

BILL ANALYSIS

H.B. 3096
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, Chapter 19, Business and Commerce Code, governs Texas farm, industrial, off-road construction, forestry harvesting equipment, and outdoor power equipment dealer agreements.

As proposed, H.B. 3096 would update the current law and makes improvements based on current dealer/manufacturer relationships. Adoption of a uniform fair dealership and buyback law in numerous states hopefully will ease the operations for both manufacturers and dealers alike. Dealers are now offering more lines and types of equipment, thus necessitating an expansion of current law to cover a broader range of dealer/manufacturer relationships. The bill adds Chapter 52, Business and Commerce Code (Agricultural, Off-Road Construction, Utility, Industrial, Mining, Forestry, Landscaping, and Outdoor Power Equipment Dealer Agreements), and repeals Chapter 19, Business and Commerce Code (Farm, Industrial, Off-Road Construction, Forestry Harvesting Equipment, and Outdoor Power Equipment Dealer Agreements).

The major positive changes in the proposed uniform legislation compared to current law are discussed below and include the dealer's right to cure problems, an expansion of the definition of "equipment" to cover additional types of equipment, enacting a definition of "good cause," elimination of required equipment purity, an increase in the age of new equipment for buyback, an increase of the buyback amount, and buyback of demonstrator equipment.

Regarding the dealer's right to cure problems, existing statute does not provide an equipment dealer a right to cure a defect in performance under the dealer agreement with the manufacturer/supplier. This is unfair, because of the drastic consequences of termination of the dealership agreement. This problem is remedied by H.B. 3096 by giving the dealer a time period in which to fix the problem about which the manufacturer is complaining.

The definition of "equipment" in the bill has been updated to cover additional types of equipment now being sold by dealers, such as lawn, garden, and mining equipment and all-terrain vehicles.

Under current law, "good cause" for terminating a dealer agreement is not defined. Without a statutory definition of "good cause," courts, as well as the dealer and the manufacturer, are not provided guidelines for determining what is sufficient to provide for "good cause" to terminate the relationship. In fact, courts may rule that "good cause" can be satisfied if the manufacturer simply has an economic reason for terminating the dealer agreement. The bill remedies this situation by providing that "good cause" for termination exists in certain circumstances, such as a dealer's violation of the dealer agreement or a dealer taking or failing to take certain actions.

Regarding equipment purity, manufacturers often want equipment purity and prohibit dealers from carrying other lines. This is detrimental to the equipment dealer's customers, because one line may be good for a certain process but not for another. Dealers want to be able to provide their customers the best equipment for all processes. Under the bill, manufacturers are prohibited from preventing a dealer from carrying another line. This provision is similar to statutes in other states and will create more uniformity with dealer laws.

Regarding buybacks, the bill increases the age of new equipment that can be returned to the manufacturer, upon termination of a dealer agreement, from 30 months to 36 months. Upon termination of a dealer agreement, the buyback price for repair parts is increased by 5 percent, and superseded parts are included. This brings the Texas statute into symmetry with other states' statutes. Another issue is that often manufacturers require dealers to demonstrate equipment. The

bill requires the manufacturer to buy back such equipment upon termination of the dealer agreement in most circumstances.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3096 amends Title 4, Business & Commerce Code, by adding Chapter 52 (Agricultural, Off-Road Construction, Utility, Industrial, Mining, Forestry, Landscaping, and Outdoor Power Equipment Dealer Agreements). The bill defines "current net parts cost," "current price," "dealer," "dealer agreement," "dealership," "demonstrator equipment," "equipment," "family member," "index," "inventory," "net equipment cost," "new equipment," "person," "repair parts," "single-line dealer," "single-line supplier," "supplier," and "terminate." The bill provides that Chapter 52, Business & Commerce Code, shall be liberally interpreted, that an attempted waiver of a provision of this chapter or of the application of this chapter is void, and that a supplier's successor in interest is liable for an obligation of the supplier imposed under this chapter.

H.B. 3096 sets forth provisions regarding dealer agreements or dealerships, and creates specific provisions regarding specific agreements. The bill sets forth provisions for the termination of agreements other than single-line agreements and for termination of single-line dealer and supplier agreements. The bill sets forth provisions relating to warranty claims and for delivery, sale, and return of equipment. The bill sets forth provisions relating to repurchase and other obligations following the cancellation or nonrenewal of an agreement and provides for actions and remedies under Chapter 52, Business & Commerce Code.

H.B. 3096 repeals Chapter 19 (Farm, Industrial, Off-Road Construction, Forestry Harvesting Equipment, and Outdoor Power Equipment Dealer Agreements), Business & Commerce Code.

H.B. 3096 provides that the changes in law made by this Act apply to a dealer agreement entered into or renewed on or after the effective date of this Act and a dealer agreement that was entered into before the effective date of this Act, has no expiration date, and is a continuing contract

EFFECTIVE DATE

September 1, 2007.