

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

607C0723

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB194** - 2/5/99

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 or construction equipment from a  
6 manufacturer under a dealership contract and who offers and sells the agricultural or  
7 construction equipment to the general public. The term, dealer, does not include a  
8 single-line dealer primarily engaged in the retail sale and service of off-road  
9 construction and earthmoving equipment;
- 10 (2) "Dealership contract," a written agreement or contract between a manufacturer and  
11 dealer which fixes the legal rights and liabilities of the parties to such agreement or  
12 contract;
- 13 (3) "Manufacturer," any person engaged in the manufacturing or distribution of  
14 agricultural or construction equipment including any person who acts for the  
15 manufacturer;
- 16 (4) "Single-line dealer," any person that has purchased seventy-five percent or more of

1 the dealer's total new product inventory from a single manufacturer under agreements  
2 with that manufacturer and has a total annual average sales volume for the three  
3 previous years with that single manufacturer in excess of fifty million dollars for the  
4 territory for which that dealer is responsible.

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

- 8 (1) The change of executive management or ownership of the dealer, unless the  
9 manufacturer can show that the change would be detrimental to the representation or  
10 reputation of the manufacturer's product;
- 11 (2) Refusal by the dealer to purchase or accept delivery of any agricultural or  
12 construction equipment, parts, accessories, or any other commodity or service not  
13 ordered by the dealer;
- 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 agricultural or  
17 construction equipment, or that the dealer has established another line-make of  
18 agricultural or construction equipment in the same dealership facilities as those of the  
19 manufacturer, if the dealer maintains a reasonable line of credit for each line-make of  
20 agricultural or construction equipment; or
- 21 (5) Refusal by the dealer to participate in any advertising campaign or contest or purchase  
22 any promotional materials, display devices, or display decoration or materials which  
23 are at the expense of the dealer.

24 It is unlawful for any manufacturer to terminate or discontinue a dealership contract, or enter  
25 into additional contracts under the circumstances described in subdivisions (1) to (5), inclusive.

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

- 5       (1)   Requires the dealer to waive trial by jury in cases involving the manufacturer;
- 6       (2)   Specifies the jurisdictions, venues, or tribunals in which disputes arising with respect  
7           to the dealership contract, lease, or agreement shall or may not be submitted for  
8           resolution or otherwise prevents a dealer from bringing an action in a particular forum  
9           otherwise available under the law;
- 10      (3)   Requires that disputes between the manufacturer and dealer be submitted to  
11           arbitration or to any other binding alternate dispute resolution procedure. However,  
12           any dealership contract, lease, or agreement may authorize the submission of a dispute  
13           to arbitration or to binding alternate dispute resolution if the manufacturer and dealer  
14           voluntarily agree to submit the dispute to arbitration or binding alternate dispute  
15           resolution at the time the dispute arises; or
- 16      (4)   Requires a dealer to pay the attorney fees of a manufacturer.

17       This section does not apply to any agreement that has as its main objective the lease or sale  
18       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