

2003 Senate Bill 235

Date of enactment: **November 12, 2003**
Date of publication*: **November 26, 2003**

2003 WISCONSIN ACT 77

AN ACT *to amend* 218.0114 (9) (a) 2., 218.0114 (10) (a), 218.0121 (3m) (b) 2. and 218.0163 (1) (a); and *to create* 218.0114 (9) (a) 4., 218.0114 (9) (d), 218.0116 (1) (v) and 218.0116 (1) (w) of the statutes; **relating to:** manufacturers, importers, and distributors of motor vehicles and franchised motor vehicle dealers.

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

SECTION 1. 218.0114 (9) (a) 2. of the statutes is amended to read:

218.0114 (9) (a) 2. Prevent a dealer or distributor from bringing an action in a particular forum otherwise available under the law or waive the dealer's or distributor's right to a jury trial.

SECTION 2. 218.0114 (9) (a) 4. of the statutes is created to read:

218.0114 (9) (a) 4. Provide a manufacturer, importer, or distributor with the right or option to compel the dealer or any of its owners to sell or transfer an ownership interest in the dealer or assets of the dealer to the manufacturer, importer, or distributor or an assignee of the manufacturer, importer, or distributor.

SECTION 3. 218.0114 (9) (d) of the statutes is created to read:

218.0114 (9) (d) Notwithstanding par. (a) 4., an agreement may provide a manufacturer, importer, or distributor with 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 requirements of s. 218.0134 (4) (c) are met.

SECTION 4. 218.0114 (10) (a) of the statutes is amended to read:

218.0114 (10) (a) A settlement agreement that is entered into by a dealer or distributor voluntarily ~~and that waives rights, remedies or defenses~~ with respect to a particular dispute existing when the settlement agreement is reached.

SECTION 5. 218.0116 (1) (v) of the statutes is created to read:

218.0116 (1) (v) Being a manufacturer, importer, or distributor who fails or refuses to offer for sale to its same line make franchised dealers all models manufactured or distributed for the line make. The offer for sale may be subject to the manufacturer's, importer's, or distributor's plan or system for the allocation, scheduling, and delivery of such models that complies with the requirements of s. 218.0123. However, the failure to deliver any such motor vehicle shall not be considered a violation of this paragraph if the failure is due to a lack of manufacturing capacity, a strike or labor difficulty, a shortage or materials, a freight embargo, or other cause beyond the control of the manufacturer, importer, or distributor. This paragraph does not prohibit reasonable requirements being imposed on dealers for the sale, marketing, or servicing of particular models.

SECTION 6. 218.0116 (1) (w) of the statutes is created to read:

218.0116 (1) (w) 1. Being a manufacturer, importer, or distributor who performs warranty service or delivery

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

and preparation work on a motor vehicle that it does not own or who authorizes or permits a person to perform warranty service or delivery and preparation work on a motor vehicle unless the person is a motor vehicle dealer with whom the manufacturer, importer, or distributor has entered into a franchise agreement for the sale and service of the manufacturer's, importer's, or distributor's motor vehicles. This subdivision shall not prohibit a manufacturer, importer, or distributor from:

a. Authorizing the performance of warranty service and delivery and preparation work by a fleet owner, as defined in s. 218.0116 (7) (d) 4., on its own vehicles.

b. If warranty service is temporarily not reasonably available to one or more owners of the manufacturer's, importer's, or distributor's vehicles, performing warranty service on such vehicles or authorizing the performance of warranty service on such vehicles by a person who is not a motor vehicle dealer with whom the manufacturer, importer, or distributor has entered into a franchise agreement for the sale and service of the manufacturer's, importer's, or distributor's motor vehicles. Warranty service may be provided or authorized by a manufacturer, importer, or distributor under this subdivision only during the period that warranty service is not otherwise reasonably available.

c. Attempting to repair a nonconformity, as defined in s. 218.0171 (1) (f), to a vehicle, if the repair is reason-

ably necessary to prevent the manufacturer, importer, or distributor from becoming subject to the requirements of s. 218.0171 (2) (b).

2. Subdivision 1. does not require a manufacturer, importer, or distributor to perform warranty service, or to authorize or permit warranty service to be performed, under a warranty given by another manufacturer, importer, or distributor or component manufacturer to a retail customer.

SECTION 7. 218.0121 (3m) (b) 2. of the statutes is amended to read:

218.0121 (3m) (b) 2. The dealer operator of the dealership is unable to acquire full ownership of the dealership with his or her own assets ~~or in conjunction with financial investments and loans from investors or lenders other than the factory holding an ownership interest in the dealership.~~

SECTION 8. 218.0163 (1) (a) of the statutes is amended to read:

218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h), (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t) ~~or~~ (u), (v), or (w).

SECTION 9. Initial applicability.

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