



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR JOSEPH LEIBHAM
FROM: Don Salm, Senior Staff Attorney *DS*
RE: Analysis of LRB-3044/1, Relating to Wholesale Motor Vehicle Dealers
DATE: September 8, 2003

This memorandum, prepared at your request, analyzes LRB-3044/1, relating to wholesale motor vehicle dealers.

DEFINITION OF "DISTRIBUTOR" OR "WHOLESALER"

Current Law

Under current law, the definition of "distributor" or "wholesaler," for purposes of that part of ch. 218, Stats., relating to motor vehicle dealers and salespersons, is a combined one, found in s. 218.0101 (6), Stats., which defines the terms as follows:

"Distributor" or "wholesaler" means a person, resident or nonresident who in whole or part, sells or distributes motor vehicles to motor vehicle dealers, or who maintain distributor representatives.

In keeping with that definition, "distributor branch" is defined in sub. (7) of that section as "a branch office similarly maintained by a distributor or wholesaler for the same purposes" and "distributor representative" is defined in sub. (8) as a "representative similarly employed by a distributor, distributor branch or wholesaler."

LRB-3044/1

The draft:

1. Takes the term "wholesaler" out of the definitions of "distributor or wholesaler," "distributor branch," and "distributor representative" in s. 218.0101, Stats., and redefines "distributor" by adding the word "new" to the definition. Under the draft, "distributor" is defined to mean "a

person, resident or nonresident who in whole or part, sells or distributes new motor vehicles to motor vehicle dealers, or who maintains distributor representatives.”

2. Creates a new definition of “wholesaler” or “wholesaler dealer” in that section. Under the draft, “wholesaler” or “wholesaler dealer” is defined to mean a person, other than a licensed motor vehicle dealer or licensed motor vehicle auction dealer, who does any of the following:
 - a. Sells more than five used motor vehicles in any 12-month period to one or more motor vehicle dealers, motor vehicle auction dealers, or salvage dealers.
 - b. Except for the exception described below, purchases used motor vehicles from a motor vehicle dealer or at a motor vehicle auction.
 - c. Except for the exception described below, purchases used motor vehicles on behalf of a motor vehicle dealer.

The exception in the draft is that a person is **not a wholesaler or a wholesale dealer** if: (1) the person is employed by and receives compensation from only one motor vehicle dealer for services relating to the sale or purchase of motor vehicles; and (2) the person conducts all financial transactions involving the sale or purchase of motor vehicles in the name of the motor vehicle dealer that employs him or her, under the supervision of the motor vehicle dealer that employs him or her, and using motor vehicle dealer’s funds or financial accounts.

DEALER OR APPLICANT BOND REQUIREMENT

Current Law

Under current law, a motor vehicle dealer or an applicant for a motor vehicle dealer license is required to provide and maintain in force a bond or irrevocable letter of credit of **not less than \$25,000** or, if the dealer or applicant sells or proposes to sell motorcycles and not other types of motor vehicles, a bond or irrevocable letter of credit of not less than \$5,000. [s. 218.0114 (5) (a), Stats.]

LRB-0344/I

The draft:

1. Increases, for motor vehicle dealers and applicants for motor vehicle dealer licenses, the maximum amount of the bond or letter of credit to **not less than \$50,000**. The \$5,000 limit applicable to dealers or applicants selling or proposing to sell only motorcycles is not changed.
2. Creates a new bond or letter of credit provision applicable to a wholesaler or a wholesale dealer or an applicant for such a license. Under the draft, a wholesaler or wholesale dealer or an applicant for a wholesaler or wholesale dealer license is required to provide and maintain in force a bond or irrevocable letter of credit of **not less than \$25,000**. Similar to the current motor vehicle dealer bond or letter requirement, the draft requires this bond or letter of credit

to be executed in the name of the Department of Transportation (DOT) for the benefit of any person who sustains a loss because of an act or omission by the wholesaler or wholesale dealer.

BOND WHERE LICENSOR HAS CAUSE TO DOUBT FINANCIAL RESPONSIBILITY OF APPLICANT OR LICENSEE

Current Law

Under current law, if the licensor has reasonable cause to doubt the financial responsibility of the applicant or licensee or the compliance by the applicant or licensee with requirements under ss. 218.0101 to 218.0163, Stats. (relating to motor vehicle dealers and salespersons), the licensor may require the applicant or licensee to furnish and maintain “**a bond**” of not less than \$5,000 nor more than \$100,000, conditioned upon the applicant or licensee complying with the applicable statutes and as indemnity for any loss sustained by any person by reason of any acts of the licensee constituting grounds for suspension or revocation of license under these applicable statutory requirements. The bonds must be executed in the name of the DOT for the benefit of “**any aggrieved parties.**” [s. 218.0114 (20) (b), Stats.]

LRB-0344/I

The draft:

1. In the current provision relating to the amount of the bond, adds the term “additional” before “bond” so that the provision specifies that the licensor may require the applicant or licensee to furnish and maintain an **additional** bond of not less than \$5,000 nor more than \$100,000.
2. Replaces the phrase “any aggrieved parties” so that the provision specifies that the bonds be executed for the benefit of “**any aggrieved person who sustains a loss because of an act of the licensee that constitutes grounds for the suspension or revocation of his or her license under ss. 218.0101 to 218.0163.**”

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DLS:wu:tlu:rv;ksm



Joe Leibham

STATE SENATOR

Testimony on Senate Bill 234

I have also authored SB234, which increases bonding for motor vehicle dealers and provides for bonding of wholesalers. Wholesalers have not been bonded in the past.

Effective July 1, 1992 motor vehicle and motorcycle dealers were required to file a bond or an irrevocable letter of credit in order to obtain a dealer license. The amount is \$25,000 for motor vehicle dealers and \$5,000 for motorcycle dealers. The bond, per Wis. Stat. 218.0114(5)(a), is executed in the name of the DOT for the benefit of any person who sustains a loss because of a dealer's action. SB234 increases the bond amount to \$50,000 for motor vehicle dealers.

Over the last 11 years since the present bond amount was set, the cost of vehicles has increased to the point that there would be little money left if more than one person is hurt by a dealer's action. The \$50,000 bond amount is well within the range of the bond amounts of other states and offers more protection for Wisconsin consumers.

The bond also serves as a guarantee to the Department of Transportation of the dealer's financial stability.

To date wholesalers (those who sell used vehicles to dealers) have never been bonded. A \$25,000 bond will help guarantee the financial stability of the



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wholesaler and provide an avenue of recovery for those hurt by the actions of wholesalers. An example would be, a dealer sells a vehicle he took in trade to a wholesaler. If that wholesaler's check is not good and he turns out to be insolvent the dealer would have some recourse.

Currently a \$25,000 bond costs about \$150. While we anticipate some increase in bond costs, we believe they will still be very affordable.

SB 234 has companion legislation, Assembly Bill 490 in the State Assembly lead by Representative Steve Freese. The Assembly Committee on Transportation has held a public hearing on AB 489 and the bill is currently awaiting passage pending an amendment and an executive session. I appreciate the attention of the Committee to this legislation and I would be happy to answer any questions.

Thank you.

—SB 234—

**Testimony on Bonding Legislation for Freese
Assembly Bill 490**

I have also authored AB490, which increase bonding for motor vehicle dealers and provides for bonding of wholesalers. Wholesalers have not been bonded in the past.

Effective July 1, 1992 motor vehicle and motorcycle dealers were required to file a bond or an irrevocable letter of credit in order to obtain a dealer license. The amount is \$25,000 for motor vehicle dealers and \$5,000 for motorcycle dealers. The bond, per Wis. Stat. 218.0114(5)(a), is executed in the name of the DOT for the benefit of any person who sustains a loss because of a dealer's action. AB490 increases the bond amount to \$50,000 for motor vehicle dealers. Over the last 11 years since the present bond amount was set, the cost of vehicles has increased to the point that there would be little money left if more than one person is hurt by a dealer's action. The \$50,000 bond amount is well within the range of the bond amounts of other states.

The bond also serves as a guarantee to the Department of Transportation of the dealer's financial stability.

To date wholesalers (those who sell used vehicles to dealers) have never been bonded. A \$25,000 bond will help guarantee the financial stability of the wholesaler and provide an avenue of recovery for those hurt by the actions of wholesalers.

Currently a \$25,000 bond costs about \$150. So we anticipate some increase in bond costs but believe they will still be very affordable.

I would be grateful if the committee would exec on AB490 today so that we would be able to take it to the floor in the fall session.

Thanks much.