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2001 ASSEMBLY BILL 561

October 10, 2001 – Introduced by Representatives Freese, Musser, Krawczyk, Ryba, Loeffelholz, Gunderson, Lippert, Lassa, Sinicki, Olsen, Kestell, Hundertmark, Ladwig, Skindrud, Vrakas, Gronemus, Sykora, M. Lehman, Coggs, Albers, Meyerhofer, Hahn and Wasserman, cosponsored by Senators Breske, Darling, Decker, Schultz, Plache, Welch, Moen, Huelsman, Jauch, S. Fitzgerald, M. Meyer, Rosenzweig, Grobschmidt, Lazich, Erpenbach and Cowles. Referred to Committee on Transportation.

AN ACT to amend 218.0134 (2) (b) and 218.0163 (1) (intro.); and to create

218.0163 (1) (c) of the statutes; **relating to:** proposed actions regarding motor vehicle franchises.

Analysis by the Legislative Reference Bureau

Under current law, each manufacturer, distributor, or importer of motor vehicles (affected grantor) that wishes to sell its motor vehicles in the state is licensed by the department of transportation (DOT). An affected grantor may enter into an agreement with a motor vehicle dealer that sets forth the terms under which the dealer may sell the affected grantor's vehicles via a motor vehicle franchise. If a dealer wishes to transfer its assets to another person, to change ownership or executive management, or to relocate the franchise or open a second franchise at the same location, and the franchise agreement requires that the affected grantor approve the proposed action, the dealer must give the affected grantor written notice of the proposed action and must secure the approval of the affected grantor before making the proposed action.

Under current law, the affected grantor must either approve of the proposed action; or, within 30 days of receiving written notice of the proposed action, must serve the motor vehicle dealer with a written report setting forth its reasons for not approving and must file a copy of this report with DOT. The dealer may then seek a decision from the division of hearing and appeals (division) within DOT permitting the proposed action. An affected grantor that does not comply with these requirements may have its license revoked and may be liable to the dealer for

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pecuniary losses, as well as actual costs and and attorney fees incurred by the dealer because of the affected grantor's failure to comply.

Under this bill, if the division determines that there is good cause to permit the proposed action, the affected grantor may be liable for the dealer's pecuniary loss, as well as for actual costs, including costs and attorney fees incurred by the dealer in obtaining a determination of good cause from the division.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 218.0134 (2) (b) of the statutes is amended to read:

218.0134 (2) (b) An affected grantor who does not approve of the proposed action shall, within 30 days after receiving the dealer's written notice of the proposed action or within 30 days after receiving all the information specified in a written list served on the dealer under par. (a), whichever is later, file with the department of transportation and serve upon the dealer a written statement of the reasons for its disapproval. The <u>publication of the</u> reasons given for the disapproval or any explanation of those reasons by the manufacturer, distributor or importer shall not subject the manufacturer, distributor or importer to any civil liability unless the reasons given or explanations made are malicious and published with the sole intent to cause harm to the dealer or a transferee of the dealer. Failure to file and serve a statement within the applicable period shall, notwithstanding the terms of any agreement, constitute approval of the proposed action by the grantor. If an affected grantor files a written statement within the applicable period, the dealer may not voluntarily undertake the proposed action unless it receives an order permitting it to do so from the division of hearings and appeals under sub. (3) (b).

Section 2. 218.0163 (1) (intro.) of the statutes is amended to read:

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218.0163 (1) (intro.) Without exhausting any administrative remedy available under an agreement or ss. 218.0101 to 218.0163, except as provided in s. ss. 218.0116 (7) and (8) and 218.0134, a licensee may recover damages in a court of competent jurisdiction for pecuniary loss, together with actual costs including reasonable attorney fees, if the pecuniary loss is caused by any of the following:

Section 3. 218.0163 (1) (c) of the statutes is created to read:

218.0163 (1) (c) An affected grantor's disapproval of a proposed action under s. 218.0134 (2) (b), if the division of hearings and appeals has determined that there is good cause for permitting the proposed action to be undertaken following a hearing under s. 218.0134 (2) (c). A dealer may recover under this paragraph even if the affected grantor complies with the order of the division of hearing and appeals under s. 218.0134 (3) (b). If a dealer recovers damages for pecuniary loss, actual costs under this paragraph also include actual costs, including reasonable attorney fees, incurred by the dealer in obtaining the division of hearings and appeals' determination of good cause.

SECTION 4. Initial applicability.

(1) This act first applies to disapprovals of proposed actions that are filed with the department of transportation under section 218.0134 (2) (b) of the statutes, as affected by this act, on the effective date of this subsection.

20 (END)