

SENATE BILL NO. 169

INTRODUCED BY B. HOVEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO CONTRACTUAL RIGHTS OF GRANTORS AND DEALERS; ALLOWING A RIGHT OF FIRST REFUSAL FOR FARM IMPLEMENT MANUFACTURER CONTRACT GRANTORS; ALLOWING A RIGHT OF FIRST REFUSAL FOR CONSTRUCTION EQUIPMENT GRANTORS; PROVIDING CIVIL DAMAGES; AMENDING SECTIONS 30-11-809 AND 30-11-908, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Grantor's right of first refusal -- farm implements. (1) In addition to 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, one or more grantors shall have the option to exercise a right of first refusal to acquire the dealer's assets that are dedicated to the sale and service of the grantor's farm implements at the relevant location. The right of first refusal may occur 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's owner receives the same or greater consideration as they have contracted to receive in a sale, not exceeding fair market value, in connection with the proposed change of ownership or transfer of the dealer's assets that are dedicated to the sale and service of the grantor's farm implements at the relevant location;

(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, corporation, or other entity controlled by a member or members of the family of one or more dealer owners; and

(d) the grantor and dealer agree to each pay 50% of the total reasonable costs and attorney fees upon completion of the transaction. The costs include amounts incurred by the grantor and dealer that are relative to the proposed changes in ownership or transfer of dealership assets. Each party shall submit an accounting of the party's costs and attorney fees within 20 days of the receipt of the other party's written request for the accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

1 (2) If the grantor and the dealer cannot agree on the fair market value in subsection (1)(b), they shall
2 appoint a mutually agreeable certified business appraiser to establish the fair market value. The cost of the
3 appraiser must be shared equally by the grantor and dealer. If the grantor and the dealer cannot agree on an
4 appraiser, each shall appoint a certified business appraiser who must make an independent appraisal. The
5 grantor and dealer shall each be responsible for the cost of the appraiser it retains. If the appraisals are within
6 10% of each other, the average of the two appraisals must constitute the fair market value. If the two appraisals
7 differ by more than 10%, the two appraisers may appoint a third certified business appraiser who shall review the
8 first two appraisals. The third appraisal, when taken with the first two appraisals and averaged amongst the three,
9 must establish the fair market value. The cost of the third appraiser must be shared equally by the grantor and
10 dealer.

11 (3) This section does not impose any obligation on the grantor to purchase the dealership and does not
12 affect any contractual right of a grantor, including but not limited to any right to charge back to the dealer's
13 account any amount previously credited or paid as a discount incident to the dealer's purchase of farm
14 implements. Sections 30-11-804 through 30-11-806 apply to a proposed sale or transfer under this section.

15
16 NEW SECTION. Section 2. Grantor's right of first refusal -- construction equipment. (1) In addition
17 to the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location
18 at which the dealer conducts any of the dealership's business, one or more grantors shall have the option to
19 exercise a right of first refusal to acquire the dealer's assets that are dedicated to the sale and service of the
20 grantor's construction equipment at the relevant location. The right of first refusal may occur if all the following
21 requirements are met:

22 (a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within
23 60 days of receipt of the dealer's written proposal for sale or transfer;

24 (b) the dealer's owner receives the same or greater consideration as they have contracted to receive
25 in a sale, not exceeding fair market value, in connection with the proposed change of ownership or transfer of
26 the dealer's assets that are dedicated to the sale and service of the grantor's construction equipment at the
27 relevant location;

28 (c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a
29 member or members of the family of one or more dealer owners or to a qualified manager, partnership,
30 corporation, or other entity controlled by a member or members of the family of one or more dealer owners; and

1 (d) the grantor and dealer agree to each pay 50% of the total reasonable costs and attorney fees upon
2 completion of the transaction. The costs include amounts incurred by the grantor and dealer relative to the
3 proposed changes in ownership or transfer of dealership assets. Each party shall submit an accounting of the
4 party's costs and attorney fees within 20 days of receipt of the other party's written request for the accounting.
5 The grantor may request the accounting before exercising the grantor's right of first refusal.

6 (2) If the grantor and the dealer cannot agree on the fair market value in subsection (1)(b), they shall
7 appoint a mutually agreeable certified business appraiser to establish the fair market value and the cost of the
8 appraiser must be shared equally by the grantor and dealer. If the grantor and the dealer cannot agree on an
9 appraiser, each shall appoint a certified business appraiser who shall make an independent appraisal. The
10 grantor and dealer shall each be responsible for the appraiser it retains. If the appraisals are within 10% of each
11 other, the average of the two appraisals must constitute the fair market value. If the two appraisals differ by more
12 than 10%, the two appraisers may appoint a third certified business appraiser who shall review the two
13 appraisals. The third appraisal, when taken with the first two appraisals and averaged amongst the three, must
14 establish the fair market value. The cost of the third appraiser must be shared equally by the grantor and dealer.

15 (3) This section does not impose any obligation on the grantor to purchase the dealership and does not
16 affect any contractual right of a grantor, including but not limited to any right to charge back to the dealer's
17 account any amount previously credited or paid as a discount incident to the dealer's purchase of construction
18 equipment. Sections 30-11-904 through 30-11-906 apply to a proposed sale or transfer under this section.

19

20 **Section 3.** Section 30-11-809, MCA, is amended to read:

21 **"30-11-809. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-804 through
22 30-11-809 or [section 1] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary
23 loss, together with court costs and reasonable attorney fees."

24

25 **Section 4.** Section 30-11-908, MCA, is amended to read:

26 **"30-11-908. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-904 through
27 30-11-908 or [section 2] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary
28 loss, together with court costs and reasonable attorney fees."

29

30 NEW SECTION. **Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an

1 integral part of Title 30, chapter 11, part 8, and the provisions of Title 30, chapter 11, part 8, apply to [section 1].

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

4
5 **NEW SECTION. Section 6. Applicability.** [This act] applies to all dealer agreements that are executed
6 or renewed on or after [the effective date of this act].

7 - END -