

State of Wisconsin
2007 - 2008 LEGISLATURE

500m

LRB-1217/11 P2

ARG:lmk:pg

in 4/26

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Recon ✓

1 AN ACT *to repeal* 218.0134 (3) (a); *to renumber* 218.0116 (1) (h) and 218.0142
2 (1); *to renumber and amend* 218.0125 (1), 218.0125 (2) and 218.0125 (7); *to*
3 *amend* 218.0125 (3), 218.0125 (5), 218.0125 (6), 218.0134 (2) (c) and 218.0134
4 (3) (b); and *to create* 218.0116 (1) (h) 1., 218.0116 (1) (y) and (z), 218.0125 (1)
5 (b), 218.0125 (2) (d), 218.0134 (3) (am) and 218.0142 (1) (b) of the statutes;
6 **relating to:** motor vehicle manufacturers, importers, distributors, and
7 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). Sales finance companies, which engage in the business of acquiring motor vehicle retail installment contracts or consumer leases from dealers and include dealers that sell or lease motor vehicles on installment contracts or consumer leases or acquire retail installment contracts or leases, are required to be licensed by the Division of Banking in the Department of Financial Institutions (DFI). A retail installment contract is a contract for the retail sale of a motor vehicle in which the vehicle's price is payable in one or more installments over a period of time and in which the seller retains title to the vehicle or takes a security interest in the vehicle.

Under current law, a franchisor must reasonably compensate an authorized dealer for performing certain types of work, including work to rectify the franchisor's product or warranty defects. Compensation includes compensation for labor at a labor rate equal to the effective labor rate charged all customers and compensation for parts at an amount not less than the amount the dealer charges its other retail service customers for parts used in performing similar work by the dealer. To be eligible for compensation for parts, the dealer must notify the franchisor in writing of the amounts that the dealer charges its other retail service customers for parts and request that it be paid for parts in accordance with these requirements. The notice may be limited to the dealer's average markup over dealer cost that the dealer charges its other retail service customers for parts used to perform similar work. The notice must be served on the franchisor not less than 30 days before the date on which the dealer requests that the franchisor begin paying the dealer for parts at the stated amounts. The franchisor must then pay the dealer at the amounts stated in the dealer notice for parts used in work performed. However, the franchisor may require the dealer, at reasonable intervals, to provide the franchisor with documents or information in support of the amounts asserted in its notice and the franchisor may show that the amounts stated in the dealer notice for parts is not reasonably competitive with the amounts charged by other similarly situated dealers. A franchisor must approve or disapprove a claim made by a dealer for compensation within 30 days after the claim is submitted to the franchisor and an approved claim must be paid within 30 days after its approval. A franchisor may audit claims for a period of one year after the date on which the claim is paid and may charge back any amounts paid on claims that are false or unsubstantiated.

This bill specifies, and clarifies, the method for determining the amount of compensation that franchisors must provide to dealers for parts and labor in performing certain types of service work, including work to rectify the franchisor's product or warranty defects. The bill specifies that compensation for parts must be determined by applying the average percentage markup over dealer cost that the dealer customarily charges for parts in qualifying nonwarranty repairs, which are nonwarranty repairs that do not involve routine maintenance such as changing the oil and oil filter. The bill also specifies that the franchisor must provide compensation for labor at the same rate that the dealer customarily charges its nonwarranty customers for qualifying nonwarranty repairs. This labor compensation rate must be determined by dividing the dealer's total labor charges for qualifying nonwarranty repairs by the total number of labor hours that would be charged for those repairs under the labor time computations that the franchisor uses to determine labor compensation to the dealer for warranty repairs. The bill provides a mechanism, somewhat similar to current law applicable to parts compensation, for a dealer to give written notice to a franchisor of its declared labor rate for use by the franchisor in providing compensation and allows the franchisor to challenge, by audit, the dealer's declared rate. A franchisor may not require a dealer to establish its amount for parts compensation on a part-by-part or transaction-by-transaction basis and may not require a dealer to perform labor rate surveys of other dealers to establish its amount for labor compensation. The bill prohibits a franchisor from

assessing against a dealer any surcharge or other cost or charge to offset compensation for parts and labor that is required to be provided to the dealer. The bill also prohibits a franchisor from refusing to approve a dealer's claim for compensation, or charging back a claim previously paid, if the dealer has documentation to establish that the work for which the claim is made was actually performed by the dealer and qualifies for compensation under these statutory provisions, regardless of whether the dealer has complied with all requirements of the franchisor's policies and procedures.

Under current law, 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 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 ~~harm~~ to the franchisor, the public, and other dealers if the proposed action is undertaken outweighs the prospective harm to the dealer, the public, and other dealers if the proposed action is not undertaken.

the dealers,

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*benefits
not*

the franchisor

Under current law, a retail installment sale of a motor vehicle to be used for personal, family, or household purposes must be evidenced by a written instrument, signed by the buyer, containing all of the agreements of the parties.

This bill allows a retail seller and buyer to agree in a separate instrument, if this separate instrument is referenced in the retail installment contract, that the sale may be voided by the seller if the seller is unable to sell, assign, or transfer the retail installment contract to a sales finance company with whom the seller regularly does business and that, for the sale to be voided, the seller must notify the buyer of its intent to void the sale within seven business days after the date the retail installment contract is fully signed.

Under current law, a franchisor generally may not induce or coerce, or attempt to induce or coerce, a dealer to sell, assign, or transfer retail installment contracts to sales finance companies specified by the franchisor. A sales finance company may not induce or coerce, or attempt to induce or coerce, a dealer to transfer retail installment contracts to the sales finance company based upon statements or representations of benefit or detriment to the relationship of the franchisor and dealer or the franchisor and sales finance company.

The bill allows DFI to suspend, revoke, or deny a license to a sales finance company that fixes the terms or conditions on which it will purchase or accept the assignment or transfer of a retail installment contract or consumer lease from a dealer based on whether the dealer finances its vehicle inventory or engages in other business with the sales finance company.

Under current law, DOT may suspend, revoke, or deny a license to a franchisor that has coerced, or attempted to coerce, a dealer to order any commodity or service or to accept delivery of or pay for any commodity or service that the dealer did not order. For purposes of this provision only, this bill defines "coerce" to mean a franchisor's doing or threatening, or refusing to do or threatening to refuse to do, any act because a dealer fails or refuses to order any commodity or service or to accept delivery of or pay for any commodity or service that the dealer did not order, if the act or refusal deprives or will deprive the dealer of a benefit available to other dealers of the same line make or otherwise has or will materially harm the dealer. The bill also allows DOT to suspend, revoke, or deny a license to a franchisor for retaliating against a dealer for exercising any right, remedy, or defense available to the dealer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 218.0116 (1) (h) of the statutes is renumbered 218.0116 (1) (h) 2.

2 **SECTION 2.** 218.0116 (1) (h) 1. of the statutes is created to read:

3 218.0116 (1) (h) 1. In this paragraph, "coerce" means for a manufacturer,
4 importer, or distributor to do or threaten to do any act, or to refuse to do or threaten
5 to refuse to do any act, because a motor vehicle dealer fails or refuses to order any

1 commodity or service or to accept delivery of or pay for any commodity or service that
2 the dealer has not ordered, if the act or refusal deprives or will deprive the dealer of
3 a benefit available to other dealers of the same line make or otherwise has or will
4 materially harm the dealer.

5 **SECTION 3.** 218.0116 (1) (y) and (z) of the statutes are created to read:

6 218.0116 (1) (y) Being a manufacturer, importer, or distributor that engages
7 in any action or fails to engage in any action with respect to any enfranchised motor
8 vehicle dealer in retaliation for the dealer exercising any right, remedy, or defense
9 available to the dealer under ss. 218.0101 to 218.0163 or under rules promulgated
10 by the department of transportation under ss. 218.0101 to 218.0163.

11 (z) Being a sales finance company that fixes the terms or conditions on which
12 it will purchase or accept the assignment or transfer of a retail installment contract
13 or consumer lease from a motor vehicle dealer based on whether the dealer finances
14 its motor vehicle inventory or engages in other business with the sales finance
15 company. This paragraph does not prohibit a sales finance company from fixing the
16 terms and conditions on which it will purchase or accept the assignment or transfer
17 of a retail installment contract or consumer lease from a dealer based on the volume
18 of retail installment contracts and consumer leases that the dealer offers to sell,
19 assign or transfer to the sales finance company.

20 **SECTION 4.** 218.0125 (1) of the statutes is renumbered 218.0125 (1) (intro.) and
21 amended to read:

22 218.0125 (1) (intro.) In this section, ~~“dealer;~~

23 (a) “Dealer cost” means the wholesale cost for a part as listed in the
24 manufacturer’s, importer’s, or distributor’s current price schedules or, if the part is
25 not so listed, the dealer’s original invoice cost for the part.

1 **SECTION 5.** 218.0125 (1) (b) of the statutes is created to read:

2 218.0125 (1) (b) "Qualifying nonwarranty repairs" means nonwarranty repairs
3 that do not involve routine maintenance such as changing the oil and oil filter.

4 **SECTION 6.** 218.0125 (2) of the statutes is renumbered 218.0125 (2) (a) and
5 amended to read:

6 218.0125 (2) (a) A manufacturer, importer, or distributor shall, for the
7 protection of the buying public, specify the delivery and preparation obligations of
8 its dealers before delivery of new motor vehicles to retail buyers. A copy of the
9 delivery and preparation obligations of its dealers shall be filed with the department
10 of transportation by every licensed motor vehicle manufacturer, importer, or
11 distributor and shall constitute the dealer's only responsibility for product liability
12 as between the dealer and the manufacturer, importer, or distributor. Any
13 mechanical, body, or parts defects arising from any express or implied warranties of
14 the manufacturer, importer, or distributor shall constitute the manufacturer's,
15 importer's, or distributor's product or warranty liability. The manufacturer,
16 importer, or distributor shall reasonably compensate any authorized dealer who
17 performs work to rectify the manufacturer's, importer's, or distributor's product or
18 warranty defects or delivery and preparation obligations or who performs any other
19 work required, requested, or approved by the manufacturer, importer, or distributor
20 or for which the manufacturer, importer, or distributor has agreed to pay, including.

21 (b) In reasonably compensating an authorized dealer under par. (a), the
22 manufacturer, importer, or distributor shall provide compensation for labor at a
23 labor rate equal to the effective labor rate charged all customers and that the dealer
24 customarily charges its nonwarranty customers for qualifying nonwarranty repairs,
25 which shall be determined by dividing the dealer's total labor charges for qualifying

1 nonwarranty repairs by the total number of labor hours that would be charged for
2 those repairs under the labor time computations that the manufacturer, importer,
3 or distributor uses to determine labor compensation to the dealer for warranty
4 repairs. A dealer may declare the labor rate used under this paragraph in a written
5 notice to the manufacturer, importer, or distributor requesting compensation at that
6 rate for labor governed by this section. The manufacturer, importer, or distributor
7 shall begin compensating the dealer at this declared labor rate for all labor under this
8 section performed after 30 days following its receipt of the written notice of this
9 declared labor rate unless an audit of the dealer's qualifying nonwarranty repair
10 orders dated not more than 60 days prior to the date of this notice establishes that
11 the dealer's actual labor rate, determined by the method established in this
12 paragraph, is less than the rate declared by the dealer. If the dealer's actual labor
13 rate is less than the dealer's declared labor rate, the manufacturer, importer, or
14 distributor shall compensate the dealer at not less than the actual labor rate
15 established by the audit. A manufacturer, importer, or distributor may not require
16 the dealer to perform geographic or other surveys of hourly labor rates charged or
17 received by other dealers in order to establish the dealer's labor rate under this
18 paragraph.

19 (c) In reasonably compensating an authorized dealer under par. (a), the
20 manufacturer, importer, or distributor shall provide compensation for parts at an
21 amount not less than the amount the dealer charges its other retail service customers
22 for parts used in performing similar work by the dealer, which shall be determined
23 by applying the average percentage markup over dealer cost that the dealer
24 customarily charges for parts in qualifying nonwarranty repairs. A manufacturer,
25 importer, or distributor may not require a dealer to establish the amount it is entitled

1 to as compensation for parts under this section on a part-by-part or
2 transaction-by-transaction basis.

3 **SECTION 7.** 218.0125 (2) (d) of the statutes is created to read:

4 218.0125 (2) (d) In providing the compensation required under this subsection
5 to an authorized dealer, a manufacturer, importer, or distributor may not assess
6 against the dealer any surcharge or other cost or charge to offset any amount that
7 is required to be provided to the dealer under pars. (b) and (c). This paragraph does
8 not affect a manufacturer's, importer's, or distributor's right to audit under sub. (7).

9 **SECTION 8.** 218.0125 (3) of the statutes is amended to read:

10 218.0125 (3) To be eligible for compensation for parts under sub. (2), a dealer
11 shall notify the manufacturer, importer, or distributor in writing of the amounts that
12 the dealer charges its other retail service customers for parts, determined by the
13 method specified in sub. (2) (c), and request that it be paid for parts in accordance
14 with this section. ~~The notice may be limited to the dealer's average markup over~~
15 ~~dealer cost that the dealer charges its other retail service customers for parts used~~
16 ~~to perform similar work.~~ The notice shall be served upon the manufacturer, importer,
17 or distributor not less than 30 days before the date on which the dealer requests that
18 the manufacturer, importer, or distributor begin paying the dealer for parts at the
19 stated amounts. The manufacturer, importer, or distributor shall pay the dealer, as
20 provided in this section, at the amounts stated in the dealer notice for parts used in
21 work performed on and after the beginning date stated in the notice.

22 **SECTION 9.** 218.0125 (5) of the statutes is amended to read:

23 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate
24 a dealer for parts at an amount not less than the amount the dealer charges its other
25 retail service customers for parts used to perform similar work, determined by the

1 method specified in sub. (2) (c), shall not be found to have violated this section if the
2 manufacturer, importer, or distributor shows that the amount is not reasonably
3 competitive to the amounts charged to retail service customers by other similarly
4 situated franchised motor vehicle dealers in this state for the same parts when used
5 by those dealers to perform similar work.

6 **SECTION 10.** 218.0125 (6) of the statutes is amended to read:

7 218.0125 (6) If a manufacturer, importer, or distributor furnishes a part to a
8 dealer at no cost for use by the dealer in performing work for which the manufacturer,
9 importer, or distributor is required to compensate the dealer under this section, the
10 manufacturer, importer, or distributor shall compensate the dealer for the part at an
11 amount not less than the amount the dealer charges its other retail customers for
12 parts when used to perform similar work, determined by the method specified in sub.
13 (2) (c), less the wholesale cost for the furnished part as listed in the manufacturer's
14 current price schedules. A manufacturer, importer, or distributor may pay the dealer
15 a reasonable handling fee instead of the compensation otherwise required by this
16 section for special high-performance complete engine assemblies furnished to the
17 dealer at no cost, provided that the manufacturer, importer, or distributor excludes
18 special high-performance complete engine assemblies in determining whether the
19 amounts requested in the dealer's notice are consistent with the amounts that the
20 dealer charges its other retail service customers for parts used by the dealer to
21 perform similar work.

22 **SECTION 11.** 218.0125 (7) of the statutes is renumbered 218.0125 (7) (a) and
23 amended to read:

24 218.0125 (7) (a) A claim made by a franchised motor vehicle dealer for
25 compensation under this section shall be either approved or disapproved within 30

1 days after the claim is submitted to the manufacturer, importer or distributor in the
2 manner and on the forms the manufacturer, importer or distributor reasonably
3 prescribes. An approved claim shall be paid within 30 days after its approval. If a
4 claim is not specifically disapproved in writing or by electronic transmission within
5 30 days after the date on which the manufacturer, importer or distributor receives
6 it, the claim shall be considered to be approved and payment shall follow within 30
7 days. A manufacturer, importer, or distributor may not refuse to approve a claim for
8 compensation under this section, and may not charge back under par. (b) a dealer for
9 a claim previously paid, if the dealer has documentation to establish that the work
10 for which the claim is made was actually performed by the dealer and qualifies for
11 compensation under this section, regardless of whether the dealer has complied with
12 all requirements of the manufacturer's, importer's or distributor's policies and
13 procedures.

14 (b) A manufacturer, importer or distributor retains the right to audit claims for
15 a period of one year after the date on which the claim is paid and to charge back any
16 amounts paid on claims that are false or unsubstantiated. If there is evidence of
17 fraud, this subsection does not limit the right of the manufacturer to audit for longer
18 periods and charge back for any fraudulent claim, subject to the limitations period
19 under s. 893.93 (1) (b).

20 **SECTION 12.** 218.0134 (2) (c) of the statutes is amended to read:

21 218.0134 (2) (c) A dealer who is served with a written statement by an affected
22 grantor under par. (b) may file with the department of transportation and the
23 division of hearings and appeals and serve upon the affected grantor a complaint for
24 the determination of whether there is good cause for not permitting the proposed
25 action 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 **SECTION 13.** 218.0134 (3) (a) of the statutes is repealed.

5 **SECTION 14.** 218.0134 (3) (am) of the statutes is created to read:

6 218.0134 (3) (am) The division of hearings and appeals may determine there
7 is good cause for not permitting a proposed action to be undertaken only if the
8 prospective ^{benefits} ~~harm~~ to the affected grantor, ^{the dealer} the public, and other dealers if the proposed
9 action is undertaken outweighs ^{not} the prospective harm ^s to the dealer, ^{the affected grantor} the public, and
10 other dealers if the proposed action is not undertaken.

11 **SECTION 15.** 218.0134 (3) (b) of the statutes is amended to read:

12 218.0134 (3) (b) The decision of the division of hearings and appeals shall be
13 in writing and shall contain findings of fact and a determination of whether there is
14 good cause for not permitting the proposed action to be undertaken. The decision
15 shall include an order that the dealer be allowed or is not allowed to undertake the
16 proposed action, as the case may be. The order may require fulfillment of appropriate
17 conditions before and after the proposed action is undertaken.

18 **SECTION 16.** 218.0142 (1) of the statutes is renumbered 218.0142 (1) (a).

19 **SECTION 17.** 218.0142 (1) (b) of the statutes is created to read:

20 218.0142 (1) (b) Paragraph (a) does not prohibit a retail seller and buyer from
21 agreeing in an instrument other than the instrument identified in par. (a), if this
22 separate instrument is referenced in the instrument identified in par. (a), that the
23 sale may be voided by the seller if the seller is unable to sell, assign, or transfer the
24 retail installment contract under par. (a) to a sales finance company with whom the
25 seller regularly does business and that, for the sale to be voided, the seller must

1 notify the buyer of its intent to void the sale within 7 business days after the date the
2 retail installment contract is fully signed.

3 **SECTION 18. Initial applicability.**

4 (1) SUSPENSIONS, REVOCATIONS, AND DENIALS. The creation of section 218.0116 (1)
5 (h) 1. of the statutes first applies to violations that occur on the effective date of this
6 subsection.

7 (2) DEALER COMPENSATION CLAIMS. The treatment of section 218.0125 (3), (5), (6),
8 and (7) of the statutes, the renumbering and amendment of 218.0125 (2) of the
9 statutes, and the creation of section 218.0125 (1) (b) and (2) (d) of the statutes, first
10 applies to claims for compensation for work performed by a dealer on the effective
11 date of this subsection.

12 (3) ADMINISTRATIVE PROCEEDINGS. The treatment of section 218.0134 (2) (c) and
13 (3) (b) of the statutes, the repeal of section 218.0134 (3) (a) of the statutes, and the
14 creation of section 218.0134 (3) (am) of the statutes, first applies to administrative
15 proceedings commenced on the effective date of this subsection.

16 (4) RETAIL INSTALLMENT CONTRACTS. The creation of section 218.0142 (1) (b) of
17 the statutes first applies to instruments executed on the effective date of this
18 subsection.

19 (END)

Gary, Aaron

From: Piliouras, Elizabeth
Sent: Monday, April 30, 2007 12:33 PM
To: Gary, Aaron
Subject: /p3 for LRB1217

Hi Aaron:

I need to get rid of everything except sections 12-15 of LRB1217/P2.

Thanks!
Beth

Beth Piliouras
Senator Roger Breske
608-266-2509

04/30/2007



State of Wisconsin
2007 - 2008 LEGISLATURE

Soon

LRB-1217/P3
ARG:lmk:nwn

in 4/30
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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This bill specifies, and clarifies, the method for determining the amount of compensation that franchisors must provide to dealers for parts and labor in performing certain types of service work, including work to rectify the franchisor's product or warranty defects. The bill specifies that compensation for parts must be determined by applying the average percentage markup over dealer cost that the dealer customarily charges for parts in qualifying nonwarranty repairs, which are nonwarranty repairs that do not involve routine maintenance such as changing the oil and oil filter. The bill also specifies that the franchisor must provide compensation for labor at the same rate that the dealer customarily charges its nonwarranty customers for qualifying nonwarranty repairs. This labor compensation rate must be determined by dividing the dealer's total labor charges for qualifying nonwarranty repairs by the total number of labor hours that would be charged for those repairs under the labor time computations that the franchisor uses to determine labor compensation to the dealer for warranty repairs. The bill provides a mechanism, somewhat similar to current law applicable to parts compensation, for a dealer to give written notice to a franchisor of its declared labor rate for use by the franchisor in providing compensation and allows the franchisor to challenge, by audit, the dealer's declared rate. A franchisor may not require a dealer to establish its amount for parts compensation on a part-by-part or transaction-by-transaction basis and may not require a dealer to perform labor rate surveys of other dealers to establish its amount for labor compensation. The bill prohibits a franchisor from

assessing against a dealer any surcharge or other cost or charge to offset compensation for parts and labor that is required to be provided to the dealer. The bill also prohibits a franchisor from refusing to approve a dealer's claim for compensation, or charging back a claim previously paid, if the dealer has documentation to establish that the work for which the claim is made was actually performed by the dealer and qualifies for compensation under these statutory provisions, regardless of whether the dealer has complied with all requirements of the franchisor's policies and procedures.

> (no P) ← ~~Under current law,~~ 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 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.

~~Under current law, a retail installment sale of a motor vehicle to be used for personal, family, or household purposes must be evidenced by a written instrument, signed by the buyer, containing all of the agreements of the parties.~~

This bill allows a retail seller and buyer to agree in a separate instrument, if this separate instrument is referenced in the retail installment contract, that the sale may be voided by the seller if the seller is unable to sell, assign, or transfer the retail installment contract to a sales finance company with whom the seller regularly does business and that, for the sale to be voided, the seller must notify the buyer of its intent to void the sale within seven business days after the date the retail installment contract is fully signed.

Under current law, a franchisor generally may not induce or coerce, or attempt to induce or coerce, a dealer to sell, assign, or transfer retail installment contracts to sales finance companies specified by the franchisor. A sales finance company may not induce or coerce, or attempt to induce or coerce, a dealer to transfer retail installment contracts to the sales finance company based upon statements or representations of benefit or detriment to the relationship of the franchisor and dealer or the franchisor and sales finance company.

The bill allows DFI to suspend, revoke, or deny a license to a sales finance company that fixes the terms or conditions on which it will purchase or accept the assignment or transfer of a retail installment contract or consumer lease from a dealer based on whether the dealer finances its vehicle inventory or engages in other business with the sales finance company.

Under current law, DOT may suspend, revoke, or deny a license to a franchisor that has coerced, or attempted to coerce, a dealer to order any commodity or service or to accept delivery of or pay for any commodity or service that the dealer did not order. For purposes of this provision only, this bill defines "coerce" to mean a franchisor's doing or threatening, or refusing to do or threatening to refuse to do, any act because a dealer fails or refuses to order any commodity or service or to accept delivery of or pay for any commodity or service that the dealer did not order, if the act or refusal deprives or will deprive the dealer of a benefit available to other dealers of the same line make or otherwise has or will materially harm the dealer. The bill also allows DOT to suspend, revoke, or deny a license to a franchisor for retaliating against a dealer for exercising any right, remedy, or defense available to the dealer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 218.0116 (1) (h) of the statutes is renumbered 218.0116 (1) (h) 2.

2 **SECTION 2.** 218.0116 (1) (h) 1. of the statutes is created to read:

3 218.0116 (1) (h) 1. In this paragraph, "coerce" means for a manufacturer,
4 importer, or distributor to do or threaten to do any act, or to refuse to do or threaten
5 to refuse to do any act, because a motor vehicle dealer fails or refuses to order any

1 commodity or service or to accept delivery of or pay for any commodity or service that
2 the dealer has not ordered, if the act or refusal deprives or will deprive the dealer of
3 a benefit available to other dealers of the same line make or otherwise has or will
4 materially harm the dealer.

5 **SECTION 3.** 218.0116 (1) (y) and (z) of the statutes are created to read:

6 218.0116 (1) (y) Being a manufacturer, importer, or distributor that engages
7 in any action or fails to engage in any action with respect to any enfranchised motor
8 vehicle dealer in retaliation for the dealer exercising any right, remedy, or defense
9 available to the dealer under ss. 218.0101 to 218.0163 or under rules promulgated
10 by the department of transportation under ss. 218.0101 to 218.0163.

11 (z) Being a sales finance company that fixes the terms or conditions on which
12 it will purchase or accept the assignment or transfer of a retail installment contract
13 or consumer lease from a motor vehicle dealer based on whether the dealer finances
14 its motor vehicle inventory or engages in other business with the sales finance
15 company. This paragraph does not prohibit a sales finance company from fixing the
16 terms and conditions on which it will purchase or accept the assignment or transfer
17 of a retail installment contract or consumer lease from a dealer based on the volume
18 of retail installment contracts and consumer leases that the dealer offers to sell,
19 assign or transfer to the sales finance company.

20 **SECTION 4.** 218.0125 (1) of the statutes is renumbered 218.0125 (1) (intro.) and
21 amended to read:

22 218.0125 (1) (intro.) In this section, "dealer:

23 (a) "Dealer cost" means the wholesale cost for a part as listed in the
24 manufacturer's, importer's, or distributor's current price schedules or, if the part is
25 not so listed, the dealer's original invoice cost for the part.

1 **SECTION 5.** 218.0125 (1) (b) of the statutes is created to read:

2 218.0125 (1) (b) "Qualifying nonwarranty repairs" means nonwarranty repairs
3 that do not involve routine maintenance such as changing the oil and oil filter.

4 **SECTION 6.** 218.0125 (2) of the statutes is renumbered 218.0125 (2) (a) and
5 amended to read:

6 218.0125 (2) (a) A manufacturer, importer, or distributor shall, for the
7 protection of the buying public, specify the delivery and preparation obligations of
8 its dealers before delivery of new motor vehicles to retail buyers. A copy of the
9 delivery and preparation obligations of its dealers shall be filed with the department
10 of transportation by every licensed motor vehicle manufacturer, importer, or
11 distributor and shall constitute the dealer's only responsibility for product liability
12 as between the dealer and the manufacturer, importer, or distributor. Any
13 mechanical, body, or parts defects arising from any express or implied warranties of
14 the manufacturer, importer, or distributor shall constitute the manufacturer's,
15 importer's, or distributor's product or warranty liability. The manufacturer,
16 importer, or distributor shall reasonably compensate any authorized dealer who
17 performs work to rectify the manufacturer's, importer's, or distributor's product or
18 warranty defects or delivery and preparation obligations or who performs any other
19 work required, requested, or approved by the manufacturer, importer, or distributor
20 or for which the manufacturer, importer, or distributor has agreed to pay, including.

21 (b) In reasonably compensating an authorized dealer under par. (a), the
22 manufacturer, importer, or distributor shall provide compensation for labor at a
23 labor rate equal to the effective labor rate charged all customers and that the dealer
24 customarily charges its nonwarranty customers for qualifying nonwarranty repairs,
25 which shall be determined by dividing the dealer's total labor charges for qualifying

1 nonwarranty repairs by the total number of labor hours that would be charged for
2 those repairs under the labor time computations that the manufacturer, importer,
3 or distributor uses to determine labor compensation to the dealer for warranty
4 repairs. A dealer may declare the labor rate used under this paragraph in a written
5 notice to the manufacturer, importer, or distributor requesting compensation at that
6 rate for labor governed by this section. The manufacturer, importer, or distributor
7 shall begin compensating the dealer at this declared labor rate for all labor under this
8 section performed after 30 days following its receipt of the written notice of this
9 declared labor rate unless an audit of the dealer's qualifying nonwarranty repair
10 orders dated not more than 60 days prior to the date of this notice establishes that
11 the dealer's actual labor rate, determined by the method established in this
12 paragraph, is less than the rate declared by the dealer. If the dealer's actual labor
13 rate is less than the dealer's declared labor rate, the manufacturer, importer, or
14 distributor shall compensate the dealer at not less than the actual labor rate
15 established by the audit. A manufacturer, importer, or distributor may not require
16 the dealer to perform geographic or other surveys of hourly labor rates charged or
17 received by other dealers in order to establish the dealer's labor rate under this
18 paragraph.

19 (c) In reasonably compensating an authorized dealer under par. (a), the
20 manufacturer, importer, or distributor shall provide compensation for parts at an
21 amount not less than the amount the dealer charges its other retail service customers
22 for parts used in performing similar work by the dealer, which shall be determined
23 by applying the average percentage markup over dealer cost that the dealer
24 customarily charges for parts in qualifying nonwarranty repairs. A manufacturer,
25 importer, or distributor may not require a dealer to establish the amount it is entitled

1 to as compensation for parts under this section on a part-by-part or
2 transaction-by-transaction basis.

3 **SECTION 7.** 218.0125 (2) (d) of the statutes is created to read:

4 218.0125 (2) (d) In providing the compensation required under this subsection
5 to an authorized dealer, a manufacturer, importer, or distributor may not assess
6 against the dealer any surcharge or other cost or charge to offset any amount that
7 is required to be provided to the dealer under pars. (b) and (c). This paragraph does
8 not affect a manufacturer's, importer's, or distributor's right to audit under sub. (7).

9 **SECTION 8.** 218.0125 (3) of the statutes is amended to read:

10 218.0125 (3) To be eligible for compensation for parts under sub. (2), a dealer
11 shall notify the manufacturer, importer, or distributor in writing of the amounts that
12 the dealer charges its other retail service customers for parts, determined by the
13 method specified in sub. (2) (c), and request that it be paid for parts in accordance
14 with this section. ~~The notice may be limited to the dealer's average markup over~~
15 ~~dealer cost that the dealer charges its other retail service customers for parts used~~
16 ~~to perform similar work.~~ The notice shall be served upon the manufacturer, importer,
17 or distributor not less than 30 days before the date on which the dealer requests that
18 the manufacturer, importer, or distributor begin paying the dealer for parts at the
19 stated amounts. The manufacturer, importer, or distributor shall pay the dealer, as
20 provided in this section, at the amounts stated in the dealer notice for parts used in
21 work performed on and after the beginning date stated in the notice.

22 **SECTION 9.** 218.0125 (5) of the statutes is amended to read:

23 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate
24 a dealer for parts at an amount not less than the amount the dealer charges its other
25 retail service customers for parts used to perform similar work, determined by the

1 method specified in sub. (2) (c), shall not be found to have violated this section if the
2 manufacturer, importer, or distributor shows that the amount is not reasonably
3 competitive to the amounts charged to retail service customers by other similarly
4 situated franchised motor vehicle dealers in this state for the same parts when used
5 by those dealers to perform similar work.

6 **SECTION 10.** 218.0125 (6) of the statutes is amended to read:

7 218.0125 (6) If a manufacturer, importer, or distributor furnishes a part to a
8 dealer at no cost for use by the dealer in performing work for which the manufacturer,
9 importer, or distributor is required to compensate the dealer under this section, the
10 manufacturer, importer, or distributor shall compensate the dealer for the part at an
11 amount not less than the amount the dealer charges its other retail customers for
12 parts when used to perform similar work, determined by the method specified in sub.
13 (2) (c), less the wholesale cost for the furnished part as listed in the manufacturer's
14 current price schedules. A manufacturer, importer, or distributor may pay the dealer
15 a reasonable handling fee instead of the compensation otherwise required by this
16 section for special high-performance complete engine assemblies furnished to the
17 dealer at no cost, provided that the manufacturer, importer, or distributor excludes
18 special high-performance complete engine assemblies in determining whether the
19 amounts requested in the dealer's notice are consistent with the amounts that the
20 dealer charges its other retail service customers for parts used by the dealer to
21 perform similar work.

22 **SECTION 11.** 218.0125 (7) of the statutes is renumbered 218.0125 (7) (a) and
23 amended to read:

24 218.0125 (7) (a) A claim made by a franchised motor vehicle dealer for
25 compensation under this section shall be either approved or disapproved within 30

1 days after the claim is submitted to the manufacturer, importer or distributor in the
2 manner and on the forms the manufacturer, importer or distributor reasonably
3 prescribes. An approved claim shall be paid within 30 days after its approval. If a
4 claim is not specifically disapproved in writing or by electronic transmission within
5 30 days after the date on which the manufacturer, importer or distributor receives
6 it, the claim shall be considered to be approved and payment shall follow within 30
7 days. A manufacturer, importer, or distributor may not refuse to approve a claim for
8 compensation under this section, and may not charge back under par. (b) a dealer for
9 a claim previously paid, if the dealer has documentation to establish that the work
10 for which the claim is made was actually performed by the dealer and qualifies for
11 compensation under this section, regardless of whether the dealer has complied with
12 all requirements of the manufacturer's, importer's or distributor's policies and
13 procedures.

14 (b) A manufacturer, importer or distributor retains the right to audit claims for
15 a period of one year after the date on which the claim is paid and to charge back any
16 amounts paid on claims that are false or unsubstantiated. If there is evidence of
17 fraud, this subsection does not limit the right of the manufacturer to audit for longer
18 periods and charge back for any fraudulent claim, subject to the limitations period
19 under s. 893.93 (1) (b).

20 SECTION ~~12~~ 218.0134 (2) (c) of the statutes is amended to read:

21 218.0134 (2) (c) A dealer who is served with a written statement by an affected
22 grantor under par. (b) may file with the department of transportation and the
23 division of hearings and appeals and serve upon the affected grantor a complaint for
24 the determination of whether there is good cause for not permitting the proposed
25 action 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 ~~SECTION 13.~~ 218.0134 (3) (a) of the statutes is repealed.

5 ~~SECTION 14.~~ 218.0134 (3) (am) of the statutes is created to read:

6 218.0134 (3) (am) The division of hearings and appeals may determine there
7 is good cause for not permitting a proposed action to be undertaken only if the
8 prospective benefits to the affected grantor, the dealer, the public, and other dealers
9 if the proposed action is not undertaken outweigh the prospective harms to the
10 dealer, the affected grantor, the public, and other dealers if the proposed action is not
11 undertaken.

12 ~~SECTION 15.~~ 218.0134 (3) (b) of the statutes is amended to read:

13 218.0134 (3) (b) The decision of the division of hearings and appeals shall be
14 in writing and shall contain findings of fact and a determination of whether there is
15 good cause for not permitting the proposed action to be undertaken. The decision
16 shall include an order that the dealer be allowed or is not allowed to undertake the
17 proposed action, as the case may be. The order may require fulfillment of appropriate
18 conditions before and after the proposed action is undertaken.

19 ~~SECTION 16.~~ 218.0142 (1) of the statutes is renumbered 218.0142 (1) (a).

20 ~~SECTION 17.~~ 218.0142 (1) (b) of the statutes is created to read:

21 218.0142 (1) (b) Paragraph (a) does not prohibit a retail seller and buyer from
22 agreeing in an instrument other than the instrument identified in par. (a), if this
23 separate instrument is referenced in the instrument identified in par. (a), that the
24 sale may be voided by the seller if the seller is unable to sell, assign, or transfer the
25 retail installment contract under par. (a) to a sales finance company with whom the

1 seller regularly does business and that, for the sale to be voided, the seller must
2 notify the buyer of its intent to void the sale within 7 business days after the date the
3 retail installment contract is fully signed.

4 **SECTION 18. Initial applicability.**

5 (1) SUSPENSIONS, REVOCATIONS, AND DENIALS. The creation of section 218.0116 (1)
6 (h) 1. of the statutes first applies to violations that occur on the effective date of this
7 subsection.

8 (2) DEALER COMPENSATION CLAIMS. The treatment of section 218.0125 (3), (5), (6),
9 and (7) of the statutes, the renumbering and amendment of 218.0125 (2) of the
10 statutes, and the creation of section 218.0125 (1) (b) and (2) (d) of the statutes, first
11 applies to claims for compensation for work performed by a dealer on the effective
12 date of this subsection.

13 (3) ADMINISTRATIVE PROCEEDINGS. ^{This act} The treatment of section 218.0134 (2) (c) and
14 (3) (b) of the statutes, the repeal of section 218.0134 (3) (a) of the statutes, and the
15 creation of section 218.0134 (3) (am) of the statutes, first applies to administrative
16 proceedings commenced on the effective date of this subsection. ✓

17 (4) RETAIL INSTALLMENT CONTRACTS. The creation of section 218.0142 (1) (b) of
18 the statutes first applies to instruments executed on the effective date of this
19 subsection.

20 (END)

change component

Gary, Aaron

From: Piliouras, Elizabeth
Sent: Wednesday, May 16, 2007 3:32 PM
To: Gary, Aaron
Cc: Bott, Eric
Subject: FW: Draft review: LRB 07-1217/P3 Topic: Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

Attachments: LRB-1217_P3

Hi Aaron:

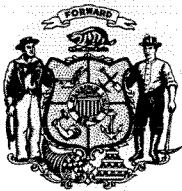
Please go ahead and have this done as a /I and allow Petrowski's office to have it drafted in an Assembly version.

Thanks,
Beth

From: Sen.Breske
Sent: Tuesday, May 01, 2007 12:56 PM
To: Piliouras, Elizabeth
Subject: FW: Draft review: LRB 07-1217/P3 Topic: Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

From: Parisi, Lori
Sent: Tuesday, May 01, 2007 12:56 PM
To: Sen.Breske
Subject: Draft review: LRB 07-1217/P3 Topic: Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

Following is the PDF version of draft LRB 07-1217/P3.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1217/23 /
ARG:lmk:jf

Sec 2

in 5/16

KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

Receiv ✓

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 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:

12 218.0134 (3) (am) The division of hearings and appeals may determine there
13 is good cause for not permitting a proposed action to be undertaken only if the

1 prospective benefits to the affected grantor, the dealer, the public, and other dealers
2 if the proposed action is not undertaken outweigh the prospective harms to the
3 dealer, the affected grantor, the public, and other dealers if the proposed action is not
4 undertaken.

5 **SECTION 4.** 218.0134 (3) (b) of the statutes is amended to read:

6 218.0134 (3) (b) The decision of the division of hearings and appeals shall be
7 in writing and shall contain findings of fact and a determination of whether there is
8 good cause for not permitting the proposed action to be undertaken. The decision
9 shall include an order that the dealer be allowed or is not allowed to undertake the
10 proposed action, as the case may be. The order may require fulfillment of appropriate
11 conditions before and after the proposed action is undertaken.

12 **SECTION 5. Initial applicability.**

13 (1) This act first applies to administrative proceedings commenced on the
14 effective date of this subsection.

15 (END)

Basford, Sarah

From: Piliouras, Elizabeth

Sent: Thursday, June 14, 2007 4:57 PM

To: LRB.Legal

Subject: Draft Review: LRB 07-1217/1 Topic: Motor vehicle dealers, manufacturers, importers, and distributors; compensation for parts and labor warranty work; retail installment sales contracts; administrative hearings; license suspensions

Please Jacket LRB 07-1217/1 for the SENATE.