

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

607C0723

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB194** - 3/1/99

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

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

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 agricultural machinery from a manufacturer under  
6 a dealership contract and who offers and sells the agricultural machinery to the  
7 general public;

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) "Manufacturer," any person engaged in the manufacturing or distribution of  
12 agricultural machinery including any person who acts for the manufacturer.

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

16 (1) The change of executive management or ownership of the dealer, unless the

1 manufacturer can show that the change would be detrimental to the representation or  
2 reputation of the manufacturer's product;

3 (2) Refusal by the dealer to purchase or accept delivery of any agricultural machinery,  
4 parts, accessories, or any other commodity or service not ordered by the dealer unless  
5 such machinery, parts, accessories, or other commodity or service is necessary for the  
6 operation of machinery commonly sold in the dealer's area of responsibility;

7 (3) The sole fact that the manufacturer desires further penetration of the market;

8 (4) The fact that the dealer owns, has an investment in, participates in the management  
9 of, or holds a dealership contract for the sale of another line-make of agricultural  
10 machinery, or that the dealer has established another line-make of agricultural  
11 machinery in the same dealership facilities as those of the manufacturer, if the dealer  
12 maintains a reasonable line of credit for each line-make of agricultural machinery; or

13 (5) Refusal by the dealer to participate in any national advertising campaign or contest or  
14 purchase any promotional materials, display devices, or display decoration or  
15 materials which are at the expense of the dealer.

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

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

21 (2) Requires that disputes between the manufacturer and dealer be submitted to  
22 arbitration or to any other binding alternate dispute resolution procedure. However,  
23 any dealership contract, lease, or agreement may authorize the submission of a dispute  
24 to arbitration or to binding alternate dispute resolution if the manufacturer and dealer  
25 voluntarily agree to submit the dispute to arbitration or binding alternate dispute

1 resolution at the time the dispute arises; or

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

3 This section does not apply to any agreement that has as its main objective the lease or sale

4 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.