

1989 Assembly Bill 235

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1989 WISCONSIN ACT 292

AN ACT *to renumber and amend* 218.01 (9) (a); and *to create* 218.01 (2) (bs), 218.01 (3) (a) 37 to 39, 218.01 (3) (fm), 218.01 (3r) and 218.01 (9) (a) 1 and 2 of the statutes, **relating to:** motor vehicle dealer agreements and agreement termination benefits.

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

SECTION 1. 218.01 (2) (bs) of the statutes is created to read:

218.01 (2) (bs) A manufacturer, distributor or importer shall designate in writing the area of sales responsibility assigned to a motor vehicle dealer. A manufacturer, distributor or importer may not modify the area of sales responsibility to avoid the requirements of sub. (3) (f).

SECTION 2. 218.01 (3) (a) 37. to 39. of the statutes are created to read:

218.01 (3) (a) 37. Being a manufacturer, distributor or importer who fails to designate in writing the area of sales responsibility assigned to a motor vehicle dealer or who changes or attempts to change an area of sales responsibility to avoid the requirements of par. (f).

38. Being a grantor, as defined in sub. (3r) (a) 2., who fails to pay a motor vehicle dealer agreement termination benefits under sub. (3r).

39. Being a manufacturer or distributor who modifies a motor vehicle dealer agreement during the term of the agreement or upon its renewal without complying with par. (fm).

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

218.01 (3) (fm) 1. A manufacturer or distributor may not modify a motor vehicle dealer agreement during the term of the agreement or upon its renewal if the modification substantially and adversely affects the motor vehicle

dealer's rights, obligations, investment or return on investment without giving 60 days written notice of the proposed modification to the motor vehicle dealer unless the modification is required by law, court order or the licenser. Within the 60-day notice period the motor vehicle dealer may file with the department and the office of the commissioner of transportation and serve upon the respondent a complaint for a determination of whether there is good cause for permitting the proposed modification. The office of the commissioner of transportation shall promptly schedule a hearing and decide the matter. Multiple complaints pertaining to the same proposed modification shall be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter.

2. In making a determination of whether there is good cause for permitting a proposed modification, the office of the commissioner of transportation may consider any relevant factor including:

- a. The reasons for the proposed modification.
- b. Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminating manner.
- c. The degree to which the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.
- d. Whether the proposed modification is in the public interest.
- e. The degree to which the proposed modification is necessary to the orderly and profitable distribution of products by the respondent.

f. Whether the proposed modification is offset by other modifications beneficial to the motor vehicle dealer.

3. The decision of the office of the commissioner of transportation shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed modification. The office of the commissioner of transportation 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 office of the commissioner of transportation is permitted.

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

218.01 (3r) AGREEMENT TERMINATION BENEFITS. (a) In this subsection:

1. “Dealership facilities” means that part of a motor vehicle dealer’s place of business that is used to conduct business under an agreement between a grantor and the motor vehicle dealer.

2. “Grantor” means 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.

(b) 1. Except as provided in par. (e) and subject to par. (c), when a grantor or motor vehicle dealer terminates, cancels or does not renew an agreement a grantor shall pay a motor vehicle dealer all of the termination benefits under subds. 2 to 5.

2. A grantor shall repurchase from the motor vehicle dealer unsold new motor vehicles that have not been structurally modified by a motor vehicle dealer, that have not been operated more than 300 miles for manufacturer’s tests, predelivery tests and motor vehicle dealer exchange in addition to operation required for motor vehicle delivery from the grantor and that the motor vehicle dealer acquired as part of the motor vehicle dealer’s original inventory or acquired from the grantor or from another motor vehicle dealer of the same line make and who acquired the motor vehicle from the grantor. In addition, a grantor may not be required to repurchase a motor vehicle under this subdivision unless the date on the original dealer invoice is within 12 months of the date on which the motor vehicle dealer terminates, cancels or does not renew an agreement or is within 18 months of the date on which the grantor terminates, cancels or does not renew an agreement. The repurchase price for a new motor vehicle shall be the motor vehicle invoice price from the grantor, plus destination, delivery or distribution charges and sales taxes incurred by the motor vehicle dealer, less allowances paid or credited to the motor vehicle dealer by the grantor. A grantor may subtract from a new motor vehicle repurchase price an amount equal to the diminution in wholesale value caused by damages to a new motor vehicle before the motor vehicle dealer delivers the new motor vehicle to the grantor.

3. A grantor shall repurchase from the motor vehicle dealer unused, undamaged and unsold parts and accessories and unopened appearance and maintenance materials and paints that are in the motor vehicle dealer’s inventory or subject to a noncancellable order to the grantor on the effective date of the termination, cancellation or nonrenewal, that are in original packaging, or, if sheet metal or body panels, that are in a comparable substitute for original packaging, and that the motor vehicle dealer acquired from the grantor or from its predecessor motor vehicle dealer if the parts, accessories and materials and paints are listed for sale in the grantor’s price schedules in effect on the effective date of the termination, cancellation or nonrenewal or are part of the motor vehicle dealer’s original inventory acquired from the grantor or are acquired by the motor vehicle dealer from the grantor within 4 years before the effective date of the termination, cancellation or nonrenewal. However, a grantor may not be required to repurchase items that are not listed for sale in the grantor’s price schedules in effect on the effective date of the termination, cancellation or nonrenewal if, within 2 years before the effective date of the termination, cancellation or nonrenewal, the grantor permitted a motor vehicle dealer to return obsolete parts and accessories, or a reasonable percentage of parts and accessories, for an amount that is equal to or greater than the price at which those items were listed for sale, less any allowances, at the time the return was permitted. The repurchase price for parts, accessories and materials and paints shall be the price at which those items are listed for sale in the grantor’s price schedules in effect on the effective date of the termination, cancellation or nonrenewal, or, if an item is not listed, the motor vehicle dealer’s original invoice cost, plus destination, delivery or distribution charges, and sales taxes incurred by the motor vehicle dealer, less allowances paid or credited to the motor vehicle dealer by the grantor. If a motor vehicle dealer inventories, handles and packages repurchased items for delivery to the grantor, the grantor shall reimburse the motor vehicle dealer an additional amount equal to 2% of the repurchase price under this subdivision.

4. A grantor shall purchase from the motor vehicle dealer undamaged signs at a fair market price, if a sign bears a common name, trade name or trademark of the grantor, the grantor required that the motor vehicle dealer acquire the sign and the sign was acquired by the motor vehicle dealer from the grantor or from a source approved by the grantor. In addition, a grantor shall purchase from the motor vehicle dealer at a fair market price poles or other hardware used to erect a sign if the grantor required that the sign be free standing and not include a trademark or trade name other than that of the grantor. Fair market price is presumed to be equal to the motor vehicle dealer’s original cost, reduced by one-tenth of the original cost for each year of ownership. The grantor or motor vehicle dealer may rebut the presumption.

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5. The grantor shall purchase from the motor vehicle dealer special tools, equipment and furnishings at a fair market price, if the motor vehicle dealer acquired the tool, equipment or furnishing from the grantor or from a source approved by the grantor and the grantor required that the motor vehicle dealer acquire the tool, equipment or furnishing. Fair market price is presumed to be equal to the motor vehicle dealer's original cost, reduced by one-seventh of the original cost for each year of ownership. The grantor or motor vehicle dealer may rebut the presumption.

(c) 1. The grantor shall provide a list of the motor vehicles, parts, accessories, materials and paints, signs, tools, equipment and furnishings that the motor vehicle dealer is authorized to return to the grantor within 30 days after the grantor receives a written inventory of the property that the motor vehicle dealer intends to return or within 30 days after the effective date of the termination, cancellation or nonrenewal, whichever is later. Within 60 days after the property is actually returned by the motor vehicle dealer to the grantor, f.o.b. dealership facilities, the grantor shall pay the motor vehicle dealer the reimbursement amount under par. (b) 2. to 5., except that the grantor may apply the reimbursement amount first to pay any amount owed by the motor vehicle dealer to the grantor.

2. If a repurchase price under par. (b) depends on a purchase date or original cost or includes an associated cost, the motor vehicle dealer shall have the burden of proving by documentary evidence the purchase date, original cost or associated cost.

(d) 1. Except as provided in par. (e) and subject to subd. 4, when a grantor terminates, cancels or does not renew an agreement a grantor shall, upon request, pay a motor vehicle dealer the termination benefits under subd. 2 or 3. If a motor vehicle dealer receives benefits under subd. 2 or 3, the grantor shall be entitled to the possession and use of the dealership facilities for the period that the termination benefits payment covers.

2. If a motor vehicle dealer leases its dealership facilities, a grantor shall, upon request, pay the motor vehicle dealer an amount equal to the dealership facilities' rent for one year or for the unexpired term of the lease, whichever is less.

3. If a motor vehicle dealer owns its dealership facilities, a grantor shall, upon request, pay the motor vehicle dealer an amount equal to the reasonable rental value of the dealership facilities for one year or until the dealership facilities are sold or leased, whichever is less.

4. Subdivisions 2 and 3 apply only to dealership facilities that are used in performing sales and service obligations under an agreement before the motor vehicle dealer receives notice of the termination, cancellation or nonrenewal of the agreement.

(e) 1. Paragraphs (b) and (d) do not apply to any of the following:

a. A motor vehicle dealer if a court, licenser or the office of the commissioner of transportation determines that the motor vehicle dealer engaged in fraud or theft against the grantor in connection with the operation or management of its dealership under an agreement.

b. A motor vehicle dealer who terminates or cancels an agreement without giving the grantor 60 days' notice or the notice required under the agreement, whichever is less.

c. A motor vehicle dealer who does not give the grantor a written request for termination benefits that specifies the benefits sought within 60 days after the effective date of the termination, cancellation or nonrenewal.

d. A motor vehicle dealer who sells its dealership assets to a 3rd party who becomes a successor motor vehicle dealer under an agreement with the grantor.

e. A motor vehicle dealer who terminates, cancels or fails to renew an agreement to sell motor homes, as defined in s. 340.01 (33m), unless a court, licenser or the office of the commissioner of transportation determines that the grantor has not acted in good faith or has materially violated the agreement or a provision of this section and determines that the motor vehicle dealer has not acted in bad faith or has not violated the agreement or a provision of this section.

f. An agreement under which a motor vehicle dealer sells a camping trailer, as defined in s. 340.01 (6m), or a trailer, as defined in s. 340.01 (71), but only to the extent that the agreement covers camping trailers or trailers.

2. Paragraph (b) does not apply to a motor vehicle dealer who is unable to convey clear title to property under par. (b) 2. to 5. on the date on which the grantor takes delivery of the property.

3. Paragraph (b) does not apply to property under par. (b) 2. to 5. that is acquired by a motor vehicle dealer from another motor vehicle dealer if the property is acquired after the motor vehicle dealer receives or gives notice of termination, cancellation or nonrenewal or if the property was acquired other than in the ordinary course of the motor vehicle dealer's business.

4. Paragraph (d) does not apply if a grantor terminates, cancels or fails to renew an agreement in compliance with sub. (3) (a) 17., unless the primary ground for termination, cancellation or nonrenewal is inadequate sales performance by the motor vehicle dealer.

(f) 1. This subsection does not restrict the right of a motor vehicle dealer to pursue any other remedy available against a grantor who terminates, cancels or does not renew an agreement.

2. A grantor may not make the termination benefits payments under par. (b) or (d) contingent on the motor vehicle dealer releasing or waiving any rights, claims or remedies.

SECTION 5. 218.01 (9) (a) of the statutes is renumbered 218.01 (9) (a) (intro.) and amended to read:

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218.01 (9) (a) (intro.) ~~Any~~ Without exhausting any administrative remedy available under an agreement or this section, except as provided in sub. (3) (f) and (fm), a licensee suffering pecuniary loss because of a violation by any other licensee of sub. (3) (a) 4., 11., 15., 16., 17., 23., 24., 26, 32 or 35 or because of any unfair practice found by the commissioner or office of the commissioner of transportation under sub. (5) (a) may recover damages therefor in any a court of competent jurisdiction in an amount equal to 3 times the a pecuniary loss, together with actual costs including a reasonable attorney fee., if the pecuniary loss is caused by any of the following:

SECTION 6. 218.01 (9) (a) 1. and 2. of the statutes are created to read:

218.01 (9) (a) 1. A violation by any other licensee of sub. (3) (a) 4., 11., 15., 16., 17, 22, 23, 24, 26, 26m, 32, 35, 36, 37, 38 or 39.

2. Any unfair practice found by a licensor or the office of the commissioner of transportation under sub. (5) (a).

SECTION 7. Initial applicability. This act first applies to an agreement, as defined in section 218.01 (1) (a) of the statutes, that is entered into, revised, renewed or extended on the effective date of this SECTION.