

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

607C0723

## SENATE BILL NO. 194

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 agricultural 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 equipment from a manufacturer under  
6 a dealership contract and who offers and sells the agricultural equipment 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 equipment including any person who acts for the manufacturer.

13 Section 2. The following circumstances are not cause for the termination or noncontinuance  
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 equipment,  
4 parts, accessories, or any other commodity or service not ordered by the dealer;

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

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

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

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

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

19 (2) Specifies the jurisdictions, venues, or tribunals in which disputes arising with respect  
20 to the dealership contract, lease, or agreement shall or may not be submitted for  
21 resolution or otherwise prevents a dealer from bringing an action in a particular forum  
22 otherwise available under the law;

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

1           to arbitration or to binding alternate dispute resolution if the manufacturer and dealer  
2           voluntarily agree to submit the dispute to arbitration or binding alternate dispute  
3           resolution at the time the dispute arises; or

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

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