

## 2003 SENATE BILL 235

August 27, 2003 – Introduced by Senators LEIBHAM, KANAVAS, S. FITZGERALD, BRESKE, PLALE, BROWN, STEPP, WELCH, RISSER, ERPENBACH and SCHULTZ, cosponsored by Representatives FREESE, GRONEMUS, OLSEN, PETROWSKI, LEMAHIEU, AINSWORTH, FRISKE, GIELOW, GUNDERSON, HAHN, HINES, HUNDERTMARK, KESTELL, KRAWCZYK, M. LEHMAN, MCCORMICK, MONTGOMERY, OTT, SHILLING, SUDER, VAN ROY and VRAKAS. Referred to Committee on Transportation and Information Infrastructure.

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

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### *Analysis by the Legislative Reference Bureau*

Under current law, each manufacturer, importer, and distributor that wishes to sell motor vehicles in this state must be licensed by the Department of Transportation (DOT). In addition, each manufacturer, importer, or distributor that enters into an agreement with a motor vehicle dealer must file the agreement with DOT. Certain provisions in an agreement are void and prohibited.

Additionally, if a manufacturer, importer, or distributor commits certain violations with respect to a motor vehicle dealer, current law allows DOT to revoke the manufacturer's, importer's, or distributor's license. The dealer may also recover damages and attorney fees caused by the violation.

This bill makes void and prohibited any provision in an agreement that waives the dealer's or distributor's right to a jury trial. It also makes void and prohibited a provision that permits a manufacturer, importer, or distributor to compel a dealer or any owner to transfer an ownership interest in, or assets of, the dealership to the manufacturer, importer, or distributor. However, 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.

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The bill also allows DOT to revoke the license of a manufacturer, importer, or distributor if the manufacturer, importer, or distributor fails to offer for sale all models manufactured or distributed for a line make to any of its dealers that hold a franchise to sell that line make.

Finally, the bill allows DOT to revoke the license of a manufacturer, importer, or distributor under most circumstances if the manufacturer, importer, or distributor performs warranty or delivery and preparations work on a vehicle that it does not own or permits a person other than a dealer franchised to sell and service the manufacturer's, importer's, or distributor's vehicles, to perform such work.

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

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

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

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

6           218.0114 **(9)** (a) 4. Provide a manufacturer, importer, or distributor with the  
7 right or option to compel the dealer or any of its owners to sell or transfer an  
8 ownership interest in the dealer or assets of the dealer to the manufacturer, importer,  
9 or distributor or an assignee of the manufacturer, importer, or distributor.

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

11          218.0114 **(9)** (d) Notwithstanding par. (a) 4., an agreement may provide a  
12 manufacturer, importer, or distributor with the right of first refusal to acquire the  
13 dealer's assets in the event of a proposed change of ownership or transfer of  
14 dealership assets if all of the requirements of s. 218.0134 (4) (c) are met.

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

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1           218.0114 **(10)** (a) A settlement agreement that is entered into by a dealer or  
2 distributor voluntarily ~~and that waives rights, remedies or defenses~~ with respect to  
3 a particular dispute existing when the settlement agreement is reached.

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

5           218.0116 **(1)** (v) Being a manufacturer, importer, or distributor who fails or  
6 refuses to offer for sale to its same line make franchised dealers all models  
7 manufactured or distributed for the line make. The offer for sale may be subject to  
8 the manufacturer's, importer's, or distributor's plan or system for the allocation,  
9 scheduling, and delivery of such models that complies with the requirements of s.  
10 218.0123. However, the failure to deliver any such motor vehicle shall not be  
11 considered a violation of this paragraph if the failure is due to a lack of  
12 manufacturing capacity, a strike or labor difficulty, a shortage or materials, a freight  
13 embargo, or other cause beyond the control of the manufacture, importer, or  
14 distributor. This paragraph does not prohibit reasonable requirements being  
15 imposed on dealers for the sale, marketing, or servicing of particular models.

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

17           218.0116 **(1)** (w) 1. Being a manufacturer, importer, or distributor who  
18 performs warranty service or delivery and preparation work on a motor vehicle that  
19 it does not own or who authorizes or permits a person to perform warranty service  
20 or delivery and preparation work on a motor vehicle unless the person is a motor  
21 vehicle dealer with whom the manufacturer, importer, or distributor has entered into  
22 a franchise agreement for the sale and service of the manufacturer's, importer's, or  
23 distributor's motor vehicles. This subdivision shall not prohibit a manufacturer,  
24 importer, or distributor from:

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

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

13           c. Attempting to repair a nonconformity, as defined in s. 218.0171 (1) (f), to a  
14 vehicle, if the repair is reasonably necessary to prevent the manufacturer, importer,  
15 or distributor from becoming subject to the requirements of s. 218.0171 (2) (b).

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

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

21           218.0121 **(3m)** (b) 2. The dealer operator of the dealership is unable to acquire  
22 full ownership of the dealership with his or her own assets ~~or in conjunction with~~  
23 ~~financial investments and loans from investors or lenders other than the factory~~  
24 ~~holding an ownership interest in the dealership.~~

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

