

SUBJECT: Nonrenewal of boat and outboard motor franchise agreements

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Gray, Hilbert, Bosse, Goodman, Roman, Zbranek
0 nays
3 absent — Alvarado, Dutton, Nixon

WITNESSES: For — Ken Lovell and John Kuhl, Boating Trades Association of Metro Houston; Howard Rose, Boating Trades Association of Houston; Mark Woods, Capitol Area Boating Trades; Darryl Hurst; Gene Schkade
Against — Don Dacus; F. Steven Herb, Roy Montgomery and Gilbert Turrieta, National Marine Manufacturers Association
On — None

BACKGROUND : Franchise agreements between boat and boat-motor manufacturers or distributors and their dealers are governed by art. 8911 V.A.C.S., enacted in 1991. Under the law, manufacturers are prohibited from terminating an agreement with a dealer without good cause. Additionally the manufacturer is required to give the dealer 30 days to cure the objections raised by the manufacturer in the written notice stating reasons for the termination.

DIGEST: CSHB 2037 would prohibit the nonrenewal of a dealer agreement unless the manufacturer gave written notice setting forth the reasons for the nonrenewal, gave the dealer 30 days to cure the causes listed in the notice, and there was “good cause in the public interest” for the nonrenewal.

Good cause in the public interest would be determined by examining dealer performance or capabilities based in sales adequacy, financial strength, inventory depth, facilities and personnel, warranty obligations, breach of material provisions of the dealer agreement, or other relevant circumstances.

CSHB 2037 would allow a person who violated the law concerning boat dealer agreements to be subject to forfeiting the right to conduct business in

Texas as a manufacturer, distributor or dealer in addition to other penalties already included in the statute.

The determination of whether termination or nonrenewal was for good cause could be submitted to binding arbitration at the request of either party. Arbitrations would be conducted according to the Texas Arbitration Act, chapter 171 of the Civil Practices and Remedies Code. If an arbiter made a determination on good cause, renewal or non renewal would occur at the end of the current term of the contract or the date of the arbiter's decision, whichever was later.

CSHB 2037 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

Since enactment of the law dealing with boat and boat-motor dealer agreements, manufacturers have discovered new ways to terminate agreements without cause. The most popular device currently used is to keep such agreements short — usually one year — and then simply fail to renew the agreement whenever the manufacturer chooses. This circumvention of the law makes the regulation of termination of contracts without good cause virtually useless.

Boat dealer agreements are regulated because the current situation places too much power in the hands of the manufacturer. Automobile dealer agreements are similarly regulated because a dealer must invest a significant amount of money and effort into advertising a particular brand. Allowing manufacturers to simply change dealers without good cause places dealers in a precarious position where any misstep could allow a manufacturer to pull an agreement and cause the dealer to lose a significant amount of that dealer's investment.

The good cause standards established in CSHB 2037 would simply set out what would be the normal considerations that would go into a determination of good cause. Setting such provisions in statute would allow dealers and manufacturers alike to clearly understand what would be considered good cause without having to get legal advice to interpret court decisions defining good cause.

Increasing the penalty for violation to forfeiture of the right to conduct business in Texas would help to ensure that those manufacturers, distributors *and* dealers that violate the law regarding such agreements would not be allowed to continue to harm other businesses in Texas. Such a penalty would be reserved for only the most egregious violations or a consistent pattern of violations.

The addition of binding arbitration to boating dealer agreements would just conform to the arbitration requirements in motor vehicle dealer agreements. Arbitration is often used to resolve contract disputes quickly and inexpensively without having to go to the courthouse.

OPPONENTS
SAY:

The state should not interfere in private dealings between two business entity in a free enterprise system. A contract is an agreement between two parties who bring different bargaining strengths and weaknesses to the table. Forcing one-sided regulation on an industry interferes in the business of these manufacturers, distributors and dealers.

Good cause is a well defined and often used term in contract law. CSHB 2037, however, would set out specific considerations in determining good cause that are not imposed on any other industry or any other contractual agreements. Additionally, the penalty of losing the right to do business in Texas would be much too harsh. Such a penalty is not imposed for the violation of any other type of franchise agreement and could significantly reduce the desire of manufacturers of distributors to do business with dealers in Texas.

NOTES:

Rep. R. Lewis plans to offer a floor amendment that would strike from the bill the sections defining what constitutes good cause, imposing the penalty of forfeiting the right to do business in Texas, and requiring binding arbitration for these disputes.

The original version of the bill would have prevented an manufacturer or dealer from refusing to continue an agreement without written notice, required 60 days of good faith efforts to cure specific grounds listed by the manufacturer for nonrenewal and additional notice stating reasons for nonrenewal after good faith negotiations. The original version also would have allowed a dealer to protest the nonrenewal to the Parks and Wildlife

Commission and enter into binding arbitration concerning whether good cause existed for the nonrenewal.

A similar bill, HB 1705 by R. Lewis, was reported favorably by the House Business and Industry Committee during the 74th regular session in 1995 and placed on the General State Calendar but was not considered by the House.