

SENATE BILL NO. 169

INTRODUCED BY B. HOVEN, E. BUTTREY, R. COOK, W. CURDY, W. GALT, C. KNUDSEN, R. LYNCH,  
D. SALOMON, J. SESSO

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

1 accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

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

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

16 (4) IF THE GRANTOR EXERCISES ITS RIGHT OF FIRST REFUSAL UNDER THIS SECTION, THE GRANTOR AND DEALER  
 17 SHALL USE BEST EFFORTS TO COMPLETE THE TRANSACTION WITHIN 120 CALENDAR DAYS AFTER THE FAIR MARKET VALUE  
 18 HAS BEEN DETERMINED UNDER SUBSECTION (2). IF THE GRANTOR ELECTS NOT TO EXERCISE ITS RIGHT OF FIRST REFUSAL,  
 19 THE PROPOSED TRANSFER OR SALE REMAINS SUBJECT TO FURTHER REVIEW PURSUANT TO 30-11-804 THROUGH  
 20 30-11-806. DURING THE 60-DAY PERIOD SET FORTH IN SUBSECTION (1)(A) OF THIS SECTION, THE GRANTOR SHALL  
 21 ASSESS WHETHER THE PROPOSED NEW OWNER OR TRANSFEREE MEETS THE REQUIREMENTS OF 30-11-804.

22  
 23 **NEW SECTION. Section 2. Grantor's right of first refusal -- construction equipment.** (1) In addition  
 24 to the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location  
 25 at which the dealer conducts any of the dealership's business, one or more grantors shall have the option to  
 26 exercise a right of first refusal to acquire the dealer's assets that are dedicated to the sale and service of the  
 27 grantor's construction equipment at the relevant location. The right of first refusal may occur if all the following  
 28 requirements are met:

29 (a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within  
 30 60 days of receipt of the dealer's written proposal for sale or transfer;

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

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

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

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

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

26 (4) IF THE GRANTOR EXERCISES ITS RIGHT OF FIRST REFUSAL UNDER THIS SECTION, THE GRANTOR AND DEALER  
27 SHALL USE BEST EFFORTS TO COMPLETE THE TRANSACTION WITHIN 120 CALENDAR DAYS AFTER THE FAIR MARKET VALUE  
28 HAS BEEN DETERMINED UNDER SUBSECTION (2). IF THE GRANTOR ELECTS NOT TO EXERCISE ITS RIGHT OF FIRST REFUSAL,  
29 THE PROPOSED TRANSFER OR SALE REMAINS SUBJECT TO FURTHER REVIEW PURSUANT TO 30-11-904 THROUGH  
30 30-11-906. DURING THE 60-DAY PERIOD SET FORTH IN SUBSECTION (1)(A) OF THIS SECTION, THE GRANTOR SHALL

1 ASSESS WHETHER THE PROPOSED NEW OWNER OR TRANSFEREE MEETS THE REQUIREMENTS OF 30-11-904.

2

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

4 **"30-11-809. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-804 through  
5 30-11-809 or [section 1] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary  
6 loss, together with court costs and reasonable attorney fees."

7

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

9 **"30-11-908. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-904 through  
10 30-11-908 or [section 2] 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."

12

13 NEW SECTION. **Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an  
14 integral part of Title 30, chapter 11, part 8, and the provisions of Title 30, chapter 11, part 8, apply to [section 1].

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

17

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

20

- END -