

**1999 DRAFTING REQUEST**

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

Received: 10/01/1999

Received By: nilsepe

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Dyck

This file may be shown to any legislator: NO

Drafter: nilsepe

May Contact:

Alt. Drafters:

Subject: Transportation - mot veh dealers

Extra Copies: TNF

**Pre Topic:**

LFB:.....Dyck - 49,

**Topic:**

Automobile factory stores, ownership interests

**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 10/01/1999	wjackson 10/01/1999		_____			
/1			martykr 10/01/1999	_____	lrb_docadmin 10/01/1999		
/2	isagerro 10/01/1999	ygeller 10/02/1999	jfrantze 10/03/1999	_____	lrb_docadmin 10/03/1999		
			kfollet 10/03/1999	_____			

10/03/1999 12:41:56 PM

Page 2

FE Sent For:

**<END>**

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/?	nilsepe 10/01/1999	wjackson 10/01/1999		_____			
/1		<i>1/2 10/2 jlg</i> martykr 10/01/1999		_____	lrb_docadmin 10/01/1999		

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*10/3* *10/3*  
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1?	nilsepe	11/11/10/11	<i>[Signature]</i>	<i>[Signature]</i>			

FE Sent For:

<END>

5



Wisconsin Speaker Pro Tempore  
**Representative Stephen J. Freese**

September 14, 1999

Speaker Scott Jensen  
Room 211 West  
State Capitol

Dear Speaker Jensen:

I am writing to make you aware of the most recent development between the WI Automobile and Truck Dealers Association (WATDA) and representatives from the automobile manufacturers in regards to the automobile dealership franchise amendment in the state budget. The amendment I speak of would prohibit factory ownership of automobile dealerships.

In an effort to prove that they were willing to talk, Gary Williams and Mary Ann Gerrard of the WATDA, flew to Detroit to discuss the dealership franchise amendment with the manufacturers with hope that some sort of agreement could be worked out. While the WATDA was willing to discuss the amendment's language and make modifications to it, the manufacturers could not agree that the modifications were a serious attempt at compromise.

I have enclosed a copy of the amendment for you. I am respectfully requesting that you amend the current budget language and accept this amendment as a reasonable attempt to seek compromise on this important issue.

Your support of this request is most appreciated!

Sincerely,

Stephen J. Freese  
State Representative

SJF:rlr

Enclosure

**Fifty-First Assembly District**

Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-7502 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us  
District: 1121 Professional Drive • Dodgeville, Wisconsin 53533 • (608) 935-3789

Printed on recycled paper with soy-based ink.



**ASSEMBLY AMENDMENT ,**  
**TO ASSEMBLY AMENDMENT 2,**  
**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**  
**TO 1999 ASSEMBLY BILL 133**

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

2           **1.** Page 379, line 16: delete "this subsection" and substitute "sub. (2c)".

3           **2.** Page 380, line 14: after "otherwise." insert "'Control" does not include the  
4 relationship between a factory and a dealership under a basic agreement filed under  
5 sub. (2) (bd) 1."

6           **3.** Page 382, line 4: delete the material beginning with "and that grants" and  
7 ending with "unreasonable" on line 13.

8           **4.** Page 382, line 24: delete the material beginning with that line and ending  
9 with page 383, line 4.

10          **5.** Page 383, line 4: after that line insert:

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10

**"SECTION 2342bv. 218.01 (2c) (cm) 4. of the statutes is created to read:**

**218.01 (2c) (cm) 4. The holding or acquisition, solely for investment purposes, of an ownership interest in a publicly traded corporation by an employe benefit plan that is sponsored by a factory.**

**SECTION 2342bvm. 218.01 (3x) (c) 1. g. of the statutes is created to read:**

**218.01 (3x) (c) 1. g. Whether the dealer and affected grantor have previously agreed upon a specific action that is inconsistent with the proposed action and, if so, whether there has been a change in circumstances sufficient to justify the proposed action."**

**(END)**

Today

51886/1

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

AA - ASA 1 - AB 133

inserts

1-note

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~~ <sup>sub. (2c) ✓</sup>, 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 <sup>plain</sup> 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

insert  
3-6

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  
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.~~

*in sen*  
*5-21*  
22 **SECTION 2342bw.** 218.01 (3x) (d) 1. of the statutes is repealed.”

insert  
1

**ASSEMBLY AMENDMENT ,  
TO ASSEMBLY AMENDMENT 2,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133**

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

2 ✓ 1. Page 379, line 16: delete "this subsection" and substitute "sub. (2c)".

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4 relationship between a factory and a dealership under a basic agreement filed under

5 sub. (2) (bd) 1.?

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insert  
5-21

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218.01 (3x) (c) 1. g. Whether the dealer and affected grantor have previously agreed upon a specific action that is inconsistent with the proposed action and, if so, whether there has been a change in circumstances sufficient to justify the proposed action.

END

(end insert)

- dak -

61886/idn

Jon Dyck:

# This is LRB60807/1, as  
affected by LRB61708/2.

- PEN

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBb1886/1dn  
PEN:wlj:km

October 1, 1999

Jon Dyck:

This is LRBb0807/1, as affected by LRBb1708/2.

Paul E. Nilsen  
Legislative Attorney  
Phone: (608) 261-6926



2  
18K  
RMC  
+JLg

LFB:.....Dyck - 49, Automobile factory stores, ownership interests

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 1999 ASSEMBLY BILL 133**

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8 operate or control the dealership or that one of the exceptions under sub. (2c) (cm)  
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19 action.

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

21 (END)

Section 2342bw. 218.01 (2c) (cm) 5. <sup>of the statutes</sup> created to read:  
→ Insert 6-15

Insert 5-15

WISCONSIN

*Gary Williams  
has applied in  
principle to the  
law, not this vehicle*

SATURN PROVISION

Section 218.01 (2c)(cm) of the statutes is created to read:

*could co-exist w/ these laws  
Special treatment for Saturn dealers*

218.01(2c)(cm) <sup>(B)</sup> 5 A factory from ~~holding~~ an ownership interest in a dealership trading gross vehicle weight solely in any line make of new motor vehicles weighing less than 8500 ~~gms~~ lbs. if all of the

following apply:

a. As of January 1, 1999, no more than ~~1000~~ <sup>10</sup> locations for ~~any~~ <sup>the</sup> line make are licensed and in operation ~~within the State of Wisconsin.~~ in the state on or after January 1, 1999.

b. At the time ~~any~~ <sup>the</sup> factory first acquires an ownership interest, the distance between the dealership ~~and~~ <sup>in the dealership,</sup> and the nearest non-affiliated new motor vehicle dealership trading in the same line make of motor vehicles is no less than 35 miles.

c. ~~Any~~ <sup>The</sup> factory does not own, directly or indirectly, in aggregate, in excess of a ~~10%~~ <sup>45%</sup> interest in ~~any~~ <sup>the</sup> dealership.

d. The factory provides written assurance to the Department that on all matters pertaining to the operation of the dealership ~~facilities,~~ <sup>the dealership,</sup> in which the factory has a partial ownership interest shall ~~have~~ <sup>have</sup> the same degree of independence from the factory as ~~all~~ <sup>all</sup> other dealerships of the same line make ~~including~~ <sup>including</sup> the ~~same~~ right to seek legally enforceable redress against the manufacturer in any dispute arising under the franchise agreement.

e. All franchise agreements for the line make of new motor vehicles ~~in the State of Wisconsin~~ <sup>in the State of Wisconsin</sup> include provisions ~~not inconsistent with applicable law~~ <sup>not inconsistent with applicable law</sup> for actively



INS 5-15

sharing responsibility between the factory and representatives of dealers of said line  
 make for decision-making on matters within the scope of the agreement that  
 significantly affect the retail automotive business. This shared responsibility shall  
 apply to at least the following matters: <sup>including</sup> 1) prior approval of any performance  
 standards binding on dealers; 2) prior and ongoing review of the allocation system the  
 factory uses for distributing new motor vehicles covered by the franchise agreement;  
 3) prior approval of any proposed supplements to the franchise agreement applicable  
 to dealerships in which the factory owns a partial interest; and 4) approval of any  
 superceding franchise agreement before said superceding agreement is offered to  
 dealers of said line make.

(end insert)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1886/2  
PEN&ISR:wlj&jlg:jf

LFB:.....Dyck - 49, Automobile factory stores, ownership interests

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 1999 ASSEMBLY BILL 133**

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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 or  
14 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. “Control” does not include  
7 the relationship between a factory and a dealership under a basic agreement filed  
8 under sub. (2) (bd) 1.

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

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

13           4m. “Department” means the department of transportation.

14           5. “Factory” means a manufacturer, distributor or importer, or an agent of a  
15 manufacturer, distributor or importer.

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

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

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

23           **SECTION 2342br.** 218.01 (2c) (c) of the statutes is renumbered 218.01 (2c) (cm)

24           3. and amended to read:

1           218.01 (2c) (cm) 3. The ownership, operation or control of a dealership by a  
2 ~~manufacturer, importer or distributor, or subsidiary thereof, which factory that~~ does  
3 not meet the conditions under ~~par. (a) or (b) subds. 1. or 2.~~, if the division of hearings  
4 and appeals determines, after a hearing on the matter at the request of any party,  
5 that there is no prospective independent dealer available to own and operate the  
6 dealership in a manner consistent with the public interest and that meets the  
7 reasonable standard and uniformly applied qualifications of the ~~manufacturer,~~  
8 ~~importer or distributor~~ factory.

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

10           218.01 (2c) (cm) 2. A factory from holding an ownership interest in a  
11 dealership, if all of the following apply:

12           a. The dealer operator of the dealership is an individual who is not an agent  
13 of the factory.

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

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

21           d. There is a bona fide written agreement in effect between the factory and the  
22 dealer operator of the dealership under which the dealer operator will acquire all of  
23 the ownership interest in the dealership held by the factory on reasonable terms  
24 specified in the agreement.

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

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

11 **SECTION 2342bv.** 218.01 (2c) (cm) 4. of the statutes is created to read:

12 218.01 (2c) (cm) 4. The holding or acquisition, solely for investment purposes,  
13 of an ownership interest in a publicly traded corporation by an employee benefit plan  
14 that is sponsored by a factory.

15 **SECTION 2342bw.** 218.01 (2c) (cm) 5. of the statutes is created to read:

16 218.01 (2c) (cm) 5. A factory from holding an ownership interest in a dealership  
17 trading solely in any line make of new motor vehicles weighing less than 8,500  
18 pounds gross vehicle weight, if all of the following apply:

19 a. No more than 10 locations for the line make are licensed and in operation  
20 in the state on or after January 1, 1999.

21 b. At the time the factory first acquires an ownership interest in the dealership,  
22 the distance between the dealership and the nearest nonaffiliated new motor vehicle  
23 dealership trading in the same line make of motor vehicles is no less than 35 miles.

24 c. The factory does not own, directly or indirectly, in aggregate, in excess of a  
25 45% interest in the dealership.

1 d. The factory provides written assurance to the department that on all matters  
2 pertaining to the operation of the dealership, the dealership has the same degree of  
3 independence from the factory as have all other dealerships of the same line make,  
4 including the right to seek legally enforceable redress against the manufacturer in  
5 any dispute arising under the franchise agreement.

6 e. All franchise agreements for the line make of new motor vehicles include  
7 provisions for actively sharing responsibility between the factory and  
8 representatives of the dealers of the line make for decision-making on matters  
9 within the scope of the agreement that significantly affect the retail automotive  
10 business including prior approval of any performance standards binding on dealers,  
11 prior and ongoing review of the allocation system the factory uses for distributing  
12 new motor vehicles covered by the franchise agreement, prior approval of any  
13 proposed supplements to the franchise agreement applicable to dealerships in which  
14 the factory owns a partial interest and approval of any superseding franchise  
15 agreement before the agreement is offered to dealers of the line make.

16 **SECTION 2342bvm.** 218.01 (3x) (c) 1. g. of the statutes is created to read:

17 218.01 (3x) (c) 1. g. Whether the dealer and affected grantor have previously  
18 agreed upon a specific action that is inconsistent with the proposed action and, if so,  
19 whether there has been a change in circumstances sufficient to justify the proposed  
20 action.

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

22 (END)