

## 2005 DRAFTING REQUEST

### Bill

Received: 04/02/2005

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Andy Lamb (608) 266-7683

By/Representing:

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: Rep.Lamb@legis.state.wi.us

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

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### Topic:

Motor vehicle dealership and franchises

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### Instructions:

See Attached

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### 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>
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/P1	phurley 04/06/2005	jdyer 04/29/2005	jfrantze 04/29/2005	_____	lnorthro 04/29/2005		
	phurley 06/09/2005	kfollett 06/23/2005		_____			
	phurley 06/23/2005	kfollett 07/20/2005		_____			
/P2	phurley 08/10/2005	kfollett 08/11/2005	rschluet 07/20/2005	_____	lemery 07/20/2005		

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/P4			pgreensl 10/07/2005	_____ _____	lnorthro 10/07/2005		
/1	phurley 10/17/2005	kfollett 10/18/2005	pgreensl 10/18/2005	_____ _____	lemery 10/18/2005	sbasford 10/27/2005	

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<END>

*none  
needed*

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08/12/2005 \_\_\_\_\_

lemery  
08/12/2005

FE Sent For:

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10-4

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/P2		1 P3 kjf 8/11	rschluet 07/20/2005	_____	lemery 07/20/2005		

*Handwritten signatures and initials:*  
A large circular signature, possibly "P6", is written over the "Proofed" column for the /P2 entry.  
Other initials include "kjf" and "8/11" in the "Reviewed" column for /P2.

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

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1P2KJf  
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2005  
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/?	phurley	PI 4/27 jld	64/29	6/29 ch			

FE Sent For:

<END>

Hurley, Peggy

2639

**From:** Michel, James  
**Sent:** Wednesday, March 09, 2005 12:35 PM  
**To:** Hurley, Peggy  
**Subject:** FW: Proposed Changes to 218.0101, et seq. (03/01/05 draft)



Proposed Changes  
to Franchise ...

Peggy,

Please find the proposal attachment. If you have any questions feel free to call us of course. Thank you for your help.

Sincerely,

James T. Michel  
Office of Representative Andy Lamb  
Legislative Aide  
888-529-0029  
james.michel@legis.state.wi.us

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

**From:** Mary Ann Gerrard [mailto:mgerrard@watda.org]  
**Sent:** Wednesday, March 09, 2005 12:03 PM  
**To:** Michel, James  
**Subject:** Fw: Proposed Changes to 218.0101, et seq. (03/01/05 draft)

James, Here is a copy of the franchise draft. Thanks to you and Andy for your help, mary ann

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

**From:** "Paul Norman" <pnorman@boardmanlawfirm.com>  
**To:** <csnyder@watda.org>; <gwilliams@watda.org>; <mgerrard@watda.org>  
**Cc:** "Gary L. Antoniewicz" <gantoni@boardmanlawfirm.com>  
**Sent:** Tuesday, March 01, 2005 2:28 PM  
**Subject:** Proposed Changes to 218.0101, et seq. (03/01/05 draft)

- > Attached is the revised draft pursuant to the Franchise Law Task Force
- > discussion yesterday. The changes from the earlier draft are:
- >
- > (1) Change the word "essential" to "material" in proposed
- > 218.0116(h)1. (Item II) and the proposed amendment to 218.0101(1) (Item
- > V).
- >
- > (2) Add a proposal to make the manufacturer's breach of contract a
- > license violation (Item IV).
- >
- > (3) Add a proposal to allow dealers to recover legal expenses,
- > including attorney fees, if they prevail in administrative actions
- > before the division of hearings and appeal. (Item VIII).
- >
- > Let me know if you have any questions.
- >

**PROPOSED CHANGES TO WIS. STAT § 218.0101, ET SEQ.**  
**(03/01/2005)**

Note: Underlining indicates additions. Brackets ([ ]) indicate deletions.

**I. ✓ "RELEVANT MARKET AREA" DEFINITION**

Amend 218.0101(30) to read:

(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. [or]

(b) The area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, factory branch or distributor[, whichever is greater].

**II. ✓ COERCION**

Amend 218.0116(h) to read:

(h) 1. In this paragraph, "coerce" means to do or threaten to do any act that will deprive the motor vehicle dealer of a benefit available to other dealers of the same line make or to refuse or threaten to refuse to do any act that is material to providing the motor vehicle dealer with a benefit available to other dealers of the same line make.

2. Being a manufacturer, importer or distributor who has coerced or attempted to coerce any motor vehicle dealer to order any commodity or service or to accept delivery of or pay for any commodity or service that the motor vehicle dealer has not ordered. This paragraph does not modify or prohibit reasonable requirements in a franchise agreement that require a dealer to market and service a representative line of new motor vehicles that the manufacturer, importer or distributor is publicly advertising.

**III. ✓ ARBITRARY, BAD FAITH OR DISCRIMINATORY CONDUCT**

Create 218.0116(1)(x) to read:

(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 which action or failure is arbitrary, in bad faith or discriminatory compared to similarly situated dealers and causes damage to the dealer.

*add to (h), to be consistent with intro*



Amend 218.0163 (1)(a) to read:

(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).

#### **IV. BREACH OF CONTRACT**

Create 218.0116(1)(y) to read:

(y) Being a manufacturer, importer or distributor who breaches or fails to perform in accordance with an agreement entered into with a motor vehicle dealer.

Amend 218.0163 (1)(a) to read:

(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, (x), or (y).

#### **V. MODIFICATION OF DEALER AGREEMENTS**

Amend 218.0101(1) to read:

(1) "Agreement" means a contract, either expressed or implied, whether oral or written, that describes the franchise relationship between manufacturers, distributors, importers and dealers. "Agreement" includes all terms and conditions that are material to the franchise relationship whether or not contained in the written agreement between the parties and specifically includes the area of sales responsibility assigned to a motor vehicle dealer under s. 218.0114(11).

Amend 218.0116(8)(b)3 to read:

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.

#### **VI. BURDEN OF PROOF**

Amend 218.0114(7)(d) to read:

(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. The burden of proof at such 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. Agreements and certificates of appointment

shall continue in effect until final determination of the issues raised in the complaint. If the complaint 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.

Amend 218.0116 (7) (a) 2 and (b) to read: ✓

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 established or relocation of the dealership or outlet. In the event of multiple complaint, hearings shall be consolidated to expedite the disposition of the issue.

(b) 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, imports or distributors, and the division of hearings and appeals shall take into consideration the existing circumstances, including, but not limited to: ✓

Amend 218.0116 (8)(b) to read: ✓

(b) 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 distribution, and the division of hearings and appeals may consider any relevant factor including:

Amend 218.0134 (2)(c) to read: ✓

(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 not 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.

Amend 218.0163(1)(c) to read:

(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.

Create 218.0163(1)(q) to read:

(q) In any action brought under this subsection, the burden of proof shall be as provided in ss. 218.0114(7)(d), 218.0116(7)(b) and 218.0116 (8)(b) regarding complaints before the division of hearings and appeals. ✓

## VII. STANDING TO BRING DAMAGE ACTION ✓

Create 218.0163(1r) to read:

(1r) For purposes of sub. (1) and (1m), "licensee" includes a dealer licensee, the dealer licensee's owner or owners, and any entity affiliated with the dealer licensee through common ownership. Further, "licensee" shall mean a person or entity holding a license at the time the cause of action arose regardless of whether such person or entity holds a license at the time an action under this section is commenced.

## VIII. DEALER EXPENSES IN ADMINISTRATIVE ACTIONS

Create 218.0163(3) to read: . . .

*revised*  
(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 ss. 218.0116 (7) or (8), 218.0131 or 218.0134, shall have a cause of action against the manufacturer, importer or distributor for the actual costs, including reasonable attorney fees, incurred by the complainant or petitioner in connection with all proceedings resulting from such complaint or petition.

## IX. INITIAL APPLICABILITY

**Initial applicability.** This act first applies to a franchise agreement that exists or is entered into on the effective date of this Section.

5/2

Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4-6-05  
D-note

1 AN ACT <sup>Gen</sup>...; relating to: motor vehicle dealers

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 218.0101 (1) of the statutes is amended to read:

3 218.0101 (1) "Agreement" means a written or oral contract, either express or  
4 implied, that describes the franchise relationship between manufacturers,  
5 distributors, importers and dealers. "Agreement" includes all terms and conditions  
6 that are material to the franchise relationship, whether or not contained in the  
7 written agreement between the parties and specifically includes the area of sale  
8 responsibility assigned to a motor vehicle dealer under s. 218.0114 (11).

History: 1999 a. 31 ss. 15 to 53; 2001 a. 102; 2003 a. 76, 216.

9 SECTION 2. 218.0101 (30) of the statutes is repealed and recreated to read:

1 218.0101 (30) "Relevant market area" means any of the following: plain

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

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

6 SECTION 3. 218.0114 (7) (d) of the statutes is amended to read:

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

20 History: 1999 a. 31 ss. 57 to 104; 1999 a. 186; 2003 a. 76, 77, 215, 216, 327.

21 SECTION 4. 218.0116 (1) (h) of the statutes is amended to read:

22 218.0116 (1) (h) Being a manufacturer, importer or distributor who has coerced  
23 or attempted to coerce any motor vehicle dealer to order any commodity or service  
24 or to accept delivery of or pay for any commodity or service that the motor vehicle  
dealer has not ordered. This paragraph does not modify or prohibit reasonable

1 requirements in a franchise agreement that require a dealer to market and service  
2 a representative line of new motor vehicles that the manufacturer, importer or  
3 distributor is publicly advertising. For the purposes of this paragraph, “coerce”  
4 means to do or threaten to do any act that will deprive the motor vehicle dealer of a  
5 benefit available to other dealers of the same line make or to refuse or threaten to  
6 refuse to do any act that is material to providing the motor vehicle dealer with a  
7 benefit available to other dealers of the same line make.

8 History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326.

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

9 218.0116 (1) (x) Being a manufacturer, importer, or distributor who engages  
10 in any action or fails to engage in any action with respect to any enfranchised motor  
11 vehicle dealer in a manner that is arbitrary, in bad faith, or discriminatory compared  
12 to similarly situated dealers and that causes damage to the dealer.

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

14 218.0116 (1) (y) Being a manufacturer, importer, or distributor who breaches  
15 or fails to perform in accordance with an agreement entered into with a motor vehicle  
16 dealer.

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

18 218.0116 (7) (a) 2. If a complaint is filed under subd. 1., the department of  
19 transportation shall inform the manufacturer, importer or distributor that a timely  
20 complaint has been filed, that a hearing is required, and that the proposed franchise  
21 agreement may not be entered into until the division of hearings and appeals has  
22 held a hearing, nor thereafter, if the division of hearings and appeals determines that  
23 there is not good cause for ~~not~~ permitting the proposed establishment or relocation

1 of the dealership or outlet. In the event of multiple complaints, hearings shall be  
2 consolidated to expedite the disposition of the issue.

3 History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326.

3 **SECTION 8.** 218.0116 (7) (b) (intro.)<sup>✓</sup> of the statutes is amended to read:

4 218.0116 (7) (b) (intro.) In determining whether good cause exists for ~~not~~  
5 permitting the proposed establishment or relocation of a dealership or outlet, the  
6 burden of proof for showing good cause shall be on the manufacturer, importer, or  
7 distributor, and the division of hearings and appeals shall take into consideration the  
8 existing circumstances, including, but not limited to:

9 History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326.

9 **SECTION 9.** 218.0116 (8) (b) (intro.)<sup>✓</sup> of the statutes is amended to read:

10 218.0116 (8) (b) (intro.) In making a determination of whether there is good  
11 cause for permitting a proposed modification, the burden of proof shall be on the  
12 manufacturer, importer, or distributor,<sup>✓</sup> and the division of hearings and appeals may  
13 consider any relevant factor including:

14 History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326.

14 **SECTION 10.** 218.0116 (8) (b) 3.<sup>✓</sup> of the statutes is amended to read:

15 218.0116 (8) (b) 3. The degree to which the proposed modification will have a  
16 substantial and adverse effect upon the motor vehicle dealer's rights,<sup>✓</sup> investment, or  
17 return on investment.

18 History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326.

18 **SECTION 11.** 218.0134 (2) (c)<sup>✓</sup> of the statutes is amended to read:

19 218.0134 (2) (c) A dealer who is served with a written statement by an affected  
20 grantor under par. (b) may file with the department of transportation and the  
21 division of hearings and appeals and serve upon the affected grantor a complaint for  
22 the determination of whether there is good cause for permitting the proposed action  
23 to be undertaken. The burden of proof for showing there is good cause for not

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 History: 1999 a. 31 ss. 235 to 246; 2001 a. 31.

**SECTION 12.** 218.0163 (1) (a) <sup>✓</sup> 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 (x), or (y). ✓

8 History: 1999 a. 31 s. 283; 2001 a. 31; 2003 a. 77.

**SECTION 13.** 218.0163 (1) (c) <sup>✓</sup> 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 History: 1999 a. 31 s. 283; 2001 a. 31; 2003 a. 77.

**SECTION 14.** 218.0163 (1) (q) <sup>(19)</sup> of the statutes is created to read:

19 218.0163 (1) (q) <sup>(19)</sup> In any action brought under this section, <sup>(3)</sup> the burden of proof  
 20 shall be as provided in ss. 218.0114 (7) (d), <sup>(19)</sup> 218.0116 (7) (b), <sup>(19)</sup> and 218.0116 (8) (b).

21 **SECTION 15.** 218.0163 (1) ~~(u)~~ <sup>(14)</sup> of the statutes is created to read:

22 218.0163 ~~(1) (u)~~ <sup>(14)</sup> For the purposes of sub. <sup>s</sup>(1) ~~and (am)~~ <sup>and (1m)</sup>, "licensee" includes a  
 23 <sup>(14)</sup> dealer licensee, the dealer licensee's owner or owners, and any entity affiliated with  
 24 <sup>B</sup> the dealer licensee through common ownership. In addition, "licensee" means a



1 person or entity holding a license at the time the cause of action arose, regardless of  
2 whether such person or entity holds a license at the time an action under this section  
3 is commenced.

4 **SECTION 16.** 218.0163 (3) of the statutes is created to read:

5 218.0163 (3) A complainant or petitioner who prevails against a manufacturer,  
6 importer, or distributor as a result of a complaint or petition filed with the division  
7 of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163  
8 shall have a cause of action against the manufacturer, importer, or distributor for the  
9 actual costs, including reasonable attorneys fees, incurred by the complainant or  
10 petitioner in connection with all proceedings resulting from the complaint or  
11 petition.

12 **SECTION 17. Initial applicability.**

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

15 (END)

↓ note  
↓

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

PI  
LRB-26397dn

PJH:.....  
JLD

Representative Lamb,

Please review this draft carefully to ensure that it is consistent with your intent. I have drafted the bill according to the instructions forwarded from Mary Ann Gerrard, with a few technical or grammatical changes, but I am uncertain as to the overall intent of this bill. I have held off writing an analysis because I want to make sure that the bill is drafted as you wish, and also because I would like to talk with you or someone from your office to ensure that the bill does everything you intend it to do. Please let me know if we can set up a meeting or, if you wish, if I can speak with Ms. Gerrard about the intent behind this bill.

Also, the initial applicability provision as drafted may pose a problem, as it affects contracts that are in effect at the time the legislation is passed. Article I, Section 12, of the Wisconsin Constitution and Article I, Section 10, of the U.S. Constitution prohibit legislation that impairs the obligation of contracts. Whenever the terms of a contract as agreed upon by the parties is changed by legislation, there is an impairment of the obligation of that contract. To avoid this problem, I would recommend that the legislation be prospective in application. Please let me know your thoughts on this matter.

Thank you; I look forward to hearing from you.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2639/P1dn  
PJH:jld:jf

April 29, 2005

Representative Lamb,

Please review this draft carefully to ensure that it is consistent with your intent. I have drafted the bill according to the instructions forwarded from Mary Ann Gerrard, with a few technical or grammatical changes, but I am uncertain as to the overall intent of this bill. I have held off writing an analysis because I want to make sure that the bill is drafted as you wish, and also because I would like to talk with you or someone from your office to ensure that the bill does everything that you intend it to do. Please let me know if we can set up a meeting or, if you wish, if I can speak with Ms. Gerrard about the intent behind this bill.

Also, the initial applicability provision as drafted may pose a problem, as it affects contracts that are in effect at the time the legislation is passed. Article I, section 12, of the Wisconsin Constitution and article I, section 10, of the U.S. Constitution prohibit legislation that impairs the obligation of contracts. Whenever the terms of a contract as agreed upon by the parties is changed by legislation, there is an impairment of the obligation of that contract. To avoid this problem, I would recommend that the legislation be prospective in application. Please let me know your thoughts on this matter.

Thank you; I look forward to hearing from you.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)

**Hurley, Peggy**

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**From:** Michel, James  
**Sent:** Wednesday, June 08, 2005 3:40 PM  
**To:** Hurley, Peggy  
**Subject:** FW: franchise draft

Peggy,

Below please find the final negotiated product between the two groups concerned with this legislation.

Rep. Lamb asks that you please make these changes and eliminate anything from the earlier draft that is not included in this draft. Any questions let us know.

THANK YOU!

Sincerely,

**James T. Michel**

*Office of Representative Andy Lamb*  
*29th Assembly District*  
**Legislative Aide**  
888-529-0029  
608-266-7683  
[james.michel@legis.state.wi.us](mailto:james.michel@legis.state.wi.us)

**PROPOSED CHANGES TO WIS. STAT § 218.0101, ET SEQ.**  
**(06/05/2005- Without preclusion language)**

Note: Underlining indicates additions. Brackets ([ ]) indicate deletions.

**I. "RELEVANT MARKET AREA" DEFINITION**

Amend 218.0101(30) to read:

(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. [or]

(b) The area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, factory branch or distributor[, whichever is greater].

OK

**II. ARBITRARY, BAD FAITH OR DISCRIMINATORY CONDUCT**

Create 218.0116(1)(x) to read:

(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 which action or failure is arbitrary and causes material damage to the dealer. OK

Amend 218.0163 (1)(a) to read:

(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). OK

*delete created 218.0116(1)(y) ✓*

**III. MODIFICATION OF DEALER AGREEMENTS**

Amend 218.0101(1) to read:

(1) "Agreement" means a contract that describes the franchise relationship between manufacturers, distributors, importers and dealers. "Agreement" includes the area of sales responsibility assigned to a motor vehicle dealer under s. 218.0114(11). OK

Amend 218.0116(8)(b)3 to read:

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. OK

**IV. BURDEN OF PROOF**

Amend 218.0114(7)(d) to read:

(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. The burden of proof at such 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. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in the complaint. If the complaint 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. OK

Amend 218.0116 (7) (a) 2 and (b) to read:

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 established or relocation of the dealership or outlet. In the event of multiple complaint, hearings shall be consolidated to expedite the disposition of the issue. OK

(b) 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, imports or distributors, and the division of hearings and appeals shall take into consideration the existing circumstances, including, but not limited to:

Amend 218.0116 (8)(b) to read:

(b) 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 shall be on the dealer with regard to the factor set forth in s. 218.0116(8)(b)3, and the division of hearings and appeals may consider any relevant factor including:

Amend 218.0134 (2)(c) to read:

(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 not 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.

Amend 218.0163(1)(c) to read:

(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.

Create 218.0163(1)(q) to read:

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

## V. STANDING TO BRING DAMAGE ACTION

Create 218.0163(1r) to read:

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

## VI. DEALER EXPENSES IN ADMINISTRATIVE ACTIONS

Create 218.0163(3) to read: . . .

insert

(3) Except as provided in ss. 218.0114(7)(d) and 218.0131(3)(c), 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 ss. 218.0116 (7) or (8), 218.0131 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 such complaint or petition, unless the division of hearings and appeals finds that the manufacturer's, importer's or distributor's position was substantially justified or that special circumstances make an award of such expenses and fees unjust.

**VII. INITIAL APPLICABILITY**

**Initial applicability.** This act first applies to a franchise agreement that exists or is entered into on the effective date of this Section, but does not apply to actions or administrative proceedings that exist on the effective date of this Section.

Handwritten note: "does this initial app agreements" with a large question mark and arrows pointing to the right.

P2  
↓  
E:kgf

1/25

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

6-23  
6-11-05

Regen

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

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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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 (1) of the statutes is amended to read:

7 218.0101 (1) "Agreement" means a written or oral contract, either express or  
8 implied, that describes the franchise relationship between manufacturers,  
9 distributors, importers and dealers. "Agreement" includes all terms and conditions  
10 that are material to the franchise relationship, whether or not contained in the



1 written agreement between the parties and specifically includes the area of sale  
2 responsibility assigned to a motor vehicle dealer under s. 218.0114 (11).

3 **SECTION 2.** 218.0101 (30) of the statutes is repealed and recreated to read:

4 218.0101 (30) "Relevant market area" means any of the following:

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

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

9 **SECTION 3.** 218.0114 (7) (d) of the statutes is amended to read:

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

23 **SECTION 4.** 218.0116 (1) (h) of the statutes is amended to read:

24 218.0116 (1) (h) Being a manufacturer, importer or distributor who has coerced  
25 or attempted to coerce any motor vehicle dealer to order any commodity or service

1 or to accept delivery of or pay for any commodity or service that the motor vehicle  
2 dealer has not ordered. This paragraph does not modify or prohibit reasonable  
3 requirements in a franchise agreement that require a dealer to market and service  
4 a representative line of new motor vehicles that the manufacturer, importer or  
5 distributor is publicly advertising. For the purposes of this paragraph, "coerce"  
6 means to do or threaten to do any act that will deprive the motor vehicle dealer of a  
7 benefit available to other dealers of the same line make or to refuse or threaten to  
8 refuse to do any act that is material to providing the motor vehicle dealer with a  
9 benefit available to other dealers of the same line make.

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

11 218.0116 (1) (x) Being a manufacturer, importer, or distributor who engages  
12 in any action or fails to engage in any action with respect to any enfranchised motor  
13 vehicle dealer in a manner that is arbitrary, in bad faith, or discriminatory compared  
14 to similarly situated dealers <sup>and</sup> that causes damage to the dealer.

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

16 218.0116 (1) (y) Being a manufacturer, importer, or distributor who breaches  
17 or fails to perform in accordance with an agreement entered into with a motor vehicle  
18 dealer.

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

20 218.0116 (7) (a) 2. If a complaint is filed under subd. 1., the department of  
21 transportation shall inform the manufacturer, importer or distributor that a timely  
22 complaint has been filed, that a hearing is required, and that the proposed franchise  
23 agreement may not be entered into until the division of hearings and appeals has  
24 held a hearing, nor thereafter, if the division of hearings and appeals determines that  
25 there is not good cause for ~~not~~ permitting the proposed establishment or relocation

1 of the dealership or outlet. In the event of multiple complaints, hearings shall be  
2 consolidated to expedite the disposition of the issue.

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

4 218.0116 (7) (b) (intro.) In determining whether good cause exists for not  
5 permitting the proposed establishment or relocation of a dealership or outlet, the  
6 burden of proof for showing good cause shall be on the manufacturer, importer, or  
7 distributor, and the division of hearings and appeals shall take into consideration the  
8 existing circumstances, including, but not limited to:

9 **SECTION 9.** 218.0116 (8) (b) (intro.) of the statutes is amended to read:

10 218.0116 (8) (b) (intro.) In making a determination of whether there is good  
11 cause for permitting a proposed modification, the burden of proof shall be on the  
12 manufacturer, importer, or distributor, and the division of hearings and appeals may  
13 consider any relevant factor including:

14 **SECTION 10.** 218.0116 (8) (b) 3. of the statutes is amended to read:

15 218.0116 (8) (b) 3. The degree to which the proposed modification will have a  
16 substantial and adverse effect upon the motor vehicle dealer's rights, investment, or  
17 return on investment.

18 **SECTION 11.** 218.0134 (2) (c) of the statutes is amended to read:

19 218.0134 (2) (c) A dealer who is served with a written statement by an affected  
20 grantor under par. (b) may file with the department of transportation and the  
21 division of hearings and appeals and serve upon the affected grantor a complaint for  
22 the determination of whether there is good cause for permitting the proposed action  
23 to be undertaken. The burden of proof for showing there is good cause for not  
24 permitting the proposed action shall be on the affected grantor. The division of

except that the burden of  
proof with regard to the  
factor set forth in par. (b) 3. shall be  
on the dealer.

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

3 **SECTION 12.** 218.0163 (1) (a) of the statutes is amended to read:

4 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),  
5 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (v), or (w),

6 ~~(x), or (y).~~

7 **SECTION 13.** 218.0163 (1) (c) of the statutes is amended to read:

8 218.0163 (1) (c) An affected grantor's disapproval of a proposed action under  
9 s. 218.0134 (2) (b), if the division of hearings and appeals has determined that there  
10 is not good cause for not permitting the proposed action to be undertaken following  
11 a hearing under s. 218.0134 (2) (c). A dealer may recover under this paragraph even  
12 if the affected grantor complies with the order of the division of hearing and appeals  
13 under s. 218.0134 (3) (b). If a dealer recovers damages for pecuniary loss, actual costs  
14 under this paragraph also include actual costs, including reasonable attorney fees,  
15 incurred by the dealer in obtaining the division of hearings and appeals'  
16 determination of good cause.

17 **SECTION 14.** 218.0163 (1q) of the statutes is created to read:

18 218.0163 (1q) In any action brought under this section, the burden of proof  
19 shall be as provided in ss. 218.0114 (7) (d), 218.0116 (7) (b), and 218.0116 (8) (b).

20 **SECTION 15.** 218.0163 (1u) of the statutes is created to read:

21 218.0163 (1u) For the purposes of subs. (1) and (1m), "licensee" includes a  
22 dealer licensee, the dealer licensee's owner or owners, and any entity affiliated with  
23 the dealer licensee through common ownership. In addition, "licensee" means a  
24 person or entity holding a license at the time the cause of action arose, regardless of

Except as provided in ss. 218.0114(7)(d) ~~218.0114(7)(d)~~

1 whether such person or entity holds a license at the time an action under this section  
2 is commenced.

3 SECTION 16. 218.0163 (3) of the statutes is created to read:

4 218.0163 (3) A complainant or petitioner who prevails against a manufacturer,  
5 importer, or distributor as a result of a complaint or petition filed with the division  
6 of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163  
7 shall have a cause of action against the manufacturer, importer, or distributor for the  
8 actual costs, including reasonable attorney fees, incurred by the complainant or  
9 petitioner in connection with all proceedings resulting from the complaint or  
10 petition.

CS Franchise agreements.

11 SECTION 17. Initial applicability.

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

14 (END)

Change  
complaint  
to  
text. in  
app. 13

(#) Administrative proceedings. This act first applies to an administrative proceeding that is commenced on the effective date of this subsection.

the treatment of and of the statutes  
218.0101(1)(30)

The treatment of sections  
218.0114(7)(d), 218.0116(1)(h) and (x), (7)(a) 2. (b) (intro.) and 3., 218.0134 (2)(c) and 218.0163 (1)(a) and (c), (1g), (1r), (1u), and (3) of the statutes

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2639/P1ins  
PJH:jld:jf

INSERT A:

**SECTION 1.** 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 2.** 218.0163 (1r) of the statutes is created to read:

X  
218.0163 (1r) For purposes of sub<sup>s</sup> (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.