CHAPTER 135
DEALER PRACTICES

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) “Dealership” 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.

(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 upon 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.

History:


Acartage agreement between an air freight company and a trucking company did not create a “dealership” under this chapter. Kania v. Airborne Freight Corp. 99 Wis. 2d 746, 300 N.W.2d 63 (1981).

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) (a) are: (1) a shared financial interest in the operation of the dealership or the marketing of a good or service; and (2) the degree of cooperation, coordination of activities, and sharing of common goals in the parties’ relationship. Ziegler Co., Inc. v. Roper Tech. 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. Gunderjohn v. Loe- wen-Ameritech, Inc. 179 Wis. 2d 201, 507 N.W.2d 115 (Ct. App. 1993).

Contracts between an HMO and chiropractors for the provision of chiropractic services to HMO members did not establish the chiropractors as dealerships under ch. 135. Bakke Chiropractic Clinic v. Physicians Plus Insurance, 215 Wis. 2d 605, 573 N.W.2d 542 (Ct. App. 1997), 971–1169.

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. Baldwin City v. Tri–Clover, Inc. 2000 WI 20, 233 Wis. 2d 57, 606 N.W.2d 145, 99–0541. See also Baldwin City 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. Moehl v. Benelli USA 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, trusts, estates, political or 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, 736 Wis. 2d 35, 897 N.W.2d 16, 23–166.

A wine grantor–dealer relationship is not included within the definition of a dealership under s. 135.02 (3) (b) since the wine is not a product of the state and the sale is a commercial transaction. Winebrow, Inc. v. Capitol–Huston Co., Inc., 2018 WI 60, 381 Wis. 2d 732, 914 N.W.2d 631, 17–1595.

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. Lakefield Telephone Co. v. Northern Telecom, Inc. 970 F.2d 392 (1992).

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 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 availability of the services is dependent upon the happening of an uncertain condition. Simons 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. Hufly 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 Corp. v. Zenith Electronics, Inc. 142 F.3d 373 (1995).

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. In 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 did not create a contractual relationship between the manufacturer and the subdistributor subject to this chapter. Praelke Auto Electric & Battery Company, Inc. v. Tecumseh Products Company, Inc. 235 F.3d 460 (2001).

The distinction between a dealer and a manufacturer’s representative is discussed. Al Bishop Agency, Inc. v. Lithonia–Division of National Services, Inc. 474 F. Supp. 828 (1979).
135.03 Cancellation and alteration of dealingships. No grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealingship agreement without good cause. The burden of proving good cause is on the grantor.

History: 1973 c. 179; 1977 c. 171.

A grantor may cancel, terminate, or non-renew a dealingship if the dealer refuses to undertake changes that are essential to the competitive purposes of the dealingship, and the dealer fails to substantially comply with the changes that constitute good cause. Ziegler Co., Inc. v. Rexnord, 147 Wis. 2d 308, 433 N.W.2d 8 (1988).

A drug supplier violated this section by terminating without good cause all dealingship agreements with independently owned pharmacies in the state. Kealakepharmacy & Home Care Service, Inc. v. Walgreen Co. 761 F.2d 345 (1985).

A drug supplier also failed to comply with this section by terminating without good cause all dealingship agreements with independently owned pharmacies in the state. Amoco Oil Co. v. 734 F.2d 1238 (1986).

is insolvency, the occurrence of an assignment for the benefit of creditors or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer shall be entitled to written notice of such default, and shall have 10 days in which to remedy such default from the date of delivery or posting of such notice.

**History:** 1973 c. 179.

A grantor must give a 90-day notice when termination is for nonpayment of sums due. White Hen Pantry v. Butts, 100 Wis. 2d 169, 301 N.W.2d 216 (1981).

The notice requirement of this section applies to substantial changes of circumstances, not a dealership agreement. Actions that substantially change competitive circumstances and that are controlled by the grantor or are allowed by the dealership agreement require the statutory notice. Jungbluth v. Hometown, Inc. 201 Wis. 2d 449, 539 N.W.2d 519 (1996), 94-1523.

Steps that the grantor requires the dealer to take in order to rectify a deficiency must be reasonable. Al Bishop Agency, Inc. v. Lithuania, etc. 474 F. Supp. 828 (1979).


The insolvency exception to the notice requirement did not apply to insolvency that was not known to the grantor at the time of termination. Bruno Wino & Spirits v. Gutmar Vineyards, 573 F. Supp. 337 (1983).

Assignment of a second distributor in Wisconsin did not breach the agreement or cause a substantial change in the competitive circumstances of the nonexclusive dealers agreement in violation of s. 135.03. However, the defendant’s assignment of a substantial change in the competitive circumstances of the plaintiff’s truck distributorship and the defendant failed to provide the plaintiff with 90 days’ written notice. Wisconsin Compressed Air Corp. v. Gardner Denver, Inc. 571 F. Supp. 2d 992 (2008).

**135.045 Repurchase of inventories.** If a dealership is terminated by the grantor, the grantor, at the option of the dealer, shall repurchase all inventories sold by the grantor to the dealer for resale under the dealership agreement at the fair wholesale market value. This section applies only to merchandise with a name, trademark, label or other mark on it which identifies the grantor.

**History:** 1977 c. 171.


**135.05 Application to arbitration agreements.** This chapter shall not apply to provisions for the binding arbitration of disputes contained in a dealership agreement concerning the items covered in s. 135.03, if the criteria for determining whether good cause existed for a termination, cancellation, nonrenewal or substantial change in competitive circumstances, and the relief provided is no less than that provided for in this chapter.

**History:** 1973 c. 179.

Federal law required enforcement of an arbitration clause even though that clause did not provide the relief guaranteed by this chapter, contrary to this section and s. 135.02(5). Madison Beauty Supply v. Helene Curtis, 167 Wis. 2d 237, 481 N.W.2d 644 (Ct. App. 1992).

**135.06 Action for damages and injunctive relief.** If any grantor violates this chapter, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the grantor’s violation, together with the actual costs of the action, including reasonable actual attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances.

**History:** 1973 c. 179; 1993 a. 482.

In an action for termination of a dealership upon written notice not complying with this chapter and without good cause, the statute of limitations started running upon receipt of the termination notice. Les Moeise, Inc. v. Rossignol Ski Co., Inc. 223 Wis. 2d 519, 599 F. Supp. 718 (1984).

A cause of action was not estopped when a defective notice under s. 135.04 was given, not when the dealership was actually terminated. Hammull v. Richel MigF. Corp. 719 F.2d 252 (1983).

This section does not restrict recovery of damages with respect to inventory on hand at the time of termination to “fair wholesale market value.” Kealey Pharmacy v. Walgreen Co. 761 F.2d 345 (1985).

A cause of action was properly included under this section. Bright v. Land O’ Lakes, Inc. 844 F.2d 436 (7th Cir. 1988).

There is no presumption in favor of injunctive relief and against damages for lost future profits. Frieberg Farm Equip. v. Van Dale, Inc. 978 F.2d 395 (1992).

**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:** 1977 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., Inc. 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 the plaintiff is entitled to a preliminary injunction. If, however, the grantor presents evidence of the absence of irreparable injury, the presumption is no longer relevant, and the dealer must come forward with evidence sufficient to meet the grantor’s evidence.


**135.066 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 in 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 wholesome 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 dealerships.

(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 bureau under s. 13.92 (1) (bmn) 2.

(5) **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 altercation of a dealership.

(6) **SEVERABILITY.** The provisions of this section are severable as provided in s. 980.001 (11).

**History:** 1999 a. 9; s. 13.92 (1) (bmn) 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.
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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.