

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **06/21/99**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Rindfleisch**

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - mot veh dealers**

Extra Copies:

**Pre Topic:**

ARC:.....Rindfleisch - #24,

**Topic:**

Auto manufacturers' dealership practices

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 06/21/99	wjackson 06/21/99		_____			
/1			jfrantze 06/22/99	_____	lrb_docadmin 06/22/99		

FE Sent For:

<END>

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1/?	nilsepe	1 6/21 Wlj	<del>6/22</del>	<del>6/22</del> mc			

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<END>

# Budget Amendments 1999- 2000

**Statement of Intent**

Department of Transportation. Modifies and Clarifies the prohibition on motor vehicle manufacturers and their subsidiaries from owning, operating or controlling a motor vehicle dealership in Wisconsin.

**Legislator**

Freese

**Amendment#**

24

3100

**Staff contact**

Rob

**Status**

Pass

60707

**Agency**

DOT

**Tax Cut****Summary**

Motor vehicle manufacturers and their subsidiaries are prohibited by existing law from owning, operating or controlling a motor vehicle dealership in Wisconsin, except under certain circumstances.

This amendment modifies and clarifies this prohibition. These modifications or clarifications include:

1. Adding statutory definitions of the terms "control", "operate" and "ownership interest".
2. Specifying the conditions under which a manufacturer may hold an ownership interest in a dealership where there is a bona fide written agreement under which an independent operator of the dealership will acquire full ownership of the dealership within eight years, unless the Department of Transportation determines that there is good cause to permit a longer period of completion of the acquisition.

The amendment also modifies the existing statute that gives motor vehicle dealers the right to challenge their manufacturers' refusals to approve proposed changes in the dealership's ownership or management, transfers of dealership assets, relocations of the franchise or sharing of the dealership's facilities with another franchise.

The amendment will ensure that motor vehicle dealers have a right to a hearing on a manufacturer's refusal to approve a proposed action under all the circumstances.

**Fiscal Impact**

None

**ARC Analyst**

Kelly Rindfleisch

1999

Date (time) needed \_\_\_\_\_

LRB b 0807 / 1

**CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]**

PEW: Wlj : \_\_\_\_\_

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 1999 ASSEMBLY BILL 133**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :



60807/1

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*At the CAT. indicated among the substitute amend  
ment as follows:*

1 **AN ACT to repeal** 218.01 (2c) (b) and 218.01 (3x) (d) 1.; **to renumber and amend**  
2 218.01 (2c) (intro.), 218.01 (2c) (a) and 218.01 (2c) (c); and **to create** 218.01 (2)  
3 (L), 218.01 (2c) (am) and 218.01 (2c) (cm) 2. of the statutes; **relating to:** motor  
4 vehicle dealers.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

#. Page 1186, line 9: after that line insert  
SECTION 4. 218.01 (2) (L) of the statutes is created to read:

6 218.01 (2) (L) 1. Words and phrases defined in sub. (2c) (am) have the same  
7 meaning in this paragraph.

8 2. The department may not issue a dealer license under this section, unless the  
9 department has determined that no factory will hold an ownership interest in or  
10 operate or control the dealership or that one of the exceptions under sub. (2c) (cm)  
11 applies.

1           3. If the applicant asserts that sub. (2c) (cm) 2. <sup>✓</sup> applies, the department shall  
 2 require the applicant to provide a copy of the written agreement described in sub. (2c)  
 3 (cm) 2. d. <sup>✓</sup> for examination by the department to ensure that the agreement meets the  
 4 requirements of sub. (2c) (cm) 2. <sup>✓</sup>

5           4. If the division of hearings and appeals determines, after a hearing on the  
 6 matter at the request of the department or any licensee, that a factory holds an  
 7 ownership interest in a dealership or operates or controls a dealership in violation  
 8 of this subsection, the division shall order the denial or revocation of the dealership's  
 9 license.

10           SECTION <sup>2342bf</sup> 218.01 (2c) (intro.) of the statutes is renumbered 218.01 (2c) (bm)  
 11 and amended to read:

12           218.01 (2c) (bm) A ~~manufacturer, importer or distributor, or a subsidiary~~  
 13 thereof, <sup>← 5161</sup> factory shall not own, directly or indirectly, hold an ownership interest in  
 14 or operate or control a motor vehicle dealership in this state.

15           (cm) This subsection does not prohibit any of the following:

16           SECTION <sup>2342bf</sup> 218.01 (2c) (a) of the statutes is renumbered 218.01 (2c) (cm) 1. and  
 17 amended to read:

18           218.01 (2c) (cm) 1. ~~The ownership and operation by a manufacturer, importer~~  
 19 ~~or distributor, or a subsidiary thereof, of~~ A factory from holding an ownership  
 20 interest in or operating a dealership for a temporary period, not to exceed one year,  
 21 during the transition from one owner or dealer operator to another.

22           SECTION <sup>2342bf</sup> 218.01 (2c) (am) of the statutes is created to read:

23           218.01 (2c) (am) In this subsection:

1           1. "Agent" means a person who is employed by or affiliated with a factory or who  
2 directly or through an intermediary is controlled by or under common control of a  
3 factory.

4           2. "Control" means the possession, direct or indirect, of the power to direct or  
5 cause the direction of the management or policies of a person, whether through the  
6 ownership of voting securities, by contract or otherwise.

7           3. "Dealer operator" means an individual who is vested with the power and  
8 authority to operate a dealership.

9           4. "Dealership" means a person licensed or required to be licensed as a motor  
10 vehicle dealer under this section.

11           4m. "Department" means the department of transportation.

12           5. "Factory" means a manufacturer, distributor or importer, or an agent of a  
13 manufacturer, distributor or importer.

14           6. "Operate" means to directly or indirectly manage a dealership.

15           7. "Ownership interest" means the beneficial ownership of one percent or more  
16 of any class of equity interest in a dealership, whether the interest is that of a  
17 shareholder, partner, limited liability company member or otherwise. To "hold" an  
18 ownership interest means to have possession of, title to or control of the ownership  
19 interest, whether directly or indirectly through a fiduciary or an agent.

20           SECTION <sup>234250.5</sup> 218.01 (2c) (b) of the statutes is repealed.

21           SECTION <sup>234250.5</sup> 218.01 (2c) (c) of the statutes is renumbered 218.01 (2c) (cm) 3. and  
22 amended to read:

23           218.01 (2c) (cm) 3. The ownership, operation or control of a dealership by a  
24 ~~manufacturer, importer or distributor, or subsidiary thereof, which factory that~~ does  
25 not meet the conditions under ~~par. (a) or (b) subds. 1. or 2.,~~ if the division of hearings



1 and appeals determines, after a hearing on the matter at the request of any party,  
2 that there is no prospective independent dealer available to own and operate the  
3 dealership in a manner consistent with the public interest and that meets the  
4 reasonable standard and uniformly applied qualifications of the ~~manufacturer,~~  
5 ~~importer or distributor~~ factory.

6 SECTION <sup>2342</sup> 218.01 (2c) (cm) 2. of the statutes is created to read:

7 218.01 (2c) (cm) 2. A factory from holding an ownership interest in a  
8 dealership, if all of the following apply:

9 a. The dealer operator of the dealership is an individual who is not an agent  
10 of the factory.

11 b. The dealer operator of the dealership is unable to acquire full ownership of  
12 the dealership with his or her own assets or in conjunction with financial  
13 investments and loans from investors or lenders other than the factory holding an  
14 ownership interest in the dealership.

15 c. The dealer operator of the dealership holds not less than 15 percent of the  
16 total ownership interests in the dealership within one year from the date that the  
17 factory initially acquires any ownership interest in the dealership.

18 d. There is a bona fide written agreement in effect between the factory and the  
19 dealer operator of the dealership under which the dealer operator will acquire all of  
20 the ownership interest in the dealership held by the factory on reasonable terms  
21 specified in the agreement and that grants the dealer operator the right to acquire  
22 all of the ownership interest in the dealership held by the factory not later than five  
23 years after the effective date of the agreement.

24 e. The written agreement described in subd. 2. d. does not unreasonably restrict  
25 the source of funds used by the dealer operator to acquire ownership interest in the

1 dealership held by the factory. A restriction that requires the dealer operator to use  
2 only funds that are received in the form of salaries, bonuses, dividends or other  
3 payments to him or her as the dealer operator, or as the holder of an ownership  
4 interest in the dealership, to acquire the factory's ownership interest in the  
5 dealership is considered unreasonable.

6 f. The written agreement described in subd. 2. d. provides that the dealer  
7 operator will make reasonable progress toward acquiring all of the ownership  
8 interest in the dealership, and the dealer is making reasonable progress toward  
9 acquiring all of the ownership interest in the dealership.

10 g. Not more than eight years have elapsed since the factory initially acquired  
11 its ownership interest in the dealership, unless the department, upon petition by the  
12 dealer operator, determines that there is good cause to allow the dealer operator a  
13 longer period to complete his or her acquisition of all of the ownership interest in the  
14 dealership held by the factory and the longer period determined by the department  
15 has not yet elapsed.

16 h. If the factory owns the real property at which the dealership is located, the  
17 written agreement described in subd. 2. d. provides the dealer operator with the right  
18 to purchase the real property from the factory for its fair market value at the time  
19 that the dealer completes his or her acquisition of the factory's ownership interest  
20 in the dealership and there is no obligation by the dealer operator to lease the real  
21 property to the factory after the dealer operator purchase the real property.

22 SECTION #. 23426w ← (B) 218.01 (3x) (d) 1. of the statutes is repealed. //



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0807/1  
PEN:wlj:jf

ARC:.....Rindfleisch - #24, Auto manufacturers' dealership practices

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1186, line 9: after that line insert:

3 **"SECTION 2342bc.** 218.01 (2) (L) of the statutes is created to read:

4 218.01 (2) (L) 1. Words and phrases defined in sub. (2c) (am) have the same  
5 meaning in this paragraph.

6 2. The department may not issue a dealer license under this section, unless the  
7 department has determined that no factory will hold an ownership interest in or  
8 operate or control the dealership or that one of the exceptions under sub. (2c) (cm)  
9 applies.

1           3. If the applicant asserts that sub. (2c) (cm) 2. applies, the department shall  
2 require the applicant to provide a copy of the written agreement described in sub. (2c)  
3 (cm) 2. d. for examination by the department to ensure that the agreement meets the  
4 requirements of sub. (2c) (cm) 2.

5           4. If the division of hearings and appeals determines, after a hearing on the  
6 matter at the request of the department or any licensee, that a factory holds an  
7 ownership interest in a dealership or operates or controls a dealership in violation  
8 of this subsection, the division shall order the denial or revocation of the dealership's  
9 license.

10           **SECTION 2342bf.** 218.01 (2c) (intro.) of the statutes is renumbered 218.01 (2c)  
11 (bm) and amended to read:

12           218.01 (2c) (bm) A ~~manufacturer, importer or distributor, or a subsidiary~~  
13 ~~thereof, factory~~ shall not ~~own, directly or indirectly, hold an ownership interest in~~  
14 ~~or operate or control a motor vehicle dealership in this state.~~

15           (cm) This subsection does not prohibit any of the following:

16           **SECTION 2342bi.** 218.01 (2c) (a) of the statutes is renumbered 218.01 (2c) (cm)  
17 1. and amended to read:

18           218.01 (2c) (cm) 1. ~~The ownership and operation by a manufacturer, importer~~  
19 ~~or distributor, or a subsidiary thereof, of~~ A factory from holding an ownership  
20 interest in or operating a dealership for a temporary period, not to exceed one year,  
21 during the transition from one owner or dealer operator to another.

22           **SECTION 2342bL.** 218.01 (2c) (am) of the statutes is created to read:

23           218.01 (2c) (am) In this subsection:

1           1. “Agent” means a person who is employed by or affiliated with a factory or who  
2 directly or through an intermediary is controlled by or under common control of a  
3 factory.

4           2. “Control” means the possession, direct or indirect, of the power to direct or  
5 cause the direction of the management or policies of a person, whether through the  
6 ownership of voting securities, by contract or otherwise.

7           3. “Dealer operator” means an individual who is vested with the power and  
8 authority to operate a dealership.

9           4. “Dealership” means a person licensed or required to be licensed as a motor  
10 vehicle dealer under this section.

11           4m. “Department” means the department of transportation.

12           5. “Factory” means a manufacturer, distributor or importer, or an agent of a  
13 manufacturer, distributor or importer.

14           6. “Operate” means to directly or indirectly manage a dealership.

15           7. “Ownership interest” means the beneficial ownership of one percent or more  
16 of any class of equity interest in a dealership, whether the interest is that of a  
17 shareholder, partner, limited liability company member or otherwise. To “hold” an  
18 ownership interest means to have possession of, title to or control of the ownership  
19 interest, whether directly or indirectly through a fiduciary or an agent.

20           **SECTION 2342bo.** 218.01 (2c) (b) of the statutes is repealed.

21           **SECTION 2342br.** 218.01 (2c) (c) of the statutes is renumbered 218.01 (2c) (cm)  
22 3. and amended to read:

23           218.01 (2c) (cm) 3. The ownership, operation or control of a dealership by a  
24 ~~manufacturer, importer or distributor, or subsidiary thereof, which factory that~~ does  
25 not meet the conditions under ~~par. (a) or (b)~~ subds. 1. or 2., if the division of hearings

1 and appeals determines, after a hearing on the matter at the request of any party,  
2 that there is no prospective independent dealer available to own and operate the  
3 dealership in a manner consistent with the public interest and that meets the  
4 reasonable standard and uniformly applied qualifications of the ~~manufacturer,~~  
5 ~~importer or distributor~~ factory.

6 **SECTION 2342bu.** 218.01 (2c) (cm) 2. of the statutes is created to read:

7 218.01 (2c) (cm) 2. A factory from holding an ownership interest in a  
8 dealership, if all of the following apply:

9 a. The dealer operator of the dealership is an individual who is not an agent  
10 of the factory.

11 b. The dealer operator of the dealership is unable to acquire full ownership of  
12 the dealership with his or her own assets or in conjunction with financial  
13 investments and loans from investors or lenders other than the factory holding an  
14 ownership interest in the dealership.

15 c. The dealer operator of the dealership holds not less than 15 percent of the  
16 total ownership interests in the dealership within one year from the date that the  
17 factory initially acquires any ownership interest in the dealership.

18 d. There is a bona fide written agreement in effect between the factory and the  
19 dealer operator of the dealership under which the dealer operator will acquire all of  
20 the ownership interest in the dealership held by the factory on reasonable terms  
21 specified in the agreement and that grants the dealer operator the right to acquire  
22 all of the ownership interest in the dealership held by the factory not later than five  
23 years after the effective date of the agreement.

24 e. The written agreement described in subd. 2. d. does not unreasonably restrict  
the source of funds used by the dealer operator to acquire ownership interest in the

1 dealership held by the factory. A restriction that requires the dealer operator to use  
2 only funds that are received in the form of salaries, bonuses, dividends or other  
3 payments to him or her as the dealer operator, or as the holder of an ownership  
4 interest in the dealership, to acquire the factory's ownership interest in the  
5 dealership is considered unreasonable.

6 f. The written agreement described in subd. 2. d. provides that the dealer  
7 operator will make reasonable progress toward acquiring all of the ownership  
8 interest in the dealership, and the dealer is making reasonable progress toward  
9 acquiring all of the ownership interest in the dealership.

10 g. Not more than eight years have elapsed since the factory initially acquired  
11 its ownership interest in the dealership, unless the department, upon petition by the  
12 dealer operator, determines that there is good cause to allow the dealer operator a  
13 longer period to complete his or her acquisition of all of the ownership interest in the  
14 dealership held by the factory and the longer period determined by the department  
15 has not yet elapsed.

16 h. If the factory owns the real property at which the dealership is located, the  
17 written agreement described in subd. 2. d. provides the dealer operator with the right  
18 to purchase the real property from the factory for its fair market value at the time  
19 that the dealer completes his or her acquisition of the factory's ownership interest  
20 in the dealership and there is no obligation by the dealer operator to lease the real  
21 property to the factory after the dealer operator purchase the real property.

22 **SECTION 2342bw.** 218.01 (3x) (d) 1. of the statutes is repealed.”.

23

(END)