

2011 DRAFTING REQUEST

Bill

Received: **02/14/2011**

Received By: **emueller**

Wanted: **As time permits**

Companion to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Jeff Weigand**

May Contact: **Paul R. Norman, Boardman Law Fir**

Drafter: **emueller**

Subject: **Transportation - mot veh dealers**

Addl. Drafters:

Extra Copies: **ARG**

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Various changes to motor vehicle dealer law.

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>
/?							
/P1	emueller 04/01/2011	wjackson 04/07/2011	mduchek 04/07/2011	_____	ggodwin 04/07/2011		State
/P2	emueller 04/14/2011	chanaman 04/14/2011	phenry 04/18/2011	_____	mbarman 04/18/2011		State
	emueller 04/14/2011	wjackson 04/18/2011		_____			
/I	emueller	wjackson	mduchek	_____	ggodwin	lparisi	

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	04/20/2011	04/20/2011	04/20/2011	_____	04/20/2011	05/05/2011	

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intro
5-19-11

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/P2	<i>EM</i> 4/14/11	<i>WJ</i> 4/18	<i>JF</i> 4/18	<i>MD</i> 4/18			

FE Sent For: *4/14/11 /P2 WJ 4/18*

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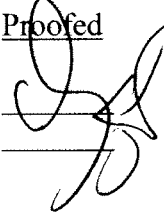
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FE Sent For:

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Mueller, Eric

From: Weigand, Jeffrey
Sent: Friday, February 11, 2011 3:43 PM
To: Mueller, Eric
Subject: Drafting request

Attachments: Explanation of Proposed Legislation to Amend WMVDL (A1145633).DOC



Explanation of
Proposed Legisl...

Eric,

Here is the list of things we would like to see drafted. I would like to give you or whoever will be working on this the authority to work with Paul Norman who is the attorney for the WATDA on any questions. All I ask is that Senator Leibham and I be kept in the loop of things. Paul's information is as follows:

Paul R. Norman
Boardman Law Firm, LLP
1 S. Pinckney Street, Fourth Floor
Madison, WI 53703
(608) 283-1766 (phone)
(608) 283-1709 (fax)

Thanks,

Jeff Weigand
Office of Senator Joe Leibham
266-2056

**EXPLANATION OF PROPOSED LEGISLATION TO AMEND
THE WISCONSIN MOTOR VEHICLE DEALER LAW (ss. 218.0101-218.0163)**

INTRODUCTION

The Wisconsin Motor Vehicle Dealer Law ("WMVDL") (Wis. Stat. §§ 218.0101-218.0163) was first enacted in the 1930's to protect Wisconsin motor vehicle dealers from unfair treatment by manufacturers who have far greater economic bargaining power than the dealers. Dealers make substantial investments in facilities, equipment, capital, inventory, training and advertising to represent manufacturers. These investments make them vulnerable to unilateral decisions by the manufacturers, who, while relying on the dealer investments to sell and service the manufacturer's vehicles, often have conflicting economic interests they will pursue to the detriment of their dealers. Without the WMVDL, Wisconsin dealers would have no protection of their dealership investments from the competing interests of the manufacturers who impose contract terms that generally favor the manufacturers.

The WMVDL protects not only Wisconsin dealers and their investments. It also preserves the jobs of the thousands of Wisconsin citizens employed by those dealers and the economic stability of the communities in which the dealers are located and to which they make substantial contributions in the form of tax payments, community sponsorships and charitable donations. It also protects the car buying public in Wisconsin by giving stability to the dealer networks appointed by manufacturers to sell and service their vehicles.

Over the years, the Wisconsin legislature has made changes to the WMVDL to address new problems that arise in the relationship between Wisconsin motor vehicle dealers and their manufacturers. These changes are often needed due to new manufacturer programs or actions which, if unregulated, could drain many dealers' capital and other resources and eventually force them out of business. Manufacturers often find ways to circumvent previously enacted legislation and argue for interpretations of existing law that thwart the legislature's intent. The proposed legislation discussed below is aimed at protecting dealer investments, as well as dealership employees, their local communities and customers, from certain manufacturer programs and actions, as well as closing loopholes and clarifying the legislature's intent under the current statute.

Several other states have already enacted legislation to address the same issues. The proposed legislation is needed to keep Wisconsin among the leaders in providing protections from unfair treatment by manufacturers for Wisconsin motor vehicle dealers and their employees, communities and customers.

PROPOSED LEGISLATION

Create definition of "Coerce"

Explanation: A fundamental protection of the WMVDL is to prohibit manufacturers from coercing dealers to refrain from exercising their rights under the dealer agreement or the WMVDL. Often such "coercion" occurs in the form of denying dealers benefits that they

would otherwise be entitled to unless they do what the manufacturer wants. Manufacturers have successfully argued in other states, where the term "coerce" is not defined by statute, that withholding benefits from dealers exercising their rights under the statute does not rise to the level of illegal coercion. To avoid this result in Wisconsin, the proposed legislation creates a statutory definition of "coerce" which makes depriving dealers of benefits available to other same line-make dealers in response to a dealer's exercise of a right granted or retained by the dealer agreement or the WMVDL, a form of coercion.

Proposed Legislation: Create 218.0101(3m) to read:

(3m) "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 if the act or refusal will deprive the dealer of a benefit generally available to other dealers of the same line make or otherwise will materially harm the dealer and the act or refusal or threat is in response to the dealer's exercise of a right granted or retained under an agreement or ss. 218.0101 to 218.0163 or under rules promulgated by the department of transportation under ss. 218.0101 to 218.0163.

Adding Coverage of Truck Component Manufacturers

Explanation: Under current law, the business relationships between heavy and medium truck dealers and the manufacturers or distributors of truck components (engines, transmissions and rear axles) installed in the trucks that the dealers sell are not covered by the WMVDL. This has resulted in gaps in coverage under the law. For example, because component manufacturers warrant the components installed in the trucks, while the truck manufacturer warrants the remainder of the truck, dealers only are ensured that the warranty reimbursement required by the law will be received on the portion of the truck warranted by the truck manufacturer. This proposed legislation will make the component manufacturers subject to the same provisions of the WMVDL as the truck manufacturers by defining "motor vehicle" to include engines, transmissions and rear axles manufactured for trucks in excess of 16,000 pounds GVWR.

Proposed Legislation: Amend 218.0101(22) to read:

(22) "Motor vehicle" means any of the following:

(a) any motor-driven vehicle required to be registered under ch. 341 except mopeds; or

(b) any engine, transmission, or rear axle manufactured for installation in a vehicle having its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

Prohibiting Certain Site Control Agreements

Explanation: Under current law, motor vehicle dealers are sometimes required to sign agreements giving the vehicle manufacturer the right to control the disposition or use of the dealer's facility after the franchise relationship ends, even where the entire facility investment has been made by the dealer. The proposed legislation will prohibit such agreements unless the dealer receives separate and valuable consideration for entering into the agreement.

Proposed Legislation: Create 218.0116(1)(y) to read:

(y) Being a manufacturer, importer or distributor who, notwithstanding the terms of any agreement, conditions the execution of a franchise agreement, renewal of a franchise agreement, or approval of the addition of a line make, a franchise relocation, an ownership or management change or a transfer of dealership assets on the dealer's or prospective dealer's agreeing to enter into a site control agreement or who otherwise coerces or attempts to coerce a dealer or prospective dealer to enter into a site control agreement. In this paragraph (y), a "site control agreement" means any agreement giving the manufacturer, importer or distributor or an affiliate of the manufacturer, importer or distributor the right to control the disposition or use of the dealer's dealership facilities or to lease the dealership facilities after the termination, cancellation or nonrenewal of the franchise agreement. The voluntary acceptance of a site control agreement by a dealer or prospective dealer in return for separate and valuable consideration shall not constitute a violation of this par. (y).

Prohibiting Certain Facility Improvement Agreements

Explanation: Under current law, motor vehicle dealers are sometimes required by their manufacturers to make significant improvements in their facilities at substantial cost to the dealer. This provision will require that such improvements be reasonably necessary to adequately sale and service the manufacturer's vehicles or otherwise justified by the reasonable business considerations of the manufacturer and dealer.

Proposed Legislation: Create 218.0116(1)(z) to read:

(z) Being a manufacturer, importer or distributor who, notwithstanding the terms of any agreement, conditions the execution of a franchise agreement, renewal of a franchise agreement, or approval of the addition of a line make, a franchise relocation, an ownership or management change or a transfer of dealership assets on the dealer's or prospective dealer's willingness to enter into a facility improvement agreement or who otherwise coerces or attempts to coerce a dealer or prospective dealer to enter into a facilities improvement agreement, unless reasonably necessary to accommodate the adequate sale and service of a vehicle based on the technology of the vehicle or unless justified by the reasonable business considerations of the manufacturer and the dealer. The manufacturer, importer or distributor shall have the burden of proof to demonstrate that the facilities improvement agreement is

reasonable in light of such considerations. The voluntary acceptance of a facility improvement agreement by a dealer in return for separate and valuable consideration shall not constitute a violation of this par. (z)

Prohibiting Certain Exclusive Use Agreements

Explanation: Under current law, motor vehicle dealers are sometimes prohibited by their manufacturers from adding another line make of vehicle to the dealership facilities, even where the revenues generated by the manufacturer's vehicles are insufficient to support the facilities. This provision will require that any requirement that the dealer maintain exclusive facilities for the manufacturer's vehicles be reasonable taking into consideration the business considerations of the manufacturer and the dealer.

Proposed Legislation: Create 218.0116(1)(aa) to read:

(aa) Being a manufacturer, importer or distributor who, notwithstanding the terms of any agreement, requires or coerces or attempts to coerce a dealer to provide or maintain exclusive facilities for a particular line make or line makes of motor vehicles or refuses to permit or approve a dealer's proposed addition of another line make of motor vehicle to the dealer's dealership facilities if the provision or maintenance of exclusive facilities or the refusal is unreasonable taking into consideration the reasonable business considerations of the manufacturer, importer or distributor and the dealer. The manufacturer, importer or distributor shall have the burden of proof to demonstrate that the provision or maintenance of exclusive facilities or the refusal to permit or approve the addition of another line make is reasonable in light of such considerations.

Prohibiting Penalties for Charging Legally-Permissible Service Fees

Explanation: Under current law, dealers are sometimes penalized by their manufacturers for charging a service fee that is legal under applicable law. This provision will prohibit such penal actions relating to permissible service fees.

Proposed Legislation: Create 218.0116(1)(ab) to read:

(ab) Being a manufacturer, importer or distributor who, notwithstanding the terms of any agreement, charges back, withholds payment, denies vehicle allocation, or takes other adverse action against a dealer for charging a service fee to a retail customer in any amount which is permitted under ss. 218.0101 to 218.0163 or under rules promulgated by the department of transportation under ss. 218.0101 to 218.0163.

Prohibiting Penalties for Unknowingly Selling Vehicle Exported to Foreign Country

Explanation: Under current law, dealers are sometimes penalized by their manufacturers because a motor vehicle the dealer sold is exported to a foreign country even though the dealer did not know or have reason to know that the buyer intended to export the vehicle. This provision will prohibit such penal actions unless the manufacturer can show that the dealer knew or reasonably should have known that the vehicle would be exported.

Proposed Legislation: Create section 218.0116(1)(ac) to read:

(ac) Being a manufacturer, importer or distributor who, notwithstanding the terms of any agreement, charges back, withholds payment, denies vehicle allocation or takes other adverse action against a dealer when a motor vehicle sold by the dealer has been exported to a foreign country unless the manufacturer, importer or distributor can demonstrate that the dealer knew or reasonably should have known that the purchaser intended to export or resell the vehicle. There shall be a rebuttable presumption that the dealer had no such knowledge if the vehicle is titled or registered in any state in this country.

Restricting Manufacturer Use Of Retail Customer Information Required From Dealer

Explanation: Under current law, dealers are sometimes required to provide manufacturers with information regarding the dealer's retail customers under circumstances which cause the dealer to be in noncompliance with federal privacy rules. This provision will restrict a manufacturer's use of such information to that permitted by the applicable rules.

Proposed Legislation: Create 218.0116(1)(ad) to read:

(ad) Being a manufacturer, importer or distributor who, notwithstanding the terms of any agreement, requires or coerces or attempts to require or coerce a dealer to provide the manufacturer, importer or distributor with information regarding the dealer's retail customers unless the information is necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives or for the submission to the manufacturer, importer or distributor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this section shall limit the manufacturer, importer or distributor's ability to require or use customer information to fulfill the manufacturer's, importer's or distributor's safety, recall, or other legal obligations. A manufacturer, importer or distributor may not share, sell or transfer customer information obtained from a dealer and not otherwise publicly available, to other manufacturer-franchised dealers while the originating dealer is still a manufacturer-franchised dealer, unless otherwise agreed to by the dealer. A manufacturer, importer or distributor may not use any nonpublic personal information, as that term is used in 16 CFR Part 313, which is obtained from a dealer, unless such use falls within one or more of the exceptions to opt out requirements under 16 CFR §§ 313.14 or 313.15.

Making a Manufacturer's Breach of the Dealer Agreement A Violation of The License Law

Explanation: Under current law, a manufacturer's failure to comply with its own dealer agreement is not a violation of the WMVDL. Because manufacturers draft the dealer agreement, they should be required by law to comply with it. The proposed legislation would make a manufacturer's breach of the terms of its agreement with a dealer a WMVDL violation.

Proposed Legislation: Create 218.0116(1)(ae) to read:

(ae) Being a manufacturer, importer or distributor who breaches the terms of an agreement with a motor vehicle dealer.

Technical Changes To Process For Issuance Of Agency Orders Enjoining Violations of WMVDL

Explanation: This amendment corrects an apparent drafting error which confuses the division of banking and division of hearings and appeals with regard to enjoining violations of the WMVDL. Under current law, the division of banking has the authority to conduct public hearings and to determine whether a licensee is in violation of the WMVDL, but the division of hearings and appeals is the agency to be petitioned to issue a special order enjoining the violation. The amendment will make the division of hearings and appeals the appropriate agency both for hearing and deciding whether a violation has occurred and for issuing a special order enjoining the violation.

Proposed Legislation: Amend 218.0116(10) to read:

(10) In addition to the licensor's authority to deny, suspend or revoke a license under ss. 218.0101 to 218.0163, the division of banking hearings and appeals, after public hearing, may issue a special order enjoining any licensee from engaging in any act or practice which is determined by the division of banking hearings and appeals to be in violation of any provision of sub. (1), and the division of hearings and appeals may be petitioned to issue such a special order after notice and hearing thereon.

Changes to Warranty Reimbursement/Product Liability Statute

Explanation: Since the early 1980's, motor vehicle manufacturers have been required to reimburse their Wisconsin dealers for labor used in making repairs under the manufacturer's warranty at the dealer's effective labor rate charged to nonwarranty retail customers. Since 1993, manufacturers have been required to reimburse their Wisconsin dealers for parts used in warranty repairs at the same amount the dealers charge their nonwarranty retail customers for parts in making similar repairs. The purpose of these requirements is to prevent manufacturers from using their economic power to force nonwarranty service customers to subsidize warranty repairs by requiring dealers to perform warranty repairs for lesser amounts than nonwarranty customers pay. However,

manufacturers have found various ways to avoid having to pay dealers for warranty repairs at the same amounts charged by the dealers for nonwarranty repairs, which has the effect of requiring dealers to charge their nonwarranty service customers more to make up for the revenues lost because the manufacturers do not comply with the statute.

The proposed legislation retains the existing obligations of manufacturers to reasonably compensate dealers for warranty and other work that the manufacturer requires or requests of its dealers, including compensation for labor at the dealer's effective nonwarranty labor rate and compensation for parts at the dealer's average percentage markup over dealer cost for nonwarranty repairs.

It also specifies a procedure for how a dealer substantiates its effective nonwarranty labor rate and average percentage markup over dealer cost to the manufacturer and gives the manufacturer 45 days from when it receives the repairs orders required to substantiate the dealer's effective nonwarranty labor rate or average percentage parts markup in which to begin compensating the dealer based on the rate or markup substantiated by those repair orders. By specifying the procedure for substantiating the dealer's effective nonwarranty labor rate and average percentage markup, the proposed legislation removes the uncertainty that causes disputes under the current law.

The proposed legislation also closes various loopholes that manufacturers have employed in recent years to avoid compensating dealers at these amounts.

One such way has been for manufacturers to include transactions that are dissimilar to warranty repairs, such as routine maintenance, in auditing dealers' claimed nonwarranty labor rates and parts markups. The proposed legislation addresses this issue by limiting review of the dealers' nonwarranty labor rates and parts markups to those charged in "qualifying nonwarranty repairs", which are defined as repairs which would be covered if the vehicle being repaired was still under the manufacturers warranty.

Another device manufacturers have used to avoid compensating Wisconsin dealers for warranty work under the WMVDL is to impose or threaten surcharges on the vehicles sold in this state to recover the cost of such compensation. Under this device, manufacturers increase their vehicle prices to recover the cost of paying for warranty work at an amount equal to what nonwarranty service customers pay. Because dealers generally must pass through the surcharge to the retail car buyer, manufacturers end up forcing retail car buyers to reimburse them for complying with the statute that is intended to protect those buyers from subsidizing the manufacturers' warranty costs. The proposed legislation addresses this issue by prohibiting manufacturers from recovering their costs of compensating their dealers as required by the WMVDL. This language has been adopted in other states and was recently upheld as constitutional in a court challenge to similar language enacted in Maine.

Another device has been to establish lower time allowances for warranty repairs than the time allowances that dealers generally use to charge for nonwarranty repairs. By doing so, manufacturers end up paying less for labor in warranty repairs than the amounts paid by

nonwarranty customers. For example, if a nonwarranty customer pays \$1,000 for labor in a major repair based on a labor rate of \$100 multiplied by the dealer's time allowance of 10 hours, the manufacturer may pay only \$900 for the same repair under warranty based on its time allowance of 9 hours multiplied by the same \$100 labor rate. The proposed legislation addresses this issue by clarifying that the dealer's effective nonwarranty labor rate is determined by dividing the total customer labor charges for repairs under the repair orders for qualifying nonwarranty repairs submitted by the dealer by the number of hours allowed for those repairs under the manufacturer's time allowances. As a result, in the above hypothetical, the dealer's effective nonwarranty labor rate would be \$111.11 (\$1,000 divided by 9 hours), and the manufacturer would be required to compensate the dealer \$1,000 (9 x \$111.11) or the same amount as what the nonwarranty customer paid.

Finally, unlike other states, Wisconsin presently doesn't have specific language requiring that manufacturers defend and indemnify their dealers against claims based on defective or negligent manufacture, assembly or design of motor vehicles by manufacturers. The proposed legislation provides such language while also providing that the obligation to defend and indemnify does not extend to claims resulting from the dealer's own acts or omissions.

Proposed Legislation:

Amend 218.0125 (title) to read:

218.0125 Warranty reimbursement; product liability.

Amend 218.0125 (1) to read:

(1) In this section:

(a) "dDealer 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, including all standard shipping and other customary charges.

(b) "Qualifying nonwarranty repairs" means nonwarranty repairs that would be covered by the manufacturer's, importer's or distributor's warranty if the vehicle being repaired was still covered by such warranty. "Qualifying nonwarranty repairs" do not include routine maintenance.

Amend 218.0125(2) to read:

(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. A manufacturer, importer or distributor shall defend, indemnify and hold harmless its dealers against any claims, judgments or settlement for damages, court costs, expert witness fees, attorneys' fees, and other expenses arising out of complaints, claims or lawsuits to the extent caused by defective or negligent manufacture, assembly or design of motor vehicles, parts or accessories by the manufacturer, importer or distributor. If the complaint by a third person alleges that the acts or omissions of both the manufacturer, importer or distributor and the dealer caused the damage or injury, the manufacturer, importer or distributor shall not be obligated to defend the dealer against claims based on the dealer's alleged acts or omissions and shall not be obligated to indemnify the dealer against any part of a judgment or settlement which is attributable to causal negligence by the dealer. 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.

Repeal and recreate 218.0125(3) to read:

(3) A 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. If a dealer requests reimbursement for such work subject to the provisions of this section, the manufacturer, importer or distributor shall make payment for labor and parts at amounts equal to those charged non-warranty customers for qualifying nonwarranty repairs. Compensation for labor under this sub. (3) shall be equal to the dealer's effective nonwarranty labor rate as substantiated under sub. (4) multiplied by the number of hours allowed for a repair under the manufacturer's, importer's or distributor's time allowances used in compensating the dealer for warranty work. Only manufacturer time guides may be used in calculating the dealer's compensation. Compensation for parts under this sub. (3) shall be equal to the dealer cost for such parts multiplied by the sum of 1.0 and the dealer's average percentage markup over dealer cost for parts as substantiated under sub. (4). The manufacturer, importer or distributor may not otherwise recover its costs for compensating a dealer for labor and parts pursuant to this section.

Repeal and recreate 218.0125(4) to read:

(4) To be eligible for compensation for labor or parts under sub. (3), a dealer shall submit to the manufacturer, importer or distributor a written notice of its claimed effective nonwarranty labor rate or average percentage markup over dealer cost for parts and 100 sequential repair orders for qualifying nonwarranty repairs or 90 days of repair orders for qualifying nonwarranty repairs, whichever is less, covering repairs made no more than 180 days before the submission. At the option of the dealer, the submission of repair orders may be made electronically or using paper records. The manufacturer, importer or distributor shall notify the dealer in writing within 45 days from receiving the properly submitted repair orders whether it disputes the dealer's claimed effective nonwarranty labor rate or average percentage markup over dealer cost for parts and, if so, provide the dealer with a written explanation of the basis for the dispute, including the effective labor rate or average percentage markup for parts that the manufacturer, importer or distributor has determined is substantiated by the submitted repair orders. The effective nonwarranty labor rate substantiated by the the submitted repair orders shall be the rate determined by dividing the total customer labor charges under those repair orders by the total number of hours allowed for the repairs for which the charges were made under the manufacturer's, importer's or distributor's time allowances used in compensating the dealer for warranty work. The average percentage markup over dealer cost for parts substantiated by the submitted repair orders shall be the total charges for parts under those repair orders divided by the total dealer cost for such parts. A manufacturer, importer or distributor may not require a dealer to establish its effective nonwarranty labor rate or average percentage markup by another methodology. A manufacturer, importer or distributor may not require information that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. The manufacturer, importer or distributor shall begin compensating the dealer based on the effective nonwarranty labor rate or average percentage markup over dealer cost for parts substantiated by the submitted repair orders effective within 45 days of submission of such repair orders.

Amend 218.0125(5) to read:

(5) A manufacturer, importer or distributor who ~~fails to compensate a~~ dealer for parts at ~~an amount~~ not less than the amount the dealer charges its other retail service customers for parts used to perform similar work required by sub. (3) and (4) shall not be found to have violated this section if the manufacturer, importer or distributor shows that the amount the dealer's average percentage markup over dealer cost is not reasonably competitive to the ~~amounts~~ markups charged to retail service customers by other similarly situated franchised motor vehicle dealers in this state ~~for the same parts when used by those dealers to perform similar work~~ in performing qualifying nonwarranty repairs.

Changes to Termination Benefits Statute

Expansion: The WMVDL presently requires manufacturers to repurchase certain new vehicles, parts and accessories, tools, equipment, furnishings and signs from a terminated or terminating dealer and to provide facilities assistance to a dealer which has been

terminated for inadequate sales performance or the withdrawal of a line-make from the market. The proposed legislation addresses certain issues regarding these statutory termination benefits that have arisen since the termination benefits statute was originally enacted in the early 1990's.

The proposed legislation clarifies that the termination benefits apply when a "franchise" is terminated, instead of requiring an entire "agreement" be terminated. This avoids manufacturers arguing that the termination benefits do not have to be provided where a dealer agreement covers more than one line make, and the dealer's "franchise" for only one of those line makes has been terminated.

The proposed legislation increases the miles that a motor vehicle may be operated for manufacturer's tests, predelivery tests and motor vehicle exchange before being disqualified for repurchase from 300 miles to 500 miles. Experience with the present law has shown that in some cases the 300 mile limit is too low and disqualifies vehicles that legitimately should be regarded as "new."

The proposed legislation also clarifies that the new vehicle must have been acquired from the manufacturer or another dealer "in the ordinary course of business" before the manufacturer is required to operate it. This avoids dealers acquiring vehicles from affiliated dealerships solely for the purpose of reselling them to the manufacturer upon termination.

The proposed legislation clarifies that a vehicle that is of the current model year or one year prior model year is considered a new vehicle subject to repurchase if it otherwise qualifies, regardless of the length of time between the vehicle's acquisition by the dealer and the termination.

The proposed legislation provides that if a terminated or terminating dealer leases a sign required by the manufacturer from the manufacturer or an entity controlled by the manufacturer, the manufacturer must terminate, or arrange for the termination, of the sign lease. This addresses a problem with manufacturers or their affiliates attempting to hold dealers liable for remaining sign lease payments after the termination of the dealer's franchise, even though the dealer can no longer use the sign. The proposed legislation also clarifies that the manufacturer is responsible for removing the sign from the dealer's premise and for the costs of such removal.

The proposed legislation requires the manufacturer to reimburse a terminated or terminating dealer for any continuing obligations that the dealer has under a computer contract entered into in order to comply with the manufacturer's requirements after the effective termination date, up to a maximum period of 24 months.

Current law requires manufacturer to compensate a dealer for the equivalent of one year of rent of their facilities when the dealer's franchise is involuntarily terminated due to inadequate sales performance or because of discontinuance of a line-make. With respect to this requirement, the proposed legislation clarifies that the manufacturer need only

reimburse the dealer for the portion of the dealership facility used for the terminated franchise. It also provides that, if the manufacturer does not reimburse the dealer for the entire facility, it is not entitled to use or possess the facility during the reimbursement period.

The proposed legislation adds a requirement that a dealer, whose franchise is terminated due to inadequate sales performance or because of discontinuance of a line-make within 24 months after completing construction or renovation of its dealership facilities, be compensated for the cost of the construction or renovation less any tax savings the dealer has received as a result of depreciation write-offs relating to the construction or renovation prior to the termination notice.

The proposed legislation also requires manufacturers who discontinue a motor vehicle line make to compensate dealers holding franchises for that line make in an amount equivalent to the fair market value of those franchises preceding the manufacturer's announcement of the discontinuation or market withdrawal.

The proposed legislation also creates exceptions from the termination benefit provisions under the current statute for terminations based on dealer license revocations, dealer closings, criminal convictions and bankruptcy or receivership filings by or against the dealer.

Proposed Legislation:

Amend 218.0133(2)(a) to read:

(a) Except as provided in sub. (5) and subject to sub. (3), when a grantor or motor vehicle dealer terminates, cancels or does not renew ~~an agreement~~ a franchise a grantor shall pay a motor vehicle dealer all of the termination benefits under pars. (b) to (e) (f).

Amend 218.0133 (2)(b)1. b. and c.

b. The motor vehicle has not been operated more than ~~300~~ 500 miles for manufacturer's tests, predelivery tests, and motor vehicle dealer exchange in addition to operation required for motor vehicle delivery from the grantor or another dealer of the same line make in the ordinary course of business.

c. The motor vehicle was acquired as part of the motor vehicle dealer's original inventory or from the grantor or from another motor vehicle dealer of the same line make in the ordinary course of business who acquired the motor vehicle from the grantor.

Repeal and recreate 218.0133(2)(b)2 to read:

2. A grantor may not be required to repurchase a motor vehicle under this

paragraph unless the vehicle is of the current or one year prior model year or the date on the original dealer invoice is within 12 months of the date on which the motor vehicle dealer terminates, cancels or does not renew the franchise or is within 18 months of the date on which the grantor gives notice of the termination, cancellation or nonrenewal of the franchise.

Amend 218.0133(2)(d) to read:

(d) A grantor shall purchase from the motor vehicle dealer undamaged signs at a fair market price, if a sign bears a common name, trade name or trademark of the grantor, the grantor required that the motor vehicle dealer acquire the sign and the sign was acquired by the motor vehicle dealer from the grantor or from a source approved by the grantor. In addition, a grantor shall purchase from the motor vehicle dealer at a fair market price poles or other hardware used to erect a sign if the grantor required that the sign be free standing and not include a trademark or trade name other than that of the grantor. Fair market price is presumed to be equal to the motor vehicle dealer's original cost, reduced by one-tenth of the original cost for each year of ownership. The grantor or motor vehicle dealer may rebut the presumption. If the dealer leases a sign from the grantor or an entity controlled by the grantor, the grantor shall terminate or arrange for the termination of the lease. The grantor shall be responsible for the removal of the sign from the dealership facility and shall bear the costs of such removal.

Create 218.0133(2)(f) to read:

(f) The grantor shall reimburse the motor vehicle dealer for the amount of any continuing obligations that the dealer will have after the effective termination date under contracts for computer hardware, software, maintenance or other computer-related services entered into by the dealer and required by the grantor up to 24 months or the remaining term of such contracts, whichever is less, provided that such hardware, software, maintenance or other computer-related services were not used to support the operations of a franchise other than the terminated franchise.

Amend 218.0133(4)(a) to read:

(4) (a) Except as provided in sub. (5) and subject to par. ~~(d)~~ (e) and (f), when a grantor terminates, cancels or does not renew an agreement due to a line-make discontinuation or a dealer's unsatisfactory sales or service performance, a grantor shall, upon request, pay a motor vehicle dealer the termination benefits under par. (b) or (c) and, if applicable, (d). If a motor vehicle dealer receives benefits under par. (b) or (c) for all of the dealership facilities, the grantor shall be entitled to the possession and use of the dealership facilities for the period that the termination benefits payment covers. This entitlement does

not apply if the termination benefits are received for only part of the dealership facilities pursuant to par. (f).

Renumber existing 218.0133(4)(d) as 218.0133(4)(e) and recreate 218.0133(4)(d) to read:

(d) If the dealer completed construction or renovation of the dealership facilities in order to comply with a requirement of the grantor within 24 months preceding the notice of the franchise termination, cancellation or nonrenewal, the grantor shall, upon request, pay the motor vehicle dealer an amount equal to the dealer's actual cost for the construction or renovation, less any allowances or credits given the dealer by the grantor and less any tax savings as a result of depreciation write-offs relating to the construction or renovation that accrue to the dealer's benefit prior to the notice of the franchise termination, cancellation or nonrenewal.

Create 218.0133(4)(f) to read:

(f) If the termination, cancellation or nonrenewal relates to fewer than all of the franchises operated by the new motor vehicle dealer at a single location, the amount of facilities assistance that the grantor is required to pay the dealer under this subsection (4) shall be based on the percentage of total square footage attributed to franchise being terminated, canceled or not renewed at the time of the termination, cancellation or nonrenewal.

Amend 218.0133(5) (a) to read:

(a) Subsections (2) and (4) do not apply to any of the following:

- 1. A motor vehicle dealer if a court, a licenser or the division of hearings and appeals determines that the motor vehicle dealer engaged in fraud or theft against the grantor in connection with the operation or management of its dealership under an agreement.**
- 2. A motor vehicle dealer who terminates or cancels an agreement without giving the grantor 60 days' notice or the notice required under the agreement, whichever is less.**
- 3. A motor vehicle dealer who does not give the grantor a written request for termination benefits that specifies the benefits sought within 60 days after the effective date of the termination, cancellation or nonrenewal.**
- 4. A motor vehicle dealer who sells its dealership assets to a 3rd party who becomes a successor motor vehicle dealer under an agreement with the grantor.**
- 5. Revocation of any license under which the new motor vehicle dealer is required to have to operate a dealership.**
- 6. A termination, cancellation or nonrenewal based on the failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for 7 consecutive business days unless the failure is caused by an act of God, by work stoppage or delays due to strikes or labor disputes or other ereason beyond the dealer's control or by an order of the department of transportation or the division of hearings and appeals.**

7. A termination, cancellation or nonrenewal based on the conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of 1 year under the law under which the dealer was convicted, or the crime involved theft, dishonesty, or false statement regardless of punishment.

8. A termination, cancellation or nonrenewal based on the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law if such petition is not dismissed within 30 days of the filing date.

59. A motor vehicle dealer who terminates, cancels or fails to renew an agreement to sell motor homes, as defined in s. 340.01(33m), unless a court, a licensor or the division of hearings and appeals determines that the grantor has not acted in good faith or has materially violated the agreement or a provision of ss. 218.0101 to 218.0163 and determines that the motor vehicle dealer has not acted in bad faith or has not violated the agreement or a provision of ss. 218.0101 to 218.0163.

610. An agreement under which a motor vehicle dealer sells a camping trailer, as defined in s. 340.01(6m), or a trailer, as defined in s. 340.01(71), but only to the extent that the agreement covers camping trailers or trailers.

Renumber 218.0133(6) as 218.0133(7) and recreate 218.0133(6) to read:

(6) If a grantor cancels or fails to renew a franchise pursuant to s. 218.0132(2), it shall, in addition to the termination benefits provided in subsection (2) and (4), compensate the dealer, within 90 days of the effective date of the cancellation or failure to renew, in an amount at least equivalent to the fair market value of the franchise terminated or failed to be renewed on the date immediately preceding the date the manufacturer, importer or distributor of the subject line make first publicly announced the termination, cancellation or discontinuation of the motor vehicle line make that caused the franchise cancellation or failure to renew.

Allowing Recovery of Pecuniary Losses For Newly-Created Violations of the WMVDL

Explanation: The proposed legislation adds violations of the WMVDL created in the preceding sections of the legislation to the violations for which a dealer licensee (or its owner) can recover pecuniary losses caused by the violation.

Proposed Legislation: Amend 218.0163(1)(a) to read:

(a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h), (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (v), (w), (x), (y), (z), (aa), (ab), (ac), (ad) or (ae).

Initial Applicability

Explanation: The proposed legislation includes language that states the the legislature's intent to make the changes to the WMVDL effected by it applicable to dealer agreements existing as of the effective date of the legislation as well as to those entered into after the effective date. This expression of intent is necessary to ensure that all Wisconsin dealers

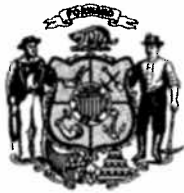
will be protected by the changes, including those who have indefinite term agreements with their manufacturers. The courts have recognized that changes to the WMVDL may be constitutionally applied to existing dealer agreements, and the legislature has stated its intent to do so in all legislation amending the WMVDL since at least 1993.

Proposed Legislation:

Initial Applicability

"This act first applies to an agreement that exists or is entered into on the effective date of this Section."

(rev. 02/11/11-prn)



WLJ

D Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMR

In 4/1/11

LPS: please check auto-refs.

Soon

gen

1 AN ACT ...; relating to: motor vehicle dealers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

2 SECTION 1. 218.0101 (3s) of the statutes is created to read:

3 218.0101 (3s) "Coerce" means to compel by acting or refusing to act, or by
4 threatening to act or refuse to act, if any of the following ^{applies} ~~apply~~:

5 (a) ① The action or refusal to act will deprive the coerced person of a benefit
6 generally available to other similarly situated persons.

7 (b) ② The action or refusal to act will materially harm the coerced person, and the
8 action or refusal to act is in response to the coerced person's exercise of a power
9 granted or retained under an agreement, ^{this section, ss. 218.011} ~~ss. 218.0101~~ to 218.0163, or rules
10 promulgated by the department of transportation under ^{218.011} ~~ss. 218.0101~~ to 218.0163.

this section or

****NOTE: I reworked this definition a bit to make it more generic. The places where "coerce" is used in ch. 218, stats., already reference manufacturers, importers, or distributors, so I thought it unnecessary to specify them in the definition. Additionally, a more generic term allows for more nuanced usage if such becomes necessary in this draft or another draft affecting ch. 218.

Please fix comp.

renumbered 218.0101 (22) (intro.) and

1 SECTION 2. 218.0101 (22) of the statutes is amended to read:

2 218.0101 (22) (intro.) "Motor vehicle" means any of the following:

3 (a) Any motor-driven vehicle required to be registered under ch. 341 except
4 mopeds.

History: 1999 a. 31 ss. 15 to 53; 2001 a. 102; 2003 a. 76, 216; 2005 a. 256.

5 SECTION 3. 218.0101 (22) (b) of the statutes is created to read:

6 218.0101 (22) (b) Any engine, transmission, or rear axle manufactured for
7 installation on a motor vehicle that is designed to transport persons or property on
8 a highway and that has a gross vehicle weight rating of greater than 16,000 pounds.

9 SECTION 4. 218.0116 (1) (um) of the statutes is created to read:

10 218.0116 (1) (um) 1. In this paragraph, "site control contract" means a contract
11 that grants authority to a manufacturer, importer, or distributor or an affiliate of a
12 manufacturer, importer, or distributor, after the termination, cancellation, or
13 nonrenewal of an agreement, to control the disposition or use of or to lease the
14 dealer's dealership facilities.

15 2. Being a manufacturer, importer, or distributor who conditions entry into an
16 agreement or renewal of an agreement or approval of the addition of a line make of
17 motor vehicles, franchise relocation, ownership or management change, or transfer
18 of dealership assets on the entry by the dealer or prospective dealer into a site control
19 contract or who coerces or attempts to coerce a dealer or prospective dealer to enter

20 into a site control contract. This ~~paragraph~~ ^{subdivision} does not prohibit a site control contract
21 for which the dealer or prospective dealer receives a separate and valuable
22 consideration.

INS
2-8

1 unreasonably refuses to permit or approve the addition of another line make to the
 2 dealership facilities of a dealer taking into consideration the reasonable business
 3 considerations of the manufacturer, importer, or distributor and the dealer. The
 4 burden of proof to demonstrate the reasonableness of the provision or maintenance
 5 of exclusive facilities or the refusal to permit or approve the addition of another line
 6 make is on the manufacturer, importer, or distributor.

Create A.R. 7

7 SECTION 7. 218.0116 (1) (xm) of the statutes is created to read:

8 218.0116 (1) (xm) Being a manufacturer, importer, or distributor who charges
 9 back, withholds payment, denies vehicle allocation, or takes other adverse action
 10 against a dealer for charging a service fee to a retail customer in any amount that
 11 is not prohibited under ss. ~~218.011~~^{218.0101} to 218.0163 or rules promulgated by the
 12 department of transportation under ss. ~~218.011~~^{218.0101} to 218.0163.

****NOTE: The use of "other adverse action" here is likely to be construed in light of the three specific types of action listed immediately prior. Will this meet your intent? Or would you prefer to simply describe the sorts of actions prohibited (e.g., "material adverse action") or provide a comprehensive list?

13 SECTION 8. 218.0116 (1) (y) of the statutes is created to read:

14 218.0116 (1) (y) Being a manufacturer, importer, or distributor who charges
 15 back, withholds payment, denies vehicle allocation, or takes other adverse action
 16 against a dealer because a motor vehicle sold by the dealer has been exported to a
 17 foreign country unless the dealer knew or reasonably should have known that the
 18 purchaser intended to export the vehicle or resell the vehicle for export. If the motor
 19 vehicle is titled or registered in any state in this country, it is presumed that the
 20 dealer had no knowledge that the purchaser intended to export the vehicle or resell
 21 the vehicle for export. The manufacturer, importer, or distributor may rebut the
 22 presumption.

****NOTE: I added "the vehicle for export" after "resell" in two places in this text. I am assuming that you are concerned with these sorts of resales and not simply generic resales. I also removed the portion of the provided text referencing the manufacturer, importer, or distributor demonstrating ~~that~~ the dealer's knowledge of the impending export. It's not clear to whom this fact would be proven or to what degree of certainty. If you'd like, a burden statement similar to those in ss. 218.0116 (1) (vm) and (wm), as created in this draft, could be added. See also, note to Section 7

CS → Use A.R. 7

1 SECTION 9. 218.0116 (1) (ym) of the statutes is created to read:

2 218.0116 (1) (ym) Being a manufacturer, importer, or distributor who requires
 3 or coerces, or attempts to require or coerce, a dealer to provide the manufacturer,
 4 importer, or distributor with information regarding the retail customers of the dealer
 5 unless the information is necessary for the sale and delivery of a new motor vehicle
 6 to a retail buyer, to validate and pay customer or dealer incentives, for warranty
 7 reimbursement substantiation under s. 218.0125, or to enable the manufacturer,
 8 importer, or distributor to fulfill safety, recall, or other legal obligations.

****NOTE: I changed the first item in the exception list to "sale and delivery of a new motor vehicle to a retail buyer" (from consumer) to use a defined term that I believe covers what you want to cover here. Please let me know if you want this changed. I also changed the exception referring to information submitted for "claim for warranty parts or repairs" to a cross-reference to the revised warranty reimbursement scheme. Let me know if this isn't what you intended. Also, I left the final exception more or less as is. It seems that the exception could be interpreted quite broadly, you may wish to consider especially whether "other legal obligations" might allow more than you intend.

9 SECTION 10. 218.0116 (1) (ys) of the statutes is created to read:

10 218.0116 (1) (ys) Being a manufacturer, importer, or distributor who transfers
 11 nonpublic customer information that was obtained from a dealer to another
 12 franchised dealer while the dealer from which the information was obtained remains
 13 a franchised dealer unless the dealer from which the information was obtained
 14 agrees to the transfer, or who uses any nonpublic personal information, as defined
 15 in 16 CFR 313.3 (n), obtained from a dealer unless the use falls within an exception
 16 under 16 CFR 313.14 or 313.15.

****NOTE: I broke your proposed s. 218.0116 (1) (ad) into two portions because I thought the two violations described were sufficiently different to warrant separate treatment.

1 SECTION 11. 218.0116 (1) (z) of the statutes is created to read:

2 218.0116 (1) (z) Being a manufacturer, importer, or distributor who materially
3 breaches the terms of an agreement with a motor vehicle dealer.

****NOTE: I added "materially" to this provision. Is this okay?

4 Please fix comp.
5

SECTION 12. 218.0125 (1) of the statutes is amended to read:

renumbered 218.0125 (i) (intro.) and (intro.)

218.0125 (1) In this section, "dealer":

6 (a) "Dealer cost" means the wholesale cost for a part as listed in the
7 manufacturer's, importer's or distributor's current price schedules or, if the part is
8 not so listed, the dealer's original invoice cost for the part, including standard
9 shipping and other customary charges.

History: 1999 a. 31 ss. 114 to 121.

****NOTE: "Other customary charges" seems a little vague to me. Is this a term that will be adequately understood by those regulated by ch. 218?

10 SECTION 13. 218.0125 (1) (b) of the statutes is created to read:

11 218.0125 (1) (b) "Qualifying nonwarranty repairs" means nonwarranty repairs
12 that would be covered by the warranty of a manufacturer, importer, or distributor if
13 the vehicle being repaired was covered by the warranty. The term does not include
14 routine maintenance.

****NOTE: Is the second sentence necessary?

15 SECTION 14. 218.0125 (2) of the statutes is amended to read:

16 218.0125 (2) A manufacturer, importer, or distributor shall, for the protection
17 of the buying public, specify the delivery and preparation obligations of its dealers
18 before delivery of new motor vehicles to retail buyers. A copy of the delivery and
19 preparation obligations of its dealers shall be filed with the department of
20 transportation by every licensed motor vehicle manufacturer, importer, or

1 distributor and shall constitute the dealer's only responsibility for product liability
2 as between the dealer and the manufacturer, importer, or distributor. Any
3 mechanical, body, or parts defects arising from any express or implied warranties of
4 the manufacturer, importer, or distributor shall constitute the manufacturer's,
5 importer's, or distributor's product or warranty liability. ~~The manufacturer,
6 importer or distributor shall reasonably compensate any authorized dealer who
7 performs work to rectify the manufacturer's, importer's or distributor's product or
8 warranty defects or delivery and preparation obligations or who performs any other
9 work required, requested or approved by the manufacturer, importer or distributor
10 or for which the manufacturer, importer or distributor has agreed to pay, including
11 compensation for labor at a labor rate equal to the effective labor rate charged all
12 customers and for parts at an amount not less than the amount the dealer charges
13 its other retail service customers for parts used in performing similar work by the
14 dealer.~~

History: 1999 a. 31 ss. 114 to 121.

****NOTE: I moved the material added to s. 218.0125 (2) in the provided language
to a new section, s. 218.0128.

15 **SECTION 15.** 218.0125 (3) of the statutes is repealed and recreated to read:
16 218.0125 (3) (a) Subject to sub. (4), a manufacturer, importer, or distributor
17 shall reasonably compensate a dealer who performs work to rectify the product or
18 warranty defects of the manufacturer, importer, or distributor or to satisfy delivery
19 and preparation obligations of the manufacturer, importer, or distributor or who
20 performs any other work required, requested, or approved by the manufacturer,
21 importer, or distributor or for which the manufacturer, importer, or distributor has
22 agreed to pay.

1 (b) Reasonable compensation under par. (a) for labor is equal to the dealer's
 2 effective nonwarranty labor rate multiplied by the number of hours allowed for the
 3 repair under the manufacturer's, importer's, or dealer's time allowances used in
 4 compensating the dealer for warranty work. Reasonable compensation under par.
 5 (a) for parts is equal to the dealer's cost for the parts multiplied by the sum of 1 and
 6 the dealer's average percentage markup over dealer cost for parts.

7 (c) A dealer's effective nonwarranty labor rate and average percentage markup
 8 over dealer cost for parts are determined, using the submitted substantiating orders
 9 under sub. (4) (a) 2., as follows:

10 1. The effective nonwarranty labor rate is determined by dividing the total
 11 customer labor charges for qualifying nonwarranty repairs in the repair orders by
 12 the total number of hours that would be allowed for the repairs if the repairs were
 13 made under the manufacturer's, importer's, or distributor's time allowances used in
 14 compensating the dealer for warranty work.

15 2. A dealer's average percentage markup over dealer cost for parts is
 16 determined by dividing total charges for parts in the repair orders by the total dealer
 17 cost for the parts.

****NOTE: This section combines elements of ss. 218.0125 (3) and (4) in the proposed language. I think the way I've organized the material here is a little clearer and places closely related material together. Please let me know if you believe I've misinterpreted your intent in any of these provisions or if you prefer a different organization. Please note, I've added the "qualifying nonwarranty repair" concept to s. 218.0125 (3) (c) 1., as created by this draft. I'm assuming that some repair orders may contain both qualifying nonwarranty repairs and repairs that don't meet the definition of qualifying nonwarranty repairs. Let me know if my assumption is incorrect or if you'd like to handle the issue in a different manner.

18 SECTION 16. 218.0125 (4) of the statutes is repealed and recreated to read:

Use 2+ → ^{Submitted Substantiating} Using the ^{Submitted Substantiating} orders under sub. (4) (a) 2.

1 218.0125 (4) (a) To be eligible for compensation for labor or parts under sub.
2 (3), a dealer shall submit to the manufacturer, importer, or distributor all of the
3 following:

4 1. A written notice of the claimed effective nonwarranty labor rate or average
5 percentage markup over dealer cost for parts.

6 2. Either 100 sequential repair orders for qualifying nonwarranty repairs or
7 all repair orders for qualifying nonwarranty repairs performed in a 90¹/₁ day period,
8 whichever is less. All repair orders under this subdivision must be for repairs made
9 no more than 180 days before the submission.

10 (b) Not more than 45 days after receiving a submission under par. (a),¹ the
11 manufacturer, importer, or distributor shall begin compensating the dealer based on
12 the effective nonwarranty labor rate or average percentage markup over dealer cost
13 for parts or notify the dealer in writing that it disputes the dealer's claimed effective
14 nonwarranty labor rate or average percentage markup over dealer cost for parts. A
15 notice under this paragraph shall include a written explanation of the reason for the
16 dispute, including the effective labor rate or average percentage markup over dealer
17 cost for parts that the manufacturer, importer, or distributor has determined is
18 substantiated by the submitted repair orders.

19 (c) A manufacturer, importer, or distributor may not require a dealer to provide
20 warranty reimbursement substantiating information that is unduly burdensome or
21 time consuming to provide, including part-by-part or transaction-by-transaction
22 schedules or calculations.

****NOTE: I'm not certain how adjustments to the effective nonwarranty labor rate or average percentage markup over dealer cost for parts will be made should this draft be enacted. The language here could support a reading that it is only possible to change rates upon a dealer's decision to resubmit repair orders. However, par. (c) does contemplate a manufacturer's, importer's, or distributor's requiring submission of some

documentation. This could be interpreted to allow a manufacturer, importer, or distributor to require resubmission of repair orders at any time insofar as this is not "unduly burdensome." Let me know if you would like to add some clarifying language. Also, do you wish to amend s. 218.0125 (6) to conform to the reimbursement pricing structure contained in s. 218.0125 (4), as created by this draft?

1 **SECTION 17.** 218.0125 (5) of the statutes is amended to read:

2 218.0125 (5) A manufacturer, importer, or distributor who ~~fails to compensate~~
3 compensates a dealer for parts at an amount ~~not~~ less than the amount ~~the dealer~~
4 ~~charges its other retail service customers for parts used to perform similar work~~
5 shall required by sub. (3) may not be found to have violated this section if the
6 manufacturer, importer, or distributor shows that the amount of the dealer's average
7 percentage markup over dealer cost for parts is not reasonably competitive to the
8 ~~amounts~~ markup charged to retail service customers by other similarly situated
9 franchised motor vehicle dealers in this state ~~for the same parts when used by those~~
10 ~~dealers to perform similar work~~ in performing qualifying nonwarranty repairs.

History: 1999 a. 31 ss. 114 to 121.

****NOTE: The revised language will allow a manufacturer, importer, or distributor to reduce dealer compensation for noncompetitive pricing on parts but not service. Please let me know if you want this changed.

11 **SECTION 18.** 218.0128 of the statutes is created to read:

12 **218.0128 Product liability.** A manufacturer, importer, or distributor shall
13 defend, indemnify, and hold harmless a dealer against any claim, judgment, or
14 settlement for damages, court costs, expert witness fees, attorneys' fees, or other
15 expenses arising out of a complaint, claim, or lawsuit to the extent that the
16 complaint, claim, or lawsuit is caused by alleged defective or negligent manufacture,
17 assembly, or design of a motor vehicle, part, or accessory by the manufacturer,
18 importer, or distributor. If a complaint, claim, or lawsuit involves acts or omissions
19 of both the manufacturer, importer, or distributor and the dealer, the manufacturer,
20 importer, or distributor is not obligated to defend the dealer against a claim arising

1 out of the dealer's alleged acts or omissions and is not obligated to indemnify the
2 dealer against any part of a judgment or settlement that arises out of the dealer's
3 alleged acts or omissions.

****NOTE: This material was inserted into existing s. 218.0125 (2) by the proposed language. I think the material is sufficiently different from the rest of s. 218.0125 to warrant the creation of a separate section. Please let me know if you disagree. Also, please note, I have altered the proposed language to use more or less the same standards throughout. Please let me know if the revised language does not meet your intent. *

4 **SECTION 19.** 218.0133 (title) of the statutes is amended to read:

5 **218.0133** (title) **Agreement Franchise termination benefits.**

History: 1999 a. 31 ss. 210 to 234.

6 **SECTION 20.** 218.0133 (2) (a) of the statutes is amended to read:

7 218.0133 (2) (a) Except as provided in sub. (5) and subject to sub. (3), when a
8 grantor or motor vehicle dealer terminates, cancels or does not renew ~~an agreement~~
9 a franchise a grantor shall pay a motor vehicle dealer all of the termination benefits
10 under pars. (b) to ~~(e)~~ (f).

History: 1999 a. 31 ss. 210 to 234.

11 **SECTION 21.** 218.0133 (2) (b) 1. b. of the statutes is amended to read:

12 218.0133 (2) (b) 1. b. The motor vehicle has not been operated more than 300
13 500 miles for manufacturer's tests, predelivery tests, and motor vehicle dealer
14 exchange in addition to operation required for motor vehicle delivery from the
15 grantor or another dealer of the same line make.

History: 1999 a. 31 ss. 210 to 234.

16 **SECTION 22.** 218.0133 (2) (b) 1. c. of the statutes is amended to read:

17 218.0133 (2) (b) 1. c. The motor vehicle was acquired as part of the motor vehicle
18 dealer's original inventory or from the grantor or in the ordinary course of business
19 from another motor vehicle dealer of the same line make who acquired the motor
20 vehicle from the grantor.

History: 1999 a. 31 ss. 210 to 234.

21 **SECTION 23.** 218.0133 (2) (b) 2. of the statutes is amended to read:

1 218.0133 (2) (b) 2. A grantor may not be required to repurchase a motor vehicle
2 under this paragraph unless the vehicle is of the current or one year prior model year
3 or the date on the original dealer invoice is within 12 months of the date on which
4 the motor vehicle dealer terminates, cancels, or does not renew ~~an agreement a~~
5 franchise or is within 18 months of the date on which the grantor terminates, cancels,
6 or does not renew ~~an agreement a~~ franchise.

7 History: 1999 a. 31 ss. 210 to 234.

7 **SECTION 24.** 218.0133 (2) (d) of the statutes is renumbered 218.0133 (2) (d) 1.

8 **SECTION 25.** 218.0133 (2) (d) 2. of the statutes is created to read:

9 218.0133 (2) (d) 2. If the dealer leases a sign from the grantor or an entity
10 controlled by the grantor, the grantor shall terminate or arrange for the termination
11 of the lease.

12 **SECTION 26.** 218.0133 (2) (d) 3. of the statutes is created to read:

13 218.0133 (2) (d) 3. The grantor is responsible for the removal of a sign subject
14 to subd. 1. or 2. from the dealership facility and shall bear the costs of the removal.

****NOTE: I understood the instructions to request the insertion of two new requirements regarding signage. Please let me know if the removal cost provision is intended to apply only to 218.0133 (2) (d) 2., as created by this draft.

15 **SECTION 27.** 218.0133 (2) (f) of the statutes is created to read:

16 218.0133 (2) (f) The grantor shall reimburse the motor vehicle dealer for the
17 amount of any obligations that extend beyond the effective date of the termination,
18 cancellation, or nonrenewal under contracts for computer hardware, software,
19 maintenance, or other related service entered into by the dealer and required by the
20 grantor for 24 months or the remaining term of the contracts, whichever is less,
21 unless the computer hardware, software, maintenance, or other related service was
22 used to support the operations of a franchise other than the franchise that was
23 terminated, cancelled, or not renewed.

1 **SECTION 28.** 218.0133 (4) (a) of the statutes is amended to read:

2 218.0133 (4) (a) Except as provided in sub. (5) and subject to par. ~~(d)~~ (f), when
3 a grantor terminates, cancels, or does not renew ~~an agreement~~ a franchise a grantor
4 shall, upon request, pay a motor vehicle dealer the termination benefits under par.
5 (b) or (c) and under par. (e). If a motor vehicle dealer receives benefits under par. (b)
6 or (c) and par. (f) does not apply, the grantor shall be entitled to the possession and
7 use of the dealership facilities for the period that the termination benefits payment
8 covers.

9 History: 1999 a. 31 ss. 210 to 234.

SECTION 29. 218.0133 (4) (d) of the statutes is repealed.

 ****NOTE: Your instructions indicated that this paragraph should be recreated.
Because I believe the subject matter of the recreated paragraph is somewhat different,
I assigned a new paragraph letter. Because recreation implies repeal, I've included the
repeal of par. (d) in this draft. Does this meet your intent?

10 **SECTION 30.** 218.0133 (4) (e) of the statutes is created to read:

11 218.0133 (4) (e) If a dealer completed construction or renovation of its
12 dealership facilities not more than 24 months before receiving the notice of the
13 franchise termination, cancellation, or nonrenewal and the construction or
14 renovation was required by the grantor, the grantor shall pay the dealer an amount
15 equal to the dealer's actual cost for the construction or renovation, less any
16 allowances or credits provided to the dealer by the grantor for the construction or
17 renovation and less any tax savings accruing to the dealer's benefit prior to the notice
18 of the franchise termination, cancellation, or nonrenewal from depreciation
19 write-offs related to the construction or renovation.

20 **SECTION 31.** 218.0133 (4) (f) of the statutes is created to read:

21 218.0133 (4) (f) If the termination, cancellation, or nonrenewal relates to fewer
22 than all of the franchises operated by a dealer at a single location, the amount of the

1 termination benefit under this subsection shall be based on the percentage of total
 2 square footage attributed to the franchise being terminated, cancelled, or not
 3 renewed at the effective date of the termination, cancellation, or nonrenewal.

****NOTE: I used "the effective date of the termination, cancellation, or nonrenewal"
 instead of "the time of the termination, cancellation, or nonrenewal." Is this correct?

4 SECTION 32. 218.0133 (5) (a) 2. of the statutes is amended to read:

5 218.0133 (5) (a) 2. A motor vehicle dealer who terminates or cancels an
 6 agreement a franchise without giving the grantor 60 days' notice or the notice
 7 required under the ~~agreement~~ ^{franchise} whichever is less.

History: 1999 a. 31 ss. 210 to 234.

****NOTE: I amended this section to reflect the refocus on franchises being
 terminated, cancelled, or not renewed. Let me know if this is not what you intend.

Create A.R. M

8 SECTION 33. 218.0133 (5) (a) 4d. of the statutes is created to read:

9 218.0133 (5) (a) 4d. A motor vehicle dealer who has any license that is required
 10 to operate its dealership revoked.

11 SECTION 34. 218.0133 (5) (a) 4h. of the statutes is created to read:

12 218.0133 (5) (a) 4h. A motor vehicle dealer who fails to conduct its customary
 13 sales and service operations during its customary business hours for 7 consecutive
 14 business days unless the failure is caused by an act of God, work stoppage or delays
 15 due to strikes or labor disputes, an order of the department of transportation or the
 16 division of hearings and appeals, or other circumstances beyond the dealer's control.

17 SECTION 35. 218.0133 (5) (a) 4p. of the statutes is created to read:

18 218.0133 (5) (a) 4p. A motor vehicle dealer who has been convicted of a crime
 19 involving theft, dishonesty, or false statement, or any other crime punishable by
 20 imprisonment for greater than ^{one} 1 year.

Create A.R. P

21 SECTION 36. 218.0133 (5) (a) 4t. of the statutes is created to read:

1 218.0133 (5) (a) 4t. A motor vehicle dealer who is subject to a bankruptcy or
 2 receivership filing unless the petition is dismissed not more than 30 days after the
 3 filing date.

Use A.R.M AR.P

****NOTE: Sections 33 to 36 have been rewritten to fit the introductory language of s. 218.0133 (5) (a). Please let me know if my rewriting has omitted any necessary material or otherwise misconstrues your intent.

4 **SECTION 37.** 218.0133 (6) of the statutes is repealed.

****NOTE: Your instructions indicated that this subsection should be recreated. *
 Because I believe the subject matter of the recreated subsection is somewhat different, I assigned a new subsection number. Because recreation implies repeal, I've included the repeal of sub. (6) in this draft. Does this meet your intent?

5 **SECTION 38.** 218.0133 (7) of the statutes is created to read:

6 218.0133 (7) If a grantor cancels or fails to renew a franchise under s. 218.0132
 7 (2), in addition to the termination benefits provided in subs. (2) and (4), the grantor
 8 shall compensate the dealer in an amount not less than the fair market value of the
 9 franchise terminated or not renewed on the date immediately preceding the date the
 10 manufacturer, importer, or distributor publicly announced the termination,
 11 cancellation, or discontinuation of the line make that resulted in the franchise
 12 cancellation or nonrenewal. The manufacturer, importer, or distributor shall
 13 provide the compensation under this subsection not more than 90 days after the
 14 effective date of the cancellation or nonrenewal.

15 **SECTION 39.** 218.0163 (1) (a) of the statutes is amended to read:

16 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
 17 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (um), (v),
 18 (vm), (w), or (wm), (x), (xm), (y), (ym), (ys), or (z).

Create A.R.A

History: 1999 a. 31 s. 283; 2001 s. 41; 2003 a. 77; 2005 a. 256.

19 **SECTION 40.** 425.202 (2) of the statutes is amended to read:

20 425.202 (2) "Motor vehicle" has the meaning given in s. 218.0101 (22) (a).

History: 1971 c. 239; 1975 c. 407; 2005 a. 255.

1 SECTION 41. 429.104 (19) of the statutes is amended to read:

2 429.104 (19) "Motor vehicle" has the meaning given in s. 218.0101 (22) (a).

Create A.R.C

3 History: 1995 a. 329; 1997 a. 487; 1999 a. 31.
SECTION 42. 779.85 (3) of the statutes is amended to read:

4 779.85 (3) "Goods" has the meaning set forth in s. 402.105 (1) (c) except that

5 this term does not include a "motor vehicle" as defined in s. 218.0101 (22) (a).

Use A.R.A. A.R.C

History: 1977 c. 296; 1979 c. 32 ss. 57, 92 (9); Stats. 1979 s. 779.85; 1981 a. 189 s. 329 (24), (30); 1999 a. 9, 31.

****NOTE: Sections 40 to 42 reflect changes necessary to retain the existing definition of "motor vehicle" in chs. 425, 429, and 779.

6 SECTION 43. Initial applicability.

7 (1) This act first applies to a franchise agreement that exists or is entered into
8 on the effective date of this subsection.

218.0125

****NOTE: You may wish to consider whether another initial applicability date or a delayed effective date is warranted in regards to the changes to s. ~~219.0125~~. I am not familiar with the manner in which covered parties are currently handling warranty reimbursements, but it seems likely that the changes in this draft will require substantial modification of whatever process is currently used. You may wish to consider whether some time will be necessary to effectuate any such changes.

9 (END)

Note

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

LRB-1444/P1dn

EVM:f:...

Wlj

Date

ATTN: Jeff Weigand

Please review the attached draft carefully to ensure that it is consistent with your intent. The draft contains substantial alterations from the provided text that are, for the most part, intended to clarify and reorganize. The draft includes a number of notes highlighting some of my changes and suggesting areas where additional clarification may be necessary. (CS)

Please note, this draft does not include the changes to s. 218.0116 (10) contained in the provided text. I do not believe the section is dysfunctional as currently written. It, in my opinion, provides the division of banking with the power to issue orders outside the contested case process regarding practices that it believes are violations of the WMVDL. The requested changes would transfer this power to the division of hearing and appeals (DHA). However, I do not think this power can effectively be wielded by DHA, as that agency largely acts as referee in contested cases and may not have the appropriate expertise to make determinations regarding the WMVDL outside the contested case context. Please note, DHA is already implicitly granted the authority to issue special orders, but only in the context of a contested case. Please let me know if you disagree with my analysis or if you wish to make different changes to s. 218.0116 (10).

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

Not
Checked
in

INSERT 2-8 for LRB-1444/P1

SECTION ~~11~~ 218.0116 (1) (rm) of the statutes is amended to read:

218.0116 (1) (rm) Being a grantor, as defined in s. 218.0133 (1) (b), who fails to pay a motor vehicle dealer ~~agreement~~ franchise termination benefits under s. 218.0133.

History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326; 2005 a. 25, 256; 2007 a. 20.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1444/P1dn
EVM:wjl:md

April 7, 2011

ATTN: Jeff Weigand

Please review the attached draft carefully to ensure that it is consistent with your intent. The draft contains substantial alterations from the provided text that are, for the most part, intended to clarify and reorganize. The draft includes a number of NOTES highlighting some of my changes and suggesting areas where additional clarification may be necessary.

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Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

4/11 ~~Att~~ had Norman redraft instructions

- § 1 - def of coerce needs to spec. parties
 - both portions of def. met
 - use right not power
 - add "or intended to prevent" to par (b)

manu, imp, dist
 Dealer of same line make

- § 5 - add "during term of agreement"

- § 9 - add burden statement sm. to § 6, 7

- § 12 - remove

- § 13 - remove additions

- § 16 - add "The manu, imp, dist may not otherwise recover its costs for compensating a dealer for labor + parts pursuant to this section"

- § 17 - manufacturer, etc needs to begin compensating dealer ~~at~~
~~within 30 days~~ even if disputing - at substantiated rate as determined by manufacturer, etc
 - 30 days to provide notice
 - par (c) unnecessary - submission under (a) req payment under (b)

- 19
~~§ 18~~ - need to add xref in 28.0116(i)(km)

- § 29 - restore ref. to par. (d)

- § 30 - do not repeal 28.0133(4)(d)

- § 34-37 - add language clarifying that dealer termination, etc. based on these conditions

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

§ 38 - do not repeal § 18.0133 (6)

§ 44 - delete "franchise" before agreement

~~***~~ - add treatment of 218.0116 (10) to
clarify DHA power to issue special
order injunction

§ 18 - remove changes other than insertion of
qual. warranty repairs in last line

~~**~~ - add treatment of 218.0133 (5)(d)
additional exception for discontinuation of
a motor vehicle line maker