



The Voice of Small Business®

Testimony in Support of HB2629 by Mr. Daniel Murray
Kansas State Director, National Federation of Independent Business

Senate Judiciary Committee
Tuesday, March 6, 2012

Good afternoon, Chairman Owens and members of the Committee. My name is Dan Murray and I am the State Director of the National Federation of Independent Business/Kansas. NFIB/KS is the leading small business organization representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB/KS represents the consensus views of its over 4,100 members in Kansas. I am pleased to submit testimony in strong support of HB2629.

HB2629 proposes to amend the Kansas Product Liability Act (KPLA) by codifying that sellers of used products are not subject to strict liability in Kansas if the following is held: (1) Such seller is a retail seller of used products; (2) such seller resold the product after the product was used by a consumer or other product user; and (3) the product was sold in substantially the same condition as it was when it was acquired for resale.

The need to provide this statutory remedy rises from the 2011 Kansas Supreme Court decision *Gaumer v. Rossville Truck*. In the decision, the Court opines that "The KPLA's description of a "product liability claim" with no accompanying language indicating the KPLA's effect or lack of effect on product liability common law leaves an ambiguity for this court to resolve." As a result of this "ambiguity," the Court largely relies upon legislative intent for the enactment of the KPLA and the 1979 Model Uniform Product Liability Act in its finding that that sellers of used products are subject to strict liability in Kansas.

We believe that any Court's reliance upon interpretation of intent and of a never-enacted model legislation can lead to unexpected and troublesome rulings. Such was the case in *Gaumer v. Rossville*. Thus, we support HB2629 for two reasons: 1) it is a vital effort to provide clarity in the statutes; and 2) it is an extremely important redress of a Court decision which will have disastrous consequences for small businesses in Kansas.

It is preposterous for a small business seller of used products to be assigned strict liability if they were never the original owner and if they never substantially altered the product they are re-selling. Imagine the countless small businesses which deal in used products being held, more or less, to the same liability standard as the original manufacturer when they had no effect on the condition of the product. Besides not being very reasonable or fair, it will certainly increase the cost of doing business in Kansas.

On behalf of our members, we fight to make Kansas the best state in which to own, operate and grow a small business. HB2629 puts into place protections of that goal. NFIB wholeheartedly supports HB2629 and urges you to pass the measure out favorably.

Small Business Isn't Small

Collectively, small business isn't small. It represents over 97 percent of all employer firms and provides employment to 54.7% of the non-farm private work force in Kansas. It pays 44 percent of total U.S. private payroll. In the past fifteen years, it has annually generated 64% of net new jobs. It generates more than 50% of the gross domestic product. It possesses half of the business wealth in the U.S.

Senate Judiciary
3-6-12
Attachment 9