

AN ACT

ENTITLED, An Act to provide certain restrictions for dealership contracts for machinery.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

- (1) "Dealer," any person who receives machinery from a manufacturer under a dealership contract and who offers and sells the machinery to the general public. The term, dealer, does not include a single-line dealer;
- (2) "Dealership contract," a written agreement or contract between a manufacturer and dealer which fixes the legal rights and liabilities of the parties to such agreement or contract;
- (3) "Machinery," any farm vehicle as defined by § 32-3-2.4 or any off-road vehicle as defined by subdivision 32-3-1(15);
- (4) "Manufacturer," any person engaged in the manufacturing or distribution of machinery including any person who acts for the manufacturer;
- (4) "Single-line dealer," any person that has purchased seventy-five percent or more of the dealer's total new product inventory from a single manufacturer under agreements with that manufacturer and has a total annual average sales volume for the three previous years with that single manufacturer in excess of fifty million dollars for the territory for which that dealer is responsible.

Section 2. The following circumstances are not cause for the termination or discontinuance of a dealership contract, nor for entering into a dealership contract for the establishment of an additional dealership in a community for the same line-make:

- (1) The change of executive management or ownership of the dealer, unless the manufacturer can show that the change would be detrimental to the representation or reputation of the manufacturer's product;
- (2) Refusal by the dealer to purchase or accept delivery of any machinery, parts, accessories,

or any other commodity or service not ordered by the dealer unless such machinery, parts, accessories, or other commodity or service is necessary for the operation of machinery commonly sold in the dealer's area of responsibility;

- (3) The sole fact that the manufacturer desires further penetration of the market;
- (4) The fact that the dealer owns, has an investment in, participates in the management of, or holds a dealership contract for the sale of another line-make of machinery, or that the dealer has established another line-make of machinery in the same dealership facilities as those of the manufacturer, if the dealer maintains a reasonable line of credit for each line-make of machinery; or
- (5) Refusal by the dealer to participate in any national advertising campaign or contest or purchase any promotional materials, display devices, or display decoration or materials which are at the expense of the dealer.

Section 3. No manufacturer may require a dealer to agree to the inclusion of a term or condition in a dealership contract, or in any lease or agreement ancillary or collateral to a dealership contract, as a condition to the offer, grant, or renewal of such dealership contract, lease, or agreement, that:

- (1) Requires the dealer to waive trial by jury in cases involving the manufacturer;
- (2) Requires that disputes between the manufacturer and dealer be submitted to arbitration or to any other binding alternate dispute resolution procedure. However, any dealership contract, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the manufacturer and dealer voluntarily agree to submit the dispute to arbitration or binding alternate dispute resolution at the time the dispute arises; or
- (3) Requires a dealer to pay the attorney fees of a manufacturer.

This section does not apply to any agreement that has as its main objective the lease or sale of real property.

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I certify that the attached Act
originated in the

SENATE as Bill No. 194

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 194

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

19____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 19____

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State