

## 2007 SENATE BILL 363

December 19, 2007 – Introduced by Senators HANSEN, COWLES, BRESKE, A. LASEE, ELLIS, ROESSLER, OLSEN and LEIBHAM, cosponsored by Representatives KAUFERT, SOLETSKI, A. OTT, SHERMAN, MUSSER, SHERIDAN, MURSAU, TOWNSEND and VRUWINK. Referred to Committee on Commerce, Utilities and Rail.

1     **AN ACT to amend** 165.25 (4) (ar); and **to create** subchapter XI of chapter 218  
2             [precedes 218.60] of the statutes; **relating to:** powersports vehicle  
3             manufacturers, distributors, and dealers and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill creates provisions governing the relationship between powersports vehicle manufacturers and distributors, including their agents, officers, factory representatives, and affiliates (collectively referred to as franchisors), and powersports vehicle dealers (dealers). Under the bill, a powersports vehicle is an all-terrain vehicle, snowmobile, lightweight utility vehicle, personal watercraft, off-road motorcycle, or moped. The bill imposes numerous restrictions on franchisors, including prohibiting franchisors from doing any of the following:

1. Discriminating between dealers in certain ways, including in the pricing of powersports vehicles, parts, or accessories or in unfair allocations or delivery of vehicles.

2. Competing with dealers in certain ways, including by acting as a dealer or owning, operating, or controlling a dealership or service facility.

3. Requiring or coercing dealers to involuntarily accept, buy, or order powersports vehicles, parts, or accessories, or other commodities or services, or to order or accept delivery of powersports vehicles with features not included in the vehicles' advertised list prices and not voluntarily requested or required by law.

4. Taking certain actions related to the capital structure or financing of dealerships or unreasonably requiring dealers to change the locations of, or substantially alter, their places of business.

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5. Failing to hold harmless and indemnify dealers in certain circumstances.
6. Failing to timely pay dealers' valid claims on grounds related to dealers' inventories.
7. Charging dealers increased prices without giving specified notice.
8. Permitting factory authorized warranty service to be performed upon powersports vehicles or accessories by persons other than dealers.
9. Paying less than dealers charge their retail customers for parts.
10. Paying dealers an amount for labor that is less than the amount dealers charge their retail customers for labor.
11. Requiring or coercing dealers to grant rights of first refusal or other preferences related to purchasing dealer franchises.
12. Imposing on dealers certain requirements related to powersports vehicle deliveries, inventories, advertising displays, and dealership facilities.
13. Requiring that arbitration or legal proceedings take place outside this state.

Under the bill, a franchisor may be required to forfeit not less than \$100 nor more than \$1,000 for each violation of these restrictions. The Department of Agriculture, Trade and Consumer Protection (DATCP) has jurisdiction to investigate and enforce these restrictions, and DATCP, represented by the Department of Justice, or a district attorney may bring an action on behalf of the state. In addition, any dealer injured by a violation of these restrictions may bring a civil action against the violating franchisor for temporary or permanent injunctive relief or for damages or both. The dealer may recover three times the amount of actual damages caused by the violation, as well as costs and reasonable attorney fees.

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.** 165.25 (4) (ar) of the statutes is amended to read:
- 2           165.25 (4) (ar) The department of justice shall furnish all legal services
- 3           required by the department of agriculture, trade and consumer protection relating
- 4           to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
- 5           100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,
- 6           100.51, and 100.195, subch. XI of ch. 218, and chs. 126, 136, 344, 704, 707, and 779,
- 7           together with any other services as are necessarily connected to the legal services.

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1           **SECTION 2.** Subchapter XI of chapter 218 [precedes 218.60] of the statutes is  
2 created to read:

**CHAPTER 218****SUBCHAPTER XI****POWERSPORTS VEHICLE MANUFACTURERS,****DISTRIBUTORS, AND DEALERS**

7           **218.60 Definitions.** In this subchapter:

8           **(1)** “Affiliate” means, with respect to a powersports vehicle manufacturer or  
9 powersports vehicle distributor or factory branch of either, a parent company, wholly  
10 or partially owned subsidiary, or any other person controlled by or under common  
11 control with the powersports vehicle manufacturer, powersports vehicle distributor,  
12 or factory branch.

13           **(2)** “All-terrain vehicle” has the meaning given in s. 340.01 (2g).

14           **(3)** “Business entity” has the meaning given in s. 13.62 (5).

15           **(4)** “Department” means the department of agriculture, trade and consumer  
16 protection.

17           **(5)** “Golf cart” means a vehicle whose speed attainable in one mile does not  
18 exceed 20 miles per hour on a paved, level surface, and is designed and intended to  
19 convey one or more persons and equipment to play the game of golf in an area  
20 designated as a golf course.

21           **(6)** “Lightweight utility vehicle” means an engine-driven device having a gross  
22 weight of more than 700 pounds but not more than 1,999 pounds that is designed to  
23 travel on 4 or more low-pressure tires, is equipped with a cargo area, and is used  
24 primarily off a highway. “Lightweight utility vehicle” does not include golf carts or  
25 low-speed vehicles.

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1           **(7)** “Low-pressure tire” means a tire that is designed to be mounted on a rim  
2 with a maximum diameter of 14 inches and to be inflated with an operating pressure  
3 not to exceed 20 pounds per square inch as recommended by the manufacturer.

4           **(8)** “Low-speed vehicle” means a low-speed vehicle, as defined in 49 CFR  
5 571.3, that satisfies the equipment standards under 49 CFR 571.500 and that was  
6 originally manufactured to meet the applicable equipment standards under 49 CFR  
7 571.500. “Low-speed vehicle” does not include a golf cart.

8           **(9)** “Moped” has the meaning given in s. 340.01 (29m).

9           **(10)** “Off-road motorcycle” means a motorcycle, as defined in s. 340.01 (32),  
10 that is not required to be registered under ch. 341.

11           **(11)** “Personal watercraft” has the meaning given in s. 30.50 (9d).

12           **(12)** “Powersports vehicle” means an all-terrain vehicle, snowmobile,  
13 lightweight utility vehicle, personal watercraft, off-road motorcycle, or moped.

14           **(13)** (a) “Powersports vehicle dealer” means any of the following:

15           1. A business entity engaged in the business of selling any all-terrain vehicle,  
16 snowmobile, lightweight utility vehicle, personal watercraft, off-road motorcycle, or  
17 moped for a profit at wholesale or retail.

18           2. An all-terrain vehicle dealer registered with the department of natural  
19 resources under s. 23.33 (2) (dm) 1.

20           3. A snowmobile dealer registered with the department of natural resources  
21 under s. 350.12 (3) (c) 1.

22           4. A moped dealer licensed by the department of transportation under s.  
23 218.41.

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1 (b) “Powersports vehicle dealer” does not include any dealer licensed under  
2 subch. I of this chapter with respect to any category of powersports vehicle for which  
3 that license applies.

4 **(14)** (a) “Powersports vehicle distributor” means any of the following:

5 1. A business entity that is engaged in the business of selling or distributing  
6 any all-terrain vehicle, snowmobile, lightweight utility vehicle, personal watercraft,  
7 off-road motorcycle, or moped to powersports vehicle dealers or that maintains  
8 distributor representatives.

9 2. An all-terrain vehicle distributor registered with the department of natural  
10 resources under s. 23.33 (2) (dm) 1.

11 3. A snowmobile distributor registered with the department of natural  
12 resources under s. 350.12 (3) (c) 1.

13 4. A factory branch of any powersports vehicle distributor described in subds.  
14 1. to 3.

15 (b) “Powersports vehicle distributor” does not include any distributor licensed  
16 under subch. I of this chapter with respect to any category of powersports vehicle for  
17 which that license applies.

18 **(15)** (a) “Powersports vehicle manufacturer” means any of the following:

19 1. A business entity engaged in the business of manufacturing any all-terrain  
20 vehicle, snowmobile, lightweight utility vehicle, personal watercraft, off-road  
21 motorcycle, or moped for sale to the public.

22 2. An all-terrain vehicle manufacturer registered with the department of  
23 natural resources under s. 23.33 (2) (dm) 1.

24 3. A snowmobile manufacturer registered with the department of natural  
25 resources under s. 350.12 (3) (c) 1.

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1           4. A factory branch of any powersports vehicle manufacturer described in  
2 subds. 1. to 3.

3           (b) “Powersports vehicle manufacturer” does not include any manufacturer  
4 licensed under subch. I of this chapter with respect to any category of powersports  
5 vehicle for which that license applies.

6           **(16)** “Snowmobile” has the meaning given in s. 340.01 (58a).

7           **(17)** “Trade secret” has the meaning given in s. 134.90 (1) (c), and may include  
8 business plans, marketing plans or strategies, customer lists, contracts, sales data,  
9 financial information, or any other confidential or proprietary information within  
10 the definition under s. 134.90 (1) (c).

11           **218.61 Prohibited practices by powersports vehicle manufacturers**  
12 **and distributors.** No powersports vehicle manufacturer or powersports vehicle  
13 distributor, and no agent, officer, factory representative, or affiliate of a powersports  
14 vehicle manufacturer or powersports vehicle distributor, may do any of the following:

15           **(1)** Discriminate between powersports vehicle dealers by doing any of the  
16 following:

17           (a) Selling or offering to sell a like powersports vehicle to one dealer at a lower  
18 actual price than the actual price offered to another dealer for the same model  
19 similarly equipped.

20           (b) Selling or offering to sell parts or accessories to one dealer at a lower actual  
21 price than the actual price offered to another dealer.

22           (c) Using a promotion plan, marketing plan, allocation plan, flooring assistance  
23 plan, or other similar device that results in a lower actual price on powersports  
24 vehicles, parts, or accessories being charged to one dealer over another dealer.

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1           (d) Adopting a method or changing an existing method for the allocation,  
2 scheduling, or delivery of new powersports vehicles, parts, or accessories to its  
3 dealers that is not fair, reasonable, and equitable. Upon the request of a powersports  
4 vehicle dealer, a powersports vehicle manufacturer shall disclose in writing to the  
5 dealer the method by which new powersports vehicles, parts, and accessories are  
6 allocated, scheduled, or delivered to its dealers handling the same line or make of  
7 vehicles.

8           **(2)** Give preferential treatment to some powersports vehicle dealers over  
9 others by refusing or failing to deliver, in reasonable quantities and within a  
10 reasonable time after receipt of an order, to any dealer holding a franchise for a line  
11 or make of powersports vehicles sold or distributed by the manufacturer any new  
12 powersports vehicle, part, or accessory, if the powersports vehicle, part, or accessory  
13 is being delivered to other dealers.

14           **(3)** Compete with a powersports vehicle dealer by doing any of the following:

15           (a) Acting in the capacity of a powersports vehicle dealer or owning, operating,  
16 or controlling, whether directly or indirectly, a powersports vehicle dealership in this  
17 state.

18           (b) Owning, operating, or controlling, whether directly or indirectly, a service  
19 facility in this state for the repair or maintenance of powersports vehicles under the  
20 manufacturer's new powersports vehicle warranty and extended warranty. This  
21 paragraph does not prohibit a powersports vehicle manufacturer from owning or  
22 operating a service facility for the purpose of providing or performing maintenance,  
23 repair, or service work on powersports vehicles that are owned by the manufacturer.

24           **(4)** Use any trade secret obtained from a powersports vehicle dealer to unfairly  
25 compete with the dealer without the prior written consent of the dealer.

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1           **(5)** Coerce, threaten, intimidate, or require, either directly or indirectly, a  
2 powersports vehicle dealer to do any of the following:

3           (a) Accept, buy, or order any powersports vehicle, part, or accessory, or other  
4 commodity or service not voluntarily ordered or requested, or buy, order, or pay  
5 anything of value for any item in order to obtain a powersports vehicle, part, or  
6 accessory, or other commodity that has been voluntarily ordered or requested.

7           (b) Enter into any agreement that violates this section.

8           (c) Order or accept delivery of a powersports vehicle with special features,  
9 accessories, or equipment not included in the list price of the vehicle as advertised  
10 by the manufacturer, except features, accessories, or equipment that are voluntarily  
11 requested or ordered by the dealer or that are required by law.

12           **(6)** Require a change in capital structure or means of financing for the  
13 dealership if the powersports vehicle dealer at all times meets the reasonable,  
14 written, and uniformly applied capital standards determined by the manufacturer.

15           **(7)** Prevent or attempt to prevent a dealer from making reasonable changes in  
16 the capital structure of a dealership or in the means by which the dealership is  
17 financed if the powersports vehicle dealer meets the reasonable, written, and  
18 uniformly applied capital requirements determined by the manufacturer.

19           **(8)** Unreasonably require the powersports vehicle dealer to change the location  
20 of, or require any substantial alterations to, the dealer's place of business.

21           **(9)** Fail to hold harmless and indemnify a powersports vehicle dealer against  
22 losses, including lawsuits and court costs, arising from any of the following:

23           (a) The manufacture or performance of any powersports vehicle, part, or  
24 accessory if the lawsuit involves representations by the manufacturer on the



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1 manufacture or performance of a powersports vehicle without negligence on the part  
2 of the dealer.

3 (b) Damage to merchandise in transit where the manufacturer specifies the  
4 carrier.

5 (c) The manufacturer's failure to jointly defend product liability suits  
6 concerning the powersports vehicle, part, or accessory provided to the dealer.

7 (d) Any other act performed by the manufacturer.

8 **(10)** Unfairly prevent or attempt to prevent a powersports vehicle dealer from  
9 receiving reasonable compensation for the value of a powersports vehicle.

10 **(11)** Fail to pay to a powersports vehicle dealer, within 60 days after receipt of  
11 a valid claim, a payment agreed to be made by the manufacturer on grounds that a  
12 new powersports vehicle or a prior year's model is in the dealer's inventory at the  
13 time of introduction of new model powersports vehicles.

14 **(12)** Deny a powersports vehicle dealer the right of free association with any  
15 other powersports vehicle dealer for any lawful purpose.

16 **(13)** Charge increased prices without having given written notice to the  
17 powersports vehicle dealer at least 15 days before the effective date of the price  
18 increase.

19 **(14)** Permit factory authorized warranty service to be performed upon  
20 powersports vehicles or accessories by persons other than their franchised dealers.

21 **(15)** Pay less than the amount the powersports vehicle dealer charges its retail  
22 customers for parts when used to perform similar work less the wholesale cost for the  
23 furnished part as listed in the manufacturer's current price schedules.

24 **(16)** Pay to a powersports vehicle dealer an amount for labor that is less than  
25 the amount the dealer charges its retail customers for labor.

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1           **(17)** Require or coerce a powersports vehicle dealer to grant a manufacturer a  
2 right of first refusal or other preference to purchase the dealer's franchise or place  
3 of business or both unless there is not another financially qualified purchaser.

4           **(18)** Require a powersports vehicle dealer to do any of the following:

5           (a) Accept delivery of a number or percentage of powersports vehicles during  
6 a specific period related to a sales order.

7           (b) Maintain an inventory in excess of the inventory needed for a period of 90  
8 days.

9           (c) Purchase unreasonable advertising displays or other materials or  
10 unreasonably require a powersports vehicle dealer to remodel or renovate existing  
11 facilities as a prerequisite to receiving a model or series of powersports vehicles.

12           **(19)** Require that any arbitration proceeding or legal action between the  
13 parties takes place in a venue other than this state.

14           **218.62 Penalties and civil actions. (1)** Any person who violates s. 218.61  
15 may be required to forfeit not less than \$100 nor more than \$1,000 for each separate  
16 violation.

17           **(2)** The department shall investigate violations of this section. The department  
18 or the department of justice, after consulting with the department, or any district  
19 attorney, upon informing the department, may on behalf of the state:

20           (a) Bring an action for temporary or permanent injunctive or other relief for any  
21 violation of this section. In such an action for injunctive relief, irreparable harm is  
22 presumed. The court may, upon entry of final judgment, award restitution when  
23 appropriate to any person suffering loss because of a violation of this section if proof  
24 of such loss is submitted to the satisfaction of the court.

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1 (b) Bring an action in any court of competent jurisdiction for the penalties  
2 authorized under sub. (1).

3 **(3)** In addition to any other available remedies, any person injured by a  
4 violation of s. 218.61 may bring a civil action against the person who violated s.  
5 218.61 for temporary or permanent injunctive relief or for damages or both. Upon  
6 finding that the defendant is violating or has violated s. 218.61, the court shall enjoin  
7 the defendant from continuing the violation, regardless of whether the plaintiff has  
8 suffered actual damages. In any action authorized under this subsection, any person  
9 who violates s. 218.61 shall be liable for 3 times the amount of actual damages caused  
10 by the violation and, notwithstanding s. 814.04 (1), the costs of the action, including  
11 reasonable attorney fees.

12 **SECTION 3. Initial applicability.**

13 (1) This act first applies to actions taken, and events occurring, on the effective  
14 date of this subsection.

15 **SECTION 4. Effective date.**

16 (1) This act takes effect on the first day of the 3rd month beginning after  
17 publication.

18 (END)