

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIR LINDA NELSON, on February 15, 1991, at
ADJOURNMENT

ROLL CALL

Members Present:

Linda Nelson, Chair (D)
Don Steppler, Vice-Chairman (D)
Bob Bachini (D)
Joe Barnett (R)
Gary Beck (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Jim Elliott (D)
Marian Hanson (R)
Harriet Hayne (R)
Vernon Keller (R)
Don Larson (D)
Jim Madison (D)
Ed McCaffree (D)
John Phillips (R)
John Scott (D)

Staff Present: Connie Erickson, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB 682

Presentation and Opening Statement by Sponsor:

REP. JANE DEBRUYCKER, House District 11, Dutton, said all HB 682
does is to permanently require that seed dealers provide a bill
of lading for each seed shipment and the Gross Vehicle Weight
personnel at the weigh stations collect the bills of lading and
forward them to the Department of Agriculture. This allows the
department to track commercial seed shipments coming into the
state.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. JANE DEBRUYCKER thanked the committee for a good hearing and urged them to pass HB 682.

EXECUTIVE ACTION ON HB 682

Motion: REP. HAYNE MOVED HB 682 DO PASS.

VOTE: HB 682 DO PASS. Motion CARRIED unanimously.

HEARING ON SB 158

Presentation and Opening Statement by Sponsor:

SEN. JERGESON, Senate District 8, said when he was growing up he helped his dad in the farm implement dealership in Chinook, MT. Now most of these small town dealers are closed. He questioned some of the factors causing the loss of these dealerships. Often times the dealerships in the small community were large employers with seven to eight employees. He said it is true that agriculture has changed over the years, and a economy in the rural areas has had a large impact on the small declining communities. It appears the loss of these dealerships in the last couple of years has taken place faster than the changes in agriculture. He went to these farm implement dealers in the small communities to try and find out why they were closing. He said the information he received in all of these communities is that when the dealer is ready to retire the business closes down. The manufacturer does not let anyone else take over that dealership. SEN. JERGESON said this bill was drafted so that a family member or even a non-family member could be a successor, and if the manufacturer does not approve of the successor they would have the ability to deny the change in the franchise if they can show good cause. After the bill was drafted he was contacted by the Montana Hardware and Implement Association with other concerns and asked if he would include them in this bill. In northeastern Montana where there has been several years of drought, the manufacturers have been increasing the sales quotas on these farm implement dealers. In an area where they have been lucky to even have 10 bushels an acre for the last several years, it has been impossible for the farm implement dealers to meet some of the sales quotas that have been imposed on them. The bill provides that in those areas where there has been a natural disaster, those contracts may not be enforced. He said another problem is when an implement dealership is canceled often times the dealer may not be fully reimbursed for the cost of parts of other inventory they have that the manufacturer will not take back. SEN. JERGESON said this bill provides for the dealer to

receive 100% from the manufacturer of those returned parts and/or equipment. He said with the cost of the equipment today a small dealership can be wiped out in short order.

Proponents' Testimony:

Mr. Charles Brooks, Managing Director of the Montana Hardware and Implement Association, distributed information. **EXHIBIT 1** He said that agriculture has been under economic stress for some time. He said we are seeing major changes in the way manufacturers of farm equipment serve and handle their dealer agreements. He addressed three changes taking place in the industry: 1) A dealership is often canceled when the current owner retires or is dies. This presents a major problem to the dealer or his family; in most cases their life savings are tied up in the business. 2) When a dealership is canceled by the company, the dealer should at least recover his raw cost from the manufacturer for inventory of equipment as well as repair parts, and the manufacturer should pay the return freight. 3) Dealers operating in areas that have been declared a drought area need protection from the manufacturer so they may not remove the dealership agreement until the farmer, rancher, and the dealer can recover. **Mr. Brooks** said this bill addresses the dealer as well as the manufacturer. He urged the committee to support SB 158.

Mr. Ken Munson, Shelby, MT of Munson Equipment, stated his support for SB 158. He said that it takes a farmer two or more good years to recover what he has lost in one bad year, and the 1980's are considered drought years. He said four years ago the manufacturer told him he had a sales quota of \$50,000 and has since increased it approximately between \$250,000 to \$300, 000. He said they also informed him there was only room for one dealership in his area and he was not going to be that dealer. **Mr. Munson** said the manufacturer informed him they had plans for a new facility to be in place by 1992. He said this legislation would help these small dealers to recover their costs on the parts they cannot sell. He said there is no way small dealers can comply with the manufacturer's increasing demands. He gave his support to SB 158.

SEN. DENNIS NATHE, Senate District 10, gave his support for SB 158. He also asked to have **SEN. GENE THAYER, Senate District 19,** Great Falls be on record in support of SB 158.

REP. DOROTHY CODY, House District 20, went on record in support of SB 158. She asked that the amendments offered by the John Deere Company be opposed; she felt they undid the intention of the legislation.

GEORGE PAUL, Executive Director, Farmers Union and Mt. Economics, said that Montana's economic health comes under stress when the symptoms appear in the small rural areas. He said the lack of income with the producers and implement dealers is a vicious

circle. Reduced incomes weaken the dealer and he cannot meet the demands placed on him by the manufacturer. Lower business volume by the dealer encourages the manufacturer to limit the number of dealerships in the state. Concentrating dealerships means that the farmer and rancher must travel greater distances to purchase equipment and parts, generating longer down times, more expenses, and a reduction in producer income. The rural community is weakened when dealerships leave the community for an environment of higher volume. The manufacturer often moves out of state and Montana loses another business. Mr. Paul commended SEN. JERGESON for SB 158. He felt the bill not only helps transfer business, but also supports the economy of the rural areas. He said Mt. Farmers Union supports this bill and urges its passage. Mr. Paul informed the committee he did not have prior knowledge of the amendments, but said he was in favor of the bill as SEN. JERGESON presented it.

Mr. Paul asked to have Kay Norenberg, WIFE recorded in favor of SB 158.

BOB STEVENS, Montana Grain Growers Association, gave his support for SB 158, but stated they do not support the amendments.

LYNDEN COBURN, President, Implement and Hardware Dealers Association, said he is also an owner of an implement dealership. Mr. Coburn said what he sees today are implement dealers with multiple lines of merchandise. The companies want dealers in the metropolitan areas so they can carry a full line of hardware, i.e., lawn and garden, etc. The companies want the dealers where the transportation is accessible. When this legislation was drafted, it was presented before the members of the association and he said it met their concerns 100 percent.

CLIFFORD HANSON, dealership in WOLF POINT, MT, said he supports SB 158 in its original form. He said Montana has to keep what industry they have because of the commitment to the customers to provide them a service.

ORVILLE NASH, NASH BROTHERS, REDSTONE, MT, has been in the implement dealership business for 4-5 years. He said a problem came about when another implement dealer was placed in his area by the manufacturer. The manufacturer set the minimum sales quota and cut the territory in half. They wanted him to install a computer system that would have cost approximately \$150,000, but was advised by his accountant not to follow the companies advice because the accountant feared that Mr. Nash's company would be canceled anyway. Mr. Nash stated they were canceled and returned \$60,000 in parts and merchandise out of \$110,000 they had in inventory. The company would not let him return \$7,000 in attachments after they had promised to transfer the attachments from the dealership before it was canceled and after they had been canceled the major manufacturer refused to take those parts. The building would have been worth \$150,000, but without the franchise it is worth approximately \$5,000 to

\$10,000.

DUANE BURKENPAS, Co-Owner of Gallatin Equipment Co., Belgrade, MT distributed information. **EXHIBIT 2** He has been an implement dealer for 30 years and a member of the Hardware Association for the same. He is also representing the Horizon Equipment Co, a John Deere dealer in Miles city, and Conrad Implement Co., in Conrad for over fifty years. He said the changes in agri-business and the consolidation of farms have reduced the demand for farm equipment. The increased product reliability of farm equipment has reduced the replacement demand. He said the increased technology of today's farm equipment has placed more demand on the farm equipment dealer to maintain highly trained technicians to service today's equipment. The labor market has disappeared. Mr. Burkenpas said a survey was done and found that most of the customers were not partial to any one brand and purchased the equipment and parts where the best buy was. The last page of the exhibit offers amendments to be placed with the bill which Mr. Burkenpas said was best for the farmer/rancher and Montana. It will eliminate the possibilities of law suits attempting to clarify what is intended by the present definitions of successor and good cause.

DAVID BOOTIE, Bootie Implement Co., Lewistown, MT, asked the committee to pass SB 158 with the amendments that Mr. Bukenpas has offered.

SEN. BOB WILLIAMS, Senate District 15, said when a businessman has spent his lifetime in building the expertise and gaining the confidence of a farming/ranching community, they should have more protection than they have now. He strongly supported SB 158.

Opponents' Testimony:

RON WATERMAN, Case Implement Company, distributed information. **EXHIBIT 3.** He said SB 158 states that a dealer alone can choose to pass the dealership on to another generation or a designated successor and the manufacturer cannot refuse the designation unless there is "good cause", showing the succession would be detrimental to the public interest or to the representation of the manufacturer. He said the standard is vague and unenforceable, because it fails to consider the interests of the manufacture and essentially assures that every rejection will be challenged. Mr. Waterman said this bill alters the concept of basic contract law and forces one party, a manufacturer, to accept another as a dealer, although the manufacturer does not know and has not willingly agreed to do business with that successor dealer. SB 158 does not propose to make the family of a dealer liable in the event the dealer decides to quit against the wishes of the manufacturer. No one would propose such a provision because it would be unfair to force the family members to continue to engage in a business in which they had no interest. He said the same should be true for the manufacturer. He said bill sets up an administrative procedure with court

review which will stretch for years during which time the manufacturer must continue the dealership regardless of how successful or unsuccessful the new dealer is and regardless of how well the dealer serves the manufacturer. This constitutes nothing more than a financial penalty imposed upon a manufacturer as it attempts to terminate or phase out a dealership. This bill also prevents termination for a natural disaster or for circumstances beyond the dealer's control. Mr. Waterman advised the committee that this bill is probably unconstitutional. It seeks to impair the obligation and terms of existing contracts and thus cannot be enforced against any existing dealership agreement. Likewise, it discriminates against the farm implement businesses by making farm equipment manufacturers keep dealerships in locations while allowing automotive and other dealers to be terminated or phased out. He requested this bill do not pass.

Questions From Committee Members:

REP. MCCAFFREE asked SEN. JERGESON to respond to Mr. Waterman's statement that this bill is unconstitutional. SEN. JERGESON replied that he cannot answer as an attorney, but made comparisons with an employee working for minimum wage. When the minimum wage is increased the employer has to pass that on to the employee. He said these kinds of contracts are changed all the time and felt this wasn't any different.

REP. LARSON asked SEN. JERGESON if the dealers have written contracts with the manufacturers. SEN. JERGESON said that generally they do. He said it's possible there would be oral contracts, but he seriously doubted it. REP. LARSON asked if the contract spelled out all the conditions under which the manufacturer may terminate the relationship. SEN. JERGESON said that under some of the statutes now they may terminate a dealership. He said this bill responds to a drought in an area, the cancellation of a dealership, and determining a successor. The showing of good cause is taken from the Minnesota statutes.

REP. KELLER asked how this bill compared to SEN. WILLIAM'S bill from 1985. SEN. JERGESON replied that SEN. WILLIAM'S bill was in response to the takeover of International Harvester by Tenneco.

REP. DEBRUYCKER (Roger) asked Mr. Waterman if he had seen the proposed amendments. Mr. Waterman replied that he had not. REP. DEBRUYCKER asked if the bill passed with those amendments would the bill be constitutional. Mr. Waterman read through the amendments and replied he would approve the bill with the amendments over the original form.

REP. BACHINI asked SEN. JERGESON if he had a chance to look at any of the amendments and if he could go along with any of them. SEN. JERGESON said he has been studying them for most of the day, but have some problems with the change from "good cause" to "reasonable grounds".

Closing by Sponsor:

SEN. JERGESON closed by adding that farm implement manufacturers have said that the smaller dealers have gone broke because there were too many and there was poor management. He felt that the mismanagement was at the national level and not the local level. SEN. JERGESON said this bill is to keep the manufacturers from imposing something artificial on the market. They are trying to reduce the number of dealers on some arbitrary basis rather than letting it happen because the dealer is or isn't able to respond to the market on his own.

EXECUTIVE ACTION ON HB 549

Motion: REP. BACHINI MOVED HB 549 DO PASS.

Discussion: Connie Erickson, Legislative Counsel, distributed amendments for the noxious weed bill. EXHIBIT 4. She said these amendments do not exempt the mills from I-105.

Motion/Vote: REP. BECK moved to adopt the amendments. REPS. BACHINI and REP. SCOTT voting no.

Vote: REP. PHILLIPS MADE A SUBSTITUTE MOTION THAT HB 549 BE TABLED. Motion CARRIED 12 to 4 with REPS. KELLER, MCCAFFREE, HAYNE and BECK voting no.

EXECUTIVE ACTION ON HB 612

Motion: REP. BACHINI MOVED HB 612 BE TABLED.

Discussion: Connie Erickson distributed amendments. EXHIBIT 5.

Motion/Vote: REP. BECK MOVED HB 612 BE TABLED. Voice vote was taken. Motion FAILED.

Motion/Vote REP. BACHINI MADE A SUBSTITUTE MOTION THAT HB 612 DO PASS AS AMENDED. Motion CARRIED unanimously.

Motion/Vote: REP. BARNETT MADE A SUBSTITUTE MOTION THAT HB 612 BE TABLED.

VOTE: HB 612 BE TABLED. Motion CARRIED unanimously.

Information/Discussion:

CHAIR LINDA NELSON informed the committee that executive action will be taken on SB 158 at the next meeting.

Connie Erickson told the committee that she has received

amendments that were not from anyone in the Legislature. She informed the committee she would need a request to be able to draft the amendments.

Motion/Vote: REP. BACHINI informed the committee that the sponsor of the bill asked that it BE NOT CONCURRED IN if the bill is amended.

Vote: REP. PHILLIPS MOVED TO HAVE AMENDMENTS DRAFTED. Motion CARRIED unanimously.


Information/Discussion:

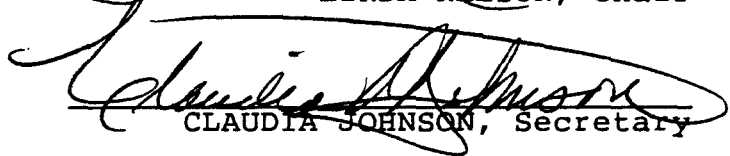
CHAIR LINDA NELSON informed the committee she had spoken with the lawyer for the McCarty Farms Case. He asked her to speak with the committee about reserving a draft request with the Legislative Council.

Motion/Vote: REP. BACHINI MOVED TO REQUEST THE COMMITTEE RESOLUTION. Motion CARRIED unanimously.

ADJOURNMENT

Adjournment: 5:30 P.M.


LINDA NELSON, Chair


CLAUDIA JOHNSON, Secretary

LN/cj

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 2-15-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		

5:10 pm
2-15-91
WML

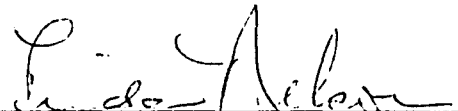
HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 682 (first reading copy -- white) do pass .

Signed: _____


Linda Nelson, Chairman

**MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION**

EXHIBIT 1

DATE 2-15-91

HB 3B 158

318 N. Last Chance Gulch
P.O. Box 440
Telephone 406/442-3388
Helena, Montana 59624

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

TESTIMONY
FEBRUARY 15, 1991
ROOM 312-3

SENATE BILL 158

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS, MANAGING DIRECTOR OF THE MONTANA HARDWARE & IMPLEMENT ASSOCIATION. WE REPRESENT A NUMBER OF FARM IMPLEMENT DEALERS THROUGHOUT THE STATE. I AM HERE TODAY TO IN SUPPORT OF SENATE BILL 158.

AS WE ALL KNOW, FOR A NUMBER OF YEARS, THE AGRICULTURE INDUSTRY IN OUR STATE HAS BEEN UNDER ECONOMIC STRESS. LIKEWISE, THOSE MAIN STREET MERCHANTS WHO SERVE THIS INDUSTRY HAVE HAD VERY DIFFICULT ECONOMIC TIMES. WE ARE SEEING MAJOR CHANGES IN THE WAY MANUFACTURERS OF FARM IMPLEMENT EQUIPMENT SERVE AND HANDLE THEIR DEALER AGREEMENTS.

SOME OF THE CHANGES WE ARE SEEING IN THE INDUSTRY ARE:

1. THE RIGHT TO SUCCESSION BEING QUESTIONED AND, IN SOME CASES, THE DEALERSHIP BEING CANCELED WHEN THE CURRENT OWNER RETIRES OR IS DECEASED. THIS PRESENTS A MAJOR PROBLEM TO THE DEALER OR HIS FAMILY, FOR IN MOST CASES THEIR LIFE SAVINGS ARE TIED UP IN THE BUSINESS.

2. WHEN A DEALERSHIP IS TERMINATED, THEN THE QUESTION OF INVENTORY AND REPAIRS PARTS BECOMES A MAJOR ISSUE. IN MOST CASES THE DEALER HAS SPENT YEARS BUILDING THE MARKET FOR THE EQUIPMENT IN HIS AREA AND BY THE DEMANDS OF THE COMPANY, AS WELL AS PROPER SERVICE TO HIS CUSTOMERS, INVENTORIES CAN BE QUITE LARGE. WE FEEL, IF A DEALERSHIP IS CANCELED BY THE COMPANY, THEN THE DEALER SHOULD AT LEAST RECOVER HIS RAW COST FROM THE MANUFACTURER FOR INVENTORY OF EQUIPMENT AS WELL AS REPAIR PARTS, AND PAY THE FREIGHT TO RETURN THE INVENTORY.

3. MANUFACTURERS ARE DEMANDING THAT DEALERS PRODUCE A CERTAIN VOLUME EACH YEAR IN THEIR PRODUCT LINE. IF THEY DO NOT REACH THIS LEVEL OF SALES, THEN IN SOME CASES THE COMPANY VOIDS THE DEALERSHIP AGREEMENT. DEALERS OPERATING IN AREAS THAT HAVE BEEN DECLARED A DROUGHT AREA, NEED PROTECTION FROM THE MANUFACTURERS, SO THEY MAY NOT REMOVE THE DEALERSHIP AGREEMENT, UNTIL THE FARMER, RANCHER AND THE DEALERSHIP CAN RECOVER. THIS BILL ADDRESSES THIS ISSUE FAIRLY FOR BOTH THE DEALER AS WELL AS THE MANUFACTURER.

EXHIBIT 1
DATE 2-15-91
HB SB 158

PAGE 2

4. A TREND WE SEE IN THIS INDUSTRY IS. TO ESTABLISH LARGE REGIONAL DEALERS WITH A FEW BRANCH STORES IN SELECTED AREAS. THIS WILL MEAN IN MANY CASES LESS SERVICE AND MORE COSTLY SERVICE AS THE FARMER / RANCHER WILL TRAVEL GREATER DISTANCES TO OBTAIN PARTS AND REPAIRS.

THE ISSUES AND CONCERNS I HAVE DISCUSSED HAVE BEEN ADDRESSED IN THIS PROPOSED LEGISLATION.

WE ASK YOUR SUPPORT OF SENATE BILL 158.

THE JOHN DEERE COMPANY AND THEIR DEALERS HAVE SUGGESTED SOME AMENDMENTS TO THE BILL WHICH I HAVE DISCUSSED WITH THE SPONSOR, SENATOR JERGESON AND OFFER THEM FOR YOUR CONSIDERATION.

WE HAVE SEVERAL IMPLEMENT DEALERS HERE TODAY. WHO WOULD LIKE TO GIVE SOME BRIEF TESTIMONY. THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

FEB 14 '91 17:12 DEERE DM ST GOV AFF P02

PROPOSED AMENDMENTS TO SENATE BILL 158

1. Strike Section 1 (5) in its entirety (lines 7-25, page 2, and line 1, page 3).

2. Strike Section 1 (6) and replace it with the following:
"(6) 'Designated successor' means a person who is designated through a succession agreement with the grantor to succeed a retiring dealer in the dealership."

3. Strike Section 1 (8) (b) in its entirety (lines 20-23, page 3)

4. Strike Sections 2,3,4 and 5 in their entirety, and replace with the following new sections:

"Transfer. No grantor may unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership whenever the dealer to be substituted meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. If a grantor determines that a proposed transferee does not meet such requirements it shall give the dealer written notice stating the specific reasons for withholding consent."

"Withhold Consent. No grantor may unreasonably withhold consent to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership if the family member meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. Should a grantor determine that the designated family member is not acceptable, it shall provide the dealer with written notice of its objections and specific reasons for withholding its consent. A grantor shall have thirty days to consider a dealer's request to make a transfer to a family member. As used in this paragraph, 'family' means and includes a spouse, parents, siblings, children, and lineal descendants, including those by adoption of the dealer or principal owner of the dealership."

5. Section 8. Strike the words "three times" on line 23, page 7.



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION



Serving Farm, Industrial and Outdoor Power Dealers
10877 Watson Road • St. Louis, Missouri 63127-1081 • 314/821-7220

G.L. S-2910

January 25, 1991

EXHIBIT 1 GENERAL LETTER

DATE 2-15-91

HB SB 158

SUBJECT: *Massey Ferguson Case*
Re: Parts Return

FOR YOUR INFORMATION

TO: Association Managers

As you are aware, Massey Ferguson (MF) has continually refused to repurchase combine and four-wheel drive parts on termination of an MF dealer. The basis for MF's refusal to purchase parts was that there had been an assignment of all of the obligations to the Massey Combines Corporation (MCC) on May 9, 1986, and that MF has consistently relied on this assignment as a basis for not having an obligation to repurchase the combine and four-wheel drive tractor parts.

A recent United States District Court for the Western District of Missouri case gives former MF dealers encouragement in the case of Lewis G. Moore & Co. v. Massey Ferguson, Inc., cause number 89-0306-CV-W-8 (January 8, 1991). Until now, there have been no reported case decisions, as MF has settled before a decision by a court.

Moore was an MF dealer, terminated in November 1987, and returned parts pursuant to a letter received from MF. MF refused to pay for \$96,176 of repair parts which were returned to MF.

Moore filed suit for the value of the parts MF refused to repurchase. Moore subsequently sought a summary judgment under the Missouri Dealer Buy-back statute and breach of contract. The Court granted Moore a summary judgment in the amount of \$96,176, plus interest and attorney's fees.

The basis of the Court's decision was the purported transfer of MF's obligation to MCC in the May 9, 1986 assignment was not a novation (a substitution of parties) as argued by MF, and MF had the obligation to repurchase the parts.

The Court relied on Missouri statute in issuing the summary judgment. Interest was awarded as of May 9, 1988.

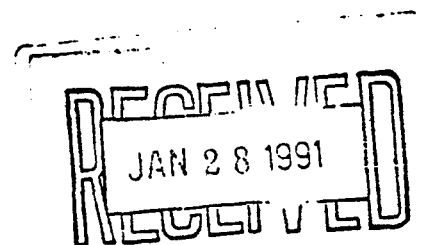
The law firm of Seigfreid, Bingham, Levy, Selzer & Gee, counsel for the Western Association, represented Moore. If you wish to receive a copy of the decision, please let Jackie Warner know and we will furnish a copy to you.

Sincerely,

William E. Galbraith
Executive Vice President

WEG:jw

cc: Board of Directors
Advisory Board



Gallatin Equipment Co.

EXHIBIT 2
DATE 2-15-91
HB SB 158



"We would rather explain our quality, than apologize for anything less."

15 February 1991

House of Representatives
Committee on Agriculture, Livestock and Irrigation

Honorable members of the Committee. I am Duane Burkenpas - co-owner with my brother of Gallatin Equipment Co., a John Deere dealership in Belgrade, MT. We have been a dealer for thirty years, serving a seven county trade area. We have been a member of the Montana Hardware and Implement Association for that same period of time. I served on the Board of Directors for several years and was President in 1983. Today I am here representing our dealership, and speaking for Horizon Equipment Co., a John Deere dealer in Miles City, and Conrad Implement Co., a John Deere dealer in Conrad for over fifty years.

We support Senate Bill 158 presently for your review before giving to the House Floor for approval. We ask that certain amendments be considered prior to giving this Bill to the Floor, addressing the transfer or secession of farm equipment dealers. It is our feeling the wording in Sections 1, 2, 3, 4, and 5 needs amended. The recommendations are attached for your reference.

The amendments do not abolish the intent of transfer or secession of a farm equipment dealership, but does allow reasonable stability

to remain in the farm equipment business in the State of Montana. We must compare the present and future position of the farm equipment dealerships with that of other agri-business and the changes that have taken place as well as future changes yet to come. Remember the grain elevator business. Remember the railroad business. Remember the rural school statis. All this is changing. Our highway system helps lead us into change. It is as easy to travel fifty miles today as it was thirty years

to travel ten miles. The Federal Crop Reserve Program has greatly reduced the demand for farm equipment. The consolidation of farms has reduced the demand for farm equipment. The increased product reliability of farm equipment has reduced the replacement demand.

Increased technology of todays farm equipment has placed increased responsibility on the dealer. Recent findings of E.P.A. determines freon used in all air conditioning systems is highly detrimental to our atmosphere. Todays cost of Freon has increased dramatically, and will soon no longer be available. To perform repairs to an air conditoning system now, a dealer investment in excess of \$5,000. in special Freon recovery equipment is needed. We have this equip-ment at our dealership. Not every dealer is going to be able to continue investing in special training and special equipment to support the limited numbers of pieces of equipment sold by that dealership. This service is going to be furnished by the stronger more reliable dealerships, demanded by the consumer.

More demand is placed on the farm equipment dealer to maintain highly trained technicians to service todays equipment. The labor market has disappeared. John Deere dealers are now sending students to North Dakota State at Whapeton, North Dakota to a special Service Training Course developed by Whapeton School of Science and John Deere Company, just for the training of new Service Technicians.

I am telling you this to help you realize that not all the present farm equipment dealers can afford or will want to invest in these long term capital investments to maintain the services you expect and demand for the equipment you purchase. The total return on investment in a farm equipment dealership is no different than any

EXHIBIT 15
DATE 2-15-91
HB SB 158

other business today. After the investment there must be enough volume to create a profitable return. With less farms, less acres farmed, it is only reasonable that there will be less farm equipment dealers. That necessarily does not say there will be poorer dealers. That is the reverse, with fewer dealers, it will offer the opportunity for those to expand customer base, increase unit volume and justify offering the backup service and parts needed.

Recent studies conducted by our dealership in parts of our trade area, found most customers with a "rainbow yard". That means the customer is not loyal to any one brand of equipment, but purchases his needs from the dealer that has the equipment at the best price. We found customers did not purchase their dry-goods or usual supplies from their home-town, but would travel to the larger ^{dealership} ~~cities~~ in a 100 mile radius to obtain the products and services needed. That is a sad fact.

The amendments offered, will allow a continuing relationship between dealership and manufacturer, with the ultimate winner being the farmer/rancher and the State of Montana. The amendments offered will eliminate the possibilities of law suits attempting to clarify what is intended by the present definitions of successor and good cause. Nobody is a winner in most law suits except the lawyers. Many small dealership today can not afford to file a suit. Adopt the amendments as offered, and then recomend a "Do Pass" for the House membership.

Thank you for the time given me to explain and express our concerns to Senate Bill 158.

PROPOSED AMENDMENTS TO SENATE BILL 158

EXHIBIT 2
DATE 2-15-91
HB SB 158

1. Strike Section 1 (5) in its entirety (lines 7-25, page 2, and line 1, page 3).

2. Strike Section 1 (6) and replace it with the following:

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3. Strike Section 1 (8) (b) in its entirety (lines 20-23, page 3)

4. Strike Sections 2,3,4 and 5 in their entirety, and replace with the following new sections:

"Transfer. No grantor may unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership whenever the dealer to be substituted meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. If a grantor determines that a proposed transferee does not meet such requirements it shall give the dealer written notice stating the specific reasons for withholding consent."

"Withhold Consent. No grantor may unreasonably withhold consent to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership if the family member meets the reasonable requirements of the grantor which include but are not limited to business, financial, character and experience qualifications. Should a grantor determine that the designated family member is not acceptable, it shall provide the dealer with written notice of its objections and specific reasons for withholding its consent. A grantor shall have thirty days to consider a dealer's request to make a transfer to a family member. As used in this paragraph, 'family' means and includes a spouse, parents, siblings, children, and lineal descendants, including those by adoption of the dealer or principal owner of the dealership."

5. Section 8. Strike the words "three times" on line 23, page 7.

I am Ronald F. Waterman and I appear on behalf of Case Corporation., Case is a manufacturer of farm equipment with a network of dealers in Montana as well as the other 49 states. I appear today in opposition to Senate Bill 158 and urge this committee to not pass this legislation.

This bill responds to the shrinking population in rural areas. It does so by attempting to keep one and only one type of business present in those counties. It will not reverse this problem.

Senate Bill 158 states that a dealer alone can choose to pass the dealership on to another generation or a designated successor and the manufacturer cannot refuse the designation unless there is "good cause", a showing the succession would be detrimental to the public interest or to the representation of the manufacturer. This standard is vague and unenforceable, it fails to consider the interests of the manufacturer and essentially assures that every rejection will be challenged.

It is basic contract law that there must be two parties willing to consent to do business with each other before a contract can be created. This bill alters that concept and forces one party, a manufacturer, to accept another as a dealer although the manufacturer does not know and has not willingly agreed to do business with that

successor dealer. Interestingly, Senate Bill 158 does not propose to make the family of a dealer liable in the event the dealer decides to quit against the wishes of the manufacturer. No one would propose such a provision because it would be unfair to force the family members to continue to engage in a business in which they had no interest. What is true for the family members is likewise true to the manufacturer.

Senate Bill 158 likewise sets up an administration procedure with court review which will stretch for years during which time the manufacturer must continue the dealership regardless of how successful or unsuccessful the new dealer is and regardless of how well the dealer serves the manufacturer. This constitutes nothing more than a financial penalty imposed upon a manufacturer as it attempts to terminate or phase out a dealership.

Senate Bill 158 prevents termination for a natural disaster or for circumstances beyond the dealer's control. Again the language is vague. Moreover, the prohibition will always be invoked. I cannot think of any unsuccessful dealer who would not blame the weather or something beyond his control to prevent termination. This section says that if a dealer is a poor salesman and if other dealers are more aggressive and successful, nevertheless the manufacturer is stuck with that dealer,

because after all, his inability to sell is beyond his control as he competes against other more successful salesmen.

Finally, I must advise that this bill is probably unconstitutional. It seeks to impair the obligations and terms of existing contracts and thus cannot be enforced against any existing dealership agreement. Likewise, it discriminates against the farm implement businesses making farm equipment manufacturers keep dealerships in locations while allowing automotive and other dealers to be terminated or phased out. I also question the validity of imposing both a penalty, making the violation of the statute quasi-criminal in nature and also imposing the prospect of treble damages in the event there is a termination despite the terms of this section.

For these reasons given above, I respectfully request that this bill receive a do not pass recommendation from this committee.

1534R

Amendments to House Bill No. 549
First Reading Copy

Requested by Rep. Grady
For the Committee on Agriculture, Livestock, and Irrigation

Prepared by Gail Kuntz
February 12, 1991

1. Page 3, line 21.
Following: "a"
Strike: "full-time"
2. Page 5, line 18.
Following: "+"
Insert: ":"
3. Page 5, line 19.
Following: "{a}"
Insert: "(a)"
4. Page 5, line 21.
Following: "{b}"
Insert: "(b)"
Strike: "or"
5. Page 5, lines 23 and 24.
Following: "county" on line 23
Strike: ", or both"
6. Page 6, line 1.
Following: "and"
Insert: "; and"
7. Page 6, line 5.
Following: line 4
Insert: "(c) levying a tax in excess of 5 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536."

Amendments to House Bill No. 612
First Reading Copy

Requested by Representative Spring
For the Committee on Agriculture, Livestock, & Irrigation

Prepared by Connie Erickson
February 15, 1991

1. Page 1, line 16.
Following: "livestock"
Insert: "-- liability"
Following: "."
Insert: "(1)"

2. Page 1, line 19.
Strike: "telephone"
Insert: "computer access, microfilm,"

3. Page 1.
Following: line 22
Insert: "(2) The department of livestock may not be held liable
to any secured party for the proceeds of livestock sold
through a livestock market by the debtor."

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture

COMMITTEE

BILL NO.

HB 682

DATE 2-15-91

SPONSOR(S)

J. DeBruycker

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Roy Bjornson</u>	<u>MT Dept of Agric.</u>		
<u>Duane Burkenpas</u>	<u>Gallatin Equipment Co.</u>	✓	
<u>DAVID Moodie</u>	<u>Moodie Implement</u>	✓	
<u>Robert Taylor</u>	<u>Taylor Bros. Inc.</u>	✓	
<u>Ken Munson</u>	<u>Munson Equip.</u>	✓	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Apiculture COMMITTEE BILL NO. SB 158
DATE 2-15-91 SPONSOR(S) Sen Jergeson
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Quill Valley Redstone Mt.	Nash Bros	✓	
Ken Manson	Manson Equip	✓	
Lynndee Coburn Billings Mont	Rape Equip + MHIA	✓	
Conn. Hansen Wolf Point, MT	Hansen Implement Co.	✓	
Bob Stephens	Mt. Grain Growers Assn	✓	
George Paul	MT Farmers Union	✓	
Norothy A. Cragg	House Dist #20	✓	
Dennis H. Tidd	Senate Dist 10	✓	
Rae Watuma	Cox		✓
Kay Noranborg	MT WIFE	✓	
Charles Brooks	MT Hwd + Imps	✓	

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