

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB96)

Received: 09/16/2011

Received By: **emueller**

Wanted: **As time permits**

Companion to LRB:

For: **Joan Ballweg (608) 266-8077**

By/Representing: **Vince Williams**

May Contact:

Drafter: **emueller**

Subject: **Transportation - mot veh dealers**

Addl. Drafters:

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Ballweg@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Exclude motorcycle manufacturers, importers, distributors, dealers from changes.

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 09/26/2011	wjackson 09/26/2011		_____			
/1			phenry 09/27/2011	_____	mbarman 09/27/2011	mbarman 09/27/2011	
/2	emueller 10/07/2011	wjackson 10/07/2011	rschluet 10/07/2011	_____	lparisi 10/07/2011	lparisi 10/07/2011	
/3	emueller	kfollett	phenry	_____	lparisi	lparisi	

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	10/10/2011	10/10/2011	10/10/2011	_____	10/10/2011	10/10/2011	
/4	emueller 10/11/2011	wjackson 10/11/2011	phenry 10/11/2011	_____ _____	lparisi 10/11/2011	lparisi 10/11/2011	

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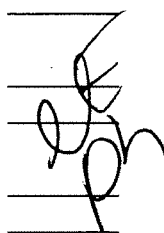
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/3	<i>EVJ</i> 10/10/11	<i>13/10/11</i> 10/10	<i>12/10/11</i>				

** This time sent jacket + copies to Ballweg per EVJ*

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/?	emueller 09/26/2011	wjackson 09/26/2011		_____			
/1			pHenry 09/27/2011	_____	mbarman 09/27/2011	mbarman 09/27/2011	

/2 EVM
10/7/11

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Sent to Senator Leibham
per EVM

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/?	emueller	/1 WLj 9/26					
/1	EMV 9/26/11						

FE Sent For:

[Handwritten signatures and initials]

<END>

4/19 Vince Williams @ Rep. Balweg

- need sub to SB 96
 - incorporate changes adopted in committee
 - changes for auto, truck manu, imp., dist, dealer
 - keep current law for motorcycle manu, imp. dist, dealer
- AA 1 to AB 132



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs 0182/1 0183/1
EVM:wlj:jf

Note

SENATE
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2011 ASSEMBLY BILL 132^{SENATE} 96

stays
RMNR

in 9/26/11

No changes /
Comparison to
ASA - AB 132

By Tues
9/27

Regen

1 AN ACT to renumber 218.0133 (2) (d); to renumber and amend 218.0101 (22)
2 and 218.0125 (1); to amend 218.0116 (1) (km), 218.0116 (1) (rm), 218.0116 (10),
3 218.0125 (2), 218.0125 (3), 218.0125 (4), 218.0125 (5), 218.0133 (title), 218.0133
4 (2) (a), 218.0133 (2) (b) 1. b., 218.0133 (2) (b) 1. c., 218.0133 (2) (b) 2., 218.0133
5 (4) (a), 218.0133 (5) (a) 2., 218.0133 (5) (d), 218.0133 (6) (b), 218.0163 (1) (a),
6 425.202 (2), 429.104 (19) and 779.85 (3); and to create 218.0101 (22) (b),
7 218.0116 (1) (um), 218.0116 (1) (vm), 218.0116 (1) (wm), 218.0116 (1) (xm),
8 218.0116 (1) (y), 218.0116 (1) (ym), 218.0116 (1) (ys), 218.0125 (1) (b), 218.0125
9 (3m), 218.0125 (4m), 218.0128, 218.0133 (1) (c), 218.0133 (2) (d) 2., 218.0133 (2)
10 (d) 3., 218.0133 (2) (f), 218.0133 (4) (e), 218.0133 (4) (f), 218.0133 (5) (a) 4d.,

1 218.0133 (5) (a) 4h., 218.0133 (5) (a) 4p., 218.0133 (5) (a) 4t. and 218.0133 (7)
2 of the statutes; **relating to:** motor vehicle dealers.

Analysis by the Legislative Reference Bureau

Under current law, each manufacturer, importer, distributor, and dealer of motor vehicles that wishes to sell motor vehicles in this state must be licensed by the Department of Transportation (DOT). The manufacturer, importer, or distributor may have its license revoked and may be liable for pecuniary losses and attorney fees incurred by the dealer, if the manufacturer, importer, or distributor takes certain actions with respect to a dealer that have been enumerated as violations.

This substitute amendment enumerates several additional actions of a manufacturer, importer, or distributor, other than a manufacturer, importer, or distributor of motorcycles, with respect to a dealer as violations. These newly designated violations are: 1) conditioning certain agreements or approvals on the dealer's entry into a contract that allows the manufacturer, importer, or distributor to control the disposition or use of the dealer's dealership facilities; 2) unreasonably conditioning certain agreements or approvals on the dealer's improvement of the dealer's dealership facilities at a substantial cost to the dealer; 3) unreasonably requiring a dealer to maintain exclusive facilities for a particular line make of motor vehicles; 4) taking certain adverse actions against a dealer for charging a lawful service fee to a retail customer; 5) taking certain adverse actions against a dealer because, without the dealer's knowledge that the purchaser intended to export the motor vehicle, a motor vehicle purchaser exported a motor vehicle; 6) with certain exceptions, requiring a dealer to provide the manufacturer, importer, or distributor with information regarding the dealer's retail customers; 7) transferring nonpublic customer information obtained from a dealer to another dealer or otherwise using nonpublic customer information obtained from a dealer for a nonpermitted use; and 8) failing to properly indemnify a dealer.

Under current law, a manufacturer, importer, or distributor must reasonably compensate a dealer that performs certain motor vehicle service work for the manufacturer, importer, or distributor. Covered service work is work to rectify product defects or other defects covered by the warranty provided by the manufacturer, importer, or distributor, certain motor vehicle delivery or preparation obligations, and any other work approved by the manufacturer, importer, or distributor. The manufacturer, importer, or distributor must compensate the dealer, for service, at the effective labor rate charged to all customers and, for parts, generally at not less than the amount the dealer charges other retail service customers for the parts. To be eligible for compensation, a dealer must notify the manufacturer, importer, or distributor of the amount that the dealer charges other retail service customers for parts. The manufacturer, importer, or distributor may require the dealer to provide documentary substantiation of the claimed amount the dealer charges for parts.

This substitute amendment requires most manufacturers, importers, or distributors to compensate a dealer based on the dealer's "effective nonwarranty labor rate" and "average percentage markup over dealer cost for parts." To be eligible for compensation, a dealer must provide the manufacturer, importer, or dealer with 100 sequential repair orders for qualifying nonwarranty repairs or all repair orders for qualifying nonwarranty repairs performed in a 90-day period. Qualifying nonwarranty repairs are repairs that are not covered by a warranty, but would be covered by the warranty of a manufacturer, importer, or distributor if the repaired vehicle was covered by the warranty. The effective nonwarranty labor rate is determined by dividing the total customer labor charges for qualifying nonwarranty repairs by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's, importer's, or distributor's time allowances. The dealer's average percentage markup over dealer cost for parts is determined by dividing total charges for parts for qualifying nonwarranty repairs by the total dealer cost for the parts. Within 30 days of receiving the substantiating repair orders, the manufacturer, importer, or distributor must begin compensating the dealer based on the rates calculated from the orders. If there is a conflict between the rates calculated by the manufacturer, importer, or distributor and the dealer, the manufacturer, importer, or distributor must provide a written notice and explanation of the dispute to the dealer. These changes to service compensation do not apply to manufacturers, importers, or distributors of motorcycles.

Under current law, with certain exceptions, when a manufacturer on direct dealership, a distributor on indirect dealership, or an importer on direct dealership (grantor) has entered into an agreement with a motor vehicle dealer and the grantor or dealer terminates, cancels, or does not renew the agreement, the grantor must pay to the dealer specified termination benefits. Among these benefits, the grantor must repurchase from the dealer unsold motor vehicles, parts, and accessories that meet certain criteria and pay the dealer a certain amount for the dealership facilities, but then the grantor is entitled to the possession and use of the dealership facilities. Among the exceptions that allow a termination without payment of benefits are the termination, cancellation, or nonrenewal of an agreement following a determination that the dealer engaged in fraud or theft against the grantor and the termination or cancellation of an agreement by a dealer without adequate notice.

This substitute amendment generally requires payment of termination benefits upon the termination, cancellation, or nonrenewal of a franchise that may constitute less than the entire agreement between the grantor and dealer. This substitute amendment also generally requires a grantor to provide several additional items of termination benefits, including removing signs from the dealership facility and reimbursing the dealer for certain computer material and service contractual expenses and certain facility renovation expenses. In addition, if the cancellation or nonrenewal of a franchise is due to a manufacturer's, importer's, or distributor's termination, cancellation, or discontinuation of a motor vehicle line make, the grantor must generally compensate the dealer in an amount not less than the fair market value of the terminated or nonrenewed franchise on the date immediately preceding the date the grantor announced the termination,

cancellation, or discontinuation of the line make. The termination benefits changes do not apply to manufacturers, importers, or distributors of motorcycles. This substitute amendment also provides several additional exceptions that allow termination, cancellation, or nonrenewal of a franchise without the payment of termination benefits. These are termination, cancellation, or nonrenewal: 1) after revocation of a necessary dealer license; 2) based on the dealer's failure to remain open during customary business hours for seven consecutive days; 3) based on the dealer's conviction of certain crimes; and 4) based on the dealer being subject to a bankruptcy or receivership filing.

This substitute amendment also requires a manufacturer, importer, or distributor, other than a manufacturer, importer, or distributor of motorcycles, to indemnify a dealer against certain claims alleging defective or negligent manufacture or design of the vehicle or its parts or accessories. Failure to adequately indemnify a dealer may result in the revocation of the manufacturer's, importer's, or distributor's license or liability for the dealer's pecuniary losses and attorney fees.

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

1 **SECTION 1.** 218.0101 (22) of the statutes is renumbered 218.0101 (22) (intro.)
2 and amended to read:

3 218.0101 **(22)** (intro.) "Motor vehicle" means any of the following:

4 (a) Any motor-driven vehicle required to be registered under ch. 341 except
5 mopeds.

6 **SECTION 2.** 218.0101 (22) (b) of the statutes is created to read:

7 218.0101 **(22)** (b) Any engine, transmission, or rear axle manufactured for
8 installation on a motor vehicle that is designed to transport persons or property on
9 a highway and that has a gross vehicle weight rating of greater than 16,000 pounds.

10 **SECTION 3.** 218.0116 (1) (km) of the statutes is amended to read:

11 218.0116 **(1)** (km) Being a manufacturer, importer, or distributor who violates
12 s. 218.0121, 218.0122, 218.0123, 218.0124 ~~or~~, 218.0125, or 218.0128.

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

1 218.0116 (1) (rm) Being a grantor, as defined in s. 218.0133 (1) (b), except a
2 motorcycle grantor, as defined in s. 218.0133 (1) (c), who fails to pay a motor vehicle
3 dealer agreement franchise termination benefits under s. 218.0133 or being a
4 motorcycle grantor who fails to pay a motor vehicle dealer agreement termination
5 benefits under s. 218.0133.

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

7 218.0116 (1) (um) 1. In this paragraph, “site control contract” means a contract
8 that grants authority to a manufacturer, importer, or distributor or an affiliate of a
9 manufacturer, importer, or distributor, during the term of an agreement or after the
10 termination, cancellation, or nonrenewal of an agreement, to control the disposition
11 or use of or to lease the dealer’s dealership facilities.

12 2. Being a manufacturer, importer, or distributor, except a manufacturer,
13 importer, or distributor of motorcycles with respect to a dealer or prospective dealer
14 of the manufacturer’s, importer’s, or distributor’s motorcycles, who conditions entry
15 into an agreement or renewal of an agreement or approval of the addition of a line
16 make of motor vehicles, franchise relocation, ownership or management change, or
17 transfer of dealership assets on the entry by the dealer or prospective dealer into a
18 site control contract or who coerces or attempts to coerce a dealer or prospective
19 dealer to enter into a site control contract. This subdivision does not prohibit a site
20 control contract for which the dealer or prospective dealer receives a separate and
21 valuable consideration.

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

23 218.0116 (1) (vm) Unless the technology of a motor vehicle reasonably requires
24 improvement of dealership facilities to accommodate the adequate sale and service
25 of the motor vehicle or the reasonable business considerations of the manufacturer

1 and dealer justify improvement of dealership facilities, being a manufacturer,
2 importer, or distributor, except a manufacturer, importer, or distributor of
3 motorcycles with respect to a dealer or prospective dealer of the manufacturer's,
4 importer's, or distributor's motorcycles, who conditions entry into an agreement or
5 renewal of an agreement or approval of the addition of a line make of motor vehicles,
6 franchise relocation, ownership or management change, or transfer of dealership
7 assets on the improvement of dealership facilities at a substantial cost to the dealer
8 or prospective dealer or who coerces or attempts to coerce a dealer or prospective
9 dealer to improve dealership facilities at a substantial cost to the dealer or
10 prospective dealer. This paragraph does not prohibit improvement of dealership
11 facilities at a substantial cost to the dealer or prospective dealer if the dealer or
12 prospective dealer has agreed to undertake the improvement and received a separate
13 and valuable consideration for the improvement. The burden of proof to demonstrate
14 the technological necessity or business justification of the facilities improvement is
15 on the manufacturer, importer, or distributor.

16 **SECTION 7.** 218.0116 (1) (wm) of the statutes is created to read:

17 218.0116 **(1)** (wm) Being a manufacturer, importer, or distributor, except a
18 manufacturer, importer, or distributor of motorcycles with respect to a dealer of the
19 manufacturer's, importer's, or distributor's motorcycles, who unreasonably requires
20 or coerces or attempts to coerce a dealer to provide or maintain exclusive facilities
21 for a particular line make of motor vehicles or unreasonably refuses to permit or
22 approve the addition of another line make to the dealership facilities of a dealer
23 taking into consideration the reasonable business considerations of the
24 manufacturer, importer, or distributor and the dealer. The burden of proof to
25 demonstrate the reasonableness of the provision or maintenance of exclusive

1 facilities or the refusal to permit or approve the addition of another line make is on
2 the manufacturer, importer, or distributor.

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

4 218.0116 (1) (xm) Being a manufacturer, importer, or distributor, except a
5 manufacturer, importer, or distributor of motorcycles with respect to a dealer of the
6 manufacturer's, importer's, or distributor's motorcycles, who charges back,
7 withholds payment, denies vehicle allocation, or takes other adverse action against
8 a dealer for charging a service fee to a retail customer in any amount that is not
9 prohibited under ss. 218.0101 to 218.0163 or rules promulgated by the department
10 of transportation under ss. 218.0101 to 218.0163.

11 **SECTION 9.** 218.0116 (1) (y) of the statutes is created to read:

12 218.0116 (1) (y) Being a manufacturer, importer, or distributor, except a
13 manufacturer, importer, or distributor of motorcycles with respect to a dealer of the
14 manufacturer's, importer's, or distributor's motorcycles, who charges back,
15 withholds payment, denies vehicle allocation, or takes other adverse action against
16 a dealer because a motor vehicle sold by the dealer has been exported to a foreign
17 country unless the dealer knew or reasonably should have known that the purchaser
18 intended to export the vehicle or resell the vehicle for export. If the motor vehicle is
19 titled or registered in any state in this country, it is presumed that the dealer had no
20 knowledge that the purchaser intended to export the vehicle or resell the vehicle for
21 export. The manufacturer, importer, or distributor may rebut the presumption. The
22 burden of proof to demonstrate that the dealer knew or reasonably should have
23 known that the purchaser intended to export the vehicle or resell the vehicle for
24 export is on the manufacturer, importer, or distributor.

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

1 218.0116 (1) (ym) Being a manufacturer, importer, or distributor, except a
2 manufacturer, importer, or distributor of motorcycles with respect to a dealer of the
3 manufacturer's, importer's, or distributor's motorcycles, who requires or coerces, or
4 attempts to require or coerce, a dealer to provide the manufacturer, importer, or
5 distributor with information regarding the retail customers of the dealer unless the
6 information is necessary for the sale and delivery of a new motor vehicle to a retail
7 buyer, to validate and pay customer or dealer incentives, for warranty
8 reimbursement substantiation under s. 218.0125, or to enable the manufacturer,
9 importer, or distributor to fulfill safety, recall, or other legal obligations.

10 **SECTION 11.** 218.0116 (1) (ys) of the statutes is created to read:

11 218.0116 (1) (ys) Being a manufacturer, importer, or distributor, except a
12 manufacturer, importer, or distributor of motorcycles with respect to a dealer of the
13 manufacturer's, importer's, or distributor's motorcycles, who transfers nonpublic
14 customer information that was obtained from a dealer to another franchised dealer
15 while the dealer from which the information was obtained remains a franchised
16 dealer unless the dealer from which the information was obtained agrees to the
17 transfer, or who uses any nonpublic personal information, as defined in 16 CFR 313.3
18 (n), obtained from a dealer unless the use falls within an exception under 16 CFR
19 313.14 or 313.15.

20 **SECTION 12.** 218.0116 (10) of the statutes is amended to read:

21 218.0116 (10) In addition to the licensor's authority to deny, suspend, or revoke
22 a license under ss. 218.0101 to 218.0163, the division of banking, after public
23 hearing, may issue a special order enjoining any licensee from engaging in any act
24 or practice which is determined by the division of banking to be in violation of any
25 provision of sub. (1), and the division of hearings and appeals may be petitioned to

1 ~~and, after notice and hearing, may issue such a special order after notice and hearing~~
2 ~~thereon enjoining a licensee from engaging in any act or practice which the division~~
3 ~~of hearing and appeals determines to be in violation of any provision of sub. (1).~~

4 **SECTION 13.** 218.0125 (1) of the statutes is renumbered 218.0125 (1) (intro.) and
5 amended to read:

6 218.0125 (1) (intro.) In this section, ~~“dealer;~~

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

10 **SECTION 14.** 218.0125 (1) (b) of the statutes is created to read:

11 218.0125 (1) (b) “Qualifying nonwarranty repairs” means nonwarranty repairs
12 that would be covered by the warranty of a manufacturer, importer, or distributor if
13 the vehicle being repaired was covered by the warranty. The term does not include
14 routine maintenance.

15 **SECTION 15.** 218.0125 (2) of the statutes is amended to read:

16 218.0125 (2) A manufacturer, importer, or distributor shall, for the protection
17 of the buying public, specify the delivery and preparation obligations of its dealers
18 before delivery of new motor vehicles to retail buyers. Except for a manufacturer,
19 importer, or distributor of motorcycles with respect to a dealer of the manufacturer’s,
20 importer’s, or distributor’s motorcycles, the specification shall be in writing. A copy
21 of the delivery and preparation obligations of its dealers shall be filed with the
22 department of transportation by every licensed motor vehicle manufacturer,
23 importer, or distributor and shall constitute the dealer’s only responsibility for
24 product liability as between the dealer and the manufacturer, importer or
25 distributor. Any mechanical, body or parts defects arising from any express or

1 implied warranties of the manufacturer, importer, or distributor shall constitute the
2 manufacturer's, importer's, or distributor's product or warranty liability. ~~The~~

3 **(2m)** A manufacturer, importer, or distributor of motorcycles with respect to
4 a dealer of the manufacturer's, importer's, or distributor's motorcycles shall
5 reasonably compensate any authorized dealer who performs work to rectify the
6 manufacturer's, importer's, or distributor's product or warranty defects or delivery
7 and preparation obligations or who performs any other work required, requested, or
8 approved by the manufacturer, importer, or distributor or for which the
9 manufacturer, importer, or distributor has agreed to pay, including compensation for
10 labor at a labor rate equal to the effective labor rate charged all customers and for
11 parts at an amount not less than the amount the dealer charges its other retail
12 service customers for parts used in performing similar work by the dealer.

13 **SECTION 16.** 218.0125 (3) of the statutes is amended to read:

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

1 applies to a manufacturer, importer, or distributor of motorcycles with respect to a
2 dealer of the manufacturer's, importer's, or distributor's motorcycles and those
3 dealers.

4 **SECTION 17.** 218.0125 (3m) of the statutes is created to read:

5 218.0125 **(3m)** (a) Subject to sub. (4m), a manufacturer, importer, or
6 distributor, except a manufacturer, importer, or distributor of motorcycles with
7 respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles,
8 shall reasonably compensate a dealer who performs work to rectify the product or
9 warranty defects of the manufacturer, importer, or distributor or to satisfy delivery
10 and preparation obligations of the manufacturer, importer, or distributor or who
11 performs any other work required, requested, or approved by the manufacturer,
12 importer, or distributor or for which the manufacturer, importer, or distributor has
13 agreed to pay. The manufacturer, importer, or distributor may not otherwise recover
14 its costs for compensating a dealer for labor and parts under this section.

15 (b) Reasonable compensation under par. (a) for labor is equal to the dealer's
16 effective nonwarranty labor rate multiplied by the number of hours allowed for the
17 repair under the manufacturer's, importer's, or distributor's time allowances used
18 in compensating the dealer for warranty work. Reasonable compensation under par.
19 (a) for parts is equal to the dealer's cost for the parts multiplied by the sum of 1 and
20 the dealer's average percentage markup over dealer cost for parts.

21 (c) 1. The effective nonwarranty labor rate is determined, using the submitted
22 substantiating orders under sub. (4m) (a) 2., by dividing the total customer labor
23 charges for qualifying nonwarranty repairs in the repair orders by the total number
24 of hours that would be allowed for the repairs if the repairs were made under the

1 manufacturer's, importer's, or distributor's time allowances used in compensating
2 the dealer for warranty work.

3 2. A dealer's average percentage markup over dealer cost for parts is
4 determined, using the submitted substantiating orders under sub. (4m) (a) 2., by
5 dividing total charges for parts in the repair orders by the total dealer cost for the
6 parts.

7 **SECTION 18.** 218.0125 (4) of the statutes is amended to read:

8 218.0125 (4) The manufacturer, importer, or distributor of motorcycles with
9 respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles
10 may require the dealer, at reasonable intervals, to provide the manufacturer,
11 importer, or distributor with documents or information regarding a reasonable
12 number of sales to other retail service customers of parts used by the dealer to
13 perform similar work in order to substantiate that the amounts requested in the
14 dealer's notice are consistent with the amounts that the dealer charges its other
15 retail service customers for parts used by the dealer to perform similar work.

16 **SECTION 19.** 218.0125 (4m) of the statutes is created to read:

17 218.0125 (4m) (a) To be eligible for compensation for labor or parts under sub.
18 (3m), a dealer shall submit to the manufacturer, importer, or distributor all of the
19 following:

20 1. A written notice of the claimed effective nonwarranty labor rate or average
21 percentage markup over dealer cost for parts.

22 2. Either 100 sequential repair orders for qualifying nonwarranty repairs or
23 all repair orders for qualifying nonwarranty repairs performed in a 90-day period,
24 whichever is less. All repair orders under this subdivision must be for repairs made
25 no more than 180 days before the submission.

1 (b) Not more than 30 days after receiving a submission under par. (a), the
2 manufacturer, importer, or distributor shall begin compensating the dealer based on
3 the effective nonwarranty labor rate or average percentage markup over dealer cost
4 for parts that is substantiated by the submission. If the manufacturer, importer, or
5 distributor disputes the dealer's claimed labor rate or markup, the manufacturer,
6 importer, or distributor shall notify the dealer in writing that it disputes the labor
7 rate or markup. A notice under this paragraph shall include a written explanation
8 of the reason for the dispute, including the labor rate or markup that the
9 manufacturer, importer, or distributor has determined is substantiated by the
10 submission.

11 **SECTION 20.** 218.0125 (5) of the statutes is amended to read:

12 218.0125 (5) A manufacturer, importer, or distributor who fails to compensate
13 a dealer for parts at an amount not less than the amount the dealer charges its other
14 retail service customers for parts used to perform similar work shall not be found to
15 have violated this section if the manufacturer, importer, or distributor shows that,
16 for a manufacturer, importer, or distributor of motorcycles with respect to a dealer
17 of the manufacturer's, importer's, or distributor's motorcycles, the amount is not
18 reasonably competitive to the amounts charged to retail service customers by other
19 similarly situated franchised motor vehicle dealers in this state for the same parts
20 when used by those dealers to perform similar work or, for any other manufacturer,
21 importer, or distributor, the amount is not reasonably competitive to the amounts
22 charged to retail service customers by other similarly situated franchised motor
23 vehicle dealers in this state in performing qualifying nonwarranty repairs.

24 **SECTION 21.** 218.0128 of the statutes is created to read:

1 **218.0128 Product liability.** A manufacturer, importer, or distributor, except
2 a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the
3 manufacturer's, importer's, or distributor's motorcycles, shall defend, indemnify,
4 and hold harmless a dealer against any claim, judgment, or settlement for damages,
5 court costs, expert witness fees, attorney fees, or other expenses arising out of a
6 complaint, claim, or lawsuit to the extent that the complaint, claim, or lawsuit is
7 caused by alleged defective or negligent manufacture, assembly, or design of a motor
8 vehicle, part, or accessory by the manufacturer, importer, or distributor. If a
9 complaint, claim, or lawsuit involves acts or omissions of both the manufacturer,
10 importer, or distributor and the dealer, the manufacturer, importer, or distributor is
11 not obligated to defend the dealer against a claim arising out of the dealer's alleged
12 acts or omissions and is not obligated to indemnify the dealer against any part of a
13 judgment or settlement that arises out of the dealer's alleged acts or omissions.

14 **SECTION 22.** 218.0133 (title) of the statutes is amended to read:

15 **218.0133** (title) ~~Agreement termination~~ **Termination** benefits.

16 **SECTION 23.** 218.0133 (1) (c) of the statutes is created to read:

17 218.0133 **(1)** (c) "Motorcycle grantor" means a manufacturer of motorcycles on
18 direct dealership, a distributor of motorcycles on indirect dealership, or an importer
19 of motorcycles on direct dealership, with respect to a dealer of the manufacturer's,
20 importer's, or distributor's motorcycles, that has entered into an agreement with a
21 motor vehicle dealer.

22 **SECTION 24.** 218.0133 (2) (a) of the statutes is amended to read:

23 218.0133 **(2)** (a) Except as provided in sub. (5) and subject to sub. (3), when a
24 motorcycle grantor or motor vehicle a dealer of its motorcycles terminates, cancels,
25 or does not renew an agreement ~~a~~, the motorcycle grantor shall pay a motor vehicle

1 the dealer all of the termination benefits under pars. (b) to (e), and when a grantor
2 that is not a motorcycle grantor or that is a dealer of its motor vehicles terminates,
3 cancels, or does not renew a franchise, the grantor shall pay the motor vehicle dealer
4 all of the termination benefits under pars. (b) to (f).

5 **SECTION 25.** 218.0133 (2) (b) 1. b. of the statutes is amended to read:

6 218.0133 (2) (b) 1. b. 218.0133 (2) (b) 1. b. ~~The~~ If the grantor is a motorcycle
7 grantor, the motor vehicle has not been operated more than 300 miles for
8 manufacturer's tests, predelivery tests, and motor vehicle dealer exchange in
9 addition to operation required for motor vehicle delivery from the grantor. If the
10 grantor is not a motorcycle grantor, the motor vehicle has not been operated more
11 than 500 miles for manufacturer's tests, predelivery tests, and motor vehicle dealer
12 exchange in addition to operation required for motor vehicle delivery from the
13 grantor or another dealer of the same line make.

14 **SECTION 26.** 218.0133 (2) (b) 1. c. of the statutes is amended to read:

15 218.0133 (2) (b) 1. c. The motor vehicle was acquired as part of the motor vehicle
16 dealer's original inventory or from the grantor or in the ordinary course of business
17 from another motor vehicle dealer of the same line make who acquired the motor
18 vehicle from the grantor.

19 **SECTION 27.** 218.0133 (2) (b) 2. of the statutes is amended to read:

20 218.0133 (2) (b) 2. A motorcycle grantor may not be required to repurchase a
21 motor vehicle under this paragraph unless the date on the original dealer invoice is
22 within 12 months of the date on which the motor vehicle dealer terminates, cancels,
23 or does not renew an agreement or is within 18 months of the date on which the
24 grantor terminates, cancels, or does not renew an agreement. A grantor that is not
25 a motorcycle grantor may not be required to repurchase a motor vehicle under this

1 paragraph unless the vehicle is of the current or one-year prior model year or the
2 date on the original dealer invoice is within 12 months of the date on which the motor
3 vehicle dealer terminates, cancels, or does not renew a franchise or is within 18
4 months of the date on which the grantor terminates, cancels, or does not renew a
5 franchise.

6 **SECTION 28.** 218.0133 (2) (d) of the statutes is renumbered 218.0133 (2) (d) 1.

7 **SECTION 29.** 218.0133 (2) (d) 2. of the statutes is created to read:

8 218.0133 (2) (d) 2. If the dealer leases a sign from the grantor or an entity
9 controlled by the grantor, the grantor, except a motorcycle grantor, shall terminate
10 or arrange for the termination of the lease.

11 **SECTION 30.** 218.0133 (2) (d) 3. of the statutes is created to read:

12 218.0133 (2) (d) 3. The grantor, except a motorcycle grantor, is responsible for
13 the removal of a sign subject to subd. 1. or 2. from the dealership facility and shall
14 bear the costs of the removal.

15 **SECTION 31.** 218.0133 (2) (f) of the statutes is created to read:

16 218.0133 (2) (f) The grantor, except a motorcycle grantor, shall reimburse the
17 motor vehicle dealer for the amount of any obligations that extend beyond the
18 effective date of the termination, cancellation, or nonrenewal under contracts for
19 computer hardware, software, maintenance, or other related service entered into by
20 the dealer and required by the grantor for 18 months or the remaining term of the
21 contracts, whichever is less, unless the computer hardware, software, maintenance,
22 or other related service was used to support the operations of a franchise other than
23 the franchise that was terminated, cancelled, or not renewed.

24 **SECTION 32.** 218.0133 (4) (a) of the statutes is amended to read:

1 218.0133 (4) (a) Except as provided in sub. (5) and subject to ~~par. pars. (d) and~~
2 (f), when a grantor ~~except a motorcycle grantor~~ terminates, cancels, or does not
3 renew ~~an agreement~~ a franchise a grantor shall, upon request, pay a motor vehicle
4 dealer the termination benefits under par. (b) or (c) and under par. (e), and when a
5 motorcycle grantor terminates, cancels, or does not renew an agreement, a
6 motorcycle grantor shall, upon request, pay a dealer the termination benefits under
7 par. (b) or (c). If a motor vehicle dealer receives benefits under par. (b) or (c) and par.
8 (f) does not apply, the grantor shall be entitled to the possession and use of the
9 dealership facilities for the period that the termination benefits payment covers.

10 **SECTION 33.** 218.0133 (4) (e) of the statutes is created to read:

11 218.0133 (4) (e) If a dealer completed construction or renovation of its
12 dealership facilities not more than 24 months before receiving the notice of the
13 franchise termination, cancellation, or nonrenewal and the construction or
14 renovation was required by the grantor, the grantor except a motorcycle grantor
15 shall pay the dealer an amount equal to the dealer's actual cost for the construction
16 or renovation, less any allowances or credits provided to the dealer by the grantor for
17 the construction or renovation and less any tax savings accruing to the dealer's
18 benefit prior to the notice of the franchise termination, cancellation, or nonrenewal
19 from depreciation write-offs related to the construction or renovation.

20 **SECTION 34.** 218.0133 (4) (f) of the statutes is created to read:

21 218.0133 (4) (f) If the termination, cancellation, or nonrenewal relates to fewer
22 than all of the franchises operated by a dealer at a single location, the amount of the
23 termination benefit under this subsection shall be based on the percentage of total
24 square footage attributed to the franchise being terminated, cancelled, or not

1 renewed at the effective date of the termination, cancellation, or nonrenewal. This
2 paragraph does not apply to a motorcycle grantor.

3 **SECTION 35.** 218.0133 (5) (a) 2. of the statutes is amended to read:

4 218.0133 (5) (a) 2. 218.0133 (5) (a) 2. A motor vehicle dealer who terminates
5 or cancels an agreement with a motorcycle grantor without giving the grantor 60
6 days' notice or the notice required under the agreement, whichever is less or who
7 terminates or cancels a franchise with a grantor that is not a motorcycle grantor
8 without giving the grantor 60 days' notice or the notice required under the
9 agreement, whichever is less.

10 **SECTION 36.** 218.0133 (5) (a) 4d. of the statutes is created to read:

11 218.0133 (5) (a) 4d. A motor vehicle dealer who has any license that is required
12 to operate its dealership revoked.

13 **SECTION 37.** 218.0133 (5) (a) 4h. of the statutes is created to read:

14 218.0133 (5) (a) 4h. A termination, cancellation or nonrenewal based on the
15 motor vehicle dealer's failure to conduct its customary sales and service operations
16 during its customary business hours for 7 consecutive business days unless the
17 failure is caused by an act of God, work stoppage or delays due to strikes or labor
18 disputes, an order of the department of transportation or the division of hearings and
19 appeals, or other circumstances beyond the dealer's control.

20 **SECTION 38.** 218.0133 (5) (a) 4p. of the statutes is created to read:

21 218.0133 (5) (a) 4p. A termination, cancellation, or nonrenewal based on the
22 conviction of a motor vehicle dealer of a crime involving theft, dishonesty, or false
23 statement, or any other crime punishable by imprisonment for greater than one year.

24 **SECTION 39.** 218.0133 (5) (a) 4t. of the statutes is created to read:

1 218.0133 (5) (a) 4t. A termination, cancellation, or nonrenewal based on the
2 motor vehicle dealer being subject to a bankruptcy or receivership filing unless the
3 petition is dismissed not more than 30 days after the filing date.

4 **SECTION 40.** 218.0133 (5) (d) of the statutes is amended to read:

5 218.0133 (5) (d) Subsection (4) does not apply if a motorcycle grantor
6 terminates, cancels, or fails to renew an agreement in compliance with s. 218.0116
7 (1) (i), unless the primary ground for termination, cancellation, or nonrenewal is
8 inadequate sales performance by the motor vehicle dealer or if a grantor that is not
9 a motorcycle grantor terminates, cancels, or fails to renew a franchise in compliance
10 with s. 218.0116 (1) (i), unless the primary ground for termination, cancellation, or
11 nonrenewal is inadequate sales performance by the motor vehicle dealer or
12 termination, cancellation, or discontinuation of a motor vehicle line make.

13 **SECTION 41.** 218.0133 (6) (b) of the statutes is amended to read:

14 218.0133 (6) (b) A motorcycle grantor may not make the termination benefits
15 payments under sub. (2) or (4) contingent on the motor vehicle dealer releasing or
16 waiving any rights, claims, or remedies and a grantor that is not a motorcycle grantor
17 may not make the termination benefits payments under sub. (2), (4), or (7) contingent
18 on the motor vehicle dealer releasing or waiving any rights, claims, or remedies.

19 **SECTION 42.** 218.0133 (7) of the statutes is created to read:

20 218.0133 (7) If a grantor except a motorcycle grantor cancels or fails to renew
21 a franchise under s. 218.0132 (2), in addition to the termination benefits provided in
22 subs. (2) and (4), the grantor shall compensate the dealer in an amount not less than
23 the fair market value of the franchise terminated or not renewed on the date
24 immediately preceding the date the manufacturer, importer, or distributor publicly
25 announced the termination, cancellation, or discontinuation of the line make that

1 resulted in the franchise cancellation or nonrenewal. The manufacturer, importer,
2 or distributor shall provide the compensation under this subsection not more than
3 90 days after the effective date of the cancellation or nonrenewal.

4 **SECTION 43.** 218.0163 (1) (a) of the statutes is amended to read:

5 218.0163 (1) (a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h),
6 (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (um), (v),
7 (vm), (w), ~~or (wm)~~, (x), (xm), (y), (ym), or (ys).

8 **SECTION 44.** 425.202 (2) of the statutes is amended to read:

9 425.202 (2) “Motor vehicle” has the meaning given in s. 218.0101 (22) (a).

10 **SECTION 45.** 429.104 (19) of the statutes is amended to read:

11 429.104 (19) “Motor vehicle” has the meaning given in s. 218.0101 (22) (a).

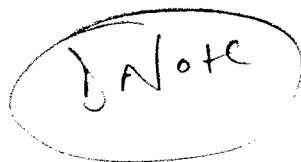
12 **SECTION 46.** 779.85 (3) of the statutes is amended to read:

13 779.85 (3) “Goods” has the meaning set forth in s. 402.105 (1) (c) except that
14 this term does not include a “motor vehicle” as defined in s. 218.0101 (22) (a).

15 **SECTION 47. Initial applicability.**

16 (1) This act first applies to an agreement that exists or is entered into on the
17 effective date of this subsection.

18 (END)

A handwritten note, possibly a signature or initials, is circled in black ink at the bottom of the page.

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

LRBs0182/1dn
EVM:wlj:jf

September 26, 2011

ATTN: Vince Williams

I have not altered any of the following provisions that were treated in the initial draft to differentiate between motorcycle dealers, etc., and non-motorcycle motor vehicle dealers, etc.: the amendment of ss. 218.0116 (10) and 218.0133 (2) (b) 1. c. and the creation of s. 218.0133 (5) (a) 4d., 4h., 4p., and 4t. Please let me know if you want any of these treated or if you have any questions or further instructions.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

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

LRBs0183/1dn
EVM:wlj:ph

September 26, 2011

ATTN: Vince Williams

I have not altered any of the following provisions that were treated in the initial draft to differentiate between motorcycle dealers, etc., and non-motorcycle motor vehicle dealers, etc.: the amendment of ss. 218.0116 (10) and 218.0133 (2) (b) 1. c. and the creation of s. 218.0133 (5) (a) 4d., 4h., 4p., and 4t. Please let me know if you want any of these treated or if you have any questions or further instructions.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

Mueller, Eric

From: Paul R. Norman [pnorman@boardmanlawfirm.com]
Sent: Monday, October 03, 2011 12:42 PM
To: Mueller, Eric
Cc: Sepic, William; Gerrard, Mary Ann; Snyder, Chris
Subject: Amendment to Senate Substitute Amendment (LRBs0183\1) to SB 96
Attachments: Senate Amendment __ to Substitute Amendment __ to SB 96 re GM issues (A1272017).DOCX
Eric,

Please review the attached proposed changes to LRBs0183/1 and then call me to discuss them as soon as possible. Thanks.

Paul R. Norman
Boardman Law Firm, LLP
1 S. Pinckney Street, Fourth Floor
Madison, WI 53703
(608) 283-1766 (phone)
(608) 283-1709 (fax)

IRS CIRCULAR 230 NOTICE: To ensure our compliance with certain U.S. Treasury Regulations, please be advised that, unless expressly indicated otherwise, if this communication or any attachment to this communication contains advice relating to any Federal tax issue, the advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding Federal tax penalties. If any of the advice was written to support the promotion, marketing, or recommendation of any transaction or matter addressed within the meaning of Internal Revenue Service Circular 230, you should seek advice based upon your particular circumstances from an independent tax advisor.

SENATE AMENDMENT ___
TO SENATE SUBSTITUTE AMENDMENT ___ (LRBs0183/1)
TO 2011 SENATE BILL 96

At the location indicated, amend the substitute amendment as follows:

1. Delete Sections 1 and 2 of the substitute amendment.
2. At page 9, line 25, after "from any", delete "express or".
3. At page 10, at the beginning of line 1, delete "implied".
4. At page 11, lines 13 and 14, delete the sentence that reads: "The manufacturer, importer or distributor may not otherwise recover its costs of compensating a dealer for labor and parts under this section."
5. At page 15, line 2, after "grantor or", delete "that is".
6. At page 15, line 4, change "(f)" to "(e)" and add the following: "When a grantor that is not a motorcycle grantor terminates, cancels, or does not renew a franchise, the grantor shall pay the motor vehicle dealer the termination benefits under par. (f)."
7. At 20, line 17, after "subsection", delete ".", and insert"; provided, however, Section 5 and Section 6 do not apply to a site control agreement or an agreement under which the dealer has agreed to improve dealership facilities unless the agreement is entered into, amended, modified, changed or renewed on or after the effective date of this subsection and Section 7 does not apply to an agreement under which the dealer, for separate and valuable consideration, has agreed to maintain exclusive facilities for a particular line make of motor vehicle, unless the agreement is entered into, amended, modified, changed or renewed on or after the effective date of this subsection."

Competition
as well
apply
also
manufacturer
terminates, etc.

clarification
of initial app.