

JOURNAL OF THE SENATE [September 2, 1969]

STATE OF WISCONSIN

# Senate Journal

Seventy-Ninth Session

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TUESDAY, September 2, 1969.

2:00 o'clock P.M.

The senate met.

The senate was called to order by the president pro tempore.

The senate stood for a moment of silent prayer.

The calling of the roll was dispensed with, upon motion of Senator Roseleip, with unanimous consent.

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## PETITIONS AND COMMUNICATIONS

The State of Wisconsin  
Department of State  
Madison 53702

September 2, 1969.

To The Honorable, The Senate:

Gentlemen: I have the honor to transmit to you, pursuant to Section 13.67 (2), a list of registered lobbyists for the period beginning August 26, 1969, and ending September 2, 1969.

Yours very truly,

ROBERT C. ZIMMERMAN,  
Secretary of State.

JOURNAL OF THE SENATE [September 2, 1969]

*Name, Address and Occupation of Lobbyist—Name and Address of Employer—Subject of Legislation—Date of Employment—Length of Time of Employment.*

Joseph J. Caputo, Disabled, 1305 Delaware Boulevard, Madison, Wis.—Self-employed—Sex education—August 29, 1969—1969-70.

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EXECUTIVE COMMUNICATIONS

The State of Wisconsin  
Executive Office  
Madison 53702

August 29, 1969.

To The Honorable, The Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State.

Senate Bill	Chapter No.	Date Approved
252 -----	155 -----	August 29, 1969
505 -----	156 -----	August 29, 1969
544 -----	157 -----	August 29, 1969
352 -----	158 -----	August 29, 1969

Respectfully submitted,

WARREN P. KNOWLES,  
Governor.

To The Honorable, The Senate:

I am returning Senate Bill 436 to you without my approval.

Senate Bill 436 seeks to provide additional protections for the automobile dealer in his business relationship with the manufacturer.

In general, legislative interference in a business-contractual relationship is justifiable only in extreme instances where the interests of protecting the public are considered paramount to the rights of the parties to contract, independent of governmental control.

## JOURNAL OF THE SENATE [September 2, 1969]

Occasionally, it is felt that the extreme imbalance in bargaining power between the parties to a business contract justifies the establishment of governmental procedures for the protection of the public by putting the parties on equal footing.

At one time in Wisconsin the apparent imbalance in bargaining power between automobile dealers and manufacturers led to the enactment of procedures which gave rule-making, supervisory, hearing and licensing powers to the Division of Motor Vehicles. This law has been widely acclaimed and copied by other states. It is acknowledged to be one of the strongest automobile-manufacturer licensing laws in existence.

The statute provides that a manufacturer must give 60 days' notice prior to termination or non-renewal of the franchise agreement. During that period a dealer may file a complaint with the Motor Vehicle Division for a determination of unfair discontinuation or cancellation. The Division is also empowered to hear cases involving unfair practices other than termination of the dealer franchise. If the Wisconsin Motor Vehicle Division finds that the manufacturer acted unfairly, his license may be denied, suspended or revoked.

**Senate Bill 436** would provide the following additional protections for the dealer:

- (1) Grant the dealer, in effect, a mandatory temporary injunction which would prevent the termination from taking place until all legal issues were resolved.
- (2) Apparently limit the dealer's responsibility for product liability to the manufacturer to performance of vehicle delivery and preparation obligations as filed with the Division of Motor Vehicles.
- (3) Provide treble damages for violations of specified practices, most of which are manufacturer violations.

Under the first provision, the bill provides that the contractual relationship between dealer and manufacturer shall continue in effect until final determination of the issues raised in the dealer's complaint. In effect, this provision would give the dealer a temporary injunction as a matter of right, pending extended litigation. This equitable remedy, under common law and statute, has for centuries been granted only upon complainant's showing a likely irrepar-

**JOURNAL OF THE SENATE [September 2, 1969]**

able injury for which there is no adequate remedy at law. In addition, the court must find in its sound discretion that there is a reasonable probability for success in the complainant's principal action. The court may also require that the complainant post a bond. This bill would remove these precautionary criteria by making the injunction automatic.

If the dealer can make an adequate showing that the temporary injunction is an appropriate remedy, the courts are available to him for this purpose. At least one such injunction has been granted in Wisconsin this year.

Section 2 of Senate Bill 436 requires the manufacturer to file a copy of the delivery and preparation obligations of its dealers with the Division of Motor Vehicles. This, in itself, is not objectionable. However, the bill also provides that such copy shall constitute the dealer's only responsibility for product liability as between himself and the manufacturer.

Although this section is quite vague and therefore difficult to interpret, it appears that the dealer responsibility limitation may excuse the dealer from negligence in his performance of warranty repairs in some circumstances. If so, this would be an obvious disservice to the consumer.

The bill also provides treble damages for any licensee suffering pecuniary loss because of violations of certain enumerated sections of the statutes by any other licensee. The enumerated sections deal almost exclusively with unfair practices of manufacturers, thus providing a one-sided penalty. Regardless, any treble damage provision has traditionally been reserved for redress of malicious or purposeful illegal activities and is not appropriate for compensation to an aggrieved party to a contractual relationship.

In view of the existing statutes which can be utilized for the protection of the dealer, I am convinced that any further strong protective legislation is unneeded. I am informed that, on the average, fewer than five cases per year reach even the informal hearing stage with the Division of Motor Vehicles. The large majority of these are resolved without further legal activity of any kind. Dealers and manufacturers generally are content to accept the findings of the Division.

The continuation for several months or years of a dealership which is engaged in false advertising or inadequate

**JOURNAL OF THE SENATE [September 2, 1969]**

warranty service would not be in the best interests of the public. Limitation of dealer responsibility for warranty repairs would also be detrimental to consumer interests.

For the above reasons, I am returning **Senate Bill 436** without my approval.

Respectfully submitted,

**WARREN P. KNOWLES,**  
Governor.

**Senate Bill 436**

Referred to calendar of October 7th.

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Upon motion of Senator Kendziorski, the senate adjourned until 9:00 A.M. Friday, September 5th.