchase so much equipment and parts, were there provisions or could areas be added that would delineate what the buyback would be in case of a termination contract or bankruptcy?

**Schwartz:** We weren't forced to try any particular product or any particular parts other than the fact what was expected to do a good job in handling their product. They maintained a list of

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recommended parts and accessories you should carry. With 50 vendors you have 50 contracts with different terms. They only look at what is required of them by state law when they terminated my contract.

**Bob Lamb, ND Implement Dealer's Association:** Current law states that it applies whether the dealer is terminated by the manufacturer or the dealer voluntarily terminates. In most sales and service agreements the manufacturers do have provisions regarding what happens if a dealer goes out of business. Unfortunately, it's slanted toward the manufacturer, not the dealer. Under present law, the dealer has the right to choose whatever remedy is in their best interest: a sales and service agreement or North Dakota law, they can use that. The problem with the contracts is that they are not negotiated between the dealer and the manufacturer. The manufacturer provides a contract and the dealer can agree or not carry that line of machinery. Lots of dealers have merchandise on their lots that they are not required to carry but they are governed by market share requirements.

**Rep. Ruby:** What do you think about the percentages of payback? Do you see any necessary changes?

**Lamb:** Are you referring to the specialized tools or general?

**Rep. Ruby:** General.

**Lamb:** This bill has been on the books since 1961 or so. In many other states, that requirement is 100% buyback. Relative to the percentages on tools, that's more difficult. If they are new and used, that percentage is probably too low (50%) If they are used, what is the true value?

**Rep. Froseth:** Are they expected to pay 100% of hold over merchandise?

**Lamb:** If it's in their current price catalogue, it's 100%.

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**Rep. Severson:** Do you think it would behoove us to look at an amendment to avoid the scenario that happened with Evinrud etc.

**Lamb:** There is a provision in current law relating to successor ship and what it says is this: Any successor in interest to those bankrupt companies or those who have gone out of business, if someone else acquires that company, they have the same obligations to the dealer as the previous company did. In this case, this bill relates to farm equipment and automobiles. It's been amended over the years. A different section of the code would address the issue you're talking about.

**Rep. Thorpe:** Shouldn't it be incumbent on a manufacturer to make sure a dealer is a viable business when a contract is mandated?

**Lamb:** This law has been on the books for a long time. Over 200 dealerships have gone under or out of business in the past two decades. The legislature has passed laws that have worked well.

**Alvin Schwartz,** testified in support of HB 1266 (See attached) I continue to sell parts, on a yearly contract basis. We need to add some other language. Short line companies will not give you a written contract. And yet you have to stock some pretty expensive sprayers etc. I believe that invoices should constitute as legal contracts.

As there was no one present to testify in opposition to HB 1266, the hearing was closed.

