

SUBJECT: Regulating off-road construction equipment dealers' agreements

COMMITTEE: Business and Industry — favorable, without amendment

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. Provisions in the chapter govern inventory return, manufacturer buyback of equipment, handling of warranty claims, renewal or termination of franchise agreements, and transfer of franchise ownership. The chapter explicitly excludes dealers of off-road construction equipment.

DIGEST: HB 965 would expand the definition of “dealer” in Chapter 19 of the Business and Commerce Code to include a person involved in the retail sale of off-road construction equipment and would expand the definition of “equipment” to include off-road construction equipment. The bill also would add off-road construction equipment to the list of products subject to the manufacturer buyback requirement.

HB 965 would exempt certain single-line dealers of off-road construction and earth-moving equipment from the regulations that apply to other dealers. It would define a “single line dealer” as a business that buys at least 75 percent of its new-product inventory from a single supplier and that has total annual average sales in excess of \$100 million over a three-year period.

The bill would take effect September 1, 1999, and would apply only to agreements reached on or after that date.

SUPPORTERS SAY: HB 965 would update the law to bring agreements between dealers and manufacturers of off-road equipment under the same provisions as for other farm and industrial equipment. Chapter 19 of the Business and Commerce Code now excludes off-road construction equipment and dealers because they once were a separate and distinct industry. However, as a result of corporate mergers, the line between off-road and other industrial equipment has become

so vague that half of a dealer's inventory may be protected under Chapter 19 while the other half is not.

Most dealers who sell only off-road construction equipment buy much of their equipment from manufacturers of farm and industrial equipment. They should receive the same protection under Chapter 19 as dealers of farm and industrial equipment receive, and HB 965 would provide this protection.

Single-line dealers who contract with only one manufacturer and who have large sales volumes generally are in a strong negotiating position and do not desire the protections offered in Chapter 19. Because of the way HB 965 defines single-line dealers, the exclusion would apply only to Caterpillar Inc. Caterpillar dealers are unique in that more than 90 percent of their products are construction equipment, so it is not appropriate for them to be regulated under the same rules that apply to dealers of farm equipment.

OPPONENTS
SAY:

Chapter 19 intentionally excludes dealers of off-road construction equipment because they tend to be larger businesses that wield enough influence with manufacturers to protect themselves. There is no need to change the law to include them. Within the industry, dealers and manufacturers are trying to solve these problems without government intervention.

The provision excluding single-line dealers effectively would exempt a single supplier, Caterpillar, Inc., unfairly.

OTHER
OPPONENTS
SAY:

HB 965 appropriately would include small multi-line dealers of off-road construction equipment under the Chapter 19 provisions, but the exclusion for single-line dealers is too narrow and should apply more broadly to all single-line dealers. This would satisfy both the smaller dealers' need for contractual protection under the law and the objections of Caterpillar's competitors concerning competitive disadvantage.

NOTES:

In the 1997 legislative session, a similar bill, HB 533 by Swinford, passed the House but died in the Senate Jurisprudence Committee.