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 economic livelihood may be impinged by the dealership grantor, whatever its size. Rosow Oil Co. v. Heinman, 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 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.

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).

A 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 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. Ryder, Inc. 139 Wis. 2d 593, 407 N.W.2d 873 (1987).

A substantial investment distinguishes a dealership from a typical vending–vendor relationship; establishing a loss of future profits is not sufficient. Gunderjohn v. Loe-ween-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 services to HMO members did not 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), 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. Baldewein Company v. Tri-Clover, Inc. 2000 WI 20, 233 Wis. 2d 57, 606 N.W.2d 145, 99–0514. See also Baldewein 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 an economic relationship 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 or to 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.”

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 to 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 is not limited to the traditional franchise. Century Hardware Corp. v. Acme United Corp. 467 F. Supp. 350 (1979).

A dealer is a person who is a grantee of a dealership situated in this state. Century Hardware Corp. v. Acme United Corp. 467 F. Supp. 350 (1979).

A dealer’s business is the business relationship can be said to be situated in the state after examining a broad set of factors outlined by the court. Baldewein Company v. Tri-Clover, Inc. 2000 WI 20, 233 Wis. 2d 57, 606 N.W.2d 145, 99–0514. See also Baldewein Company v. Tri-Clover, Inc. 183 F. Supp. 2d 1116 (2002).

A “community of interest” means: (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. Ryder, Inc. 139 Wis. 2d 593, 407 N.W.2d 873 (1987).
DEALERSHIP PRACTICES

135.03 Cancellation and alteration of dealerships. No grantor, directly or through any officer, agent, or employee, may cause a substantial change in the competitive circumstances of a dealership 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 dealership if the grantor refuses to provide changes that are essential and reasonable, and does not discriminate in failure to substantially comply with the changes that constitutes good cause. Ziegler Co., Inc. v. Rexnord, 147 Wis. 2d 306, 403 N.W.2d 8 (1987).

A grantor's supplier violated this section by terminating without good cause all dealership agreements with independently owned pharmacies in the state. Keleher Pharmacy & Home Care Service, Inc. v. Walgreen Co. 761 F.3d 345 (2015).

This chapter did not apply to a grantor’s action that was due to business exigencies unique to the dealer and was not in a nondiscriminatory manner. Remus v. Amoco Oil Co. 794 F.2d 1238 (1986).


A grantor’s substantial loss of money under a dealership relationship may constitute “good cause” for changes in the contract, including termination. Morley–Murphy Co. v. Zenith Electronics Corp., 142 F.3d 573 (1998).

A change in credit terms was a change in the dealer’s “competitive circumstances.” Van v. Mobil Oil Corp. 515 F. Supp. 487 (1981).

This section did not apply when a grantor withdrew in a nondiscriminatory fashion from a product market on a large geographic scale. A 90–90 day notice was required. St. Joseph Equipment v. Massey–Ferguson, Inc. 546 F. Supp. 1245 (1982).

Franchises failed to meet their burden of proof that their competitive circumstances would be substantially changed by a new agreement. Breder’s 33 Flavors Franchising Corp. v. Wokosin, 591 F. Supp. 1533 (1984).


When parties continue their relations after the term of a dealership contract has expired, the contract has been renewed for another period of time. Continental Auto Electric & Battery Co., Inc. v. Tecumseh Products, Co. 110 F. Supp. 2d 899 (2000).

Reversed on other grounds, 255 F.3d 460 (2001).

The “situated in this state” requirement under sub. (2) is satisfied as long as the contract has been renewed after expiration, the contract has been renewed for another period of the same length. Praefke Auto Electric & Battery Co., Inc. v. Tecumseh Products, Co. 110 F. Supp. 2d 1065 (2007).

A manufacturer's representative, defined as an independent contractor who solicits sales on behalf of the manufacturer, may not enter into a dealership contract. Kevin Lumber & Cedar, Inc. v. 82 F. Supp. 2d 985 (2007).

Nothing in the text or legislative history of ch. 135 suggests that the legislature intended to preclude co-op sales from being dealers. Sub. (2) defines a dealer as “a person who has a 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 both sub. (6) and subject to ch. 135. Build-r-Room Inc. v. Kevin Lumber & Cedar, Inc. 82 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 from the WFDL. Northland Sales, Inc. v. Maax Corp. 556 F. Supp. 2d 928 (2008).

A clause 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 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-op sales from being dealers. Sub. (2) defines a dealer as “a person who has a 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 both sub. (6) and subject to ch. 135. Build-r-Room Inc. v. Kevin Lumber & Cedar, Inc. 82 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 from the WFDL. Northland Sales, Inc. v. Maax Corp. 556 F. Supp. 2d 928 (2008).

The WFDL expresses no concern for the mission or other motivation underlying the taille in question; it asks only whether sales occur. Nor does the statute draw any distinction between for-profit and not-for-profit entities. The stated concern is with fair business relations, and it is beyond dispute that nonprofit corporations can be substantial competitors. It matters not whether the purported dealer who should be called a “dealer” in everyday conversation; what matters only is how the statute defines the term. Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of America, Inc. 357 F. Supp. 2d 920 (2004).


135.05 Purposes; rules of construction; variation by contract. (1) This chapter shall be liberally construed and applied to promote its underlying remedial purposes and policies.

(2) The underlying purposes and policies of this chapter are:

(a) To promote the compelling interest of the public in fair business relations between dealers and grantors, and in the continuation of dealerships on a fair basis;

(b) To protect dealers against unfair treatment by grantors, who inherently have superior economic power and superior bargaining power in the negotiation of dealerships;

(c) To provide dealers with rights and remedies in addition to those existing by contract or common law;

(d) To govern all dealerships, including any renewals or amendments, to the full extent consistent with the constitutions of this state and the United States.

(3) The effect of this chapter may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

History: 1977 c. 171.


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, 419 N.W.2d 30 (1988). 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. 310 F. Supp. 905 (1961).

The relinquishment of territory and the signing of a guaranty agreement were changes insufficient to bring a relationship under this law. Rochester v. Royal Appliance Mfg Co. 569 F. Supp. 736 (1983).

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

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

The notice requirement of this section applies to substantial changes of circumstances that are not a dealership agreement. Acts 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 519, 547 N.W.2d 337 (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. Lithonia, et al., 474 F. Supp. 828 (1979).

The notice requirement does not impermissibly burden interstate commerce. Designs in Medicine, Inc. v. Xomed, Inc. 761 F.2d 345 (1985).


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. Jimmarra 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 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 option 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:** 1973 c. 179.


### 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 of 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 (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 statutory notice 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 was accrued when a defective notice under s. 135.04 was given, not when the dealership was actually terminated. Hammill v. Richell Mfg. 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 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. Freeburg 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. Minnesota 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. 255 (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 a preliminary injunction is appropriate. The effect of the statute is to transfer from the plaintiff to the defendant the burden of going forward with evidence on the question of irreparable injury. If neither party presents evidence on the issue, the rebuttable presumption created by the statute entitles the judge to find in favor of the dealer. 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 injury to 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 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) (h) 2. (2017−18). (bmm) 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).

**History:** 1999 a. 9; s. 13.92 (1) (bmm) 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.
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, 17–1395.

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.