

## 2007 DRAFTING REQUEST

### Bill

Received: 12/20/2006

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Roger Breske (608) 266-2509

By/Representing: Beth Piliouras (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - mot veh dealers

Extra Copies: BAB

Submit via email: YES

Requester's email: Sen.Breske@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

---

### 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>
/?				_____			State
/P1	agary 01/22/2007	lkunkel 02/06/2007	pgreensl 02/06/2007	_____	mbarman 02/06/2007		State
/P2	agary 04/26/2007	lkunkel 04/27/2007	nнатzke 04/30/2007	_____	cduerst 04/30/2007		
/P3	agary	lkunkel	jfrantze	_____	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	04/30/2007	05/01/2007	05/01/2007	_____	05/01/2007		
/1	agary 05/16/2007	lkunkel 05/17/2007	nnatzke 05/17/2007	_____	mbarman 05/17/2007	sbasford 06/15/2007	

FE Sent For:

**26**

**<END>**

## 2007 DRAFTING REQUEST

### Bill

Received: 12/20/2006

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Roger Breske (608) 266-2509

By/Representing: Beth Piliouras (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - mot veh dealers

Extra Copies: BAB

Submit via email: YES

Requester's email: Sen.Breske@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

---

### 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>
/?				_____			State
/P1	agary 01/22/2007	lkunkel 02/06/2007	pgreensl 02/06/2007	_____	mbarman 02/06/2007		State
/P2	agary 04/26/2007	lkunkel 04/27/2007	nmatzke 04/30/2007	_____	cduerst 04/30/2007		
/P3	agary	lkunkel	jfrantze	_____	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	04/30/2007	05/01/2007	05/01/2007 _____		05/01/2007		
/1	agary 05/16/2007	lkunkel 05/17/2007	nmatzke 05/17/2007 _____		mbarman 05/17/2007		

FE Sent For:

**<END>**

**2007 DRAFTING REQUEST**

**Bill**

Received: **12/20/2006**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Roger Breske (608) 266-2509**

By/Representing: **Beth Piliouras (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - mot veh dealers**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Sen.Breske@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

**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>
/?							State
/P1	agary 01/22/2007	lkunkel 02/06/2007	pgreensl 02/06/2007		mbarman 02/06/2007		State
/P2	agary 04/26/2007	lkunkel 04/27/2007	nmatzke 04/30/2007		cduerst 04/30/2007		
/P3	agary	lkunkel	jfrantze nwn 5/17		lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	04/30/2007	05/01/2007	05/01/2007	_____	05/01/2007		

/l/mk 5/17

FE Sent For:

<END>

**2007 DRAFTING REQUEST**

**Bill**

Received: **12/20/2006**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Roger Breske (608) 266-2509**

By/Representing: **Beth Piliouras (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - mot veh dealers**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Sen.Breske@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

**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>
/?							State
/P1	agary 01/22/2007	lkunkel 02/06/2007	pgreensl 02/06/2007		mbarman 02/06/2007		State
/P2	agary 04/26/2007	lkunkel 04/27/2007	nmatzke 04/30/2007		cduerst 04/30/2007		

*Handwritten signatures and initials:*  
 1/23/mk 5/1  
 [Signature] 1/2  
 [Signature] 1/5

FE Sent For:

**<END>**

**2007 DRAFTING REQUEST**

**Bill**

Received: **12/20/2006**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Roger Breske (608) 266-2509**

By/Representing: **Beth Piliouras (aide)**

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - mot veh dealers**

Extra Copies: **BAB**

Submit via email: **YES**

Requester's email: **Sen.Breske@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

---

**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>
/?							State
/P1	agary 01/22/2007	lkunkel 02/06/2007	pgreensl 02/06/2007		mbarman 02/06/2007		

FE Sent For:

*p2/mk 4/27 nwn  
4/27 nwn/pg  
4/30*

<END>

**2007 DRAFTING REQUEST**

**Bill**

Received: 12/20/2006

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Roger Breske (608) 266-2509

By/Representing: Beth Piliouras (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - mot veh dealers

Extra Copies: BAB

Submit via email: YES

Requester's email: Sen.Breske@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

---

**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>
/?	agary	p/mk 2/6	2/6 PS	2/6 PS/B			State

FE Sent For:

<END>

**Gary, Aaron**

---

**From:** Piliouras, Elizabeth  
**Sent:** Wednesday, December 20, 2006 2:36 PM  
**To:** Gary, Aaron  
**Subject:** RE: Breske draft request - MV dealers

*All in one bill please.*

*Thanks Aaron.*

---

**From:** Gary, Aaron  
**Sent:** Wednesday, December 20, 2006 2:32 PM  
**To:** Piliouras, Elizabeth  
**Subject:** RE: Breske draft request - MV dealers

Hi Beth,

I haven't looked at the documents yet, but did you intend them to be entered as 5 separate requests. I will be the drafter (or Brett Balinsky, the other transportation drafter, will be). We'll get them in the queue when I hear back from you. Thanks. Aaron

Aaron R. Gary  
Legislative Attorney  
Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Piliouras, Elizabeth  
**Sent:** Wednesday, December 20, 2006 11:12 AM  
**To:** Gary, Aaron; Sundberg, Christopher  
**Subject:** Breske draft request - MV dealers

*Hi Aaron:*

*I wasn't sure who would be drafting this, so I'm sending this to you both. Roger would like the following 5 documents drafted, please.*

*If you have any questions, you can contact me or Paul Norman who is working with the dealers association on these. His contact information is below:*

Paul R. Norman  
Boardman Law Firm, LLP  
1 S. Pinckney Street, Fourth Floor  
Madison, WI 53703  
(608) 283-1766 (phone)

12/20/2006

(608) 283-1709 (fax)

*Thanks much!*

Beth

*Beth Piliouras*

Senator Roger Breske

608-266-2509

**Possible 2007-08 Legislation: Amending Warranty Reimbursement Statute**

Section \_\_\_\_\_. 218.0125(1) of the statutes is repealed and recreated to read:

218.0125(1) Warranty reimbursement. (1) In this section:

(a) "Dealer cost" means the wholesale cost for a part as listed in the manufacturer's, importer's or distributor's current price schedules or, if the part is not so listed, the dealer's original invoice cost for the part.

(b) "Qualifying nonwarranty repairs" means nonwarranty repairs not involving routine maintenance such as changing the oil and oil filter.

(c) "Effective labor rate charged all customers" means the labor rate that the dealer customarily charges its nonwarranty customers for qualifying nonwarranty repairs. The "effective labor rate charged all customers" is determined by dividing the dealer's total labor charges for qualifying nonwarranty repairs by the total number of labor hours that would be charged for those repairs under the labor time computations that the manufacturer, importer or distributor uses to determine labor compensation to the dealer for warranty repairs. A dealer may declare its "effective labor rate charged all customers" in a written notice to the manufacturer, importer or distributor requesting compensation at that rate for labor governed by this section. The manufacturer, importer or distributor shall begin compensating the dealer at the dealer's declared "effective labor rate charged all customers" for all labor under this section performed after 30 days following its receipt of the dealer's notice, unless an audit of the dealer's qualifying nonwarranty repair orders dated not more than 60 days prior to date of the notice establishes that the dealer's actual "effective labor rate charged all customers" is less than the rate declared by the dealer, in which case the manufacturer, importer or distributor must compensate the dealer at not less than the actual "effective labor rate charged all customers" established by the audit. A manufacturer, importer or distributor may not require the dealer to perform geographic or other surveys of hourly labor rates charged or received by other dealers in order to establish the dealer's "effective labor rate charged all customers."

(d) "The amount the dealer charges its other retail service customers for parts used in performing similar work by the dealer" means the amount determined by applying the average percentage markup over dealer cost that the dealer customarily charges for parts in qualifying nonwarranty repairs. A manufacturer, importer or distributor may not require a dealer to establish the amount it is entitled to as compensation for parts under this section on a part-by-part or transaction-by-transaction basis.

Section \_\_\_\_\_. 218.0125(2) of the statutes is amended to read:

218.0125(2) A manufacturer, importer or distributor shall, for the protection of the buying public, specify the delivery and preparation obligations of its dealers before delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its dealers

shall be filed with the department of transportation by every licensed motor vehicle manufacturer, importer or distributor and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer, importer or distributor. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer, importer or distributor shall constitute the manufacturer's, importer's or distributor's product or warranty liability. The manufacturer, importer or distributor shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's, importer's or distributor's product or warranty defects or delivery and preparation obligations or who performs any other work required, requested or approved by the manufacturer, importer or distributor or for which the manufacturer, importer or distributor has agreed to pay, including compensation for labor at a labor rate equal to the effective labor rate charged all customers and for parts at an amount not less than the amount the dealer charges its other retail service customers for parts used in performing similar work by the dealer. The manufacturer, importer or distributor may not otherwise recover its cost for compensating its dealers for labor and parts pursuant to this subsection.

Section \_\_\_\_ . 218.0125(8) is created to read:

218.0125(8) Notwithstanding a dealer's failure to adhere to all requirements of the manufacturer's, importer's or distributor's policies and procedures, a manufacturer, importer or distributor may not refuse to approve and pay a claim for compensation under this section or charge back a dealer for a claim that has been previously paid, if the dealer has documentation to establish that the work for which the claim is made was actually performed by the dealer and qualifies for compensation under this section.

**Explanation:**

**Under current law, a motor vehicle manufacturer, importer or distributor ("franchiser") must reasonably compensate dealers for warranty or other work that the franchiser requires or requests the dealer to do, including compensation for labor at the dealer's "effective rate charged all customers" ("retail labor rate") and for parts "at the amount the dealer charges its other retail service customers for parts used in performing similar work by the dealer" ("retail parts markup").**

**This legislation would amend the current law to do all of the following:**

- 1. Exclude from the calculation of the dealer's retail labor rate and retail parts markup, transactions involving routine maintenance, such as changing the oil and oil filter, which are dissimilar from warranty work and for which dealers generally charge lower labor rates and parts markups.**
- 2. Ensure that the franchiser pays the same amount for a repair as a nonwarranty customer does, regardless of what time guide the dealer uses in calculating the amount of labor to be charged for a particular repair transaction.**

3. **Codifies existing administrative regulations that:**
  - **Define "effective labor rate charged all customers".**
  - **State how a dealer notifies a franchiser of its "effective labor rate charged all customers"**
  - **Provide that the franchiser must begin compensating the dealer at the dealer's declared "effective labor rate charged all customers" for all labor performed after 30 days following its receipt of the dealer's notice, unless an audit establishes that the dealer's retail labor rate is less.**
  - **Provide that a franchiser may not require the dealer to perform geographic or other surveys of hourly labor rates charged or received by other dealers in order to establish the dealer's "effective labor rate charged all customers."**
  
4. **Clarifies that a dealer can receive its average retail parts markup and is not required to prove its retail parts markup on a part by part basis.**
  
5. **Prohibits a franchiser from surcharging dealers to recover their increased warranty costs.**
  
6. **Clarifies that a dealer is entitled to the compensation required by the warranty reimbursement law even though it fails to dot every "I" and cross every "T" as required by the manufacturer's warranty policy and procedure manual.**

## Possible 2007-08 Legislation: Retaliation

Section \_\_\_\_ 218.0116(1)(y) of the statutes is created to read:

218.0116(1)(y) Being a manufacturer, importer or distributor who engages in any action or fails to engage in any action with respect to any enfranchised motor vehicle dealer in retaliation for the dealer exercising any right, remedy or defense available to the dealer under ss. 218.0101 to 218.0163 or under rules promulgated by the department of transportation under ss. 218.0101 to 218.0163.

### Explanation:

**Under current law, a motor vehicle dealer has various rights, remedies and defenses that it may assert against a manufacturer, importer or distributor ("franchiser"). This bill would prohibit a franchiser from retaliating against a dealer because it exercised any right, remedy or defense available to it under the law.**

## **Possible 2007-08 Legislation: Spot Deliveries**

218.0142(1) is amended to read:

218.0142(1) Every retail installment sale shall be evidenced by an instrument in writing, which shall contain all agreements of the parties and shall be signed by the buyer. This paragraph does not prohibit a seller and buyer agreeing in a separate instrument, which is referenced in the instrument evidencing the retail installment sale, that the sale may be voided by the seller if the seller is unable to sell, assign or transfer the retail installment sales contract to a sales finance company with whom the seller regularly does business and the seller notifies the buyer of its intent to void the sale within 7 business days after the date the retail installment sales contract is fully signed.

### **Explanation:**

**Current law requires that all agreements between a dealer and a customer pertaining to a retail installment sale of a motor vehicle must be contained in a single instrument signed by the customer. This bill would allow the dealer and customer to agree in a separate instrument that, if the dealer is unable to sell, assign or transfer the retail installment sales contract to a lender with whom the dealer regularly does business, the dealer may void the contract by giving the customer notice of its intent to do so within 7 business days of when the contract was fully signed. The retail installment sales contract must reference this separate document.**

## **Possible 2007-08 Legislation: Sales Finance Company Tying**

Section \_\_. 218.0116(1)(z) of the statutes is created to read:

218.0116(1)(z) Being a sales finance company who fixes the terms or conditions on which it will purchase or accept the assignment or transfer of a retail installment sales contract or consumer lease from a motor vehicle dealer based on whether the dealer finances its motor vehicle inventory or engages in other business with the sales finance company. This paragraph does not prohibit a sales finance company from fixing the terms and conditions on which it will purchase or accept the assignment or transfer of a retail installment sales contract or consumer lease from a dealer based on the volume of retail installment sales contracts and consumer leases that the dealer offers to sell, assign or transfer to the sales finance company.

### **Explanation:**

**Current law requires sales finance companies to be licensed and prohibits manufacturers from coercing dealers to assign retail installment contracts and consumer motor vehicle leases to certain sales finance companies that they control. This bill would prohibit a sales finance company from fixing the terms and conditions on which it will purchase or accept assignment of retail installment sales contracts or consumer leases from a dealer based on whether the dealer finances its motor vehicle inventory or engages in other business with the sales finance company. However, it would not prohibit a sales finance company from fixing such terms and conditions based on the volume of contracts that the dealer assigns to the it.**

## **Possible 2007-08 Legislation: Definition of "Coerce"**

Section \_\_. 218.0116(1)(h) is repealed and recreated to read:

218.0116(1)(h) 1. In this paragraph, "coerce" means for a manufacturer, importer or distributor to do or threaten to do any act or to refuse or threaten to refuse to do any act because a dealer fails or refuses to order any commodity or service or to accept delivery of or pay for any commodity or service that the motor vehicle dealer has not ordered, if the act or refusal deprives or will deprive the dealer of a benefit available to other dealers of the same line make or otherwise has or will materially harm the dealer.

2. Being a manufacturer, importer or distributor who has coerced or attempted to coerce any motor vehicle dealer to order any commodity or service or to accept delivery of or pay for any commodity or service that the motor vehicle dealer has not ordered.

3. This paragraph does not modify or prohibit reasonable requirements in a franchise agreement that require a dealer to market and service a representative line of new motor vehicles that the manufacturer, importer or distributor is publicly advertising.

### **Explanation:**

**Under current law, a motor vehicle manufacturer, importer or distributor ("franchiser") cannot "coerce" or attempt to "coerce" a dealer to order commodities (such as vehicles or parts) or services or to pay for commodities or services that the dealer has not ordered. However, there is no definition of what "coerce" means. This legislation would define "coerce" to prevent a franchiser from doing or threatening to do something (or to not do something) that would deprive the dealer of a benefit available to other dealers selling the same brand or that would otherwise materially harm the dealer in retaliation for a dealer failing or refusing to order something or failing or refusing to pay for something that the dealer did not order.**

**Possible 2007-08 Legislation: Amend 218.0134(2)(c) and repeal and recreate 218.0134(3)(a).**

Section \_\_. 218.0134(2)(c) is amended to read:

(2) A dealer who is served with a written statement by an affected grantor under par. (b) may file with the department of transportation and the division of hearings and appeals and serve upon the affected grantor a complaint for determination of whether there is good cause for not permitting the proposed action to be undertaken. The burden of proof for showing there is good cause for not permitting the proposed action shall be on the affected grantor. The division of hearings and appeals shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

Section \_\_. 218.0134(3)(a) is repealed and recreated to read:

(3) (a) The division of hearings and appeals shall determine there is good cause for not permitting a proposed action to be undertaken only if the prospective harm to the affected grantor, the public and other dealers if the proposed action is undertaken outweighs the prospective harm to the dealer, the public and other dealers if the proposed action is not undertaken.

**Explanation:**

**Current law permits a motor vehicle dealer to complain to the Division of Hearings and Appeals ("Division") in the event a manufacturer, importer or distributor ("affected grantor") disapproves a proposed change in the dealership's ownership, executive management or location or the proposed transfer of the dealership's assets or the proposed addition of another franchise to the dealership's facility. If a complaint is filed, the Division conducts a hearing and determines whether or not the proposed action should be permitted.**

**Current law describes the complaint as being one for determination of whether there is good cause for permitting the proposed action to be undertaken. However, current law also states that the affected grantor has the burden of proof to show there is good cause for not permitting the proposed action to be undertaken.**

**Current law does not provide a specific standard for the Division to apply in determining whether good cause exists. It permits the Division to consider any relevant factor including certain factors specifically set forth in the statute. This can lead to non-uniform results that fail to give proper guidance to either dealers or manufacturers.**

**This bill makes the question to be determined by the Division consistent with the statement on the burden of proof. That is, the question to be determined will be stated in all parts of**

the statute as whether there is good cause for not permitting the proposed action to be undertaken. In addition, it provides that the standard for determining that there is good cause for not permitting the proposed action will be that the prospective harm to the affected grantor (together with any harm to the public or other dealers) if the proposed action is undertaken outweighs the prospective harm to the dealer (together with any harm to the public or other dealers) if the proposed action is not undertaken.