CHAPTER 135
DEALERSHIP PRACTICES

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

History: 1973 c. 179; s. 35.17 correction.

This chapter was enacted for the protection of the interests of the dealer whose eco-
nomic livelihood may be impacted by the dealership grantor, whatever its size. Ros-
sow 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.
-U-Haul Co. of Western Wis., Inc. 101 Wis. 2d 586, 304 N.W.2d 767 (1981).

This chapter is constitutional; it may be applied to out-of-state dealers when pro-
vided 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

Dealing with the dealers: Scope of the Wisconsin fair dealership law. Axe, WBB

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


Determining “Community of Interest” Under the WFDL. Wright. Wis. Law. Dec.
2004.

Understanding the Wisconsin Fair Dealership Law. Wright & Aquino. Wis. Law.
Nov. 2009.

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. This paragraph does not apply to dealerships 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 deal-

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

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


A cartage 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 geo-
ographic 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 guidelines for determining the existence of a “community of interest” under sub.
(3) are: (1) a shared financial interest in the operation of the dealership or the mar-
keting of a good or service; and (2) the degree of cooperation, coordination of activi-
ties, and sharing of common goals in the parties’ relationship. Ziegler Co., Inc. v. Rover.
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 America, Inc. 179 Wis. 2d 201, 507 N.W.2d 115 (Ct. App. 1993).

Contracts between an HMO and chiropractors for the provision of chiropractic serv-
ices to HMO members did not did not create the chiropractors as dealerships
under s. 135. Bakke Chiropractic Clinic v. Physicians Plus Insurance, 215 Wis. 2d
505, 753 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. Baldwin Company v. Tri–Clover, Inc. 2000 WI
20, 233 Wis. 2d 57, 606 N.W.2d 145, 99–0541. See also Baldwin Company v. Tri–

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 deter-
mining the existence of a community of interest, that factor did not demonstrate the existence of an economic investment in this case. Moe v. Benelli USA, Inc. 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 per-
son, partnership, joint venture or other entity” and a city is a municipal corpo-
racion. Under s. 990.01 (26), “person” includes all partnerships, associations, and entities of a political or corporate, public, or private nature. 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, 2016–1795.

A wine grantor–dealer relationship is not included within the definition of a deal-
ership under s. 135.02 (2) (b). Section 135.066 (2) (b) provides the operative definition of intoxicat-
ing liquor for purposes of this chapter, and that definition explicitly excludes wine.
Winembo, 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.

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. Friburg 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 viability of the services is dependent on the happening of an uncertain condi-

This chapter does not protect a manufacturer’s representative that lacks the unqual-
ified authorization to sell or provide the authority to commit the manufacturer to a sale. Sales & Marketing Assoc., Inc. v. Huffy Corp. 577 F.2d 602 (1978).

If a grantor is losing substantial money under the dealership relationship, it may constitute “good cause” for changes in the contract, including termination. Morley–

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 prin-
ciples in 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’ subdealers may constitute a contractual relationship between the manufacturer and the subdealer subject to this chapter. Pfaelze Auto Electric & Battery Company, Inc. v. Tecumseh Products Company, Inc. 255 F.3d 460 (2001).

The distinction between a dealer and a manufacturer’s representative is discussed.
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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).


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 sells the product. Smith v. Rainsof, 488 F. Supp. 1413 (1975).


A business 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. Praefke 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 in business as a...” 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 the sales in question; it asks only whether sales occur. Nor does the statute draw any

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 dealership agreement without good cause. The burden of proving good cause is on the grantor.

History: 1973 c. 177; 1977 c. 171.

A grantor may cancel, terminate, or non-renew a dealership if the dealer refuses to conform to changes that are essential, reasonable, and not discriminatory. See Violation of termination clause in a dealership agreement was unenforceable. Eisele’ s World, Inc. v. Marvin Lumber & Cedar, Inc. 646 F.3d 983 (2011).

The “situated in this state” requirement under sub. (2) is satisfied as long as the dealership agreement in violation of s. 135.03. However, the defendant’s assignment of a second distributor in Wisconsin did not breach the agreement or cause a substantial change in the competitive circumstances of the nonexclusive dealership agreement in violation of s. 135.03. However, the defendant’s assignment of a second distributor was a violation of s. 135.04 because it caused a substantial change in the competitive circumstances of the plaintiff’s truck distributorship agreement and the defendant failed to provide the plaintiff with 90 days’ written notice.

When an action becomes so egregious as to amount to constructive termination of the dealership this section is violated. Constructive termination of a dealership agreement occurs when the grantor takes actions that amount to a constructive termination of that agreement. The purpose of the agreement was the formation of a nonexclusive dealership agreement that would have resulted in the granting of a franchise to the plaintiff. The grantor’s own circumstances can constitute good cause for reasonable, essential, and nondiscriminatory changes in the way it does business with dealers. To show good cause for making a substantial change in the competitive circumstances of a dealership agreement, the grantor must demonstrate: 1) an objectively ascertainable need for change; 2) a proportionate response to that need; and (3) a nondiscriminatory action. This action makes no distinction between for-profit and not-for-profit entities, and, as such, the court cannot judicially craft a lower threshold for when non−for−profit organizations wish to substantially change the competitive circumstances of a dealership agreement.


135.04 Notice of termination or change in dealership. Except as provided in this section, a grantor shall provide a dealer at least 90 days’ prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the dealer has 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal

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

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The choice of law clause in a dealership agreement was unenforceable. Bush v. National Shredding Co., 139 Wis. 2d 635, 407 N.W.2d 883 (1987).

Federal law required the enforcement of an arbitration clause even though that clause did not provide the relief guaranteed by this chapter, contrary to this section and s. 135.05. Madison Beauty Supply v. Helene Curtis, 167 Wis. 2d 237, 418 N.W.2d 293 (1994).

A forum-selection clause in a dealership agreement was not freely bargained for and was rendered ineffective under sub. (2) (b). Cutter v. Scott & Fetzer Co. 510 F. Supp. 1086 (2000).

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. Kurtke, 100 Wis. 2d 169, 301 N.W.2d 216 (1981).

The notice requirement of this section applies to substantial changes of circumstance caused by the grantor, not a dealership agreement. Actions that substantially change the 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 214, 543 N.W.2d 519 (1996), 94-1525.

Steps that the grantor requires the dealer to take in order to rectify a deficiency must be reasonable. Al Bishop Agency, Inc. v. Lithonia, 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 Wine & Spirits v. Guimarra 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 dealership agreement in violation of s. 135.03. However, the defendant’s assignment of a second distributor was not a violation of s. 135.04 because it caused a 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 by § 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. 135.025. Madison Beauty Supply v. Helene Curtis, 167 Wis. 2d 237, 481 N.W.2d 644 (Cit. 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 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 Morse, Inc. v. Rossignol Ski Co., Inc. 125 Wis. 2d 51, 361 N.W.2d 653 (1985).

A cause of action accrued when a defective notice under s. 135.04 was given, not when the dealership was actually terminated. Hammil v. Rickett Mfg. Co., 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 accrued 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. Friesbarg 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. Rent a distributor 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 temporary injunction is needed to prevent irreparable injury. If neither party presents evidence on the issue, the rebuttable presumption created by the statute requires a finding in favor of the defendant. 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 of irreparable harm to support 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; and 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 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) (b) (1) (bem) 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 alteration of a dealership.

#### (6) SEVERABILITY

The provisions of this section are severable as provided in s. 990.001 (11).
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.