

- SUBJECT:** Regulating agreements between boat manufacturers and dealers
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons
0 nays
2 absent — S. Miller, Workman
- WITNESSES:** For — Rod Malone, Boating Trades Association of Texas, Marine Retailers Association of America; Rick Smith, Boating Trades Association of Texas; Del Waters, Texas Boating Trades of Texas; (*Registered, but did not testify*: Brittney Booth, Boating Trade Association of Texas; John Kuhl, Boating Trades Association of Metro Houston; Michael Marks, Boating Trades Association of Texas)

Against — David Dickerson, National Marine Manufacturers Association; Jeff Stone, Skeeter Boats
- DIGEST:** CSHB 1960 would add inboard boat motors to the products regulated by the Occupations Code. The bill would increase the required term length of a written agreement between a manufacturer or distributor and a dealer for the purchase and sale of new boats or new boat motors to a minimum of three years, unless it was the initial agreement. The bill would require a dealer and manufacturer, at the end of the initial agreement, to determine whether to enter into a new three-year agreement. If the dealer and manufacturer entered into a new agreement, the initial agreement would be void. If the dealer and manufacturer did not enter into a new agreement, the dealer and manufacturer would be bound by the terms and conditions of the initial agreement.
- The agreement would have to include any mutually agreed minimum product stocking requirements and mutually agreed standards for maintenance of a dedicated or self-funded line of credit and a trade-in line of credit or self-funded trade-in line of credit. Upon signing an agreement, a manufacturer would have to provide the dealer with a written statement of the approximate amount of time the manufacturer would take to deliver a part to the dealer.

During the term of an agreement, a manufacturer could not appoint another authorized dealer for the sale of the manufacturer's boats in a dealer's territory. A dealer could not advertise or promote the sale of the manufacturer's boats outside the dealer's territory, including through the Internet. A dealer could not use a broker in another dealer's territory to sell a manufacturer's boat. The bill would not prohibit a dealer from selling a boat to a customer residing outside of the dealer's territory who independently visited the dealership to purchase a boat.

Defaults. A manufacturer would have to make reasonable efforts to provide a dealer with information regarding the dealer's compliance with performance standards.

The bill would define a default for a manufacturer, distributor, or dealer. A manufacturer or distributor would have to give a dealer written notice of a default and allow the dealer to cure the default within a time period dictated by the circumstances.

Warranty. Until the first anniversary of the date of termination or nonrenewal of an agreement, a dealer would be required to perform warranty work for the manufacturer's products, unless otherwise specified by the manufacturer in the termination notice. A manufacturer or distributor could not audit a claim filed for warranty work after the first anniversary of the date the claim were submitted. A manufacturer would have 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 would specify the manner in which a manufacturer or distributor would have to approve or disapprove a dealer's written claim for warranty work.

Repurchase upon termination. A manufacturer or distributor who terminated an agreement would have to repurchase on demand from the dealer a new, unsold, and complete boat and any boat motor that had been purchased during the two years before the termination. The manufacturer or distributor would have to repurchase the boat no later than the 30th day after the date the dealer demanded the repurchase.

Civil penalty. A manufacturer or distributor who violated the provisions of the bill would be liable for a civil penalty not to exceed \$500 for each violation. Each sale of a new boat or boat motor by a manufacturer or distributor would be a separate violation. The attorney general could sue to collect a civil penalty and could recover the reasonable expenses incurred in obtaining the penalty.

The bill would apply only to an agreement entered into or renewed on or after September 1, 2011. The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1960 would update the regulations of the retail boating business. The bill would lengthen the minimum term of dealer agreements between manufacturers and dealers to be consistent with the extent of dealer investment in retail space and facilities, repair and warranty work capability, and product advertising and branding necessary to market a manufacturer's products. A three-year contract, as opposed to a one-year contract, would balance the power between a manufacturer and dealer. The bill would add necessary performance standards and other conditions and protections.

Claims that the bill would hurt small, family-owned dealers are unfounded because all dealers would benefit from a long-term relationship with the manufacturer.

**OPPONENTS
SAY:**

CSHB 1960 would hurt small dealerships and would create an imbalance of power by distributing a greater portion of risk onto dealers. The bill's provisions would remove the flexibility to negotiate from the free enterprise system. Texas would be the only state in the nation to specify the length of the contract. The bill would remove the flexibility afforded to both manufacturers and dealers.

NOTES:

The companion bill, SB 1315 by Jackson, was referred to the Senate Transportation and Homeland Security Committee on March 16.