



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 96

**Senate
Substitute Amendment 1**

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Senate Substitute Amendment 1 to 2011 Senate Bill 96 expands the protections the Wisconsin Motor Vehicle Dealer Law, ss. 218.0101 to 218.0163, Stats. (the Dealer Law), affords motor vehicle dealers vis-à-vis motor vehicle manufacturers, importers, and distributors. The substitute amendment's changes to the Dealer Law do not apply to motorcycle manufacturers, importers, or distributors with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles.

CURRENT LAW

The Dealer Law regulates the relationship between motor vehicle dealers and, among other entities, motor vehicle manufacturers, importers, and distributors. Under the Dealer Law, “[n]o motor vehicle dealer, motor vehicle wholesaler, motor vehicle salesperson, motor vehicle buyer, or sales finance company may engage in business as a motor vehicle dealer, motor vehicle wholesaler, motor vehicle salesperson, motor vehicle buyer, or sales finance company in this state without a license therefor as provided in ss. 218.0101 to 218.0163.” [s. 218.0114 (1), Stats.]

The Dealer Law also provides motor vehicle dealers with a number of protections vis-à-vis motor vehicle manufactures, importers, and distributors. These protections include limitations on a manufacturer's, importer's, or distributor's authority to cancel a dealer's franchise, force dealers to accept unwanted products, change franchise territory, or cancel a franchise without paying the dealer compensation. Failure to comply with these requirements could subject a manufacturer, importer, or distributor to denial, suspension, or revocation of its license.

2011 SENATE BILL 96

2011 Senate Bill 96 expands the Dealer Law's protections to motor vehicle dealers in a number of respects. It widens the scope of certain definitions; enumerates additional offences that may subject a manufacturer, importer, or distributor to revocation of its license; clarifies a manufacturer's, importer's, or distributor's warranty repair reimbursement obligations; requires a manufacturer, importer, or distributor to indemnify a dealer against certain product liability claims; and alters the statutory benefits a manufacturer, importer, or distributor must pay a terminated dealer.

Definitions

The *bill* provides a definition of “coerce” that is specific to motor vehicle manufacturers,’ importers,’ and distributors,’ dealings with dealerships.

The *bill* also expands the definition of “motor vehicle” to include, “[a]ny engine, transmission, or rear axle manufactured for installation on a motor vehicle that is designed to transport persons or property on a highway and that has a gross vehicle weight rating of greater than 16,000 pounds.”

Licenses, How Denied, Suspended, or Revoked [s. 218.0116, Stats.]

As noted above, the Dealer Law requires motor vehicle dealers, manufacturers, importers, and distributors engaging in business in Wisconsin to be licensed. *Current law* enumerates various reasons such a license may be denied, suspended, or revoked.

The *bill* adds to these reasons additional actions that may subject a manufacturer, importer, or distributor to denial, suspension, or revocation of its license. Under the *bill*, a manufacturer, importer, or distributor may now have its license denied, suspended, or revoked if it:

- Conditions entry into an agreement, or renewal of an agreement, on the entry of a dealer or prospective dealer into a site control contract or attempts to coerce a dealer, or prospective dealer to enter a site control contract.*
- Conditions entry into an agreement, or renewal of agreement, on the improvement of dealership facilities at a substantial cost to the dealer or prospective dealer, unless the improvements are reasonably necessary to accommodate the technology of a motor vehicle or the reasonable business considerations of the manufacturer, importer, or distributor; or coerces or attempts to coerce a dealer or prospective dealer to improve dealership facilities at a substantial cost to the dealer or prospective dealer.
- Unreasonably requires, coerces, or attempts to coerce a dealer to provide or maintain exclusive facilities for a particular line make of motor vehicles, or unreasonably refuses to permit or approve the addition of another line make to the dealership facilities of a dealer.
- Takes any adverse action against a dealer for charging a retail customer a lawful service fee.
- Takes any adverse action against a dealer because the dealer sold a motor vehicle that was exported to a foreign country, unless the dealer knew or reasonably should have known that the purchaser intended to export the vehicle.
- With certain exceptions, requires or coerces, or attempts to require or coerce, a dealer to provide the manufacturer, importer, or distributor with information about the dealer’s retail customers.
- With certain exceptions, transfers nonpublic customer information from one dealer to another franchised dealer.

* The bill defines “site control contract” as a “contract that grants authority to a manufacturer, importer, or distributor ... during the term of an agreement or after the termination, cancellation, or nonrenewal of an agreement, to control the disposition or use of or to leave the dealership’s facilities.”

Warranty Reimbursement [s. 218.0125, Stats.]

Under *current law*, a manufacturer, importer, or distributor must reasonably compensate a dealer who performs work to rectify the manufacturer's, importer's, or distributor's product or warranty defects. *Current law* requires the manufacturer, importer, or distributor to pay the dealer for labor at a rate equal to the effective labor rate charged all customers and for parts at an amount not less than the amount the dealer charges its other retail service customers. [s. 218.0125 (2), Stats.]

The *bill* provides a formula for calculating a dealer's effective labor rate. The *bill* also provides a formula for calculating how a dealer shall be compensated for parts used in warranty repairs.

Product Liability

The *bill* creates a statutory section [s. 218.0128] titled "Product Liability," which requires a manufacturer, importer, or distributor to indemnify a dealer against expenses arising out of a product liability claim to the extent that the claim was caused by the defective or negligent manufacture, assembly, or design of the motor vehicle, part, or accessory.

Agreement Termination Benefits [s. 218.0133, Stats.]

Under *current law*, a "grantor" must repurchase certain new vehicles, parts and accessories, tools, equipment, furnishings, and signs from a terminated dealer and provide facilities assistance to a dealer that has been terminated for certain reasons. Grantor is defined as "a manufacturer on direct dealership, a distributor on indirect dealership or an importer on direct dealership that has entered into an agreement with a motor vehicle dealer."

The *bill* makes several changes to the termination benefits a grantor must pay a terminated dealer. These changes include the following:

- Under *current law*, a grantor must repurchase certain new vehicles that have not been operated more than 300 miles. The *bill* changes the distance requirement to 500 miles.
- Under *current law*, a grantor may not be required to repurchase a motor vehicle unless the date on the original dealer invoice is within a certain timeframe. Under the *bill*, in addition to vehicles falling within this time-frame, a grantor may be required to repurchase a vehicle of the current or one-year prior model year.
- The *bill* expands the responsibilities of a grantor vis-à-vis a terminated dealer with respect to dealership signs.
- Under the *bill*, a grantor must reimburse a terminated motor vehicle dealer for obligations related to computer hardware, software, maintenance, or related service costs for the lesser of the term of the obligation or 24 months.
- Under the *bill*, a grantor must reimburse a dealer for construction or renovation costs incurred within 24 months of receiving the notice of franchise termination, cancellation, or nonrenewal if the construction was required by the manufacturer, importer, or distributor.

Current law provides certain exceptions to the general rule that a grantor must pay a dealer termination benefits. The *bill* adds four new exceptions. Under the *bill*, a grantor is not required to pay benefits if the dealer was terminated because:

- The dealer had a license, which was required to operate the dealership, revoked.
- With certain exceptions, the dealer closed the business for more than seven consecutive days.
- The dealer was convicted of a crime involving theft, dishonesty, or false statement, or any other crime punishable by imprisonment for greater than one year.
- The dealer was subject to a bankruptcy or receivership filing and the petition was not dismissed within 30 days of the filing date.

Finally, the *bill* provides that if a grantor cancels or fails to renew a franchise under certain circumstances when the grantor also contemporaneously cancels or fails to renew other franchises for the same line make, the grantor must compensate the dealer for the fair market value of the franchise, in addition to paying the termination benefits required by statute.

Initial Applicability

The provisions of the bill would first apply to an agreement existing or entered into on the effective date.

SENATE SUBSTITUTE AMENDMENT 1 TO 2011 SENATE BILL 96

Senate Substitute Amendment 1 makes the following changes to 2011 Senate Bill 2011:

- The *substitute amendment* exempts motorcycle manufacturers, importers, and distributors from all of the changes in the *bill* with respect to dealers of the manufacturers', importers', and distributors' motorcycles.
- The *substitute amendment* deletes the *bill's* definition of coerce.
- The *substitute amendment* deletes the provision of the *bill* expanding the definition of motor vehicle to include certain engines, transmissions, and rear axles.
- Under *current law*, a manufacturer, importer, or distributor is required to specify the delivery and preparation obligations of its dealers and file a copy of this with the Department of Transportation. The *substitute amendment* requires this specification to be in writing.
- The *bill* includes a requirement that, in the event of a termination of a franchise, the grantor must reimburse the dealer for obligations related to computer hardware, software, maintenance, or related service costs for the lesser of the term of the obligation or 24 months. The *substitute amendment* reduces this obligation to the lesser of the term of the obligation or 18 months.
- All of the provisions of the *bill* would first apply to an agreement existing or entered into on the effective date. Under the *substitute amendment*, the proscriptions against conditioning

an agreement on a dealer's entry into a site control contract, an agreement to improve dealership facilities, or an agreement to maintain exclusive facilities for a particular line make of motor vehicles would first apply to agreements entered into, amended, modified, changed, or renewed after the effective date. All other provisions of the *substitute amendment* would first apply to an agreement that exists or is entered into on the effective date.

Legislative History

The Senate Committee on Transportation and Elections offered Senate Substitute Amendment 1 on October 13, 2011. On the same day, the Senate Committee on Transportation and Elections unanimously recommended adoption of Senate Substitute Amendment 1 and passage of Senate Bill 96 as amended.

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