

**2019 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB304)**

For: **Kathleen Bernier (608) 266-7511** Drafter: **emueller**  
 By: **Nathan** Secondary Drafters:  
 Date: **9/17/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Sen.Bernier@legis.wisconsin.gov**  
 Carbon copy (CC) to: **eric.mueller@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Motor vehicle dealer compensation for certain service work

**Instructions:**

See attached

**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>        | <u>Reviewed</u>       | <u>Submitted</u>     | <u>Jacketed</u>      | <u>Required</u> |
|--------------|-----------------------|-----------------------|----------------------|----------------------|-----------------|
| /?           | emueller<br>9/18/2019 |                       |                      |                      |                 |
| /P1          | emueller<br>10/4/2019 | ccarmich<br>9/18/2019 | dwalker<br>9/18/2019 |                      |                 |
| /1           |                       | ccarmich<br>10/4/2019 | lparisi<br>10/4/2019 | lparisi<br>10/4/2019 |                 |

FE Sent For: **<END>**

**Mueller, Eric**

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**From:** Duerkop, Nathan  
**Sent:** Tuesday, September 17, 2019 11:41 AM  
**To:** Mueller, Eric  
**Subject:** FW: Dealer Alternative Plan  
**Attachments:** 2019 WI warranty language draft amendment (v1).docx

Hi again Eric,

I have a request that should hopefully be a better fit for you than my last one! I'm looking to have the attached be drafted as an amendment to SB 304. Please let me (or anyone in the email chain know if you have questions. Thank you,

Nathan  
Office of Sen. Bernier

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**From:** JLeibham@foley.com <JLeibham@foley.com>  
**Sent:** Tuesday, September 17, 2019 11:12 AM  
**To:** Duerkop, Nathan <Nathan.Duerkop@legis.wisconsin.gov>  
**Subject:** Fwd: Dealer Alternative Plan

Thanks Nathan. Please advise with any questions. Hearing is next Wednesday so we would love to see this later this week if possible.

Joe

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Brian O'Connell <[brian.oconnell@gm.com](mailto:brian.oconnell@gm.com)>  
**Date:** 9/6/19 11:34 AM (GMT-06:00)  
**To:** [jfitzgerald@paladincg.com](mailto:jfitzgerald@paladincg.com), "Leibham, Joe" <[JLeibham@foley.com](mailto:JLeibham@foley.com)>  
**Subject:** Dealer Alternative Plan

**\*\* EXTERNAL EMAIL MESSAGE \*\***

**Brian O'Connell**

Regional Director

State Government Relations

124 W. Allegan St.

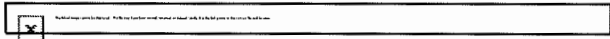
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**SECTION 1. 218.0125 (3m) of the statutes is amended to read:**

(3m) (a) **Except as otherwise provided in sub. (3n), and** ~~Subject to sub. (4m),~~ a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, shall reasonably compensate a dealer who performs work to rectify the product ~~or warranty~~ defects **under a warranty or recall issued by** of the manufacturer, importer, or distributor ~~or to satisfy delivery and preparation obligations of the manufacturer, importer, or distributor, or who performs any other repair work required, requested, or approved by the manufacturer, importer, or distributor or for which the manufacturer, importer, or distributor has agreed to pay.~~

(b) Reasonable compensation under par. (a) for labor is equal to the dealer's effective nonwarranty labor rate multiplied by the number of hours allowed for the repair under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work. **A dealer may request additional time allowance for either diagnostic or repair work on a specific vehicle covered under the manufacturer's warranty in the manner and with all documentation and information as reasonably required by the manufacturer, which request shall not be unreasonably denied by the manufacturer.** Reasonable compensation under par. (a) for parts is equal to the dealer's cost for the parts multiplied by the dealer's average percentage markup over dealer cost for parts.

(c) 1. The effective nonwarranty labor rate is determined, using the submitted substantiating orders under sub. (4m) (a) 2., by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders 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 distributor's time allowances used in compensating the dealer for warranty work~~ **generated the total labor charges as indicated on the submitted customer repair orders.**

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

3. **A manufacturer, importer, or distributor may not assess any penalties, fees, or surcharges against an individual dealer for the purpose of recovering costs associated with compensating the dealer under s 218.0125. Provided, however, a manufacturer, importer, or distributor is not prohibited from increasing the price charged for goods or services in the ordinary course of business.**

**SECTION 2. 218.0125 (5) of the statutes is amended to read:**

(5) A manufacturer, importer, or distributor who fails to compensate a dealer for parts **or labor** at an amount not less than the amount the dealer charges its other retail service customers for parts **or labor** used to perform similar work shall not be found to have violated this section if the manufacturer, importer, or distributor shows that, for a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, the amount is not reasonably competitive to the amounts charged to retail service customers by other similarly situated franchised motor vehicle dealers in this state for the same parts **or labor** when used by those dealers to perform similar work or, for any other manufacturer, importer, or distributor, the amount is not reasonably competitive to the amounts charged to retail service customers by other similarly situated franchised motor vehicle dealers in this state in performing qualifying nonwarranty repairs.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRBs0099/P1  
EVM:edc

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 304**

9/18/19

1 **AN ACT** <sup>gc</sup>...; **relating to:** compensation of motor vehicle dealers by manufacturers,  
2 importers, or distributors for certain service work.

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

3 **SECTION 1.** 218.0125 (3m) (a) <sup>✓</sup> of the statutes is amended to read:

4 218.0125 (3m) (a) Subject to sub. (4m), a manufacturer, importer, or  
5 distributor, except a manufacturer, importer, or distributor of motorcycles with  
6 respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles,  
7 shall reasonably compensate a dealer who performs work to rectify the product or  
8 warranty defects of under a warranty or recall issued by the manufacturer, importer,  
9 or distributor ~~or to satisfy delivery and preparation obligations of the manufacturer,~~  
10 ~~importer, or distributor~~ or who performs any other repair work required, requested,

1 or approved by the manufacturer, importer, or distributor or for which the  
2 manufacturer, importer, or distributor has agreed to pay.

History: 1999 a. 31 ss. 114 to 121; 2011 a. 91; 2015 a. 171; 2017 a. 235.

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

4 218.0125 (3m) (b) Reasonable compensation under par. (a) for labor is equal  
5 to the dealer's effective nonwarranty labor rate multiplied by the number of hours  
6 allowed for the repair under the manufacturer's, importer's, or distributor's time  
7 allowances used in compensating the dealer for warranty work. A dealer may  
8 request that the time allowance for work on a specific vehicle include an additional  
9 amount of time for diagnostic or repair work performed on the vehicle. The request  
10 shall be made in the manner and with all the documentation and information  
11 reasonably required by the manufacturer, importer, or distributor. A request for an  
12 additional amount of time allowance under this paragraph may not be unreasonably  
13 denied by the manufacturer, importer, or distributor. Reasonable compensation  
14 under par. (a) for parts is equal to the dealer's cost for the parts multiplied by the  
15 dealer's average percentage markup over dealer cost for parts.

History: 1999 a. 31 ss. 114 to 121; 2011 a. 91; 2015 a. 171; 2017 a. 235.

\*\*\*\*NOTE: Please note, this provision was a little unclear to me. Please review the revised language and let me know if it does not meet your intent.

16 **SECTION 3.** 218.0125 (3m) (c) 1. of the statutes is amended to read:

17 218.0125 (3m) (c) 1. The effective nonwarranty labor rate is determined, using  
18 the submitted substantiating orders under sub. (4m) (a) 2., by dividing the total  
19 customer labor charges for qualifying nonwarranty repairs in the repair orders by  
20 the total number of hours that would be allowed for the repairs if the repairs were  
21 made under the manufacturer's, importer's, or distributor's time allowances used in

1 ~~compensating the dealer for warranty work generated the total customer labor~~  
2 ~~charges as indicated in the repair orders.~~

**History:** 1999 a. 31 ss. 114 to 121; 2011 a. 91; 2015 a. 171; 2017 a. 235.

3 **SECTION 4.** 218.0125 (5) of the statutes is amended to read:

4 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate  
5 a dealer for parts or labor at an amount not less than the amount the dealer charges  
6 its other retail service customers for parts or labor used to perform similar work shall  
7 not be found to have violated this section if the manufacturer, importer, or distributor  
8 shows that, for a manufacturer, importer, or distributor of motorcycles with respect  
9 to a dealer of the manufacturer's, importer's, or distributor's motorcycles, the  
10 amount is not reasonably competitive to the amounts charged to retail service  
11 customers by other similarly situated franchised motor vehicle dealers in this state  
12 for the same parts or labor when used by those dealers to perform similar work or,  
13 for any other manufacturer, importer, or distributor, the amount is not reasonably  
14 competitive to the amounts charged to retail service customers by other similarly  
15 situated franchised motor vehicle dealers in this state in performing qualifying  
16 nonwarranty repairs.

**History:** 1999 a. 31 ss. 114 to 121; 2011 a. 91; 2015 a. 171; 2017 a. 235.

17 **SECTION 5.** 218.0125 (8) of the statutes is created to read:

18 218.0125 (8) A manufacturer, importer, or distributor may not assess any  
19 penalty, fee, or surcharge against an individual dealer for the purpose of recovering  
20 costs associated with compensating the dealer under this section. This paragraph <sup>subsection</sup>  
21 does not prohibit a manufacturer, importer, or distributor <sup>or from</sup> for increasing the price  
22 charged for goods or services in the ordinary course of business.

\*\*\*\*NOTE: Do you want to specify an initial applicability for this amendment, e.g.  
"first applies to work performed on the effective date?"

1

**(END)**





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRBs0099/P1  
EVM:cdc

PMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 304**

10/14/19

1 **AN ACT to amend** 218.0125 (3m) (a), 218.0125 (3m) (b), 218.0125 (3m) (c) 1. and  
2 218.0125 (5); and **to create** 218.0125 (8) of the statutes; **relating to:**  
3 compensation of motor vehicle dealers by manufacturers, importers, or  
4 distributors for certain service work.

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

5 **SECTION 1.** 218.0125 (3m) (a) of the statutes is amended to read:  
6 218.0125 (3m) (a) Subject to sub. (4m), a manufacturer, importer, or  
7 distributor, except a manufacturer, importer, or distributor of motorcycles with  
8 respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles,  
9 shall reasonably compensate a dealer who performs work to rectify the product or  
10 warranty defects of under a warranty or recall issued by the manufacturer, importer,

1 or distributor ~~or to satisfy delivery and preparation obligations of the manufacturer,~~  
2 importer, ~~or distributor~~ or who performs any other repair work required, requested,  
3 or approved by the manufacturer, importer, or distributor ~~or~~ for which the  
4 manufacturer, importer, or distributor has agreed to pay.

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

6 218.0125 (3m) (b) Reasonable compensation under par. (a) for labor is equal  
7 to the dealer's effective nonwarranty labor rate multiplied by the number of hours  
8 allowed for the repair under the manufacturer's, importer's, or distributor's time  
9 allowances used in compensating the dealer for warranty work. A dealer may  
10 request that the time allowance for work on a specific vehicle include an additional  
11 amount of time for diagnostic or repair work performed on the vehicle. The request  
12 shall be made in the manner and with all the documentation and information  
13 reasonably required by the manufacturer, importer, or distributor. A request for an  
14 additional amount of time allowance under this paragraph may not be unreasonably  
15 denied by the manufacturer, importer, or distributor. Reasonable compensation  
16 under par. (a) for parts is equal to the dealer's cost for the parts multiplied by the  
17 dealer's average percentage markup over dealer cost for parts.

\*\*\*\*NOTE: Please note, this provision was a little unclear to me. Please review the  
revised language and let me know if it does not meet your intent.

18 **SECTION 3.** 218.0125 (3m) (c) 1. of the statutes is amended to read:

19 218.0125 (3m) (c) 1. The effective nonwarranty labor rate is determined, using  
20 the submitted substantiating orders under sub. (4m) (a) 2., by dividing the total  
21 customer labor charges for qualifying nonwarranty repairs in the repair orders by  
22 the total number of hours that ~~would be allowed for the repairs if the repairs were~~  
23 ~~made under the manufacturer's, importer's, or distributor's time allowances used in~~

1 ~~compensating the dealer for warranty work~~ generated the total customer labor  
2 charges as indicated in the repair orders.

3 **SECTION 4.** 218.0125 (5) of the statutes is amended to read:

4 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate  
5 a dealer for parts or labor at an amount not less than the amount the dealer charges  
6 its other retail service customers for parts or labor used to perform similar work shall  
7 not be found to have violated this section if the manufacturer, importer, or distributor  
8 shows that, for a manufacturer, importer, or distributor of motorcycles with respect  
9 to a dealer of the manufacturer's, importer's, or distributor's motorcycles, the  
10 amount is not reasonably competitive to the amounts charged to retail service  
11 customers by other similarly situated franchised motor vehicle dealers in this state  
12 for the same parts or labor when used by those dealers to perform similar work or,  
13 for any other manufacturer, importer, or distributor, the amount is not reasonably  
14 competitive to the amounts charged to retail service customers by other similarly  
15 situated franchised motor vehicle dealers in this state in performing qualifying  
16 nonwarranty repairs.

17 **SECTION 5.** 218.0125 (8) of the statutes is created to read:

18 218.0125 (8) A manufacturer, importer, or distributor may not assess any  
19 penalty, fee, or surcharge against an individual dealer for the purpose of recovering  
20 costs associated with compensating the dealer under this section. This subsection  
21 does not prohibit a manufacturer, importer, or distributor from increasing the price  
22 charged for goods or services in the ordinary course of business.

\*\*\*\*NOTE: Do you want to specify an initial applicability for this amendment, e.g.  
"first applies to work performed on the effective date?"

## Mueller, Eric

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**From:** Duerkop, Nathan  
**Sent:** Friday, October 04, 2019 11:01 AM  
**To:** Mueller, Eric  
**Subject:** RE: Dealer Alternative Plan

Thanks for the official memo. Could you send us over the official draft when convenient please? Regarding your two notes in the text, we are ok with the one section of language as is, and for an effective date, let's just go with standard post passage language if that works ok?

*10/4 No specified inis app - per Nathan*

Nathan

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**From:** Mueller, Eric <Eric.Mueller@legis.wisconsin.gov>  
**Sent:** Thursday, October 3, 2019 2:15 PM  
**To:** Duerkop, Nathan <Nathan.Duerkop@legis.wisconsin.gov>  
**Subject:** RE: Dealer Alternative Plan

Nathan,

Please find attached the memo you requested.

Eric Mueller  
Attorney, Legislative Reference Bureau  
Phone: (608) 504-5825  
[eric.mueller@legis.wisconsin.gov](mailto:eric.mueller@legis.wisconsin.gov)

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**From:** Duerkop, Nathan <Nathan.Duerkop@legis.wisconsin.gov>  
**Sent:** Thursday, October 03, 2019 12:38 PM  
**To:** Mueller, Eric <Eric.Mueller@legis.wisconsin.gov>  
**Subject:** RE: Dealer Alternative Plan

Thanks Eric for doing this, it was really helpful. Hopefully last request for you related to this... could you put the information you sent me into memo type format that can be circulated among other offices? Thanks again,

Nathan

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**From:** Mueller, Eric <Eric.Mueller@legis.wisconsin.gov>  
**Sent:** Wednesday, October 2, 2019 12:00 PM  
**To:** Duerkop, Nathan <Nathan.Duerkop@legis.wisconsin.gov>  
**Subject:** RE: Dealer Alternative Plan

Nathan,

The following is a somewhat generalized summary, please let me know if you have any questions or if you need additional details.

SB304 and your substitute amendment address several of an extensive list of regulations related to motor vehicle manufacturers and dealers of those motor vehicles. In general, both manufacturers and dealers must be licensed by the state and are subject to losing those licenses and other penalties for violating any of a pretty long list of