

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

445I0388

HOUSE BILL NO. 1123

Introduced by: Representatives Sebert and Olson (Mel) and Senators McCracken, Albers,
Moore, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to clarify certain circumstances relating to the termination
2 or discontinuance of certain dealership contracts.

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

4 Section 1. That § 37-5-14 be amended to read as follows:

5 37-5-14. 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 determines that the new management or
11 owner does not met the reasonable financial, business ability, experience, and
12 character requirements of the manufacturer for the dealership location. If the
13 manufacturer determines that the new management or owner does not meet these
14 requirements, the manufacturer shall provide the dealer or the dealer's representative
15 with written notice of the supplier's specific objections. In any dispute as to whether



1 the manufacturer has unreasonably withheld consent under this section, the
2 manufacturer has the burden of proving, through an arbitration process, a responsible
3 justification for withholding consent;

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

9 (3) The sole fact that the manufacturer desires further penetration of the market, unless
10 the manufacturer has given the dealer written notice and a reasonable period of time
11 of at least two years to improve to a defined level of market penetration. Market
12 penetration shall be based on record information or mutually agreed upon targets
13 when record information is not available, and the dealer must have consistently failed
14 to demonstrate substantial improvement toward the reasonable market penetration
15 requirements of the manufacturer;

16 (4) The fact that the dealer owns, has an investment in, participates in the management
17 of, or holds a dealership contract for the sale of another line-make of machinery, or
18 that the dealer has established another line-make of machinery in the same dealership
19 facilities as those of the manufacturer, if the dealer maintains a reasonable line of
20 credit for each line-make of machinery and the other line-make does not reduce
21 market penetration below a reasonable and defined requirement of the current
22 manufacturer; or

23 (5) Refusal by the dealer to participate in any national advertising campaign or contest or
24 purchase any promotional materials, display devices, or display decoration or

1 materials which are at the expense of the dealer.