

## **BILL ANALYSIS**

C.S.H.B. 3079  
By: Darby  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to certain sources, Texas laws governing the relationship between a dealer of certain equipment used for agricultural, construction, utility, industrial, mining, outdoor power, forestry, and landscaping purposes and the suppliers of such equipment need to be updated to reflect recent developments in those relationships and to conform Texas laws with those of other states. C.S.H.B. 3079 seeks to make those revisions.

### **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. 3079 amends the Business & Commerce Code to make void an attempted waiver of its provisions relating to dealer agreements involving the purchase and sale of certain all-terrain vehicles or equipment or machinery used for agricultural, construction, utility, industrial, mining, outdoor power, forestry, and landscaping purposes or an attempted waiver of the application of those provisions. The bill establishes legislative findings relating to the retail distribution, sales, and rental of certain equipment through the use of independent dealers operating under contract with equipment suppliers. The bill provides a short title, the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, for purposes of citing its provisions.

#### **Provisions Regarding Dealer Agreement or Dealership**

C.S.H.B. 3079 makes void any provision in a dealer agreement that purports to elect the application of a law of another state instead of the law of Texas and any provision that requires a dealer to pay attorney's fees incurred by an equipment supplier.

C.S.H.B. 3079 prohibits a supplier from preventing, by contract or otherwise, a dealer from changing its capital structure or the means by or through which the dealer finances its operations under certain conditions and prohibits a supplier from requiring a dealer to assent to a release, assignment, novation, waiver, or estoppel that would release any person from liability imposed by the bill's provisions.

#### **Sale, Transfer, or Ownership of Dealership**

C.S.H.B. 3079 sets out provisions relating to the transfer of an interest in a dealership by succession, applicable only to a single-line dealer agreement, and provisions relating to the approval of the sale or transfer of a dealer's business at the dealer's request. The bill sets out provisions relating to the approval of a sale or transfer of a dealer's business at the request of a personal representative of the dealer's estate or any other person with authority to transfer the dealer's assets, applicable only to a dealer agreement that is not a single-line dealer agreement.

## **Termination of Agreements Other Than Single-Line Dealer Agreements**

C.S.H.B. 3079 requires a dealer, in relation to a dealer agreement that is not a single-line dealer agreement, to give the supplier at least 30 days' prior written notice of termination and prohibits a supplier from terminating such a dealer agreement without good cause. The bill specifies the conditions under which good cause exists for termination of such a dealer agreement, except as otherwise specifically provided by the bill's provisions. The bill establishes that good cause is not considered to exist when there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier if a person revokes any guarantee of the dealer's obligations to the supplier in connection with or following the transfer of the person's entire ownership interest in the dealership and the supplier does not require the person to execute a new guarantee of the dealer's present or future obligations to the supplier in connection with the transfer.

C.S.H.B. 3079 requires a supplier, except as otherwise provided by the bill's provisions, to provide a dealer written notice of termination of a dealer agreement at least 180 days before the effective date of termination. The bill requires the notice to state all reasons constituting good cause for the termination and that the dealer has 60 days in which to cure any claimed deficiency and establishes that, if the deficiency is cured within that period, the notice will be void. The bill prohibits a supplier, other than a specialty agricultural equipment supplier, from terminating a dealer agreement when a dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives unless the supplier gives the dealer notice of the action at least two years before the effective date of the termination. The bill makes the notice void and continues the dealer agreement in effect if the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period. The bill makes the requirements relating to the notice and right to cure inapplicable if the reason for termination is specified by the bill's provisions as good cause reasons relating to the termination of agreements other than single-line dealer agreements.

## **Termination of Single-Line Dealer Agreements**

C.S.H.B. 3079 prohibits a supplier from terminating a single-line dealer agreement without good cause and defines "good cause," for purposes of the termination of single-line dealer agreements under the bill's provisions, to mean failure by a dealer to comply with requirements imposed on the dealer by the dealer agreement if the requirements are not different from those requirements imposed on other similarly situated dealers. The bill specifies additional conditions under which good cause exists for termination of a single-line dealer agreement.

C.S.H.B. 3079 requires a supplier to provide a dealer with at least 90 days' written notice of termination, with certain exceptions. The bill requires the notice to state all reasons constituting good cause for the termination and to state that the dealer has 60 days in which to cure any claimed deficiency and establishes that, if the deficiency is cured within 60 days, the notice will be void. The bill establishes that, if the good cause reason for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time has existed where the supplier has worked with the dealer to gain the desired market share. The bill makes the requirements relating to the notice and right to cure inapplicable if the reason for termination is specified by the bill's provisions as good cause reasons relating to the termination of single-line dealer agreements.

## **Warranty Claims**

C.S.H.B. 3079 sets out provisions relating to a warranty claim submitted by a dealer to the supplier and makes these provisions applicable to a dealer who has complied with the supplier's reasonable policies and procedures for reimbursement of the warranty claim that is a warranted claim under the supplier's warranty policy. The bill establishes that a supplier's warranty reimbursement policies and procedures are considered unreasonable to the extent of any conflict with the provisions of the bill relating to warranty claims. The bill specifies that, for purposes of

these provisions, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

C.S.H.B. 3079 requires a supplier, not later than the 45th day after the date the supplier receives a warranty claim from a dealer while the dealer agreement is in effect or not later than the 60th day after the termination or expiration date of the dealer agreement, to accept or reject the claim by providing written notice to the dealer on the condition that the claim is for work performed before the effective date of the termination or expiration. The bill establishes that a claim not rejected before that deadline is considered accepted and requires the supplier, if the warranty claim is accepted, to pay or credit to the dealer's account all amounts owed to the dealer with respect to the accepted claim not later than the 30th day after the date the claim is accepted. The bill requires the supplier, if the supplier rejects the warranty claim, to give the dealer written or electronic notice of the grounds for the rejection and requires the notice to be consistent with the supplier's grounds for rejection of warranty claims of other dealers, both in the terms and manner of enforcement. The bill establishes that the claim is considered accepted if no grounds for rejection of a rejected claim are given to the dealer.

C.S.H.B. 3079 provides for the resubmission of a warranty claim that was rejected on the ground that the dealer failed to properly follow the procedural or technical requirements for submission of a warranty claim. The bill sets out provisions relating to payment of a warranty claim, a warranty claim for certain repair work or installation of replacement parts, and a supplier's audit of a warranty claim submitted by a dealer. The bill establishes alternate reimbursement terms of a dealer agreement for certain warranty labor costs, provides for the enforceability of those terms, and specifies that the alternate reimbursement terms do not affect the supplier's obligation to reimburse the dealer for parts under the provisions of the bill relating to the payment of a warranty claim.

### **Delivery, Sale, and Return of Equipment**

C.S.H.B. 3079 prohibits a supplier from coercing, compelling, or requiring a dealer to accept delivery of equipment or a repair part that has not been voluntarily ordered by the dealer, unless the equipment or repair part is a safety feature required by the supplier or applicable law or the dealer is otherwise required by applicable law to accept the delivery. The bill prohibits a supplier from coercing a dealer to refuse purchase of equipment manufactured by another supplier. The bill requires that it not be considered a violation of these provisions of the bill if the supplier requires a dealer to have or provide separate facilities, financial statements, or sales staff for major competing product lines if the supplier gives the dealer at least three years' notice of such a requirement.

C.S.H.B. 3079 prohibits a supplier from conditioning the sale of equipment, repair parts, or goods or services to a dealer on the purchase of other goods or services and establishes that this provision does not prohibit a supplier from requiring a dealer to purchase all repair parts, special tools, or training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer. The bill prohibits a supplier from refusing to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement and specifically advertised or represented by the supplier as available for immediate delivery, unless the refusal is due to certain specified reasons.

C.S.H.B. 3079 prohibits a supplier from discriminating, directly or indirectly, in filling an order placed by a dealer for retail sale or lease of new equipment under a dealer agreement as between dealers of the same product line. The bill prohibits a supplier from discriminating, directly or indirectly, in the price among different dealers with respect to a purchase of equipment or a repair part of like grade and quality and identical brand, where the effect of such discrimination may be to substantially lessen competition, tend to create a monopoly in any line of commerce,

or injure, destroy, or prevent competition with any dealer who either grants or knowingly receives the benefit of such discrimination. The bill authorizes a supplier to charge a different price among dealers for such purchases under specified circumstances.

### **Repurchase or Other Obligations Following Cancellation or Nonrenewal of Agreement**

C.S.H.B. 3079 sets out provisions applicable to the repurchase of a dealer's inventory at a particular business location being closed, if the dealer has more than one of its business locations covered by the same dealer agreement, unless the closing occurs without the permission of the supplier. The bill specifies that, for purposes of these provisions, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

C.S.H.B. 3079 requires a supplier, when a supplier or dealer terminates or otherwise discontinues the dealer agreement entered into between the two parties, to pay to the dealer, or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier, various amounts based on the type and value of certain equipment, repair parts, data processing hardware or software, or tools, and other specified factors. The bill establishes the methods for determining the value of certain items. The bill transfers, on payment of the amount due or on credit to the dealer's account of the amount required, title to all inventory repurchased to the supplier and entitles the supplier to possession of the inventory.

C.S.H.B. 3079 requires all payments or allowances of credit due to a dealer to be paid or credited within 90 days after receipt by the supplier of property required to be repurchased and establishes that any payment or allowance of credit due a dealer that is not paid within that period will accrue interest at the maximum rate allowed by law. The bill authorizes the supplier to withhold payments due during the period in which the dealer fails to comply with its contractual obligation to remove any signage indicating that the dealer is an authorized dealer of the supplier.

C.S.H.B. 3079 makes a supplier who refuses to repurchase any inventory covered under provisions of the bill after termination or discontinuation of the dealer agreement liable to the dealer for certain amounts, charges, interest, and costs. The bill requires the supplier and dealer to each pay 50 percent of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to these provisions. The bill establishes that the dealer retains title to and has a first and prior lien against all inventory returned by the dealer to the supplier until the dealer is paid all amounts owed by the supplier for the required repurchase of the inventory and requires the supplier to hold the proceeds of the inventory in trust for the dealer's benefit.

C.S.H.B. 3079 prohibits its provisions relating to repurchase or other obligations following cancellation or nonrenewal of a dealer agreement from being construed to affect any security interest the supplier may have in the inventory of the dealer, and prohibits any repurchase of the dealer's inventory under such provisions from being subject to the claims of any secured or unsecured creditor of the supplier or any assignee of the supplier until the dealer has received full payment or credit, as applicable.

C.S.H.B. 3079 establishes that provisions of the bill relating to repurchase or other obligations following the cancellation or nonrenewal of a dealer agreement do not apply to a specialty agricultural equipment supplier if the dealer terminates the dealer agreement without good reason and specifies the reasons that constitute good reason for a dealer to terminate the dealer agreement. The bill prohibits its provisions relating to repurchase or other obligations following cancellation or nonrenewal of a dealer agreement from being construed to limit a specialty agricultural equipment supplier's obligation to repurchase a dealer's inventory if the supplier terminates or otherwise discontinues the dealer agreement.

C.S.H.B. 3079 provides exceptions to the requirement that a supplier repurchase equipment, inventory, or a repair part from a dealer, establishes that a supplier will be required to repurchase certain broken or damaged items for a specified repurchase price under certain conditions, and makes provisions relating to the repurchase of equipment or a repair part that is not returned to the supplier within a designated period inapplicable under certain conditions.

### **Actions and Remedies**

C.S.H.B. 3079 authorizes a dealer, if a supplier violates any provision of the bill, to bring an action against the supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation together with the actual costs of the action and authorizes the dealer also to be granted injunctive relief for unlawful termination. The bill establishes that such a remedy is not exclusive and is in addition to any other remedy permitted by law.

C.S.H.B. 3079 establishes that the provisions of the bill are supplemental to any dealer agreement between the dealer and the supplier that provides the dealer with greater protection. The bill authorizes a dealer to elect to pursue its contract remedy or the remedy provided by state law, or both, and establishes that an election by the dealer to pursue those remedies does not bar the dealer's right to exercise any other remedies that may be granted at law or in equity.

### **Other Provisions**

C.S.H.B. 3079 defines "current net parts cost," "current net parts price," "dealer," "dealer agreement," "dealership," "demonstrator," "equipment," "family member," "index," "inventory," "net equipment cost," "new equipment," "person," "repair parts," "single-line dealer," "single-line dealer agreement," "single-line supplier," "specialty agricultural equipment," "specialty agricultural equipment supplier," "supplier," "terminate," "termination," and "threshold amount."

C.S.H.B. 3079 repeals Chapter 55, Business & Commerce Code, relating to farm, industrial, off-road construction, forestry harvesting, and outdoor power equipment dealer agreements.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3079, in the definition for "specialty agricultural equipment supplier," contains language not included in the original among the conditions for applicability of the term a supplier whose qualification for status as a specialty agricultural equipment supplier is determined on a case-by-case basis depending on the sales of an applicable dealer and the sales to the applicable dealer by the specialty agricultural equipment supplier.

C.S.H.B. 3079 differs from the original, in the provision specifying that the definition of "supplier" includes any successor in interest of a supplier, by including as such successors a receiver, trustee, liquidator, assignee, purchaser of assets or stock, or surviving corporation resulting from a merger, liquidation, or reorganization of an original supplier and a purchaser of all or substantially all of a supplier's assets, such as a purchaser of all or substantially all of the inventory of the supplier or any division or product line of the supplier, whereas the original specifies that the applicability of the term "supplier" to a person's successor in interest includes a receiver, trustee, liquidator, or assignee of the person; a surviving corporation resulting from a merger, liquidation, or reorganization of the person; or a purchaser of assets or stock of the person, such as a purchaser of all or substantially all of the inventory of the person or any division or product line of the person.

C.S.H.B. 3079, in the definition of "threshold amount" as the lesser of 10 percent of a dealer's gross sales revenue or \$350,000 based on net sales during a certain period, contains a specification not included in the original that the lesser of those amounts is in each case. The substitute, in the requirement that the \$350,000 amount be increased each year, omits a specification included in the original that the annual increase occur on September 1.

C.S.H.B. 3079, in a provision giving as a good cause reason for terminating a single-line dealer agreement the dealer's failure to comply with certain requirements if the requirements are not different from those requirements imposed on other similarly situated dealers in certain ways, omits a specification included in the original that such dealers are in Texas.

C.S.H.B. 3079 omits a provision included in the original relating to the inapplicability to certain specialty suppliers of provisions of the bill relating to a dealer's termination of a dealer agreement, establishing that whether a supplier qualifies as a specialty agricultural equipment supplier is determined on a case-by-case basis depending on the sales of the applicable dealer and the sales to the applicable dealer by the specialty agricultural equipment supplier.

C.S.H.B. 3079 differs from the original in nonsubstantive ways.