

2001 DRAFTING REQUEST

Bill

Received: **10/02/2001**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Roger Breske (608) 266-2509**

By/Representing: **vaughn vance**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Transportation - mot veh dealers**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Breske@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Automobile dealers

Instructions:

Companion bill to lrb 01 2014/3. Make identical to that bill.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 10/02/2001	jdye 10/03/2001		_____			State
/1	phurley 10/07/2001	jdye 10/08/2001	jfrantze 10/03/2001	_____	lrb_docadmin 10/03/2001		State
/2	phurley		jfrantze	_____	lrb_docadmin	lrb_docadmin	State

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	10/08/2001		10/08/2001	_____	10/08/2001	10/08/2001	
				_____		lrb_docadmin	
				_____		10/08/2001	
				_____		lrb_docadmin	
				_____		10/08/2001	
/3	phurley 10/09/2001	jdye 10/09/2001	jfrantze 10/09/2001	_____	lrb_docadmin 10/09/2001	lrb_docadmin 10/09/2001	

FE Sent For: 10/08/2001.

<END>

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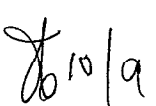
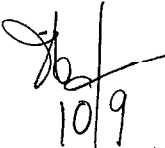
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/2		3 10/9 jld	jfrantze		lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketcd</u>	<u>Required</u>
			10/08/2001	_____	10/08/2001	10/08/2001	
				_____		lrb_docadmin	
				_____		10/08/2001	

<END>

FE Sent For:

10-08-01
("12")

Requested
by Vaughn

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/2			jfrantze	_____	lrb_docadmin		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketcd</u>	<u>Required</u>
			10/08/2001 _____		10/08/2001		

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/1		1/2 10/8 jld	jfrantze 10/03/2001		lrb_docadmin 10/03/2001		

10/10/8 Self 10/8

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/?	phurley	11/10/3 jld		_____			

FE Sent For:

<END>

3933/1

2001 BILL

Submitted
10-2-01
rec'd by
10-4-01

Regen

1 AN ACT *to amend* 218.0134 (2) (b) and 218.0163 (1) (intro.), and *to create*
2 218.0163 (1) (c) of the statutes; **relating to:** proposed actions regarding motor
3 vehicle franchises.

Analysis by the Legislative Reference Bureau

Under current law, each manufacturer, distributor, or importer of motor vehicles (affected grantor) that wishes to sell its motor vehicles in the state is licensed by the department of transportation (DOT). An affected grantor may enter into an agreement with a motor vehicle dealer that sets forth the terms under which the dealer may sell the affected grantor's vehicles via a motor vehicle franchise. If a dealer wishes to transfer its assets to another person, to change ownership or executive management, or to relocate the franchise or open a second franchise at the same location, and the franchise agreement requires that the affected grantor approve the proposed action, the dealer must give the affected grantor written notice of the proposed action and must secure the approval of the affected grantor before making the proposed action.

Under current law, the affected grantor must either approve of the proposed action; or, within 30 days of receiving written notice of the proposed action, must serve the motor vehicle dealer with a written report setting forth its reasons for not approving and must file a copy of this report with DOT. The dealer may then seek a decision from the division of hearing and appeals (division) within DOT permitting the proposed action. An affected grantor that does not comply with these requirements may have its license revoked and may be liable to the dealer for

BILL

pecuniary losses, as well as actual costs and and attorney fees incurred by the dealer because of the affected grantor's failure to comply.

Under this bill, if the division determines that there is good cause to permit the proposed action, the affected grantor may be liable for the dealer's pecuniary loss, as well as for actual costs, including costs and attorney fees incurred by the dealer in obtaining a determination of good cause from the division.

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. 218.0134 (2) (b) ^X of the statutes is amended to read:

2 218.0134 (2) (b) . An affected grantor who does not approve of the proposed
3 action shall, within 30 days after receiving the dealer's written notice of the proposed
4 action or within 30 days after receiving all the information specified in a written list
5 served on the dealer under par. (a), whichever is later, file with the department of
6 transportation and serve upon the dealer a written statement of the reasons for its
7 disapproval. The publication of the reasons given for the disapproval or any
8 explanation of those reasons by the manufacturer, distributor or importer shall not
9 subject the manufacturer, distributor or importer to any civil liability unless the
10 reasons given or explanations made are malicious and published with the sole intent
11 to cause harm to the dealer or a transferee of the dealer. Failure to file and serve a
12 statement within the applicable period shall, notwithstanding the terms of any
13 agreement, constitute approval of the proposed action by the grantor. If an affected
14 grantor files a written statement within the applicable period, the dealer may not
15 voluntarily undertake the proposed action unless it receives an order permitting it
16 to do so from the division of hearings and appeals under sub. (3) (b).

17 SECTION 2. 218.0163 ^X (1) (intro.) of the statutes is amended to read:

Emery, Lynn

From: Emery, Lynn
Sent: Wednesday, October 03, 2001 10:30 AM
To: Vance, Vaughn
Subject: LRB-3933/1 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

ROGER BRESKE

STATE SENATOR

12th District

Capitol Address:
State Capitol, South Wing
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-2509



Home Address:
8800 Hwy. 29
Eland, WI 54427
(715) 454-6575

Toll Free:
1 (800) 334-8773

E-Mail Address:
Sen.Breske@legis.state.wi.us

FACSIMILE COVER SHEET

PLEASE DELIVER TO: Peggy Hurley

ORGANIZATION: LRB

FAX NUMBER: () 4-6948

PAGES (INCLUDING COVER SHEET): 3

FROM: VAUGHN L. VANCE, J.D., M.P.A.
Chief of Staff & Legal Counsel
Office of Senator Roger Breske
WISCONSIN STATE SENATE *JLV.*

NOTES: Please find attached instructions for
an amendment to LRB3933. I
think that I sent in the jacking
form. We plan to hear the bill in
Comt on 10/10. This would be a comt. amend.

IN THE EVENT OF DELIVERY PROBLEMS, PLEASE CONTACT SENATOR BRESKE'S OFFICE AT
608/266-2509.

2001 - 2002 Legislature

- 3 -

LRB-9933/1
PJH:jld:jf
SECTION 2

BILL

1 218.0163 (1) (intro.) Without exhausting any administrative remedy available
2 under an agreement or ss. 218.0101 to 218.0163, except as provided in ~~s. ss.~~ 218.0116
3 (7) and (8) and 218.0134, a licensee may recover damages in a court of competent
4 jurisdiction for pecuniary loss, together with actual costs including reasonable
5 attorney fees, if the pecuniary loss is caused by any of the following:

6 **SECTION 3.** 218.0163 (1) (c) of the statutes is created to read:

7 218.0163 (1) (c) An affected grantor's disapproval of a proposed action under
8 s. 218.0134 (2) (b), if the division of hearings and appeals has determined that there
9 is good cause for permitting the proposed action to be undertaken following a hearing
10 under s. 218.0134 (2) (c). A dealer may recover under this paragraph even if the
11 affected grantor complies with the order of the division of hearing and appeals under
12 s. 218.0134 (3) (b). ~~Damages under this paragraph may include~~ actual costs,
13 including reasonable attorney fees incurred by the dealer in obtaining the division
14 of hearings and appeals' determination of good cause.

15 **SECTION 4. Initial applicability.**

16 (1) This act first applies to disapprovals of proposed actions that are filed with
17 the department of transportation under section 218.0134 (2) (b) of the statutes, as
18 affected by this act, on the effective date of this subsection.

19 (END)

*Upon a showing of pecuniary loss
the dealer may recover*

2001 - 2002 Legislature

- 2 -

LRB-3935/1
PJH:jld:jf

BILL

pecuniary losses, as well as actual costs and and attorney fees incurred by the dealer because of the affected grantor's failure to comply.

Under this bill, if the division determines that there is good cause to permit the proposed action, the affected grantor may be liable for the dealer's pecuniary loss, as well as for actual costs, including costs and attorney fees incurred by the dealer in obtaining a determination of good cause from the division.

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. 218.0134 (2) (b) of the statutes is amended to read:**

2 **218.0134 (2) (b) An affected grantor who does not approve of the proposed**
3 **action shall, within 30 days after receiving the dealer's written notice of the proposed**
4 **action or within 30 days after receiving all the information specified in a written list**
5 **served on the dealer under par. (a), whichever is later, file with the department of**
6 **transportation and serve upon the dealer a written statement of the reasons for its**
7 **disapproval. The publication of the reasons given for the disapproval or any**
8 **explanation of those reasons by the manufacturer, distributor or importer shall not**
9 **subject the manufacturer, distributor or importer to any civil liability unless the**
10 **reasons given or explanations made are malicious and published with the sole intent**
11 **to cause harm to the dealer or a transferee of the dealer. Failure to file and serve a**
12 **statement within the applicable period shall, notwithstanding the terms of any**
13 **agreement, constitute approval of the proposed action by the grantor. If an affected**
14 **grantor files a written statement within the applicable period, the dealer may not**
15 **voluntarily undertake the proposed action unless it receives an order permitting it**
16 **to do so from the division of hearings and appeals under sub. (3) (b).**

17 **SECTION 2. 218.0163 (1) (intro.) of the statutes is amended to read:**



2001 BILL

Submitted
10-7-01
by
10-9-01

Reger

1 AN ACT *to amend* 218.0134 (2) (b) and 218.0163 (1) (intro.); and *to create*
2 218.0163 (1) (c) of the statutes; **relating to:** proposed actions regarding motor
3 vehicle franchises.

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Under current law, each manufacturer, distributor, or importer of motor vehicles (affected grantor) that wishes to sell its motor vehicles in the state is licensed by the department of transportation (DOT). An affected grantor may enter into an agreement with a motor vehicle dealer that sets forth the terms under which the dealer may sell the affected grantor's vehicles via a motor vehicle franchise. If a dealer wishes to transfer its assets to another person, to change ownership or executive management, or to relocate the franchise or open a second franchise at the same location, and the franchise agreement requires that the affected grantor approve the proposed action, the dealer must give the affected grantor written notice of the proposed action and must secure the approval of the affected grantor before making the proposed action.

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4 action or within 30 days after receiving all the information specified in a written list
5 served on the dealer under par. (a), whichever is later, file with the department of
6 transportation and serve upon the dealer a written statement of the reasons for its
7 disapproval. The publication of the reasons given for the disapproval or any
8 explanation of those reasons by the manufacturer, distributor or importer shall not
9 subject the manufacturer, distributor or importer to any civil liability unless the
10 reasons given or explanations made are malicious and published with the sole intent
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17 the department of transportation under section 218.0134 (2) (b) of the statutes, as
18 affected by this act, on the effective date of this subsection.

19 (END)

NO
Upon a
showing of
pecuniary loss,
a dealer may
recover.

Basford, Sarah

From: Vance, Vaughn
Sent: Monday, October 08, 2001 10:34 AM
To: LRB.Legal
Subject: Draft review: LRB-3933/2 Topic: Automobile dealers

It has been requested by <Vance, Vaughn> that the following draft be jacketed for the SENATE:

Draft review: LRB-3933/2 Topic: Automobile dealers

Hurley, Peggy

From: Vance, Vaughn
Sent: Monday, October 08, 2001 3:19 PM
To: Kiel, Joyce; 'pnorman@boardmanlawfirm.com'; Hurley, Peggy
Cc: 'mgerrard@watda.org'
Subject: RE: LRB3933---actions regarding motor vehicle franchise

Thanks for all of your work on this bill -- especially under the tight timeline that we have. Given the hearing scheduled for skeleton, it is important that I have a version of the legislation ready for introduction during skeleton session tomorrow. As it is, I am concerned about the applicability of the fiscal estimate being prepared on /2.

That having been said, I would like to proceed with the third draft of this bill which incorporates the language worked out between Joyce, Paul & Peggy which is explained below. If we get final okay from GM on the proposed change below, and if we have time to get a third draft done for introduction tomorrow, I can still get it introduced in time. If GM does not sign off on the proposed change, I prefer to go ahead with the second draft and introduce a committee amendment to accomplish the goals below (again, as long as GM signs off). If GM, for whatever reason, does not sign off on the change, it is Roger's intention to proceed with /2 as is. I have discussed this approach with Mary Ann Gerrard who has signed off on the plan for the Auto/Truck Dealers.

Peggy -- do I have to turn in /2 jacket in order to get a /3 in process? I would like to hang on to /2 in order to ensure that I have something to turn in in the morning if need be.

Given the short time line involved in this, I thought it was important that you all know where we are at. As always, please feel free to give me a call at 266-2509 if you have questions.

VAUGHN I. VANCE for
Senator Roger Breske

-----Original Message-----

From: Kiel, Joyce
Sent: Monday, October 08, 2001 2:35 PM
To: 'pnorman@boardmanlawfirm.com'
Cc: Sen.Breske; Vance, Vaughn
Subject: LRB3933---actions regarding motor vehicle franchise

Paul:

Based on our conversations, here is the language under consideration as the last sentence in proposed s. 218.0163 (1) (c):

"If a dealer recovers damages for pecuniary loss, actual costs under this paragraph also include actual costs, including reasonable attorney fees, incurred by the dealer in obtaining the division of hearings and appeals' determination of good cause."

Please get back to me right away. Thanks,

Joyce L. Kiel, Senior Staff Attorney
Wisconsin Legislative Council Staff
Suite 401, One East Main Street
Madison, WI 53703
608-266-3137
608-266-3830 (fax)
Joyce.Kiel@legis.state.wi.us

H/c to Vaughn 10-8-01. GM hasn't agreed yet, so
~~keep~~ /2 version as is. Do not change it yet. If GM
agrees to new language, then do an and to /2, which will be
introduced tomorrow

10-9-01 r/c to Vaughn Vance -

This bill not introduced yet, so do a
13 asap. Call ass. office re: instructions
on assembly version.



3
RMR

2001 BILL

10-9-01
now

Regen

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BILL

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16 to do so from the division of hearings and appeals under sub. (3) (b).

17 **SECTION 2.** 218.0163 (1) (intro.) of the statutes is amended to read:

Memo

To: Sen. Breske

(The Bill's Requestor)

Attached is a fiscal estimate prepared for your 2001 draft that has not yet been introduced.

LRB Number: LRB 3933

Version: "/ 2 "

Entered In Computer And Copy Sent To Requestor Via E-Mail: 10/09/2001

Fiscal Estimate Prepared By: (agency abbr.) DOT

If you have questions about the attached fiscal estimate, you may contact the agency/ individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* * * * *

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

- If this is **re-drafted** to a new version please attach this early fiscal estimate to the back of the draft's file between the old version and the new version.
- If this draft gets **introduced** ... and the version of the attached fiscal estimate is correct ... please write the drafts intro. number below and give this fiscal estimate to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2001 SB275

- If this draft gets **introduced** ... and the version of the attached fiscal estimate is for a previous version ... please attach this early fiscal estimate to the back of the draft's file between the old version and the new version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, October 09, 2001 1:15 PM
To: Sen.Breske
Subject: LRB-3933/2 (FE by DOT - attached - for your review)



FE_Breske.pdf

FE_Breske.pdf

Fiscal Estimate Narratives

DOT 10/9/01

LRB Number 01-3933/2	Introduction Number	Estimate Type	Original
Subject Automobile dealers			

Assumptions Used in Arriving at Fiscal Estimate

This draft concerns the relationship between a motor vehicle franchise grantor (ie, manufacturer, distributor, or importer) and a motor vehicle dealer franchisee.

In some cases, a manufacturer - dealer franchise agreement requires grantor approval if a franchisee wishes to transfer its assets to another person, to change ownership or executive management, or to relocate the franchise or open a second franchise at the same location. In this case, if the grantor does not agree to the change, the grantor must notify the dealer and DOT of the reasons, and the dealer may seek Division of Hearings and Appeals review.

This bill requires that, if the Division of Hearings and Appeals determines that there is good cause to allow the proposed action, the dealer may recover from the grantor actual costs, including certain attorney's fees, if the dealer shows pecuniary loss.

This bill has no fiscal impact on the Department of Transportation or the Transportation Fund.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2001 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 01-3933/2		Introduction Number	
Subject			
Automobile dealers			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):			
None			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$	
(FTE Position Changes)			
State Operations - Other Costs			
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category		\$	\$
B. State Costs by Source of Funds			
GPR			
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
		Increased Rev	Decreased Rev
GPR Taxes		\$	\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues		\$	\$
NET ANNUALIZED FISCAL IMPACT			
		<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS		\$none	\$
NET CHANGE IN REVENUE		\$none	\$
Agency/Prepared By		Authorized Signature	Date
DOT/ Carson Frazier (608) 266-7857		Carol Buckmaster (608) 267-6979	10/9/01