

By: Murphy

H.B. No. 963

A BILL TO BE ENTITLED

AN ACT

relating to applicability of the Fair Practices of Equipment  
Manufacturers, Distributors, Wholesalers, and Dealers Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 57.002(3), (4), (5), (7), (15), (16),  
and (17), Business & Commerce Code, as added by Chapter 1039 (H.B.  
3079), Acts of the 82nd Legislature, Regular Session, 2011, are  
amended to read as follows:

(3) "Dealer" means a person who is primarily engaged  
in the business of:

(A) selling, including on a commission basis, or  
leasing equipment or repair parts for equipment to end users or  
installers of the equipment; and

(B) repairing or servicing equipment.

(4) "Dealer agreement" means an oral or written  
agreement or arrangement, of definite or indefinite duration,  
between a dealer and a supplier that provides for the rights and  
obligations of the parties with respect to the purchase or sale,  
including on a commission basis, of equipment or repair parts.

(5) "Dealership" means the retail sale business,  
whether selling or leasing to end users or installers, engaged in by  
a dealer under a dealer agreement.

(7) "Equipment":

(A) means machinery, equipment, or implements or

1 attachments to the machinery, equipment, or implements used for, or  
2 in connection with, any of the following purposes:

3 (i) lawn, garden, golf course, landscaping,  
4 or grounds maintenance;

5 (ii) planting, cultivating, irrigating,  
6 harvesting, or producing agricultural or forestry products;

7 (iii) raising, feeding, or tending to  
8 livestock or harvesting products from livestock or any other  
9 activity in connection with those activities; or

10 (iv) industrial, construction, including  
11 building systems, maintenance, mining, or utility activities or  
12 applications; and

13 (B) does not mean:

14 (i) trailers or self-propelled vehicles  
15 designed primarily for the transportation of persons or property on  
16 a street or highway; or

17 (ii) all-terrain vehicles, utility task  
18 vehicles, or recreational off-highway vehicles.

19 (15) "Single-line dealer" means a dealer that:

20 (A) has purchased from, or sells on behalf of,  
21 including on a commission basis, a single supplier construction,  
22 industrial, forestry, or mining equipment [~~from a single supplier~~]  
23 constituting 75 percent or more of the dealer's total new equipment  
24 that is construction, industrial, forestry, or mining equipment, or  
25 75 percent or more of the dealer's total new equipment sales that  
26 consist of construction, industrial, forestry, or mining  
27 equipment, computed on the basis of net equipment cost; and

1 (B) has a total annual average sales volume of  
2 equipment acquired from the single-line supplier in excess of \$25  
3 million for the five calendar years immediately preceding the  
4 applicable determination date, provided, however, that the \$25  
5 million threshold will be increased as of September 1 of each year  
6 by an amount equal to the threshold on the date the determination is  
7 made multiplied by the percentage increase in the index from  
8 January of the immediately preceding year to January of the year the  
9 determination is made.

10 (16) "Single-line dealer agreement" means a dealer  
11 agreement between a single-line dealer and a single-line supplier  
12 that only provides for the rights and obligations of the parties  
13 with respect to the purchase or [~~and~~] sale, including on a  
14 commission basis, of construction, forestry, industrial, or mining  
15 equipment.

16 (17) "Single-line supplier" means the supplier that is  
17 selling or supplying to a single-line dealer construction,  
18 industrial, forestry, or mining equipment constituting:

19 (A) 75 percent of the single-line dealer's new  
20 equipment that consists of construction, industrial, forestry, and  
21 mining equipment; or

22 (B) 75 percent of the single-line dealer's new  
23 equipment sales that consist of construction, industrial,  
24 forestry, and mining equipment.

25 SECTION 2. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2013.