

AN ACT

ENTITLED, An Act to regulate a manufacturer's right of first refusal.

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

Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the terms of any franchise agreements, the manufacturer or franchisor may exercise a right of first refusal to acquire the motor vehicle dealer's assets or ownership if all of the following conditions are met:

- (1) In order to exercise the right of first refusal, the manufacturer or franchisor shall notify the motor vehicle dealer in writing within sixty days of its receipt of the completed proposal for the sale or transfer and all related agreements;
- (2) The exercise of the right of first refusal will result in the dealer receiving the same or greater consideration as the dealer has contracted to receive in connection with the proposed change of ownership or transfer;
- (3) The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealers, or to a qualified manager with at least two years management experience at the dealership of one or more of these dealers, or to a partnership or corporation controlled by such persons;
- (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including attorney fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the manufacturer's or franchisor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Such expenses and attorney fees shall be paid to the proposed new owner or transferee at the time of closing of the sale or transfer for which the manufacturer or

franchisor exercised its right of first refusal. No payment of such expenses and attorney fees is required if the new owner or transferee has not submitted an accounting of those expenses within thirty days of the dealer's receipt of the manufacturer's or franchisor's written request for such an accounting. A manufacturer or franchisor may request such accounting before exercising a right of first refusal; and

- (5) The dealer does not have any liability to any person as a result of a manufacturer or franchisor exercising a right of first refusal.

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I certify that the attached Act
originated in the

SENATE as Bill No. 77

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. 77

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Ass. Secretary of State