

SENATE BILL NO. 257

INTRODUCED BY B. HOVEN

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING FARM IMPLEMENT DEALERS' AND CONSTRUCTION DEALERS' CONTRACTUAL RIGHTS REGARDING A DEALER'S TRANSFER OF OWNERSHIP IN A PLACE OF BUSINESS OPERATED BY THE DEALER; PROVIDING FOR PENALTIES; AND AMENDING SECTIONS 30-11-809 AND 30-11-908, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Grantor's right of first refusal.** (1) Regardless of the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location at which the dealer conducts any of the dealership's business, the grantor may exercise a right of first refusal to acquire the dealer's assets, including a location at which the dealer conducts the dealership's business, or ownership. The right of first refusal may occur if the sale or transfer is conditioned on either the grantor or dealer entering into a contract with the proposed new owner or transferee if all the following requirements are met:

(a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

(c) 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 dealer owners or to a qualified manager, partnership, or corporation controlled by a member of the family of a dealer owner; and

(d) the grantor agrees to pay reasonable costs and attorney fees relative to the proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the grantor's written request for the accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

(2) This section does not affect any contractual right of a grantor to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of farm implements.

1 **NEW SECTION. Section 2. Grantor's right of first refusal.** (1) Regardless of the terms of a
2 dealership contract, in the event of a proposed sale or transfer of a dealership or of a location at which the dealer
3 conducts any of the dealership's business, the grantor may exercise a right of first refusal to acquire the dealer's
4 assets, including a location at which the dealer conducts the dealership's business, or ownership. The right of
5 first refusal may occur if the sale or transfer is conditioned on either the grantor or dealer entering into a contract
6 with the proposed new owner or transferee if all the following requirements are met:

7 (a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within
8 60 days of receipt of the dealer's written proposal for sale or transfer;

9 (b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted
10 to receive in connection with the proposed change of ownership or transfer;

11 (c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a
12 member or members of the family of one or more dealer owners or to a qualified manager, partnership, or
13 corporation controlled by a member of the family of a dealer owner; and

14 (d) the grantor agrees to pay reasonable costs and attorney fees relative to the proposed changes in
15 ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an
16 accounting of the expenses within 20 days of the dealer's receipt of the grantor's written request for the
17 accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

18 (2) This section does not affect any contractual right of a grantor to charge back to the dealer's account
19 any amount previously credited or paid as a discount incident to the dealer's purchase of construction equipment.

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21 **NEW SECTION. Section 3. Penalties -- administrative penalties.** (1) Except as provided in
22 subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction
23 shall be fined not less than \$500 or more than \$1,000 for each violation. Each day that a violation continues or
24 occurs constitutes a separate violation.

25 (2) A grantor who has filed with the department a contract used by all its dealers in this state and a list
26 of the dealers and who fails to notify the department within 30 days of any revision, change, or addition to the
27 contract is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500.

28 (3) If a dealer or transferee of a dealer incurs pecuniary loss due to a violation of this part by a
29 manufacturer, distributor, importer, factory branch, or grantor or by a representative or agent of a manufacturer,
30 distributor, importer, factory branch, or grantor, the dealer or transferee of a dealer may recover damages in a

1 court of competent jurisdiction in an amount equal to three times the pecuniary loss, plus costs and reasonable
2 attorney fees.

3 (4) In addition to any other penalty provided for in this part, the department may take appropriate
4 enforcement action in accordance with the contested case procedures of Title 2, chapter 4. A person who violates
5 the provisions of this part may be subject to administrative action and a civil penalty not to exceed \$500 for each
6 violation.

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8 **Section 4.** Section 30-11-809, MCA, is amended to read:

9 **"30-11-809. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-804 through
10 30-11-809 or [section 1] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary
11 loss, together with court costs and reasonable attorney fees."

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13 **Section 5.** Section 30-11-908, MCA, is amended to read:

14 **"30-11-908. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-904 through
15 30-11-908 or [section 2] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary
16 loss, together with court costs and reasonable attorney fees."

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18 NEW SECTION. **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
19 integral part of Title 30, chapter 11, part 8, and the provisions of Title 30, chapter 11, part 8, apply to [section 1].

20 (2) [Section 2] is intended to be codified as an integral part of Title 30, chapter 11, part 9, and the
21 provisions of Title 30, chapter 11, part 9, apply to [section 2].

22 (3) [Section 3] is intended to be codified as an integral part of Title 30, chapter 11, part 8 and part 9, and
23 the provisions of Title 30, chapter 11, part 8 and part 9, respectively apply to [section 3].

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