

HOUSE BUSINESS & INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on March 9, 1983, in Room 420 of the Capitol Building, Helena, Montana at 9:00 a.m. All members were present except Rep. Howe, Kadas and Fabrega who were excused.

SENATE BILL 432

SENATOR SMITH, District 1, sponsor, opened by saying the purpose of this bill is to provide some protection to retailers of farm equipment and vehicles if a distributor wishes to cancel a contract with that dealership. With this legislation, those distributors will have to buy back stock and equipment. We had the John Deere dealership cancelled because they felt there should only be one dealership in each county. They should, therefore, be obligated to buy the equipment back if it's in good condition. Neil Simon contacted me with amendments to propose and I have no problem with them. We did not intend to affect Western Auto, or Northern Auto Parts, or Midas Mufflers so that if they cancelled out they would be required to take that equipment back. It's possible for a distributor to unload their equipment on a dealer and then cancel them so they are stuck with everything.

PROPONENTS:

REP. JACOBSEN, District 1: This legislation was passed in the House last session and then killed in the Senate. This year we decided to try the Senate first - it passed. We are hopeful it will pass the House.

BLAKE WORDAL, Managing Director of the Montana Hardware and Implement Association: Our association opposed the bill last session because it was too general. This bill is modeled after the Minnesota statute and has been endorsed by our board. It clearly states what parts will be bought back by the distributor and provides an important section relating to the automobile dealers. Farm implements are tied to large, expensive expenditures and the loss of a franchise can simply bankrupt a thriving business through no fault of the dealer. Dealers are forced to auction what they can at significant losses and sacrifice the rest. We believe SB 432 is a good vehicle to eliminate these inequities. (Exhibit #1)

JERRY RAUNIG, Montana Automobile Dealers Association: We support this because several of our members are also farm implement dealers. Six years ago when we passed the Montana Franchise Act, we felt this was sufficiently covered but in the course of the last three years we have found some problems in that there are some catchy little phrases that get us into trouble. This is a good piece of legislation and it will help many people.

REP. WALLIN: I am a proponent of this bill. In my case, we have this in our agreement and we would have no problem with the factory. This will not benefit me in any way, but some dealers need this protection.

PONENTS:

NEIL SIMON, International Franchise Association: We represent 360 franchise companies. The proponents have no problem with my amendments. On page 1, line 10 inventory includes among other things automobiles, trucks and repair parts. My concern is with repair parts being left out there all alone. Repair shops alone may be regulated under the bill. We should add "sold by an automobile or truck dealer." We should also specify "dealership contract" instead of just contract in section 2. I urge you to amend this bill. (Exhibit #2)

SEN. SMITH, in closing, said it is not his intention to involve other kinds of dealerships in this bill and he hopes the committee will amend and concur with this bill.

QUESTIONS:

REP. FAGG: Has anyone been hurt by this in Montana? Rep. Jacobsen: The International Dealer went through extensive court action and expense. Rep. Fagg: I don't know that we should pass a law protecting a private businessman. No one protects architects or other private businessmen. We are protecting them from poor management or poor legal advice. Rep. Jacobsen: I had this experience. You have in stock inventory that the company as well as yourself will make a profit on. There should be an obligation both ways. Sen. Smith: The distributor forces stock on the dealership and tells them they must sell it. Unless he has an ironclad agreement, he's stuck.

REP. LYBECK: Mr. Raunig, is this a problem with automobile dealerships? Mr. Raunig: One problem right now is Fiatt has announced they will no longer sell in our country. They will not buy back anything. There is no place to sell the parts and stock. The manufacturer has an option to buy back the parts and sell them - the dealer does not.

REP. HARPER: In section 5 on page 4, it seems to say the act doesn't affect contractual rights and in section 7 on page 5, you see that the remedy is supplemental and the wholesalers can pursue either this remedy, his contract remedies or both. I wonder what the interplay is going to be between this and existing contracts. How many old contracts are we automatically setting a floor on with this bill? Doesn't this automatically lift up to that base existing contracts?

Neil Simon: That is standard language in the 20 state laws that are in existence. Most dealers have contracts that protect them. Notice this is only on new parts. Rep. Harper: The wholesaler should have a right under that contract to expect his dealers to sell his products - you are providing a new base and saying he doesn't have to. Blake Wordal: There is a time limit. A franchise agreement is a valuable thing to have and no one cancels them for no reason. This gives an option.

SENATE BILL 420

SEN. THOMAS, District 20, sponsor, opened by saying this bill revises the Electronic Funds Transfer Act by eliminating the

ceiling on charges of 125% of the average transaction cost but allowing a reasonable return on the owner's equity, and by requiring that any financial institution be allowed to use any automated teller machine, allowing many smaller banks into the program. The banks have all agreed on this bill and we hope you will look favorably on it.

PROPOSERS:

GARY GIBSON, First Bank, Helena: We stand in support of this bill.

JOHN CADBY, Montana Banker's Association: This removes the price ceiling and allows the free market to fix it, and it allows automated teller machines by bank customers whether they're customers of a system bank or an independent bank. All the banks in Montana support this bill.

STEVE BROWN, Independent Bankers: We are in support of this legislation.

OPPOSERS: none

QUESTIONS:

REP. METCALF: Any bank can use these machines under this law?
Sen. Thomas: They can enter into an agreement.

EXECUTIVE SESSION:

SENATE BILL 420

REP. HARPER: I move SENATE BILL 420 BE CONCURRED IN.
QUESTION: The motion carried unanimously.

SENATE BILL 432

REP. KITSELMAN: I move SENATE BILL 432 be amended by those presented today.
QUESTION: Motion carried unanimously.


REP. KITSELMAN: I move SENATE BILL 432 BE CONCURRED IN AS AMENDED.
REP. FAGG: I have some problems with this bill because it's so broad. To let anyone cancel and make the wholesaler responsible is too much...it goes too far.
REP. WALLIN: I agree with the point Rep. Harper brought up. In my particular case, anything that is in the price book is returnable. If a car is old, the factory might have to go out and have a jobber make that particular part and they should not have to take back those parts. They cannot sell it to someone else. I would like to include that particular protection to the wholesaler.
REP. FAGG: I would like to amend it on line 13 by striking the word "retailer" and on page 4, section 4 strike the entire thing.

MARCH 9, 1983

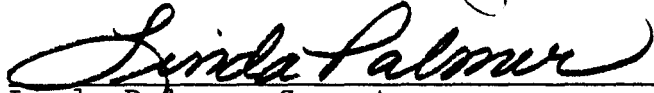
Page 4

REP. METCALF: We will defer action on this bill until tomorrow when some amendments can be worked out. Rep. Wallin will do this.

The hearing adjourned at 10:00 a.m.



REP. JERRY METCALF, CHAIRMAN



Linda Palmer, Secretary

STANDING COMMITTEE REPORT

MARCH 9

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SPEAKER:

MR.

We, your committee on **BUSINESS & INDUSTRY**

having had under consideration **SENATE** Bill No. **420**

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**A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
ELECTRONIC FUNDS TRANSFER ACT TO ELIMINATE COST RESTRICTIONS
AND TO ALLOW SHARING OF OFF-PREMISES AUTOMATED TELLER MACHINES
WITHIN THE STATE; AMENDING SECTIONS 32-6-203 AND 32-6-204, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **420**

~~XXXXXX~~ **BE CONCURRED IN**

~~DO PASS~~



**MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION**

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the advocate for Montana and Northern Wyoming retail hardware and farm implement dealers

TESTIMONY ON SENATE BILL 432

Mr. Chairman and members of the House Business and Industry Committee, I am Blake Wordal, the managing director of the Montana Hardware and Implement Association. Our association represents retail hardware and farm implement dealers in Montana and northern Wyoming.

We strongly support Senate Bill 432. This legislation is protective legislation for our dealers when a franchise is cancelled and has been adopted in 20 other states. Similiar legislation was introduced in the last session of the Montana Legislature and passed the House with little dissent. It was defeated, however, in a Senate Committee because our association opposed the bill as too general and too vague. At that time, we pledged to return with legislation based on the law in Minnesota. The bill you have before you is modeled after the Minnesota statutes and has been unanimously endorsed by my Board of Directors and the general membership at our 1982 convention.

When this type of legislation was first considered in other states, the battles between retailers, wholesalers, distributors and manufacturers were hard fought. After several of these fights, retailers and manufacturers decided that the best avenue to resolve their problems was to compromise. The Minnesota law was the result and has been used as a model in most other states.

This bill clearly states what wholegoods and parts will be bought back by the wholesaler, manufacturer or distributor; the amounts to be reimbursed; how the transaction shall take place; and provides an important section relating to the death of a dealer or major stockholder. Industrial equipment and automobiles have been included in this legislation at the request of their representatives.

The farm implement industry is one where a retailer's assets are tied into large, expensive machinery and parts. The loss of a franchise can simply bankrupt a thriving business through no fault of the dealer. He or she can be left with hundreds of thousands of dollars in inventory and no future relationship for service, parts or even updated information from the manufacturer, wholesaler or distributor. As the law now stands, the manufacturer, wholesaler and distributor have no responsibility to repurchase items bought by the retailer in good faith that their relationship would continue. He or she have very few alternatives. There are few farmers or ranchers who will buy merchandise from a farm implement dealer who is unable to service the equipment. Dealers are forced to auction what they can at significant losses and sacrifice the rest.

Senate Bill 432 is a very good vehicle to eliminate these inequities. I urge your favorable consideration of this legislation and will be happy to answer any questions the Committee members might have. Thank you.

STATEMENT OF NEIL SIMON ON BEHALF OF THE INTERNATIONAL FRANCHISE
ASSOCIATION BEFORE THE BUSINESS AND INDUSTRY COMMITTEE ON S.B. 432
MARCH 9, 1983

Good morning Mr. Chairman and members of the committee. My name is Neil Simon, I represent the International Franchise Association, a Washington D.C. based organization representing approximately 360 franchising companies throughout the United States. Many of our members do business in Montana, and others intend to do so in the future.

More than 1,800 companies, representing over 40 industries use the franchise method to distribute their goods and services. Most are small businesses, in fact, 65% of all franchisors have fewer than 50 units. The strength of this system is evident in a rate of success for franchising which is estimated to be two to five times greater than that of other small businesses.

The source of the International Franchise Association's concern about S.B. 432 revolves around the over 35,000 franchised establishments dealing in automobile products and services, many of whom are represented by IFA. I'm not here talking about automobile dealers, but about companies such as Western Auto, AAMCO Transmissions, Midas Mufflers and Ziebart to name but a few.

Despite the fact that these companies do not, I repeat do not,

deal in farm implements or equipment, they fall under ~~the~~ ambit of the legislation because of the broad definition of the term "inventory".

As defined by section 1(2) (c) of the bill, inventory includes "automobiles, trucks and repair parts." As a consequence of this definition, franchisors involved in automobile repair and auto parts sales may be required to repurchase their franchisee's inventory in the event that the franchise agreement is terminated.

Without passing judgement on the application of ~~the~~ legislation on manufacturers, wholesalers and distributors of farm and industrial equipment, I can state that it would be inappropriate and ill advised to include franchisors under the coverage of this bill. Indeed, I am not certain that it is your intent to further regulate these franchises at all.

Unlike farm implement and equipment dealers, franchising is regulated under the Federal Trade Commission Rule on Franchising. It requires full disclosure of all relevant information to the prospective franchisee before the contract is executed. Among the disclosures that must be made are what inventory must be carried, and what happens upon termination.

Franchising companies have different procedures regarding

repurchase of inventory. Some franchise agreements include provisions regarding repurchase, others do not. Thus, if repurchase is important to the prospective franchisees he is given all the information necessary to make an informed choice among the different franchisors.

Moreover, franchisors do not simply pass on finished products to be distributed by franchisees. Indeed, under our nation's antitrust laws, franchisees can not be required to buy products from franchisors. In most instances, the franchisor establishes manufacturing and assembly specifications for the products sold or used by franchisees. The franchisee then has the option to purchase the necessary inventory from either the franchisor or outside suppliers.

Because of this arrangement, most franchisors have a limited capability to distribute repurchased inventory to other dealers. Because of the shipping and storage costs involved, it would be very expensive, and highly uneconomical, for a franchisor to repurchase a few odd lots of inventory.

I would also like to point out that the problem to which this legislation is addressed, dealership terminations, occurs extremely infrequently among franchises. According to the U.S. Department of Commerce Survey "Franchising in the Economy, 1981 - 1983", there were 366,513 franchisee owned outlets operating in 1981. Of these, only 7,181, or 2 per cent, were terminated. A majority of those contracts

terminated -- 57% -- was at the initiative of the franchisee or by mutual consent. Of the over 35,000 establishments dealing in automobile products and services, there were only 1,287 terminations. Again, 66 per cent of these were at the initiative of the franchisee or by mutual consent.

A franchise is a business venture. Both parties enter into the arrangement with the expectation of profit and an understanding of the risk of failure based on the full disclosure made under the FTC Rule. Although the International Franchise Association strongly supports the federal disclosure law, we oppose efforts interfering with the contractually established relationship between the franchisor and franchisee.

Senate Bill 432 will add a new and uncertain factor into the successful formula of franchising. Under the bill, a franchisor would be required to repurchase the franchisee's inventory even where the franchisee unilaterally cancelled the franchise agreement. This "golden parachute" for franchisees will significantly alter the franchisor-franchisee relationship and the allocation of risks agreed upon when the franchise agreement was executed.

Franchising is an enormously successful way of doing business. New laws and regulations will not help attract new job opportunities for Montannans. I urge you to amend the bill by tightening up the

definition of inventory.

Thank you very much for giving me this opportunity to present our views.

AMENDMENTS TO S.B. 432 PROPOSED BY THE INTERNATIONAL FRANCHISE ASSOCIATION

Page 1, line 24

Amend section 1 (2)(c) to read as follows:

"(c) automobiles, trucks and repair parts SOLD BY AN AUTOMOBILE
OR TRUCK DEALER AS DEFINED IN TITLE 61 OF THE MONTANA CODE."

Rationale: Amendment would make clear that the bill applies only to
dealers of automobiles and trucks and not businesses that carry repair
parts alone, such as Western Auto and Midas Muffler.

Page 2, line 10

Amend section 2 (1) to read as follows:

"enters into a written DEALERSHIP contract evidenced by franchise"

Rationale: As currently written, S.B. 432 covers the cancellation of all
contracts, not just the cancellation of dealership contracts.

VISITOR'S REGISTER

HOUSE Bus. & Ind.

COMMITTEE

BILL SB 4/32

DATE 3-9-83

SPONSOR _____

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WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

Bus & Ind.

COMMITTEE

BILL

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DATE _____

3-9-83

SPONSOR

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