

## 2005 ASSEMBLY BILL 823

1     **AN ACT** *to amend* 218.0114 (7) (d), 218.0116 (7) (a) 2., 218.0116 (7) (b) (intro.),  
2           218.0116 (8) (b) (intro.), 218.0116 (8) (b) 3., 218.0134 (2) (c), 218.0163 (1) (a) and  
3           218.0163 (1) (c); *to repeal and recreate* 218.0101 (30); and *to create* 218.0116  
4           (1) (x), 218.0163 (1q), 218.0163 (1r) and 218.0163 (3) of the statutes; **relating**  
5           **to:** motor vehicle dealers.

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*Analysis by the Legislative Reference Bureau*

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

6           **SECTION 1.** 218.0101 (30) of the statutes is repealed and recreated to read:  
7           218.0101 **(30)** “Relevant market area” means any of the following:  
8           (a) All of the area within a 10-mile radius of the site of an existing enfranchised  
9           motor vehicle dealership.  
10           (b) The area of sales responsibility assigned to the existing enfranchised  
11           dealership by the manufacturer, importer, or distributor.

**ASSEMBLY BILL 823****SECTION 2**

1           **SECTION 2.** 218.0114 (7) (d) of the statutes is amended to read:

2           218.0114 (7) (d) Any dealer or distributor discontinued or canceled may, on or  
3 before the date on which the discontinuation or cancellation becomes effective, file  
4 with the department of transportation and division of hearings and appeals and  
5 serve upon the respondent manufacturer, distributor or importer a complaint for a  
6 determination of unfair discontinuation or cancellation under s. 218.0116 (1) (i).  
7 Allowing opportunity for an answer, the division of hearings and appeals shall  
8 schedule a hearing on and decide the matter. The burden of proof at the hearing shall  
9 be on the manufacturer, distributor, or importer to show that the discontinuation or  
10 cancellation was fair, for just provocation, and with due regard to the equities.  
11 Agreements and certificates of appointment shall continue in effect until final  
12 determination of the issues raised in the complaint. If the complainant prevails the  
13 complainant shall have a cause of action against the respondent for reasonable  
14 expenses and attorney fees incurred by the complainant in the matter.

15           **SECTION 3.** 218.0116 (1) (x) of the statutes is created to read:

16           218.0116 (1) (x) Being a manufacturer, importer, or distributor who engages  
17 in any action or fails to engage in any action with respect to any enfranchised motor  
18 vehicle dealer in a manner that is arbitrary and causes material damage to the  
19 dealer.

20           **SECTION 4.** 218.0116 (7) (a) 2. of the statutes is amended to read:

21           218.0116 (7) (a) 2. If a complaint is filed under subd. 1., the department of  
22 transportation shall inform the manufacturer, importer or distributor that a timely  
23 complaint has been filed, that a hearing is required, and that the proposed franchise  
24 agreement may not be entered into until the division of hearings and appeals has  
25 held a hearing, nor thereafter, if the division of hearings and appeals determines that

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1 there is not good cause for ~~not~~ permitting the proposed establishment or relocation  
2 of the dealership or outlet. In the event of multiple complaints, hearings shall be  
3 consolidated to expedite the disposition of the issue.

4 **SECTION 5.** 218.0116 (7) (b) (intro.) of the statutes is amended to read:

5 218.0116 (7) (b) (intro.) In determining whether good cause exists for ~~not~~  
6 permitting the proposed establishment or relocation of a dealership or outlet, the  
7 burden of proof for showing good cause shall be on the manufacturer, importer, or  
8 distributor, and the division of hearings and appeals shall take into consideration the  
9 existing circumstances, including, but not limited to:

10 **SECTION 6.** 218.0116 (8) (b) (intro.) of the statutes is amended to read:

11 218.0116 (8) (b) (intro.) In making a determination of whether there is good  
12 cause for permitting a proposed modification, the burden of proof shall be on the  
13 manufacturer or distributor, except that the burden of proof with regard to the factor  
14 set forth in par. (b) 3. shall be on the dealer, and the division of hearings and appeals  
15 may consider any relevant factor including:

16 **SECTION 7.** 218.0116 (8) (b) 3. of the statutes is amended to read:

17 218.0116 (8) (b) 3. The degree to which the proposed modification will have a  
18 substantial and adverse effect upon the motor vehicle dealer's rights, investment, or  
19 return on investment.

20 **SECTION 8.** 218.0134 (2) (c) of the statutes is amended to read:

21 218.0134 (2) (c) A dealer who is served with a written statement by an affected  
22 grantor under par. (b) may file with the department of transportation and the  
23 division of hearings and appeals and serve upon the affected grantor a complaint for  
24 the determination of whether there is good cause for permitting the proposed action  
25 to be undertaken. The burden of proof for showing there is good cause for not

**ASSEMBLY BILL 823****SECTION 8**

1 permitting the proposed action shall be on the affected grantor. The division of  
2 hearings and appeals shall promptly schedule a hearing and decide the matter. The  
3 proposed action may not be undertaken pending the determination of the matter.

4 **SECTION 9.** 218.0163 (1) (a) of the statutes is amended to read:

5 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),  
6 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (v), ~~or~~ (w),  
7 or (x).

8 **SECTION 10.** 218.0163 (1) (c) of the statutes is amended to read:

9 218.0163 (1) (c) An affected grantor's disapproval of a proposed action under  
10 s. 218.0134 (2) (b), if the division of hearings and appeals has determined that there  
11 is not good cause for not permitting the proposed action to be undertaken following  
12 a hearing under s. 218.0134 (2) (c). A dealer may recover under this paragraph even  
13 if the affected grantor complies with the order of the division of hearing and appeals  
14 under s. 218.0134 (3) (b). If a dealer recovers damages for pecuniary loss, actual costs  
15 under this paragraph also include actual costs, including reasonable attorney fees,  
16 incurred by the dealer in obtaining the division of hearings and appeals'  
17 determination of good cause.

18 **SECTION 11.** 218.0163 (1q) of the statutes is created to read:

19 218.0163 (1q) In any action brought under this subsection, the burden of proof  
20 as to liability shall be the same as set forth in ss. 218.0114 (7) (d), 218.0116 (7) (b),  
21 and 218.0116 (8) (b) regarding complaints brought before the division of hearings and  
22 appeals, but the burden of proof as to damages shall be on the licensee seeking  
23 damages.

24 **SECTION 12.** 218.0163 (1r) of the statutes is created to read:

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1           218.0163 **(1r)** For purposes of subs. (1) and (1m), “licensee” means a person or  
2           entity holding a license at the time the cause of action arose regardless of whether  
3           the person or entity holds a license at the time an action under this section is  
4           commenced.

5           **SECTION 13.** 218.0163 (3) of the statutes is created to read:

6           218.0163 **(3)** A complainant or petitioner who prevails against a manufacturer,  
7           importer, or distributor as a result of a complaint or petition filed with the division  
8           of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163 or  
9           under s. 218.0116 (7) or (8) or 218.0134 shall have a cause of action against the  
10          manufacturer, importer, or distributor for reasonable expenses and attorney fees  
11          incurred by the complainant or petitioner in connection with all proceedings  
12          resulting from the complaint or petition. This subsection does not apply:

13          (a) If the division of hearings and appeals finds that the manufacturer,  
14          importer, or distributor was substantially justified or that special circumstances  
15          make an award of expenses and attorney fees unjust.

16          (b) To an action or proceeding under ss. 218.0114 (7) (d), 218.0131 (3) (c), and  
17          218.0163 (1) and (1m).

18          **SECTION 14. Initial applicability.**

19          (1) **FRANCHISE AGREEMENTS.** The treatment of section 218.0101 (30) of the  
20          statutes first applies to a franchise agreement that exists or is entered into on the  
21          effective date of this subsection.

22          (2) **ADMINISTRATIVE PROCEEDINGS.** The treatment of sections 218.0114 (7) (d),  
23          218.0116 (1) (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134 (2) (c),

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**SECTION 14**

1 and 218.0163 (1) (a) and (c), (1q), (1r), and (3) of the statutes first applies to an  
2 administrative proceeding that is commenced on the effective date of this subsection.

3 (END)