

lamb

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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), 218.0163 (1q), 218.0163 (1r), ~~218.0163 (1u)~~
 5 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.

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

1 SECTION 2. 218.0101 (30) of the statutes is repealed and recreated to read:

2 218.0101 (30) "Relevant market area" means any of the following:

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

5 (b) The area of sales responsibility assigned to the existing enfranchised
6 dealership by the manufacturer, ^{importer} factory branch, or distributor.

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

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

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~~
25 ~~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 SECTION ~~4~~ 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 and causes ^{material} damage to the dealer.

12 SECTION ~~5~~ 218.0116 (7) (a) 2. of the statutes is amended to read:

13 218.0116 (7) (a) 2. If a complaint is filed under subd. 1., the department of
14 transportation shall inform the manufacturer, importer or distributor that a timely
15 complaint has been filed, that a hearing is required, and that the proposed franchise
16 agreement may not be entered into until the division of hearings and appeals has
17 held a hearing, nor thereafter, if the division of hearings and appeals determines that
18 there is not good cause for ~~not~~ permitting the proposed establishment or relocation
19 of the dealership or outlet. In the event of multiple complaints, hearings shall be
20 consolidated to expedite the disposition of the issue.

21 SECTION ~~6~~ 218.0116 (7) (b) (intro.) of the statutes is amended to read:

22 218.0116 (7) (b) (intro.) In determining whether good cause exists for ~~not~~
23 permitting the proposed establishment or relocation of a dealership or outlet, the
24 burden of proof for showing good cause shall be on the manufacturer, importer, or

1 distributor, and the division of hearings and appeals shall take into consideration the
2 existing circumstances, including, but not limited to:

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

4 218.0116 (8) (b) (intro.) In making a determination of whether there is good
5 cause for permitting a proposed modification, the burden of proof shall be on the
6 manufacturer or distributor, except that the burden of proof with regard to the factor
7 set forth in par. (b) 3. shall be on the dealer, and the division of hearings and appeals
8 may consider any relevant factor including:

9 ~~SECTION 9.~~⁸ 218.0116 (8) (b) 3. of the statutes is amended to read:

10 218.0116 (8) (b) 3. The degree to which the proposed modification will have a
11 substantial and adverse effect upon the motor vehicle dealer's rights, investment, or
12 return on investment.

13 ~~SECTION 10.~~⁹ 218.0134 (2) (c) of the statutes is amended to read:

14 218.0134 (2) (c) A dealer who is served with a written statement by an affected
15 grantor under par. (b) may file with the department of transportation and the
16 division of hearings and appeals and serve upon the affected grantor a complaint for
17 the determination of whether there is good cause for permitting the proposed action
18 to be undertaken. The burden of proof for showing there is good cause for not
19 permitting the proposed action shall be on the affected grantor. The division of
20 hearings and appeals shall promptly schedule a hearing and decide the matter. The
21 proposed action may not be undertaken pending the determination of the matter.

22 ~~SECTION 11.~~¹⁰ 218.0163 (1) (a) of the statutes is amended to read:

23 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
24 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (v), ~~or~~ (w),
25 or (x).

1 ¹¹
~~SECTION 12.~~ 218.0163 (1) (c) of the statutes is amended to read:

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

11 ¹²
SECTION ~~12.~~ 218.0163 (1q) of the statutes is created to read:

12 218.0163 (1q) In any action brought under this subsection, the burden of proof
13 as to liability shall be the same as set forth in ss. 218.0114 (7) (d), 218.0116 (7) (b),
14 and 218.0116 (8) (b) regarding complaints brought before the division of hearings and
15 appeals, but the burden of proof as to damages shall be on the licensee seeking
16 damages.

17 ¹³
SECTION ~~13.~~ 218.0163 (1r) of the statutes is created to read:

18 218.0163 (1r) For purposes of subs. (1) and (1m), "licensee" means a person or
19 entity holding a license at the time the cause of action arose regardless of whether
20 the person or entity holds a license at the time an action under this section is
21 commenced.

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

23 ~~218.0163 (1u)~~ For the purposes of subs. (1) and (1m), "licensee" includes a
24 dealer licensee, the dealer licensee's owner or owners, and any entity affiliated with
25 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:

218.0131(3)(c) and 218.0163(1)

5 218.0163 (3) Except as provided in s. 218.0114 (7) (d), a complainant or
6 petitioner who prevails against a manufacturer, importer, or distributor as a result
7 of a complaint or petition filed with the division of hearings and appeals based on an

8 alleged violation of ss. 218.0101 to 218.0163 shall have a cause of action against the
9 manufacturer, importer, or distributor for reasonable attorney fees incurred by the
10 complainant or petitioner in connection with all proceedings resulting from the
11 complaint or petition

or under ss. 218.0116(2) or (8), or 218.0134,

expenses and 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.

12 SECTION 17. Initial applicability.

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

16 (2) ADMINISTRATIVE PROCEEDINGS. The treatment of sections 218.0114 (7) (d),
17 218.0116 (1) (h) and (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134
18 (2) (c), and 218.0163 (1) (a) and (c), (1q), (1r), ~~(1s)~~, and (3) of the statutes first applies
19 to an administrative proceeding that is commenced on the effective date of this
20 subsection.

21 (END)

Stays

P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

8/10/05

regen

1 **AN ACT to amend** 218.0101 (1), 218.0114 (7) (d), 218.0116 (1) (h), 218.0116 (7) (a)
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4 motor vehicle dealership.

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6 dealership by the manufacturer, ~~factory branch~~, or distributor. importer

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

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25 dealer has not ordered. This paragraph does not modify or prohibit reasonable

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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
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12 SECTION 17. Initial applicability. *importer, or distributor was*

13 (1) FRANCHISE AGREEMENTS. The treatment of section 218.0101 (1) and (30) of
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15 the effective date of this subsection. *substantially
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16 (2) ADMINISTRATIVE PROCEEDINGS. The treatment of sections 218.0114 (7) (d),
17 218.0116 (1) ~~(h)~~ and (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134
18 (2) (c), and 218.0163 (1) (a) and (c), (1q), (1r), ~~(1u)~~ and (3) of the statutes first applies *award
of
expenses
and
attorney
fees
unjust.*
19 to an administrative proceeding that is commenced on the effective date of this
20 subsection.

21 (END)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

9.23.05

Regen

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 2 (b) (intro.), 218.0116 (8) (b) (intro.), 218.0116 (8) (b) 3., 218.0134 (2) (c), 218.0163
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18 cause for permitting a proposed modification, the burden of proof shall be on the
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19 subsection does not apply if the division of hearings and appeals finds that the
20 manufacturer, importer, or distributor was substantially justified or that special
21 circumstances make an award of expenses and attorney fees unjust.

22 **SECTION 15. Initial applicability.**

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

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

5

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2639/P3ins
PJH:jld&kjf:rs

1

~~Analysis insert.~~

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 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 refuses to permit a dealer to modify an existing contract, to take a proposed action, or to establish or relocate a dealership to a new location, the burden of proof is on the manufacturer, importer, or distributor to demonstrate that the refusal was for good cause. 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 division of hearings and appeals determines that the actions of the manufacturer, importer, or distributor were substantially justified or that other circumstances would make an award of expenses and attorney fees unjust.

in the Department of Administration (DOA) X

in DOA

X
X

S

S

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

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

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

~~218.0101 (1) "Agreement" means a contract that describes the franchise relationship between manufacturers, distributors, importers and dealers.~~

~~"Agreement" includes the area of sale responsibility assigned to a motor vehicle dealer under s. 218.0114 (11).~~

SECTION 2. 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 3. 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

1 schedule a hearing on and decide the matter. The burden of proof at the hearing shall
2 be on the manufacturer, distributor, or importer to show that the discontinuation or
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4 Agreements and certificates of appointment shall continue in effect until final
5 determination of the issues raised in the complaint. If the complainant prevails the
6 complainant shall have a cause of action against the respondent for reasonable
7 expenses and attorney fees incurred by the complainant in the matter.

8 **SECTION 4.** 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 and causes material damage to the
12 dealer.

13 **SECTION 5.** 218.0116 (7) (a) 2. of the statutes is amended to read:

14 218.0116 (7) (a) 2. If a complaint is filed under subd. 1., the department of
15 transportation shall inform the manufacturer, importer or distributor that a timely
16 complaint has been filed, that a hearing is required, and that the proposed franchise
17 agreement may not be entered into until the division of hearings and appeals has
18 held a hearing, nor thereafter, if the division of hearings and appeals determines that
19 there is not good cause for ~~not~~ permitting the proposed establishment or relocation
20 of the dealership or outlet. In the event of multiple complaints, hearings shall be
21 consolidated to expedite the disposition of the issue.

22 **SECTION 6.** 218.0116 (7) (b) (intro.) of the statutes is amended to read:

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24 permitting the proposed establishment or relocation of a dealership or outlet, the
25 burden of proof for showing good cause shall be on the manufacturer, importer, or

1 distributor, and the division of hearings and appeals shall take into consideration the
2 existing circumstances, including, but not limited to:

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

4 218.0116 (8) (b) (intro.) In making a determination of whether there is good
5 cause for permitting a proposed modification, the burden of proof shall be on the
6 manufacturer or distributor, except that the burden of proof with regard to the factor
7 set forth in par. (b) 3. shall be on the dealer, and the division of hearings and appeals
8 may consider any relevant factor including:

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

10 218.0116 (8) (b) 3. The degree to which the proposed modification will have a
11 substantial and adverse effect upon the motor vehicle dealer's rights, investment, or
12 return on investment.

13 **SECTION 9.** 218.0134 (2) (c) of the statutes is amended to read:

14 218.0134 (2) (c) A dealer who is served with a written statement by an affected
15 grantor under par. (b) may file with the department of transportation and the
16 division of hearings and appeals and serve upon the affected grantor a complaint for
17 the determination of whether there is good cause for permitting the proposed action
18 to be undertaken. The burden of proof for showing there is good cause for not
19 permitting the proposed action shall be on the affected grantor. The division of
20 hearings and appeals shall promptly schedule a hearing and decide the matter. The
21 proposed action may not be undertaken pending the determination of the matter.

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

23 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
24 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (v), ~~or~~ (w),
25 or (x).

1 **SECTION 11.** 218.0163 (1) (c) of the statutes is amended to read:

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

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

12 218.0163 (1q) In any action brought under this subsection, the burden of proof
13 as to liability shall be the same as set forth in ss. 218.0114 (7) (d), 218.0116 (7) (b),
14 and 218.0116 (8) (b) regarding complaints brought before the division of hearings and
15 appeals, but the burden of proof as to damages shall be on the licensee seeking
16 damages.

17 **SECTION 13.** 218.0163 (1r) of the statutes is created to read:

18 218.0163 (1r) For purposes of subs. (1) and (1m), "licensee" means a person or
19 entity holding a license at the time the cause of action arose regardless of whether
20 the person or entity holds a license at the time an action under this section is
21 commenced.

22 **SECTION 14.** 218.0163 (3) of the statutes is created to read:

23 218.0163 (3) ~~Except as provided in s. 218.0114 (7) (d), 218.0131 (3) (c), and~~
24 ~~218.0163 (1),~~ **A** complainant or petitioner who prevails against a manufacturer,
25 importer, or distributor as a result of a complaint or petition filed with the division

1 of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163
 2 shall have a cause of action against the manufacturer, importer, or distributor for
 3 reasonable expenses and attorney fees incurred by the complainant or petitioner in
 4 connection with all proceedings resulting from the complaint or petition. This
 5 subsection does not apply if the division of hearings and appeals finds that the
 6 manufacturer, importer, or distributor was substantially justified or that special
 7 circumstances make an award of expenses and attorney fees unjust.

Handwritten: This
 Except as provided
 in s. 218.
 0114(7)(d),
 218.0131(3)
 (e), 218.0163
 and 218.0163
 (1m),

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

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 13 218.0116 (1) (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134 (2) (c),
 14 and 218.0163 (1) (a) and (c), (1q), (1r), and (3) of the statutes first applies to an
 15 administrative proceeding that is commenced on the effective date of this subsection.

(END)

Handwritten: or under ss. 218.0116(7) or (8),
 or 218.0134,

Handwritten: If this fee is
 awarded under
 (a) to an action or proceeding
 under ...
 (b) If justified/
 unjust

stays

py

10-7

regen

1 **AN ACT to amend** 218.0101 (1), 218.0114 (7) (d), 218.0116 (7) (a) 2., 218.0116 (7)
 2 (b) (intro.), 218.0116 (8) (b) (intro.), 218.0116 (8) (b) 3., 218.0134 (2) (c), 218.0163
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the expenses and fees are otherwise provided for by statute or

a dealership to a new location, the burden of proof is on the manufacturer, importer, or distributor to demonstrate that the refusal was for good cause. 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 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.

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

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

23 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
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10 determination of good cause.

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12 218.0163 (1q) In any action brought under this subsection, the burden of proof
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16 damages.

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20 the person or entity holds a license at the time an action under this section is
21 commenced.

22 **SECTION 14.** 218.0163 (3) of the statutes is created to read:

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24 218.0163 (1), a complainant or petitioner who prevails against a manufacturer,
25 importer, or distributor as a result of a complaint or petition filed with the division

or under ~~ss. 218.0116(7) or (8)~~ or ~~ss. 218.0134~~

1 of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163
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6 manufacturer, importer, or distributor was substantially justified or that special
7 circumstances make an award of expenses and attorney fees unjust.

•••
#(a)
=IF

SECTION 15. Initial applicability.

8
9 (1) FRANCHISE AGREEMENTS. The treatment of section 218.0101 ~~(1) and (30)~~ of
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13 218.0116 (1) (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134 (2) (c),
14 and 218.0163 (1) (a) and (c), (1q), (1r), and (3) of the statutes first applies to an
15 administrative proceeding that is commenced on the effective date of this subsection.

16 (END)

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

Hurley, Peggy

From: Michel, James
Sent: Monday, October 17, 2005 11:29 AM
To: Hurley, Peggy
Subject: FW: LRB 2639

Attachments: 05-2639/P4

Peggy,

As of the last revision LRB 2639 (/4 I believe) is the way we want it. Could you please submit a /1 so that we can have it jacketed? See e-mail below for clarification.

Thanks,

James

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

From: Emery, Lynn
Sent: Monday, October 17, 2005 10:17 AM
To: Michel, James
Subject: RE: LRB 2639

James,

In order to jacket this, the drafting attorney (Peggy Hurley) will have to make it a /1. I've attached a pdf of the /P4 and once the /1 is submitted and jacketed you will receive a pdf of that in the Rep. Lamb inbox.

Sorry for the confusion!



05-2639P4.pdf (24
KB)

From: Michel, James
Sent: Monday, October 17, 2005 10:10 AM
To: LRB.Legal
Subject: LRB 2639

Please jacket the most recent version of LRB 2639 (I think it's P4) and send to the Lamb Office - 9W. We would also appreciate a pdf of the bill as well.

james.michel@legis.state.wi.us
andy.lamb@legis.state.wi.us

Thanks

James

James T. Michel

*Office of Representative Andy Lamb
29th Assembly District*

Legislative Aide

888-529-0029

james.michel@legis.state.wi.us

Hurley, Peggy

From: Paul Norman [pnorman@boardmanlawfirm.com]
Sent: Monday, October 17, 2005 2:05 PM
To: Hurley, Peggy
Cc: Mary Ann Gerrard
Subject: LRB - 2639/P4

Peggy,

The first sentence of the third paragraph of the "Analysis by the Legislative Reference Bureau" for this draft needs to be restated. It should read as follows:

"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."

I will also call you to discuss.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2639/P4

PJH:jld&kjf:pg

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

10-17-05
soon

please
Jacket w/ done.
Thanks!

Regen

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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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.

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seeks

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

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

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

5 218.0116 (1) (x) Being a manufacturer, importer, or distributor who engages
6 in any action or fails to engage in any action with respect to any enfranchised motor
7 vehicle dealer in a manner that is arbitrary and causes material damage to the
8 dealer.

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

10 218.0116 (7) (a) 2. If a complaint is filed under subd. 1., the department of
11 transportation shall inform the manufacturer, importer or distributor that a timely
12 complaint has been filed, that a hearing is required, and that the proposed franchise
13 agreement may not be entered into until the division of hearings and appeals has
14 held a hearing, nor thereafter, if the division of hearings and appeals determines that
15 there is not good cause for ~~not~~ permitting the proposed establishment or relocation
16 of the dealership or outlet. In the event of multiple complaints, hearings shall be
17 consolidated to expedite the disposition of the issue.

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

19 218.0116 (7) (b) (intro.) In determining whether good cause exists for ~~not~~
20 permitting the proposed establishment or relocation of a dealership or outlet, the
21 burden of proof for showing good cause shall be on the manufacturer, importer, or
22 distributor, and the division of hearings and appeals shall take into consideration the
23 existing circumstances, including, but not limited to:

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

1 218.0116 (8) (b) (intro.) In making a determination of whether there is good
2 cause for permitting a proposed modification, the burden of proof shall be on the
3 manufacturer or distributor, except that the burden of proof with regard to the factor
4 set forth in par. (b) 3. shall be on the dealer, and the division of hearings and appeals
5 may consider any relevant factor including:

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

7 218.0116 (8) (b) 3. The degree to which the proposed modification will have a
8 substantial and adverse effect upon the motor vehicle dealer's rights, investment, or
9 return on investment.

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

11 218.0134 (2) (c) A dealer who is served with a written statement by an affected
12 grantor under par. (b) may file with the department of transportation and the
13 division of hearings and appeals and serve upon the affected grantor a complaint for
14 the determination of whether there is good cause for permitting the proposed action
15 to be undertaken. The burden of proof for showing there is good cause for not
16 permitting the proposed action shall be on the affected grantor. The division of
17 hearings and appeals shall promptly schedule a hearing and decide the matter. The
18 proposed action may not be undertaken pending the determination of the matter.

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

20 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
21 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (v), ~~or~~ (w),
22 or (x).

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

24 218.0163 (1) (c) An affected grantor's disapproval of a proposed action under
25 s. 218.0134 (2) (b), if the division of hearings and appeals has determined that there

1 is not good cause for not permitting the proposed action to be undertaken following
2 a hearing under s. 218.0134 (2) (c). A dealer may recover under this paragraph even
3 if the affected grantor complies with the order of the division of hearing and appeals
4 under s. 218.0134 (3) (b). If a dealer recovers damages for pecuniary loss, actual costs
5 under this paragraph also include actual costs, including reasonable attorney fees,
6 incurred by the dealer in obtaining the division of hearings and appeals'
7 determination of good cause.

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

9 218.0163 (1q) In any action brought under this subsection, the burden of proof
10 as to liability shall be the same as set forth in ss. 218.0114 (7) (d), 218.0116 (7) (b),
11 and 218.0116 (8) (b) regarding complaints brought before the division of hearings and
12 appeals, but the burden of proof as to damages shall be on the licensee seeking
13 damages.

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

15 218.0163 (1r) For purposes of subs. (1) and (1m), "licensee" means a person or
16 entity holding a license at the time the cause of action arose regardless of whether
17 the person or entity holds a license at the time an action under this section is
18 commenced.

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

20 218.0163 (3) A complainant or petitioner who prevails against a manufacturer,
21 importer, or distributor as a result of a complaint or petition filed with the division
22 of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163 or
23 under s. 218.0116 (7) or (8) or 218.0134 shall have a cause of action against the
24 manufacturer, importer, or distributor for reasonable expenses and attorney fees

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

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

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

8 **SECTION 14. Initial applicability.**

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

12 (2) **ADMINISTRATIVE PROCEEDINGS.** The treatment of sections 218.0114 (7) (d),
13 218.0116 (1) (x), (7) (a) 2. and (b) (intro.), and (8) (b) (intro.) and 3., 218.0134 (2) (c),
14 and 218.0163 (1) (a) and (c), (1q), (1r), and (3) of the statutes first applies to an
15 administrative proceeding that is commenced on the effective date of this subsection.

16 (END)

Barman, Mike

From: Michel, James
Sent: Thursday, October 27, 2005 10:45 AM
To: LRB.Legal
Subject: Draft review: LRB 05-2639/1 Topic: Motor vehicle dealership and franchises

It has been requested by <Michel, James> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2639/1 Topic: Motor vehicle dealership and franchises