



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1444/02
EVM:wlj:jf

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMR

In 4/20/11

Today

Regen

1 AN ACT *to renumber* 218.0133 (2) (d); *to renumber and amend* 218.0101 (22)
2 and 218.0125 (1); *to amend* 218.0116 (1) (km), 218.0116 (1) (rm), 218.0116 (10),
3 218.0125 (2), 218.0125 (5), 218.0133 (title), 218.0133 (2) (a), 218.0133 (2) (b) 1.
4 b., 218.0133 (3) (4) (a), 218.0133 (5) (a) 2.,
5 218.0133 (5) (5.202 (2), 429.104 (19) and
6 779.85 (3); *to* and 218.0125 (4); and *to*
7 *create* 218.0116 (1) (um), 218.0116 (1) (vm),
8 218.0116 (1) (y), 218.0116 (1) (ym),
9 218.0116 (1) (3 (2) (d) 2., 218.0133 (2) (d)
10 3., 218.0133 (f), 218.0133 (5) (a) 4d.,
11 218.0133 (5) (5) (a) 4t. and 218.0133 (7)
12 of the statute

Changes on pp. 4, 11

Analysis by the Legislative Reference Bureau

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.

Under current law, a manufacturer, importer, or distributor must reasonably compensate a dealer that 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 the 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 distributor must provide a written notice and explanation of the dispute to the dealer.

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.

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

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

2 218.0101 (3s) "Coerce" means, with respect to a manufacturer, importer, or
3 distributor, for a manufacturer, importer, or distributor to compel by acting or
4 refusing to act, or by threatening to act or refuse to act, if all of the following ~~applies~~ apply

5 (a) The action or refusal to act will deprive the coerced dealer of a benefit
6 generally available to other dealers of the same line make of motor vehicles.

7 (b) The action or refusal to act is in response to, or intended to prevent, the
8 coerced dealer's exercise of a right granted or retained under an agreement, this
9 section, ss. 218.0111 to 218.0163, or rules promulgated by the department of
10 transportation under this section or ss. 218.0111 to 218.0163.

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

13 218.0101 (22) (intro.) "Motor vehicle" means any of the following:

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

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

17 218.0101 (22) (b) Any engine, transmission, or rear axle manufactured for
18 installation on a motor vehicle that is designed to transport persons or property on
19 a highway and that has a gross vehicle weight rating of greater than 16,000 pounds.

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

or will otherwise materially harm the coerced dealer

1 218.0116 (1) (km) Being a manufacturer, importer, or distributor who violates
2 s. 218.0121, 218.0122, 218.0123, 218.0124 ~~or~~, 218.0125, or 218.0128.

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

4 218.0116 (1) (rm) Being a grantor, as defined in s. 218.0133 (1) (b), who fails
5 to pay a motor vehicle dealer ~~agreement~~ franchise termination benefits under s.
6 218.0133.

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

8 218.0116 (1) (um) 1. In this paragraph, “site control contract” means a contract
9 that grants authority to a manufacturer, importer, or distributor or an affiliate of a
10 manufacturer, importer, or distributor, during the term of an agreement or after the
11 termination, cancellation, or nonrenewal of an agreement, to control the disposition
12 or use of or to lease the dealer’s dealership facilities.

13 2. Being a manufacturer, importer, or distributor who conditions entry into an
14 agreement or renewal of an agreement or approval of the addition of a line make of
15 motor vehicles, franchise relocation, ownership or management change, or transfer
16 of dealership assets on the entry by the dealer or prospective dealer into a site control
17 contract or who coerces or attempts to coerce a dealer or prospective dealer to enter
18 into a site control contract. This subdivision does not prohibit a site control contract
19 for which the dealer or prospective dealer receives a separate and valuable
20 consideration.

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

22 218.0116 (1) (vm) Unless the technology of a motor vehicle reasonably requires
23 improvement of dealership facilities to accommodate the adequate sale and service
24 of the motor vehicle or the reasonable business considerations of the manufacturer
25 and dealer justify improvement of dealership facilities, being a manufacturer,

1 importer, or distributor who conditions entry into an agreement or renewal of an
2 agreement or approval of the addition of a line make of motor vehicles, franchise
3 relocation, ownership or management change, or transfer of dealership assets on the
4 improvement of dealership facilities at a substantial cost to the dealer or prospective
5 dealer or who coerces or attempts to coerce a dealer or prospective dealer to improve
6 dealership facilities at a substantial cost to the dealer or prospective dealer. This
7 paragraph does not prohibit improvement of dealership facilities at a substantial
8 cost to the dealer or prospective dealer if the dealer or prospective dealer has agreed
9 to undertake the improvement and received a separate and valuable consideration
10 for the improvement. The burden of proof to demonstrate the technological necessity
11 or business justification of the facilities improvement is on the manufacturer,
12 importer, or distributor.

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

14 218.0116 (1) (wm) Being a manufacturer, importer, or distributor who
15 unreasonably requires or coerces or attempts to coerce a dealer to provide or
16 maintain exclusive facilities for a particular line make of motor vehicles or
17 unreasonably refuses to permit or approve the addition of another line make to the
18 dealership facilities of a dealer taking into consideration the reasonable business
19 considerations of the manufacturer, importer, or distributor and the dealer. The
20 burden of proof to demonstrate the reasonableness of the provision or maintenance
21 of exclusive facilities or the refusal to permit or approve the addition of another line
22 make is on the manufacturer, importer, or distributor.

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

24 218.0116 (1) (xm) Being a manufacturer, importer, or distributor who charges
25 back, withholds payment, denies vehicle allocation, or takes other adverse action

1 against a dealer for charging a service fee to a retail customer in any amount that
2 is not prohibited under ss. 218.0101 to 218.0163 or rules promulgated by the
3 department of transportation under ss. 218.0101 to 218.0163.

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

5 218.0116 (1) (y) Being a manufacturer, importer, or distributor who charges
6 back, withholds payment, denies vehicle allocation, or takes other adverse action
7 against a dealer because a motor vehicle sold by the dealer has been exported to a
8 foreign country unless the dealer knew or reasonably should have known that the
9 purchaser intended to export the vehicle or resell the vehicle for export. If the motor
10 vehicle is titled or registered in any state in this country, it is presumed that the
11 dealer had no knowledge that the purchaser intended to export the vehicle or resell
12 the vehicle for export. The manufacturer, importer, or distributor may rebut the
13 presumption. The burden of proof to demonstrate that the dealer knew or reasonably
14 should have known that the purchaser intended to export the vehicle or resell the
15 vehicle for export is on the manufacturer, importer, or distributor.

16 **SECTION 11.** 218.0116 (1) (ym) of the statutes is created to read:

17 218.0116 (1) (ym) Being a manufacturer, importer, or distributor who requires
18 or coerces, or attempts to require or coerce, a dealer to provide the manufacturer,
19 importer, or distributor with information regarding the retail customers of the dealer
20 unless the information is necessary for the sale and delivery of a new motor vehicle
21 to a retail buyer, to validate and pay customer or dealer incentives, for warranty
22 reimbursement substantiation under s. 218.0125, or to enable the manufacturer,
23 importer, or distributor to fulfill safety, recall, or other legal obligations.

24 **SECTION 12.** 218.0116 (1) (ys) of the statutes is created to read:

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

8 **SECTION 13.** 218.0116 (10) of the statutes is amended to read:

9 218.0116 (10) In addition to the licensor's authority to deny, suspend, or revoke
10 a license under ss. 218.0101 to 218.0163, the division of banking, after public
11 hearing, may issue a special order enjoining any licensee from engaging in any act
12 or practice which is determined by the division of banking to be in violation of any
13 provision of sub. (1), and the division of hearings and appeals may be petitioned to
14 and, after notice and hearing, may issue such a special order after notice and hearing
15 thereon enjoining a licensee from engaging in any act or practice which the division
16 of hearing and appeals determines to be in violation of any provision of sub. (1).

17 **SECTION 14.** 218.0125 (1) of the statutes is renumbered 218.0125 (1) (intro.) and
18 amended to read:

19 218.0125 (1) (intro.) In this section, "dealer:

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

23 **SECTION 15.** 218.0125 (1) (b) of the statutes is created to read:

24 218.0125 (1) (b) "Qualifying nonwarranty repairs" means nonwarranty repairs
25 that would be covered by the warranty of a manufacturer, importer, or distributor if

1 the vehicle being repaired was covered by the warranty. The term does not include
2 routine maintenance.

3 **SECTION 16.** 218.0125 (2) of the statutes is amended to read:

4 218.0125 (2) A manufacturer, importer, or distributor shall, for the protection
5 of the buying public, specify the delivery and preparation obligations of its dealers
6 before delivery of new motor vehicles to retail buyers. A copy of the delivery and
7 preparation obligations of its dealers shall be filed with the department of
8 transportation by every licensed motor vehicle manufacturer, importer, or
9 distributor and shall constitute the dealer's only responsibility for product liability
10 as between the dealer and the manufacturer, importer, or distributor. Any
11 mechanical, body, or parts defects arising from any express or implied warranties of
12 the manufacturer, importer, or distributor shall constitute the manufacturer's,
13 importer's, or distributor's product or warranty liability. ~~The manufacturer,
14 importer or distributor shall reasonably compensate any authorized dealer who
15 performs work to rectify the manufacturer's, importer's or distributor's product or
16 warranty defects or delivery and preparation obligations or who performs any other
17 work required, requested or approved by the manufacturer, importer or distributor
18 or for which the manufacturer, importer or distributor has agreed to pay, including
19 compensation for labor at a labor rate equal to the effective labor rate charged all
20 customers and for parts at an amount not less than the amount the dealer charges
21 its other retail service customers for parts used in performing similar work by the
22 dealer.~~

23 **SECTION 17.** 218.0125 (3) of the statutes is repealed and recreated to read:

24 218.0125 (3) (a) Subject to sub. (4), a manufacturer, importer, or distributor
25 shall reasonably compensate a dealer who performs work to rectify the product or

1 warranty defects of the manufacturer, importer, or distributor or to satisfy delivery
2 and preparation obligations of the manufacturer, importer, or distributor or who
3 performs any other work required, requested, or approved by the manufacturer,
4 importer, or distributor or for which the manufacturer, importer, or distributor has
5 agreed to pay. The manufacturer, importer, or distributor may not otherwise recover
6 its costs for compensating a dealer for labor and parts under this section.

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

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

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

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

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 90-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 30 days after receiving a submission under par. (a), 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 that the manufacturer, importer, or distributor has determined is
14 substantiated by the submission. If the manufacturer, importer, or distributor
15 disputes the dealer's claimed labor rate or markup, the manufacturer, importer, or
16 distributor shall notify the dealer in writing that it disputes the labor rate or
17 markup. A notice under this paragraph shall include a written explanation of the
18 reason for the dispute, including the labor rate or markup that the manufacturer,
19 importer, or distributor has determined is substantiated by the submission.

20 **SECTION 19.** 218.0125 (5) of the statutes is amended to read:

21 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate
22 a dealer for parts at an amount not less than the amount the dealer charges its other
23 retail service customers for parts used to perform similar work shall not be found to
24 have violated this section if the manufacturer, importer, or distributor shows that the
25 amount is not reasonably competitive to the amounts charged to retail service

1 customers by other similarly situated franchised motor vehicle dealers in this state
2 ~~for the same parts when used by those dealers to perform similar work in performing~~
3 qualifying nonwarranty repairs.

4 **SECTION 20.** 218.0128 of the statutes is created to read:

5 **218.0128 Product liability.** A manufacturer, importer, or distributor shall
6 defend, indemnify, and hold harmless a dealer against any claim, judgment, or
7 settlement for damages, court costs, expert witness fees, attorney fees, or other
8 expenses arising out of a complaint, claim, or lawsuit to the extent that the
9 complaint, claim, or lawsuit is caused by alleged defective or negligent manufacture,
10 assembly, or design of a motor vehicle, part, or accessory by the manufacturer,
11 importer, or distributor. If a complaint, claim, or lawsuit involves acts or omissions
12 of both the manufacturer, importer, or distributor and the dealer, the manufacturer,
13 importer, or distributor is not obligated to defend the dealer against a claim arising
14 out of the dealer's alleged acts or omissions and is not obligated to indemnify the
15 dealer against any part of a judgment or settlement that arises out of the dealer's
16 alleged acts or omissions.

17 **SECTION 21.** 218.0133 (title) of the statutes is amended to read:

18 **218.0133 (title) Agreement Franchise termination benefits.**

19 **SECTION 22.** 218.0133 (2) (a) of the statutes is amended to read:

20 218.0133 (2) (a) Except as provided in sub. (5) and subject to sub. (3), when a
21 grantor or motor vehicle dealer terminates, cancels or does not renew ~~an agreement~~
22 a franchise a grantor shall pay a motor vehicle dealer all of the termination benefits
23 under pars. (b) to (e) (f).

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

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

5 **SECTION 24.** 218.0133 (2) (b) 1. c. of the statutes is amended to read:

6 218.0133 (2) (b) 1. c. The motor vehicle was acquired as part of the motor vehicle
7 dealer's original inventory or from the grantor or in the ordinary course of business
8 from another motor vehicle dealer of the same line make who acquired the motor
9 vehicle from the grantor.

10 **SECTION 25.** 218.0133 (2) (b) 2. of the statutes is amended to read:

11 218.0133 (2) (b) 2. A grantor may not be required to repurchase a motor vehicle
12 under this paragraph unless the vehicle is of the current or one-year prior model
13 year or the date on the original dealer invoice is within 12 months of the date on
14 which the motor vehicle dealer terminates, cancels, or does not renew an agreement
15 a franchise or is within 18 months of the date on which the grantor terminates,
16 cancels, or does not renew an agreement a franchise.

17 **SECTION 26.** 218.0133 (2) (d) of the statutes is renumbered 218.0133 (2) (d) 1.

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

19 218.0133 (2) (d) 2. If the dealer leases a sign from the grantor or an entity
20 controlled by the grantor, the grantor shall terminate or arrange for the termination
21 of the lease.

22 **SECTION 28.** 218.0133 (2) (d) 3. of the statutes is created to read:

23 218.0133 (2) (d) 3. The grantor is responsible for the removal of a sign subject
24 to subd. 1. or 2. from the dealership facility and shall bear the costs of the removal.

25 **SECTION 29.** 218.0133 (2) (f) of the statutes is created to read:

1 218.0133 (2) (f) The grantor shall reimburse the motor vehicle dealer for the
2 amount of any obligations that extend beyond the effective date of the termination,
3 cancellation, or nonrenewal under contracts for computer hardware, software,
4 maintenance, or other related service entered into by the dealer and required by the
5 grantor for 24 months or the remaining term of the contracts, whichever is less,
6 unless the computer hardware, software, maintenance, or other related service was
7 used to support the operations of a franchise other than the franchise that was
8 terminated, cancelled, or not renewed.

9 **SECTION 30.** 218.0133 (4) (a) of the statutes is amended to read:

10 218.0133 (4) (a) Except as provided in sub. (5) and subject to ~~par.~~ pars. (d) and
11 (f), when a grantor terminates, cancels, or does not renew ~~an agreement~~ a franchise
12 a grantor shall, upon request, pay a motor vehicle dealer the termination benefits
13 under par. (b) or (c) and under par. (e). If a motor vehicle dealer receives benefits
14 under par. (b) or (c) and par. (f) does not apply, the grantor shall be entitled to the
15 possession and use of the dealership facilities for the period that the termination
16 benefits payment covers.

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

18 218.0133 (4) (e) If a dealer completed construction or renovation of its
19 dealership facilities not more than 24 months before receiving the notice of the
20 franchise termination, cancellation, or nonrenewal and the construction or
21 renovation was required by the grantor, the grantor shall pay the dealer an amount
22 equal to the dealer's actual cost for the construction or renovation, less any
23 allowances or credits provided to the dealer by the grantor for the construction or
24 renovation and less any tax savings accruing to the dealer's benefit prior to the notice

1 of the franchise termination, cancellation, or nonrenewal from depreciation
2 write-offs related to the construction or renovation.

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

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

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

10 218.0133 (5) (a) 2. A motor vehicle dealer who terminates or cancels ~~an~~
11 ~~agreement~~ a franchise without giving the grantor 60 days' notice or the notice
12 required under the agreement, whichever is less.

13 **SECTION 34.** 218.0133 (5) (a) 4d. of the statutes is created to read:

14 218.0133 (5) (a) 4d. A motor vehicle dealer who has any license that is required
15 to operate its dealership revoked.

16 **SECTION 35.** 218.0133 (5) (a) 4h. of the statutes is created to read:

17 218.0133 (5) (a) 4h. A termination, cancellation or nonrenewal based on the
18 motor vehicle dealer's failure to conduct its customary sales and service operations
19 during its customary business hours for 7 consecutive business days unless the
20 failure is caused by an act of God, work stoppage or delays due to strikes or labor
21 disputes, an order of the department of transportation or the division of hearings and
22 appeals, or other circumstances beyond the dealer's control.

23 **SECTION 36.** 218.0133 (5) (a) 4p. of the statutes is created to read:

1 218.0133 (5) (a) 4p. A termination, cancellation, or nonrenewal based on the
2 conviction of a motor vehicle dealer of a crime involving theft, dishonesty, or false
3 statement, or any other crime punishable by imprisonment for greater than one year.

4 **SECTION 37.** 218.0133 (5) (a) 4t. of the statutes is created to read:

5 218.0133 (5) (a) 4t. A termination, cancellation, or nonrenewal based on the
6 motor vehicle dealer being subject to a bankruptcy or receivership filing unless the
7 petition is dismissed not more than 30 days after the filing date.

8 **SECTION 38.** 218.0133 (5) (d) of the statutes is amended to read:

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

14 **SECTION 39.** 218.0133 (6) (b) of the statutes is amended to read:

15 218.0133 (6) (b) A grantor may not make the termination benefits payments
16 under sub. (2) ~~or~~, (4), or (7) contingent on the motor vehicle dealer releasing or
17 waiving any rights, claims, or remedies.

18 **SECTION 40.** 218.0133 (7) of the statutes is created to read:

19 218.0133 (7) If a grantor cancels or fails to renew a franchise under s. 218.0132
20 (2), in addition to the termination benefits provided in subs. (2) and (4), the grantor
21 shall compensate the dealer in an amount not less than the fair market value of the
22 franchise terminated or not renewed on the date immediately preceding the date the
23 manufacturer, importer, or distributor publicly announced the termination,
24 cancellation, or discontinuation of the line make that resulted in the franchise
25 cancellation or nonrenewal. The manufacturer, importer, or distributor shall

1 provide the compensation under this subsection not more than 90 days after the
2 effective date of the cancellation or nonrenewal.

3 **SECTION 41.** 218.0163 (1) (a) of the statutes is amended to read:

4 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
5 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (um), (v),
6 (vm), (w), ~~or (wm)~~, (x), (xm), (y), (ym), or (ys).

7 **SECTION 42.** 425.202 (2) of the statutes is amended to read:

8 425.202 (2) "Motor vehicle" has the meaning given in s. 218.0101 (22) (a).

9 **SECTION 43.** 429.104 (19) of the statutes is amended to read:

10 429.104 (19) "Motor vehicle" has the meaning given in s. 218.0101 (22) (a).

11 **SECTION 44.** 779.85 (3) of the statutes is amended to read:

12 779.85 (3) "Goods" has the meaning set forth in s. 402.105 (1) (c) except that
13 this term does not include a "motor vehicle" as defined in s. 218.0101 (22) (a).

14 **SECTION 45. Initial applicability.**

15 (1) This act first applies to an agreement that exists or is entered into on the
16 effective date of this subsection.

17

(END)

Parisi, Lori

From: Leibham, Joseph
Sent: Thursday, May 05, 2011 1:06 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1444/1 Topic: Various changes to motor vehicle dealer law.

Please Jacket LRB 11-1444/1 for the SENATE.