

1981 Assembly Bill 816

Date of enactment: May 28, 1982

Date of publication: June 4, 1982

CHAPTER 382 , Laws of 1981
(Veto Overruled)

AN ACT to amend 218.01 (2) (c), (8) (d) and (9); to repeal and recreate 218.01 (3) (f); and to create 218.01 (1) (x), (2) (c) 2. b and (3) (a) 32 of the statutes, relating to the establishment or relocation of motor vehicle dealerships and providing a penalty.

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

SECTION 1. 218.01 (1) (x) of the statutes is created to read:

218.01 (1) (x) "Relevant market area" means all of the area within a 10-mile radius of the site of an existing enfranchised motor vehicle dealership or the area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, factory branch or distributor, whichever is greater.

SECTION 2. 218.01 (2) (c) of the statutes is amended to read:

218.01 (2) (c) ~~All 1. Except as provided in subd. 2, all licenses shall be granted or refused within 60 days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted, except that.~~

2. a. In cases where a complaint of unfair cancellation of a dealer agreement is in the process of being heard, no replacement application for such the agreement shall may be considered until a decision is rendered by the transportation commission.

SECTION 3. 218.01 (2) (c) 2. b of the statutes is created to read:

218.01 (2) (c) 2. b. In cases where a complaint has been filed under sub. (3) (f) protesting the proposed establishment or relocation of a dealership in a relevant market area, no license may be issued until the transportation commission has rendered a decision permitting the issuance of the license.

SECTION 4. 218.01 (3) (a) 32 of the statutes is created to read:

218.01 (3) (a) 32. Being a manufacturer, factory branch or distributor who enters into a franchise agreement establishing or relocating a motor vehicle dealership in a relevant market area without first complying with the procedure in par. (f) 1.

SECTION 5. 218.01 (3) (f) of the statutes is repealed and recreated to read:

218.01 (3) (f) 1. A manufacturer, factory branch or distributor who seeks to enter into a franchise agreement establishing or relocating a motor vehicle dealership within the relevant market area of an existing enfranchised dealer of the line make of motor vehicle shall first notify in writing the department and each such existing enfranchised dealer of its intention to establish or relocate a dealership. Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, factory branch or distributor, whichever is later, any existing enfranchised dealer of the same line make to whom the manufacturer, factory branch or distributor is required to give notice under this subdivision may file with the department and the transportation commission a complaint protesting the proposed establishment or relocation of the dealership within the relevant market area of the existing enfranchised dealer. If a complaint is filed, the department shall inform the manufacturer, factory branch or distributor that a timely complaint has been filed, that a hearing is required, and that the proposed franchise agreement may not be entered into until the transportation commission has held a hearing, nor thereafter, if the transportation commission determines that there is good cause for not permitting the proposed establishment or relocation of the dealership. In the event of multiple complaints, hearings shall be consolidated to expedite the disposition of the issue.

2. In determining whether good cause exists for not permitting the proposed establishment or relocation of a dealership, the transportation commission shall take into consideration the existing circumstances, including, but not limited to:

a. The amount of business transacted by existing enfranchised dealers of the line make of motor vehicle when compared with the amount of business available to them.

b. The permanency of the investment necessarily made and the obligations incurred by existing enfranchised dealers in the performance of their franchise agreements.

c. The effect on the retail motor vehicle business in the relevant market area.

d. Whether it is injurious to the public welfare for the proposed dealership to be established or relocated.

e. Whether the establishment or relocation of the proposed dealership would increase competition and therefore be in the public interest.

f. Whether the existing enfranchised dealers of the line make of motor vehicle are providing adequate consumer care for the motor vehicles of that line make, including the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified personnel.

g. Whether the existing enfranchised dealers of the line make of motor vehicle are receiving vehicles and parts in quantities promised by the manufacturer, factory branch or distributor and on which promised quantities existing enfranchised dealers based their investment and scope of operations.

h. The effect the denial of such establishment or relocation would have on the license applicant or dealer who is seeking to establish or relocate a dealership.

3. The decision of the transportation commission shall be in writing and shall contain findings of fact and a determination of whether there is good cause for not permitting the proposed establishment or relocation of the dealership. The transportation commission shall deliver copies of the decision to the parties personally or by registered mail. The decision is final upon its delivery or mailing and no reconsideration or rehearing by the transportation commission is permitted.

4. For purposes of this paragraph:

a. The reopening of a dealership, which has been closed for less than 2 years, at the original location is not the establishment or relocation of a motor vehicle dealership. The reopening of a dealership at a location other than the original location is the establishment or relocation of a motor vehicle dealership if the new location is within 6 miles, by the closest highway route, of another enfranchised dealer of the same line make and is closer to such dealer than the reopening dealer's closed dealership.

b. The relocation of an enfranchised dealership to a location within the existing area of sales responsibility assigned to that enfranchised dealership by the manufacturer, factory branch or distributor is not the relocation of a dealership, unless the relocation site is within 6 miles, by the closest highway route, of the location of another enfranchised dealer of the same line make and is closer to such dealer than the relocating dealer's existing location.

SECTION 6. 218.01 (8) (d) and (9) of the statutes are amended to read:

218.01 (8) (d) Any person ~~or persons~~ violating sub. (3) (a) 15, 16, 17, 23, 24 ~~or~~, 26, ~~or~~ 32 may, in addition to, or in lieu of, the general denial, suspension or revocation penalties in sub. (3), be subject to a fine of not more than \$5,000 or be subject to a suspension or revocation sentence of not more than a one year effective only in the territory formerly served by the unfairly canceled dealer or, for a violation of sub. (3) (a) 32, in the relevant market area, or by both such fine and suspension or revocation, except that in a metropolitan area serviced by several dealers handling the same motor vehicle line make, the suspension or revocation order shall not be applicable to the remaining dealers.

(9) CIVIL DAMAGES. Any licensee suffering pecuniary loss because of a violation by any other licensee of sub. (3) (a) 4, 11, 15, 16, 17, 23, 24 ~~or~~, 26 ~~or~~ 32 or because of any unfair practice found by the commissioner or transportation commission under sub. (5) (a), may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss together with costs including a reasonable ~~attorney's~~ attorney fee.