

- SUBJECT:** Sale of used heavy-duty trucks by vehicle manufacturers and distributors
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 8 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Murphy
- 1 nay — Macias
- WITNESSES:** (*On original version:*)
For – None
- Against — Stephen Fink, International Truck and Engine Corp.; Shane McBee, Texas Truck Dealers Coalition; Clark McEwen, Texas Recreational Vehicle Association; Karen Phillips, Texas Automobile Dealers Association; Borden Bell; Kevin Lancaster; (*Registered, but did not testify:* Dennis Huffmon, International Truck and Engine Corp.; David Orf, Rusa Enterprises, Inc.)
- On — Brett Bray, Texas Department of Transportation)
- (*On committee substitute:*)
For — Billy Donley, Arrow Truck Sales; Benjamin Escobar, SelecTrucks, Freightliner Market Developer.
- BACKGROUND:** Occupations Code, sec. 2301.476 bars vehicle manufacturers, distributors, or their representatives from directly or indirectly owning an interest in, operating or controlling, or acting as a dealership.
- In 2005, the 79th Legislature approved HB 2702 by Krusee, creating the Study Commission to Evaluate the Availability of Pre-owned Medium and Heavy Duty Commercial Vehicles and the Potential Impact of Manufacturer Ownership in Used Medium and Heavy Truck Dealerships. Its recommendations were published December 1, 2006.
- DIGEST:** CSHB 733 would allow a vehicle manufacturer or distributor that owned a dealership and held an ownership stake in that property before January 2, 2007, to sell used trucks weighing at least 16,000 pounds, with a few exceptions, as long as the manufacturer or distributor did not increase its

ownership stake in the dealership. If the dealership was transferred or relocated, the manufacturer or distributor could maintain the same level of ownership if the action was caused by an act of God or the exercise of eminent domain, or if the Motor Vehicle Division of the Department of Transportation approved the reason for the transfer or relocation under the hearing process defined in the Occupations Code.

A dealership owned by a manufacturer or distributor could not sell or offer sales of new vehicles or perform or offer warranty repair on new vehicles. It could sell a vehicle that weighed less than 16,000 pounds only if it were acquired as a trade-in for a vehicle of 16,000 pounds or more. The lower-weight vehicle would have to be offered for sale to another dealer, as defined in the Transportation Code. The manufacturer or distributor could not sell or transfer any of its interest to an unaffiliated manufacturer or distributor.

A violation under this section would be punishable by a civil penalty of up to \$10,000 a day per infraction, a suit for injunctive relief or civil penalty, and denial, revocation, and suspension of a license.

The bill would take effect September 1, 2008, and the exceptions and exemptions granted under this bill would expire September 1, 2023.

**SUPPORTERS
SAY:**

CSHB 733 would incorporate recommendations of the study commission and correct unrecognized changes made by previous legislative action. It would restore a decades-old system for selling used medium and heavy-duty trucks. When the law was amended in 1999, used truck sales were not even mentioned in public testimony. The Legislature never intended to stop manufacturers or distributors from selling used vehicles. The practice benefited consumers by increasing competition in the marketplace and was free from public complaints. The role of manufacturers in this marketplace is vital. Without them, local dealers would be unable to absorb the same level of risk or process large fleet trade-ins.

The International Truck and Engine Corp. (ITE) filed an injunction in federal district court to prevent being forced to divest itself of two used truck dealerships, and TxDOT abated enforcement pending conclusion of court proceedings. On June 3, 2004, the Fifth U.S. Circuit Court of Appeals affirmed a lower court decision in *International Truck Corp. v Bray* (No. 03-050479) prohibiting ITE from acting as a used car dealer. ITE no longer operates in Texas, but two manufacturers — SelecTrucks

and Arrow Truck Sales — continue to sell used trucks. TxDOT has continued to abate enforcement of the statute pending legislative action.

Without this bill, the precedent the state would set by retroactively revoking business licenses would impact Texas' economy beyond the vehicle industry as other companies seeking to relocate or expand might have concerns about the regulatory and legislative environment. The joint commission's report found no compelling reason to exclude manufacturers and distributors from the used truck marketplace. Concerns about the negative impact their role would have on smaller dealers have been shown to be unfounded by the decades during which the practice was legal and in recent years when the process continued as the state abated action against the companies. The Motor Vehicle Division reported no complaints against the manufacturers related to used truck sales before the 1999 legislation. The commission found no evidence of a statewide monopoly on the market nor any power to control prices, noting testimony indicating that manufacturers sell a fraction of used heavy trucks.

Consumers benefit more under increased competition and the removal of artificial restrictions on the market. Manufacturer-affiliated dealerships provide reliability for consumers, especially with respect to safety. These dealerships can offer extensive warranties, along with financing and rebate options that locally owned dealerships cannot. Although local dealers might feel like they are being crowded out of the market, these independent dealers could become more efficient or provide a unique service to compete, resulting in increased options for the consumer.

The statewide economic impact of not passing this bill would be significant. Businesses related to the used car market, such as appraisal and repair companies, would lose business, reducing employment opportunities and the local tax base. Retroactively revoking business licenses or changing the rules could scare other investors from selecting Texas as a supportive place to grow their businesses free from intrusive regulation. The mere appearance of regulatory instability or unreliability could be enough to drive investors away.

The dealerships now affiliated with manufacturers benefit from this relationship. Small business owners can share the risk with an established and reliable company. Manufacturers provide technical services and other administrative support that can stabilize fledgling local businesses. These dealers do not have to seek out vehicles to resell, and they have a partner

that can redistribute excess inventory. This capacity to handle large volume fleet trades and sales was cited by the joint commission as an attribute unmatched by locally owned independent dealers. Manufacturer-owned dealerships can accommodate fleet trades in excess of 1,000 units, while locally owned independent dealerships typically cannot handle more than a few hundred units.

CSHB 733 is narrowly tailored to avoid repeating any mistakes of unintentionally applying the law to unintended parties. It also would create a compromise by temporarily allowing these provisions and not allowing additional manufacturers and distributors into the market.

OPPONENTS
SAY:

CSHB 733 could threaten the existence of small, independent dealerships at the benefit of large, sometimes multinational companies that do not have a vested interest in the concerns of local communities and economies. This bill would reward those companies that knowingly have been breaking the law in recent years while providing a blueprint for other types of vehicle manufacturers to enter into the used vehicle market.

Small dealerships cannot compete with large companies with huge inventories that offer financing packages that they cannot. Large companies can control supply and flood a market with used vehicles to drop prices and can hurt local competitors or withhold vehicles and artificially raise prices. They can offer rebates local dealers are banned from offering, and they can subsidize losses in used truck sales with profits from other areas. The intent of the initial legislation was to keep large manufacturers from crushing smaller independent dealerships. This bill would subvert the spirit of the law.

The impact this bill would have on the local economy would be enormous and result in the closing of independent locally owned businesses that employ residents and play a role in the local community. Large multinational companies and their affiliates do not have the same connection with a local community and have no vested interest in what happens there.

The current law has been on the books for eight years, and a federal appeals court has affirmed that the manufacturers and distributors have been violating the statute. Manufacturers and distributors not only have been willfully acting in violation of this law by continuing their current

operations, but they have maintained language in their agreements with new franchises mandating that they sell used trucks.

Creating another exemption only would entice manufacturers of other vehicles to seek a similar waiver for their respective industries. Although competition is one of the rationales for this bill, it could create new monopolies of manufacturers-as-vendors and result in reduced choices for consumers.

OTHER
OPPONENTS
SAY:

The exemption for vehicle manufacturers and distributors to sell heavy-duty used trucks should not have an expiration date. The system as it worked for sales of used medium and heavy-duty trucks before 1999 had been in place for some time and worked well. If the goal is to provide consumers with the most choice and it is truly beneficial to have manufacturers in the marketplace, those circumstances will not evaporate in 15 years.

NOTES:

The committee substitute moved from 2005 to 2007 the date before which a manufacturer must have maintained ownership interest and specified that the manufacturer would still have to maintain that stake in order to qualify for the exemption. The substitute also increased the weight of exempt vehicles from 11,000 pounds to 16,000 pounds, provided penalties for violations, created exceptions regarding when relocating or transferring a dealership would not disqualify it from receiving the exemption, and added special provisions related to lighter vehicles traded in to the dealer.

The original version of HB 733 would have taken effect immediately or on September 1, 2007. The substitute made the bill effective on September 1, 2008, and set an expiration date for the exemption on September 1, 2023.

SB 1369 by Corona, a similar companion bill to CSHB 733, has been referred to the Senate Transportation and Homeland Security Committee.

In the 2005 regular session, CSHB 1050 by Krusee, which would have exempted manufacturers from prohibitions regarding sales of vehicles weighing 11,000 pounds or more if they owned a dealership prior to January 1, 2005, was reported favorably by the House Transportation Committee, but did not receive a floor vote.