

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

734D0473

SENATE BILL NO. 77

Introduced by: Senators Rounds and Symens and Representatives Jaspers and Wilson

1 FOR AN ACT ENTITLED, An Act to regulate a manufacturer's right of first refusal.

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

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

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

8 (1) In order to exercise the right of first refusal, the manufacturer or franchisor shall
9 notify the motor vehicle dealer in writing within sixty days of its receipt of the
10 completed proposal for the sale or transfer and all related agreements;

11 (2) The exercise of the right of first refusal will result in the dealer receiving the same or
12 greater consideration as the dealer has contracted to receive in connection with the
13 proposed change of ownership or transfer;

14 (3) The proposed sale or transfer of the dealership's assets does not involve the transfer
15 or sale to a member or members of the family of one or more dealers, or to a qualified
16 manager with at least two years management experience at the dealership if one or
17 more of these dealers, or to a partnership or corporation controlled by such persons;

- 1 (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including
2 attorney fees which do not exceed the usual, customary, and reasonable fees charged
3 for similar work done for other clients, incurred by the proposed owner or transferee
4 prior to the manufacturer's or franchisor's exercise of its right of first refusal in
5 negotiating and implementing the contract for the proposed sale or transfer of the
6 dealership or dealership assets. Such expenses and attorney fees shall be paid to the
7 proposed new owner or transferee at the time of closing of the sale or transfer for
8 which the manufacturer or franchisor exercised its right of first refusal. No payment
9 of such expenses and attorney fees is required if the new owner or transferee has not
10 submitted an accounting of those expenses within thirty days of the dealer's receipt
11 of the manufacturer's or franchisor's written request for such an accounting. A
12 manufacturer or franchisor may request such accounting before exercising a right of
13 first refusal; and
- 14 (5) The dealer does not have any liability to any person as a result of a manufacturer or
15 franchisor exercising a right of first refusal and the manufacturer or franchisor
16 assumes the defense of the selling dealer for any claim by the proposed owner or
17 transferee arising from the exercise of the right of first refusal.