

SUBJECT: Regulating off-road construction equipment dealer agreements

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 9 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Janek, Solomons, Woolley
0 nays

WITNESSES: For — Charles Tupper, Southwest Hardware and Implement Association; James A. Bost; Heywood C. Clemons; Gilbert D. Gaedcke; Whit Perryman; Frank Steves; Henry Van De Putte; Gary N. Wiley
Against — Phil Cates, Equipment Manufacturers' Institute

BACKGROUND : Chapter 19 of the Business and Commerce Code regulates farm, industrial, and outdoor power equipment dealer agreements, including the return of inventory and manufacturer buy-back of equipment, handling of warranty claims, and renewal or termination of dealer franchise agreements. The chapter explicitly provides that it does not apply to dealers of off-road construction equipment.

DIGEST: HB 533 would delete the provision excepting off-road equipment dealers from Business and Commerce Code Chapter 19 and stipulate that the term “equipment” as used in the chapter would also mean off-road equipment.

The bill, as amended, would provide that the term “dealer” would not include a single-line dealer primarily engaged in the retail sale and service of off-road construction and earthmoving equipment. “Single-line dealer” would mean a person or entity that purchases at least 75 percent of its new product inventory from a single supplier and has a total annual average sales volume for the three previous years in excess of \$100 million.

The bill would take effect on September 1, 1997, and would only apply to agreements entered into on or after that date.

**SUPPORTERS
SAY:**

HB 533 would enable off-road construction equipment dealers to enjoy the statutory safeguards currently benefiting farm and industrial equipment dealers. An equipment dealer's contractual relationship with its supplier is a key factor in its economic success and survival. The standard franchise contract is usually imposed upon the local dealer as a mandatory or one-way contract, with no sense of negotiation or give-and-take between the supplier and the dealer. These form contracts grant the manufacturer or distributor the unilateral right to cancel the dealer's contract, either for cause or for no specific reason, often leaving the local equipment dealer with limited notice, depleted inventory, strained dealer finances, and the loss of good will from angry customers who are likely to take their business elsewhere. The potential economic loss and damage to local communities that can result from such an arbitrary termination of a supplier-dealer contract was one reason behind the creation of the current statutory language covering farm and industrial equipment.

HB 533 would simply expand to off-road construction equipment dealers the protections for inventory return and equipment buy-back in cases where the manufacturer terminates the franchise agreement. This would give those local businesses a minimal level of protection from the arbitrary decisions of an out-of-state corporation, and equal treatment with other Texas equipment dealers selling farm tractors and implements, industrial tractors and outdoor power equipment.

The one justified exception to these protections, added by the committee amendment, would be for exclusive dealerships. Handling only a single line of equipment, these dealers have a stable and steady relationship with their suppliers, as proven by sustained economic success. These relationships warrant special treatment, since they generally involve a contractual agreement that cannot be unilaterally terminated. The overwhelming number of off-road equipment dealers, however, do not work under such exclusive agreements and offer products from several different manufacturers. These community dealers need the full protection of Texas law.

**OPPONENTS
SAY:**

HB 533 would be an unnecessary intrusion by the state into the private right of contract between equipment manufacturers, distributors, or suppliers and the local equipment dealers who sell these products on behalf of the

manufacturers. Imposition of these artificial standards would remove needed flexibility from the law concerning equipment dealers, and make it less likely that these primarily out-of-state manufacturers would want to establish more franchise agreements in Texas. This state-imposed language could drive up the cost of obtaining such equipment within the state.

NOTES:

The committee amendment would add the provision exempting single-line dealers from coverage under the bill.