

BILL ANALYSIS

C.S.H.B. 4395
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law regulates the wholesale distribution of boats and boat motors by manufacturers supplying Texas dealers and requires manufacturers to enter into agreements with dealers that prescribe provisions relating to terms, dealer territory, performance and product standards, and manufacturer warranty work rates and reimbursement. These laws need to be updated to address the changes in the retail boat business that have taken place since the enactment of these laws in 1991.

C.S.H.B. 4395 clarifies language relating to regulation of boat manufacturers, distributors, and dealers and creates a civil penalty for violating such a regulation.

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

C.S.H.B. 4395 amends the Occupations Code to replace the term "outboard motor" with the term "boat motor" in provisions relating to boat manufacturers, distributors, and dealers, except within the definition of the term "outboard motor." The bill replaces statutory citations in the definitions of "dealer" and "manufacturer" with the applicable language provided within the cited statutes, adjusting references to "outboard motor" to conform with these provisions. The bill requires a boat dealer's territory, as specified in a dealer agreement with a manufacturer or distributor, to provide for an exclusive market area of not less than a 50 mile radius from the dealer location. The bill specifies that good cause is required for the nonrenewal of such an agreement, rather than requiring good cause only for the renewal of an agreement having an original term of less than one year. The bill repeals law that requires a manufacturer or distributor pay a dealer the higher of the labor rate provided by a warranty program or a rate equal to 80 percent of the dealer's retail labor rate if the manufacturer or distributor has a warranty program that reimburses a dealer at 100 percent of the dealer's retail labor rate and the dealer complies with reasonable and objective criteria. The bill requires a manufacturer or distributor that terminates a dealer agreement to repurchase on demand from the dealer a new, unsold, retainable, undamaged, and complete boat, and accessories, that was purchased from the manufacturer or distributor during the two years, rather than within one year, preceding the date of the termination and requires such demand to be made in writing not later than the 90th day after termination of the agreement, rather than the 30th day after termination.. The bill makes a person who violates a provision relating to boat manufacturers, distributors, and dealers liable to the state for a civil penalty not to exceed \$500 for each violation and specifies that each sale of, purchase of, or offer to sell or purchase a new boat or boat motor, as applicable, by a manufacturer, distributor, or dealer before entering into a dealer agreement is a separate violation. The bill authorizes the attorney general to sue to collect such a civil penalty and recover reasonable expenses incurred in obtaining the penalty. The bill defines "boat motor."

C.S.H.B. 4395 repeals Section 2352.105(c), Occupations Code.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4395 adds a provision not in the original to replace the term "outboard motor" with the term "boat motor" in provisions relating to boat manufacturers, distributors, and dealers, except within the definition of the term "outboard motor."

C.S.H.B. 4395 removes a provision in the original that includes stern drives, direct drives, v-drives, and other mechanical forms of marine propulsion under the definition of "outboard motor".

C.S.H.B. 4395 adds a provision not in the original to replace statutory citations in the definitions of "dealer" and "manufacturer" with the applicable language provided within the cited statutes and adds a provision to define "boat motor."

C.S.H.B. 4395 differs from the original by repealing a provision relating to reimbursements under a manufacturer or distributor warranty program, whereas the original removes the language of the provision.

C.S.H.B. 4395 removes a provision in the original that prohibits a person from engaging in business in Texas as a dealer, distributor, or manufacturer unless the person holds the appropriate license.

C.S.H.B. 4395 differs from the original by prohibiting a civil penalty under provisions relating to boat manufacturers, distributors, and dealers from exceeding \$500 for each violation, whereas the original requires such a penalty to be in the amount of \$500. The substitute adds a provision not in the original to specify that each sale of, purchase of, or offer to sell or purchase a new boat or boat motor, as applicable, by a manufacturer, distributor, or dealer before entering into a dealer agreement is a separate violation and adds a provision authorizing the attorney general to sue to collect a civil penalty and recover reasonable expenses incurred in obtaining the penalty.