



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1444/P1
EVM:wlj:md

P2

D Note

stays ↑
RMB

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERTS

In 4/14/11

~~Soon~~
Today.

repeal

1 **AN ACT to repeal** 218.0133 (4) (d) and 218.0133 (6); **to renumber** 218.0133 (2)

2 (d); **to renumber and amend** 218.0101 (22) and 218.0125 (1); **to amend**

3 218.0116 (1) (rm), 218.0125 (2), 218.0125 (5), 218.0133 (title), 218.0133 (2) (a),

4 218.0133 (2) (b) 1. b., 218.0133 (2) (b) 1. c., 218.0133 (2) (b) 2., 218.0133 (4) (a),

5 218.0133 (5) (a) 2., 218.0163 (1) (a), 425.202 (2), 429.104 (19) and 779.85 (3); **to**

6 **repeal and recreate** 218.0125 (3) and 218.0125 (4); and **to create** 218.0101

7 (3s), 218.0101 (22) (b), 218.0116 (1) (um), 218.0116 (1) (vm), 218.0116 (1) (wm),

8 218.0116 (1) (xm), 218.0116 (1) (y), 218.0116 (1) (ym), 218.0116 (1) (ys), 218.0116

9 (1) (z), 218.0125 (1) (b), 218.0128, 218.0133 (2) (d) 2., 218.0133 (2) (d) 3.,

10 218.0133 (2) (f), 218.0133 (4) (e), 218.0133 (4) (f), 218.0133 (5) (a) 4d., 218.0133

1 (5) (a) 4h., 218.0133 (5) (a) 4p., 218.0133 (5) (a) 4t. and 218.0133 (7) of the
2 statutes; **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.

INS
Analysis

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

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

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

6 (a) The action or refusal to act will deprive the coerced person of a benefit ^{dealer}
7 generally available to other similarly situated persons. ^{dealers of the same line make of motor vehicle}

8 (b) The action or refusal to act will materially harm the coerced person, and the
9 action or refusal to act is in response to the coerced person's exercise of a power ^{right}
10 granted or retained under an agreement, this section, ss. 218.0111 to 218.0163, or
11 rules promulgated by the department of transportation under this section or ss.
12 218.0111 to 218.0163. ^{dealers} ^{or intended to prevent}

****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.

13 **SECTION 2.** 218.0101 (22) of the statutes is renumbered 218.0101 (22) (intro.)
14 and amended to read:

15 218.0101 (22) (intro.) "Motor vehicle" means any of the following:

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

with respect to a manufacturer, importer, or distributor
for a manufacturer, importer, or distributor

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

2 218.0101 (22) (b) Any engine, transmission, or rear axle manufactured for
3 installation on a motor vehicle that is designed to transport persons or property on
4 a highway and that has a gross vehicle weight rating of greater than 16,000 pounds.

5 **SECTION 4.** 218.0116 (1) (rm) of the statutes is amended to read:

6 218.0116 (1) (rm) Being a grantor, as defined in s. 218.0133 (1) (b), who fails
7 to pay a motor vehicle dealer ~~agreement~~ franchise termination benefits under s.
8 218.0133.

9 **SECTION 5.** 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. *during the term of an agreement or*

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 subdivision does not prohibit a site control contract
21 for which the dealer or prospective dealer receives a separate and valuable
22 consideration.

****NOTE: I reworked the language here a bit to avoid using "agreement," which unfortunately is a defined term in ss. 218.0101 to 218.0163, stats. Let me know if you think any of the language here fails to accomplish your intent.

23 **SECTION 6.** 218.0116 (1) (vm) of the statutes is created to read:

1 218.0116 (1) (vm) Unless the technology of a motor vehicle reasonably requires
2 improvement of dealership facilities to accommodate the adequate sale and service
3 of the motor vehicle or the reasonable business considerations of the manufacturer
4 and dealer justify improvement of dealership facilities, being a manufacturer,
5 importer, or distributor who conditions entry into an agreement or renewal of an
6 agreement or approval of the addition of a line make of motor vehicles, franchise
7 relocation, ownership or management change, or transfer of dealership assets on the
8 improvement of dealership facilities at a substantial cost to the dealer or prospective
9 dealer or who coerces or attempts to coerce a dealer or prospective dealer to improve
10 dealership facilities at a substantial cost to the dealer or prospective dealer. This
11 paragraph does not prohibit improvement of dealership facilities at a substantial
12 cost to the dealer or prospective dealer if the dealer or prospective dealer has agreed
13 to undertake the improvement and received a separate and valuable consideration
14 for the improvement. The burden of proof to demonstrate the technological necessity
15 or business justification of the facilities improvement is on the manufacturer,
16 importer, or distributor.

****NOTE: Similar to the previous SECTION, I have attempted to draft this SECTION to avoid using the term "agreement." Again, let me know if you believe this text is inadequate.

17 **SECTION 7.** 218.0116 (1) (wm) of the statutes is created to read:

18 218.0116 (1) (wm) Being a manufacturer, importer, or distributor who
19 unreasonably requires or coerces or attempts to coerce a dealer to provide or
20 maintain exclusive facilities for a particular line make of motor vehicles or
21 unreasonably refuses to permit or approve the addition of another line make to the
22 dealership facilities of a dealer taking into consideration the reasonable business
23 considerations of the manufacturer, importer, or distributor and the dealer. The

1 burden of proof to demonstrate the reasonableness of the provision or maintenance
2 of exclusive facilities or the refusal to permit or approve the addition of another line
3 make is on the manufacturer, importer, or distributor.

4 **SECTION 8.** 218.0116 (1) (xm) of the statutes is created to read:

5 218.0116 (1) (xm) Being a manufacturer, importer, or distributor who charges
6 back, withholds payment, denies vehicle allocation, or takes other adverse action
7 against a dealer for charging a service fee to a retail customer in any amount that
8 is not prohibited under ss. 218.0101 to 218.0163 or rules promulgated by the
9 department of transportation under ss. 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?

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

11 218.0116 (1) (y) Being a manufacturer, importer, or distributor who charges
12 back, withholds payment, denies vehicle allocation, or takes other adverse action
13 against a dealer because a motor vehicle sold by the dealer has been exported to a
14 foreign country unless the dealer knew or reasonably should have known that the
15 purchaser intended to export the vehicle or resell the vehicle for export. If the motor
16 vehicle is titled or registered in any state in this country, it is presumed that the
17 dealer had no knowledge that the purchaser intended to export the vehicle or resell
18 the vehicle for export. The manufacturer, importer, or distributor may rebut the
19 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 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 8.

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The burden of proof to demonstrate that the dealer knew or reasonably should have known that the purchaser intended to export the vehicle or resell the vehicle for export is on the manufacturer, importer, or distributor.

1 **SECTION 10.** 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 11.** 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.

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SECTION 12. 218.0116 (1) (z) of the statutes is created to read:
218.0116 (1) (z) Being a manufacturer, importer, or distributor who materially breaches the terms of an agreement with a motor vehicle dealer.

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

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SECTION 13. 218.0125 (1) of the statutes is renumbered 218.0125 (1) (intro.) and amended to read:

218.0125 (1) (intro.) In this section, ~~dealer;~~

(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, including standard shipping and other customary charges.

****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?

SECTION 14. 218.0125 (1) (b) of the statutes is created to read:

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

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

SECTION 15. 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,

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

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

11 SECTION 16. 218.0125 (3) of the statutes is repealed and recreated to read:

12 218.0125 (3) (a) Subject to sub. (4), a manufacturer, importer, or distributor
 13 shall reasonably compensate a dealer who performs work to rectify the product or
 14 warranty defects of the manufacturer, importer, or distributor or to satisfy delivery
 15 and preparation obligations of the manufacturer, importer, or distributor or who
 16 performs any other work required, requested, or approved by the manufacturer,
 17 importer, or distributor or for which the manufacturer, importer, or distributor has
 18 agreed to pay.

19 (b) Reasonable compensation under par. (a) for labor is equal to the dealer's
 20 effective nonwarranty labor rate multiplied by the number of hours allowed for the
 21 repair under the manufacturer's, importer's, or dealer's time allowances used in
 22 compensating the dealer for warranty work. Reasonable compensation under par.

No The manufacturer, importer, or distributor may not otherwise recover its costs for compensating a dealer for labor and parts under this section.

1 (a) for parts is equal to the dealer's cost for the parts multiplied by the sum of 1 and
2 the dealer's average percentage markup over dealer cost for parts.

3 (c) 1. The effective nonwarranty labor rate is determined, using the submitted
4 substantiating orders under sub. (4) (a) 2., by dividing the total customer labor
5 charges for qualifying nonwarranty repairs in the repair orders by the total number
6 of hours that would be allowed for the repairs if the repairs were made under the
7 manufacturer's, importer's, or distributor's time allowances used in compensating
8 the dealer for warranty work.

9 2. A dealer's average percentage markup over dealer cost for parts is
10 determined, using the submitted substantiating orders under sub. (4) (a) 2., by
11 dividing total charges for parts in the repair orders by the total dealer cost for the
12 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.

13 **SECTION 17.** 218.0125 (4) of the statutes is repealed and recreated to read:

14 218.0125 (4) (a) To be eligible for compensation for labor or parts under sub.
15 (3), a dealer shall submit to the manufacturer, importer, or distributor all of the
16 following:

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

19 2. Either 100 sequential repair orders for qualifying nonwarranty repairs or
20 all repair orders for qualifying nonwarranty repairs performed in a 90-day period,

1 whichever is less. All repair orders under this subdivision must be for repairs made
2 no more than 180 days before the submission.

3 (b) Not more than ³⁰45 days after receiving a submission under par. (a), the
4 manufacturer, importer, or distributor shall begin compensating the dealer based on

5 the effective nonwarranty labor rate or average percentage markup over dealer cost

6 for parts or notify the dealer in writing that it disputes the dealer's claimed effective

7 nonwarranty labor rate or average percentage markup over dealer cost for parts. A

8 notice under this paragraph shall include a written explanation of the reason for the

9 dispute, including the effective labor rate or average percentage markup over dealer

10 cost for parts that the manufacturer, importer, or distributor has determined is

11 substantiated by the submitted repair orders ^{submission}

12 (c) A manufacturer, importer, or distributor may not require a dealer to provide

13 warranty reimbursement substantiating information that is unduly burdensome or

14 time consuming to provide, including part-by-part or transaction-by-transaction

15 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?

16 SECTION 18. 218.0125 (5) of the statutes is amended to read:

17 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate

18 compensates a dealer for parts at an amount not less than the amount the dealer

19 charges its other retail service customers for parts used to perform similar work shall

20 required by sub. (3) may not be found to have violated this section if the

1 manufacturer, importer, or distributor shows that the amount of the dealer's average
 2 percentage markup over dealer cost for parts is not reasonably competitive to the
 3 amounts markup charged to retail service customers by other similarly situated
 4 franchised motor vehicle dealers in this state ~~for the same parts when used by these~~
 5 ~~dealers to perform similar work in performing qualifying nonwarranty repairs.~~

****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.

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6 **SECTION 19.** 218.0128 of the statutes is created to read:

7 **218.0128 Product liability.** A manufacturer, importer, or distributor shall
 8 defend, indemnify, and hold harmless a dealer against any claim, judgment, or
 9 settlement for damages, court costs, expert witness fees, attorney fees, or other
 10 expenses arising out of a complaint, claim, or lawsuit to the extent that the
 11 complaint, claim, or lawsuit is caused by alleged defective or negligent manufacture,
 12 assembly, or design of a motor vehicle, part, or accessory by the manufacturer,
 13 importer, or distributor. If a complaint, claim, or lawsuit involves acts or omissions
 14 of both the manufacturer, importer, or distributor and the dealer, the manufacturer,
 15 importer, or distributor is not obligated to defend the dealer against a claim arising
 16 out of the dealer's alleged acts or omissions and is not obligated to indemnify the
 17 dealer against any part of a judgment or settlement that arises out of the dealer's
 18 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.

19 **SECTION 20.** 218.0133 (title) of the statutes is amended to read:

20 **218.0133 (title) Agreement Franchise termination benefits.**

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

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

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

7 218.0133 (2) (b) 1. b. The motor vehicle has not been operated more than ~~300~~
8 500 miles for manufacturer's tests, predelivery tests, and motor vehicle dealer
9 exchange in addition to operation required for motor vehicle delivery from the
10 grantor or another dealer of the same line make.

11 **SECTION 23.** 218.0133 (2) (b) 1. c. of the statutes is amended to read:

12 218.0133 (2) (b) 1. c. The motor vehicle was acquired as part of the motor vehicle
13 dealer's original inventory or from the grantor or in the ordinary course of business
14 from another motor vehicle dealer of the same line make who acquired the motor
15 vehicle from the grantor.

16 **SECTION 24.** 218.0133 (2) (b) 2. of the statutes is amended to read:

17 218.0133 (2) (b) 2. A grantor may not be required to repurchase a motor vehicle
18 under this paragraph unless the vehicle is of the current or one-year prior model
19 year or the date on the original dealer invoice is within 12 months of the date on
20 which the motor vehicle dealer terminates, cancels, or does not renew ~~an agreement~~
21 a franchise or is within 18 months of the date on which the grantor terminates,
22 cancels, or does not renew ~~an agreement~~ a franchise.

23 **SECTION 25.** 218.0133 (2) (d) of the statutes is renumbered 218.0133 (2) (d) 1.

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

1 218.0133 (2) (d) 2. If the dealer leases a sign from the grantor or an entity
2 controlled by the grantor, the grantor shall terminate or arrange for the termination
3 of the lease.

4 **SECTION 27.** 218.0133 (2) (d) 3. of the statutes is created to read:

5 218.0133 (2) (d) 3. The grantor is responsible for the removal of a sign subject
6 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.

7 **SECTION 28.** 218.0133 (2) (f) of the statutes is created to read:

8 218.0133 (2) (f) The grantor shall reimburse the motor vehicle dealer for the
9 amount of any obligations that extend beyond the effective date of the termination,
10 cancellation, or nonrenewal under contracts for computer hardware, software,
11 maintenance, or other related service entered into by the dealer and required by the
12 grantor for 24 months or the remaining term of the contracts, whichever is less,
13 unless the computer hardware, software, maintenance, or other related service was
14 used to support the operations of a franchise other than the franchise that was
15 terminated, cancelled, or not renewed.

16 **SECTION 29.** 218.0133 (4) (a) of the statutes is amended to read:

17 218.0133 (4) (a) Except as provided in sub. (5) and subject to par. ~~(d)~~ (f), when
18 a grantor terminates, cancels, or does not renew ~~an agreement~~ a franchise a grantor
19 shall, upon request, pay a motor vehicle dealer the termination benefits under par.
20 (b) or (c) and under par. (e). If a motor vehicle dealer receives benefits under par. (b)
21 or (c) and par. (f) does not apply, the grantor shall be entitled to the possession and
22 use of the dealership facilities for the period that the termination benefits payment
23 covers.

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SECTION 30. 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?

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SECTION 31. 218.0133 (4) (e) of the statutes is created to read:

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

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SECTION 32. 218.0133 (4) (f) of the statutes is created to read:

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218.0133 (4) (f) If the termination, cancellation, or nonrenewal relates to fewer than all of the franchises operated by a dealer at a single location, the amount of the termination benefit under this subsection shall be based on the percentage of total square footage attributed to the franchise being terminated, cancelled, or not 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?

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SECTION 33. 218.0133 (5) (a) 2. of the statutes is amended to read:

19

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

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***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.

1 SECTION 34. 218.0133 (5) (a) 4d. of the statutes is created to read:
2 ~~218.0133 (5) (a) 4d. A motor vehicle dealer who has any license that is required~~
3 to operate its dealership ~~or other~~ ^{dealers failure} ~~dealer who has any license that is required~~ ^{dealer's revocation} ~~of~~

4 SECTION 35. 218.0133 (5) (a) 4h. of the statutes is created to read:
5 218.0133 (5) (a) 4h. A motor vehicle dealer who fails to conduct its customary
6 sales and service operations during its customary business hours for 7 consecutive
7 business days unless the failure is caused by an act of God, work stoppage or delays
8 due to strikes or labor disputes, an order of the department of transportation or the
9 division of hearings and appeals, or other circumstances beyond the dealer's control.

10 SECTION 36. 218.0133 (5) (a) 4p. of the statutes is created to read:
11 218.0133 (5) (a) 4p. A motor vehicle dealer who has been convicted of a crime
12 involving theft, dishonesty, or false statement, or any other crime punishable by
13 imprisonment for greater than one year.

14 SECTION 37. 218.0133 (5) (a) 4t. of the statutes is created to read:
15 218.0133 (5) (a) 4t. A motor vehicle dealer who is subject to a bankruptcy or
16 receivership filing unless the petition is dismissed not more than 30 days after the
17 filing date.

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***NOTE: SECTIONS 34 to 37 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.

SECTION 38. 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?

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SECTION 39. 218.0133 (7) of the statutes is created to read:

1 218.0133 (7) If a grantor cancels or fails to renew a franchise under s. 218.0132
 2 (2), in addition to the termination benefits provided in subs. (2) and (4), the grantor
 3 shall compensate the dealer in an amount not less than the fair market value of the
 4 franchise terminated or not renewed on the date immediately preceding the date the
 5 manufacturer, importer, or distributor publicly announced the termination,
 6 cancellation, or discontinuation of the line make that resulted in the franchise
 7 cancellation or nonrenewal. The manufacturer, importer, or distributor shall
 8 provide the compensation under this subsection not more than 90 days after the
 9 effective date of the cancellation or nonrenewal.

10 **SECTION 40.** 218.0163 (1) (a) of the statutes is amended to read:

11 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
 12 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (um), (v),
 13 (vm), (w), ~~or (wm)~~, (x), (xm), (y), (ym), (ys) or (z). ^{or}

14 **SECTION 41.** 425.202 (2) of the statutes is amended to read:

15 425.202 (2) "Motor vehicle" has the meaning given in s. 218.0101 (22) (a).

16 **SECTION 42.** 429.104 (19) of the statutes is amended to read:

17 429.104 (19) "Motor vehicle" has the meaning given in s. 218.0101 (22) (a).

18 **SECTION 43.** 779.85 (3) of the statutes is amended to read:

19 779.85 (3) "Goods" has the meaning set forth in s. 402.105 (1) (c) except that
 20 this term does not include a "motor vehicle" as defined in s. 218.0101 (22) (a).

****NOTE: Sections 41 to 43 reflect changes necessary to retain the existing definition of "motor vehicle" in chs. 425, 429, and 779.

21 **SECTION 44. Initial applicability.**

22 (1) This act first applies to a franchise ^{agreement} that exists or is entered into
 23 on the effective date of this subsection.

****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. 218.0125. 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.

1

(END)

DNote

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1444/P2ins
EVM:wlj:md

1

INS-Analysis

Under current law, each manufacturer, importer, distributor, and dealer of motor vehicles ~~that~~ wishes to sell motor vehicles in this state must be licensed by the Department of Transportation (DOT). The manufacturer, importer, or distributor may have its license revoked and may be liable for pecuniary losses and attorney fees incurred by the dealer, if the manufacturer, importer, or distributor takes certain actions with respect to a dealer that have been enumerated as violations.

This bill enumerates several additional actions of a manufacturer, importer, or distributor with respect to a dealer as violations. These newly designated violations are: 1) conditioning certain agreements or approvals on the dealer's entry into a contract that allows the manufacturer, importer, or distributor to control the disposition or use of the dealer's dealership facilities; 2) unreasonably conditioning certain agreements or approvals on the dealer's improvement of the dealer's dealership facilities at a substantial cost to the dealer; 3) unreasonably requiring a dealer to maintain exclusive facilities for a particular line make of motor vehicles; 4) taking certain adverse actions against a dealer for charging a lawful service fee to a retail customer; 5) taking certain adverse actions against a dealer because, without the dealer's knowledge that the purchaser intended to export the motor vehicle, a motor vehicle purchaser exported a motor vehicle; 6) with certain exceptions, requiring a dealer to provide the manufacturer, importer, or distributor with information regarding the dealer's retail customers; 7) transferring nonpublic customer information obtained from a dealer to another dealer or otherwise using nonpublic customer information obtained from a dealer for a nonpermitted use; and 8) failing to properly indemnify a dealer. ~~that~~

~~And~~ under current law, a manufacturer, importer, or distributor must reasonably compensate a dealer ~~who~~ performs certain motor vehicle service work for the manufacturer, importer, or distributor. Covered service work is work to rectify product defects or other defects covered by the warranty provided by the manufacturer, importer, or distributor, certain motor vehicle delivery or preparation obligations, and any other work approved by the manufacturer, importer, or distributor. The manufacturer, importer, or distributor must compensate the dealer, for service, at the effective labor rate charged to all customers and, for parts, generally at not less than the amount the dealer charges other retail service customers for the parts. To be eligible for compensation, a dealer must notify the manufacturer, importer, or distributor of the amount that the dealer charges other retail service customers for parts. The manufacturer, importer, or distributor may require the dealer to provide documentary substantiation of the claimed amount the dealer charges for parts.

This bill requires a manufacturer, importer, or distributor to compensate a dealer based on the dealer's "effective nonwarranty labor rate" and "average percentage markup over dealer cost for parts." To be eligible for compensation, a dealer must provide the manufacturer, importer, or dealer with 100 sequential repair orders for qualifying nonwarranty repairs or all repair orders for qualifying

nonwarranty repairs performed in a 90 day period. Qualifying nonwarranty repairs are repairs that are not covered by a warranty, but would be covered by the warranty of a manufacturer, importer, or distributor if the repaired vehicle was covered by the warranty. The effective nonwarranty labor rate is determined by dividing total customer labor charges for qualifying nonwarranty repairs by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's, importer's, or distributors time allowances. The dealer's average percentage markup over dealer cost for parts is determined by dividing total charges for parts for qualifying nonwarranty repairs by the total dealer cost for the parts. Within 30 days of receiving the substantiating repair orders, the manufacturer, importer, or distributor must begin compensating the dealer based on the rates calculated from the orders. If there is a conflict between the rates calculated by the manufacturer, importer, or distributor and the dealer, the manufacturer, importer, or ~~dealer~~ distributor must provide a written notice and explanation of the dispute to the dealer.

distributor

Under current law, with certain exceptions, when a manufacturer on direct dealership, a distributor on indirect dealership, or an importer on direct dealership (grantor) has entered into an agreement with a motor vehicle dealer and the grantor or dealer terminates, cancels, or does not renew the agreement, the grantor must pay to the dealer specified termination benefits. Among these benefits, the grantor must repurchase from the dealer unsold motor vehicles, parts, and accessories that meet certain criteria and pay the dealer a certain amount for the dealership facilities, but then the grantor is entitled to the possession and use of the dealership facilities. Among the exceptions that allow a termination without payment of benefits are the termination, cancellation, or nonrenewal of an agreement following a determination that the dealer engaged in fraud or theft against the grantor and the termination or cancellation of an agreement by a dealer without adequate notice.

This bill requires payment of termination benefits upon the termination, cancellation, or nonrenewal of a franchise that may constitute less than the entire agreement between the grantor and dealer. This bill also requires a grantor to provide several additional items of termination benefits, including removing signs from the dealership facility and reimbursing the dealer for certain computer material and service contractual expenses and certain facility renovation expenses. In addition, if the cancellation or nonrenewal of a franchise is due to a manufacturer's, importer's, or distributor's termination, cancellation, or discontinuation of a motor vehicle line make, the grantor must compensate the dealer in an amount not less than the fair market value of the terminated or nonrenewed franchise on the date immediately preceding the date the grantor announced the termination, cancellation, or discontinuation of the line make. This bill also provides several additional exceptions that allow termination, cancellation, or nonrenewal of a franchise without the payment of termination benefits. These are termination, cancellation, or nonrenewal: 1) after revocation of a necessary dealer license; 2) based on the dealer's failure to remain open during customary business hours for seven consecutive days; 3) based on the dealer's conviction of certain crimes; and 4) based on the dealer being subject to a bankruptcy or receivership filing.

This bill also requires a manufacturer, importer, or distributor to indemnify a dealer against certain claims alleging defective or negligent manufacture or design of the vehicle or its parts or accessories. Failure to adequately indemnify a dealer may result in the revocation of the manufacturer's, importer's, or distributor's license or liability for the dealer's pecuniary losses and attorney fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

1

2

INS 3-4

3

4

SECTION ~~4~~ 218.0116 (1) (km) of the statutes is amended to read:

5

218.0116 (1) (km) Being a manufacturer, importer or distributor who violates

6

s. 218.0121, 218.0122, 218.0123, 218.0124 ~~or~~ ² 218.0125, or 218.0128.

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.

7

8

INS 7-1

9

10

SECTION ~~7~~ 218.0116 (10) of the statutes is amended to read:

11

218.0116 (10) In addition to the licensor's authority to deny, suspend, or revoke

12

a license under ss. 218.0101 to 218.0163, the division of banking, after public

13

hearing, may issue a special order enjoining any licensee from engaging in any act

14

or practice which is determined by the division of banking to be in violation of any

15

provision of sub. (1), and the division of hearings and appeals may be petitioned to

16

~~and, after notice and hearing, may issue such a special order after notice and hearing~~

17

thereon enjoining a licensee from engaging in any act or practice which the division

18

of hearing and appeals determines to be in violation of any provision of sub. (1). ✓

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.

19

20

INS 10-6

Not

1 that the manufacturer, importer, or distributor has determined is
2 substantiated by the submission. If the manufacturer, importer, or distributor
3 disputes the dealer's claimed labor rate or markup, the manufacturer, importer, or
4 distributor shall

5
6 **INS 11-5**

7
8 **SECTION ~~A~~** 218.0125 (5) of the statutes is amended to read:

9 218.0125 (5) A manufacturer, importer or distributor who fails to compensate
10 a dealer for parts at an amount not less than ⁵the amount the dealer charges its other
11 retail service customers for parts used to perform similar work shall not be found to
12 have violated this section if the manufacturer, importer or distributor shows that the
13 amount is not reasonably competitive to the amounts charged to retail service
14 customers by other similarly situated franchised motor vehicle dealers in this state
15 ~~for the same parts when used by those dealers to perform similar work in performing~~
16 qualifying nonwarranty repairs.

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

18 **INS 13-15**

19
20 **SECTION ~~A~~** 218.0133 (4) (a) of the statutes is amended to read:

21 218.0133 (4) (a) Except as provided in sub. (5) and subject to ~~par. (d) and~~
22 (f), when a grantor terminates, cancels, or does not renew ~~an agreement a franchise~~
23 a grantor shall, upon request, pay a motor vehicle dealer the termination benefits
24 under par. (b) or (c) and under par. (e). If a motor vehicle dealer receives benefits

1 under par. (b) or (c) and par. (f) does not apply, the grantor shall be entitled to the
2 possession and use of the dealership facilities for the period that the termination
3 benefits payment covers.

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

5 **INS 15-17**

6
7 **SECTION** ~~218.0133~~ 218.0133 (5) (d) of the statutes is amended to read:

8 218.0133 (5) (d) Subsection (4) does not apply if a grantor terminates, cancels⁵
9 or fails to renew ~~an agreement~~ a franchise in compliance with s. 218.0116 (1) (i),
10 unless the primary ground for termination, cancellation or nonrenewal is⁵
11 inadequate sales performance by the motor vehicle dealer or termination,
12 cancellation, or discontinuation of a motor vehicle line make.

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

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
EVM:.....

Not Checked
In

1 11-1444/P2 Insert

2 INS 15-18

3

4 SECTION ~~218.0133~~ 218.0133 (6) (b) of the statutes is amended to read:

5 218.0133 (6) (b) A grantor may not make the termination benefits payments

6 under sub. (2) or (4) or (7) contingent on the motor vehicle dealer releasing or

7 waiving any rights, claims or remedies.

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

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

LRB-1444/P2dn
EVM:wlj:md

Stays

Date

ATTN: Jeff Weigand

Please review the changes made to this draft in response to my conversation with Attys. Paul Norman and Christopher Snyder. I have made particularly significant changes to ss. 218.0101 (3s) (revised definition of "coerce"), 218.0116 (10) (clarified authority of DHA to issue special orders), 218.0125 (3) (a) (added a nonrecourse provision), 218.0125 (4) (b) (revised warranty compensation procedure and timeline), 218.0125 (5) (removed most changes), 218.0133 (5) (a) (4d. to 4t. (revised exemption language significantly), and 218.0133 (5) (d) (added an exception). In addition s. 218.0125 (4) (c), as created in the previous draft, ~~was removed~~ and s. 218.0133 (4) (d) and (6), which were repealed in the previous draft, ~~were restored~~. Please note, the revised definition of "coerce" in s. 218.0101 (3s), as created by this draft, is slightly different from the language requested by Attys. Norman and Snyder because a few uses of coerce in ch. 218, ~~as well as~~, do not involve manufacturers, importers, or distributors. Please let me know if my changes do not meet your intent or if you wish to make any additional changes.

*
I removed
*
I restored

One question, do you want to add a reference to s. 218.0133 (7), as created by this draft in 218.0133 (6) (b), stats.?

Please let me know if you have any questions, additional instructions, or if you would like this draft converted to an introducible version.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1444/P2dn
EVM:wlj:jf

April 18, 2011

ATTN: Jeff Weigand

Please review the changes made to this draft in response to my conversation with Attys. Paul Norman and Christopher Snyder. I have made particularly significant changes to ss. 218.0101 (3s) (revised definition of "coerce"), 218.0116 (10) (clarified authority of DHA to issue special orders), 218.0125 (3) (a) (added a nonrecourse provision), 218.0125 (4) (b) (revised warranty compensation procedure and timeline), 218.0125 (5) (removed most changes), 218.0133 (5) (a) 4h. to 4t. (revised exemption language significantly), and 218.0133 (5) (d) (added an exception). In addition, I removed s. 218.0125 (4) (c), as created in the previous draft, and I restored s. 218.0133 (4) (d) and (6), which were repealed in the previous draft. Please note, the revised definition of "coerce" in s. 218.0101 (3s), as created by this draft, is slightly different from the language requested by Attys. Norman and Snyder because a few uses of coerce in ch. 218 do not involve manufacturers, importers, or distributors. Please let me know if my changes do not meet your intent or if you wish to make any additional changes.

Please let me know if you have any questions, additional instructions, or if you would like this draft converted to an introducible version.

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

Mueller, Eric

From: Paul R. Norman [pnorman@boardmanlawfirm.com]
Sent: Tuesday, April 19, 2011 2:24 PM
To: Mueller, Eric
Cc: Gerrard, Mary Ann; wsepic@watda.org; Snyder, Chris
Subject: RE: LRB 1444/P2

Eric,

Thanks so much for expediting the second draft of LRB-1444. It is very close to what we intend. My major concern is that the phrase "or will otherwise materially harm the coerced dealer" does not appear in the definition of "coerce" at the end of line 6 on page 4 of the draft (218.0101(3s)(a)). I'm concerned that without this language, the definition becomes too narrow and does not encompass punitive acts other than withholding benefits.

My other issue relates to 218.0125(4)(b). You included the language I proposed. However, in reviewing it, I wonder if the phrase "that the manufacturer, importer, or distributor has determined is substantiated by the submission" might be construed to prevent the dealer from challenging the manufacturer's determination. Would it be better for the first sentence of (4)(b) to read: "Not more than 30 days after receiving a submission under par. (a), 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 submission"? I think this would allow the dealer to challenge the manufacturer's determination by alleging that the manufacturer is not paying the amount that the repair order submission substantiates.

These are my only two concerns based on my preliminary view of LRB 1444/P2. I have not yet checked with the others at WATDA to determine if they have additional concerns. I'll let you know if there are any others, when I follow up later in the day.

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

From: Mueller, Eric [mailto:Eric.Mueller@legis.wisconsin.gov]
Sent: Monday, April 18, 2011 5:05 PM
To: Paul R. Norman
Subject: RE: LRB 1444

Paul,

These were just submitted.

Eric Mueller
Attorney, Legislative Reference Bureau
Phone: (608)261-7032

4/20/2011

eric.mueller@legis.wisconsin.gov

From: Paul R. Norman [mailto:pnorman@boardmanlawfirm.com]
Sent: Friday, April 15, 2011 10:14 AM
To: Mueller, Eric
Subject: LRB 1444

Eric,

Here is my contact information, including my email address in the event the legislator authorizes you to send me a copy of the revisions to LRB 1444.

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

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IRS CIRCULAR 230 NOTICE: To ensure our compliance with certain U.S. Treasury Regulations, please be advised that, unless expressly indicated otherwise, if this communication or any attachment to this communication contains advice relating to any Federal tax issue, the advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding Federal tax penalties. If any of the advice was written to support the promotion, marketing, or recommendation of any transaction or matter addressed within the meaning of Internal Revenue Service Circular 230, you should seek advice based upon your particular circumstances from an independent tax advisor.