135.01 Short title. This chapter may be cited as the “Wisconsin Fair Dealership Law.”

History: 1973 c. 176; s. 35.17 correction.

This chapter was enacted for the protection of the interests of the dealer whose economic livelihood may be imperiled by the dealership grantor, whatever its size. Rosow Oil Co. v. Heiman, 72 Wis. 2d 696, 242 N.W.2d 176 (1976).

This chapter covers only agreements entered into after April 5, 1974. Wipperfurth v. -Haul Co. of Western Wis., Inc. 101 Wis. 2d 586, 340 N.W.2d 767 (1981).

This chapter is constitutional; it may be applied to out-of-state dealers when provided by contract. C. A. Marine Sup. Co. v. Brunswick Corp. 557 F.2d 1163. See: Boatland, Inc. v. Brunswick Corp. 558 F.2d 818.

When a dealer did not comply with all the terms of acceptance of a dealership agreement, no contract was formed and this chapter did not apply. Century Hardware Corp. v. Acme United Corp. 467 F. Supp. 350 (1979).


The fair dealership law: Good cause for review. Riteris and Robertson, WBB March, 1986.


135.02 Definitions. In this chapter:

(1) “Community of interest” means a continuing financial interest between the grantor and grantee in either the operation of the dealership business or the marketing of such goods or services.

(2) “Dealer” means a person who is a grantee of a dealership situated in this state.

(3) “Dealingship” means any of the following:

(a) A contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise.

(b) A contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons by which a wholesaler, as defined in s. 125.02 (21), is granted the right to sell or distribute intoxicating liquor or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol related to intoxicating liquor. This paragraph does not apply to dealships described in s. 135.066 (5) (a) and (b).

(4) “Good cause” means:

(a) Failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement; or

(b) Bad faith by the dealer in carrying out the terms of the dealership.

(5) “Grantor” means a person who grants a dealership.

(6) “Person” means a natural person, partnership, joint venture, corporation or other entity.


135.05 Application to arbitration agreements.

135.06 Action for damages and injunctive relief.

135.07 Temporary injunctions.

135.066 Intoxicating liquor dealerships.

A manufacturer’s representative was not a “dealership.” Foerster, Inc. v. Atlas Metal Parts Co. 105 Wis. 2d 17, 313 N.W.2d 60 (1981).

This chapter applies exclusively to dealerships that do business within the geographic confines of the state. Swan Sales Corp. v. Jos. Schlitz Brewing Co. 126 Wis. 2d 16, 374 N.W.2d 640 (Ct. App. 1985).

Two guideposts for determining the existence of a “community of interest” under sub. (3) are (1) a shared financial interest in either the operation of the dealership or the marketing of goods or services; and (2) the degree of cooperation, coordination of activities, and sharing of common goals in the parties’ relationship. Ziegler Co., Inc. v. Barber-Coleman Co. Inc. 139 Wis. 2d 593, 407 N.W.2d 873 (1987).

A substantial investment distinguishes a dealership from a typical vendor—vendor relationship; establishing a loss of future profits is not sufficient. Gunterjohn v. Loe- wen-America, Inc. 179 Wis. 2d 201, 507 N.W.2d 115 (Ct. App. 1994).

Contracts between an HMO and chiropractors for the provision of chiropractic services to HMO members did not did not establish the chiropractors as dealerships under 135. Bakke Chiropractic Clinic v. Physicians Plus Insurance, 215 Wis. 2d 605, 573 N.W.2d 542 (Ct. App. 1997), 97–1169.

A dealership is a contract or agreement establishing a particular sort of commercial relationship that encompasses an extraordinary diverse set of business relationships not limited to the traditional franchise. The focus of the analysis must be on whether the business relationship can be said to be situated in the state after examining a broad set of factors outlined by the court. Baldeuw Company v. Tri-Clover, Inc. 2000 WI 20, 203 Wis. 2d 57, 606 N.W.2d 145, 99–0541. See also Baldeuw Company v. Tri-Clover, Inc. 183 F. Supp. 2d 1116 (2002).

Assuming without deciding that the size of the local economy relative to the cost of the putative dealer’s inventory of the grantor’s products is a relevant factor in determining the existence of a community of interest, that factor did not demonstrate the existence of a community of interest in this case. Moe v. Benelli U.S.A. Corp. 2007 WI App 254, 306 Wis. 2d 812, 743 N.W.2d 691, 06–1512.

Under sub. (2), a “dealer” is defined in ch. 135 to mean a “person who is a grantee of a dealership situated in this state.” Sub. (3) defines “dealership” in part as “contract or agreement . . . between 2 or more persons, by which a person is granted the right to sell or distribute goods or services . . . .” Sub. (6) defines “person” as “a natural person, partnership, joint venture, corporation or other entity” and a city is a municipal corporation. Under s. 990.01 (26), “person” includes all partnerships, associations, and bodies politic and corporate. The general term “corporation” presumably should be read to include more specific types of corporations. Under the facts of this case, the relationships between the defendant city and the golf pro plaintiffs who operated its golf courses constituted “dealerships” under sub. (3). Benson v. City of Madison, 2017 WI 65, 766 Wis. 2d 35, 897 N.W.2d 16, 23–1566.

A wine grantor–dealer relationship is not included within the definition of a dealership under s. 135.02 (3) (bi). Section 135.066 (2) provides the operative definition of intoxicating liquor for purposes of this chapter, and that definition explicitly excludes wine. Winebow, Inc. v. Capitol–Husting Co., Inc. 2018 WI 60, 381 Wis. 2d 732, 914 N.W.2d 631, 17–1593.

When an otherwise protected party transfers a protected interest to a third party, a “community of interest” is destroyed and the party removed from WFDL protection. Moe v. Benelli U.S.A. Corp. 2007 WI App 254, 306 Wis. 2d 812, 743 N.W.2d 691, 06–1512.

A wine grantor–dealer relationship is not included within the definition of a dealership under s. 135.02 (3) (bi). Section 135.066 (2) provides the operative definition of intoxicating liquor for purposes of this chapter, and that definition explicitly excludes wine. Winebow, Inc. v. Capitol–Husting Co., Inc. 2018 WI 60, 381 Wis. 2d 732, 914 N.W.2d 631, 17–1593.

A community of interest exists when a large proportion of a dealer’s revenues are derived from the dealership, or when the alleged dealer has made sizable investments specialized in the grantor’s goods or services. Freeburg Farm Equip. v. Van Dale, Inc. 978 F.2d 395 (1992).

There is no “community of interest” in the sale of services not yet in existence when the purchase of the services is dependent on the happening of an uncertain condition. Simos v. Embassy Suites, Inc. 983 F.2d 1404 (1993).

This chapter does not protect a manufacturer’s representative that lacks the unqualified authorization to sell or the authority to commit the manufacturer to a sale. Sales & Marketing Assoc., Inc. v. Huffly Corp. 57 F.3d 602 (1995).

If a grantor is losing substantial money under the dealership relationship, it may constitute “good cause” for changes in the contract, including termination. Morley– Murphy Co. v. Zenith Electronics, Inc. 142 F.3d 373 (1996).

This chapter specifies who may take advantage of its protections through the terms “dealer” and “dealership” and obviates the need to resort to conflict of laws principles for its application in the state without in-state sales does not bring a party within the coverage of the chapter. Generac Corp. v. Caterpillar, Inc. 172 F.3d 971 (1999).

A manufacturer’s right of approval of its distributors’ subdistributors does not create a contractual relationship between the manufacturer and the subdistributor subject to this chapter. Praetke Auto Electric & Battery Company, Inc. 172 F.3d 971 (1999).

The distinction between a dealer and a manufacturer’s representative is discussed. AIP Bishop Agency, Inc. v. Lithuania–Division of National Services, Inc. 474 F. Supp. 282 (1979).
The employment relationship in question was not a “dealership.” O’Leary v. Sterling Extruding 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 is 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 v. 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, 584 F. Supp. 1413 (1994).


A business in 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. Fruehauf 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 is a dealer or dealership.” Sub. (6) defines a person as a “corporation or other entity.” Under s. 185.02, a co-op is “an association incorporated” in the state. Thus, a co-op is a corporation or other entity within sub. (6) and subject to ch. 135. Buildr’s Sentry, Inc. v. Covin Lumber & Cede, Inc. 482 F. Supp. 2d 1065 (2007).

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 in 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 business in question; it asks only whether sales occur. Not does the statute draw any distinction between for-profit and not-for-profit entities. 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 is a dealer or dealership.” Sub. (6) defines a person as a “corporation or other entity.” Under s. 185.02, a co-op is “an association incorporated” in the state. Thus, a co-op is a corporation or other entity within sub. (6) and subject to ch. 135. Buildr’s Sentry, Inc. v. Covin Lumber & Cede, Inc. 482 F. Supp. 2d 1065 (2007).


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The WFDL expresses no concern for the mission or other motivation underlying the business in question; it asks only whether sales occur. Not does the statute draw any distinction between for-profit and not-for-profit entities. 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 is a dealer or dealership.” Sub. (6) defines a person as a “corporation or other entity.” Under s. 185.02, a co-op is “an association incorporated” in the state. Thus, a co-op is a corporation or other entity within sub. (6) and subject to ch. 135. Buildr’s Sentry, Inc. v. Covin Lumber & Cede, Inc. 482 F. Supp. 2d 1065 (2007).


DEALERSHIP PRACTICES


An arbitration award that did not award attorney fees was enforceable. Parties may agree on their legal expenses when resolving differences; what the parties may do, an arbitrator as their mutual agent may also do. George Watts & Son, Inc. v. Tiffany & Co. 248 F.3d 577 (2001).

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: 1997 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. 253 (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. v. Vickes, Inc. 774 F.Supp. 1160 (1991).

If a plaintiff establishes the likelihood of a violation of this chapter, the statute creates a rebuttable presumption that a finding in favor of the plaintiff is more likely than not. The grantor presents evidence of the absence of irreparable injury, the presumption is not a relevant factor, and the dealer must come forward with evidence negating the presumption. Meyer v. Kero−Sun, Inc.

If neither party presents evidence on the issue, the rebuttable presumption created by the statute is negated. Wisconsin Compressed Air Corp. v. Gardner Denver, Inc. 571 F.Supp. 20992 (2008).

135.065 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 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 dealerships expect changes to state legislation regarding those dealings.

(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 bureaus under s. 13.92 (4m). (b) (title). (2017−18 Wis. Stats. 8th Biennial Engage)

135.066 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 200,000 gallons of intoxicating liquor in any 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. 990.001 (4m).

History: 1999 a. s. 13.92 (1) (b) 2.; s. 35.17 correction in (2) (title). A wine 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.
Winebow, Inc. v. Capitol–Husting Co., Inc. 2018 WI 60, 381 Wis. 2d 732, 914 N.W.2d 631, 17–1595.

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.