

1993 Assembly Bill 535

Date of enactment: **July 22, 1993**
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1993 WISCONSIN ACT 13

AN ACT *to repeal* 218.01 (3) (a) 26m and 218.01 (3c) (a); *to amend* 218.01 (1) (a), 218.01 (1) (m), 218.01 (2) (am), 218.01 (2) (bc), 218.01 (2) (bd) 1, 218.01 (2) (bd) 2, 218.01 (3) (a) 15, 218.01 (3) (a) 17, 218.01 (3) (a) 22, 218.01 (3) (a) 32, 218.01 (3) (f) 1 and 2. (intro.), d., e. and h., 218.01 (3) (f) 3, 218.01 (9) (a) (intro.) and 218.01 (9) (a) 1; *to repeal and recreate* 218.01 (3) (a) 23, 218.01 (3) (a) 24, 218.01 (3) (f) 4. a. and 218.01 (3) (f) 4. b.; and *to create* 218.01 (1) (df), 218.01 (1) (je), 218.01 (1) (jg), 218.01 (1) (Lm), 218.01 (1) (pt), 218.01 (1) (x), 218.01 (2) (bd) 1g, 218.01 (2) (bd) 1r, 218.01 (2) (bm) 1. c., 218.01 (2c), 218.01 (2d), 218.01 (2f), 218.01 (2g), 218.01 (2w), 218.01 (2x), 218.01 (3) (a) 41, 218.01 (3) (a) 42, 218.01 (3) (a) 43, 218.01 (3) (f) 4. c., 218.01 (3) (f) 4. d., 218.01 (3) (f) 4. e., 218.01 (3n), 218.01 (3x), 218.01 (7m), 218.01 (7r), 218.01 (7t) and 218.01 (9) (am) of the statutes, **relating to:** motor vehicle dealer franchises.

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

SECTION 1. 218.01 (1) (a) of the statutes is amended to read:

218.01 (1) (a) “Agreement” means ~~a contract or franchise or any other terminology used to describe the contractual~~ that describes the franchise relationship between manufacturers, distributors, importers and dealers.

SECTION 2. 218.01 (1) (df) of the statutes is created to read:

218.01 (1) (df) “Designated family member” includes all of the following:

1. The spouse, child, grandchild, parent, brother or sister of a deceased owner of a dealership who holds an interest in the dealership or who is entitled to receive an interest in the dealership by reason of the owner’s death.

2. A court-appointed legal representative of an incapacitated owner, including a guardian or conservator.

3. An owner’s attorney-in-fact under a valid power of attorney.

4. A court-appointed personal representative or special administrator of a deceased owner’s estate if the deceased owner’s estate holds an interest in the dealership and, if the personal representative or special admin-

istrator is a corporate fiduciary, an individual is designated as operator under the franchise agreement.

5. The trustee of a trust, testamentary or inter vivos, of which an owner was settlor if the trust holds an interest in the dealership and, if the trustee is a corporate fiduciary, an individual is designated as operator under the franchise agreement.

6. An individual who has been nominated by the operator of a dealership as his or her successor in a written instrument filed with and accepted by the manufacturer, importer or distributor if that individual will hold a legal or beneficial interest in the dealership and is acceptable to the persons who will hold the controlling interest in the dealership.

SECTION 3. 218.01 (1) (je) of the statutes is created to read:

218.01 (1) (je) “Franchise” means the right to buy, sell, distribute or service a line make of motor vehicles that is granted to a motor vehicle dealer or distributor by a manufacturer, importer or distributor.

SECTION 4. 218.01 (1) (jg) of the statutes is created to read:

218.01 (1) (jg) “Importer” means a person who has written authorization from a foreign manufacturer of a line make of motor vehicles to grant franchises to motor

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vehicle dealers or distributors in this state with respect to that line make.

SECTION 5. 218.01 (1) (Lm) of the statutes is created to read:

218.01 (1) (Lm) “Motorcycle” has the meaning given in s. 340.01 (32).

SECTION 6. 218.01 (1) (m) of the statutes is amended to read:

218.01 (1) (m) “Motor vehicle” means any ~~motor driven or trailer type~~ motor-driven vehicle required to be registered under ch. 341 except mopeds, ~~semitrailers or trailers designed for use in combination with truck or truck tractor, and except that mobile home dealers and salespersons and moped dealers and salespersons are not required to be licensed under s. 218.01 (2) (d) 1. and 5.~~

SECTION 7. 218.01 (1) (pt) of the statutes is created to read:

218.01 (1) (pt) “Parts outlet” means a facility at which a manufacturer, importer or distributor has authorized the sale of motor vehicle parts or accessories manufactured or distributed by the manufacturer, importer or distributor using a trade name, trademark or service mark also used to designate, make known or distinguish the manufacturer’s, importer’s or distributor’s motor vehicles or dealers.

SECTION 8. 218.01 (1) (x) of the statutes is created to read:

218.01 (1) (x) “Service outlet” means a facility at which a manufacturer, importer or distributor has authorized the performance of work to rectify a manufacturer’s, importer’s or distributor’s product or warranty defects or delivery and preparation obligations or has authorized the use of a trade name, trademark or service mark also used to designate, make known or distinguish the manufacturer’s, importer’s or distributor’s motor vehicles or dealers in connection with a service facility.

SECTION 9. 218.01 (2) (am) of the statutes is amended to read:

218.01 (2) (am) No manufacturer of ~~motor vehicles, or factory branch, or distributor, importer~~ or distributor ~~branch~~ shall engage in business as such in this state without a license therefor as provided in this section.

SECTION 10. 218.01 (2) (bc) of the statutes is amended to read:

218.01 (2) (bc) Except as provided in this subsection every dealer and distributor of new motor vehicles, ~~other than mopeds or motor bicycles,~~ shall, at the time of application for a license, file with the department a certified copy of the applicant’s written agreement and a certificate of appointment as dealer or distributor, respectively. The certificate of appointment shall be signed by an authorized agent of the manufacturer of domestic vehicles on direct manufacturer–dealer agreements; or, where the manufacturer is wholesaling through an appointed distributorship, by an authorized agent of the distributor on indirect distributor–dealer agreements.

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The certificate shall be signed by an authorized agent of the importer on direct importer–dealer agreements of foreign–made vehicles; or by an authorized agent of the distributor on indirect distributor–dealer agreements. The distributor’s certificate of appointment shall be signed by an authorized agent of the manufacturer; or by an agent of the manufacturer or importer of foreign manufactured vehicles.

SECTION 11. 218.01 (2) (bd) 1 of the statutes is amended to read:

218.01 (2) (bd) 1. ~~A dealer or distributor need not file a written agreement~~ need not be filed for each dealer or distributor if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships utilizes the identical basic agreement for all its dealers or distributors in Wisconsin and certifies in the certificate of appointment that such blanket agreement is on file and such written agreement with such dealer or distributor, respectively, is identical with the filed blanket agreement, and has filed with the department one such agreement together with a list of authorized dealers or distributors. Such manufacturer, distributor or importer shall notify the department immediately of the appointment of any additional dealers or distributors, of any revisions of or additions to the basic agreement on file, or of any individual dealer or distributor supplements to such agreement. ~~Such~~ Except as provided in subd. 1g, the manufacturer, distributor or importer shall notify the dealer or distributor and forward a copy of such notice to the department of the discontinuation or cancellation of the agreement of any of its dealers or distributors at least 60 days before the effective date thereof together with the specific grounds for discontinuation or cancellation of the agreement, if discontinued or canceled. Agreements and certificates of appointment are deemed to be continuing unless the manufacturer, distributor or importer has notified the department of the discontinuation or cancellation of the agreement of any of its dealers or distributors, and annual renewal of certifications filed as provided in this subsection is not necessary.

SECTION 12. 218.01 (2) (bd) 1g of the statutes is created to read:

218.01 (2) (bd) 1g. The manufacturer, distributor or importer shall send a notice of discontinuation or cancellation by certified mail, and forward a copy of the notice to the department, not less than 20 days before the effective date of discontinuation or cancellation of the agreement, if the dealer or distributor fails to conduct its customary sales and service operations during its customary business hours for 7 consecutive business days unless the failure is caused by an act of God, by work stoppage or delays due to strikes or labor disputes or other reason beyond the dealer’s or distributor’s control or by an order of the department or the office of the commissioner of transportation.

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SECTION 13. 218.01 (2) (bd) 1r of the statutes is created to read:

218.01 (2) (bd) 1r. The notice served upon a motor vehicle dealer under subds. 1 and 1g is not effective unless it conspicuously displays the following statement:

NOTICE TO DEALER

YOU HAVE THE RIGHT TO: 1) MEDIATE IF YOU OPPOSE THE PROPOSED TERMINATION OR NONRENEWAL OF YOUR FRANCHISE AND 2) A HEARING BY THE OFFICE OF THE COMMISSIONER OF TRANSPORTATION IF MEDIATION DOES NOT RESOLVE THE DISPUTE. TO PRESERVE THESE RIGHTS, YOU MUST TAKE CERTAIN STEPS ON OR BEFORE THE DATE THAT THE PROPOSED TERMINATION OR NONRENEWAL TAKES EFFECT. FOR FURTHER INFORMATION, CONSULT YOUR ATTORNEY OR CALL THE DEALER SECTION, WISCONSIN DEPARTMENT OF TRANSPORTATION, AT (insert area code and telephone number).

SECTION 14. 218.01 (2) (bd) 2 of the statutes is amended to read:

218.01 (2) (bd) 2. Any dealer or distributor discontinued or canceled may ~~within such 60-day notice period, on or before the date on which the discontinuation or cancellation becomes effective,~~ file with the department and office of the commissioner of transportation and serve upon the respondent a complaint for a determination of unfair discontinuation or cancellation under sub. (3) (a) 17. Allowing opportunity for an answer, the office of the commissioner of transportation shall thereafter schedule a hearing on and decide the matter. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in such complaint. If the complainant prevails he or she shall have a cause of action against the defendant for reasonable expenses and attorney's fees incurred by him or her in such matter.

SECTION 15. 218.01 (2) (bm) 1. c. of the statutes is created to read:

218.01 (2) (bm) 1. c. Require a motor vehicle dealer to pay the attorney fees of a manufacturer, importer or distributor.

SECTION 16. 218.01 (2c) of the statutes is created to read:

218.01 (2c) **FACTORY STORES.** A manufacturer, importer or distributor, or a subsidiary thereof, shall not own, operate or control a motor vehicle dealership in this state. This subsection does not prohibit any of the following:

(a) The ownership and operation by a manufacturer, importer or distributor, or a subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another.

(b) The ownership or control of a dealership by a manufacturer, importer or distributor, or a subsidiary

thereof, if the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership, or a contract exists under which the operator of the dealership can expect to acquire full ownership of or a controlling interest in the dealership, and after the transfer of ownership is completed the dealership will no longer be owned, operated or controlled by the manufacturer, importer or distributor, or a subsidiary thereof.

(c) The ownership, operation or control of a dealership by a manufacturer, importer or distributor, or subsidiary thereof, which does not meet the conditions under par. (a) or (b), if the office of the commissioner of transportation determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the manufacturer, importer or distributor.

SECTION 17. 218.01 (2d) of the statutes is created to read:

218.01 (2d) **DAMAGES TO DELIVERED VEHICLES.** (a) A manufacturer, importer or distributor shall disclose in writing to a motor vehicle dealer, at or before delivery to the dealer, any damage and repair to a new motor vehicle occurring after the manufacturing process is complete but before delivery to the dealer, if the cost of the repair exceeds 6% of the manufacturer's suggested retail price, as measured by retail repair costs. Replacement of glass, tires, bumpers, fenders, moldings, audio equipment, instrument panels, hoods and deck lids with identical manufacturer's original equipment is not considered damage and repair under this paragraph. If a manufacturer, importer or distributor fails to make a disclosure of damage and repair under this paragraph, it shall be liable to the dealer for any liability imposed on the dealer for a failure on the part of the dealer to disclose that damage and repair.

(b) If the cost of repairing damage to a new motor vehicle that occurs before delivery to the dealer's location exceeds 6% of the manufacturer's suggested retail price, as measured by retail repair costs, the dealer may reject or, if title has passed to the dealer, require the manufacturer, importer or distributor who delivered the vehicle to repurchase the vehicle within 10 business days after delivery, unless the damage occurred during shipment and the method of transportation, carrier or transporter of the motor vehicle was designated by the motor vehicle dealer. Upon repurchase, the manufacturer, importer or distributor shall be subrogated to all of the dealer's rights against the carrier or transporter of the motor vehicle regarding damage. The cost of repairing glass, tires, bumpers, moldings and audio equipment with identical manufacturer's original equipment shall not be included in determining the cost of repairing damage under this paragraph.

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(c) This subsection does not apply to motorcycles that are delivered in a crated, disassembled condition to the dealer or the dealer's agent.

SECTION 18. 218.01 (2f) of the statutes is created to read:

218.01 (2f) **VEHICLE ALLOCATIONS.** No manufacturer, importer or distributor shall adopt, change, establish or implement a plan or system for the allocation, scheduling or delivery of new motor vehicles, parts or accessories to its motor vehicle dealers that is not fair, reasonable and equitable or modify an existing plan or system so as to cause the plan or system to be unreasonable, unfair or inequitable. Upon the request of any dealer franchised by it, a manufacturer, importer or distributor shall disclose in writing to the dealer the basis upon which new motor vehicles, parts and accessories are allocated, scheduled and delivered among the manufacturer's, importer's or distributor's dealers of the same line make.

SECTION 19. 218.01 (2g) of the statutes is created to read:

218.01 (2g) **PERFORMANCE STANDARDS.** Any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer, importer or distributor, shall be fair, reasonable and equitable. Upon the request of any dealer, a manufacturer, importer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

SECTION 20. 218.01 (2w) of the statutes is created to read:

218.01 (2w) **WARRANTY REIMBURSEMENT.** (a) In this subsection, "dealer cost" means the wholesale cost for a part as listed in the manufacturer's, importer's or distributor's current price schedules or, if the part is not so listed, the dealer's original invoice cost for the part.

(b) 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 by every licensed motor vehicle manufacturer, importer or distributor and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer, importer or distributor. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer, importer or distributor shall constitute the manufacturer's, importer's or distributor's product or warranty liability. The manufacturer, importer or distributor shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's, importer's or distributor's product or warranty defects or delivery and preparation obligations or who performs

any other work required, requested or approved by the manufacturer, importer or distributor or for which the manufacturer, importer or distributor has agreed to pay, including compensation for labor at a labor rate equal to the effective labor rate charged all customers and for parts at an amount not less than the amount the dealer charges its other retail service customers for parts used in performing similar work by the dealer.

(c) To be eligible for compensation for parts under par. (b), a dealer shall notify the manufacturer, importer or distributor in writing of the amounts that the dealer charges its other retail service customers for parts and request that it be paid for parts in accordance with this subsection. The notice may be limited to the dealer's average markup over dealer cost that the dealer charges its other retail service customers for parts used to perform similar work. The notice shall be served upon the manufacturer, importer or distributor not less than 30 days before the date on which the dealer requests that the manufacturer, importer or distributor begin paying the dealer for parts at the stated amounts. The manufacturer, importer or distributor shall pay the dealer, as provided in this subsection, at the amounts stated in the dealer notice for parts used in work performed on and after the beginning date stated in the notice.

(d) The manufacturer, importer or distributor may require the dealer, at reasonable intervals, to provide the manufacturer, importer or distributor with documents or information regarding a reasonable number of sales to other retail service customers of parts used by the dealer to perform similar work in order to substantiate that the amounts requested in the dealer's notice are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

(e) A manufacturer, importer or distributor who fails to compensate a dealer for parts at an amount not less than the amount the dealer charges its other retail service customers for parts used to perform similar work shall not be found to have violated this subsection if the manufacturer, importer or distributor shows that 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 when used by those dealers to perform similar work.

(f) If a manufacturer, importer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer, importer or distributor is required to compensate the dealer under this subsection, the manufacturer, importer or distributor shall compensate the dealer for the part at an amount not less than the amount the dealer charges its other retail customers for parts when used to perform similar work less the wholesale cost for such part as listed in the manufacturer's current price schedules. A manufacturer, importer or distributor may pay the dealer a reasonable

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handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies furnished to the dealer at no cost, provided that the manufacturer, importer or distributor excludes special high-performance complete engine assemblies in determining whether the amounts requested in the dealer's notice are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

(g) A claim made by a franchised motor vehicle dealer for compensation under this subsection shall be either approved or disapproved within 30 days after the claim is submitted to the manufacturer, importer or distributor in the manner and on the forms the manufacturer, importer or distributor reasonably prescribes. An approved claim shall be paid within 30 days after its approval; and, if a claim is not specifically disapproved in writing or by electronic transmission within 30 days after the date on which the manufacturer, importer or distributor receives it, the claim shall be considered to be approved and payment shall follow within 30 days. A manufacturer, importer or distributor retains the right to audit claims for a period of one year after the date on which the claim is paid and to charge back any amounts paid on claims that are false or unsubstantiated. If there is evidence of fraud, this paragraph does not limit the right of the manufacturer to audit for longer periods and charge back for any fraudulent claim, subject to the limitations period under s. 893.93 (1) (b).

SECTION 21. 218.01 (2x) of the statutes is created to read:

218.01 (2x) PROMOTIONAL ALLOWANCES. A claim made by a franchised motor vehicle dealer for promotional allowances or other incentive payments shall be either approved or disapproved within 30 days after the claim is submitted to the manufacturer, importer or distributor in the manner and on the forms the manufacturer, importer or distributor reasonably prescribes. An approved claim shall be paid within 30 days after its approval; and, if a claim is not specifically disapproved in writing or by electronic transmission within 30 days after the date on which the manufacturer, importer or distributor receives it, the claim shall be considered to be approved and payment shall follow within 30 days after approval. A manufacturer, importer or distributor retains the right to audit a claim for a period of 2 years after the date on which the claim is paid and to charge back any amounts paid on claims that are false or unsubstantiated. If there is evidence of fraud, this subsection does not limit the right of the manufacturer to audit for longer periods and charge back for any fraudulent claim, subject to the limitations period under s. 893.93 (1) (b).

SECTION 22. 218.01 (3) (a) 15. of the statutes is amended to read:

218.01 (3) (a) 15. Being a manufacturer of motor vehicles, factory branch, importer or distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has induced or coerced or attempted to induce or coerce any motor vehicle dealer to order any commodity or service or to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities which shall not have been ordered by said dealer or pay for any commodity or service that the motor vehicle dealer has not ordered. This subdivision does not modify or prohibit reasonable requirements in a franchise agreement that require a dealer to market and service a representative line of new motor vehicles that the manufacturer, importer or distributor is publicly advertising.

SECTION 23. 218.01 (3) (a) 17. of the statutes is amended to read:

218.01 (3) (a) 17. Being Subject to sub. (3n), being a manufacturer, factory branch, importer or distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of the dealer or without just provocation, directly or indirectly canceled or failed to renew the franchise of any motor vehicle dealer; or being a manufacturer, factory branch or importer, who has unfairly, without due regard to the equities of a distributor or without just provocation, directly or indirectly canceled or failed to renew the franchise of any distributor. All existing dealers' franchises If there is a change in a manufacturer, importer or distributor, a motor vehicle dealer's franchise granted by the former manufacturer, importer or distributor shall continue in full force and operation under a newly appointed the new manufacturer, importer or distributor on the termination of an existing distributor unless a mutual agreement of cancellation is filed with the department between the newly appointed new manufacturer, importer or distributor and such the dealer. In this subdivision, "due regard to the equities" means treatment in enforcing an agreement that is fair and equitable to a motor vehicle dealer or distributor and that is not discriminatory compared to similarly situated dealers or distributors; and "just provocation" means a material breach by a motor vehicle dealer or distributor, due to matters within the dealer's or distributor's control, of a reasonable and necessary provision of an agreement and the breach is not cured within a reasonable time after written notice of the breach has been received from the manufacturer, importer or distributor.

SECTION 24. 218.01 (3) (a) 22. of the statutes is amended to read:

218.01 (3) (a) 22. Being a manufacturer, factory branch importer or distributor who for the protection of the buying public fails to specify the delivery and prepara-

ration obligations of its dealers prior to 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 by every licensed motor vehicle manufacturer, factory branch or distributor and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer, factory branch or distributor. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer or importer shall constitute the manufacturer's or importer's product or warranty liability. The manufacturer, factory branch or distributor shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's or importer's product or warranty defects or delivery and preparation obligations. A manufacturer, factory branch or distributor shall pay the dealer who performs work to rectify the manufacturer's or importer's product or warranty defects at a labor rate equal to the effective labor rate charged all customers violates sub. (2c), (2d), (2f), (2g) or (2w).

SECTION 25. 218.01 (3) (a) 23. of the statutes is repealed and recreated to read:

218.01 (3) (a) 23. Being a motor vehicle dealer who, in breach of an agreement, voluntarily changes its ownership or executive management, transfers its dealership assets to another person, adds another franchise at the same location as its existing franchise, or relocates a franchise without first complying with the procedures in sub. (3x).

SECTION 26. 218.01 (3) (a) 24. of the statutes is repealed and recreated to read:

218.01 (3) (a) 24. Being a manufacturer, importer or distributor who fails to comply with the procedures in sub. (3x) regarding a dealer's request for approval of a change of ownership or executive management, transfer of its dealership assets to another person, adding another franchise at the same location as its existing franchise, or relocation of a franchise or who fails to comply with an order of the office of the commissioner of transportation issued under sub. (3x).

SECTION 27. 218.01 (3) (a) 26m of the statutes is repealed.

SECTION 28. 218.01 (3) (a) 32. of the statutes is amended to read:

218.01 (3) (a) 32. Being a manufacturer, factory branch or distributor who enters into a franchise agreement establishing or relocating a motor vehicle dealership, parts outlet or service outlet in a relevant market area without first complying with the procedure in par. (f) 1.

SECTION 29. 218.01 (3) (a) 41. of the statutes is created to read:

218.01 (3) (a) 41. Being a manufacturer, importer or distributor who compels a dealer, through a financing subsidiary of the manufacturer, importer or distributor, to agree to unreasonable operating requirements or who

directly or indirectly cancels or fails to renew a dealer's franchise, except as allowed under subs. (3) (a) 17. and (3n), through the actions of a financing subsidiary of the manufacturer, importer or distributor. This subdivision does not limit the right of a financing subsidiary to engage in business practices in accordance with the usages of the trade in which it is engaged.

SECTION 30. 218.01 (3) (a) 42. of the statutes is created to read:

218.01 (3) (a) 42. Being a licensee who wilfully refuses or fails to participate in mediation pursuant to a demand for mediation served under sub. (7m) (a).

SECTION 31. 218.01 (3) (a) 43. of the statutes is created to read:

218.01 (3) (a) 43. Being a manufacturer, importer or distributor who uses a right of first refusal, granted to it under an agreement, to influence the consideration or other terms offered by a potential buyer for a dealership's assets or stock or to influence a potential buyer to refrain from entering into, or to withdraw from, negotiations for the purchase of a dealership's assets or stock.

SECTION 32. 218.01 (3) (f) 1. and 2. (intro.), d., e. and h. of the statutes are amended to read:

218.01 (3) (f) 1. A manufacturer, ~~factory branch importer~~ or distributor who seeks to enter into a franchise agreement establishing or relocating a motor vehicle dealership, parts outlet or service outlet within the relevant market area of an existing enfranchised dealer of the line make of motor vehicle shall first notify in writing the department and each such existing enfranchised dealer of its intention to establish or relocate a dealership or outlet. Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, ~~factory branch importer~~ or distributor, whichever is later, any existing enfranchised dealer of the same line make to whom the manufacturer, ~~factory branch importer~~ or distributor is required to give notice under this subdivision may file with the department and the office of the commissioner of transportation a complaint protesting the proposed establishment or relocation of the dealership or outlet within the relevant market area of the existing enfranchised dealer. If a complaint is filed, the department shall inform the manufacturer, ~~factory branch importer~~ or distributor that a timely complaint has been filed, that a hearing is required, and that the proposed franchise agreement may not be entered into until the office of the commissioner of transportation has held a hearing, nor thereafter, if the office of the commissioner of transportation determines that there is good cause for not permitting the proposed establishment or relocation of the dealership or outlet. In the event of multiple complaints, hearings shall be consolidated to expedite the disposition of the issue.

2. (intro.) In determining whether good cause exists for not permitting the proposed establishment or relocation of a dealership or outlet, the office of the commis-

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sioner of transportation shall take into consideration the existing circumstances, including, but not limited to:

d. Whether it is injurious to the public welfare for the proposed dealership or outlet to be established or relocated.

e. Whether the establishment or relocation of the proposed dealership or outlet would increase competition and therefore be in the public interest.

h. The effect the denial of such establishment or relocation would have on the license applicant ~~or~~ dealer or outlet operator who is seeking to establish or relocate a dealership or outlet.

SECTION 33. 218.01 (3) (f) 3. of the statutes is amended to read:

218.01 (3) (f) 3. The decision of the office of the commissioner of transportation shall be in writing and shall contain findings of fact and a determination of whether there is good cause for not permitting the proposed establishment or relocation of the dealership or outlet. The office of the commissioner of transportation shall deliver copies of the decision to the parties personally or by registered mail. The decision is final upon its delivery or mailing and no reconsideration or rehearing by the office of the commissioner of transportation is permitted.

SECTION 34. 218.01 (3) (f) 4. a. of the statutes is repealed and recreated to read:

218.01 (3) (f) 4. a. The reopening or replacement of a dealership or outlet that has been closed for less than 2 years, at the original location or within 2 miles of the original location by the closest highway route, is not the establishment of a motor vehicle dealership or outlet, unless the location is within 4 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the closed dealership or outlet. In this subd. 4. a., "closed" means the effective date of the termination or expiration of the dealership's or outlet's license or franchise, whichever is earlier. The reopening or replacement of a dealership or outlet that has been closed for less than 2 years at a location other than the original location and other than a location within 2 miles of the original location by the closest highway route, but within the area of sales responsibility that had been assigned to the closed dealership or outlet by the manufacturer, importer or distributor is not the establishment of a motor vehicle dealership or outlet, unless the new location is within 6 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the closed dealership or outlet. The reopening or replacement of a dealership or outlet that has been closed for 2 or more years or that is at a location outside of the area of sales responsibility that had been assigned to the closed dealership or outlet by the manufacturer, importer or distributor is the establishment of a dealership or outlet.

SECTION 35. 218.01 (3) (f) 4. b. of the statutes is repealed and recreated to read:

218.01 (3) (f) 4. b. The relocation of a dealership or outlet to a location within 2 miles of the existing location by the closest highway route and within the existing area of sales responsibility assigned to that dealership or outlet by the manufacturer, importer or distributor is not the relocation of a dealership or outlet, unless the location is within 4 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the existing location. The relocation of a dealership or outlet to a location other than a location within 2 miles of the existing location, but within the existing area of sales responsibility assigned to that dealership or outlet by the manufacturer, importer or distributor is not the relocation of a dealership or outlet, unless the relocation site is within 6 miles, by the closest highway route, of the location of another enfranchised dealer of the same line make and is closer to that dealer than the existing location. The relocation of a dealership or outlet to a location outside the area of sales responsibility assigned to the dealership or outlet by the manufacturer is the relocation of a dealership or outlet.

SECTION 36. 218.01 (3) (f) 4. c. of the statutes is created to read:

218.01 (3) (f) 4. c. The establishment or relocation of a service or parts outlet requires that notice be given under subd. 1 to existing enfranchised dealers who are otherwise entitled to receive such notice and who are authorized to perform work to rectify product or warranty defects or delivery and preparation obligations on the same line make as the proposed service outlet or to use a trade name, trademark or service mark that is also proposed to be used by the proposed service or parts outlet, except that the establishment or relocation of a service or parts outlet that is owned and operated by a motor vehicle dealership enfranchised by the manufacturer, importer or distributor requires that notice be given only to existing dealers who are otherwise entitled to receive such notice and who hold a franchise to sell the same line make as the dealership that will own and operate the proposed service or parts outlet.

SECTION 37. 218.01 (3) (f) 4. d. of the statutes is created to read:

218.01 (3) (f) 4. d. A manufacturer's, importer's or distributor's authorization of a fleet owner to perform warranty or delivery and preparation work only on the fleet owner's own vehicles is not the establishment of a service outlet. In this subd. 4. d., "fleet owner" means a person who owns for its own use or for the use of others 10 or more motor vehicles of the current or preceding model year manufactured or sold by the manufacturer, importer or distributor who is authorizing the warranty work to be performed, except that "fleet owner" does not include persons engaged in the business of leasing motor vehicles to individual consumers.

SECTION 38. 218.01 (3) (f) 4. e. of the statutes is created to read:

218.01 (3) (f) 4. e. The establishment or relocation of a motor vehicle dealership with respect to used motor vehicles under an agreement between the dealer and a manufacturer, importer or distributor is the establishment or relocation of a motor vehicle dealership.

SECTION 39. 218.01 (3c) (a) of the statutes is repealed.

SECTION 40. 218.01 (3n) of the statutes is created to read:

218.01 (3n) **TERMINATION PROVISIONS.** (a) For purposes of sub. (3) (a) 17., the termination, cancellation or discontinuation of a motor vehicle line make will be considered to be the cancellation or failure to renew the franchise of a motor vehicle dealer or distributor of that line make even if that line make is part of an agreement that includes other line makes but a manufacturer, importer or distributor may change, add or delete models, specifications, model names, numbers or identifying marks or similar characteristics of motor vehicles that it markets.

(b) The cancellation or nonrenewal of a franchise shall not be a violation of sub. (3) (a) 17. if all of the following requirements are met:

1. The motor vehicle dealer or distributor is given notice at least 6 months before the effective date of the cancellation or nonrenewal.

2. The manufacturer, importer or distributor contemporaneously cancels or fails to renew every franchise for the same line make granted to any dealer or distributor in the United States or, in the case of a franchise relating to a line make that is sold or distributed in less than 13 states of the United States, the manufacturer, importer or distributor contemporaneously cancels or fails to renew every franchise for the same line make granted to any dealer or distributor in this state.

3. If the franchisee is a motor vehicle dealer, the dealer receives the termination benefits under sub. (3r).

4. The manufacturer, importer or distributor does any of the following:

a. Offers or causes to be offered to the motor vehicle dealer or distributor a replacement franchise with reasonable terms and conditions.

b. Compensates the dealer or distributor for the actual pecuniary loss caused by the franchise cancellation or nonrenewal. In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer or distributor for the line make covered by the franchise shall be considered. If the dealer or distributor and the manufacturer, importer or distributor cannot agree on the amount of compensation to be paid under this subd. 4. b., either may file a declaratory judgment action in a court of competent jurisdiction.

c. Establishes, in a proceeding brought by the dealer or distributor alleging that the cancellation or nonrenewal violates sub. (3) (a) 17., that the continued distribution of the line make in the United States would cause it economic loss and that, after the effective date of the fran-

chise cancellation or nonrenewal, neither the manufacturer, importer or distributor nor any owner, assignee or licensee of the trademarks or service marks used for the purpose of designating, making known or distinguishing the line make covered by the franchise will use the trademarks or service marks, either alone or in conjunction with other marks, in designating, making known or distinguishing any line make of motor vehicle sold or distributed in the United States.

d. If the franchise relates to a line make that is sold or distributed in less than 13 states of the United States, establishes, in a proceeding brought by the dealer or distributor alleging that the cancellation or nonrenewal violates sub. (3) (a) 17., that the continued distribution of the line make in this state would cause it economic loss and that, after the effective date of the franchise cancellation or nonrenewal, neither the manufacturer, importer or distributor nor any owner, assignee or licensee of the trademarks or service marks used for the purpose of designating, making known or distinguishing the line make covered by the franchise will use such trademarks or service marks, either alone or in conjunction with other marks, in designating, making known or distinguishing any line make of motor vehicle sold or distributed in this state, except that, if the line make covered by the franchise has been first distributed in this state less than 2 years before the effective date of the cancellation or nonrenewal, such trademarks and service marks may be used in this state after 6 years from the effective date of the cancellation or nonrenewal.

e. Establishes, in a proceeding brought by the dealer or distributor alleging that the cancellation or nonrenewal violates sub. (3) (a) 17., that the continued distribution of the line make in this state is prohibited by law or by an order of a court or agency with jurisdiction to issue the order and that the continued distribution of the line make in this state cannot be made to comply with the law or order through the reasonable efforts of the manufacturer, importer or distributor and that, after the effective date of the franchise cancellation or nonrenewal, neither the manufacturer, importer or distributor nor any owner, assignee or licensee of the trademarks or service marks used for the purpose of designating, making known or distinguishing the line make covered by the franchise will use such trademarks or service marks, either alone or in conjunction with other marks, in designating, making known or distinguishing any comparable line make of motor vehicle sold or distributed in this state.

SECTION 41. 218.01 (3x) of the statutes is created to read:

218.01 (3x) **DEALERSHIP CHANGES.** (a) In this subsection, “affected grantor” means a manufacturer on direct dealerships, a distributor on indirect dealerships or an importer on direct dealerships that has entered into an agreement with a motor vehicle dealer and that is directly

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affected by an action proposed to be undertaken by the dealer under this subsection.

(b) 1. If a motor vehicle dealer's agreement with an affected grantor requires the grantor's prior approval of an action proposed to be undertaken by the dealer under this subsection, a dealer may not voluntarily change its ownership or executive management, transfer its dealership assets to another person, add another franchise at the same location as its existing franchise or relocate a franchise without giving prior written notice of the proposed action to the affected grantor and to the department. Within 20 days after receiving the notice, the affected grantor may serve the dealer with a written list of the information not already known or in the possession of the grantor that is reasonably necessary in order for the grantor to determine whether the proposed action should be approved. The grantor shall, in good faith, confirm in writing to the dealer the date on which it has received from the dealer or from other sources all the information specified on the list.

2. An affected grantor who does not approve of the proposed action shall, within 30 days after receiving the dealer's written notice of the proposed action or within 30 days after receiving all the information specified in a written list served on the dealer under subd. 1, whichever is later, file with the department and serve upon the dealer a written statement of the reasons for its disapproval. The reasons given for the disapproval or any explanation of those reasons by the manufacturer, distributor or importer shall not subject the manufacturer, distributor or importer to any civil liability unless the reasons given or explanations made are malicious and published with the sole intent to cause harm to the dealer or a transferee of the dealer. Failure to file and serve a statement within the applicable period shall, notwithstanding the terms of any agreement, constitute approval of the proposed action by the grantor. If an affected grantor files a written statement within the applicable period, the dealer may not voluntarily undertake the proposed action unless it receives an order permitting it to do so from the office of the commissioner of transportation under par. (c) 2.

3. A dealer who is served with a written statement by an affected grantor under subd. 2 may file with the department and the office of the commissioner of transportation and serve upon the affected grantor a complaint for the determination of whether there is good cause for permitting the proposed action to be undertaken. The office of the commissioner of transportation shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

(c) 1. In determining if there is good cause for permitting a proposed action to be undertaken, the office of the commissioner of transportation may consider any relevant factor including:

a. The reasons for the proposed action.

b. The affected grantor's reasons for not approving the proposed action.

c. The degree to which the inability to undertake the proposed action will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.

d. Whether the proposed action is in the public interest.

e. The degree to which the proposed action will interfere with the orderly and profitable distribution of products by the affected grantor.

f. The impact of the proposed action on other motor vehicle dealers.

2. The decision of the office of the commissioner of transportation shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed action to be undertaken. The decision shall include an order that the dealer be allowed or is not allowed to undertake the proposed action, as the case may be. The order may require fulfillment of appropriate conditions before and after the proposed action is undertaken.

(d) This subsection does not apply to:

1. An action that has been agreed to in writing between a dealer and each affected grantor.

2. A proposed action that would require an affected grantor to give notice under sub. (3) (f) 1., except that the dealer must have the affected grantor's written approval before undertaking any such proposed action.

3. The exercise by an affected grantor under an agreement of the right of first refusal to acquire the dealer's assets in the event of a proposed change of ownership or transfer of dealership assets, if all of the following requirements are met:

a. The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer of dealership assets.

b. The proposed change of ownership or transfer of dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to one or more immediate family members of one or more dealer owners or to a qualifying member of the dealer's management or to a partnership or corporation controlled by such persons. In this subd. 3. b., "immediate family member" means the spouse, child, grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner; and "qualifying member of the dealer's management" means an individual who has been employed by the dealer for at least 2 years and who otherwise qualifies as a dealer operator.

c. The affected grantor agrees to pay the reasonable expenses, including reasonable attorney fees that do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the

proposed new owner or transferee before the grantor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or transfer of dealership assets. Notwithstanding this subd. 3. c., no payment of expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 7 days after the dealer's receipt of the affected grantor's written request for an accounting.

4. An action, if a proposed new owner or transferee does not agree to comply with the agreement between the affected grantor and dealer or with a new agreement containing substantially the same terms.

SECTION 42. 218.01 (7m) of the statutes is created to read:

218.01 (7m) MEDIATION OF DISPUTES BETWEEN LICENSEES. (a) A licensee may not file a complaint or petition with the office of the commissioner of transportation or bring an action under sub. (9) (a), based on an alleged violation of this section by any other licensee or pursuant to sub. (3) (f) or (fm), (3c) or (3x), unless the licensee serves a demand for mediation upon the other licensee before or contemporaneous with the filing of the complaint or petition or the bringing of the action. A demand for mediation shall be in writing and served upon the other licensee by certified mail at an address designated for that licensee in the licensor's records. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the licensee filing the demand.

(b) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be within this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either licensee or upon the stipulation of both licensees.

(c) The service of a demand for mediation under par. (a) shall stay the time for the filing of any complaint or petition with the office of the commissioner of transportation or for bringing an action under sub. (9) (a), based on an alleged violation of this section by the other licensee or pursuant to sub. (3) (f) or (fm), (3c) or (3x), until the representatives of both licensees have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint or petition is filed before the meeting, the office of the commissioner of transportation or the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, upon the written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the commissioner of transportation or court considers to be appropriate. A suspension order issued under this paragraph may be revoked upon motion of any party or upon

motion of the office of the commissioner of transportation or the court.

(d) The licensor shall encourage licensees under this subsection to establish, maintain and administer a panel of mediators who have the character, ability and training to serve as mediators and who have knowledge of the motor vehicle industry.

SECTION 43. 218.01 (7r) of the statutes is created to read:

218.01 (7r) ARBITRATION OF DISPUTES BETWEEN LICENSEES. A manufacturer, importer or distributor and a dealer may agree to submit a dispute arising under a franchise agreement or under this section to binding arbitration. Unless agreed otherwise in an agreement that complies with subs. (2) (bm) 2 and (3) (a) 36. d., any arbitration proceeding shall be voluntary, initiated by serving a written demand for arbitration on the other party, and shall be conducted under the provisions of the state of Wisconsin arbitration plan administered by representatives of the licensees.

SECTION 44. 218.01 (7t) of the statutes is created to read:

218.01 (7t) IMMUNITY AND PRESUMPTION OF GOOD FAITH. A mediator or arbitrator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of his or her powers and duties under sub. (7m) or the arbitration plan referred to in sub. (7r). Every act or omission of a mediator or arbitrator is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

SECTION 45. 218.01 (9) (a) (intro.) of the statutes is amended to read:

218.01 (9) (a) (intro.) Without exhausting any administrative remedy available under an agreement or this section, except as provided in sub. (3) (f) and (fm), a licensee may recover damages in a court of competent jurisdiction in an amount equal to 3 times a for pecuniary loss, together with actual costs including a reasonable attorney fee, if the pecuniary loss is caused by any of the following:

SECTION 46. 218.01 (9) (a) 1. of the statutes is amended to read:

218.01 (9) (a) 1. A violation by any other licensee of sub. (3) (a) 4., 11., 15., 16., 17, 22, 23, 24, 26, ~~26m~~, 32, 35, 36, 37, 38, 39 ~~or~~, 40, 41 or 43.

SECTION 47. 218.01 (9) (am) of the statutes is created to read:

218.01 (9) (am) If a court finds that a violation or practice described in par. (a) 1 or 2 is wilful, a licensee shall recover damages in an amount equal to 3 times the pecuniary loss, together with actual costs including reasonable attorney fees.

SECTION 48. Initial applicability. This act first applies to a franchise agreement that exists or is entered

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into on the effective date of this SECTION, except as follows:

(1) The treatment of section 218.01 (2) (bm) 1. c. of

the statutes first applies to a franchise agreement that is entered into, extended, renewed or modified on the effective date of this subsection.

