

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

607C0723

HOUSE ENGROSSED NO. **SB194** - 3/3/99

Introduced by: Senators Flowers, Dennert, Drake, Hutmacher, Kloucek, and Symens and
Representatives McNenny, Cerny, Chicoine, Frysliie, Jaspers, and Weber

1 FOR AN ACT ENTITLED, An Act to provide certain restrictions for dealership contracts for
2 machinery.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Dealer," any person who receives machinery from a manufacturer under a dealership
6 contract and who offers and sells the machinery to the general public. The term,
7 dealer, does not include a single-line dealer;

8 (2) "Dealership contract," a written agreement or contract between a manufacturer and
9 dealer which fixes the legal rights and liabilities of the parties to such agreement or
10 contract;

11 (3) "Machinery," any farm vehicle as defined by § 32-3-2.4 or any off-road vehicle as
12 defined by subdivision 32-3-1(15);

13 (4) "Manufacturer," any person engaged in the manufacturing or distribution of
14 machinery including any person who acts for the manufacturer;

15 (4) "Single-line dealer," any person that has purchased seventy-five percent or more of
16 the dealer's total new product inventory from a single manufacturer under agreements

1 with that manufacturer and has a total annual average sales volume for the three
2 previous years with that single manufacturer in excess of fifty million dollars for the
3 territory for which that dealer is responsible.

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

- 7 (1) The change of executive management or ownership of the dealer, unless the
8 manufacturer can show that the change would be detrimental to the representation or
9 reputation of the manufacturer's product;
- 10 (2) Refusal by the dealer to purchase or accept delivery of any machinery, parts,
11 accessories, or any other commodity or service not ordered by the dealer unless such
12 machinery, parts, accessories, or other commodity or service is necessary for the
13 operation of machinery commonly sold in the dealer's area of responsibility;
- 14 (3) The sole fact that the manufacturer desires further penetration of the market;
- 15 (4) The fact that the dealer owns, has an investment in, participates in the management
16 of, or holds a dealership contract for the sale of another line-make of machinery, or
17 that the dealer has established another line-make of machinery in the same dealership
18 facilities as those of the manufacturer, if the dealer maintains a reasonable line of
19 credit for each line-make of machinery; or
- 20 (5) Refusal by the dealer to participate in any national advertising campaign or contest or
21 purchase any promotional materials, display devices, or display decoration or
22 materials which are at the expense of the dealer.

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

1 lease, or agreement, that:

2 (1) Requires the dealer to waive trial by jury in cases involving the manufacturer;

3 (2) Requires that disputes between the manufacturer and dealer be submitted to
4 arbitration or to any other binding alternate dispute resolution procedure. However,
5 any dealership contract, lease, or agreement may authorize the submission of a dispute
6 to arbitration or to binding alternate dispute resolution if the manufacturer and dealer
7 voluntarily agree to submit the dispute to arbitration or binding alternate dispute
8 resolution at the time the dispute arises; or

9 (3) Requires a dealer to pay the attorney fees of a manufacturer.

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

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Commerce. S.J. 233

3 2/2/99 Scheduled for Committee hearing on this date.

4 2/4/99 Scheduled for Committee hearing on this date.

5 2/4/99 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 331

6 2/8/99 Deferred with pending amendment (Rule 5-17). S.J. 382

7 2/10/99 Senate Deferred to another day. S.J. 427

8 2/12/99 Senate Deferred to another day. S.J. 485

9 2/16/99 Motion to Amend, Passed. S.J. 502

10 2/16/99 Motion to Amend, Passed. S.J. 502

11 2/16/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 6. S.J. 503

12 2/17/99 First read in House and referred to Judiciary. H.J. 588

13 2/26/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 791

14 2/26/99 Scheduled for Committee hearing on this date.

15 3/2/99 Motion to Amend, Passed. H.J. 850

16 3/2/99 Motion to Amend, Passed. H.J. 851

17 3/2/99 House of Representatives Do Pass Amended, Passed, AYES 53, NAYS 13. H.J. 851

18 3/2/99 House of Representatives Title Amended Passed. H.J. 852