

1987 Senate Bill 494

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1987 Wisconsin Act 251

AN ACT to repeal 218.01 (2) (be); and to create 218.01 (2) (bf), 218.01 (2) (bm), 218.01 (2) (bo) and 218.01 (3) (a) 36 of the statutes, relating to contract or franchise agreements between motor vehicle dealers and manufacturers, distributors or importers.

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

SECTION 1. 218.01 (2) (be) of the statutes is repealed.

SECTION 2. 218.01 (2) (bf) of the statutes is created to read:

218.01 (2) (bf) Within 60 days after the department or office of the commissioner of transportation issues a declaratory ruling under s. 227.41 that an agreement is inconsistent with par. (bm), a manufacturer, distributor or importer shall remove or revise any provision of the agreement declared to be inconsistent with par. (bm).

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

218.01 (2) (bm) 1. Except as provided in par. (bo), provisions of an agreement which do any of the following are void and prohibited:

a. Waive a remedy or defense available to a distributor or dealer or other provision protecting the interests of a distributor or dealer under this section or

under rules promulgated by the department under this section.

b. Prevent a dealer or distributor from bringing an action in a particular forum otherwise available under the law.

2. a. Notwithstanding subd. 1. b and subject to sub. (3) (a) 36. d, an agreement may provide for the resolution of disputes by arbitration, including binding arbitration, if both parties to the agreement voluntarily agree to an arbitration provision. An arbitrator acting under this subd. 2. a shall be bound by the laws of this state, including par. (bd) 2 and other provisions of this section.

b. No finding of an arbitrator is binding upon any person who is not a party to the agreement. A finding of an arbitrator does not bind the department or the office of the commissioner of transportation with respect to enforcement of this section.

3. Notwithstanding subd. 1. b, an agreement may require a dealer or distributor to submit disputes to a nonbinding and reasonably prompt dispute resolution procedure before bringing an action in another forum.

SECTION 4. 218.01 (2) (bo) of the statutes is created to read:

218.01 (2) (bo) Paragraph (bm) does not apply to any of the following:

1. A settlement agreement that is entered into by a dealer or distributor voluntarily and that waives rights, remedies or defenses with respect to a particular dispute existing when the settlement agreement is reached.

2. An agreement, made after a dealer receives notice under sub. (3) (f) 1, which waives the dealer's right to file a complaint protesting the establishment or relocation of a dealership proposed in the notice.

SECTION 5. 218.01 (3) (a) 36 of the statutes is created to read:

218.01 (3) (a) 36. Being a manufacturer, distributor or importer who does any of the following:

a. Fails to notify the department of any revision or addition to an agreement as required under sub. (2) (bd) 1.

b. Fails to revise or remove portions of an agreement that the department or the office of the commissioner of transportation declares to contain provisions which are inconsistent with sub. (2) (bm).

c. Requires or coerces a dealer or distributor to execute an agreement, as a condition of obtaining or continuing a franchise, that contains provisions that are void or prohibited under sub. (2) (bm) or attempts to enforce an agreement with void or prohibited provisions.

d. Requires or coerces a dealer or distributor to execute an agreement that requires arbitration as a condition of obtaining or continuing a franchise, unless the dealer or distributor has the option of signing an otherwise identical agreement without the arbitration provision or unless the agreement provides for arbitration on a case-by-case basis and only when both parties elect to refer the matter to arbitration. This subd. 36. d does not apply to a manufacturer or distributor who enters into an agreement that creates a new franchise for a new line make of motor vehicle, if the arbitration provision was the subject of good faith negotiations with a representative group of dealers, and if each dealer voluntarily accepts the arbitration provision after receiving a franchise offering circular under s. 553.27 (4) that discloses the existence and effect of the arbitration provision, and if the manufacturer or dealer files a copy of the franchise offering circular and proof of good faith negotiation and voluntary acceptance of the arbitration with any filing required under sub. (2) (bd) 1.

SECTION 6. **Initial applicability.** The treatment of section 218.01 (2) (bf), (bm) and (bo) of the statutes applies to agreements, as defined in section 218.01 (1) (a) of the statutes, which are entered into, renewed, revised or extended on or after the effective date of this SECTION.