CHAPTER 135
DEALERSHIP PRACTICES

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The employment relationship in question was not a “dealership.” O’Leary v. Sterling Extruder Corp. 533 F. Supp. 1205 (1982).

The plaintiff was not a “dealer” since money advanced to the company for fixtures and inventory was refundable. Moore v. Tandy Corp. Radio Shack Div. 631 F. Supp. 1037 (1986).

It is improper to determine whether under sub. (3) a “community of interest” exists by examining the effect termination has on a division of the plaintiff. U.S. v. Davis, 756 F. Supp. 1162 (1990).

The plaintiff’s investment in “goodwill” was not sufficient to afford it protection under this chapter. Team Electronics v. Apple Computer, 773 F. Supp. 153 (1991).

The “situated in this state” requirement under sub. (2) is satisfied as long as the dealership business was transacted in Wisconsin. CSS-Wisconsin Office v. Houston Satellite Systems, 779 F. Supp. 979 (1991).

There is no “community of interest” under sub. (3) when there is an utter absence of “shared goals” or “cooperative coordinated efforts” between the parties. Cajan of Wisconsin v. Winston Furniture Co. 817 F. Supp. 778 (1993).

Even if a person is granted a right to sell a product, the person is not a dealer unless that person actually sells the product. Smith v. Rainsoft, 648 F. Supp. 1413 (1994).


The party providing that the party who had drafted the contract and dictated all of its provisions was not a party to the contract was void, and that party was a grantor of a dealership. Praefke Auto Electric & Battery Co., Inc. v. Tecumseh Products, Co. 110 F. Supp. 2d 899 (2000).

Nothing in the text or legislative history of ch. 135 suggests that the legislature intended to preclude co-ops from being dealers. Sub. (2) defines a dealer as “a person who holds a dealership.” Sub. (6) defines a person as a “corporation or other entity.” Under s. 185.02, a co-op is “an association incorporated.” Thus the “situated in this state” requirement under sub. (2) is satisfied as long as the dealership business was transacted in Wisconsin. Thus, the plaintiff was not a “dealer” since money advanced to the company for fixtures and inventory was refundable. Moore v. Tandy Corp. Radio Shack Div. 631 F. Supp. 1037 (1986).

In determining whether a plaintiff has a right to sell under the WFDL, the most important factor is the dealer’s ability to transfer the product itself, or title to the product, or commit the grantor to a transaction at the moment of the agreement to sell. A manufacturer’s representative, defined as an independent contractor who solicits orders for a manufacturer’s product from potential customers and is paid a commission on resulting sales, is a position consistently excluded from the WFDL. Northland Sales, Inc. v. Maas Corp. 556 F. Supp. 2d 928 (2008).

The WFDL expresses no concern for the mission or other motivation underlying the sales in question; it asks only whether sales occur. It does not the statute draw any distinction between for-profit and not-for-profit entities. The state’s interest is in the sales made to the public. The state’s concern is with the terms and conditions under which the public is marketed to.

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A plaintiff could proceed under this chapter if they could adduce evidence either that defendant made a change in the competitive circumstances of their dealership agreements that had a discriminatory effect on them or that defendant’s actions were intended to eliminate them or all of its dealers from the state. A plaintiff could also show that plaintiffs-dealers show an intent to terminate on the part of the grantor. Although it would not be enough to show that the grantor made bad management decisions; it might be enough if the plaintiff-dealers can show that the bad decisions were made with the intent to slough off the dealers and take over the markets they had developed. Conrad’s Sentry, Inc. v. Supervar, Inc. 357 F. Supp. 2d 1086 (2005).

Assignment of a second distributor in Wisconsin did not breach the agreement or cause a substantial change in the competitive circumstances of the nonexclusive dealership agreement in violation of s. 135.03. However, the defendant’s assignment of a second dealership was a violation of s. 135.04 because it caused a substantial change in the competitive circumstances of the nonexclusive dealership agreement in violation of s. 135.03.

When parties continue their relations after the term of a dealership contract has expired, the contract has been renewed for another period of the same length. Praefke Auto Electric & Battery Co., Inc. v. Tecumseh Products, Co. 110 F. Supp. 2d 899 (2000). Reversed on other grounds, 255 F.3d 460 (2001).

When parties continue their relations after the term of a dealership contract has expired, the contract has been renewed for another period of the same length. Praefke Auto Electric & Battery Co., Inc. v. Tecumseh Products, Co. 110 F. Supp. 2d 899 (2000). Reversed on other grounds, 255 F.3d 460 (2001).

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is insolvency, the occurrence of an assignment for the benefit of creditors or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer shall be entitled to written notice of such default, and shall have 10 days in which to remedy such default from the date of delivery or posting of such notice.

**History:** 1973 c. 179.

A grantor must give a 90−day notice when termination is for nonpayment of sums due. White Hen Pantry v. Buttker, 100 Wis. 2d 169, 301 N.W.2d 216 (1981).

The notice requirement of this section applies to substantial changes of circumstances that are not a dealership agreement. Actions that substantially change the competitive circumstances and that are controlled by the grantor or are allowed by the dealership agreement require the statutory notice. Jungbluth v. Hometown, Inc. 201 Wis. 2d 519, 537 N.W.2d 199 (1996), 94−152.

Steps that the grantor requires the dealer to take in order to rectify a deficiency must be reasonable. Al Bishop Agency, Inc. v. Lithonia, etc., 474 F. Supp. 828 (1979).


**Remedies for termination should be available only for unequivocal terminations of the entire relationship.** Meyer v. Kero−Sun, Inc. 570 F. Supp. 402 (1983).

The insolvency exception to the notice requirement did not apply to insolvency that was not known to the grantor at the time of termination. Bruno Wine & Spirits v. Guimarra Vineyards, 573 F. Supp. 337 (1983).

Assignment of second distributor in Wisconsin did not breach the agreement or cause a substantial change in the competitive circumstances of the nonexclusive dealership agreement in violation of s. 135.03. However, the defendant’s assignment of a substantially similar but new and substantially different product was a violation of s. 135.04 because it caused a substantial change in the competitive circumstances of the plaintiff’s truck distributorship and the defendant failed to provide the plaintiff with 90 days’ written notice. Wisconsin Compressed Air Corp. v. Gardner Denver, Inc. 571 F. Supp. 2d 992 (2002).

**135.045 Repurchase of inventories.** If a dealership is terminated by the grantor, the option at the expense of the dealer, shall repurchase all inventories sold by the grantor for resale under the dealership agreement at the fair wholesale market value. This section applies only to merchandise with a name, trademark, label or other mark on it which identifies the grantor.

**History:** 1977 c. 171.


**135.05 Application to arbitration agreements.** This chapter shall not apply to provisions for the binding arbitration of disputes contained in a dealership agreement concerning the items covered in s. 135.03, if the criteria for determining whether good cause existed for a termination, cancellation, nonrenewal or substantial change of competitive circumstances, and the relief provided is no less than that provided for in this chapter.

**History:** 1973 c. 179.

Federal law required enforcement of an arbitration clause even though that clause was not known to the grantor at the time of termination. Los Moise, Inc. v. Rossignol Ski Co., Inc. 125 Wis. 2d 51, 361 N.W.2d 653 (1985).

The term “actual costs of the action” includes appellate attorney fees. Siegel v. Leor, Inc. 156 Wis. 2d 621, 457 N.W.2d 533 (Ct. App. 1990).

**135.06 Action for damages and injunctive relief.** If any grantor violates this chapter, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages and injunctive relief.

**History:** 1973 c. 179; 1993 a. 482.

In an action for termination of a dealership upon written notice not complying with this chapter and without good cause, the statute of limitations started running upon receipt of the termination notice. Les Moise, Inc. v. Rossignol Ski Co., Inc. 125 Wis. 2d 51, 361 N.W.2d 653 (1985).


A cause of action accrued when a defective notice under s. 135.04 was given, not when the dealership was actually terminated. Hammil v. Rickett Mfg. Corp. 719 F.2d 252 (1983).

This section does not restrict recovery of damages with respect to inventory on hand at the time of termination to “fair wholesale market value.” Kealey Pharmacy v. Walgreen Co. 761 F.2d 345 (1985).

Accounting of lost profits was properly included under this section. Bright v. Land O’ Lakes, Inc. 844 F.2d 436 (7th Cir. 1988).

There is no presumption in favor of injunctive relief and against damages for lost future profits. Friebel Farm Equip. v. Van Dale, Inc. 978 F.2d 395 (1992).

**135.065 Temporary injunctions.** In any action brought by a dealer against a grantor under this chapter, any violation of this chapter by the grantor is deemed an irreparable injury to the dealer for determining if a temporary injunction should be issued.

**History:** 1977 c. 171.

Four factors considered in granting preliminary injunction are discussed. The loss of good will constituted irreparable harm. Reinders Bros. v. Rain Bird Eastern Sales Corp. 627 F.2d 44 (1980).

The court did not abuse its discretion in granting a preliminary injunction notwithstanding the arguable likelihood that the defendant would ultimately prevail at trial. Menominee Rubber Co. v. Gould, Inc. 657 F.2d 164 (1981).

Although the plaintiff showed irreparable harm, the failure to show a reasonable likelihood of success on the merits precluded a preliminary injunction. Milwaukee Rentals, Inc. v. Budget Rent A Car Corp. 496 F. Supp. 255 (1980).

A presumption of irreparable harm exists in favor of a dealer when a violation is shown. For the presumption to apply, a dealership relationship must be shown to exist. Price Engineering Co., Inc. v. Vickes, Inc. 774 F. Supp. 1160 (1991).

If a plaintiff establishes the likelihood of a violation of this chapter, the statute creates a presumption that there is irreparable harm. The effect of the statute is to shift the burden of proof to the defendant. If, however, the grantor presents evidence of the absence of irreparable injury, the presumption is no longer relevant, and the dealer must come forward with evidence to prove that the grantor’s evidence.

**135.066 Intoxicating liquor dealerships.** (1) **LEGISLATIVE FINDINGS.** The legislature finds that a balanced and healthy 3−tier system for distributing intoxicating liquor is in the best interest of this state and its citizens; that the 3−tier system for distributing intoxicating liquor has existed since the 1930’s; that a balanced and healthy 3−tier system ensures a level system between the manufacturer and wholesale tiers; that a wholesale tier consisting of numerous healthy competitors is necessary for a balanced and healthy 3−tier system; that the number of intoxicating liquor wholesalers in this state is in significant decline; that this decline threatens the health and stability of the wholesale tier; that the regulation of all intoxicating liquor dealerships, regardless of when they were entered into, is necessary to promote and maintain a wholesale tier consisting of numerous healthy competitors; and that the maintenance and promotion of the 3−tier system will promote the public health, safety and welfare. The legislature further finds that a stable and healthy wholesale tier provides an efficient and effective means for tax collection. The legislature further finds that dealerships between intoxicating liquor wholesalers and manufacturers have been subject to state regulation since the enactment of the 21st Amendment to the U.S. Constitution and that the parties to those dealership expectations changes to state legislation regarding those dealership.

(2) **DEFINITION.** “Intoxicating liquor” has the meaning given in s. 125.02 (8) minus wine.

**NOTE:** Sub. (2) is shown as renumbered from sub. (2) (a) by the legislative reference bureau under s. 139.11 (b)(2). (a) (2). (2) (c).

**5 NONAPPLICABILITY.** This section does not apply to any of the following dealerships:

(a) Dealerships in which a grantor, including any affiliate, division or subsidiary of the grantor, has never produced more than 5 percent of the dealer’s total net revenues from the sale of intoxicating liquor during the dealer’s most recent fiscal year.

(b) Dealerships in which the dealer’s net revenues from the sale of all of the grantor’s brands of intoxicating liquor constitute less than 5 percent of the dealer’s total net revenues from the sale of intoxicating liquor during the dealer’s most recent fiscal year preceding a grantor’s cancellation or alteration of a dealership.

**6 SEVERABILITY.** The provisions of this section are severable as provided in s. (999.001 (11) (b)(2). (a) (2)). (2) (c).

**History:** 1999 a. 9; s. 139.12 (1) (b) 2.; s. 35.17 correction in (2) (title).

A grantor−dealer relationship is not included within the definition of a dealership in s. 135.02 (3) (b). Sub. (2) provides the operative definition of intoxicating
liquor for purposes of this chapter, and that definition explicitly excludes wine.

135.07 Nonapplicability. This chapter does not apply:

1. To a dealership to which a motor vehicle dealer or motor vehicle distributor or wholesaler as defined in s. 218.0101 is a party in such capacity.

2. To the insurance business.

3. Where goods or services are marketed by a dealership on a door to door basis.


When a “dealer” under ch. 135 is also a “franchisee” under ch. 553, the commissioner of securities may deny, suspend, or revoke the franchisor’s registration or revoke its exemption if the franchisor has contracted to violate or avoid the provisions of ch. 135. Ch. 135 expresses public policy and its provisions may not be waived. 66 Atty. Gen. 11.