

2007 SENATE BILL 217

June 19, 2007 – Introduced by Senators BRESKE, SCHULTZ, JAUCH, PLALE, KAPANKE, LEIBHAM, OLSEN, LASSA and CARPENTER, cosponsored by Representatives PETROWSKI, GRONEMUS, A. OTT, BALLWEG, ALBERS, NYGREN, MONTGOMERY, MUSSER, SHERIDAN, GOTTLIEB, SOLETSKI, KREUSER, VAN ROY, GUNDERSON, KLEEFISCH, SUDER and HAHN. Referred to Committee on Transportation, Tourism and Insurance.

1 **AN ACT** *to repeal* 218.0134 (3) (a); *to amend* 218.0134 (2) (c) and 218.0134 (3)
2 (b); and *to create* 218.0134 (3) (am) of the statutes; **relating to:** motor vehicle
3 manufacturers, importers, distributors, and dealers.

Analysis by the Legislative Reference Bureau

Under current law, motor vehicle dealers (dealers) and manufacturers, importers, and distributors (franchisors) are required to be licensed by the Department of Transportation (DOT). If an agreement between a franchisor and a dealer requires the franchisor's prior approval of certain proposed actions by the dealer, the dealer may not voluntarily change its ownership or executive management, transfer its dealership assets to another person, add another franchise at the same location as its existing franchise, or relocate a franchise, without giving prior written notice of the proposed action to the franchisor and to DOT. If the franchisor does not approve of the proposed action, the franchisor must provide the dealer and DOT with a written statement of the reasons for its disapproval. The dealer may then file a complaint with the Division of Hearings and Appeals in the Department of Administration (DHA) for the determination of whether there is good cause for permitting the proposed action to be undertaken. DHA must schedule a hearing and decide the matter. The burden of proof for showing there is good cause for not permitting the proposed action is on the franchisor. In determining if there is good cause for permitting a proposed action to be undertaken, DHA may consider any relevant factor including: 1) the reasons for the proposed action, 2) the franchisor's reasons for not approving the proposed action, 3) the degree of adverse

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impact of not being able to undertake the proposed action on the dealer's investment or return on investment, 4) whether the proposed action is in the public interest, 5) the degree to which the proposed action interferes with the orderly and profitable distribution of the franchisor's products, 6) the impact of the proposed action on other dealers, and 7) whether the dealer and franchisor previously agreed on a specific action that is inconsistent with the proposed action and, if so, whether circumstances have changed. DHA's decision must be in writing and contain findings of fact and a determination of whether there is good cause for permitting the proposed action to be undertaken.

This bill eliminates any ambiguity with respect to the DHA hearing process by specifying that DHA must determine whether there is good cause for not permitting the proposed action to be undertaken, thereby uniformly recognizing a burden of proof on the franchisor. The bill also eliminates the specific list of factors that DHA may consider. The bill provides that DHA may determine there is good cause for not permitting a proposed action to be undertaken only if the prospective benefits to the franchisor, the dealer, the public, and other dealers if the proposed action is not undertaken outweigh the prospective harms to the dealer, the franchisor, the public, and other dealers if the proposed action is not undertaken.

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

1 **SECTION 1.** 218.0134 (2) (c) of the statutes is amended to read:

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

10 **SECTION 2.** 218.0134 (3) (a) of the statutes is repealed.

11 **SECTION 3.** 218.0134 (3) (am) of the statutes is created to read:

