

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Greg Jergeson, on February 1, 1991, at 3:00 P.M.

ROLL CALL

Members Present:

Greg Jergeson, Chairman (D)
Francis Koehnke, Vice Chairman (D)
Gary Aklestad (R)
Thomas Beck (R)
Betty Bruski (D)
Gerry Devlin (R)
Jack Rea (D)
Bernie Swift (R)
Bob Williams (D)

Members Excused: None

Staff Present: Doug Sternberg (Legislative Council).

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

Announcements/Discussion: None

HEARING ON SENATE BILL 181

Presentation and Opening Statement by Sponsor:

Senator Gerry Devlin, Senate District 13, advised that two years ago he presented a bill allowing for a \$25.00 penalty for late payment on state leases in agriculture. SB 181 extends that same penalty on to other leases issued by the State Lands Department, such as cabin leases. He informed that Jeff Hagener from the Department of State Lands was present and would be available for questions.

Proponents' Testimony:

Jeff Hagener, Administrator of the Land Administration Division of Department of State Lands, advised that his division asked that this bill be introduced. In 1989 the \$25.00 penalty was placed on the grazing and agricultural leases, but did not apply to any other leases or licenses. That bill has been effective and positive, particularly in agricultural leases and has cut down the number of delinquent payments, and has brought about a saving in mailing costs. They would like to extend the penalty to the rest of the leases and licenses, thereby making it

consistent throughout.

Opponents' Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

Senator Devlin was excused to attend another hearing. Chairman Jergeson announced that the hearing on SB 181 was closed.

HEARING ON SENATE BILL 64

Presentation and Opening Statement by Sponsor:

Senator Del Gage, Senate District 5, advised that part of his District is the Blackfeet Indian Reservation. The state of Montana has very little authority or jurisdiction on Indian reservations. He informed that East Glacier is experiencing a problem regarding livestock which pretty much roam at will in that area, which is a tourist area. One person who has an RV park continues to write to Legislators requesting help in alleviating problems. The Lodge is well known throughout the United States. It has a golf course, and livestock is a problem. Presently there is a statute that says livestock may not roam in the municipal areas. This bill is requesting the Legislature to afford that same kind of protection to unincorporated areas where some residential property is involved and also the area that is tourism related, both of which apply to the East Glacier situation. The individuals involved have contacted the Blackfeet tribe and have not been successful in getting the tribal government to get involved in this problem; the county authorities are not able to do anything under the present statutes. This bill patterns the penalties after the ones that are imposed in municipal areas that are incorporated. He stated that we do have the open range law in the state of Montana. However, there are significant problems with the open range law itself. He suggested that maybe we are at a point in the development of Montana where we need to take a look at the open range law and see what kind of problems there are with the open range law in Montana. He stated in our quest to do things for people, we regulate everybody to try to get the one culprit. This bill falls in that same category. Senator Gage stated he has been on the Indian Affairs Committee all the years he has been in the Legislature, and is very sensitive to things that involve Indian tribes, and added that it is a very sensitive area. He conceded that this bill may do nothing as far as solving this problem, but in the case of these people if there is

a possibility of solving a problem by having it in the statute, then he encouraged the consideration of SB 64.

Proponents' Testimony:

None.

Opponents' Testimony:

Jim Peterson, Executive Vice-President of Montana Stock Growers Association, stated he was speaking on behalf of that group as well as for the Montana Farm Bureau. He stated he was appearing in opposition to SB 64. He read and presented his written testimony to the committee (Exhibit #1). He suggested that East Glacier consider becoming an incorporated area, and then the existing law covering incorporated municipalities would address the constituent's problem. He does not believe altering an historic law is a solution. He urged the committee to vote "do not pass" on SB 64.

LEO HARGRAVE, a rancher from the Kalispell area, stated there are many unincorporated houses, cabins and river streams in that area. He indicated the ramifications of this bill would be very great to the livestock industry in such a position as his. In this area there are many recreation facilities and lots of people with cabin sites and state leases. Therefore, he opposes this bill because of its ramifications. There are ways of handling trespassing livestock, namely fencing them out. He believes that is the responsibility of the property owners and that responsibility cannot be legislated for each person on a case by case basis. He believes the bill would also cause problems where none exist.

ELLEN HARGRAVE, wife of Leo Hargrave, advised that she is a farmer's daughter and a rancher's wife. She stated she and her husband have a cattle operation 40 miles west of Kalispell. She spoke of her concerns regarding SB 64. (1) They do not feel this is the right body to legislate on the constituent's problem on Indian land. (2) For other lands that are affected by deciding here, there is no need to create new laws. It is her belief that it not necessary to extend trespass laws to unincorporated residential areas or tourist areas. There are many time-honored laws to deal with trespass violations; (3) she believes the bill is unworkable and too broad; (4) the present system takes care of its own problems. She believes cabin owners should fence their property, as the ranchers have done. According to Mrs. Hargrave, the status quo is working. There is no need to make more laws. She believes the dispute in question should be taken care of elsewhere through proper channels.

CAROL MOSHER, appeared to represent the Montana Cattlewomen and her family's cattle ranch out of Augusta. She stated the Montana Cattlewomen are opposed to SB 64. She read and presented her written testimony to the committee members (Exhibit #2).

She urged the committee to give a "do not pass" recommendation on this bill.

Questions From the Committee:

Senator Beck asked what the fine is for trespassing of cattle. Jim Peterson advised that the maximum penalty is six months in jail and \$500 fine.

Senator Beck asked if there is a definition of unincorporated towns. Senator Gage responded that the County Commissioners would determine the area involved.

Senator Rea asked if this violation is occurring on the Reservation, why does the person involved not fence. Senator Gage stated that it is happening on the Reservation, and that the person feels put upon to have to fence trespassers out.

Senator Jergeson asked if it is conceivable to him that this kind of a problem could occur outside the boundaries of a Reservation. Senator Gage stated he was sure it could. Senator Jergeson asked Mrs. Mosher or Mr. Peterson, since they both testified that they saw this as a problem limited on places where the state had no jurisdiction, would they have had different testimony if Senator Gage had presented an incident occurring off the Reservation. Mr. Peterson said they would still oppose the bill because of the broad implications, lack of definition, and because of the term "tourism-related areas" which could include almost any tourism-related area in Montana. No other problems have been reported to the MSGA regarding trespass in unincorporated or tourism-related areas.

Senator Jergeson continued by asking them if the fact that this particular incident occurs on a Reservation is more or less irrelevant to the committee's decision on SB 64. Mr. Peterson responded that it is irrelevant to the point that the bill talks about the state of Montana. However, this particular problem is on the Reservation and stimulated the introduction of this bill. SB 64 was presented as a possible solution to this particular problem. He indicated they do not view this as a solution to that problem, nor is it needed as an addition to the livestock trespass laws. He stated he asked the Department of Agriculture if this bill was needed to address the livestock issue, and was told that they felt the existing statute as well as the fencing bill addressed the issue and seemed to resolve problem situations.

Senator Jergeson asked that since the Montana Stock Growers very strongly supports protection of their members against trespass by other people, is there a reason why the people involved in the livestock industry should be protected against people who trespass while others may not have that same protection. Mr. Peterson replied that livestock people basically take responsibility for their cattle by fencing them in with the

exception of where there is open range. There is a trespass law for incorporated municipalities that protects those areas from livestock trespass. He believes SB 64 is much broader, and could potentially lead to re-writing the open range law. He stated they are not aware of a trespass problem of livestock in the state of Montana.

Senator Jergeson advised that a bill was passed out of the Fish and Game Committee which provides additional means for people involved in livestock industry or owners of land to protect their property against trespass in the case of unfenced property along a public road. Mr. Peterson stated there is nothing to prevent a property owner from building a fence and keeping those cattle out. Senator Jergeson commented that they are attempting to protect the property of people who do not have a fence with the bill that was passed by the F & G Committee. Protection is being afforded to the livestock industry, but that industry doesn't seem willing to afford that same protection to people who are having a problem who don't happen to be in that particular industry. Mr. Peterson asked if they should accept the responsibility for someone to fence someone else's property. Senator Jergeson said he is trying to make sure the livestock industry's representatives approach this from a balanced standpoint and make sure they do not have a dichotomy in how they approach trespass issues.

Mr. Peterson stated that as he understands it, the trespass laws allow the landowner to protect themselves by posting and in the case of livestock by building a fence. To date the livestock industry has used those avenues and he believes this is consistent with private property rights issues. He thinks that expecting the livestock industry to build fences to protect someone else's property is a deviation from the private property rights issue. In response to Senator Jergeson's question as to whether this bill requires building a fence, he stated it does not. It subjects the person to possible fine and imprisonment.

Senator Aklestad suggested that possibly some of the concerns might be handled by existing herd laws.

Senator Beck stated he had some concerns about County Commissioners determining what is a tourist area or what is a non-incorporated residential area. In reply, Senator Gage stated it is left to the good judgment of the County Commissioners who are servants of the people and would take into consideration those people whom they are serving, whether they are trespassers or land owners.

Senator Bruski pointed out there are already laws on the books stating whether cattle should be fenced in or fenced out. She does not see where this bill helps matters at all. Senator Gage stated that the laws currently on the books do not deal with unincorporated areas. He stated in the incident in question the people do not feel they should have to fence trespassers out.

Senator Bruski added that is because it is open range. Senator Gage stated the open range law has been in existence for many years and has had some minor adjustments, and this may be another adjustment to the open range law. Senator Bruski concluded by stating she sees no reason why that law should be changed.

Senator Swift wondered if in relation to the broad language in the bill, if it was refined down to "improved recreation sites" would that satisfy the problem.

Senator Williams said there is a movement in the Big Sky area to redefine unincorporated areas so they can come under tourism areas in order to be subject to a sales tax.

Senator Beck asked if he was correct in hearing Senator Gage state that even if SB 64 was passed, it might not solve the problem in East Glacier. Senator Gage answered in the affirmative.

Closing by Sponsor:

Senator Gage stated he tried to be as honest as he could be regarding SB 64. He stated this bill is like many others that come before the legislature. It may do nothing, but it does leave an avenue open to the complainants in the event they could negotiate with the tribe to be able to have law enforcement do something in regard to their problem. He believes the people in the Kalispell area labor under a whole different situation. They are living on a reservation that is known as a Public Law 280 Reservation. He believes Congress should legislate jurisdictional problems. He extended an invitation to come to some of their Indian Affairs Committee meetings to experience some of the difficulties the state of Montana has in dealing with Indian problems. He stated it is not his intention to create a problem for the rest of Montana, but he reiterated it is a significant problem in that area. He added that the same penalties apply that are already in force on municipalities.

EXECUTIVE ACTION ON SENATE BILL 181

Motion:

Senator Devlin made a motion that Senate Bill 181 DO PASS.

Discussion:

Senator Rea stated he encountered a situation wherein an individual lost his lease because he did not receive his certified mail. This was a case where a certified letter was sent; however, he did not receive it and never signed for it. Senator Rea wondered if in such a case the landowner might not be notified by phone before he would lose his lease.

SENATE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

February 1, 1991

Page 7 of 10

Senator Devlin asked Mr. Hagener if the leaseholder has to sign for the certified letter of notification which the Department sends out. Mr. Hagener stated that generally they do have to sign for the certified letter; however, there are cases where people will not sign for the letter. The law requires that the Department send a certified notification two weeks prior to cancellation. It does not say that the Department must receive a signed copy of that back. He believes about 99% of the time they receive a certified mail receipt back.

Senator Devlin asked if in those cases where they do not receive a receipt back, would any other means of contact be used. Mr. Hagener stated he assumes there would be. Senator Devlin suggested the committee take a further look at this procedure.

Senator Aklestad questioned Mr. Hagener regarding those letters not signed for, and those letters delivered where no one currently resides. Mr. Hagener informed there are different forms designating the reason for the return of the letter.

Senator Rea asked how often it happens that people will not sign for their certified mail. Mr. Hagener stated it does not happen very often, but a few occur each year.

Senator Rea asked if an amendment to the bill might include what they have talked about regarding notification. Senator Jergeson advised that Doug Sternberg, legal counsel, would have to determine if any change or tightening up of the notification requirements would be within the scope of this bill.

Mr. Sternberg advised that SB 181 is an agency bill, specifically requested by the Department of State Lands, to deal with the specific problem, so the scope of the agency request probably would not include addressing the notification issue. However, as Senator Devlin suggested, if the committee wanted to look into that issue and felt it was appropriate to address it by means of a committee bill, something like that could be done.

Recommendation and Vote:

The motion was made by Senator Devlin that SB 181 DO PASS. Those in favor - 8; opposed - 1 (Bruski). Senator Bruski later requested to change her vote to "yes". Final vote: in favor - 9; opposed - 0. MOTION CARRIED.

EXECUTIVE ACTION ON SENATE BILL 64

Recommendation and Vote:

Senator Rea made a motion to TABLE Senate Bill 64.
In favor - 9; opposed - 0. MOTION CARRIED.

EXECUTIVE ACTION ON SENATE BILL 158

Discussion:

Senator Jergeson advised that the amendments which Doug Sternberg, legal counsel, has prepared incorporate by and large the amendments that were offered during discussion, and also incorporate the discussion about the wisdom of putting an immediate effective date on the bill. Rather than risk the possibility of dealerships being canceled prior to July 1, an immediate effective date was included. The other amendments make changes of raising the 85% to 100%, and also includes the cost of freight to return repair parts. (Exhibit #4)

Doug Sternberg stated that many of the questions posed by Ron Waterman of the Case Corporation had to be considered as part of the drafting of this bill in order to present some legislation that was valid. In answer to a question posed by Senator Aklestad, Mr. Sternberg stated that his research into Federal Commerce Code did not reveal any provisions that would be applicable to farm implement dealership franchises. Mr. Waterman's testimony reinforced this research because Mr. Sternberg believed if there was something out there, Mr. Waterman would have brought it before the committee.

According to Mr. Sternberg, Mr. Waterman questioned the constitutionality of this concept as it would apply to the Article that prohibits the Legislature from passing bills that would impair contracts that are out there. This question came to his mind in drafting the bill. If the text of the bill is examined, it will indicate that it does not require any of the parties who are presently involved in a dealership contract to change the contract at all. The current contracts will be allowed to continue to run their term. Section 2 is the heart of this legislation, according to Mr. Sternberg, and he clarified that section.

He pointed out the wording of the designated successor law as it applies to farm implement dealers is taken almost word for word from a present law on the books that relates to automobile dealer franchises. Since 1977 automobile franchisees have been able to designate a successor, and the wording is now being applied to farm implement dealers. He stated there is certainly some precedent in the law for this bill. Also included is the definition of good cause, which Mr. Waterman indicated as being

vague. That language is taken word for word out of the present automobile franchise law, and apparently it is working for them.

Another point referred to by Mr. Waterman as being vague regarded Section 6 wherein conditions are set out for illegal cancellation based on natural disaster. Mr. Sternberg informed that section was taken from Subsection 4 of Section 325E.063 of the present Minnesota code. As far as he knows, it has not been tested in Minnesota but he feels there is some legal precedent for that section. His research indicated there have been court cases across the country that have been compiled in American law reviews that speak to the validity, construction, and effect of a clause in franchise contract which prohibits transfer of a franchise or contract.

According to Mr. Sternberg, Mr. Waterman also alluded to the fairness of the treble damages clause, and there have been numerous court cases dealing with damages for termination of auto dealership contracts that would probably apply as well to farm implement dealerships.

He also pointed out that there is a severability clause in this bill. By way of clarification, he explained the amendments in detail.

Senator Aklestad stated that in the succession section, Mr. Sternberg mentioned existing contracts. He asked whether that also includes at the expiration of contracts that the father would be able to designate a family member. Mr. Sternberg stated that as long as there is a valid contract, and the dealer notifies the grantor within 120 days of his intent to retire or other circumstance, this would apply. He added that unless there is a valid dealership contract in place, recourse could not be granted.

Senator Jergeson informed the committee that Mr. Charles Brooks of the Montana Hardware and Implement Association was present, and had supplied the committee with copies of legislation from nearby states (Exhibit #3).

Doug Sternberg stated he wished to add that the aspect dealing with the designating of a family member to carry on a dealership has good precedent in Montana law from the automobile dealership franchise succession laws which have been on the books for about 14 years. One aspect that is not clear or that has not been tested regards allowing succession to another person that is not a family member. There is a section in the new law that says that nothing in this law precludes a dealer from designating any person as his successor.

Senator Rea asked if the increase to 100% can be justified. Mr. Brooks advised that there are some costs the dealer will never recover. The state of Washington requires 105%, which includes 5% stocking charge.

Mr. Sternberg also advised that there is a long list of inventory that is not subject to repurchase requirements.

Amendments, Discussion, and Votes:

Senator Beck made a motion that the amendments prepared by Doug Sternberg be adopted.

Senator Aklestad questioned whether 100% without return freight charge would be enough. Senator Jergeson pointed out how heavy repair parts are, and it would be an extreme expense for a person who is going out of business to have to pay that freight. Senator Beck added that the dealer paid for the parts to get to his store; its only fair the manufacturer should pay for the return trip.

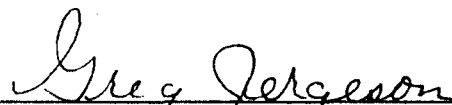
Those in favor of adopting amendments - 9; opposed - 0.
MOTION CARRIED.

Recommendation and Vote:

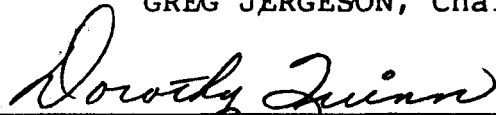
Senator Aklestad made a motion that Senate Bill 158 DO PASS AS AMENDED. Those in favor - 9; opposed - 0. MOTION CARRIED.

ADJOURNMENT

Adjournment At: 4:55 P.M.



GREG JERGESON, Chairman



DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL
AGRICULTURE COMMITTEE

Friday
 DATE 2/1/91

52nd
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

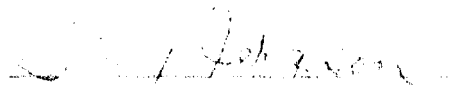
Page 1 of 1

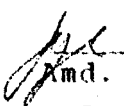
February 2, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration Senate Bill No. 181 (first reading copy -- white), respectfully report that Senate Bill No. 181 do pass.

Signed:


Greg Jergeson, Chairman

 2-2-91
Amd. Coord.

SB 2-2- 8:00 AM
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 2, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 158 (first reading copy -- white), respectfully report that Senate Bill No. 158 be amended and as so amended do pass:

1. Title, line 13.

Following: "PENALTIES;"

Strike: "AND"

2. Title, line 14.

Following: "HCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3, line 19.

Strike: "9"

Insert: "8"

4. Page 6, line 14.

Strike: "9"

Insert: "8"

5. Pages 6 and 7.

Following: line 24 on page 6

Strike: section 7 in its entirety

Re-number: subsequent sections

6. Page 7, lines 17 and 21.

Strike: "3"

Insert: "8"

7. Page 8, line 2.

Strike: "Except as provided in [section 7], if"

Insert: "If"

8. Page 8, line 11.

Following: "items"

Strike: ", except repair parts,"

9. Page 8, line 12

Following: "cancellation"

Insert: ", plus cost of freight to return the inventory"

10. Page 8, line 13.

Strike: "85%"

Insert: "100%"

11. Page 8, line 14.

Following: "catalog"

Insert: "or the last catalog or price list in which the repair part was listed as"

12. Page 8, line 16.

Following: "cancellation"

Insert: ", plus cost of freight to return the repair parts"

13. Page 9, line 2.

Strike: "85%"

Insert: "100%"

14. Page 9, line 3.

Following: "catalog"

Insert: "or the last catalog or price list in which the repair part was listed as"

15. Page 9, lines 12 through 20.

Strike: section 1j in its entirety

Renumber: subsequent sections

16. Page 10, lines 3 and 6.

Strike: "9"

Insert: "8"

17. Page 10, line 7.

Following: line 6

Insert: "NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval."

Signed: Greg Jergeson
Greg Jergeson, Chairman

AC 2-2-91
Asst. Coord.

SP 2-2 Don Allen
Sec. of Senate

TESTIMONY ON

SB 64, LIVESTOCK TRESPASSING LAW

JIM PETERSON, EXECUTIVE DIRECTOR

MONTANA STOCKGROWERS ASSOCIATION

FEBRUARY 1, 1991

CHAIRMAN JERGENSON AND MEMBERS OF THE COMMITTEE -- THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE THE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE. MY NAME IS JIM PETERSON AND I AM THE EXECUTIVE VICE PRESIDENT OF THE MONTANA STOCKGROWERS ASSOCIATION. I APPEAR TODAY IN OPPOSITION TO SENATE BILL 64, AN ACT TO APPLY LIVESTOCK TRESPASSING LAWS TO UNINCORPORATED RESIDENTIAL AREAS AND TOURISM RELATED AREAS.

WELL OVER 100 YEARS AGO, LEGISLATORS FOR THE TERRITORY DEVELOPED A SET OF LAWS REGARDING THE RANGE, THE CATTLE AND HOW THE TWO LEGALLY COEXISTED. THESE LAWS SERVE THEIR PURPOSE, AND WITH A FEW ADJUSTMENTS, ARE STILL THE LAW IN THE HIGH-TECH AGE OF THE 1990'S. THERE'S FEW LAWS THAT CAN CLAIM THAT KIND OF LONGEVITY AND FOR THOSE FEW, THERE'S GOOD REASON WHY THEY LAST THAT LONG. THE OPEN RANGE LAW GOVERNING MONTANA CATTLEMEN IS ONE OF THOSE RARE LAWS. THE MONTANA STOCKGROWERS ASSOCIATION RESPECTS AND HONORS THIS LAW AND IT HAS SERVED OUR INDUSTRY WELL.

SENATE BILL 64, ALTHOUGH WELL INTENTIONED, DOES NOT EVEN ADDRESS THE PROBLEM THAT IT WAS INTENDED TO ALLEVIATE. THE ISSUE THAT THIS LEGISLATION IS ATTEMPTING TO CORRECT WAS ENCOUNTERED IN THE EAST GLACIER AREA WHICH IS GOVERNED UNDER TRIBAL JURISDICTION - - WHICH IS NOT SUBJECT TO MONTANA STATE LAW . THEREFORE, THIS BILL

WOULD SUBSTANTIALLY ALTER A HISTORIC, RESPECTED MONTANA LAW TO ADDRESS A SINGLE, CONSTITUENT PROBLEM THAT WILL NOT BE REMEDIED BY THIS PROPOSED LEGISLATION.

WHILE I RESPECT SENATOR GAGE'S HONEST ATTEMPT TO HELP A FRUSTRATED CONSTITUENT AND I RECOGNIZE THAT THERE IS A LEGITIMATE PROBLEM, SENATE BILL 64 IS NOT THE SOLUTION. I URGE YOU TO CONSIDER THE BROAD IMPLICATIONS THIS LEGISLATION COULD HAVE ON THE LIVESTOCK INDUSTRY AND VOTE "DO NOT PASS" ON SENATE BILL 64.

TESTIMONY BY CAROL MOSHER

MONTANA CATTLEWOMEN

SB 64, LIVESTOCK TRESPASSING BILL

FEBRUARY 1, 1991

GOOD AFTERNOON. CHAIRMAN JERGENSEN, MEMBERS OF THE COMMITTEE. MY NAME IS CAROL MOSHER, I APPEAR TODAY REPRESENTING THE MONTANA CATTLEWOMEN AND MY FAMILY'S CATTLE RANCH OUT OF AUGUSTA, MONTANA. THE MONTANA CATTLEWOMEN IS OPPOSED TO SENATE BILL 64, AN ACT APPLYING LIVESTOCK TRESPASSING LAWS TO UNINCORPORATED RESIDENTIAL AREAS AND TOURISM RELATED AREAS.

THE LAW THAT WILL BE AMENDED BY THIS PROPOSED BILL IS COMMONLY KNOWN AS THE "OPEN RANGE LAW". THIS LAW WAS FIRST ENACTED IN 1887 AND SINCE IT'S INCEPTION HAS BEEN AMENDED SEVERAL TIMES TO REFLECT THE CHANGING TIMES AND INDUSTRY OF MONTANA. THE MONTANA CATTLEWOMEN AND THE MONTANA LIVESTOCK INDUSTRY IS CERTAINLY NOT OPPOSED TO CHANGE. THE CHANGES THAT HAVE BEEN MADE TO THE "OPEN RANGE LAW" WERE PERTINENT AND USEFUL. THIS AMENDMENT, HOWEVER, IS UNNECESSARY.

ALTHOUGH SENATOR GAGE HAS MADE AN HONEST ATTEMPT TO ADDRESS A PROBLEM IN THE EAST GLACIER AREA OF HIS SENATE DISTRICT, THIS PARTICULAR LEGISLATION WILL NOT PROHIBIT THE LIVESTOCK IN THAT AREA FROM TRESPASSING ON THE UNINCORPORATED RESIDENTIAL AREA THAT IS EXPERIENCING THE DILEMMA. THIS AREA IS UNDER THE JURISDICTION OF THE BLACKFEET TRIBE AND, AS YOU KNOW, STATE LAW WILL HAVE NO LEGAL RECOURSE ON THE ACTIONS OF THE RANCHER OR THE LIVESTOCK THAT HAVE CAUSED THE PROBLEM.

SINCE THIS LAW HAS BROAD IMPLICATIONS WITH REGARD TO TOURISM
RELATED AREAS AND LIVESTOCK TRESPASS THEREIN, WE RESPECTFULLY URGE
THIS COMMITTEE TO VOTE "DO NOT PASS" ON SENATE BILL 64.

THANK YOU FOR THE OPPORTUNITY TO PRESENT OUR VIEWS.

SB 158

LEGISLATURE OF THE STATE OF IDAHO
CENTENNIAL LEGISLATURE SECOND REGULAR SESSION - 1990

IN THE SENATE

SENATE AGRICULTURE

EXHIBIT NO. #3

SENATE BILL NO. 1496, AS AMENDED IN THE HOUSE

DATE 2/1/91

BY COMMERCE AND LABOR COMMITTEE

BILL NO. SB 158

AN ACT

RELATING TO SUPPLIERS AND DEALERS IN AGRICULTURE EQUIPMENT; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION THERETO OF A NEW CHAPTER 24, PART 1, TITLE 28, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO PROVIDE DEFINITIONS, TO DESIGNATE UNLAWFUL ACTS AND PRACTICES, TO PROVIDE FOR NOTICE OF AND GOOD CAUSE FOR TERMINATION OF DEALER AGREEMENTS OR CHANGES IN THE COMPETITIVE CIRCUMSTANCES OF A DEALER'S AGREEMENT, TO SPECIFY WHAT SHALL CONSTITUTE GOOD CAUSE, TO PROVIDE FOR REMEDIES AND ENFORCEMENT, TO PROVIDE SEVERABILITY, AND TO PROVIDE AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 24, Part 1, Title 28, Idaho Code, and to read as follows:

TITLE 28
CHAPTER 24
PART 1

AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

28-24-101. LEGISLATIVE FINDINGS AND INTENT. The legislature of this state finds that the retail distribution and sale of agricultural equipment, utilizing independent retail businesses operating under agreements with the manufacturers and distributors thereof, vitally affects the general economy of the state, public interests and public welfare and that it is necessary to regulate the business relations between independent dealers and the equipment manufacturers, wholesalers and distributors.

28-24-102. DEFINITIONS. As used in this chapter:

(1) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(2) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute or service the supplier's equipment, where there is a continuing commercial relationship between the supplier and the equipment dealer.

(3) "Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing.

(4) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association or other form of business enterprise, primarily engaged in the retail sale and/or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services.

(5) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided, such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

(6) "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the equipment dealer, or any successor in interest to or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or any trustee of the original supplier.

28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall be a violation of the provisions of this chapter for a supplier to:

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

(2) Require or attempt to require any equipment dealer to enter into any agreement, whether written or oral, supplementing or amending an existing dealer agreement with such supplier unless such amendment or supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. The failure to deliver any such equipment shall not be considered a violation of the provisions of this chapter when deliveries are based on prior retail sales ordering histories, the priority given to the sequence in which the orders are received or manufacturing schedules or if such failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo or other cause over which the supplier has no control;

(4) Terminate, cancel or fail to renew the dealer agreement of any equipment dealer or substantially change the competitive circumstances of the dealer agreement, attempt to terminate or cancel, or threaten not to renew the dealer agreement or attempt to substantially change the competitive circumstances of the dealer agreement without good cause. Nothing in this paragraph shall be interpreted to apply to a discontinuation of or change in the product line of an equipment dealer;

(5) Condition the renewal, continuation or extension of a dealer agreement on the equipment dealer's substantial renovation of the equipment dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the equipment dealer, unless:

(a) The supplier has advised the equipment dealer in writing of its demand for such renovation, construction, purchase, acquisition or rental within a reasonable time prior to the effective date of the proposed date of renewal or extension, but in no case less than one (1) year; and

(b) The supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's products and any significant economic conditions existing at the time in the equipment dealer's trade area, and the

1 equipment dealer does not make a good faith effort to complete such construction or renovation plans within one (1) year.

2 (6) Discriminate in the prices charged for equipment of like grade and
3 quality sold by the supplier to similarly situated dealers in this state where
4 the effect of such discrimination may be to substantially lessen competition
5 or tend to create a monopoly in a line of commerce. The provisions of this
6 subsection do not prevent the use of differentials which make only due allowance
7 for differences in the cost of manufacture, sale or delivery of equipment
8 resulting from the differing methods or quantities in which such equipment is
9 sold or delivered; provided that nothing shall prevent a supplier from offering
10 a lower price in order to meet an equally low price of a competitor, or
11 the services or facilities furnished by a competitor;

12 (7) Unreasonably withhold consent for an equipment dealer to change the
13 capital structure of the equipment dealership or the means by which it is
14 financed, provided that the equipment dealer meets the reasonable capital
15 requirements of the supplier;

16 (8) Prevent, by contract or otherwise, any equipment dealer or any officer,
17 member, partner or stockholder of an equipment dealership from selling,
18 assigning, or transferring any interest or portion thereof held by any of them
19 in the equipment dealership to any other person or party; provided, however,
20 that no equipment dealer, officer, partner, member or stockholder shall have
21 the right to sell, transfer, or assign the equipment dealership or the power
22 of management or control thereof without the written consent of the supplier,
23 except that such consent shall not be unreasonably withheld if the buyer,
24 transferee, or assignee meets the reasonable financial, business experience
25 and character standards of the supplier;

26 (9) Require an equipment dealer to assent to a release, assignment, novation,
27 waiver or estoppel which would relieve any person from liability imposed
28 by this chapter;

29 (10) (a) Unreasonably withhold consent, in the event of the death of the
30 equipment dealer or the principal owner of the equipment dealership, to
31 the transfer of the equipment dealer's or the principal owner's interest
32 in the equipment dealership to a member or members of the family of the
33 equipment dealer or of the principal owner or to another qualified individual,
34 if the family member or other qualified individual meets the reasonable financial,
35 business experience and character standards of the supplier. A supplier shall
36 have sixty (60) days to consider a request to make a transfer to a family member
37 or other qualified individual. If, within that period, the supplier determines
38 that the designated family member or other qualified individual does not meet
39 the reasonable financial, business experience and character standards of the
40 supplier, it shall provide the designated family member or other qualified
41 individual with written notice of its objection and the specific reasons for
42 withholding its consent. If the family member or other qualified individual
43 reasonably satisfies the supplier's objections within sixty (60) days after
44 notice thereof, the supplier shall approve the transfer. As used in this
45 paragraph, "family" means and includes a spouse, parents, siblings, children,
46 step-children, sons-in-law, daughters-in-law, and lineal descendants,
47 including those by adoption of the equipment dealer or principal owner of
48 the equipment dealership. Nothing in this paragraph shall entitle a family
49 member or other qualified individual to continue to operate the dealership
50 without the consent of the supplier.

51 (b) Notwithstanding the provisions of paragraph (a) of this subsection,
52 in the event that a supplier and equipment dealer have duly executed an
53
54

1 agreement concerning succession rights prior to the equipment dealer's
2 death, and if such agreement has not been revoked, such agreement shall be
3 observed.

4 28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT
5 DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier
6 shall provide written notice to the equipment dealer of any proposed termina-
7 tion or nonrenewal of a dealer agreement or substantial change in the competi-
8 tive circumstances of a dealer agreement. The notice shall state the reason(s)
9 constituting good cause for the action proposed to be taken. Except where good
10 cause is alleged under the provisions of paragraphs (a) through (e) of subsec-
11 tion (2) of this section, such notice shall be provided to the equipment
12 dealer not less than ninety (90) days before the proposed action is to become
13 effective. Except where good cause is alleged under paragraphs (a) through (d)
14 of subsection (2) of this section, the equipment dealer shall be given sixty
15 (60) days within which to cure any claimed deficiency, and the notice shall
16 advise the dealer of his right to cure. If the claimed deficiency is rectified
17 within sixty (60) days, the notice shall be void and the proposed action shall
18 not become effective. Notwithstanding the equipment dealer's failure to cure
19 the deficiency or deficiencies claimed, where a ninety (90) day notice is
20 required to be given by the supplier, the contractual term of the dealer
21 agreement shall not expire, nor shall the dealer agreement be otherwise termi-
22 nated or cancelled, nor shall the equipment dealer's competitive circumstances
23 be substantially changed prior to the expiration of at least ninety (90) days
24 following such notice without the written consent of the equipment dealer.

25 (2) As used in this chapter, "good cause" shall exist, but not be limited
26 to the following circumstances when the equipment dealer has:

- 27 (a) Transferred a controlling ownership interest in the equipment dealer-
28 ship without the supplier's consent;
- 29 (b) Made a material misrepresentation to the supplier;
- 30 (c) Filed a voluntary petition in bankruptcy or has had an involuntary
31 petition in bankruptcy filed against the equipment dealer which has not
32 been discharged within sixty (60) days after the filing; is in default
33 under the provisions of a security agreement in effect with the supplier;
34 or is insolvent or in receivership;
- 35 (d) Been convicted of a crime, punishable for a term of imprisonment for
36 one (1) year or more;
- 37 (e) Failed to operate in the normal course of business for ten (10) con-
38 secutive business days or has terminated said business;
- 39 (f) Relocated the equipment dealer's place of business without the
40 supplier's consent;
- 41 (g) Consistently engaged in business practices which are detrimental to
42 the consumer or supplier by way of excessive pricing, misleading advertis-
43 ing, failure to provide service and replacement parts or perform warranty
44 obligations;
- 45 (h) Inadequately represented the supplier over one (1) year or such time
46 period specified in the dealer agreement causing lack of performance in
47 sales, service or warranty areas and failed to achieve market penetration
48 at levels consistent with similarly situated equipment dealerships in the
49 state based on available record information;
- 50 (i) Consistently failed to meet building and housekeeping requirements,
51 or has failed to provide adequate sales, service or parts personnel com-
52 mensurate with the dealer agreement;
- 53 (j) Failed to comply with the applicable licensing laws pertaining to the

1 products and services being represented for and on supplier's behalf;
2 (k) Materially failed to comply with the terms of the dealer agreement.

3 28-24-105. REMEDIES AND ENFORCEMENT. Monetary damages may be recovered
4 for losses sustained as a consequence of any violation of the provisions of
5 this chapter. Such recovery may also include a requirement that the supplier
6 repurchase at fair market value any data processing hardware and specialized
7 repair tools and equipment previously purchased from the supplier or approved
8 vendor of the supplier pursuant to requirements of the supplier. Injunctive
9 relief may also be granted against any actual or threatened violation of the
10 provisions of this chapter. In any action brought under this chapter the pre-
11 vailing party shall be entitled to recover reasonable attorney fees and costs.
12 The remedies set forth in this section shall not be deemed exclusive and shall
13 be in addition to any other remedies permitted by law.

14 28-24-106. SEVERABILITY. The provisions of this act are hereby declared
15 to be severable and if any provision of this act or the application of such
16 provision to any person or circumstance is declared invalid for any reason,
17 such declaration shall not affect the validity of remaining portions of this
18 act.

19 28-24-107. EFFECTIVE DATE -- APPLICATION TO AGREEMENTS. This act shall
20 take effect on July 1, 1990, and shall apply to any dealer agreement then in
21 effect which has no expiration date and which is a continuing agreement and
22 all other dealer agreements entered into or renewed on or after such effective
23 date.

RS 23839

STATEMENT OF PURPOSE

Relating to suppliers and dealers in agricultural equipment;
to provide for notice of and good cause for termination of
dealer agreements.

FISCAL IMPACT

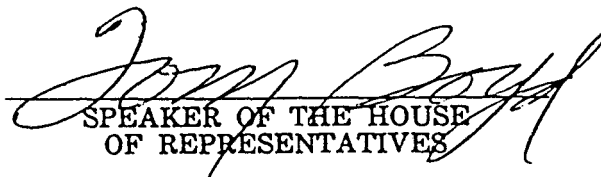
There is no fiscal impact to the General Fund.

NO. S1496 -

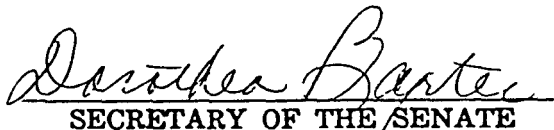
THIS BILL PASSED THE SENATE ON THE 29th DAY OF March, 1990


PRESIDENT OF THE SENATE

THIS BILL PASSED THE HOUSE OF REPRESENTATIVES ON THE 27th
DAY OF March, 1990


SPEAKER OF THE HOUSE
OF REPRESENTATIVES

I HEREBY CERTIFY THAT THE WITHIN SENATE BILL NUMBER
1496, a.a.H. ORIGINATED
IN THE SENATE DURING THE Second Regular SESSION
OF THE Centennial LEGISLATURE OF THE STATE OF IDAHO.


SECRETARY OF THE SENATE

THIS BILL RECEIVED BY THE GOVERNOR ON THE 30th
DAY OF MARCH AT 1:00 P.M. O'CLOCK, AND APPROVED
ON THE 5th DAY OF April AT 3:30 P.M. O'CLOCK.

RECEIVED & FILED

April 6, 1990 10:28 a.m.

Chapter 267
CHAPTER NO.

PETE T. CENARRUSA
SECRETARY OF STATE


GOVERNOR

HEFTE, PEMBERTON, SORLIE & RUFER

ATTORNEYS AND COUNSELORS AT LAW

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ROBERT W. BIGWOOD

MICHAEL T. RENGEL

MARK S. STOLPMAN

PERSONAL AND CONFIDENTIAL

Mr. Orville Nash.

Nash Bros. Implement

Redstone, MT 59257

December 22, 1989

IN RE: Our File No. 89-4012

Pursuant to your conversations with Mr. Lillquist I enclose herewith a copy of the Minnesota Statutes regarding terminations or cancellations.

Leona M. Swanson
Leona M. Swanson, Legal Assistant,
for H. Morrison Kershner

89356.1/6

Enclosure

merger or liquidation, any receiver or assignee, or any trustee of the original farm equipment manufacturer.

Subd. 4. Farm equipment dealer or dealership. "Farm equipment dealer" or "farm equipment dealership" means a person, partnership, corporation, association, or other form of business enterprise engaged in the retail sale of farm equipment.

Subd. 5. Dealership agreement. "Dealership agreement" means an oral or written agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

History: 1988 c 511 s 1

325E.062 TERMINATIONS OR CANCELLATIONS.

Subdivision 1. Good cause required. No farm equipment manufacturer, directly or through an officer, agent, or employee may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly-situated dealers by their terms. In addition, good cause exists whenever:

(1) without the consent of the farm equipment manufacturer who shall not withhold consent unreasonably, (a) the farm equipment dealer has transferred an interest in the farm equipment dealership, or (b) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (c) there has been a substantial reduction in interest of a partner or major stockholder;

(2) the farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement of dissolution or liquidation of the dealer;

(3) there has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement;

(4) the farm equipment dealer has defaulted under a chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the farm equipment manufacturer;

(5) the farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business;

(6) the farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer;

(7) the dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare; or

(8) the farm equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Subd. 2. Notice. Except as otherwise provided in this subdivision, a farm equipment manufacturer shall provide a farm equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void. The notice and right to cure

provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (1) to (7).

History: 1988 c 511 s 2

325E.063 VIOLATIONS.

(a) It is a violation of sections 325E.061 to 325E.065 for a farm equipment manufacturer to coerce a farm equipment dealer to accept delivery of farm equipment, parts, or accessories which the farm equipment dealer has not voluntarily ordered.

(b) It is a violation of sections 325E.061 to 325E.065 for a farm equipment manufacturer to:

(1) condition or attempt to condition the sale of farm equipment on a requirement that the farm equipment dealer also purchase other goods or services; except that a farm equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer;

(2) coerce or attempt to coerce a farm equipment dealer into a refusal to purchase the farm equipment manufactured by another farm equipment manufacturer;

(3) discriminate in the prices charged for farm equipment of like grade and quality sold by the farm equipment manufacturer to similarly-situated farm equipment dealers. The clause does not prevent the use of differentials which make only due allowance for difference in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the farm equipment is sold or delivered, by the farm equipment manufacturer; or

(4) attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement if the attempt or threat is based on the results of a natural disaster, including a sustained drought in the dealership market area, a labor dispute, or other circumstance beyond the dealer's control.

History: 1988 c 511 s 3

325E.064 STATUS OF INCONSISTENT AGREEMENTS.

A term of a dealership agreement either expressed or implied which is inconsistent with the terms of sections 325E.061 to 325E.065 is void and unenforceable and does not waive any rights which are provided to a person by sections 325E.061 to 325E.065.

History: 1988 c 511 s 4

325E.065 REMEDIES.

If a farm equipment manufacturer violates sections 325E.061 to 325E.065, a farm equipment dealer may bring an action against the manufacturer in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorney's fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

History: 1988 c 511 s 5

325E.066 CITATION.

Sections 325E.061 to 325E.065 may be cited as the "Minnesota agricultural equipment dealership act."

History: 1988 c 511 s 6

325E.067 APPLICABILITY.

The provisions of sections 325E.061 to 325E.065 are effective April 14, 1988, and apply to all dealership agreements now in effect which have no expiration date and

which are continuing contracts, and all other contracts entered into, amended, or renewed after April 14, 1988. Any contract in force and effect on April 14, 1988, which by its terms will terminate on a date subsequent thereto and which is not renewed is governed by the law as it existed before April 14, 1988.

History: 1988 c 511 s 7

CIGARETTE VENDING MACHINES

325E.07 CIGARETTE VENDING MACHINES, NOTICE RELATING TO SALES.

Subdivision 1. In a conspicuous place on each cigarette vending machine in use within the state, there shall be posted, and kept in easily legible form and repair, by the owner, lessee, or person having control thereof, a warning to persons under 18 years of age which shall be printed in bold type letters each of which shall be at least one-half inch high and which shall read as follows:

"Any Person Under 18 Years of Age Is Forbidden By Law To Purchase Cigarettes From This Machine."

Subd. 2. Any owner, any lessee, and any person having control of any cigarette vending machine which does not bear the warning required by this section shall be guilty of a misdemeanor.

History: 1963 c 545 s 1

GASOLINE STATIONS; HANDICAPPED SERVICE

325E.08 SERVICE FOR HANDICAPPED AT GASOLINE STATIONS.

All gasoline service stations which offer both full service and self-service gasoline dispensing operations shall provide an attendant to dispense gasoline at the self-service price into vehicles bearing handicapped plates or a handicapped parking certificate issued pursuant to section 168.021.

History: 1979 c 160 s 1

MOTOR FUEL; SALE PRICE AND OCTANE DISPLAY

325E.09 MOTOR FUEL; DISPLAY OF OCTANE RATING AND SALE PRICE.

Subdivision 1. The legislature finds that the wording, arrangement, and accumulation of signs advertising the quality and the price per gallon of motor fuel and located at or near places of business for the retail sale of motor fuel, in a confusing, exaggerated, deceptive, misleading, or otherwise fraudulent manner, is detrimental to the public interest.

Subd. 2. For the purposes of this section:

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, or public or private corporation;

"Motor fuel" means liquefied petroleum gas or any other volatile and inflammable liquid or substance produced, blended or compounded for, or suitable and practicable for, operating internal combustion engines furnishing power to operate a motor vehicle.

Subd. 3. It shall be unlawful for any person to offer to sell at retail and dispense or to sell at retail and dispense motor fuel into fuel supply tanks of motor vehicles unless there is continuously and publicly posted and displayed on each pump or other dispensing device the minimum octane rating and the retail price per gallon including all federal and state tax of the motor fuel dispensed therefrom:

(1) On the computer mechanism of the dispensing device, which shall state the

CENTENNIAL LEGISLATURE

LEGISLATURE OF THE STATE OF IDAHO

SECOND REGULAR SESSION - 1990

IN THE SENATE

SENATE BILL NO. 1496, AS AMENDED IN THE HOUSE

BY COMMERCE AND LABOR COMMITTEE

AN ACT

RELATING TO SUPPLIERS AND DEALERS IN AGRICULTURE EQUIPMENT; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION THERETO OF A NEW CHAPTER 24, PART 1, TITLE 28, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO PROVIDE DEFINITIONS, TO DESIGNATE UNLAWFUL ACTS AND PRACTICES, TO PROVIDE FOR NOTICE OF AND GOOD CAUSE FOR TERMINATION OF DEALER AGREEMENTS OR CHANGES IN THE COMPETITIVE CIRCUMSTANCES OF A DEALER'S AGREEMENT, TO SPECIFY WHAT SHALL CONSTITUTE GOOD CAUSE, TO PROVIDE FOR REMEDIES AND ENFORCEMENT, TO PROVIDE SEVERABILITY, AND TO PROVIDE AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 24, Part 1, Title 28, Idaho Code, and to read as follows:

TITLE 28
CHAPTER 24
PART 1

AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

28-24-101. LEGISLATIVE FINDINGS AND INTENT. The legislature of this state finds that the retail distribution and sale of agricultural equipment, utilizing independent retail businesses operating under agreements with the manufacturers and distributors thereof, vitally affects the general economy of the state, public interests and public welfare and that it is necessary to regulate the business relations between independent dealers and the equipment manufacturers, wholesalers and distributors.

28-24-102. DEFINITIONS. As used in this chapter:

(1) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(2) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute or service the supplier's equipment, where there is a continuing commercial relationship between the supplier and the equipment dealer.

(3) "Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing.

(4) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association or other form of business enterprise, primarily engaged in the retail sale and/or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services.

(5) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided, such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

(6) "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the equipment dealer, or any successor in interest to or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or any trustee of the original supplier.

28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall be a violation of the provisions of this chapter for a supplier to:

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

(2) Require or attempt to require any equipment dealer to enter into any agreement, whether written or oral, supplementing or amending an existing dealer agreement with such supplier unless such amendment or supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. The failure to deliver any such equipment shall not be considered a violation of the provisions of this chapter when deliveries are based on prior retail sales ordering histories, the priority given to the sequence in which the orders are received or manufacturing schedules or if such failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo or other cause over which the supplier has no control;

(4) Terminate, cancel or fail to renew the dealer agreement of any equipment dealer or substantially change the competitive circumstances of the dealer agreement, attempt to terminate or cancel, or threaten not to renew the dealer agreement or attempt or threaten to substantially change the competitive circumstances of the dealer agreement without good cause. Nothing in this paragraph shall be interpreted to apply to a discontinuation of or change in the product line of an equipment dealer;

(5) Condition the renewal, continuation or extension of a dealer agreement on the equipment dealer's substantial renovation of the equipment dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the equipment dealer, unless:

(a) The supplier has advised the equipment dealer in writing of its demand for such renovation, construction, purchase, acquisition or rental within a reasonable time prior to the effective date of the proposed date of renewal or extension, but in no case less than one (1) year; and

(b) The supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's products and any significant economic conditions existing at the time in the equipment dealer's trade area, and the

1 equipment dealer does not make a good faith effort to complete such construction or renovation plans within one (1) year.

2
3 (6) Discriminate in the prices charged for equipment of like grade and
4 quality sold by the supplier to similarly situated dealers in this state where
5 the effect of such discrimination may be to substantially lessen competition
6 or tend to create a monopoly in a line of commerce. The provisions of this
7 subsection do not prevent the use of differentials which make only due allowance
8 for differences in the cost of manufacture, sale or delivery of equipment
9 resulting from the differing methods or quantities in which such equipment is
10 sold or delivered; provided that nothing shall prevent a supplier from offering
11 a lower price in order to meet an equally low price of a competitor, or
12 the services or facilities furnished by a competitor;

13 (7) Unreasonably withhold consent for an equipment dealer to change the
14 capital structure of the equipment dealership or the means by which it is
15 financed, provided that the equipment dealer meets the reasonable capital
16 requirements of the supplier;

17 (8) Prevent, by contract or otherwise, any equipment dealer or any officer,
18 member, partner or stockholder of an equipment dealership from selling,
19 assigning, or transferring any interest or portion thereof held by any of them
20 in the equipment dealership to any other person or party; provided, however,
21 that no equipment dealer, officer, partner, member or stockholder shall have
22 the right to sell, transfer, or assign the equipment dealership or the power
23 of management or control thereof without the written consent of the supplier,
24 except that such consent shall not be unreasonably withheld if the buyer,
25 transferee, or assignee meets the reasonable financial, business experience
26 and character standards of the supplier;

27 (9) Require an equipment dealer to assent to a release, assignment, novation,
28 waiver or estoppel which would relieve any person from liability imposed
29 by this chapter;

30 (10) (a) Unreasonably withhold consent, in the event of the death of the
31 equipment dealer or the principal owner of the equipment dealership, to
32 the transfer of the equipment dealer's or the principal owner's interest
33 in the equipment dealership to a member or members of the family of the
34 equipment dealer or of the principal owner or to another qualified individual,
35 if the family member or other qualified individual meets the reasonable financial,
36 business experience and character standards of the supplier. A supplier shall have sixty (60) days to consider a request to make
37 a transfer to a family member or other qualified individual. If, within
38 that period, the supplier determines that the designated family member or
39 other qualified individual does not meet the reasonable financial, business
40 experience and character standards of the supplier, it shall provide
41 the designated family member or other qualified individual with written
42 notice of its objection and the specific reasons for withholding its consent.
43 If the family member or other qualified individual reasonably satisfies the
44 supplier's objections within sixty (60) days after notice thereof, the supplier
45 shall approve the transfer. As used in this paragraph, "family" means and includes
46 a spouse, parents, siblings, children, step-children, sons-in-law, daughters-in-law,
47 and lineal descendants, including those by adoption of the equipment dealer or
48 principal owner of the equipment dealership. Nothing in this paragraph shall entitle
49 a family member or other qualified individual to continue to operate the dealership
50 without the consent of the supplier.

51 (b) Notwithstanding the provisions of paragraph (a) of this subsection,
52 in the event that a supplier and equipment dealer have duly executed an
53
54

1 agreement concerning succession rights prior to the equipment dealer's
2 death, and if such agreement has not been revoked, such agreement shall be
3 observed.

4 28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT
5 DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier
6 shall provide written notice to the equipment dealer of any proposed termina-
7 tion or nonrenewal of a dealer agreement or substantial change in the competi-
8 tive circumstances of a dealer agreement. The notice shall state the reason(s)
9 constituting good cause for the action proposed to be taken. Except where good
10 cause is alleged under the provisions of paragraphs (a) through (e) of subsec-
11 tion (2) of this section, such notice shall be provided to the equipment
12 dealer not less than ninety (90) days before the proposed action is to become
13 effective. Except where good cause is alleged under paragraphs (a) through (d)
14 of subsection (2) of this section, the equipment dealer shall be given sixty
15 (60) days within which to cure any claimed deficiency, and the notice shall
16 advise the dealer of his right to cure. If the claimed deficiency is rectified
17 within sixty (60) days, the notice shall be void and the proposed action shall
18 not become effective. Notwithstanding the equipment dealer's failure to cure
19 the deficiency or deficiencies claimed, where a ninety (90) day notice is
20 required to be given by the supplier, the contractual term of the dealer
21 agreement shall not expire, nor shall the dealer agreement be otherwise termi-
22 nated or cancelled, nor shall the equipment dealer's competitive circumstances
23 be substantially changed prior to the expiration of at least ninety (90) days
24 following such notice without the written consent of the equipment dealer.

25 (2) As used in this chapter, "good cause" shall exist, but not be limited
26 to the following circumstances when the equipment dealer has:

27 (a) Transferred a controlling ownership interest in the equipment dealer-
28 ship without the supplier's consent;

29 (b) Made a material misrepresentation to the supplier;

30 (c) Filed a voluntary petition in bankruptcy or has had an involuntary
31 petition in bankruptcy filed against the equipment dealer which has not
32 been discharged within sixty (60) days after the filing; is in default
33 under the provisions of a security agreement in effect with the supplier;
34 or is insolvent or in receivership;

35 (d) Been convicted of a crime, punishable for a term of imprisonment for
36 one (1) year or more;

37 (e) Failed to operate in the normal course of business for ten (10) con-
38 secutive business days or has terminated said business;

39 (f) Relocated the equipment dealer's place of business without the
40 supplier's consent;

41 (g) Consistently engaged in business practices which are detrimental to
42 the consumer or supplier by way of excessive pricing, misleading advertis-
43 ing, failure to provide service and replacement parts or perform warranty
44 obligations;

45 (h) Inadequately represented the supplier over one (1) year or such time
46 period specified in the dealer agreement causing lack of performance in
47 sales, service or warranty areas and failed to achieve market penetration
48 at levels consistent with similarly situated equipment dealerships in the
49 state based on available record information;

50 (i) Consistently failed to meet building and housekeeping requirements,
51 or has failed to provide adequate sales, service or parts personnel com-
52 mensurate with the dealer agreement;

53 (j) Failed to comply with the applicable licensing laws pertaining to the

1 products and services being represented for and on supplier's behalf;
2 (k) Materially failed to comply with the terms of the dealer agreement.

3 28-24-105. REMEDIES AND ENFORCEMENT. Monetary damages may be recovered
4 for losses sustained as a consequence of any violation of the provisions of
5 this chapter. Such recovery may also include a requirement that the supplier
6 repurchase at fair market value any data processing hardware and specialized
7 repair tools and equipment previously purchased from the supplier or approved
8 vendor of the supplier pursuant to requirements of the supplier. Injunctive
9 relief may also be granted against any actual or threatened violation of the
10 provisions of this chapter. In any action brought under this chapter the pre-
11 vailing party shall be entitled to recover reasonable attorney fees and costs.
12 The remedies set forth in this section shall not be deemed exclusive and shall
13 be in addition to any other remedies permitted by law.

14 28-24-106. SEVERABILITY. The provisions of this act are hereby declared
15 to be severable and if any provision of this act or the application of such
16 provision to any person or circumstance is declared invalid for any reason,
17 such declaration shall not affect the validity of remaining portions of this
18 act.

19 28-24-107. EFFECTIVE DATE -- APPLICATION TO AGREEMENTS. This act shall
20 take effect on July 1, 1990, and shall apply to any dealer agreement then in
21 effect which has no expiration date and which is a continuing agreement and
22 all other dealer agreements entered into or renewed on or after such effective
23 date.

RS 23839

STATEMENT OF PURPOSE

Relating to suppliers and dealers in agricultural equipment;
to provide for notice of and good cause for termination of
dealer agreements.

FISCAL IMPACT

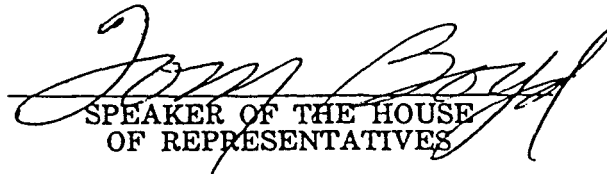
There is no fiscal impact to the General Fund.

NO. S1496 -

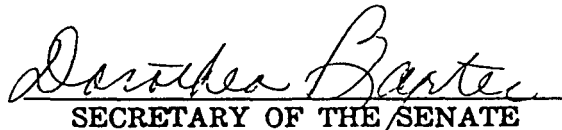
THIS BILL PASSED THE SENATE ON THE 29th DAY OF March, 1990


PRESIDENT OF THE SENATE

THIS BILL PASSED THE HOUSE OF REPRESENTATIVES ON THE 27th
DAY OF March, 1990


SPEAKER OF THE HOUSE
OF REPRESENTATIVES

I HEREBY CERTIFY THAT THE WITHIN SENATE BILL NUMBER
1496, a.a.H. ORIGINATED
IN THE SENATE DURING THE Second Regular SESSION
OF THE Centennial LEGISLATURE OF THE STATE OF IDAHO.


SECRETARY OF THE SENATE

THIS BILL RECEIVED BY THE GOVERNOR ON THE 30th
DAY OF MARCH, AT 1:00 P.M. O'CLOCK, AND APPROVED
ON THE 5th DAY OF April, AT 3:30 P.M. O'CLOCK.

RECEIVED & FILED

April 6, 1990 10:28 a.m.

Chapter 267
CHAPTER NO.

PETE T. CENARRUSA
SECRETARY OF STATE


GOVERNOR

Amendments to Senate Bill No. 158
First Reading Copy

Requested by Senator Jergeson
For the Senate Committee on Agriculture

Prepared by Doug Sternberg
January 28, 1991

1. Title, line 13.
Following: "PENALTIES;"
Strike: "AND"

2. Title, line 14.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3, line 19.
Strike: "9"
Insert: "8"

4. Page 6, line 14.
Strike: "9"
Insert: "8"

5. Pages 6 and 7.
Following: line 24 on page 6
Strike: section 7 in its entirety
Re-number: subsequent sections

6. Page 7, lines 17 and 21.
Strike: "9"
Insert: "8"

7. Page 8, line 2.
Strike: "Except as provided in [section 7], if"
Insert: "If"

8. Page 8, line 11.
Following: "items"
Strike: ", except repair parts,"

9. Page 8, line 12
Following: "cancellation"
Insert: ", plus cost of freight to return the inventory"

10. Page 8, line 13.
Strike: "85%"
Insert: "100%"

11. Page 8, line 14.
Following: "catalog"
Insert: "or the last catalog or price list in which the repair
part was listed as"

12. Page 8, line 16.

Following: "cancellation"

Insert: ", plus cost of freight to return the repair parts"

13. Page 9, line 2.

Strike: "85%"

Insert: "100%"

14. Page 9, line 3.

Following: "catalog"

Insert: "or the last catalog or price list in which the repair part was listed as"

15. Page 9, lines 12 through 20.

Strike: section 11 in its entirety

Renumber: subsequent sections

16. Page 10, lines 3 and 6.

Strike: "9"

Insert: "8"

17. Page 10, line 7.

Following: line 6

Insert: "NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval."

DATE 2-1-91

COMMITTEE ON Agriculture

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

DATE 2/1/91

COMMITTEE ON Agriculture BILL NO. _____

BILL NO.

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 2/1/91 Bill No. 64 Time 4:12

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	absent
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN
Secretary

GREG JERGESON
Chairman

Motion: Sen. Rea made a motion to
TABLE 54 64. In favor - 9;
opposed - 0. Motion CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 2/1/91 Bill No. 181 Time 4:10

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	X *
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN
Secretary

GREG JERGESON
Chairman

Motion: Sen Devlin made a motion
that Senate Bill 181 DO PASS
On Favor: 98 Opposed: 0
Motion Carried.

* Senator Bruski requested change of her vote.
Com. allowed her to change vote to 'yes'

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 2/1/91 Bill No. SB 158 Time

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	✓	
SEN. DEVLIN	✓	
SEN. REA	✓	
SEN. SWIFT	✓	
SEN. WILLIAMS	✓	
SEN. KOEHNKE	X	
SEN. JERGESON	✓	

D. QUINN
Secretary

GREG JERGESON
Chairman

Motion: Senator Beck made a motion
that amendments for SB 158 be
adopted. In favor - 9; opposed - 0.
Motion CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

Date

2/1/91

Bill No.

SB 158

Time

NAME

YES

NO

SEN. AKLESTAD

X

SEN. BECK

X

SEN. BRUSKI

X

SEN. DEVLIN

X

SEN. REA

X

SEN. SWIFT

X

SEN. WILLIAMS

X

SEN. KOEHNKE

X

SEN. JERGESON

X

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion:

Sen Aklestad made the
motion that SB 158 DO PASS
AS AMENDED. In favor - 9;
opposed - 0. Motion CARRIED.