

SUBJECT: Prohibiting coercion of equipment dealers to sell one line exclusively

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley
0 nays

WITNESSES: None

BACKGROUND: Chapter 19 of the Business and Commerce Code regulates agreements between dealers and manufacturers of farm, industrial, and outdoor power equipment. The chapter regulates inventory return and manufacturer buy-back of equipment, handling of warranty claims, renewal or termination of franchise agreements, and transfer of franchise ownership. Sec. 19.22 prohibits a supplier from coercing or compelling a dealer to accept delivery of equipment with special features or accessories.

DIGEST: CSHB 1066 would prohibit an equipment supplier from coercing or compelling an equipment dealer to refuse purchase of another manufacturer's equipment.

The bill also would expand the definition of "equipment" covered by Chapter 19 of the Business and Commerce Code to include forklifts and material-handling equipment.

The bill would take effect on September 1, 1999.

SUPPORTERS SAY: CSHB 1066 would prevent large equipment manufacturers from unfairly pressuring dealers into selling only that manufacturer's equipment. With increasing frequency, manufacturers are handing out ultimatums requiring dealers to divest of all other companies' equipment lines.

In some cases, dealerships sold multiple equipment lines before large manufacturers approached them and asked them to sign a contract in order to sell the manufacturer's product. Only after signing the contract did the dealers learn that they could not sell other product lines.

Small dealerships have little bargaining room with large equipment suppliers, so CSHB 1066 is necessary to prevent dealers from being coerced into selling one equipment line exclusively. Most equipment dealerships are independently owned local businesses. Business owners should be able to decide how to run their businesses and what products to carry. Business owners must sell what the customer wants, not what they think the customer should buy.

Competition from mass market retailers makes it imperative for independent dealers to expand their product lines. Being coerced into becoming a single-line dealer could put many dealers out of business.

Manufacturers who claim that they have invested in a dealer's business and therefore should have a say in how the business is run are overvaluing their investment. Dealerships receive no financial subsidy from manufacturers, and in the end it is the dealer who must make a living off of the bottom line.

Expanding the definition of "equipment" would clarify the original intent of Chapter 19. In sec. 19.43, the chapter's manufacturer buy-back provision, forklifts and material-handling equipment are explicitly included with other products defined as "equipment." However, an oversight excluded forklifts and material-handling equipment from the chapter's general definition of "equipment" in section 19.01.

OPPONENTS
SAY:

CSHB 1066 would prohibit manufacturers from enforcing standard contract provisions requiring single-line sales. A dealer should be aware of this commonplace requirement before signing the contract. Dealers who want to sell multiple lines often are allowed to do so provided that the other products are sold at a second location.

Asking independent dealers to carry a single product line is not unreasonable or unusual. Auto manufacturers have always required their dealers to sell only a single product line or, if they want to sell multiple lines, open a separate dealership.

Manufacturers invest time and money in independent dealerships through research and development, training and material costs. Competing manufacturers can leech off of that investment if dealers diversify their product lines.

Requiring dealerships to become single-line dealers actually gives small business owners a competitive advantage over mass retailers. Single-line dealerships signify quality and expertise. Other retailers are not allowed into that specific market, giving small business owners the edge and making it unnecessary for them to compete with superstores over smaller lines.

NOTES:

The original bill would have added off-road construction equipment to the definition of equipment covered by Chapter 19.

A related bill, HB 965 by Swinford, which passed the House on March 31, would add off-road construction equipment and forestry harvesting equipment to the definition of equipment covered by Chapter 19. HB 965 also would exempt single-line dealers of off-road construction and earth-moving equipment from the provisions of Chapter 19.