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2005 ASSEMBLY BILL 823

November 10, 2005 − Introduced by Representatives LAMB, FREESE, GRONEMUS, KESTELL, MONTGOMERY, HAHN, OWENS, MUSSER, LEMAHIEU, KRAWCZYK, HINES, GUNDERSON, GARD, KREIBICH, VOS, HUNDERTMARK, OTT, MOULTON and SUDER, cosponsored by Senators KAPANKE, A. LASEE, LEIBHAM and BRESKE. Referred to Committee on Transportation.

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

Analysis by the Legislative Reference Bureau

This bill clarifies certain duties a motor vehicle manufacturer, importer, or distributor has concerning motor vehicle dealers. Under current law, a manufacturer, importer, or distributor may be liable for civil damages, including actual costs and attorneys fees, if it causes harm to a dealer by certain actions or failure to act. Under this bill, a manufacturer, importer, or distributor may be liable for damages, including actual costs and attorneys fees, if it engages in action or fails to act in a way that is arbitrary and causes material damage to the dealer.

Under the bill, if a manufacturer, importer, or distributor cancels or discontinues an agreement with a dealer and the dealer challenges the cancellation or discontinuation as unwarranted, the burden of proof at a hearing before the Division of Hearings and Appeals in the Department of Administration (DOA) on the matter is on the manufacturer, distributor, or importer to show that the discontinuation or cancellation was fair, for just provocation, and with due regard to the equities.

Similarly, if a manufacturer, importer, or distributor seeks to modify an existing contract or to establish or relocate a dealership in the relevant market area of an

existing dealer of the same line make, or refuses to permit a dealer to take a proposed action, the burden of proof is on the manufacturer, importer, or distributor to demonstrate that there is good cause for the modification, establishment, relocation, or refusal. Under the bill, a dealer who prevails against a manufacturer, importer, or distributor at the hearing has a cause of action for reasonable expenses and attorneys fees incurred in connection with all proceedings resulting from the complaint, unless the expenses and fees are otherwise provided for by statute, or the Division of Hearings and Appeals in DOA determines that the actions of the manufacturer, importer, or distributor were substantially justified or that other circumstances would make awards of expenses and attorneys fees unjust.

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

SECTION 1. 218.0101 (30) of the statutes is repealed and recreated to read:

218.0101 **(30)** "Relevant market area" means any of the following:

(a) All of the area within a 10−mile radius of the site of an existing enfranchised motor vehicle dealership.

(b) The area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, importer, or distributor.

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

218.0114 **(7)** (d) Any dealer or distributor discontinued or canceled may, on or before the date on which the discontinuation or cancellation becomes effective, file with the department of transportation and division of hearings and appeals and serve upon the respondent manufacturer, distributor or importer a complaint for a determination of unfair discontinuation or cancellation under s. 218.0116 (1) (i). Allowing opportunity for an answer, the division of hearings and appeals shall schedule a hearing on and decide the matter. <u>The burden of proof at the hearing shall be on the manufacturer, distributor, or importer to show that the discontinuation or cancellation was fair, for just provocation, and with due regard to the equities.</u> Agreements and certificates of appointment shall continue in effect until final

determination of the issues raised in the complaint. If the complainant prevails the complainant shall have a cause of action against the respondent for reasonable expenses and attorney fees incurred by the complainant in the matter.

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

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

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

218.0116 **(7)** (a) 2. If a complaint is filed under subd. 1., the department of transportation shall inform the manufacturer, importer or distributor that a timely complaint has been filed, that a hearing is required, and that the proposed franchise agreement may not be entered into until the division of hearings and appeals has held a hearing, nor thereafter, if the division of hearings and appeals determines that there is not good cause for ~~not~~ permitting the proposed establishment or relocation of the dealership or outlet. In the event of multiple complaints, hearings shall be consolidated to expedite the disposition of the issue.

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

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

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

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

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

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

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

218.0134 **(2)** (c) A dealer who is served with a written statement by an affected grantor under par. (b) may file with the department of transportation and the division of hearings and appeals and serve upon the affected grantor a complaint for the determination of whether there is good cause for permitting the proposed action to be undertaken. The burden of proof for showing there is good cause for not permitting the proposed action shall be on the affected grantor. The division of hearings and appeals shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

SECTION 9. 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), (u), (v), ~~or~~ (w), or (x).

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

218.0163 **(1)** (c) An affected grantor's disapproval of a proposed action under s. 218.0134 (2) (b), if the division of hearings and appeals has determined that there

is not good cause for not permitting the proposed action to be undertaken following a hearing under s. 218.0134 (2) (c). A dealer may recover under this paragraph even if the affected grantor complies with the order of the division of hearing and appeals under s. 218.0134 (3) (b). 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.

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

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

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

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

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

218.0163 **(3)** A complainant or petitioner who prevails against a manufacturer, importer, or distributor as a result of a complaint or petition filed with the division of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163 or under s. 218.0116 (7) or (8) or 218.0134 shall have a cause of action against the manufacturer, importer, or distributor for reasonable expenses and attorney fees

incurred by the complainant or petitioner in connection with all proceedings resulting from the complaint or petition. This subsection does not apply:

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

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

SECTION 14. Initial applicability.

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

(2) ADMINISTRATIVE PROCEEDINGS. The treatment of sections 218.0114 (7) (d), 218.0116 (1) (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134 (2) (c), and 218.0163 (1) (a) and (c), (1q), (1r), and (3) of the statutes first applies to an administrative proceeding that is commenced on the effective date of this subsection.

(END)