

BILL ANALYSIS

C.S.H.B. 1960
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Approximately 20 years ago, the Texas Legislature enacted legislation to regulate the wholesale distribution of boats and boat motors by manufacturers supplying Texas dealers. The legislation required manufacturers to enter into dealer agreements with dealers that meet certain minimum prescribed standards relating to terms, dealer territory, performance and product standards, and manufacturer warranty work rates and reimbursement, and provided for other related regulatory requirements.

Certain provisions in that legislation have become outdated as a result of changes in the retail boat business since the law was passed. The primary concern among certain trade groups for both dealers and manufacturers is the use of one-year dealer agreements between manufacturers and dealers, which no longer is consistent with the amount of dealer investment in retail space and facilities, repair and warranty work capability, and product advertising and branding necessary to successfully market a manufacturer's products.

C.S.H.B. 1960 seeks to address this concern by requiring a minimum of three years for the term of an agreement between a dealer and manufacturer and adding certain performance standards and other conditions and protections.

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. 1960 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 "outboard motor." The bill makes the following changes to a boat dealer's agreement with a distributor or manufacturer: requires the agreement to include the dealer's territory and dealership locations, rather than location, territory, or market area; requires the agreement to be for a stated term of not less than three years; specifies that working capital, inventory, facility, equipment, or tool standards include mutually agreed minimum product stocking requirements, if any exist; and requires the agreement to include mutually agreed standards for maintenance of a dedicated or self-funded line of credit if one exists and a trade-in line of credit or self-funded trade-in line of credit, if either exists. The bill requires a dealer and manufacturer, at the end of the first year of an agreement, to evaluate the dealer's progress in meeting the agreement's performance standards, marketing standards, and line of credit standards to determine whether to enter into a new three-year agreement. The bill specifies that the initial agreement is void if the dealer and manufacturer enter into a new agreement and that, if no new agreement is entered into, the dealer and manufacturer are bound by the terms and conditions of the initial agreement. The bill authorizes a term of less than three years for an initial agreement between a dealer and a manufacturer and requires a minimum term of at least three years for an extension or renewal of the initial agreement or a subsequent agreement between the same dealer

and manufacturer.

C.S.H.B. 1960 requires a manufacturer to make reasonable efforts to provide a dealer with information regarding the dealer's compliance with performance standards. The bill requires performance standards to be evaluated on an annual basis and authorizes an adjustment of such standards to promote the sale of the manufacturer's products if the dealer and manufacturer agree. The bill provides for the initial performance standards to remain in place until the expiration of the agreement if revised performance standards are not agreeable.

C.S.H.B. 1960 prohibits a manufacturer, during the term of an agreement, from appointing another authorized dealer for the sale of the manufacturer's boats in a dealer's territory. The bill prohibits a dealer from advertising or promoting the sale of the manufacturer's boats outside the dealer's territory, including through the Internet, except for purposes of advertising without an advertised price or with a manufacturer's suggested retail price. The bill prohibits a dealer from using a broker in another dealer's territory to sell a manufacturer's boat. The bill establishes that statutory provisions relating to boat manufacturers, distributors, and dealers do not prohibit a dealer from selling a boat to a customer residing outside of the dealer's territory who independently visits the dealership and seeks to purchase a boat from the dealer.

C.S.H.B. 1960 establishes that a default under an agreement by a boat manufacturer, distributor, or dealer is a material failure to meet minimum product stocking requirements as specified by the agreement; a material failure to make timely payment of any material obligation as specified by the agreement; a material failure to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or an act of material fraud relating to the performance of a right or obligation under the agreement. The bill establishes that a default by a boat dealer under a boat dealer's agreement with a distributor or manufacturer is a material failure to meet applicable performance standards as specified by the agreement for a defined one model year marketing cycle; a material failure to meet applicable marketing standards as specified by the agreement; a material failure to meet applicable standards for a dedicated or self-funded line of credit or a trade-in or self-funded trade-in line of credit as specified by the agreement; or the marketing of the manufacturer's boats by the dealer outside of the dealer's territory in violation of the applicable statutory provisions.

C.S.H.B. 1960 requires a manufacturer or distributor to give a dealer written notice of a default and allow the dealer to cure the default within a specified cure period. The bill requires a dealer to cure a default not later than the following deadlines:

- the 30th day after the date of receipt of notice of a default that is a material failure to make timely payment of any material obligation as specified by the agreement or that is the marketing of the manufacturer's boats by the dealer outside of the dealer's territory;
- the 60th day after the date of receipt of notice of a default that is a material failure either to meet applicable marketing standards as specified by the agreement or to meet applicable standards for a dedicated or self-funded line of credit or a trade-in or self-funded trade-in line of credit as specified by the agreement;
- the 90th day after the date of receipt of notice of a default that is a material failure to meet minimum product stocking requirements as specified by the agreement; or
- the 180th day after the date of receipt of notice of a default that is a material failure to meet applicable performance standards as specified by the agreement for a defined one model year marketing cycle.

C.S.H.B. 1960 revises the circumstances under which a manufacturer or distributor is authorized to terminate an agreement with a dealer by establishing a dealer's default as grounds for termination instead of requiring that there be good cause; by requiring the manufacturer or distributor to give the dealer written notice of the default and possible termination and requiring that notice to state the default; by requiring the dealer to have been given the applicable cure

period to make a good faith effort to cure the stated default; and by adding the dealer's failure to cure the default as a prerequisite to termination. The bill removes a provision requiring good cause for the nonrenewal of an agreement having an original term of less than one year. The bill specifies that the fact that a dealer holds an agreement involving another line, make, or brand of a new boat or new boat motor does not constitute a default or grounds for termination of an agreement, rather than that it does not constitute good cause. The bill revises the list of dealer actions that authorize a manufacturer or distributor to terminate an agreement on written notice without a cure period by removing from that list engaging in fraudulent conduct in conducting the dealer's business or performing the agreement and by adding the following to that list: engaging in an act of material fraud relating to the performance of a right or obligation under the agreement; failing to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; and receiving three valid notices of a default for the same default, whether cured or not, within a 12-month period.

C.S.H.B. 1960 authorizes a former dealer to continue to purchase parts and accessories to service the products covered by the agreement after a nonrenewal, as well as after a termination, of that agreement, until the first anniversary of the date of nonrenewal or termination. The bill requires the dealer, until the first anniversary of the date of termination or nonrenewal of an agreement, to continue to perform warranty work for the manufacturer's products, unless otherwise specified by the manufacturer in the termination notice. The bill removes an exception to a former dealer's continued authorization to purchase parts and accessories that made that authorization inapplicable if the manufacturer or distributor terminates the agreement based on quality of service or for a reason justifying immediate termination.

C.S.H.B. 1960 establishes a deadline of not later than the second business day after the date that a manufacturer or distributor receives a dealer's written claim for warranty work for the manufacturer or distributor to approve or disapprove the dealer's claim. The bill establishes a deadline of later than the 30th day after the date that the manufacturer or distributor receives the dealer's written invoice or written proof of completion of the warranty work, if the claim has been approved, for a manufacturer or distributor to pay the approved claim. The bill prohibits a manufacturer or distributor from auditing a claim filed for warranty work after the first anniversary of the date the claim is submitted and requires a manufacturer to act as the single source of contact for the dealer for the manufacturer's component part product warranties, other than engine-related product warranties. The bill requires a manufacturer, on signing an agreement, to provide a dealer with a written statement of the approximate amount of time the manufacturer takes to deliver a part to the dealer.

C.S.H.B. 1960, in a provision that requires a manufacturer or distributor who terminates an agreement to repurchase on the dealer's demand certain items purchased by the dealer from the manufacturer or distributor, removes the condition that a boat be retailable and undamaged and makes the repurchase requirement applicable to a boat that was purchased during the two years preceding the date of termination, rather than within one year before that date. The bill extends the deadline for making a demand for repurchase from the 30th day to the 90th day after the date the manufacturer or distributor terminates the agreement and establishes a deadline of not later than the 30th day after the date a dealer demands a repurchase for a manufacturer or distributor to complete the repurchase, rather than requiring the completion of the repurchase within a reasonable time.

C.S.H.B. 1960 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 a new boat or boat motor by a manufacturer or distributor 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, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

C.S.H.B. 1960 defines "boat motor," "marketing standards," "performance standards," and "territory" and redefines "agreement," "dealer," "distributor," and "manufacturer."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1960 contains a provision not included in the original authorizing a term of less than three years for an initial agreement between a boat dealer and a manufacturer and requiring a minimum term of at least three years for a renewed, extended, or subsequent agreement between those same parties.

C.S.H.B. 1960 differs from the original, in a provision authorizing a manufacturer or distributor to terminate an agreement with a dealer on written notice and without a cure period under certain conditions, by specifying that one of those conditions is the dealer's receipt of three valid notices of a default for the same default within a 12-month period, whereas the original specifies as a condition the receipt of three notices of a default for the same default within a 12-month period.

C.S.H.B. 1960 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.