CHAPTER 218

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SUBCHAPTER I

MOTOR VEHICLE DEALERS; SALESPERSONS; SALES FINANCE COMPANIES

Cross−reference: See also chs. Trans 137, 138, 139, 140, and 144, Wis. adm. code.

218.0101 Definitions. In ss. 218.0101 to 218.0163, unless the context requires otherwise:

(1) "Agreement" means a contract that describes the franchise relationship between manufacturers, distributors, importers and dealers.

(3) "Cash price" means the retail seller's price in dollars for the sale of goods, and the transfer of unqualified title to those goods, upon payment of the retail seller's price in cash or a cash equivalent.

(4) "Consumer lease" has the meaning given in s. 429.104 (9).

(5) "Designated family member" includes all of the following:

(a) The spouse, child, grandchild, parent, brother or sister of a deceased owner of a dealership who holds an interest in the dealership or who is entitled to receive an interest in the dealership by reason of the owner's death.

(b) A court−appointed legal representative of an incapacitated owner, including a guardian or conservator.

(c) An owner's attorney−in−fact under a valid power of attorney.

(d) A court−appointed personal representative or special administrator of a deceased owner's estate if the deceased owner's estate holds an interest in the dealership and, if the personal representative or special administrator is a corporate fiduciary, an individual is designated as operator under the franchise agreement.

(e) The trustee of a trust, testamentary or inter vivos, of which an owner was settlor if the trust holds an interest in the dealership and, if the trustee is a corporate fiduciary, an individual is designated as operator under the franchise agreement.

(f) An individual who has been nominated by the operator of a dealership as his or her successor in a written instrument filed with and accepted by the manufacturer, importer or distributor if that individual will hold a legal or beneficial interest in the dealership and is acceptable to the persons who will hold the controlling interest in the dealership.

(6) "Distributor" means a person, resident or nonresident who in whole or part, sells or distributes new motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

(7) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes.

(8) "Distributor representative" means a representative similarly employed by a distributor or distributor branch.

(9) "Division of hearings and appeals" means the division of hearings and appeals in the department of administration.

(10) "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

(11) "Factory representative" means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

(12) "Finance charge" has the meaning set forth in s. 421.301 (20).

(13) "Franchise" means the right to buy, sell, distribute or service a line make of motor vehicles that is granted to a motor vehicle dealer or distributor by a manufacturer, importer or distributor.

(13m) "Gross capitalized cost" has the meaning given in s. 429.104 (13m).

(14) "Importer" means a person who has written authorization from a foreign manufacturer of a line make of motor vehicles to grant franchises to motor vehicle dealers or distributors in this state with respect to that line make.

(15) "Lease" or "leasing" means, with respect to a lessor, to enter into or offer to enter into a consumer lease with a lessee.

(16) "Lessee" has the meaning given in s. 429.104 (17).

(17) "Lessor" means a person who leases a motor vehicle to a lessee under a consumer lease, but does not include an assignee of a consumer lease.

(18) "License period" means the period during which a particular type of license described in s. 218.0114 (14) is effective, as established by the department of transportation or division of banking under s. 218.0114 (13) (b) or (d).

(19) "Licensor" means the body, either the division of banking or the department of transportation or both, issuing a license under ss. 218.0101 to 218.0163.

(20) "Manufacturer" means any person, resident or nonresident, who does any of the following:

(a) Manufactures or assembles motor vehicles.

(b) Manufactures or installs on previously assembled truck chassis, special bodies or equipment which when installed form an integral part of the motor vehicle and which constitutes a major manufacturing alteration and which completed unit is owned by the manufacturer.

(21) "Motorcycle" has the meaning given in s. 340.01 (32).

(22) "Motor vehicle" means any motor−driven vehicle required to be registered under ch. 341 except mopeds.

(22m) "Motor vehicle buyer" means an individual who is employed by or who has contracted with one or more motor vehicle dealers to bid on or purchase a motor vehicle being held and offered for sale by a motor vehicle dealer or motor vehicle auction.

(23) (a) "Motor vehicle dealer" means any person, firm or corporation, not excluded by par. (b) who:

1. For commission, money or other thing of value, sells, leases, exchanges, buys, offers or attempts to negotiate a sale, consumer lease or exchange of an interest in motor vehicles; or

2. Is engaged wholly or in part in the business of selling or leasing motor vehicles, including motorcycles, whether or not the motor vehicles are owned by that person, firm or corporation.

(b) The term "motor vehicle dealer" does not include:

1. Receivers, trustees, personal representatives, guardians, or other persons appointed by or acting under the judgment or order of any court.

2. Public officers while performing their official duties.

3. Employees of persons, corporations or associations enumerated in subds. 1. and 2., when engaged in the specific performance of their duties as employees of the enumerated persons, corporations or associations.

4. Sales finance companies or other loan agencies who sell or offer for sale motor vehicles repossessed or foreclosed on by those sales finance companies or other loan agencies under terms of an installment contract, or motor vehicles taken in trade on such repossessions.

5. Sales finance companies when engaged in purchasing or otherwise acquiring consumer leases from a motor vehicle dealer, or in renegotiating consumer leases previously purchased or otherwise acquired by them.

(24) "Motor vehicle salesperson" means sales representative, sales manager, general manager or other person who is employed by a motor vehicle dealer for the purpose of selling or approving retail sales, or leasing or approving consumer leases, of motor vehicles. Any motor vehicle salesperson licensed under ss. 218.0101 to 218.0163 shall be licensed to sell or lease for only one dealer at a time.

(25) "Parts outlet" means a facility at which a manufacturer, importer or distributor has authorized the sale of motor vehicle parts or accessories manufactured or distributed by the manufacturer, importer or distributor using a trade name, trademark or service mark also used to designate, make known or distinguish the manufacturer's, importer's or distributor's motor vehicles or dealers.

(26) "Person" means a person, firm, corporation or association.

(27) "Prelease agreement" means an agreement to enter into a consumer lease whereby the motor vehicle will be available and ready to be delivered to the prospective lessee at a later time.

(28) "Prospective lessee" has the meaning given in s. 429.104 (21).

(29) "Prospective lessor" has the meaning given in s. 429.104 (21m).

(30) "Relevant market area" means any of the following:

(a) All of the area within a 10−mile radius of the site of an existing enfranchised motor vehicle dealership.

(b) The area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, importer, or distributor.

(31) "Retail buyer" means a person, firm or corporation, other than a motor vehicle manufacturer, distributor or dealer, buying or agreeing to buy one or more motor vehicles from a motor vehicle dealer.

(32) "Retail installment contract" or "installment contract" means and includes every contract to sell one or more motor vehicles at retail, in which the price of the motor vehicle is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated either as a conditional sale, chattel mortgage or otherwise.

(33) "Retail seller" means a person, firm or corporation selling or agreeing to sell one or more motor vehicles under a retail installment contract to a buyer for the buyer's personal use or consumption.

(34) (a) "Sales finance company" means any person, firm or corporation engaging in the business, in whole or in part, of acquiring by purchase or by loan on the security thereof, or otherwise, retail installment contracts or consumer leases from retail sellers or lessors in this state.

(b) "Sales finance company" includes any motor vehicle dealer who sells or leases any motor vehicle on an installment contract or consumer lease or acquires any retail installment contracts in the dealer's retail sales or leases of motor vehicles.

(35) "Secretary" means the secretary of transportation.

(36) "Service outlet" means a facility at which a manufacturer, importer or distributor has authorized the performance of work to rectify a manufacturer's, importer's or distributor's product or warranty defects or delivery and preparation obligations or has authorized the use of a trade name, trademark or service mark also used to designate, make known or distinguish the manufacturer's, importer's or distributor's motor vehicles or dealers in connection with a service facility.

(37) "Special order" means an order against a person.

(38) (a) "Wholesaler" or "wholesale dealer" means a person, other than a licensed motor vehicle dealer or licensed motor vehicle auction dealer, who does any of the following:

1. Sells more than 5 used motor vehicles in any 12−month period to one or more motor vehicle dealers, motor vehicle auction dealers, or salvage dealers.

2. Except as provided in par. (b), purchases used motor vehicles from a motor vehicle dealer or at a motor vehicle auction for the purpose of selling the vehicles to a motor vehicle dealer, motor vehicle auction, or wholesaler.

3. Except as provided in par. (b), purchases used motor vehicles on behalf of a motor vehicle dealer.

(b) A person is not a wholesaler or a wholesale dealer if the person is employed by and receives compensation from only one motor vehicle dealer for services relating to the sale or purchase of motor vehicles and the person conducts all financial transactions involving the sale or purchase of motor vehicles in the name of the motor vehicle dealer that employs him or her, under the supervision of the motor vehicle dealer that employs him or her, and using the motor vehicle dealer's funds or financial accounts.

History: 1999 a. 31 ss. 15 to 53; 2001 a. 102; 2003 a. 76, 216; 2005 a. 256.

For a company to be a manufacturer under s. 218.01 (1) (L) [now sub. (20) (b)], all four of the prerequisites in that paragraph must be met. Harger v. Caterpillar, Inc. 2000 WI App 241, 239 Wis. 2d 551, 620 N.W.2d 477, 00−0536.

218.0111 Authority of licensors. (1) The department of transportation shall issue the licenses provided for in s. 218.0114 (14) (a) to (fm) and have supervision over the licensees in respect to all of the provisions of ss. 218.0101 to 218.0163, except that the division of banking shall have jurisdiction and control over all of the following:

(a) Matters that relate to the sale of motor vehicles on retail installment contracts and the financing and servicing of those retail installment contracts.

(b) Matters that relate to prelease agreements under s. 218.0144 and consumer leases under chs. 421 to 427 and 429.

(c) The issuance of licenses to sales finance companies.

(2) Either licensor under sub. (1) shall, upon request, furnish the other licensor with any information it may have in respect to any licensee or applicant for license or any transaction in which such a licensee or applicant may be a party or be interested. No license shall be issued under s. 218.0114 (14) (a) and (g) until both licensors have approved the application. The suspension or revocation of either the license issued under s. 218.0114 (14) (a) or (g) shall automatically suspend or revoke the other license. Any suspension or revocation shall be certified by the licensor ordering it to the other licensor.

History: 1999 a. 31 ss. 54 to 55; 2003 a. 216.

218.0113 Licenses for dealers, distributors, manufacturers or transporters of semitrailers and trailers. Subject to ch. 180 where applicable, any dealer, distributor, manufacturer or transporter of semitrailers or trailers designed for use in combination with a truck or truck tractor is considered licensed under ss. 218.0101 to 218.0163 where for purposes of chs. 341 and 342 a license under ss. 218.0101 to 218.0163 is required. This section is enacted to remove an undue burden on interstate commerce from a class of commercial transactions in which the business character of the parties does not require the protection provided by ss. 218.0101 to 218.0163 and to promote the expansion of credit for truck operators who require banking and financing facilities throughout the United States.

History: 1999 a. 31 s. 56.

218.0114 Licenses, how granted; agreements, filing. (1) No motor vehicle dealer, motor vehicle wholesaler, motor vehicle salesperson, motor vehicle buyer, or sales finance company may engage in business as a motor vehicle dealer, motor vehicle wholesaler, motor vehicle salesperson, motor vehicle buyer, or sales finance company in this state without a license therefor as provided in ss. 218.0101 to 218.0163. If any motor vehicle dealer acts as a motor vehicle salesperson, he or she shall secure a motor vehicle salesperson's license in addition to a motor vehicle dealer license. Every motor vehicle dealer shall be responsible for the licensing of every motor vehicle salesperson or motor vehicle buyer in his or her employ. Any person violating this subsection may be required to forfeit not less than $500 nor more than $5,000.

(2) No manufacturer, importer or distributor may engage in business as a manufacturer, importer or distributor in this state without a license therefor as provided in ss. 218.0101 to 218.0163.

(2m) No manufacturers', distributors' or importers' vehicles shall be sold in this state unless either the manufacturer on direct dealerships of domestic vehicles, the importer of foreign manufactured vehicles on direct dealerships or the distributor on indirect dealerships of either domestic or foreign vehicles are licensed under ss. 218.0101 to 218.0163. The obtaining of a license under ss. 218.0101 to 218.0163 shall conclusively establish that a manufacturer, distributor or importer is doing business in this state and shall subject the licensee to all provisions of the Wisconsin statutes regulating manufacturers, importers and distributors.

(3) No factory representative or distributor representative may engage in business as a factory representative or distributor representative in this state without a license therefor as provided in ss. 218.0101 to 218.0163.

(4) Application for a license under this section shall be made to the licensor, at such time, in such form and with such information as the licensor shall require and shall be accompanied by the required fees. An applicant for a sales finance company license, other than a motor vehicle dealer, shall pay to the division of banking a nonrefundable $300 investigation fee in addition to the license fee under sub. (16). If the cost of an investigation exceeds $300, the applicant shall, upon demand of the division of banking, pay the amount by which the cost of the investigation exceeds the nonrefundable fee. A licensee is not required to pay an investigation fee for the renewal of a license. The licensor may require the applicant to provide information relating to any pertinent matter that is commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, except that information relating to the applicant's solvency and financial standing may not be required for motor vehicle dealers except as provided in sub. (20) (a). The information provided may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in ss. 218.0101 to 218.0163.

(5) (a) A motor vehicle dealer or an applicant for a motor vehicle dealer license shall provide and maintain in force a bond or irrevocable letter of credit of not less than $50,000 or, if the dealer or applicant sells or proposes to sell motorcycles and not other types of motor vehicles, a bond or irrevocable letter of credit of not less than $5,000. The bond or letter of credit shall be executed in the name of the department of transportation for the benefit of any person who sustains a loss because of an act of a motor vehicle dealer that constitutes grounds for the suspension or revocation of a license under ss. 218.0101 to 218.0163.

(b) A sales finance company or an applicant for a sales finance company license shall provide and maintain in force a bond or irrevocable letter of credit of not less than $25,000 issued by a surety company licensed to do business in this state or a federally

insured financial institution, as defined in s. 705.01 (3). The bond or letter of credit shall be payable to the state of Wisconsin for the use of the state and of any person who sustains a loss because of an act of a sales finance company that constitutes grounds for the suspension or revocation of a license under ss. 218.0101 to 218.0163.

(c) A wholesaler or a wholesale dealer or an applicant for a wholesaler or wholesale dealer license shall provide and maintain in force a bond or irrevocable letter of credit of not less than $25,000. The bond or letter of credit shall be executed in the name of the department of transportation for the benefit of any person who sustains a loss because of an act or omission by the wholesaler or wholesale dealer.

(6) Except as provided in this section every dealer and distributor of new motor vehicles shall, at the time of application for a license, file with the department of transportation a certified copy of the applicant's written agreement and a certificate of appointment as dealer or distributor, respectively. The certificate of appointment shall be signed by an authorized agent of the manufacturer of domestic vehicles on direct manufacturer−dealer agreements; or, where the manufacturer is wholesaling through an appointed distributorship, by an authorized agent of the distributor on indirect distributor−dealer agreements. The certificate shall be signed by an authorized agent of the importer on direct importer−dealer agreements of foreign−made vehicles; or by an authorized agent of the distributor on indirect distributor−dealer agreements. The distributor's certificate of appointment shall be signed by an authorized agent of the manufacturer; or by an agent of the manufacturer or importer of foreign manufactured vehicles.

(7) (a) 1. A written agreement need not be filed for each dealer or distributor if the manufacturer or importer, for direct dealerships, or distributor, for indirect dealerships, utilizes the identical basic agreement for all its dealers or distributors in Wisconsin and certifies all of the following in the certificate of appointment:

a. That the blanket agreement is on file with the department of transportation.

b. That the manufacturer's, distributor's or importer's agreement with each of its dealers or distributors, respectively, is identical to the filed blanket agreement.

c. That the manufacturer, distributor or importer has filed one basic agreement together with a list of its authorized dealers or distributors with the department of transportation.

2. A manufacturer, distributor or importer shall notify the department of transportation immediately of any of the following:

a. The appointment of any additional dealers or distributors not included in the list filed under subd. 1. c.

b. Any revisions of or additions to the basic agreement on file under subd. 1. a.

c. Any individual dealer or distributor supplements to the basic agreement on file under subd. 1. a.

3. Except as provided in par. (b), a manufacturer, distributor or importer shall notify a dealer or distributor, forwarding a copy of the notice to the department of transportation, of the discontinuation or cancellation of the agreement of any of its dealers or distributors at least 60 days before the effective date of the discontinuation or cancellation together with the specific grounds for discontinuation or cancellation of the agreement.

(b) The manufacturer, distributor or importer shall send a notice of discontinuation or cancellation by certified mail, and forward a copy of the notice to the department of transportation, not less than 20 days before the effective date of discontinuation or cancellation of the agreement, if the dealer or distributor fails to conduct its customary sales and service operations during its customary business hours for 7 consecutive business days unless the failure is caused by an act of God, by work stoppage or delays due to strikes or labor disputes or other reason beyond the dealer's or distributor's control or by an order of the department of transportation or the division of hearings and appeals.

(c) The notice served upon a motor vehicle dealer under pars. (a) 3. and (b) is not effective unless it conspicuously displays the following statement:

NOTICE TO DEALER

YOU HAVE THE RIGHT TO: 1) MEDIATE IF YOU OPPOSE THE PROPOSED TERMINATION OR NONRENEWAL OF YOUR FRANCHISE AND 2) A HEARING BY THE DIVISION OF HEARINGS AND APPEALS IF MEDIATION DOES NOT RESOLVE THE DISPUTE. TO PRESERVE THESE RIGHTS, YOU MUST TAKE CERTAIN STEPS ON OR BEFORE THE DATE THAT THE PROPOSED TERMINATION OR NONRENEWAL TAKES EFFECT. FOR FURTHER INFORMATION, CONSULT YOUR ATTORNEY OR CALL THE DEALER SECTION, WISCONSIN DEPARTMENT OF TRANSPORTATION, AT.... (insert area code and telephone number).

(d) Any dealer or distributor discontinued or canceled may, on or before the date on which the discontinuation or cancellation becomes effective, file with the department of transportation and division of hearings and appeals and serve upon the respondent manufacturer, distributor or importer a complaint for a determination of unfair discontinuation or cancellation under s. 218.0116 (1) (i). Allowing opportunity for an answer, the division of hearings and appeals shall schedule a hearing on and decide the matter. The burden of proof at the hearing shall be on the manufacturer, distributor, or importer to show that the discontinuation or cancellation was fair, for just provocation, and with due regard to the equities. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in the complaint. If the complainant prevails the complainant shall have a cause of action against the respondent for reasonable expenses and attorney fees incurred by the complainant in the matter.

(e) Agreements and certificates of appointment are considered to be continuing unless the manufacturer, distributor or importer has notified the department of transportation of the discontinuation or cancellation of the agreement of any of its dealers or distributors, and annual renewal of certifications filed as provided in this section is not necessary.

(8) Within 60 days after the department of transportation issues a declaratory ruling under s. 227.41 that an agreement is inconsistent with sub. (9), a manufacturer, distributor or importer shall remove or revise any provision of the agreement declared to be inconsistent with sub. (9).

(9) (a) Except as provided in sub. (10), provisions of an agreement which do any of the following are void and prohibited:

1. Waive a remedy or defense available to a distributor or dealer or other provision protecting the interests of a distributor or dealer under ss. 218.0101 to 218.0163 or under rules promulgated by the department of transportation under ss. 218.0101 to 218.0163.

2. Prevent a dealer or distributor from bringing an action in a particular forum otherwise available under the law or waive the dealer's or distributor's right to a jury trial.

3. Require a motor vehicle dealer to pay the attorney fees of a manufacturer, importer or distributor.

4. Provide a manufacturer, importer, or distributor with the right or option to compel the dealer or any of its owners to sell or transfer an ownership interest in the dealer or assets of the dealer to the manufacturer, importer, or distributor or an assignee of the manufacturer, importer, or distributor.

(b) 1. Notwithstanding par. (a) 2. and subject to s. 218.0116 (1) (qm) 4., an agreement may provide for the resolution of disputes by arbitration, including binding arbitration, if both parties to the agreement voluntarily agree to an arbitration provision. An arbitrator acting under this subdivision shall be bound by the laws of this state, including sub. (7) (d) and other provisions of ss. 218.0101 to 218.0163.

2. No finding of an arbitrator is binding upon any person who is not a party to the agreement. A finding of an arbitrator does not

bind the department of transportation with respect to enforcement of ss. 218.0101 to 218.0163.

(c) Notwithstanding par. (a) 2., an agreement may require a dealer or distributor to submit disputes to a nonbinding and reasonably prompt dispute resolution procedure before bringing an action in another forum.

(d) Notwithstanding par. (a) 4., an agreement may provide a manufacturer, importer, or distributor with the right of first refusal to acquire the dealer's assets in the event of a proposed change of ownership or transfer of dealership assets if all of the requirements of s. 218.0134 (4) (c) are met.

(10) Subsection (9) does not apply to any of the following:

(a) A settlement agreement that is entered into by a dealer or distributor voluntarily with respect to a particular dispute existing when the settlement agreement is reached.

(b) An agreement, made after a dealer receives notice under s. 218.0116 (7) (a), which waives the dealer's right to file a complaint protesting the establishment or relocation of a dealership proposed in the notice.

(11) A manufacturer, distributor or importer shall designate in writing the area of sales responsibility assigned to a motor vehicle dealer. A manufacturer, distributor or importer may not modify the area of sales responsibility to avoid the requirements of s. 218.0116 (7).

(12) (a) Except as provided in par. (b), all licenses shall be granted or refused within 60 days after the licensor receives the application for the license.

(b) 1. In cases where a complaint of unfair cancellation of a dealer agreement is in the process of being heard, no replacement application for the agreement may be considered until a decision is rendered by the division of hearings and appeals.

2. In cases where a complaint has been filed under s. 218.0116 (7) protesting the proposed establishment or relocation of a dealership in a relevant market area, no license may be issued until the division of hearings and appeals has rendered a decision permitting the issuance of the license.

(13) (a) Licenses described in sub. (16) expire on December 31 of the calendar year for which the licenses are granted.

(b) The department of transportation shall promulgate rules establishing the license period for each type of license described in sub. (14) (a) to (fm).

(c) The department of transportation may promulgate rules establishing expiration dates for the various types of licenses described in sub. (14) (a) to (fm).

(d) The division of banking shall promulgate rules establishing the license period for the license described in sub. (14) (g).

(e) The division of banking may promulgate rules establishing expiration dates for licenses issued under sub. (14) (g).

(14) Subject to sub. (15), the fee for licenses described in this subsection equals the number of years in a license period multiplied by whichever of the following applies:

(a) For motor vehicle dealers, to the department of transportation, $20 for each office or branch of the motor vehicle dealer, plus $1 for a supplemental license for each used motor vehicle lot within the same municipality, but not immediately adjacent to the office or to a branch.

(b) For motor vehicle manufacturers, $20; and for each factory branch in this state, $20.

(c) For distributors or wholesalers, the same as for dealers.

(d) Any person licensed under par. (b) or (c) may also operate as a motor vehicle dealer, without any additional fee.

(e) For motor vehicle salespersons, $4.

(f) For factory representative, or distributor branch representative, $4.

(fm) For motor vehicle buyers, $6. Any motor vehicle buyer who buys a motor vehicle on behalf of more than one dealership must hold a separate motor vehicle buyer license for each employing dealership.

(g) 1. Except as provided in subd. 2., for motor vehicle dealers, to the division of banking, $10.

2. For motor vehicle dealers that operate as a sales finance company or that carry or retain retail installment contracts or consumer leases for more than 30 days, to the division of banking, the same as for sales finance companies under sub. (16).

(15) (a) If the department of transportation or division of banking establishes a license period that is not evenly divisible into years, the department of transportation or division of banking shall prorate the remainder when determining the license fee under sub. (14).

(b) If the department of transportation or division of banking grants a license described under sub. (14) during the license period, the fee for the license shall equal the applicable dollar amount under sub. (14) (a) to (g) multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for an entire license period under sub. (14).

(c) No license fee is required under sub. (14) (e), (f), or (fm) for an individual who is eligible for the veterans fee waiver program under s. 45.44.

(16) The fee for licenses for sales finance companies for each calendar year, or part of a calendar year, is based on the gross volume of purchases of retail installment contracts and consumer leases of motor vehicles sold or leased in this state for the 12 months immediately preceding October 31 of the year in which the application for license is made, as follows: On a gross volume of $100,000 or less, $50; and on each $100,000 or part thereof over $100,000, an additional $15. No extra charge shall be made for branch licenses for sales finance companies. Gross volume shall be based on the unpaid balance of the retail installment contracts and the base periodic payments, as defined in s. 429.104 (4), of the consumer leases.

(17) The licenses of dealers, manufacturers, factory branches, distributors, distributor branches and sales finance companies shall specify the location of the office or branch and must be conspicuously displayed at that location. In case the location of the office or branch is changed, the licensor shall endorse the change of location on the license, without charge, if the new location is within the same municipality as the previous location. A change of location to another municipality shall require a new license, except for sales finance companies.

(18) Every salesperson, factory representative, distributor representative, or motor vehicle buyer shall carry his or her license when engaged in business, and display the license upon request. The license shall name the licensee's employer or motor vehicle dealership for whom the motor vehicle buyer is buying. Upon leaving an employer, or, in the case of a buyer, terminating a buying relationship with a motor vehicle dealership, the licensee shall immediately surrender the license to his or her employer or to the dealership, who shall mail the license to the licensor. If during the license period the licensee again is employed or acts as a salesperson or motor vehicle buyer, he or she shall make application for reissue of a salesperson's or motor vehicle buyer license. There shall be no fee in connection with the subsequent application for a salesperson's license. The fee for a subsequent application for a motor vehicle buyer license is $6.

(19) Every sales finance company shall be required to procure a salesperson's license for itself or its employees in order to sell motor vehicles repossessed by it.

(20) (a) If the licensor has reasonable cause to doubt the financial responsibility of the applicant or licensee or the compliance by the applicant or licensee with ss. 218.0101 to 218.0163, the licensor may require the applicant or licensee to furnish information relating to the applicant's or licensee's solvency and financial standing.

(b) If the licensor has reasonable cause to doubt the financial responsibility of the applicant or licensee or the compliance by the applicant or licensee with ss. 218.0101 to 218.0163, the licensor may require the applicant or licensee to furnish and maintain an additional bond in the form, amount and with the sureties it approves, but not less than $5,000, nor more than $100,000, conditioned upon the applicant or licensee complying with the statutes applicable to the licensee and as indemnity for any loss sustained by any person by reason of any acts of the licensee constituting grounds for suspension or revocation of the license under ss. 218.0101 to 218.0163. The bonds shall be executed in the name of the department of transportation for the benefit of any aggrieved person who sustains a loss because of an act of the licensee that constitutes grounds for the suspension or revocation of his or her license under ss. 218.0101 to 218.0163, except that the aggregate liability of the surety to all aggrieved persons shall, in no event, exceed the amount of the bond. The bonding requirements in this paragraph shall not apply to manufacturers, factory branches, and their agents and is in addition to the bond or letter of credit required of a motor vehicle dealer under sub. (5) (a).

(c) An applicant or licensee furnishing information under par. (a) may designate the information as a trade secret, as defined in s. 134.90 (1) (c), or as confidential business information. The licensor shall notify the applicant or licensee providing the information 15 days before any information designated as a trade secret or as confidential business information is disclosed to the legislature, a state agency, as defined in s. 13.62 (2), a local governmental unit, as defined in s. 605.01 (1), or any other person. The applicant or licensee furnishing the information may seek a court order limiting or prohibiting the disclosure, in which case the court shall weigh the need for confidentiality of the information against the public interest in the disclosure. A designation under this paragraph does not prohibit the disclosure of a person's name or address, of the name or address of a person's employer or of financial information that relates to a person when requested under s. 49.22 (2m) by the department of children and families or a county child support agency under s. 59.53 (5).

(21) Application for dealers' licenses shall be submitted to the department of transportation in duplicate and shall contain such information as the licensors require. Application for sales finance company licenses shall contain such information as the division of banking requires. No motor vehicle dealer or sales finance company, unless so licensed, shall be permitted to register or receive or use registration plates under ss. 341.47 to 341.57. The department of transportation shall transmit the duplicate copy of each application for a dealer's license to the division of banking with the fee required under sub. (14) (g). The division of banking may not refund the fee required under sub. (14) (g). The division of banking shall approve a sales finance company license for a dealer if no prior sales finance company license has been suspended or revoked, and if the applicant meets the requirements of ss. 218.0101 to 218.0163 relating to sales finance companies.

(21e) (a) In addition to any other information required under this section and except as provided in par. (c), an application by an individual for the issuance or renewal of a license described in sub. (14) shall include the individual's social security number and an application by a person who is not an individual for the issuance or renewal of a license described in sub. (14) (a), (b), (c) or (e) shall include the person's federal employer identification number. The licensor may not disclose any information received under this paragraph to any person except the department of children and families for purposes of administering s. 49.22, the department of revenue for the sole purpose of requesting certifications under s. 73.0301, and the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(b) The licensor shall deny an application for the issuance or renewal of a license if the information required under par. (a) is not included in the application.

(c) If an applicant for the issuance or renewal of a license described in sub. (14) is an individual who does not have a social security number, the applicant, as a condition of applying for or applying to renew the license, shall submit a statement made or subscribed under oath or affirmation to the licensor that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this paragraph is invalid.

(21g) (a) In addition to any other information required under this section and except as provided in par. (c), an application for a license described in sub. (16) shall include the following:

1. In the case of an individual, the individual's social security number.

2. In the case of a person that is not an individual, the person's federal employer identification number.

(b) The licensor may not disclose any information received under par. (a) to any person except as follows:

1. The licensor may disclose information under par. (a) to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

2. The licensor may disclose information under par. (a) 1. to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

(c) If an applicant for the issuance or renewal of a license described in sub. (16) is an individual who does not have a social security number, the applicant, as a condition of applying for or applying to renew the license, shall submit a statement made or subscribed under oath or affirmation to the licensor that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this paragraph is invalid.

(22) A motor vehicle dealer licensed in accordance with the provisions of ss. 218.0101 to 218.0163 shall make reports to the licensor at such intervals and showing such information as the licensor may require.

(23) After the receipt of an application in due form, properly verified and certified, and upon the payment of the $5 examination fee, the secretary, deputy secretary or any salaried employee of the department of transportation designated by the secretary shall, within a reasonable time and in a place reasonably accessible to the applicant for a license, subject each first−time applicant for license and, if the secretary deems necessary, any applicant for renewal of license to a personal written examination as to competency to act as a motor vehicle salesperson. The secretary shall issue to an applicant a resident or nonresident motor vehicle salesperson's license if the application and examination show that the applicant meets all of the following requirements:

(a) Intends in good faith to act as a motor vehicle salesperson.

(b) Is of good reputation.

(c) Has had experience or training in, or is otherwise qualified for, selling or leasing motor vehicles.

(d) Is a resident of this state, unless application is for a nonresident motor vehicle salesperson's license.

(e) Is reasonably familiar with the motor vehicle sales or consumer lease laws or contracts that the applicant is proposing to solicit, negotiate or effect.

(f) Is worthy of a license.

(24) (a) Words and phrases defined in s. 218.0121 (1m) have the same meaning in this subsection.

(b) The department may not issue a dealer license under ss. 218.0101 to 218.0163, unless the department has determined that no factory will hold an ownership interest in or operate or control the dealership or that one of the exceptions under s. 218.0121 (3m) applies.

(c) If the applicant asserts that s. 218.0121 (3m) (b) applies, the department shall require the applicant to provide a copy of the written agreement described in s. 218.0121 (3m) (b) 4. for examination by the department to ensure that the agreement meets the requirements of s. 218.0121 (3m) (b).

(d) If the division of hearings and appeals determines, after a hearing on the matter at the request of the department or any licensee, that a factory holds an ownership interest in a dealership or operates or controls a dealership in violation of s. 218.0121 the division shall order the denial or revocation of the dealership's license.

History: 1999 a. 31 ss. 57 to 104; 1999 a. 186; 2003 a. 76, 77, 215, 216, 327; 2005 a. 256; 2007 a. 20; 2011 a. 209; 2013 a. 36.

Cross−reference: See also chs. DFI−Bkg 76 and Trans 137, 138. 139, 140, and 144, Wis. adm. code.

Section 180.847 (1) [now s. 180.1502 (1)], prescribing that no foreign corporation transacting business in the state without a certificate of authority shall be permitted to maintain or defend a civil action until it obtains a certificate of authority, and s. 218.01 (2) (bd) 3. [now 218.0114 (2m)]), providing that obtaining a license under the motor vehicle dealers law conclusively establishes that a distributor is doing business in this state, have entirely different purposes and meanings. Nagle Motors v. Volkswagen North Central Distributor, Inc. 51 Wis. 2d 413, 187 N.W.2d 374 (1971).

A dealer's refusal to sell the manufacturer's products after filing a complaint under s. 218.01 (2) (bd) 2. [now 218.0114 (7) (d)] is a violation of that provision, and consequently of s. 218.01 (3) (a) 4. [now 218.0116 (1) (bm)], entitling the manufacturer to treble damages under s. 218.01 (9) (am) [now s. 218.0163]. American Suzuki Motor Corp. v. Bill Kummer, Inc. 65 F.3d 1381 (1995).

218.0116 Licenses, how denied, suspended or revoked. (1) A license may be denied, suspended or revoked on the following grounds:

(a) Proof of unfitness.

(am) Material misstatement in application for license.

(b) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(bm) Willful failure to comply with any provision of ss. 218.0101 to 218.0163 or any rule or regulation promulgated by the licensor under ss. 218.0101 to 218.0163.

(c) Willfully defrauding any retail buyer, lessee or prospective lessee to the buyer's, lessee's or prospective lessee's damage.

(cm) Willful failure to perform any written agreement with any retail buyer, lessee or prospective lessee.

(d) Failure or refusal to furnish and keep in force any bond required.

(dm) Having made a fraudulent sale, consumer lease, prelease agreement, transaction or repossession.

(e) Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer, lessee or prospective lessee.

(em) Employment of fraudulent devices, methods or practices in connection with compliance with the statutes with respect to the retaking of goods under retail installment contracts or consumer leases and the redemption and resale or subsequent lease of the retaken goods.

(f) Having engaged in any unconscionable practice relating to the licensed business activity.

(fm) Having charged a finance charge in excess of the rate permitted by s. 422.201 (3).

(g) Having sold a retail installment contract or consumer lease to a sales finance company that is not licensed under ss. 218.0101 to 218.0163.

(gm) Having violated any law relating to the sale, lease, distribution or financing of motor vehicles.

(gr) Being a dealer who violates s. 218.0146 (4).

(h) Being a manufacturer, importer or distributor who has coerced or attempted to coerce any motor vehicle dealer to order any commodity or service or to accept delivery of or pay for any commodity or service that the motor vehicle dealer has not ordered. This paragraph does not modify or prohibit reasonable requirements in a franchise agreement that require a dealer to market and service a representative line of new motor vehicles that the manufacturer, importer or distributor is publicly advertising.

(hm) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent or any representative of a motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any motor vehicle dealer to enter into any agreement with the manufacturer, factory branch or representative of the motor vehicle manufacturer or factory branch, or to do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch or representative of the motor vehicle manufacturer or factory branch and the dealer.

(i) 1. In this paragraph:

a. "Due regard to the equities" means treatment in enforcing an agreement that is fair and equitable to a motor vehicle dealer or distributor and that is not discriminatory compared to similarly situated dealers or distributors.

b. "Just provocation" means a material breach by a motor vehicle dealer or distributor, due to matters within the dealer's or distributor's control, of a reasonable and necessary provision of an agreement and the breach is not cured within a reasonable time after written notice of the breach has been received from the manufacturer, importer or distributor.

2. Subject to s. 218.0132, being a manufacturer, importer or distributor who has unfairly, without due regard to the equities or without just provocation, directly or indirectly canceled or failed to renew the franchise of any motor vehicle dealer; or being a manufacturer or importer, who has unfairly, without due regard to the equities or without just provocation, directly or indirectly canceled or failed to renew the franchise of any distributor. If there is a change in a manufacturer, importer or distributor, a motor vehicle dealer's franchise granted by the former manufacturer, importer or distributor shall continue in full force and operation under the new manufacturer, importer or distributor unless a mutual agreement of cancellation is filed with the department of transportation between the new manufacturer, importer or distributor and the dealer.

(im) 1. In this paragraph, "bushing" means:

a. With respect to an order or contract of purchase, the practice of increasing the selling price of a motor vehicle above that originally quoted the purchaser as evidenced by a purchase order or contract which has been signed by both the purchaser and dealer licensee.

b. With respect to a consumer lease or prelease agreement, the practice of increasing the gross capitalized cost above that originally quoted the lessee or prospective lessee as evidenced by a consumer lease or prelease agreement which has been signed by both the lessee or prospective lessee and the dealer licensee.

2. Having accepted an order or contract of purchase from a buyer or a consumer lease or prelease agreement from a lessee or prospective lessee if the arrangement results in the practice of bushing.

(j) Having advertised, printed, displayed, published, distributed, broadcast or televised or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast or televised in any manner whatsoever, any statement or representation with regard to the sale, lease or financing of motor vehicles which is false, deceptive or misleading.

(jm) Having set up, promoted or aided in the promotion of a plan by which motor vehicles are sold or leased to a person for a consideration and upon the further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase or lease and in turn agreeing to secure one or more persons likewise to join in the plan, each purchaser or lessee being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan.

(k) Being a dealer who keeps open the dealer's place of business on Sunday for the purpose of buying, leasing or selling motor vehicles; but nothing in this paragraph shall apply to any person who conscientiously believes that the 7th day of the week, from sunset Friday to sunset Saturday, should be observed as the Sabbath and who actually refrains from conducting or engaging in the business of buying, leasing, selling or offering for lease or sale motor vehicles, or performing other secular business on that day.

(km) Being a manufacturer, importer, or distributor who violates s. 218.0121, 218.0122, 218.0123, 218.0124, 218.0125, or 218.0128.

(L) Being a motor vehicle dealer who, in breach of an agreement, voluntarily changes its ownership or executive management, transfers its dealership assets to another person, adds another franchise at the same location as its existing franchise, or relocates a franchise without first complying with the procedures in s. 218.0134.

(Lm) Being a manufacturer, importer or distributor who fails to comply with the procedures in s. 218.0134 regarding a dealer's request for approval of a change of ownership or executive management, transfer of its dealership assets to another person, adding another franchise at the same location as its existing franchise, or relocation of a franchise or who fails to comply with an order of the division of hearings and appeals issued under s. 218.0134.

(m) Having violated chs. 421 to 427 or 429.

(mm) Being a manufacturer, factory branch, distributor, field representative, officer, agent or any representative of a manufacturer, factory branch or distributor who, notwithstanding the terms of any agreement, refuses to honor the succession to the ownership or operation of a dealership under an existing franchise agreement by a designated family member of a deceased or incapacitated dealer, except in the manner prescribed by s. 218.0131, or who unreasonably withholds its approval of a change of ownership or executive management of the dealership after the dealer's death or incapacity.

(n) The selling of new motor vehicles for which the dealer is not franchised.

(nm) Willful failure to provide and maintain facilities and business records as required by ss. 218.0101 to 218.0163 or by any rule promulgated by the licensor pertaining to facility and business records.

(o) Being an inactive business, as evidenced by 3 or less motor vehicle purchases and sales or consumer leases during the prior year licensing period.

(om) Failure to obtain proper business zoning or failure to obtain and maintain any required additional state or local license or permit.

(p) Having violated an order issued under sub. (10).

(pm) Being a manufacturer, factory branch or distributor who enters into a franchise agreement establishing or relocating a motor vehicle dealership, parts outlet or service outlet in a relevant market area without first complying with the procedure in sub. (7) (a).

(q) Being a manufacturer, factory branch or distributor who engages in any action which transfers to a motor vehicle dealer any responsibility of the manufacturer, factory branch or distributor under s. 218.0171.

(qm) Being a manufacturer, distributor or importer who does any of the following:

1. Fails to notify the department of transportation of any revision or addition to an agreement as required under s. 218.0114 (7) (a) 2.

2. Fails to revise or remove portions of an agreement that the department of transportation declares to contain provisions which are inconsistent with s. 218.0114 (9).

3. Requires or coerces a dealer or distributor to sign an agreement, as a condition of obtaining or continuing a franchise, that contains provisions that are void or prohibited under s. 218.0114 (9) or attempts to enforce an agreement with void or prohibited provisions.

4. Requires or coerces a dealer or distributor to sign an agreement that requires arbitration as a condition of obtaining or continuing a franchise, unless the dealer or distributor has the option of signing an otherwise identical agreement without the arbitration provision or unless the agreement provides for arbitration on a case−by−case basis and only when both parties elect to refer the matter to arbitration. This subdivision does not apply to a manufacturer or distributor who enters into an agreement that creates a new franchise for a new line make of motor vehicle, if each of the following is applicable:

a. The arbitration provision was the subject of good faith negotiations with a representative group of dealers.

b. Each dealer voluntarily accepts the arbitration provision after receiving a franchise offering circular under s. 553.27 (4) that discloses the existence and effect of the arbitration provision.

c. The manufacturer or dealer files a copy of the franchise offering circular and proof of good faith negotiation and voluntary acceptance of the arbitration with any filing required under s. 218.0114 (7) (a).

(r) Being a manufacturer, distributor or importer who fails to designate in writing the area of sales responsibility assigned to a motor vehicle dealer or who changes or attempts to change an area of sales responsibility to avoid the requirements of sub. (7).

(rm) Being a grantor, as defined in s. 218.0133 (1) (b), except a motorcycle grantor, as defined in s. 218.0133 (1) (c), who fails to pay a motor vehicle dealer franchise termination benefits under s. 218.0133 or being a motorcycle grantor who fails to pay a motor vehicle dealer agreement termination benefits under s. 218.0133.

(s) Being a manufacturer or distributor who modifies a motor vehicle dealer agreement during the term of the agreement or upon its renewal without complying with sub. (8).

(sm) Having violated s. 218.0172.

(t) Being a manufacturer, importer or distributor who compels a dealer, through a financing subsidiary of the manufacturer, importer or distributor, to agree to unreasonable operating requirements or who directly or indirectly cancels or fails to renew a dealer's franchise, except as allowed under par. (i) and s. 218.0132, through the actions of a financing subsidiary of the manufacturer, importer or distributor. This paragraph does not limit the right of a financing subsidiary to engage in business practices in accordance with the usages of the trade in which it is engaged.

(tm) Being a licensee who willfully refuses or fails to participate in mediation pursuant to a demand for mediation served under s. 218.0136 (1).

(u) Being a manufacturer, importer or distributor who uses a right of first refusal, granted to it under an agreement, to influence the consideration or other terms offered by a potential buyer for a dealership's assets or stock or to influence a potential buyer to refrain from entering into, or to withdraw from, negotiations for the purchase of a dealership's assets or stock.

(um) 1. In this paragraph, "site control contract" means a contract that grants authority to a manufacturer, importer, or distributor or an affiliate of a manufacturer, importer, or distributor, during the term of an agreement or after the termination, cancellation, or nonrenewal of an agreement, to control the disposition or use of or to lease the dealer's dealership facilities.

2. Being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer or prospective dealer of the manufacturer's, importer's, or distributor's motorcycles, who conditions entry into an agreement or renewal of an agreement or approval of the addition of a line make of motor vehicles, franchise relocation, ownership or management change, or transfer of dealership assets on the entry by the dealer or prospective dealer into a site control contract or who coerces or attempts to coerce a dealer or prospective dealer to enter into a site control contract. This subdivision does not pro-

hibit a site control contract for which the dealer or prospective dealer receives a separate and valuable consideration. This subdivision does not apply to a site control contract that is in existence on December 21, 2011, unless the contract is amended, modified, changed, or renewed after December 21, 2011.

(v) Being a manufacturer, importer, or distributor who fails or refuses to offer for sale to its same line make franchised dealers all models manufactured or distributed for the line make. The offer for sale may be subject to the manufacturer's, importer's, or distributor's plan or system for the allocation, scheduling, and delivery of such models that complies with the requirements of s. 218.0123. However, the failure to deliver any such motor vehicle shall not be considered a violation of this paragraph if the failure is due to a lack of manufacturing capacity, a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause beyond the control of the manufacture, importer, or distributor. This paragraph does not prohibit reasonable requirements being imposed on dealers for the sale, marketing, or servicing of particular models.

(vm) Unless the technology of a motor vehicle reasonably requires improvement of dealership facilities to accommodate the adequate sale and service of the motor vehicle or the reasonable business considerations of the manufacturer and dealer justify improvement of dealership facilities, being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer or prospective dealer of the manufacturer's, importer's, or distributor's motorcycles, who conditions entry into an agreement or renewal of an agreement or approval of the addition of a line make of motor vehicles, franchise relocation, ownership or management change, or transfer of dealership assets on the improvement of dealership facilities at a substantial cost to the dealer or prospective dealer or who coerces or attempts to coerce a dealer or prospective dealer to improve dealership facilities at a substantial cost to the dealer or prospective dealer. This paragraph does not prohibit improvement of dealership facilities at a substantial cost to the dealer or prospective dealer if the dealer or prospective dealer has agreed to undertake the improvement and received a separate and valuable consideration for the improvement. The burden of proof to demonstrate the technological necessity or business justification of the facilities improvement is on the manufacturer, importer, or distributor. This paragraph does not apply to an agreement to improve dealership facilities at a substantial cost to the dealer or prospective dealer that is in existence on December 21, 2011, unless the agreement is amended, modified, changed, or renewed after December 21, 2011.

(w) 1. Being a manufacturer, importer, or distributor who performs warranty service or delivery and preparation work on a motor vehicle that it does not own or who authorizes or permits a person to perform warranty service or delivery and preparation work on a motor vehicle unless the person is a motor vehicle dealer with whom the manufacturer, importer, or distributor has entered into a franchise agreement for the sale and service of the manufacturer's, importer's, or distributor's motor vehicles. This subdivision shall not prohibit a manufacturer, importer, or distributor from:

a. Authorizing the performance of warranty service and delivery and preparation work by a fleet owner, as defined in s. 218.0116 (7) (d) 4., on its own vehicles.

b. If warranty service is temporarily not reasonably available to one or more owners of the manufacturer's, importer's, or distributor's vehicles, performing warranty service on such vehicles or authorizing the performance of warranty service on such vehicles by a person who is not a motor vehicle dealer with whom the manufacturer, importer, or distributor has entered into a franchise agreement for the sale and service of the manufacturer's, importer's, or distributor's motor vehicles. Warranty service may be provided or authorized by a manufacturer, importer, or distributor under this subdivision only during the period that warranty service is not otherwise reasonably available.

c. Attempting to repair a nonconformity, as defined in s. 218.0171 (1) (f), to a vehicle, if the repair is reasonably necessary to prevent the manufacturer, importer, or distributor from becoming subject to the requirements of s. 218.0171 (2) (b).

2. Subdivision 1. does not require a manufacturer, importer, or distributor to perform warranty service, or to authorize or permit warranty service to be performed, under a warranty given by another manufacturer, importer, or distributor or component manufacturer to a retail customer.

(wm) Being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, who unreasonably requires or coerces or attempts to coerce a dealer to provide or maintain exclusive facilities for a particular line make of motor vehicles or unreasonably refuses to permit or approve the addition of another line make to the dealership facilities of a dealer taking into consideration the reasonable business considerations of the manufacturer, importer, or distributor and the dealer. The burden of proof to demonstrate the reasonableness of the provision or maintenance of exclusive facilities or the refusal to permit or approve the addition of another line make is on the manufacturer, importer, or distributor. This paragraph does not apply to an agreement for a dealer to provide or maintain exclusive facilities for a particular line make of motor vehicles and for which the dealer has received separate and valuable consideration that is in existence on December 21, 2011, unless the agreement is amended, modified, changed, or renewed after December 21, 2011.

(x) Being a manufacturer, importer, or distributor who engages in any action or fails to engage in any action with respect to any enfranchised motor vehicle dealer in a manner that is arbitrary and causes material damage to the dealer.

(xm) Being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, who charges back, withholds payment, denies vehicle allocation, or takes other adverse action against a dealer for charging a service fee to a retail customer in any amount that is not prohibited under ss. 218.0101 to 218.0163 or rules promulgated by the department of transportation under ss. 218.0101 to 218.0163.

(y) Being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, who charges back, withholds payment, denies vehicle allocation, or takes other adverse action against a dealer because a motor vehicle sold by the dealer has been exported to a foreign country unless the dealer knew or reasonably should have known that the purchaser intended to export the vehicle or resell the vehicle for export. If the motor vehicle is titled or registered in any state in this country, it is presumed that the dealer had no knowledge that the purchaser intended to export the vehicle or resell the vehicle for export. The manufacturer, importer, or distributor may rebut the presumption. The burden of proof to demonstrate that the dealer knew or reasonably should have known that the purchaser intended to export the vehicle or resell the vehicle for export is on the manufacturer, importer, or distributor.

(ym) Being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, who requires or coerces, or attempts to require or coerce, a dealer to provide the manufacturer, importer, or distributor with information regarding the retail customers of the dealer unless the information is necessary for the sale and delivery of a new motor vehicle to a retail buyer, to validate and pay customer or dealer incentives, for warranty reimbursement substantiation under s. 218.0125, or to enable the manufacturer, importer, or distributor to fulfill safety, recall, or other legal obligations.

(ys) Being a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, who transfers nonpublic customer information that was obtained from a dealer to another franchised dealer while the dealer from which the information was obtained remains a franchised dealer unless the dealer from which the information was obtained agrees to the transfer, or who uses any nonpublic personal information, as defined in 16 CFR 313.3 (n), obtained from a dealer unless the use falls within an exception under 16 CFR 313.14 or 313.15.

(1g) (a) A license described in s. 218.0114 (14) shall be denied, restricted, limited or suspended if the applicant or licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(b) A license described in s. 218.0114 (14) (a), (b), (c) or (e) shall be suspended or revoked if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the applicant or licensee is liable for delinquent unemployment insurance contributions.

(c) No provision of ss. 218.0101 to 218.0163 that entitles an applicant or licensee to a notice or hearing applies to a denial, restriction, limitation, suspension or revocation of a license under this subsection.

(1m) (a) A license described in s. 218.0114 (16) shall be denied if any of the following applies:

1. The applicant fails to provide any information required under s. 218.0114 (21g) (a).

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose license is denied under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

2m. The department of workforce development certifies under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose license is denied under this subdivision for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

3. The applicant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this subdivision is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under ss. 218.0101 to 218.0163.

(b) A license described in s. 218.0114 (16) shall be restricted or suspended if the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under ss. 218.0101 to 218.0163.

(c) A license described in s. 218.0114 (16) shall be revoked if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(d) A license described in s. 218.0114 (16) shall be revoked if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(2) The licensor may without prior notice deny the application for a license within 60 days after receipt of the application by written notice to the applicant, stating the grounds for the denial. Within 30 days after receiving the notice, the applicant may petition the division of hearings and appeals to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

(3) (a) 1. Except as provided in subd. 2., the department of transportation shall not license an applicant as a dealer for the sale or lease of motor vehicles at retail unless the applicant owns or leases a vehicle display lot and a permanent building in which there are facilities to display motor vehicles and to repair functional and nonfunctional parts of motor vehicles, where replacement parts, repair tools and equipment to service motor vehicles are kept, and at which the books, records and files necessary to conduct the dealer's business shall be kept and maintained.

1m. A residence, tent or temporary stand is not a sufficiently permanent building within the meaning of subd. 1.

2. The requirements in subd. 1. that an applicant own or lease a vehicle display lot and that the permanent building owned or leased by the applicant contain facilities to display motor vehicles do not apply to persons who are engaged only in the leasing of motor vehicles and who do not maintain an inventory of motor vehicles offered for lease.

(b) An approved service contract with an established repair shop having the repair parts and repair facilities specified in par. (a) 1. shall serve in lieu of the applicant's owning or leasing the applicant's own repair facilities if the service connection is within a reasonable distance from the applicant's place of business and if the service connection guarantees in writing the making of the repairs or replacements ordered by the dealer.

(c) This subsection does not apply to persons who deal only in mopeds or motor bicycles.

(4) (a) No license may be suspended or revoked except after a hearing on the possible suspension or revocation. Except as provided in par. (b), the licensor shall give the licensee at least 5 days' notice of the time and place of the hearing. The order suspending or revoking the license shall not be effective until after 10 days' written notice of the order to the licensee, after the hearing under this paragraph has been held.

(b) When in the licensor's opinion the best interest of the public or the trade demands it, for conduct or under circumstances specified in ss. 218.0101 to 218.0163 or in rules promulgated by the licensor, the licensor may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license.

(c) Matters involving suspensions or revocations brought before the department of transportation shall be heard and decided upon by the division of hearings and appeals. If the department

of transportation requests the division of hearings and appeals to hear a matter brought before the department of transportation under par. (b), the division of hearings and appeals shall hear and decide the matter within 30 days after the date of the department of transportation's request.

(5) The licensor may inspect the pertinent books, records, letters and contracts of a licensee and shall determine the cost of an examination. The cost of an examination shall be paid by the licensee so examined within 30 days after demand for the examination by the licensor. The licensor may maintain an action for the recovery of the costs of the examination in any court of competent jurisdiction.

(6) If a licensee is a firm, corporation or limited liability company, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director, trustee or manager of the firm, corporation or limited liability company, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending or revoking a license to that party as an individual. Each licensee shall be responsible for the acts of any or all of his or her salespersons while acting as his or her agent, if the licensee approved of or had knowledge of the acts or other similar acts and after approving of or obtaining knowledge of the acts retained the benefit, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

(7) (a) 1. A manufacturer, importer or distributor who seeks to enter into a franchise agreement establishing or relocating a motor vehicle dealership, parts outlet or service outlet within the relevant market area of an existing enfranchised dealer of the line make of motor vehicle shall first notify, in writing, the department of transportation and that existing enfranchised dealer of its intention to establish or relocate a dealership or outlet. Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, importer or distributor, whichever is later, any existing enfranchised dealer of the same line make to whom the manufacturer, importer or distributor is required to give notice under this paragraph may file with the department of transportation and the division of hearings and appeals a complaint protesting the proposed establishment or relocation of the dealership or outlet within the relevant market area of the existing enfranchised dealer.

2. If a complaint is filed under subd. 1., the department of transportation shall inform the manufacturer, importer or distributor that a timely complaint has been filed, that a hearing is required, and that the proposed franchise agreement may not be entered into until the division of hearings and appeals has held a hearing, nor thereafter, if the division of hearings and appeals determines that there is not good cause for permitting the proposed establishment or relocation of the dealership or outlet. In the event of multiple complaints, hearings shall be consolidated to expedite the disposition of the issue.

(b) In determining whether good cause exists for permitting the proposed establishment or relocation of a dealership or outlet, the burden of proof for showing good cause shall be on the manufacturer, importer, or distributor, and the division of hearings and appeals shall take into consideration the existing circumstances, including, but not limited to:

1. The amount of business transacted by existing enfranchised dealers of the line make of motor vehicle when compared with the amount of business available to them.

2. The permanency of the investment necessarily made and the obligations incurred by existing enfranchised dealers in the performance of their franchise agreements.

3. The effect on the retail motor vehicle business in the relevant market area.

4. Whether it is injurious to the public welfare for the proposed dealership or outlet to be established or relocated.

5. Whether the establishment or relocation of the proposed dealership or outlet would increase competition and therefore be in the public interest.

6. Whether the existing enfranchised dealers of the line make of motor vehicle are providing adequate consumer care for the motor vehicles of that line make, including the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified personnel.

7. Whether the existing enfranchised dealers of the line make of motor vehicle are receiving vehicles and parts in quantities promised by the manufacturer, factory branch or distributor and on which promised quantities existing enfranchised dealers based their investment and scope of operations.

8. The effect the denial of the proposed establishment or relocation would have on the license applicant, dealer or outlet operator who is seeking to establish or relocate a dealership or outlet.

(c) The decision of the division of hearings and appeals shall be in writing and shall contain findings of fact and a determination of whether there is good cause for not permitting the proposed establishment or relocation of the dealership or outlet. The division of hearings and appeals shall deliver copies of the decision to the parties personally or by registered mail. The decision is final upon its delivery or mailing and no reconsideration or rehearing by the division of hearings and appeals is permitted.

(d) For purposes of this subsection:

1d. "Closed" means the effective date of the termination or expiration of a dealership's or outlet's license or franchise, whichever is earlier.

1h. The reopening or replacement of a dealership or outlet that has been closed for less than 2 years, at the original location or within 2 miles of the original location by the closest highway route, is not the establishment of a motor vehicle dealership or outlet, unless the location is within 4 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the closed dealership or outlet.

1m. The reopening or replacement of a dealership or outlet that has been closed for less than 2 years at a location other than the original location and other than a location within 2 miles of the original location by the closest highway route, but within the area of sales responsibility that had been assigned to the closed dealership or outlet by the manufacturer, importer or distributor is not the establishment of a motor vehicle dealership or outlet, unless the new location is within 6 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the closed dealership or outlet.

1q. The reopening or replacement of a dealership or outlet that has been closed for 2 or more years or that is at a location outside of the area of sales responsibility that had been assigned to the closed dealership or outlet by the manufacturer, importer or distributor is the establishment of a dealership or outlet.

2. The relocation of a dealership or outlet to a location within 2 miles of the existing location by the closest highway route and within the existing area of sales responsibility assigned to that dealership or outlet by the manufacturer, importer or distributor is not the relocation of a dealership or outlet, unless the location is within 4 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the existing location. The relocation of a dealership or outlet to a location other than a location within 2 miles of the existing location, but within the existing area of sales responsibility assigned to that dealership or outlet by the manufacturer, importer or distributor is not the relocation of a dealership or outlet, unless the relocation site is within 6 miles, by the closest highway route, of the location of another enfranchised dealer of the same line make and is closer to that dealer than the existing location. The relocation of a dealership or outlet to a location outside the area of sales

responsibility assigned to the dealership or outlet by the manufacturer is the relocation of a dealership or outlet.

3. The establishment or relocation of a service or parts outlet requires that notice be given under par. (a) to existing enfranchised dealers who are otherwise entitled to receive notice under par. (a) and who are authorized to perform work to rectify product or warranty defects or delivery and preparation obligations on the same line make as the proposed service outlet or to use a trade name, trademark or service mark that is also proposed to be used by the proposed service or parts outlet, except that the establishment or relocation of a service or parts outlet that is owned and operated by a motor vehicle dealership enfranchised by the manufacturer, importer or distributor requires that notice be given only to existing dealers who are otherwise entitled to receive notice under par. (a) and who hold a franchise to sell the same line make as the dealership that will own and operate the proposed service or parts outlet.

4. A manufacturer's, importer's or distributor's authorization of a fleet owner to perform warranty or delivery and preparation work only on the fleet owner's own vehicles is not the establishment of a service outlet. In this subdivision:

a. "Fleet owner" means a person who owns for its own use or for the use of others 10 or more motor vehicles of the current or preceding model year manufactured or sold by the manufacturer, importer or distributor who is authorizing the warranty work to be performed.

b. "Fleet owner" does not include persons engaged in the business of leasing motor vehicles to individual consumers.

5. The establishment or relocation of a motor vehicle dealership with respect to used motor vehicles under an agreement between the dealer and a manufacturer, importer or distributor is the establishment or relocation of a motor vehicle dealership.

(8) (a) A manufacturer or distributor may not modify a motor vehicle dealer agreement during the term of the agreement or upon its renewal if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment or return on investment without giving 60 days written notice of the proposed modification to the motor vehicle dealer unless the modification is required by law, court order or the licensor. Within the 60−day notice period the motor vehicle dealer may file with the department of transportation and the division of hearings and appeals and serve upon the respondent a complaint for a determination of whether there is good cause for permitting the proposed modification. The division of hearings and appeals shall promptly schedule a hearing and decide the matter. Multiple complaints pertaining to the same proposed modification shall be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter.

(b) In making a determination of whether there is good cause for permitting a proposed modification, the burden of proof shall be on the manufacturer or distributor, except that the burden of proof with regard to the factor set forth in par. (b) 3. shall be on the dealer, and the division of hearings and appeals may consider any relevant factor including:

1. The reasons for the proposed modification.

2. Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminating manner.

3. The degree to which the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's rights, investment, or return on investment.

4. Whether the proposed modification is in the public interest.

5. The degree to which the proposed modification is necessary to the orderly and profitable distribution of products by the respondent.

6. Whether the proposed modification is offset by other modifications beneficial to the motor vehicle dealer.

(c) The decision of the division of hearings and appeals shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed modification. The division of hearings and appeals shall deliver copies of the decision to the parties personally or by registered mail. The decision is final upon its delivery or mailing and no reconsideration or rehearing by the division of hearings and appeals is permitted.

(9) Any person in interest aggrieved by a decision of the division of hearings and appeals or an order of the division of banking may have a review of the decision as provided in ch. 227.

(10) In addition to the licensor's authority to deny, suspend, or revoke a license under ss. 218.0101 to 218.0163, the division of banking, after public hearing, may issue a special order enjoining any licensee from engaging in any act or practice which is determined by the division of banking to be in violation of any provision of sub. (1), and the division of hearings and appeals may be petitioned to and, after notice and hearing, may issue a special order enjoining a licensee from engaging in any act or practice which the division of hearings and appeals determines to be in violation of any provision of sub. (1).

History: 1999 a. 31 ss. 123 to 187, 284 to 286; 1999 a. 186; 2003 a. 77, 326; 2005 a. 25, 256; 2007 a. 20; 2011 a. 91; 2013 a. 36; 2013 a. 168 s. 21.

Cross−reference: See also chs. Trans 137, 138, 139, and 140, Wis. adm. code.

"Willful" under s. 218.01 (3) (a) 6. [now sub. (1) (cm)] means intentional. Fraud and malice are not elements. The state need not prove intent to deceive the buyer under s. 218.01 (3) (a) 18. [now sub. (1) (im) 2.]. DOT v. Wisconsin Transportation Commission, 105 Wis. 2d 678, 315 N.W.2d 371 (Ct. App. 1981).

Affirmed. 111 Wis. 2d 80, 330 N.W.2d 159 (1983).

Under s. 218.01 (3) (b) [now sub. (2)] the commissioner may conduct a de novo review of a department decision and may substitute his or her own judgment for that of the department. DOT v. Office of the Commissioner of Transportation, 159 Wis. 2d 271, 463 N.W.2d 870 (Ct. App. 1990).

The legislature imposed the adjudicative responsibilities under sub.(8) (a) on the Division of Hearings and Appeals and, for purposes of adjudication, charged the Division with administration and enforcement of that statute. A court may accord deference to the division's interpretation of sub. (8) (a). Interpretation of a motor vehicle dealer agreement under sub. (8) (a) was a matter of first impression. The division lacked the requisite expertise and experience for its statutory interpretation to be accorded great weight deference. Racine Harley−Davidson, Inc. v. Division of Hearings and Appeals, 2006 WI 86, 278 Wis. 2d 549, 717 N.W.2d 184, 03−2628.

The manufacturer's assignment of territory to a dealer is part of their motor vehicle dealer agreement under sub. (8). Racine Harley−Davidson, Inc. v. Division of Hearings and Appeals, 2006 WI 86, 278 Wis. 2d 549, 717 N.W.2d 184, 03−2628.

Perfect performance is not required to effectuate a "cure" under sub. (1) (i) 1. b. The statutory word "cured" encompasses the meaning of "cured" in contract law: the breaching party is to stop the offending conduct and to substantially perform the contract. Only if the breach is not cured to the level of substantial performance may the injured party terminate the contract. This meaning focuses on the performance of the breaching party, rather than on matters beyond the control of the breaching party, such as the conduct of 3rd parties or on the effects of an economic recession. Volvo Trucks North America v. Wausau Truck Center, Inc. 2010 WI 15, 323 Wis. 2d 294, 779 N.W.2d 423, 08−1385.

Section 218.01 (3) (a) 11. [now sub. (1) (f)] is applicable to manufacturers. Bob Willow Motors, Inc. v. General Motors Corp. 872 F.2d 788 (1989).

A dealer's refusal to sell the manufacturer's products after filing a complaint under s. 218.01 (2) (bd) 2. [now 218.0114 (7) (d)] is a violation of that provision, and consequently of s. 218.01 (3) (a) 4. [now 218.0116 (1) (bm)], entitling the manufacturer to treble damages under s. 218.01 (9) (am) [now s. 218.0163]. American Suzuki Motor Corp. v. Bill Kummer, Inc. 65 F.3d 1381 (1995).

218.0119 Changes in places of business to be reported. (1) Before changing the location of a place of business or opening a new place of business in a municipality in which authorized to do business, a licensed dealer, distributor, or manufacturer shall apply to the department of transportation for an amended license. The department of transportation shall issue such license without charge.

(2) Whenever a licensed dealer, distributor, manufacturer or transporter opens a new place of business, the licensee shall promptly report that fact, including the address of the new place of business, to the department of transportation.

(3) Whenever a licensed dealer, distributor or manufacturer discontinues or disposes of his or her business, that dealer, distributor or manufacturer shall promptly report that fact to the department of transportation and return the license and registration plates issued. Whenever a licensed dealer, distributor or manufac-

turer discontinues business due to license suspension or revocation, that dealer, distributor or manufacturer shall surrender the licenses and registration plates to the department of transportation for the suspension or revocation period.

(4) Any dealer, distributor, manufacturer or transporter who fails to comply with the requirements of this section may be required to forfeit not less than $100 nor more than $200.

History: 1999 a. 31 ss. 105 to 109; 2003 a. 215.

Cross−reference: See also ch. Trans 138, Wis. adm. code.

218.0121 Factory stores. (1m) In this section:

(a) "Agent" means a person who is employed by or affiliated with a factory or who directly or through an intermediary is controlled by or under common control of a factory.

(b) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise. "Control" does not include the relationship between a factory and a dealership under a basic agreement filed under s. 218.0114 (7) (a) 1.

(c) "Dealer operator" means an individual who is vested with the power and authority to operate a dealership.

(d) "Dealership" means a person licensed or required to be licensed as a motor vehicle dealer under ss. 218.0101 to 218.0163.

(dm) "Department" means the department of transportation.

(e) "Factory" means a manufacturer, distributor or importer, or an agent of a manufacturer, distributor or importer.

(f) "Operate" means to directly or indirectly manage a dealership.

(g) "Ownership interest" means the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member or otherwise. To "hold" an ownership interest means to have possession of, title to or control of the ownership interest, whether directly or indirectly through a fiduciary or an agent.

(2m) A factory shall not, directly or indirectly, hold an ownership interest in or operate or control a motor vehicle dealership in this state.

(3m) This section does not prohibit any of the following:

(a) A factory from holding an ownership interest in or operating a dealership for a temporary period, not to exceed one year, during the transition from one owner or dealer operator to another.

(b) A factory from holding an ownership interest in a dealership, if all of the following apply:

1. The dealer operator of the dealership is an individual who is not an agent of the factory.

2. The dealer operator of the dealership is unable to acquire full ownership of the dealership with his or her own assets.

3. The dealer operator of the dealership holds not less than 15 percent of the total ownership interests in the dealership within one year from the date that the factory initially acquires any ownership interest in the dealership.

4. There is a bona fide written agreement in effect between the factory and the dealer operator of the dealership under which the dealer operator will acquire all of the ownership interest in the dealership held by the factory on reasonable terms specified in the agreement.

5. The written agreement described in subd. 4. provides that the dealer operator will make reasonable progress toward acquiring all of the ownership interest in the dealership, and the dealer is making reasonable progress toward acquiring all of the ownership interest in the dealership.

6. Not more than eight years have elapsed since the factory initially acquired its ownership interest in the dealership, unless the department, upon petition by the dealer operator, determines that there is good cause to allow the dealer operator a longer period to complete his or her acquisition of all of the ownership interest in the dealership held by the factory and the longer period determined by the department has not yet elapsed.

(c) The ownership, operation or control of a dealership by a factory that does not meet the conditions under par. (a) or (b), if the division of hearings and appeals determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.

(d) The holding or acquisition, solely for investment purposes, of an ownership interest in a publicly traded corporation by an employee benefit plan that is sponsored by a factory.

History: 1999 a. 31 s. 110, 186; 2003 a. 77.

218.0122 Damages to delivered vehicles. (1) A manufacturer, importer or distributor shall disclose in writing to a motor vehicle dealer, at or before delivery to the dealer, any damage and repair to a new motor vehicle occurring after the manufacturing process is complete but before delivery to the dealer, if the cost of the repair exceeds 6 percent of the manufacturer's suggested retail price, as measured by retail repair costs. Replacement of glass, tires, bumpers, fenders, moldings, audio equipment, instrument panels, hoods and deck lids with identical manufacturer's original equipment is not considered damage and repair under this subsection. If a manufacturer, importer or distributor fails to make a disclosure of damage and repair under this subsection, it shall be liable to the dealer for any liability imposed on the dealer for a failure on the part of the dealer to disclose that damage and repair.

(2) If the cost of repairing damage to a new motor vehicle that occurs before delivery to the dealer's location exceeds 6 percent of the manufacturer's suggested retail price, as measured by retail repair costs, the dealer may reject or, if title has passed to the dealer, require the manufacturer, importer or distributor who delivered the vehicle to repurchase the vehicle within 10 business days after delivery, unless the damage occurred during shipment and the method of transportation, carrier or transporter of the motor vehicle was designated by the motor vehicle dealer. Upon repurchase, the manufacturer, importer or distributor shall be subrogated to all of the dealer's rights against the carrier or transporter of the motor vehicle regarding damage. The cost of repairing glass, tires, bumpers, moldings and audio equipment with identical manufacturer's original equipment shall not be included in determining the cost of repairing damage under this subsection.

(3) This section does not apply to motorcycles that are delivered in a crated, disassembled condition to the dealer or the dealer's agent.

History: 1999 a. 31 s. 111.

218.0123 Vehicle allocations. No manufacturer, importer or distributor shall adopt, change, establish or implement a plan or system for the allocation, scheduling or delivery of new motor vehicles, parts or accessories to its motor vehicle dealers that is not fair, reasonable and equitable or modify an existing plan or system so as to cause the plan or system to be unreasonable, unfair or inequitable. Upon the request of any dealer franchised by it, a manufacturer, importer or distributor shall disclose in writing to the dealer the basis upon which new motor vehicles, parts and accessories are allocated, scheduled and delivered among the manufacturer's, importer's or distributor's dealers of the same line make.

History: 1999 a. 31 s. 112.

218.0124 Performance standards. Any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer, importer or distributor, shall be fair, reasonable and equitable. Upon the request of any dealer, a manufacturer, importer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in

the application of the performance standard or program to that dealer.

History: 1999 a. 31 s. 113.

218.0125 Warranty reimbursement. (1) In this section:

(a) "Dealer cost" means the wholesale cost for a part as listed in the manufacturer's, importer's or distributor's current price schedules or, if the part is not so listed, the dealer's original invoice cost for the part.

(b) "Qualifying nonwarranty repairs" means nonwarranty repairs that would be covered by the warranty of a manufacturer, importer, or distributor if the vehicle being repaired was covered by the warranty. The term does not include routine maintenance.

(2) A manufacturer, importer, or distributor shall, for the protection of the buying public, specify the delivery and preparation obligations of its dealers before delivery of new motor vehicles to retail buyers. Except for a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, the specification shall be in writing. A copy of the delivery and preparation obligations of its dealers shall be filed with the department of transportation by every licensed motor vehicle manufacturer, importer, or distributor and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer, importer, or distributor. Any mechanical, body, or parts defects arising from any warranties of the manufacturer, importer, or distributor shall constitute the manufacturer's, importer's, or distributor's product or warranty liability.

(2m) A manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's, importer's, or distributor's product or warranty defects or delivery and preparation obligations or who performs any other work required, requested, or approved by the manufacturer, importer, or distributor or for which the manufacturer, importer, or distributor has agreed to pay, including compensation for labor at a labor rate equal to the effective labor rate charged all customers and for parts at an amount not less than the amount the dealer charges its other retail service customers for parts used in performing similar work by the dealer.

(3) To be eligible for compensation for parts under sub. (2m), a dealer of motorcycles shall notify the manufacturer, importer, or distributor of motorcycles in writing of the amounts that the dealer charges its other retail service customers for parts and request that it be paid for parts in accordance with this section. The notice may be limited to the dealer's average markup over dealer cost that the dealer charges its other retail service customers for parts used to perform similar work. The notice shall be served upon the manufacturer, importer, or distributor not less than 30 days before the date on which the dealer requests that the manufacturer, importer, or distributor begin paying the dealer for parts at the stated amounts. The manufacturer, importer, or distributor shall pay the dealer, as provided in this section, at the amounts stated in the dealer notice for parts used in work performed on and after the beginning date stated in the notice. This section applies to a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles and those dealers.

(3m) (a) Subject to sub. (4m), a manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, shall reasonably compensate a dealer who performs work to rectify the product or warranty defects of the manufacturer, importer, or distributor or to satisfy delivery and preparation obligations of the manufacturer, importer, or distributor or who performs any other work required, requested, or approved by the manufacturer, importer, or distributor or for which the manufacturer, importer, or distributor has agreed to pay.

(b) Reasonable compensation under par. (a) for labor is equal to the dealer's effective nonwarranty labor rate multiplied by the number of hours allowed for the repair under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work. Reasonable compensation under par. (a) for parts is equal to the dealer's cost for the parts multiplied by the dealer's average percentage markup over dealer cost for parts.

(c) 1. The effective nonwarranty labor rate is determined, using the submitted substantiating orders under sub. (4m) (a) 2., by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work.

2. A dealer's average percentage markup over dealer cost for parts is determined, using the submitted substantiating orders under sub. (4m) (a) 2., by dividing total charges for parts in the repair orders by the total dealer cost for the parts.

(4) The manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles may require the dealer, at reasonable intervals, to provide the manufacturer, importer, or distributor with documents or information regarding a reasonable number of sales to other retail service customers of parts used by the dealer to perform similar work in order to substantiate that the amounts requested in the dealer's notice are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

(4m) (a) To be eligible for compensation for labor or parts under sub. (3m), a dealer shall submit to the manufacturer, importer, or distributor all of the following:

1. A written notice of the claimed effective nonwarranty labor rate or average percentage markup over dealer cost for parts.

2. Either 100 sequential repair orders for qualifying nonwarranty repairs or all repair orders for qualifying nonwarranty repairs performed in a 90−day period, whichever is less. All repair orders under this subdivision must be for repairs made no more than 180 days before the submission.

(b) Not more than 30 days after receiving a submission under par. (a), the manufacturer, importer, or distributor shall begin compensating the dealer based on the effective nonwarranty labor rate or average percentage markup over dealer cost for parts that is substantiated by the submission. If the manufacturer, importer, or distributor disputes the dealer's claimed labor rate or markup, the manufacturer, importer, or distributor shall notify the dealer in writing that it disputes the labor rate or markup. A notice under this paragraph shall include a written explanation of the reason for the dispute, including the labor rate or markup that the manufacturer, importer, or distributor has determined is substantiated by the submission.

(5) A manufacturer, importer, or distributor who fails to compensate a dealer for parts at an amount not less than the amount the dealer charges its other retail service customers for parts used to perform similar work shall not be found to have violated this section if the manufacturer, importer, or distributor shows that, for a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, the amount is not reasonably competitive to the amounts charged to retail service customers by other similarly situated franchised motor vehicle dealers in this state for the same parts when used by those dealers to perform similar work or, for any other manufacturer, importer, or distributor, the amount is not reasonably competitive to the amounts charged to retail service customers by other similarly situated franchised motor vehicle dealers in this state in performing qualifying nonwarranty repairs.

(6) If a manufacturer, importer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer, importer or distributor is required to

compensate the dealer under this section, the manufacturer, importer or distributor shall compensate the dealer for the part at an amount not less than the amount the dealer charges its other retail customers for parts when used to perform similar work less the wholesale cost for the furnished part as listed in the manufacturer's current price schedules. A manufacturer, importer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this section for special high−performance complete engine assemblies furnished to the dealer at no cost, provided that the manufacturer, importer or distributor excludes special high−performance complete engine assemblies in determining whether the amounts requested in the dealer's notice are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

(7) A claim made by a franchised motor vehicle dealer for compensation under this section shall be either approved or disapproved within 30 days after the claim is submitted to the manufacturer, importer or distributor in the manner and on the forms the manufacturer, importer or distributor reasonably prescribes. An approved claim shall be paid within 30 days after its approval. If a claim is not specifically disapproved in writing or by electronic transmission within 30 days after the date on which the manufacturer, importer or distributor receives it, the claim shall be considered to be approved and payment shall follow within 30 days. A manufacturer, importer or distributor retains the right to audit claims for a period of one year after the date on which the claim is paid and to charge back any amounts paid on claims that are false or unsubstantiated. If there is evidence of fraud, this subsection does not limit the right of the manufacturer to audit for longer periods and charge back for any fraudulent claim, subject to the limitations period under s. 893.93 (1) (b).

History: 1999 a. 31 ss. 114 to 121; 2011 a. 91; 2015 a. 171.

218.0126 Promotional allowances. A claim made by a franchised motor vehicle dealer for promotional allowances or other incentive payments shall be either approved or disapproved within 30 days after the claim is submitted to the manufacturer, importer or distributor in the manner and on the forms the manufacturer, importer or distributor reasonably prescribes. An approved claim shall be paid within 30 days after its approval. If a claim is not specifically disapproved in writing or by electronic transmission within 30 days after the date on which the manufacturer, importer or distributor receives it, the claim shall be considered to be approved and payment shall follow within 30 days after approval. A manufacturer, importer or distributor retains the right to audit a claim for a period of 2 years after the date on which the claim is paid and to charge back any amounts paid on claims that are false or unsubstantiated. If there is evidence of fraud, this section does not limit the right of the manufacturer to audit for longer periods and charge back for any fraudulent claim, subject to the limitations period under s. 893.93 (1) (b).

History: 1999 a. 31 s. 122.

218.0128 Product liability. A manufacturer, importer, or distributor, except a manufacturer, importer, or distributor of motorcycles with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, shall defend, indemnify, and hold harmless a dealer against any claim, judgment, or settlement for damages, court costs, expert witness fees, attorney fees, or other expenses arising out of a complaint, claim, or lawsuit to the extent that the complaint, claim, or lawsuit is caused by alleged defective or negligent manufacture, assembly, or design of a motor vehicle, part, or accessory by the manufacturer, importer, or distributor. If a complaint, claim, or lawsuit involves acts or omissions of both the manufacturer, importer, or distributor and the dealer, the manufacturer, importer, or distributor is not obligated to defend the dealer against a claim arising out of the dealer's alleged acts or omissions and is not obligated to indemnify the dealer against any part of a judgment or settlement that arises out of the dealer's alleged acts or omissions.

History: 2011 a. 91.

218.0131 Family member's right to succeed deceased or incapacitated dealer under existing franchise agreement. (1) Any designated family member of a deceased or incapacitated dealer shall have the right to succeed the deceased or incapacitated dealer in the ownership or operation of the dealership under the existing franchise agreement if the designated family member gives the manufacturer, factory branch or distributor written notice of his or her intention to do so within 120 days of the dealer's death or incapacity, unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch or distributor. The manufacturer, factory branch or distributor may request, and the designated family member shall provide, personal and financial data that are reasonably necessary to determine whether the succession should be honored.

(2) If a manufacturer, factory branch or distributor believes it has good cause for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch or distributor may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department of transportation notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served. The notice shall state the specific grounds for the refusal to honor the succession and the discontinuance of the franchise agreement. If no notice of refusal and discontinuance is timely served upon the family member and department of transportation, or if the division of hearings and appeals rules in favor of the complainant in a hearing held under sub. (3), the franchise agreement shall continue in effect subject to termination only in the manner prescribed in this subchapter.

(3) (a) Any designated family member who receives a notice of the manufacturer's, factory branch's or distributor's refusal to honor his or her succession to the ownership and operation of the dealership may, within the 60−day notice period, serve on the respondent and file in triplicate with the division of hearings and appeals a verified complaint for a hearing and determination by the division of hearings and appeals on whether good cause exists for the manufacturer's, factory branch's or distributor's refusal and discontinuance. The division of hearings and appeals shall forward a copy of the complaint to the department of transportation.

(b) The manufacturer, factory branch or distributor shall, at the hearing held under par. (a), have the burden of establishing good cause for its refusal by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch or distributor. The franchise agreement shall continue in effect until the final determination of the issues raised in the complaint.

(c) If the complainant prevails at the hearing held under par. (a), he or she shall have a cause of action against the defendant manufacturer, factory branch or distributor for reasonable expenses and attorney fees incurred in the matter. If the manufacturer, factory branch or distributor prevails, the division of hearings and appeals shall include in its order approving the termination of the franchise agreement such conditions as are reasonable and adequate to afford the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(4) Nothing in this section shall prevent a dealer, during the dealer's lifetime, from designating any person as his or her succes-

sor dealer by written instrument filed with the manufacturer, factory branch or distributor.

History: 1999 a. 31 ss. 193 to 197.

218.0132 Termination provisions. (1) (a) For purposes of s. 218.0116 (1) (i), the termination, cancellation or discontinuation of a motor vehicle line make will be considered to be the cancellation or failure to renew the franchise of a motor vehicle dealer or distributor of that line make even if that line make is part of an agreement that includes other line makes.

(b) Notwithstanding par. (a), a manufacturer, importer or distributor may change, add or delete models, specifications, model names, numbers or identifying marks or similar characteristics of motor vehicles that it markets without effecting a cancellation or failure to renew a franchise.

(2) The cancellation or nonrenewal of a franchise shall not be a violation of s. 218.0116 (1) (i) if all of the following requirements are met:

(a) The motor vehicle dealer or distributor is given notice at least 6 months before the effective date of the cancellation or nonrenewal.

(b) The manufacturer, importer or distributor contemporaneously cancels or fails to renew every franchise for the same line make granted to any dealer or distributor in the United States or, in the case of a franchise relating to a line make that is sold or distributed in less than 13 states of the United States, the manufacturer, importer or distributor contemporaneously cancels or fails to renew every franchise for the same line make granted to any dealer or distributor in this state.

(c) If the franchisee is a motor vehicle dealer, the dealer receives the termination benefits under s. 218.0133.

(d) The manufacturer, importer or distributor does any of the following:

1. Offers or causes to be offered to the motor vehicle dealer or distributor a replacement franchise with reasonable terms and conditions.

2. Compensates the dealer or distributor for the actual pecuniary loss caused by the franchise cancellation or nonrenewal. In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer or distributor for the line make covered by the franchise shall be considered. If the dealer or distributor and the manufacturer, importer or distributor cannot agree on the amount of compensation to be paid under this subdivision, either may file a declaratory judgment action in a court of competent jurisdiction.

3. Establishes, in a proceeding brought by the dealer or distributor alleging that the cancellation or nonrenewal violates s. 218.0116 (1) (i), that the continued distribution of the line make in the United States would cause it economic loss and that, after the effective date of the franchise cancellation or nonrenewal, neither the manufacturer, importer or distributor nor any owner, assignee or licensee of the trademarks or service marks used for the purpose of designating, making known or distinguishing the line make covered by the franchise will use the trademarks or service marks, either alone or in conjunction with other marks, in designating, making known or distinguishing any line make of motor vehicle sold or distributed in the United States.

4. If the franchise relates to a line make that is sold or distributed in less than 13 states of the United States, establishes, in a proceeding brought by the dealer or distributor alleging that the cancellation or nonrenewal violates s. 218.0116 (1) (i) all of the following:

a. That the continued distribution of the line make in this state would cause it economic loss.

b. That after the effective date of the franchise cancellation or nonrenewal, neither the manufacturer, importer or distributor nor any owner, assignee or licensee of the trademarks or service marks used for the purpose of designating, making known or distinguishing the line make covered by the franchise will use those trademarks or service marks, either alone or in conjunction with other marks, in designating, making known or distinguishing any line make of motor vehicle sold or distributed in this state, except that, if the line make covered by the franchise has been first distributed in this state less than 2 years before the effective date of the cancellation or nonrenewal, those trademarks and service marks may be used in this state after 6 years from the effective date of the cancellation or nonrenewal.

5. Establishes in a proceeding brought by the dealer or distributor alleging that the cancellation or nonrenewal violates s. 218.0116 (1) (i) all of the following:

a. That the continued distribution of the line make in this state is prohibited by law or by an order of a court or agency with jurisdiction to issue the order.

b. That the continued distribution of the line make in this state cannot be made to comply with the law or order through the reasonable efforts of the manufacturer, importer or distributor.

c. That after the effective date of the franchise cancellation or nonrenewal, neither the manufacturer, importer or distributor nor any owner, assignee or licensee of the trademarks or service marks used for the purpose of designating, making known or distinguishing the line make covered by the franchise will use those trademarks or service marks, either alone or in conjunction with other marks, in designating, making known or distinguishing any comparable line make of motor vehicle sold or distributed in this state.

History: 1999 a. 31 ss. 198 to 209.

218.0133 Termination benefits. (1) In this section:

(a) "Dealership facilities" means that part of a motor vehicle dealer's place of business that is used to conduct business under an agreement between a grantor and the motor vehicle dealer.

(b) "Grantor" means a manufacturer on direct dealership, a distributor on indirect dealership or an importer on direct dealership that has entered into an agreement with a motor vehicle dealer.

(c) "Motorcycle grantor" means a manufacturer of motorcycles on direct dealership, a distributor of motorcycles on indirect dealership, or an importer of motorcycles on direct dealership, with respect to a dealer of the manufacturer's, importer's, or distributor's motorcycles, that has entered into an agreement with a motor vehicle dealer.

(2) (a) Except as provided in sub. (5) and subject to sub. (3), when a motorcycle grantor or a dealer of its motorcycles terminates, cancels, or does not renew an agreement, the motorcycle grantor shall pay the dealer all of the termination benefits under pars. (b) to (e), and when a grantor that is not a motorcycle grantor or a dealer of its motor vehicles terminates, cancels, or does not renew a franchise, the grantor shall pay the motor vehicle dealer all of the termination benefits under pars. (b) to (e). When a grantor that is not a motorcycle grantor terminates, cancels, or does not renew a franchise, the grantor shall pay the motor vehicle dealer the termination benefits under par. (f).

(b) 1. A grantor shall repurchase from the motor vehicle dealer any unsold new motor vehicle that meets all of the following criteria:

a. The motor vehicle has not been structurally modified by a motor vehicle dealer.

b. If the grantor is a motorcycle grantor, the motor vehicle has not been operated more than 300 miles for manufacturer's tests, predelivery tests, and motor vehicle dealer exchange in addition to operation required for motor vehicle delivery from the grantor. If the grantor is not a motorcycle grantor, the motor vehicle has not been operated more than 500 miles for manufacturer's tests, predelivery tests, and motor vehicle dealer exchange in addition to operation required for motor vehicle delivery from the grantor or another dealer of the same line make.

c. The motor vehicle was acquired as part of the motor vehicle dealer's original inventory or from the grantor or in the ordinary course of business from another motor vehicle dealer of the same line make who acquired the motor vehicle from the grantor.

2. A motorcycle grantor may not be required to repurchase a motor vehicle under this paragraph unless the date on the original dealer invoice is within 12 months of the date on which the motor vehicle dealer terminates, cancels, or does not renew an agreement or is within 18 months of the date on which the grantor terminates, cancels, or does not renew an agreement. A grantor that is not a motorcycle grantor may not be required to repurchase a motor vehicle under this paragraph unless the vehicle is of the current or one−year prior model year or the date on the original dealer invoice is within 12 months of the date on which the motor vehicle dealer terminates, cancels, or does not renew a franchise or is within 18 months of the date on which the grantor terminates, cancels, or does not renew a franchise.

3. The repurchase price for a new motor vehicle shall be the motor vehicle invoice price from the grantor, plus destination, delivery or distribution charges and sales taxes incurred by the motor vehicle dealer, less allowances paid or credited to the motor vehicle dealer by the grantor. A grantor may subtract from a new motor vehicle repurchase price an amount equal to the diminution in wholesale value caused by damages to a new motor vehicle before the motor vehicle dealer delivers the new motor vehicle to the grantor.

(c) 1. A grantor shall repurchase from the motor vehicle dealer any unused, undamaged and unsold parts and accessories and unopened appearance and maintenance materials and paints if those items meet all of the following criteria:

a. The items are in the motor vehicle dealer's inventory or subject to a noncancelable order to the grantor on the effective date of the termination, cancellation or nonrenewal and are in original packaging, or, if sheet metal or body panels, are in a comparable substitute for original packaging.

b. The items were acquired by the motor vehicle dealer from the grantor or from the motor vehicle dealer's predecessor motor vehicle dealer and the items are listed for sale in the grantor's price schedules in effect on the effective date of the termination, cancellation or nonrenewal, the items are part of the motor vehicle dealer's original inventory acquired from the grantor or the items were acquired by the motor vehicle dealer from the grantor within 4 years before the effective date of the termination, cancellation or nonrenewal.

2. A grantor may not be required to repurchase items that are not listed for sale in the grantor's price schedules in effect on the effective date of the termination, cancellation or nonrenewal if, within 2 years before the effective date of the termination, cancellation or nonrenewal, the grantor permitted a motor vehicle dealer to return obsolete parts and accessories, or a reasonable percentage of parts and accessories, for an amount that is equal to or greater than the price at which those items were listed for sale, less any allowances, at the time the return was permitted.

3. The repurchase price for parts, accessories, materials and paints repurchased under subd. 1. shall be the price at which those items are listed for sale in the grantor's price schedules in effect on the effective date of the termination, cancellation or nonrenewal, or, if an item is not listed, the motor vehicle dealer's original invoice cost, plus destination, delivery or distribution charges, and sales taxes incurred by the motor vehicle dealer, less allowances paid or credited to the motor vehicle dealer by the grantor. If a motor vehicle dealer inventories, handles and packages repurchased items for delivery to the grantor, the grantor shall reimburse the motor vehicle dealer an additional amount equal to 2 percent of the repurchase price under this paragraph.

(d) 1. A grantor shall purchase from the motor vehicle dealer undamaged signs at a fair market price, if a sign bears a common name, trade name or trademark of the grantor, the grantor required that the motor vehicle dealer acquire the sign and the sign was acquired by the motor vehicle dealer from the grantor or from a source approved by the grantor. In addition, a grantor shall purchase from the motor vehicle dealer at a fair market price poles or other hardware used to erect a sign if the grantor required that the sign be free standing and not include a trademark or trade name other than that of the grantor. Fair market price is presumed to be equal to the motor vehicle dealer's original cost, reduced by one−tenth of the original cost for each year of ownership. The grantor or motor vehicle dealer may rebut the presumption.

2. If the dealer leases a sign from the grantor or an entity controlled by the grantor, the grantor, except a motorcycle grantor, shall terminate or arrange for the termination of the lease.

3. The grantor, except a motorcycle grantor, is responsible for the removal of a sign subject to subd. 1. or 2. from the dealership facility and shall bear the costs of the removal.

(e) The grantor shall purchase from the motor vehicle dealer special tools, equipment and furnishings at a fair market price, if the motor vehicle dealer acquired the tool, equipment or furnishing from the grantor or from a source approved by the grantor and the grantor required that the motor vehicle dealer acquire the tool, equipment or furnishing. Fair market price is presumed to be equal to the motor vehicle dealer's original cost, reduced by one−seventh of the original cost for each year of ownership. The grantor or motor vehicle dealer may rebut the presumption.

(f) The grantor, except a motorcycle grantor, shall reimburse the motor vehicle dealer for the amount of any obligations that extend beyond the effective date of the termination, cancellation, or nonrenewal under contracts for computer hardware, software, maintenance, or other related service entered into by the dealer and required by the grantor for 18 months or the remaining term of the contracts, whichever is less, unless the computer hardware, software, maintenance, or other related service was used to support the operations of a franchise other than the franchise that was terminated, cancelled, or not renewed.

(3) (a) The grantor shall provide a list of the motor vehicles, parts, accessories, materials and paints, signs, tools, equipment and furnishings that the motor vehicle dealer is authorized to return to the grantor within 30 days after the grantor receives a written inventory of the property that the motor vehicle dealer intends to return or within 30 days after the effective date of the termination, cancellation or nonrenewal, whichever is later. Within 60 days after the property is actually returned by the motor vehicle dealer to the grantor, f.o.b. dealership facilities, the grantor shall pay the motor vehicle dealer the reimbursement amount under sub. (2) (b) to (e), except that the grantor may apply the reimbursement amount first to pay any amount owed by the motor vehicle dealer to the grantor.

(b) If a repurchase price under sub. (2) depends on a purchase date or original cost or includes an associated cost, the motor vehicle dealer shall have the burden of proving by documentary evidence the purchase date, original cost or associated cost.

(4) (a) Except as provided in sub. (5) and subject to pars. (d) and (f), when a grantor except a motorcycle grantor terminates, cancels, or does not renew a franchise a grantor shall, upon request, pay a motor vehicle dealer the termination benefits under par. (b) or (c) and under par. (e), and when a motorcycle grantor terminates, cancels, or does not renew an agreement, a motorcycle grantor shall, upon request, pay a dealer the termination benefits under par. (b) or (c). If a motor vehicle dealer receives benefits under par. (b) or (c) and par. (f) does not apply, the grantor shall be entitled to the possession and use of the dealership facilities for the period that the termination benefits payment covers.

(b) If a motor vehicle dealer leases its dealership facilities, a grantor shall, upon request, pay the motor vehicle dealer an amount equal to the dealership facilities' rent for one year or for the unexpired term of the lease, whichever is less.

(c) If a motor vehicle dealer owns its dealership facilities, a grantor shall, upon request, pay the motor vehicle dealer an amount equal to the reasonable rental value of the dealership facil-

ities for one year or until the dealership facilities are sold or leased, whichever is less.

(d) Paragraphs (b) and (c) apply only to dealership facilities that are used in performing sales and service obligations under an agreement before the motor vehicle dealer receives notice of the termination, cancellation or nonrenewal of the agreement.

(e) If a dealer completed construction or renovation of its dealership facilities not more than 24 months before receiving the notice of the franchise termination, cancellation, or nonrenewal and the construction or renovation was required by the grantor, the grantor except a motorcycle grantor shall pay the dealer an amount equal to the dealer's actual cost for the construction or renovation, less any allowances or credits provided to the dealer by the grantor for the construction or renovation and less any tax savings accruing to the dealer's benefit prior to the notice of the franchise termination, cancellation, or nonrenewal from depreciation write−offs related to the construction or renovation.

(f) If the termination, cancellation, or nonrenewal relates to fewer than all of the franchises operated by a dealer at a single location, the amount of the termination benefit under this subsection shall be based on the percentage of total square footage attributed to the franchise being terminated, cancelled, or not renewed at the effective date of the termination, cancellation, or nonrenewal. This paragraph does not apply to a motorcycle grantor.

(5) (a) Subsections (2) and (4) do not apply to any of the following:

1. A motor vehicle dealer if a court, a licensor or the division of hearings and appeals determines that the motor vehicle dealer engaged in fraud or theft against the grantor in connection with the operation or management of its dealership under an agreement.

2. A motor vehicle dealer who terminates or cancels an agreement with a motorcycle grantor without giving the grantor 60 days' notice or the notice required under the agreement, whichever is less or who terminates or cancels a franchise with a grantor that is not a motorcycle grantor without giving the grantor 60 days' notice or the notice required under the agreement, whichever is less.

3. A motor vehicle dealer who does not give the grantor a written request for termination benefits that specifies the benefits sought within 60 days after the effective date of the termination, cancellation or nonrenewal.

4. A motor vehicle dealer who sells its dealership assets to a 3rd party who becomes a successor motor vehicle dealer under an agreement with the grantor.

4d. A motor vehicle dealer who has any license that is required to operate its dealership revoked. This subdivision does not apply to a motorcycle grantor or a dealer of its motorcycles with respect to the motorcycle grantor.

4h. A termination, cancellation or nonrenewal based on the motor vehicle dealer's failure to conduct its customary sales and service operations during its customary business hours for 7 consecutive business days unless the failure is caused by an act of God, work stoppage or delays due to strikes or labor disputes, an order of the department of transportation or the division of hearings and appeals, or other circumstances beyond the dealer's control. This subdivision does not apply to a motorcycle grantor or a dealer of its motorcycles with respect to the motorcycle grantor.

4p. A termination, cancellation, or nonrenewal based on the conviction of a motor vehicle dealer of a crime involving theft, dishonesty, or false statement, or any other crime punishable by imprisonment for greater than one year. This subdivision does not apply to a motorcycle grantor or a dealer of its motorcycles with respect to the motorcycle grantor.

4t. A termination, cancellation, or nonrenewal based on the motor vehicle dealer being subject to a bankruptcy or receivership filing unless the petition is dismissed not more than 30 days after the filing date. This subdivision does not apply to a motorcycle grantor or a dealer of its motorcycles with respect to the motorcycle grantor.

5. A motor vehicle dealer who terminates, cancels or fails to renew an agreement to sell motor homes, as defined in s. 340.01 (33m), unless a court, a licensor or the division of hearings and appeals determines that the grantor has not acted in good faith or has materially violated the agreement or a provision of ss. 218.0101 to 218.0163 and determines that the motor vehicle dealer has not acted in bad faith or has not violated the agreement or a provision of ss. 218.0101 to 218.0163.

6. An agreement under which a motor vehicle dealer sells a camping trailer, as defined in s. 340.01 (6m), or a trailer, as defined in s. 340.01 (71), but only to the extent that the agreement covers camping trailers or trailers.

(b) Subsection (2) does not apply to a motor vehicle dealer who is unable to convey clear title to property under sub. (2) (b) to (e) on the date on which the grantor takes delivery of the property.

(c) Subsection (2) does not apply to property under sub. (2) (b) to (e) that is acquired by a motor vehicle dealer from another motor vehicle dealer if the property is acquired after the motor vehicle dealer receives or gives notice of termination, cancellation or nonrenewal or if the property was acquired other than in the ordinary course of the motor vehicle dealer's business.

(d) Subsection (4) does not apply if a motorcycle grantor terminates, cancels, or fails to renew an agreement in compliance with s. 218.0116 (1) (i), unless the primary ground for termination, cancellation, or nonrenewal is inadequate sales performance by the motor vehicle dealer or if a grantor that is not a motorcycle grantor terminates, cancels, or fails to renew a franchise in compliance with s. 218.0116 (1) (i), unless the primary ground for termination, cancellation, or nonrenewal is inadequate sales performance by the motor vehicle dealer or termination, cancellation, or discontinuation of a motor vehicle line make.

(6) (a) This section does not restrict the right of a motor vehicle dealer to pursue any other remedy available against a grantor who terminates, cancels or does not renew an agreement.

(b) A motorcycle grantor may not make the termination benefits payments under sub. (2) or (4) contingent on the motor vehicle dealer releasing or waiving any rights, claims, or remedies and a grantor that is not a motorcycle grantor may not make the termination benefits payments under sub. (2), (4), or (7) contingent on the motor vehicle dealer releasing or waiving any rights, claims, or remedies.

(7) If a grantor except a motorcycle grantor cancels or fails to renew a franchise under s. 218.0132 (2), in addition to the termination benefits provided in subs. (2) and (4), the grantor shall compensate the dealer in an amount not less than the fair market value of the franchise terminated or not renewed on the date immediately preceding the date the manufacturer, importer, or distributor publicly announced the termination, cancellation, or discontinuation of the line make that resulted in the franchise cancellation or nonrenewal. The manufacturer, importer, or distributor shall provide the compensation under this subsection not more than 90 days after the effective date of the cancellation or nonrenewal.

History: 1999 a. 31 ss. 210 to 234; 2011 a. 91.

218.0134 Dealership changes. **(1)** In this section, "affected grantor" means a manufacturer on direct dealerships, a distributor on indirect dealerships or an importer on direct dealerships that has entered into an agreement with a motor vehicle dealer and that is directly affected by an action proposed to be undertaken by the dealer under this section.

(2) (a) If a motor vehicle dealer's agreement with an affected grantor requires the grantor's prior approval of an action proposed to be undertaken by the dealer under this section, a dealer may not voluntarily change its ownership or executive management, transfer its dealership assets to another person, add another franchise at the same location as its existing franchise or relocate a franchise

without giving prior written notice of the proposed action to the affected grantor and to the department of transportation. Within 20 days after receiving the notice, the affected grantor may serve the dealer with a written list of the information not already known or in the possession of the grantor that is reasonably necessary in order for the grantor to determine whether the proposed action should be approved. The grantor shall, in good faith, confirm in writing to the dealer the date on which it has received from the dealer or from other sources all the information specified on the list.

(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 publication of the 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).

(c) A dealer who is served with a written statement by an affected grantor under par. (b) may file with the department of transportation and the division of hearings and appeals and serve upon the affected grantor a complaint for the determination of whether there is good cause for not permitting the proposed action to be undertaken. The burden of proof for showing there is good cause for not permitting the proposed action shall be on the affected grantor. The division of hearings and appeals shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

(3) (am) The division of hearings and appeals may determine there is good cause for not permitting a proposed action to be undertaken only if the prospective benefits to the affected grantor, the dealer, the public, and other dealers if the proposed action is not undertaken outweigh the prospective harms to the dealer, the affected grantor, the public, and other dealers if the proposed action is not undertaken.

(b) The decision of the division of hearings and appeals shall be in writing and shall contain findings of fact and a determination of whether there is good cause for not permitting the proposed action to be undertaken. The decision shall include an order that the dealer be allowed or is not allowed to undertake the proposed action, as the case may be. The order may require fulfillment of appropriate conditions before and after the proposed action is undertaken.

(4) This section does not apply to:

(b) A proposed action that would require an affected grantor to give notice under s. 218.0116 (7) (a), except that the dealer must have the affected grantor's written approval before undertaking any such proposed action.

(c) The exercise by an affected grantor under an agreement of the right of first refusal to acquire the dealer's assets in the event of a proposed change of ownership or transfer of dealership assets, if all of the following requirements are met:

1. The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer of dealership assets.

2. The proposed change of ownership or transfer of dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to one or more immediate family members of one or more dealer owners or to a qualifying member of the dealer's management or to a partnership, limited liability company or corporation controlled by those persons. In this subdivision:

a. "Immediate family member" means the spouse, child, grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner.

b. "Qualifying member of the dealer's management" means an individual who has been employed by the dealer for at least 2 years and who otherwise qualifies as a dealer operator.

3. The affected grantor agrees to pay the reasonable expenses, including reasonable attorney fees that do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner or transferee before the grantor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or transfer of dealership assets. Notwithstanding this subdivision, no payment of expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 7 days after the dealer's receipt of the affected grantor's written request for an accounting.

(d) An action, if a proposed new owner or transferee does not agree to comply with the agreement between the affected grantor and dealer or with a new agreement containing substantially the same terms.

History: 1999 a. 31 ss. 235 to 246; 2001 a. 31; 2005 a. 256; 2007 a. 32.

The application of s. 218.01 (3x) [now s. 218.0134] to a contract executed prior to the enactment of sub. (3x) did not violate the contracts clause of the U.S. constitution. Chrysler Corp. v. Kolosso Auto Sales, Inc. 148 F.3d 892 (1998).

Section 218.01 (3x) [now 218.0134] provides an exclusive remedy for evaluating a manufacturer's proposal regarding additions or changes of franchises. The immunity provided by this section is intended to protect against "end runs" around the administrative procedures provided and instead proceeding directly to court. Ray Hutson Chevrolet, Inc. v. General Motors Corp. 235 F.3d 348 (2000).

218.0136 Mediation of disputes between licensees. **(1)** A licensee may not file a complaint or petition with the division of hearings and appeals or bring an action under s. 218.0163 (1), based on an alleged violation of ss. 218.0101 to 218.0163 by any other licensee or under s. 218.0116 (7) or (8), 218.0131 or 218.0134, unless the licensee serves a demand for mediation upon the other licensee before or contemporaneous with the filing of the complaint or petition or the bringing of the action. A demand for mediation shall be in writing and served upon the other licensee by certified mail at an address designated for that licensee in the licensor's records. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the licensee filing the demand.

(2) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be within this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either licensee or upon the stipulation of both licensees.

(3) The service of a demand for mediation under sub. (1) shall stay the time for the filing of any complaint or petition with the division of hearings and appeals or for bringing an action under s. 218.0163 (1), based on an alleged violation of ss. 218.0101 to 218.0163 by the other licensee or under s. 218.0116 (7) or (8), 218.0131 or 218.0134, until the representatives of both licensees have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint or petition is filed before the meeting, the division of hearings and appeals or the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, upon the written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the

proceeding or action for as long a period as the division of hearings and appeals or court considers to be appropriate. A suspension order issued under this subsection may be revoked upon motion of any party or upon motion of the division of hearings and appeals or the court.

(4) The licensor shall encourage licensees under this section to establish, maintain and administer a panel of mediators who have the character, ability and training to serve as mediators and who have knowledge of the motor vehicle industry.

History: 1999 a. 31 ss. 274 to 278.

218.0137 Arbitration of disputes between licensees. A manufacturer, importer or distributor and a dealer may agree to submit a dispute arising under a franchise agreement or under ss. 218.0101 to 218.0163 to binding arbitration. Unless agreed otherwise in an agreement that complies with ss. 218.0114 (9) (b) and 218.0116 (1) (qm) 4., any arbitration proceeding shall be voluntary, initiated by serving a written demand for arbitration on the other party, and shall be conducted under the provisions of the state of Wisconsin arbitration plan administered by representatives of the licensees.

History: 1999 a. 31 s. 279.

218.0138 Immunity and presumption of good faith. A mediator or arbitrator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of his or her powers and duties under s. 218.0136 or the arbitration plan referred to in s. 218.0137. Every act or omission of a mediator or arbitrator is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

History: 1999 a. 31 s. 280.

218.0141 Contract provisions. No contract for the sale of a motor vehicle shall contain a clause which, upon nonacceptance of the vehicle by the buyer, would subject the buyer to a penalty greater than 5 percent of the cash price of the vehicle.

History: 1999 a. 31 ss. 254 to 255.

Cross−reference: See also ch. Trans 139, Wis. adm. code.

218.0142 Installment sales. (1) Every retail installment sale shall be evidenced by an instrument in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(2) (a) Prior to or concurrent with any installment sale, the seller shall deliver to the buyer a written statement clearly describing all of the following:

1. The motor vehicle sold to the buyer.

2. The cash sale price.

3. The cash paid down by the buyer.

4. The amount credited the buyer for any trade−in.

5. A description of the trade−in.

5m. The cost to the retail buyer of any insurance.

6. The amount financed, which may include the cost of insurance and sales and use taxes.

7. The amount of the finance charge.

8. The amount of any other charge specifying its purpose.

9. The total of payments due from the buyer.

10. The terms of payment of the total of payments due from the buyer.

11. The amount and date of each payment necessary to pay the total finally.

12. A summary of any insurance coverage to be effected.

(b) The division of banking may determine the form of the statement required under par. (a).

(c) If a written order is taken from a prospective purchaser in connection with any installment sale, the written statement described in par. (a) shall be given to the purchaser prior to or concurrent with the signing of the order by the purchaser.

(3) A retail installment sale made after October 31, 1984, is not subject to any maximum finance charge limit.

(4) An exact copy of the installment sale contract and any note or notes given in connection with the contract shall be furnished by the seller to the buyer at the time the buyer signs the contract. The buyer's copy of the contract shall contain the signature of the seller identical with the signature on the original contract. No contract shall be signed in blank except that a detailed description of the motor vehicle including the serial number or other identifying marks of the vehicle sold which are not available at the time of execution of the contract may be filled in before final delivery of the motor vehicle.

(5) A violation of sub. (1), (2) or (3) bars recovery of any finance charge by the seller, or an assignee of the seller who, at the time of the assignment, had knowledge of the violation, in any suit upon a sales contract arising from the sale where the violation occurred.

(6) (a) Prior to 30 days after acquisition of any retail installment contract from a retail seller, every finance company shall do all of the following:

1. Mail or deliver to the retail buyer a written notice that the finance company has acquired the retail installment contract from the retail seller.

2. Mail or cause to be mailed with the notice described in subd. 1. a statement of the particulars of the retail installment contract price required under sub. (2) to be stated by the retail seller, in accordance with the finance company's records respecting the particulars of the retail installment contract, including the amount of the finance charge.

(b) Every finance company, if insurance is provided by the finance company, shall also within 30 days after acquisition of the retail installment contract send or cause to be sent to the retail buyer a policy of insurance clearly setting forth the exact nature of the insurance coverage and the amount of the premiums, each stated separately, which shall be filed with the commissioner of insurance in accordance with ch. 625. The cancellation and rewriting of any policy provided by the finance company shall comply with the requirements of s. 631.69.

(7) In the event that the dealer shall finance the installment sale contract, the division of banking may permit the dealer to combine the information required by subs. (2) and (6) in one statement under rules that the division of banking may from time to time promulgate.

(8) Any retail buyer of a motor vehicle under a retail installment contract who is a resident of this state at the time of purchase shall have a valid defense in any action or proceeding at law to enforce the contract by any finance company that is not licensed and which has purchased or otherwise acquired the contract if the finance company has willfully failed or refused to comply with sub. (6).

(9) Any retail buyer of a motor vehicle under a retail installment contract made in this state who is a resident of this state at the time of purchase shall have a valid defense against the recovery of the principal, finance charge and other fees included in the contract in any action or proceeding at law to enforce the contract by any person who has purchased or otherwise acquired the contract if all of the following are true:

(a) The person who acquired the contract has failed or refused prior to the purchase or acquisition to be licensed as a sales finance company under ss. 218.0101 to 218.0163.

(b) The person who acquired the contract is actually engaged in business, in whole or in part as a sales finance company.

(10) All transactions that constitute consumer transactions, as defined under s. 421.301 (13), are subject to chs. 421 to 427, in addition to ss. 218.0101 to 218.0163.

(11) This section does not apply to a retail installment sale of a motor vehicle made on or after November 1, 1981, if the motor

vehicle is to be used primarily for business or commercial purposes and not for the buyer's personal, family or household use.

History: 1999 a. 31 ss. 256 to 267; 2013 a. 165.

An installment sale contract signed in blank is void. Vic Hansen & Sons, Inc. v. Crowley, 57 Wis. 2d 106, 203 N.W.2d 728 (1973).

218.0143 Notice of insurance to buyer under installment sales contract. Whenever a person sells or agrees to sell any motor vehicle at retail under a retail installment contract that provides for insurance coverage, or a charge is made for insurance coverage, the seller shall do one of the following:

(1m) Ensure that the policy so issued or provided for includes public liability coverage protecting the driver of the motor vehicle against damages resulting from the negligent use of the vehicle.

(2) Notify, in writing, the buyer at the time of making the retail installment contract that the motor vehicle is not covered by public liability insurance protecting the driver against damages resulting from the negligent use of the vehicle and obtain, on a form separate from the retail installment contract, the signed acknowledgment of the buyer that he or she has been notified that the contract does not include public liability insurance protecting the driver against damages resulting from the negligent use of the vehicle.

History: 1999 a. 31 s. 268; 2005 a. 133.

218.0144 Prelease agreements. (1) Every prelease agreement shall be in writing, which shall contain all of the agreements of the parties with respect to entering into a consumer lease and shall be signed by both parties.

(2) No prelease agreement shall be binding on a prospective lessee unless all of the following apply:

(a) All of the information required to be disclosed in a consumer lease under s. 429.203 (3) and (4) is disclosed in writing to the prospective lessee before the execution of the prelease agreement by the prospective lessee.

(b) The prelease agreement contains, directly above the place for the prospective lessee's signature, a notice in substantially the following language in bold−faced capital letters of not less than 10−point type:

NOTICE TO PROSPECTIVE LESSEE

1. THIS IS A BINDING PRELEASE AGREEMENT. BY SIGNING THIS PRELEASE AGREEMENT, YOU WILL BECOME OBLIGATED TO ENTER INTO AN AGREEMENT WITH THE PROSPECTIVE LESSOR TO LEASE THE MOTOR VEHICLE DESCRIBED IN THIS PRELEASE AGREEMENT WHEN IT IS AVAILABLE AND READY TO BE DELIVERED TO YOU, UPON LEASE TERMS DISCLOSED IN THIS PRELEASE AGREEMENT OR IN THE ATTACHED DISCLOSURE STATEMENT, IF ANY.

2. DO NOT SIGN THIS PRELEASE AGREEMENT BEFORE YOU READ IT, INCLUDING THE WRITING ON THE REVERSE SIDE.

3. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

4. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(3) An exact copy of the prelease agreement shall be furnished by the prospective lessor to the prospective lessee at the time that the prospective lessee signs the prelease agreement. The prospective lessee's copy of the prelease agreement shall contain the signature of the prospective lessor identical with the signature on the original prelease agreement. No prelease agreement shall be signed in blank except that a detailed description of the motor vehicle, including the serial or identification number, that is not available at the time of execution of the prelease agreement may be omitted.

(4) A prospective lessor may cancel a prelease agreement that, with regard to the lease terms disclosed in the prelease agreement, is contingent upon approval of the prospective lessee's credit by a sales finance company to whom the prospective lessor intends to assign the consumer lease, if the prelease agreement contains a provision requiring the prospective lessor to give the prospective lessee written notice of the cancellation within 10 business days of execution of the prelease agreement and the notice is given to the prospective lessee.

(5) No prelease agreement may contain a clause which, upon nonacceptance of the motor vehicle by the prospective lessee, would subject the prospective lessee to a penalty greater than 5 percent of the gross capitalized cost of the vehicle.

History: 1999 a. 31 s. 269.

218.0145 Prohibited acts. (1) No manufacturer, wholesaler, or distributor, and no officer, agent, or representative of a manufacturer, wholesaler, or distributor, shall induce or coerce, or attempt to induce or coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this state to sell, assign, or transfer any retail installment sales contract, obtained by the dealer in connection with the sale by the dealer in this state of motor vehicles manufactured or sold by the manufacturer, wholesaler, or distributor, to a specified sales finance company or class of sales finance companies, or to any other specified person, by any of the following acts or means:

(a) By any express or implied statement, suggestion, promise or threat, made directly or indirectly, that the manufacturer, wholesaler or distributor will in any manner benefit or injure the dealer.

(b) By any act that will benefit or injure the dealer.

(c) By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling motor vehicles manufactured or sold by the manufacturer, wholesaler or distributor, on the condition that the dealer sell, assign or transfer the dealer's retail installment contracts on motor vehicles manufactured or sold by the manufacturer, wholesaler or distributor, in this state, to a specified sales finance company or class of sales finance companies, or to any other specified person.

(d) By any express or implied statement or representation, made directly or indirectly, that the dealer is under any obligation to sell, assign or transfer any of the dealer's retail sales contracts, in this state, on motor vehicles manufactured or sold by the manufacturer, wholesaler or distributor to a sales finance company, or class of sales finance companies, or other specified person, because of any relationship or affiliation between the manufacturer, wholesaler or distributor and the sales finance company or companies or the specified person or persons.

(2) Any statements, threats, promises, acts, contracts or offers of contracts, set forth in sub. (1) are declared unfair trade practices and unfair competition and against the policy of this state, are unlawful and are prohibited.

(3) No sales finance company, and no officer, agent or representative of a sales finance company, shall induce or coerce or attempt to induce or coerce any retail motor vehicle dealer to transfer to the sales finance company any of the dealer's retail installment sales contracts in this state on any motor vehicle by any of the following acts or means:

(a) By any statement or representation, express or implied, made directly or indirectly, that the manufacturer, wholesaler or distributor of the motor vehicles will grant the dealer a franchise to handle the manufacturer's, wholesaler's or distributor's motor vehicles if the dealer will sell, assign or transfer all or part of such retail sales contracts to such sales finance company.

(b) By any statement or representation, express or implied, made directly or indirectly, that the manufacturer, wholesaler or distributor will in any manner benefit or injure the dealer if the dealer does or does not sell, assign or transfer all or part of the dealer's retail sales contracts to the sales finance company.

(c) By an express or implied statement or representation made directly or indirectly, that there is an express or implied obligation on the part of the dealer to so sell, assign or transfer all or part of the dealer's retail sales contracts on the manufacturer's, wholesaler's or distributor's motor vehicles to the sales finance company

because of any relationship or affiliation between the sales finance company and the manufacturer, wholesaler or distributor.

(4) Any statements or representations set forth in sub. (3) are declared to be unfair trade practices, unfair competition and against the policy of this state, and are unlawful and are prohibited.

(5) Any retail motor vehicle dealer who, pursuant to any inducement, statement, promise or threat declared unlawful under this section, shall sell, assign or transfer any or all of the dealer's retail installment contracts shall not be guilty of any unlawful act and may be compelled to testify to each such unlawful act.

(6) No manufacturer shall directly or indirectly pay or give, or contract to pay or give, anything of service or value to any sales finance company licensee in this state, and no sales finance company licensee in this state shall accept or receive or contract or agree to accept or receive directly or indirectly any payment or thing of service or value from any manufacturer, if the effect of the payment or the giving of the thing of service or value by the manufacturer, or the acceptance or receipt of the payment or thing of service or value by the sales finance company licensee, may be to lessen or eliminate competition or tend to grant an unfair trade advantage or create a monopoly in the sales finance company licensee.

History: 1999 a. 31 s. 270; 2001 a. 38.

Cross−reference: See also ch. Trans 139, Wis. adm. code.

218.0146 Motor vehicles. (1) A motor vehicle may not be offered for sale by any motor vehicle dealer or motor vehicle salesperson unless the mileage on the motor vehicle is disclosed in writing by the transferor on the certificate of title or on a form or in an automated format authorized by the department of transportation to reassign the title to the dealer and the disclosure is subsequently shown to the retail purchaser by the dealer or salesperson prior to sale. The department of transportation may promulgate rules to exempt types of motor vehicles from this mileage disclosure requirement and shall promulgate rules for making the disclosure requirement on a form or in an automated format other than the certificate of title.

(2) It shall be unlawful for any motor vehicle dealer or motor vehicle salesperson to fail to provide, upon request of a prospective purchaser, the name and address of the most recent titled owner and of all subsequent nontitled owners, unless exempted from this requirement by rule of the department of transportation, of any motor vehicle offered for sale. If the most recent titled owner of the motor vehicle is the motor vehicle dealer, the dealer or salesperson shall also provide the name and address of the previous titled owner.

(3) Except for motor vehicles obtained by involuntary transfer under s. 342.17, a person required to be licensed under this chapter may not sell, offer for sale or have possession of a motor vehicle if any of the following applies:

(a) The certificate of title has been altered.

(b) The mileage disclosure statement has been altered.

(c) The mileage disclosure statement of the previous owner is not complete.

(d) The assignment or reassignment of ownership by the previous owner is not complete.

(4) A motor vehicle dealer who is required to process an application for transfer of title and registration under s. 342.16 (1) (a) shall comply with the requirements of s. 342.16 (1) (am).

History: 1999 a. 31 s. 271; 2005 a. 25.

Cross−reference: See also chs. Trans 138, 139, 141, and 154, Wis. adm. code.

218.0147 Purchase or lease of motor vehicle by minor. (1) No minor may purchase or lease any motor vehicle unless the minor, at the time of purchase or lease, submits to the seller or lessor a statement verified before a person authorized to administer oaths and made and signed by either parent of the purchaser or lessee, if the signing parent has custody of the minor or, if neither parent has custody, then by the person having custody, setting forth that the purchaser or lessee has consent to purchase or lease the vehicle. The signature on the statement shall not impute any liability for the purchase price of the motor vehicle or for any payments under the consumer lease to the consenting person. The statement shall not adversely affect any other arrangement for the assumption of liability for the purchase price or any lease payments which the consenting person may make.

(2) If a motor vehicle is purchased by a minor, the signed statement described in sub. (1) shall accompany the application for a certificate of title and shall be filed by the department of transportation with the application. Failure to obtain the consent or to forward it, together with the application for a certificate of title in the event of the purchase of a motor vehicle, shall not void the contract of sale or consumer lease of a motor vehicle in the hands of an innocent holder, without notice, for value and in the ordinary course of business.

(3) Any person who sells or leases a motor vehicle to a minor with knowledge of that fact without procuring the statement described in sub. (1) may be fined not more than $200 or imprisoned for not more than 6 months or both.

History: 1999 a. 31 ss. 272, 273.

218.0151 Advisory committee. The licensor may appoint annually one or more local advisory committees and one general advisory committee, each consisting of not more than 9 members. The committees upon request of the licensor may advise and assist the licensor in the administration of ss. 218.0101 to 218.0163. The members of the committees shall receive no compensation for their services or expenses.

History: 1999 a. 31 s. 247.

218.0152 Rules and regulations. (1) The licensor shall promote the interests of retail buyers and lessees of motor vehicles relating to default, delinquency, repossession or collection charges and the refund of the finance charge and insurance premium on prepayment of the installment contract or consumer lease. It may define unfair practices in the motor vehicle industry and trade between licensees or between any licensees and retail buyers, lessees or prospective lessees of motor vehicles, but may not limit the price at which licensees may sell, assign or transfer receivables, contracts or other evidence of any obligation arising out of an installment sale or consumer lease made under ss. 218.0101 to 218.0163.

(2) (a) The division of banking, department of transportation and division of hearings and appeals shall have the power in hearings arising under this chapter to do all of the following:

1. Determine the place, in this state, where the hearings shall be held.

2. Subpoena witnesses and documents.

3. Take and permit the taking of depositions of witnesses residing in or outside of this state and to otherwise permit the discovery and preservation of evidence before hearing, in the manner provided for in civil actions in courts of record.

4. Pay the witnesses described in subd. 2 the fees and mileage for their attendance that are provided for witnesses in civil actions in courts of record.

5. Administer oaths.

(b) If the licensor has reason to believe that a violation of ss. 218.0101 to 218.0163 has occurred, the licensor may issue subpoenas to compel the attendance of persons to be examined or the production of materials regarding the violation. Subpoenas shall be issued and served in accordance with ch. 885.

(c) A person providing information under this subsection may request that the information be designated as a trade secret, as defined in s. 134.90 (1) (c), or as confidential business information. The division of hearings and appeals or licensor shall approve the designation if the person providing the information demonstrates that the release of the information would adversely affect the person's competitive position. At least 15 days before any information designated as a trade secret or as confidential

business information is disclosed to any other person, the division of hearings and appeals or licensor shall notify the person providing the information. The person providing the information may seek a court order limiting or prohibiting the disclosure, in which case the court shall weigh the need for confidentiality of the information against the public interest in disclosure. Confidentiality is waived if the person providing the information consents in writing to disclosure.

(3) The licensor may promulgate such rules as it considers necessary or proper for the effective administration and enforcement of ss. 218.0101 to 218.0163, but no licensee shall be subject to examination or audit by the licensor except as provided in s. 218.0116 (5).

History: 1999 a. 31 ss. 248 to 253.

Cross−reference: See also chs. Trans 137, 138, 139, 140, and 144, Wis. adm. code.

218.0161 Penalties. Except for s. 218.0116 (1) (a), (b), (cm), (d), (f), (fm), (g), (jm), (m), (o) and (om), and except for violations for s. 218.0114 (1), 218.0119, or 218.0147, any person violating ss. 218.0101 to 218.0163 may be required to forfeit not less than $25 nor more than $500 for each violation.

History: 1999 a. 31 s. 281; 1999 a. 138; 2001 a. 38.

218.0162 Commencement of action. Upon the request of the licensor, the department of justice or the district attorney may commence an action in the name of the state to recover a forfeiture under s. 218.0161. An action under s. 218.0161 shall be commenced within 3 years after the occurrence of the unlawful act or practice which is the subject of the action.

History: 1999 a. 31 s. 282.

218.0163 Civil damages. (1) Without exhausting any administrative remedy available under an agreement or ss. 218.0101 to 218.0163, except as provided in 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:

(a) A violation by any other licensee of s. 218.0116 (1) (bm), (f), (h), (hm), (i), (km), (L), (Lm), (mm), (pm), (q), (qm), (r), (rm), (s), (sm), (t), (u), (um), (v), (vm), (w), (wm), (x), (xm), (y), (ym), or (ys).

(b) Any unfair practice found by a licensor or the division of hearings and appeals under s. 218.0152 (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 not good cause for not 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 hearings 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.

(1m) If a court finds that a violation or practice described in sub. (1) (a) or (b) is willful, a licensee shall recover damages in an amount equal to 3 times the pecuniary loss, together with actual costs including reasonable attorney fees.

(1q) In any action brought under this subsection, the burden of proof as to liability shall be the same as set forth in ss. 218.0114 (7) (d), 218.0116 (7) (b), and 218.0116 (8) (b) regarding complaints brought before the division of hearings and appeals, but the burden of proof as to damages shall be on the licensee seeking damages.

(1r) For purposes of subs. (1) and (1m), "licensee" means a person or entity holding a license at the time the cause of action arose regardless of whether the person or entity holds a license at the time an action under this section is commenced.

(2) Any retail buyer, lessee or prospective lessee suffering pecuniary loss because of a violation by a licensee of s. 218.0116 (1) (bm), (c), (cm), (dm), (e), (em), (f), (im), (m) or (p) may recover damages for the loss in any court of competent jurisdiction together with costs, including reasonable attorney fees.

(3) A complainant or petitioner who prevails against a manufacturer, importer, or distributor as a result of a complaint or petition filed with the division of hearings and appeals based on an alleged violation of ss. 218.0101 to 218.0163 or under s. 218.0116 (7) or (8) or 218.0134 shall have a cause of action against the manufacturer, importer, or distributor for reasonable expenses and attorney fees incurred by the complainant or petitioner in connection with all proceedings resulting from the complaint or petition. This subsection does not apply:

(a) If the division of hearings and appeals finds that the manufacturer, importer, or distributor was substantially justified or that special circumstances make an award of expenses and attorney fees unjust.

(b) To an action or proceeding under ss. 218.0114 (7) (d), 218.0131 (3) (c), and 218.0163 (1) and (1m).

History: 1999 a. 31 s. 283; 2001 a. 31; 2003 a. 77; 2005 a. 256; 2011 a. 91; 2013 a. 168 s. 21.

Only a licensee may recover under this section; a claim must be related to the scope of the license. Ford Motor Co. v. Lyons, 137 Wis. 2d 397, 405 N.W.2d 354 (Ct. App. 1987).

Sub. (2) authorizes recovery of reasonable costs and reasonable attorney fees by retail purchasers who prevail on claims under s. 218.0116. Sub. (2) and s. 218.0116 manifest a legislative purpose to provide recovery of the reasonable expenses of the litigation, and such an interpretation is necessary to harmonize otherwise conflicting provisions of sub. (2) and 814.04. Recovery of only s. 814.04 enumerated costs would discourage litigants with legitimate claims from seeking relief and undermine the statute's effectiveness in suppressing prohibited mischief. Kolupar v. Wilde Pontiac Cadillac, Inc. 2007 WI 98, 303 Wis. 2d 258, 735 N.W.2d 93, 05−0935.

A dealer's refusal to sell the manufacturer's products after filing a complaint under s. 218.01 (2) (bd) 2. [now 218.0114 (7) (d)] is a violation of that provision, and consequently of s. 218.01 (3) (a) 4. [now 218.0116 (1) (bm)], entitling the manufacturer to treble damages under sub. (9) (am) [now s. 218.0163]. American Suzuki Motor Corp. v. Bill Kummer, Inc. 65 F.3d 1381 (1995).

218.0171 Repair, replacement and refund under new motor vehicle warranties. (1) In this section:

(a) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining alternative transportation.

(b) "Consumer" means any of the following:

1. The purchaser of a new motor vehicle, if the motor vehicle was purchased from a motor vehicle dealer for purposes other than resale.

2. A person to whom the motor vehicle is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motor vehicle.

3. A person who may enforce the warranty.

4. A person who leases a motor vehicle from a motor vehicle lessor under a written lease.

(bd) "Demonstrator" means used primarily for the purpose of demonstration to the public.

(bg) "Early termination cost" means any expense or obligation a motor vehicle lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motor vehicle to a manufacturer under sub. (2) (b) 3. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(bj) "Early termination savings" means any expense or obligation a motor vehicle lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motor vehicle to a manufacturer under sub. (2) (b) 3. "Early termination savings" includes an interest charge the motor vehicle lessor would have paid to finance the motor vehicle or, if the motor vehicle lessor does not finance the motor vehicle, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(bp) "Executive" means used primarily by an executive of a licensed manufacturer, distributor or dealer, and not used for demonstration to the public.

(bt) "Heavy−duty vehicle" means any motor vehicle having a gross vehicle weight rating or actual gross weight of more than 10,000 pounds.

(c) "Manufacturer" means a manufacturer as defined in s. 218.0101 (20) and agents of the manufacturer, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motor vehicles, but not including a motor vehicle dealer.

(d) "Motor vehicle" means any motor driven vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05 (2), including a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor vehicle dealer, which a consumer purchases or accepts transfer of in this state. "Motor vehicle" does not mean a moped, semitrailer or trailer designed for use in combination with a truck or truck tractor.

(e) "Motor vehicle dealer" has the meaning given under s. 218.0101 (23) (a).

(em) "Motor vehicle lessor" means a person who holds title to a motor vehicle leased to a lessee, or who holds the lessor's rights, under a written lease.

(f) "Nonconformity" means a condition or defect which substantially impairs the use, value or safety of a motor vehicle, and is covered by an express warranty applicable to the motor vehicle or to a component of the motor vehicle, but does not include a condition or defect which is the result of abuse, neglect or unauthorized modification or alteration of the motor vehicle by a consumer.

(g) "Out of service," with respect to a motor vehicle, means that the vehicle is unable to be used by the consumer for the vehicle's intended purpose as a result of any of the following:

1. The vehicle is in the possession of the manufacturer, motor vehicle lessor, or any of the manufacturer's authorized motor vehicle dealers for the purpose of performing or attempting repairs to correct a nonconformity.

2. The vehicle is in the possession of the consumer and the vehicle has a nonconformity that substantially affects the use or safety of the vehicle and that has been subject to an attempt to repair under sub. (2) (a) on at least 2 occasions.

(h) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motor vehicle or within one year after first delivery of the motor vehicle to a consumer, whichever is sooner:

1. The same nonconformity with the warranty is subject to repair by the manufacturer, motor vehicle lessor or any of the manufacturer's authorized motor vehicle dealers at least 4 times and the nonconformity continues.

2. The motor vehicle is out of service for an aggregate of at least 30 days because of warranty nonconformities. Time during which repair services are not available to the consumer because of flood or other natural disaster, war, invasion, fire, or strike may not be included in the 30−day time period under this subdivision.

(2) (a) If a new motor vehicle does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor, or any of the manufacturer's authorized motor vehicle dealers and makes the motor vehicle available for repair before the expiration of the warranty or one year after first delivery of the motor vehicle to a consumer, whichever is sooner, the nonconformity shall be repaired.

(b) 1. If after a reasonable attempt to repair the nonconformity is not repaired and if the consumer provides the manufacturer with the form specified in sub. (8) (a) 2. or 3., the manufacturer shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

2. At the direction of a consumer described under sub. (1) (b) 1., 2. or 3., do one of the following:

a. Accept return of the motor vehicle and, subject to par. (cg), replace the motor vehicle with a comparable new motor vehicle and refund any collateral costs.

b. Accept return of the motor vehicle and refund to the consumer and to any holder of a perfected security interest in the consumer's motor vehicle, as their interest may appear, the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a motorcycle, 20,000, and the numerator of which is the number of miles the motor vehicle was driven before the consumer first reported the nonconformity to the motor vehicle dealer.

3. a. With respect to a consumer described in sub. (1) (b) 4., accept return of the motor vehicle, refund to the motor vehicle lessor and to any holder of a perfected security interest in the motor vehicle, as their interest may appear, the current value of the written lease and refund to the consumer the amount the consumer paid under the written lease plus any sales tax and collateral costs, less a reasonable allowance for use.

b. Under this subdivision, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the motor vehicle dealer's early termination costs and the value of the motor vehicle at the lease expiration date if the lease sets forth that value, less the motor vehicle lessor's early termination savings.

c. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 100,000 and the numerator of which is the number of miles the consumer drove the motor vehicle before first reporting the nonconformity to the manufacturer, motor vehicle lessor or motor vehicle dealer.

(c) To receive a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the refund. When the manufacturer provides the refund, the consumer shall return the motor vehicle having the nonconformity to the manufacturer and provide the manufacturer with the certificate of title and all endorsements necessary to transfer title to the manufacturer. If another person is in possession of the certificate of title, as shown by the records of the department of transportation, that person shall, upon request of the consumer, provide the certificate of title to the manufacturer upon satisfaction of any security interest in the motor vehicle.

(cg) 1. If a consumer described under sub. (1) (b) 1., 2., or 3. elects a comparable new motor vehicle on the form specified in sub. (8) (a) 2., no later than 30 days after receiving this form the manufacturer shall agree in writing to provide a comparable new motor vehicle or a refund of the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale, and collateral costs. Upon the consumer's receipt of this writing, the manufacturer shall have until the 45th day after receiving from the consumer the form specified in sub. (8) (a) 2. to either provide the comparable new motor vehicle or the refund. During this period, the manufacturer shall exercise due diligence in locating and providing a comparable new motor vehicle. If the manufacturer agrees to provide a comparable new motor vehicle, the manufacturer retains the right to provide the refund if a comparable new motor vehicle does not exist or cannot be delivered within this 45−day period. This subdivision does not apply with respect to heavy−duty vehicles.

2. If a consumer described under sub. (1) (b) 1., 2., or 3. elects a comparable new motor vehicle on the form specified in sub. (8) (a) 2., no later than 30 days after receiving this form the manufac-

turer shall agree in writing to provide a comparable new motor vehicle or a refund of the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale, and collateral costs. Upon the consumer's receipt of this writing, the manufacturer shall have until the 120th day after receiving from the consumer the form specified in sub. (8) (a) 2. to either provide the comparable new motor vehicle or the refund. During this period, the manufacturer shall exercise due diligence in locating and providing a comparable new motor vehicle. If the manufacturer agrees to provide a comparable new motor vehicle, the manufacturer retains the right to provide the refund if a comparable new motor vehicle does not exist or cannot be delivered within this 120−day period. This subdivision applies only with respect to heavy−duty vehicles.

3. When a manufacturer provides a new motor vehicle under subd. 1. or 2., the consumer shall return the motor vehicle having the nonconformity to the manufacturer and provide the manufacturer with the certificate of title and all endorsements necessary to transfer title to the manufacturer. If another person is in possession of the certificate of title, as shown by the records of the department of transportation, that person shall, upon request of the consumer, provide the certificate of title to the manufacturer upon satisfaction of any security interest in the motor vehicle.

(cm) 1. To receive a refund due under par. (b) 3., a consumer described under sub. (1) (b) 4. shall offer to the manufacturer of the motor vehicle having the nonconformity to return that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return the motor vehicle having the nonconformity to the manufacturer.

2. To receive a refund due under par. (b) 3., a motor vehicle lessor shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the motor vehicle lessor. When the manufacturer provides the refund, the motor vehicle lessor shall provide to the manufacturer the certificate of title and all endorsements necessary to transfer title to the manufacturer. If another person is in possession of the certificate of title, as shown by the records of the department of transportation, that person shall, upon request of the motor vehicle lessor, provide the certificate to the manufacturer or to the motor vehicle lessor.

3. No person may enforce the lease against the consumer after the consumer receives a refund due under par. (b) 3.

(cq) Upon payment of a refund to a consumer under par. (b) 2. b. or (cg) 1. or 2., the manufacturer shall provide to the consumer a written statement that specifies the trade−in amount previously applied under s. 77.51 (12m) (b) 5. or 6. or (15b) (b) 5. or 6. toward the sales price of the motor vehicle having the nonconformity and the date on which the manufacturer provided the refund.

(d) No motor vehicle returned by a consumer or motor vehicle lessor in this state under par. (b) or sub. (6m), or by a consumer or motor vehicle lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

(e) The department of revenue shall refund to the manufacturer any sales tax which the manufacturer refunded to the consumer under par. (b) if the manufacturer provides to the department of revenue a written request for a refund along with evidence that the sales tax was paid when the motor vehicle was purchased and that the manufacturer refunded the sales tax to the consumer. The department may not refund any sales tax under this paragraph if it has made a refund in connection with the same motor vehicle under par. (f).

(f) The department of revenue shall refund to a consumer described under sub. (1) (b) 1., 2. or 3. all or part of the sales tax paid by the consumer on the purchase of a new motor vehicle, based on the amount of the refund of the purchase price of the motor vehicle actually received by the consumer, if all of the following apply:

1. The consumer returned the motor vehicle to its manufacturer and received a refund of all or part of the purchase price but not the corresponding amount of sales tax.

2. The consumer bought the new motor vehicle after November 2, 1983.

3. The consumer provides the department of revenue with a written request for a refund of the sales tax along with evidence that the consumer received a certain amount as a refund of the purchase price of the motor vehicle from the manufacturer, that the sales tax was paid when the motor vehicle was bought new and that the manufacturer did not refund the sales tax to the consumer.

4. The department of revenue has not made a refund under par. (e) in connection with the motor vehicle.

(3) If there is available to the consumer an informal dispute settlement procedure which is certified under sub. (4), the consumer may not bring an action under sub. (7) unless he or she first resorts to that procedure.

(4) (a) The department of transportation shall adopt rules specifying the requirements with which each informal dispute settlement procedure shall comply. The rules shall require each person establishing an informal dispute settlement procedure to do all of the following:

1. Provide rights and procedures at least as favorable to the consumer as are required under 16 CFR Part 703, in effect on November 3, 1983.

2. If after a reasonable attempt to repair the nonconformity is not repaired, require the manufacturer to provide a remedy as set forth under sub. (2) (b).

(b) The department of transportation shall investigate each informal dispute settlement procedure provided in this state to determine whether it complies with the rules adopted under par. (a). The department shall certify each informal dispute settlement procedure which complies. The department may revoke certification if it determines that an informal dispute settlement procedure no longer complies with the rules promulgated under par. (a). Annually, the department shall publish a report evaluating the informal dispute settlement procedures provided in this state, stating whether those procedures are certified and stating the reasons for the failure of any procedure to obtain certification or for the revocation of any certification.

(c) Any person who establishes an informal dispute settlement procedure the certification of which is denied or revoked by the department of transportation may appeal that denial or revocation under ch. 227.

(d) Annually, any person who establishes an informal dispute settlement procedure shall file with the department of transportation a copy of the annual audit required under 16 CFR Part 703 or a substantially similar audit and any additional information the department requires in order to evaluate informal dispute settlement procedures.

(e) The department of transportation may consider whether a manufacturer obtains certification under this subsection in determining whether to issue a manufacturer's license to do business in this state.

(5) Except as provided in sub. (7) (b), this section does not limit rights or remedies available to a consumer under any other law.

(6) Any waiver by a consumer of rights under this section is void.

(6m) Notwithstanding subs. (2) (b) and (6), if the consumer enters into a negotiated written settlement with the manufacturer regarding any motor vehicle nonconformity, the manufacturer shall no longer be subject to any requirement of this section, except for sub. (2) (d), with respect to that motor vehicle. This subsection applies only with respect to heavy−duty vehicles.

(7) (a) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section if the action is commenced within 36 months after first delivery of the motor vehicle to a consumer. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and may award any equitable relief the court determines appropriate.

(b) Notwithstanding any other provision of this section or ch. 802, 804, or 806, in an action for a violation under this section, if a court finds that any party to the action has failed to reasonably cooperate with another party's efforts to comply with obligations under this section, which hinders the other party's ability to comply with or seek recovery under this section, the court may extend any deadlines specified in this section, reduce any damages, attorney fees, or costs that may be awarded under par. (a), strike pleadings, or enter default judgment against the offending party.

(8) (a) The department of transportation shall prescribe one or more forms for consumers to use for all of the following:

2. To elect that a manufacturer replace a motor vehicle with a comparable new motor vehicle as provided under sub. (2) (b) 2. a.

3. To elect that a manufacturer make a refund as provided under sub. (2) (b) 2. or 3.

(b) The department shall make any form specified in par. (a) available on the department's Internet site. Any form specified in par. (a) shall require the consumer to provide all of the following information:

1. The consumer's contact information.

2. Identification of the motor vehicle dealer from which the motor vehicle was purchased, the date of delivery of the motor vehicle from the dealer, and the purchase price of the motor vehicle.

3. Identification of any holder of a perfected security interest in the consumer's motor vehicle.

4. The mileage of the motor vehicle at the time the first nonconformity is asserted to have occurred.

5. A place on the form to make the election described in par. (a) 2. or 3.

6. An itemization of any other damages claimed by the consumer.

(c) If any form specified in par. (a) is required under this section to be used by a consumer and the consumer has not provided all information required under par. (b) to the satisfaction of the manufacturer, the manufacturer may, within 30 days of receiving the form, request that the consumer provide additional information required under par. (b). If the manufacturer makes such a timely request for additional information, any time period under sub. (2) (c), (cg) 1. or 2., or (cm) 1. does not begin to elapse until the consumer provides this additional information.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45; 2009 a. 2; 2011 a. 32; 2013 a. 101; 2015 a. 173.

Cross−reference: See also ch. Trans 143, Wis. adm. code.

An action to recover under sub. (1) (h) 2. was not defeated by the repair of reported nonconformities. Hartlaub v. Coachman Industries, Inc., 143 Wis. 2d 791, 422 N.W.2d 869 (Ct. App. 1988).

"Out of service" under sub. (1) (h) 2. includes periods during which the motor vehicle is incapable of providing service because of warranty nonconformity, regardless of whether the vehicle is in the owner's possession and driveable. Vultaggio v. General Motors Corp. 145 Wis. 2d 874, 429 N.W.2d 93 (Ct. App. 1988).

"Disbursements and reasonable attorney fees" under sub. (7) include post−trial disbursements and reasonable fees incurred. Chmill v. Friendly Ford−Mercury, 154 Wis. 2d 407, 453 N.W.2d 197 (Ct. App. 1990).

Sub. (2) (c) does not require that a vehicle continue to have a nonconformity for a consumer to demand a refund when the vehicle has been out of service at least 30 days; "having the nonconformity" is a general reference to the vehicle in question, rather than a refund prerequisite. Nick v. Toyota Motor Sales, 160 Wis. 2d 373, 466 N.W.2d 215 (Ct. App. 1991).

Under sub. (1) (a), the allowance for alternate transportation is limited to the cost in connection with the repair of the nonconforming vehicle. Nick v. Toyota Motor Sales, 160 Wis. 2d 373, 466 N.W.2d 215 (Ct. App. 1991).

If the owner gives notice and a single opportunity to repair, the owner cannot refuse additional attempts to repair within 30 days and sue under the lemon law. Carl v. Spickler Enterprises Ltd. 165 Wis. 2d 611, 478 N.W.2d 48 (Ct. App. 1991).

Although the plaintiff arguably granted the automaker an extension of the 30−day period under sub. (2) (c), the prohibition of waivers of claims under sub. (6) resulted in the automaker being liable for failing to satisfy the claim within the 30−day period. Hughes v. Chrysler Motors. Corp. 188 Wis. 2d 1, 523 N.W.2d 197 (Ct. App. 1994).

Affirmed on other grounds. 197 Wis. 2d 974, 542 N.W.2d 148 (1996), 93−0208.

Attorney time spent prior to the expiration of the 30−day period under sub. (2) (c) is recoverable under sub. (7). Hughes v. Chrysler Motors. Corp. 188 Wis. 2d 1, 523 N.W.2d 197 (Ct. App. 1994).

Affirmed on other grounds. 197 Wis. 2d 974, 542 N.W.2d 148 (1996), 93−0208.

A manufacturer is not liable for defects in dealer added accessories not manufactured or distributed by the manufacturer. Malone v. Nissan Motor Corp. 190 Wis. 2d 436, 526 N.W.2d 841 (Ct. App. 1994).

Pecuniary loss under sub. (7) includes the entire purchase price of the vehicle. Hughes v. Chrysler Motor Corp. 197 Wis. 2d 974, 542 N.W.2d 148 (1996), 93−0208.

The 30−day time limit in sub. (2) (c) is not suspended or delayed by the parties' disagreement over the amount of the refund. The manufacturer's options are to, within the 30−day period, pay the amount demanded or pay the amount it deems appropriate and be subject to possible suit over the disputed amount. Church v. Chrysler Corp. 221 Wis. 2d 460, 585 N.W.2d 685 (Ct. App. 1998), 97−2065.

It is proper to deduct the amount of a cash rebate in determining the refund amount. Church v. Chrysler Corp. 221 Wis. 2d 460, 585 N.W.2d 685 (Ct. App. 1998), 97−2065.

A "new motor vehicle" under sub. (2) (a) does not include a previously−owned vehicle that is subject to the original manufacturer's warranty and is less than one year removed from first delivery to a consumer. Schey v. Chrysler Corp. 228 Wis. 2d 483, 597 N.W.2d 457 (Ct. App. 1999), 98−1277.

A vehicle used as a demonstrator was a "comparable new motor vehicle" under sub. (2) (b) when the defective vehicle had also been a demonstrator. Sub. (2) (b) applies when a reasonable attempt to repair has been established. An action seeking a remedy under sub. (7) for violation of sub. (2) (a) applies only to a customer who cannot establish a reasonable attempt to repair and is not entitled to the remedy under sub. (2) (b). Dussault v. Chrysler Corp. 229 Wis. 2d 296, 600 N.W.2d 6 (Ct. App. 1999), 98−0744.

As used in sub. (7), "any damages" does not include personal injury damages. Gosse v. Navistar International Transportation Corp. 2000 WI App 8, 232 Wis. 2d 163, 605 N.W.2d 896, 98−3499.

A purchaser's awareness of defects in a vehicle prior to delivery does not make the lemon law inapplicable. Dieter v. Chrysler Corp. 2000 WI 45, 234 Wis. 2d 670, 610 N.W.2d 832, 98−0958.

A manufacturer of component parts who ships completed parts to an automobile manufacturer is not liable under this section. Harger v. Caterpillar, Inc. 2000 WI App 241, 239 Wis. 2d 551, 620 N.W.2d 477, 00−0536.

This section is a stand alone statute that is not dependent upon or qualified by the uniform commercial code. An obligation of good faith by all parties is rooted in the statute. There is no basis to argue that a party who acts in compliance with the statute acts in bad faith. Herzberg v. Ford Motor Co. 2001 WI App 65, 242 Wis. 2d 316, 626 N.W.2d 67, 00−1284.

A person who purchases a vehicle at the conclusion of a lease term is no longer a consumer within the meaning of sub. (1) (b) 4. and is not entitled to any relief under the Lemon Law. Varda v. General Motors Corporation, 2001 WI App 89, 242 Wis. 2d 756, 626 N.W.2d 346, 00−1720.

A manufacturer did not fulfill its obligation to provide a "comparable new motor vehicle" under sub. (2) (b) by offering to replace a consumer's nonconforming tow truck with a new cab and chassis but without a new tow unit, although the tow unit was not manufactured by the manufacturer. Kiss v. General Motors Corporation, 2001 WI App. 122, 246 Wis. 2d 364, 630 N.W.2d 742, 00−0626.

Enforcement of an informal settlement decision under sub. (3) is not limited to remedies under ch. 788, applicable to arbitration. Acceptance of the decision by the consumer does not prevent the consumer from pursuing an action under sub. (7) to enforce the decision. Kiss v. General Motors Corporation, 2001 WI App. 122, 246 Wis. 2d 364, 630 N.W.2d 742, 00−0626.

In order to receive a refund or replacement vehicle under sub. (2) (b), the consumer must offer to transfer title back to the manufacturer and, upon receipt of the refund or replacement, deliver the vehicle and its title to the manufacturer. A vehicle owner who transferred the vehicle back to the dealer 8 months prior to seeking relief could not fulfill these requirements and was no longer a consumer who could assert a claim under this section. Smyser v. Western Star Trucks Corp. 2001 WI App 180, 247 Wis. 2d 281, 634 N.W.2d 134, 00−2482.

Delivery of a refund check to a dealer and a fax to the consumer's attorney is not delivery of the refund to the consumer for purposes of determining whether the refund was timely made under sub. (2) (c). Estate of Riley v. Ford Motor Company, 2001 WI App 234, 248 Wis. 2d 193, 635 N.W.2d 635, 00−2977.

Sub. (2) (b) 3. does not apply when a lemon law action is filed. Instead, the sub. (7) pecuniary loss provisions apply. The current value of a vehicle lease is not the proper measure of damages under sub. (7). Estate of Riley v. Ford Motor Company, 2001 WI App 234, 248 Wis. 2d 193, 635 N.W.2d 635, 00−2977.

For purposes of triggering the 30−day time limit under sub. (2) (c), the consumer must either demand that the manufacturer provide a new vehicle or demand that the manufacturer refund the purchase price. The choice cannot be left to the manufacturer and the manufacturer cannot be offered a 3rd choice. Berends v. Mack Truck, Inc. 2002 WI App 69, 252 Wis. 2d 371, 643 N.W.2d 158, 01−0911.

A vehicle is not free from non−conformities simply because the consumer is able to drive it. Dobbratz Trucking & Excavating v. PACCAR, Inc. 2002 WI App 138, 256 Wis. 2d 205, 647 N.W.2d 315, 01−1091.

This section makes the vehicle manufacturer liable for nonconformities to the engine even though the engine is not covered in the manufacturer's express warranty. Schonscheck v. Paccar, Inc. 2003 WI App 79, 261 Wis. 2d 769, 661 N.W.2d 476, 02−1413.

A consumer who demands a replacement vehicle under this section impliedly offers to transfer title to the old vehicle as required under sub. (2) (c). Garcia v. Mazda Motor of America, Inc. 2004 WI 93, 273 Wis. 2d 612, 682 N.W.2d 365, 02−2260.

A consumer has a duty to act in good faith in pursuing a Lemon Law claim. Under sub. (2) (b) 2. b. the phrase "refund to any holder of a perfected security interest as [its] interest may appear" requires the payor transferring the correct sum to the secured lender in a separate check, not giving a lump−sum check to the consumer and leaving the consumer to sort it out with the lender. If a consumer intentionally thwarted the manufacturer's attempt to make a refund by failing to provide necessary information about the consumer's auto loan, the consumer is not entitled to the Lemon Law's statutory remedies. Marquez v. Mercedes−Benz USA, LLC, 2008 WI App 70, 312 Wis. 2d 210, 751 N.W.2d 859, 07−0681.

When the purchaser objected to signing documents as a condition to receiving a replacement vehicle and the manufacturer agreed to waive the signing requirement, it does not support a finding that the purchaser was required to sign prohibited documents in order to obtain the replacement vehicle and no violation of this statute occurred. BCR Trucking v. PACCAR, Inc. 2009 WI App 36, 316 Wis. 2d 465, 765 N.W.2d 828, 08−1196.

When a consumer who is leasing a motor vehicle brings an action against the manufacturer of the vehicle under sub. (7) then exercises an option to purchase the vehicle under the terms of the lease, the consumer is not entitled to damages for the price of the voluntary purchase because the purchase was not caused by any violation of the statute by the manufacturer. Furthermore, a consumer's refund under sub. (2) (b) 2. b. or 3. a. is subject to a reasonable allowance for use. Because sub. (7) is read in conjunction with the rest of the statute, the amount of pecuniary loss under sub. (7) must incorporate a reasonable allowance for use before the pecuniary loss is doubled. Tammi v. Porsche Cars North America, Inc. 2009 WI 83, 320 Wis. 2d 45, 768 N.W.2d 783, 08−1913.

A dealer is not a "manufacturer" under sub. (1) (c) that is liable for the failure of the component parts it installed. Despite the assertion that a dealer essentially assembled a motorcycle when it installed accessories, the Lemon Law provision specifically excludes a "motor vehicle dealer" from the definition of "manufacturer." Goudy v. Yamaha Motor Corporation, USA, 2010 WI App 55, 324 Wis. 2d 441, 782 N.W.2d 114, 09−0617.

The plain language of sub. (7) supports the conclusion that a plaintiff may maintain an action for equitable relief under sub. (7). In order to obtain relief under sub. (7), however, the plaintiff must prove a violation of some part of this section. Kilian v. Mercedes−Benz USA, LLC, 2011 WI 65, 335 Wis. 2d 566, 799 N.W.2d 815, 09−0538.

Under sub. (2) (cm) 3., a lender who continues to enforce a lease after the consumer returns the vehicle and receives a refund from the manufacturer may be held to violate the plain language of the statute prohibiting any person from doing so. Kilian v. Mercedes−Benz USA, LLC, 2011 WI 65, 335 Wis. 2d 566, 799 N.W.2d 815, 09−0538.

A prevailing party in an equitable action under sub. (7) is entitled to costs, disbursements, and reasonable attorney fees, but in this case the prevailing party was not entitled to an award for pecuniary loss. The legislature did not intend that consumers who have already received a proper refund should also recover twice the amount they paid under the lease as pecuniary loss. Such a result would provide a windfall without advancing a central purpose of sub. (7) — discouraging manufacturers from withholding legitimate refunds. Kilian v. Mercedes−Benz USA, LLC, 2011 WI 65, 335 Wis. 2d 566, 799 N.W.2d 815, 09−0538.

A manufacturer may avoid Lemon Law penalties for failing to provide a refund within the 30−day period under sub. (2) (c) if it proves that the consumer intentionally prevented the manufacturer from providing a refund within the 30−day statutory period. The manufacturer must meet the middle burden of proof of "clear and convincing" evidence in proving its affirmative defense that a consumer intentionally prevented it from providing a refund within the 30−day statutory period under the Lemon Law. Marquez v. Mercedes−Benz USA, LLC 2012 WI 57, 341 Wis. 2d 119, 815 N.W.2d 314, 10−0826.

This section requires that a plaintiff prove two elements — one, that the car is a lemon, and two, that the manufacturer failed to provide a comparable replacement within the provided timeframe — in order to recover. It was not inconsistent for the defendant to defend both elements of the plaintiff's claim. Because the defendant's defenses were not inconsistent, the defendant was not required to either assert a) that the car was not a lemon, or b) that the car was a lemon but that it provided a comparable replacement under the election of remedies doctrine. Porter v. Ford Motor Company, 2015 WI App 39, 362 Wis. 2d 505, 865 N.W.2d 207, 14−0975.

The lemon law does not state that a manufacturer satisfies its refund obligations by tendering a check to the consumer for the consumer's part of the refund along with an assurance that it will pay off the lienholder directly. Rather, sub. (2) (b) 2. b. requires that the manufacturer must tender a check to the consumer and actually pay off the lien. In this case, the purchaser did return the vehicle, but the manufacturer did not send out a refund and pay off the lien, but insisted that the purchaser either "accept" the refund, which the purchaser was not required to do, or come and retrieve the vehicle. James Michael Leasing, LLC v. PACCAR Inc. 772 F. 3d 2d 815 (2014).

Sub. (2) (a) does not say that the vehicle is available for repair only if it is actually taken to the manufacturer or an authorized dealer. The Lemon Law protects consumers who go to a repair facility authorized by the manufacturer whether the facility is a manufacturer's authorized motor vehicle dealer or not. Burzlaff v. Thoroughbred Motorsports, Inc. 758 F. 3d 841 (2014).

"Days" under sub. (1) (h) includes weekends and holidays. Kletzien v. Ford Motor Co., 668 F. Supp. 1225 (1987).

When, at the plaintiffs' home in Wisconsin, a Minnesota motor vehicle dealer accepted a down payment and entered into a binding purchase contract that obligated the plaintiffs to take delivery of a new vehicle and to pay the remainder of the purchase price at the time of delivery, the purchase occurred in Wisconsin. Because the plaintiffs purchased the vehicle in Wisconsin, this section applies. Begalke v. Sterling Truck Corporation, 437 F. Supp. 2d 847 (2006).

The argument that the word "transfer" in sub. (1) (d) refers to transfer of title to a motor vehicle, as opposed to transfer of the vehicle itself, is unconvincing for the simple reason that it contains no mention of the word "title." Consideration of ch. 342 does not change the result. At least as between the parties themselves, a transfer of ownership takes place before a new title to a vehicle is issued. "Accept transfer of," as used in sub. (1) (d), refers to transfer of possession of the vehicle. Since it is undisputed that the plaintiffs traveled to the dealership in Illinois to take possession of the vehicle, they did not accept transfer of the vehicle in Wisconsin. Lamont v. Winnebago Industries, Inc., 569 F. Supp. 2d 806 (2008).

Remedies for motor vehicle purchasers. Nicks, WBB March, 1985.

Lemon law II. Nicks. WBB July 1987.

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218.0172 Motor vehicle adjustment programs.

(1) DEFINITIONS. In this section:

(a) "Adjustment program" means an extended policy program under which a manufacturer undertakes to pay for all or any part of the cost of repairing, or to reimburse purchasers for all or any part of the cost of repairing, any condition that may substantially affect motor vehicle durability, reliability or performance. "Adjustment program" does not include service provided under a written warranty provided to a consumer, service provided under a safety or emission−related recall program or individual adjustments made by a manufacturer on a case−by−case basis.

(b) "Consumer" has the meaning given in s. 218.0171 (1) (b).

(c) "Manufacturer" has the meaning given in s. 218.0171 (1) (c).

(d) "Motor vehicle" has the meaning given in s. 218.0171 (1) (d).

(e) "Motor vehicle dealer" means a motor vehicle dealer, as defined in s. 218.0101 (23) (a), that sells new motor vehicles.

(2) DISCLOSURE REQUIREMENTS. (a) A manufacturer shall do all of the following:

1. Establish a procedure to inform a consumer of any adjustment program applicable to the consumer's motor vehicle and, upon request, furnish the consumer with any document issued by the manufacturer relating to any adjustment program.

2. Notify, by 1st class mail, a consumer who is eligible under an adjustment program of the condition in the motor vehicle that is covered by the adjustment program and the principal terms and conditions of the adjustment program within 90 days after the date on which the adjustment program is adopted.

3. Notify its motor vehicle dealers, in writing, of all the terms and conditions of an adjustment program within 30 days after the date on which the program is adopted.

4. If a consumer is a purchaser or lessor of a new motor vehicle, notify the consumer, in writing, of the consumer's rights and remedies under this section. The notice shall include a statement in substantially the following language: "Sometimes.... (manufacturer's name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your motor vehicle dealer to determine whether any adjustment program is applicable to your motor vehicle."

(b) If a motor vehicle dealer has been informed of an adjustment program under par. (a) 3., the motor vehicle dealer shall disclose to a consumer seeking repairs for a condition covered by the adjustment program the terms and conditions of the adjustment program.

(3) ADJUSTMENT PROGRAM REIMBURSEMENT. (a) A manufacturer who establishes an adjustment program shall implement procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs expenses for repair of a condition subject to the program before acquiring knowledge of the program. Reimbursement shall be consistent with the terms and conditions of the particular adjustment program.

(b) A consumer shall make a claim for reimbursement under par. (a) in writing to the manufacturer within 2 years after the date of the consumer's payment for repair of the condition. The manufacturer shall notify the consumer within 21 business days, as defined in s. 421.301 (6), after receiving a claim for reimbursement if the claim will be allowed or denied. If the claim is denied, the specific reasons for the denial shall be stated in writing.

(4) REMEDIES. In addition to pursuing any other remedy, a consumer may bring an action to recover damages caused by a violation of this section. A court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1), and any equitable relief the court determines appropriate.

History: 1999 a. 31 s. 288; Stats. 1999 s. 218.0172.

The trial court mistakenly believed that repair of a defect was required to state a claim under this section. The definition of an "adjustment program" requires the repair of a condition, which can necessarily include a defective condition, but does not require that the condition at issue constitutes a defect. A manufacturer's attempt to limit its adjustment program only to police vehicles conflicts with the plain language of this section. Wisconsin consumers have the right to seek redress from the Wisconsin judicial system when a manufacturer violates a statute enacted by the legislature. Cuellar v. Ford Motor Company, 2006 WI App 210, 296 Wis. 2d 545, 723 N.W. 2d 747, 05−2003.

SUBCHAPTER II

ADJUSTMENT SERVICE COMPANIES

218.02 Adjustment service companies. (1) DEFINITIONS. As used in this section:

(a) "Adjustment service company," hereinafter called company, shall mean a corporation, limited liability company, association, partnership or individual engaged as principal in the business of prorating the income of a debtor to the debtor's creditor or creditors, or of assuming the obligations of any debtor by purchasing the accounts the debtor may have with the debtor's several creditors, in return for which the principal receives a service charge or other consideration.

(d) "Division" means the division of banking.

(2) LICENSES; APPLICATIONS; FEES; BOND. (a) 1. Each adjustment service company shall apply to the division for a license to engage in such business. Application for a separate license for each office of a company to be operated under this section shall be made to the division in writing, under oath, in a form to be prescribed by the division. The division may issue more than one license to the same licensee. Except as provided in subd. 3., an application for a license under this section shall include the following:

a. In the case of an individual, the individual's social security number.

b. In the case of a person that is not an individual, the person's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

b. The division may disclose information under subd. 1. a. to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

3. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(b) At the time of making application and before engaging in business, every applicant for an adjustment service company license shall pay a nonrefundable $200 fee to the division for investigating the application and a $200 annual license fee. If the cost of an investigation exceeds $200, the applicant shall, upon demand of the division, pay the excess cost. No investigation fee shall be required on the renewal of a license.

(c) The division may require any licensee either before or after the issuance of the license to file and maintain in force a bond in a form to be prescribed by and acceptable to the division, in such sum as the division may deem necessary to safeguard the interest of the borrowers and the public, not exceeding, however, the sum of $5,000.

(3) CONDITIONS OF THE ISSUANCE OF LICENSES. The division shall issue a license to the applicant to conduct such business at the office specified in the application in accordance with the provisions of this section, if the division shall find:

(a) That the applicant has filed the required application and paid the required fees.

(b) That the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof if the applicant be a partnership, limited liability company or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this section.

(c) That allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(d) That the applicant has not been certified under s. 73.0301 by the department of revenue as being liable for delinquent taxes.

(dm) That the applicant has not been certified under s. 108.227 by the department of workforce development as being liable for delinquent unemployment insurance contributions.

(e) That, if the applicant is an individual, the applicant has not failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings and is not delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(4) ORDER DENYING APPLICATION. If the division is not satisfied as to all of the matters specified in sub. (3) the division shall enter a special order denying the application for a license and shall return the applicant's license fee. The division shall make findings of fact as part of and in support of the division's order denying any application for a license.

(5) LICENSES; POSTING; CHANGES OF LOCATION; RENEWAL. (a) Every license issued shall state the address of the office at which the business is to be conducted, the name of the licensee, and if the licensee is a partnership, limited liability company or association, the names of the members thereof, and if a corporation the date and place of its incorporation. Such license shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

(b) Whenever a licensee shall contemplate a change of the licensee's place of business to another location within the same city, village or town, the licensee shall give written notice thereof to the division, which shall attach to the license the division's authorization of such removal, specifying the date thereof and the new location. Such authorization shall be authority for the operation of such business under the same license at the specified new location. No change in the place of business of a licensee to a location outside of the original city, village or town shall be permitted under the same license.

(c) Every licensee shall, on or before the tenth day of each December, pay to the division the annual license fee for the next succeeding calendar year.

(6) REVOCATION; SUSPENSION; REINSTATEMENT AND TERM OF LICENSES. (a) The division, after complaint, notice and hearings

as provided in s. 217.19, shall revoke any license in the following cases:

1. If the licensee has failed to pay the annual license fee or to maintain in effect the bond required under the provisions of this section;

2. If the licensee has violated any provisions of this section or of any lawful order issued hereunder;

3. If any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the division in refusing to issue such license;

4. If the licensee has demonstrated untrustworthiness or incompetency to act in such business in a manner to safeguard the interests of the public.

(b) In accordance with a memorandum of understanding entered into under s. 49.857, the division shall restrict or suspend a license if the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse.

(c) In accordance with s. 73.0301, the division shall revoke a license if the department of revenue has certified under s. 73.0301 that the licensee is liable for delinquent taxes.

(d) In accordance with s. 108.227, the division shall revoke a license if the department of workforce development has certified under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions.

(7) POWERS OF DIVISION. It shall be the duty of the division and the division shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to such companies and upon the basis thereof:

(a) To issue general or special orders in execution of or supplementary to this section, but not in conflict therewith, to protect debtors from oppressive or deceptive practices of licensees;

(b) To regulate advertising and solicitation of business by licensees, and to prevent evasions of this section;

(c) At any time and so often as the division may determine to investigate the business and examine the books, accounts, records and files used therein of every licensee. The cost of an examination shall be determined by the division and shall be paid to the division by every licensee so examined within 30 days after demand therefor by the division, and the state may maintain an action for the recovery of such costs in any court of competent jurisdiction;

(d) To determine and fix by general order the maximum fees or charges that such companies may make.

(8) STATEMENT TO DEBTOR. When any settlement or reduction of accounts has been made by such company, it shall furnish the debtor on demand a verified statement showing the amount due creditors by the terms of such settlement or reduction.

(9) RULES AND REPORTS; FEES; ENFORCEMENT. (a) The division may make such rules and require such reports as the division deems necessary for the enforcement of this section. Sections 217.17, 217.18 and 217.21 (1) and (2) apply to and are available for the purposes of this section. This paragraph does not apply to any of the following:

1. Applications for licenses that are denied, or licenses that are revoked, because the department of revenue has certified under s. 73.0301 that the applicant or licensee is liable for delinquent taxes.

1m. Applications for licenses that are denied, or licenses that are revoked, because the department of workforce development has certified under s. 108.227 that the applicant or licensee is liable for delinquent unemployment insurance contributions.

2. Applications for licenses that are denied or licenses that are restricted or suspended because the applicant or licensee has failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse.

(b) All fees and moneys received by the division under authority of this chapter shall be paid by the division into the state treasury within one week after the receipt thereof.

(c) The division shall investigate, ascertain and determine whether this chapter or the lawful orders issued hereunder are being violated and for such purposes the division shall have all of the powers conferred by ss. 217.17 and 217.18. The division shall report all violations to the district attorney of the proper county for prosecution.

(10) PENALTIES. Any person violating any of the provisions of this section shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment.

History: 1971 c. 125, 164, 215; 1973 c. 3; 1989 a. 336; 1991 a. 316; 1993 a. 112, 246; 1995 a. 27; 1997 a. 27, 191, 237; 1999 a. 9, 32; 2007 a. 20; 2013 a. 36.

Cross−reference: See also ch. DFI−Bkg 73, Wis. adm. code.

According the division of banking's interpretation of sub. (1) (a) great weight deference, its determination that the petitioner was an adjustment service company subject to licensing because the petitioner was engaged in the business of prorating the income of a debtor to the debtor's creditor or creditors was reasonable, although the petitioner did not receive money from debtors to distribute to creditors. JK Harris Financial Recovery Systems, LLC v. Department of Financial Institutions, 2006 WI App 107, 293 Wis. 2d 753, 718 N.W.2d 739, 05−0631.

JK Harris expressly rejected a narrow definition of "prorating" in sub. (1) (a) as inconsistent with the goals of the statutory scheme. Prorating occurs when one negotiates a reduction or extended payment on behalf of the debtor for the debtor's outstanding debt with that creditor. Morgan Drexen, Inc. v. DFI, 2015 WI App 27, 361 Wis. 2d 271, 862 N.W.2d 329, 14−1268.

A hearing examiner's interpretation of "engaged as principal" in sub. (1) (a) as solely modifying the word "individual" was not unreasonable. Morgan Drexen, Inc. v. DFI, 2015 WI App 27, 361 Wis. 2d 271, 862 N.W.2d 329, 14−1268.

SUBCHAPTER III

COLLECTION AGENCIES

218.04 Collection agencies. (1) DEFINITIONS. The following terms, as used in this section, shall have the meaning stated, unless the context requires a different meaning:

(a) "Collection agency" means any person engaging in the business of collecting or receiving for payment for others of any account, bill, or other indebtedness. "Collection agency" does not include attorneys at law authorized to practice in this state and resident herein, banks, express companies, health care billing companies, state savings banks, state savings and loan associations, insurers and their agents, trust companies, district attorneys acting under s. 971.41, persons contracting with district attorneys under s. 971.41 (5), real estate brokers, and real estate salespersons.

(b) "Collector" or "solicitor" means any person employed by a collection agency to collect or receive payment or to solicit the receiving or collecting of payment for others of any account, bill or other indebtedness outside of the office or the person's home.

(c) "Division" means the division of banking.

(d) "General order" means an order which is not a special order.

(e) "Licensee" means a person licensed under this section.

(f) "Person" includes individuals, partnerships, associations, corporations and limited liability companies.

(g) "Special order" means an order against a person.

(2) LICENSES REQUIRED. (a) Except as provided in par. (b), a person may not operate as a collection agency or as a collector or solicitor in this state without first having obtained a license as required by this section.

(b) A nonresident of this state is not required to obtain a collection agency license if that person conducts collection business with state residents solely by means of interstate telecommunications or interstate mail.

(3) LICENSES; APPLICATIONS; FEES; BOND. (a) 1. Application for licenses under the provisions of this section shall be made to the division in writing, under oath, on a form to be prescribed by the division. All licenses shall expire on June 30 next following their date of issue. Except as provided in subd. 3., an application for a license under this section shall include the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

b. The division may disclose information under subd. 1. a. to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

3. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(b) At the time of making application, every applicant for a collection agency license shall pay a nonrefundable fee of $1,000 to the division for investigating the application, unless the applicant is already licensed under this section, and the sum of $200 as an annual license fee. If the cost of investigation exceeds $1,000, the applicant shall, upon demand of the division, pay the excess cost. No investigation fee is required on the renewal of a license.

(c) The license fee for a collector or solicitor shall be $15, except that no license fee is required for an individual who is eligible for the veterans fee waiver program under s. 45.44. This license shall be carried as a means of identification whenever the collector is engaged in business. The license shall state the name of the employer and shall be surrendered to the division upon termination of employment. A new license is required for a change of employment.

(d) The division may require any licensee to file and maintain in force a bond, in a form to be prescribed by and acceptable to the division, and in such sum as the division may deem reasonably necessary to safeguard the interests of the public.

(4) ISSUANCE OR DENIAL OF LICENSES. (a) Except as provided in par. (am), upon the filing of such application and the payment of such fee, the division shall make an investigation, and if the division finds that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the division shall thereupon issue a license to said applicant. Such license is not assignable and shall permit operation under it only at or from the location specified in the license, except that an employee of a licensed collection agency may work from the employee's home if the employee complies with all of the same requirements under this section and the division's rules that would apply if the employee were working within the licensed office and except that a licensed collector or solicitor may work outside the licensed office of a collection agency. A nonresident of this state may, upon complying with all other provisions of this section, secure a collection agency license provided the nonresident maintains an active office in this state.

(am) The division may not issue or renew a license under this section if any of the following applies:

1. The applicant fails to provide any information required under sub. (3) (a) 1.

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant for whom a license is not issued or renewed under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

2m. The department of workforce development certifies under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant for whom a license is not issued or renewed under this subdivision for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this subdivision for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

(b) No licensee shall conduct a collection agency business within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the division upon finding that the character of such other business is such that the granting of such authority would not facilitate evasion of this section or the lawful orders issued thereunder.

(5) REVOCATION; SUSPENSION; REINSTATEMENT OF LICENSES. (a) The division may suspend or revoke any license issued under this section if the division finds that:

1. The licensee has violated any of the provisions of this section or any lawful order of the division made thereunder;

2. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license;

3. The licensee has failed to pay the annual license fee or to maintain in effect the bond required under sub. (3) (d);

4. The licensee has failed to remit money due to any and all claimants or forwarders within 30 days from the close of the month during which the collection was effected; or

5. The licensee or any officer or employee of it has violated chs. 421 to 427 and 429.

(am) The division shall restrict or suspend a license issued under this section if the division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(ar) The division shall revoke a license issued under this section if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(at) The division shall revoke a license issued under this section if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(b) Except as provided in pars. (am) to (at), no license shall be revoked or suspended except after a hearing under this section. A complaint stating the grounds for suspension or revocation together with a notice of hearing shall be delivered to the licensee at least 5 days in advance of the hearing. In the event the licensee cannot be found, complaint and notice of hearing may be left at the place of business stated in the license and this shall be deemed the equivalent of delivering the notice of hearing and complaint to the licensee.

(c) In the event of the death of a licensee, if the licensee is an individual, or of the partners, if the licensee is a partnership, the license of the agency shall terminate as of the date of death of said licensee, except the division may reinstate a license if the estate of the former licensee signifies to the division within 45 days its intention to continue the business of the agency.

(6) LICENSES; POSTING; CHANGES OF LOCATION; RENEWAL. (a) Whenever a collection agency shall contemplate a change of its place of business to another location within the same city or village, it shall give written notice thereof to the division, which shall attach to the license the division's authorization of such removal, specifying the date thereof and the new location. Such authorization shall be authority for the operation of such business under the same license at the specified new location. All collection agency licenses shall be conspicuously posted in the office of the licensee.

(b) Every licensee applying for a renewal of a license shall, on or before the first day of June, pay in advance to the division the annual license fee.

(c) Before discontinuing operating as a collection agency under the provisions of this section, every licensee shall furnish the division with proof in a form to be determined by the division and approved by the advisory committee that:

1. Proper remittance has been made to all claimants or forwarders on money collected.

2. All accounts have been returned to the claimants or forwarders.

3. All valuable papers given to the licensee by the claimant or forwarder in connection with claims have been returned to the claimants or forwarders.

(7) POWERS OF DIVISION; ADVISORY COMMITTEES. It shall be the duty of the division and the division shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to the collection of accounts and upon the basis thereof:

(a) To issue any general or special order in execution of or supplementary to this chapter to protect the public from oppressive or deceptive practices of licensees and to prevent evasions of this chapter.

(b) For the purpose of discovering violations of this section the division may cause an investigation to be made of the business of the licensee transacted under the provisions of this section, and shall cause an investigation to be made of convictions reported to the division by any district attorney for violation by a licensee of any of the provisions of this section. The place of business, books of accounts, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division shall have authority to examine under oath all persons whose testimony is required relative to said investigation. The cost of the first investigation or examination during any licensing year shall be paid by the licensee, but the cost of additional investigation or examination during such year shall be paid by the licensee only if such examination discloses violation of sub. (5) (a) 4. The division shall determine the cost of an investigation or examination. The licensee shall pay the cost of any hearing including witness fees, unless it be found by the division, board of review or court that licensee has not violated any provision of this section. All said costs shall be paid by the licensee within 30 days after demand therefor by the division. The state may maintain an action for the recovery of such costs and expenses in any court of competent jurisdiction.

(d) To make all necessary or proper orders, rules and regulations for the administration and enforcement of this section.

(8) HEARINGS AND ORDERS. The division shall have the same power to conduct hearings, take testimony and secure evidence as is provided in ss. 217.17, 217.18 and 217.19.

(9g) TRUST ACCOUNTS. (a) In this section, "financial institution" has the meaning given in s. 705.01 (3).

(b) A licensee shall establish a trust account with a financial institution. The licensee shall notify the division of the name of the financial institution that maintains the trust account. The division may prohibit a licensee from establishing or maintaining a trust account in a financial institution if the division believes that the financial institution is operating in an unsafe or unsound manner.

(c) Promptly after collection, a licensee shall deposit in the trust account sufficient funds to pay all money due any claimant or forwarder. A licensee may not use the trust account for any other purpose.

(9j) CONSOLIDATION OF ACCOUNTS. (a) A licensee may, after receiving authorization from a creditor, consolidate the creditor's account or accounts relating to a particular debtor with those of any other creditor or creditors relating to that debtor and may cause an action to be brought on behalf of the creditor or creditors. All of the following apply to any action caused to be brought by a licensee on behalf of a creditor or creditors under this subsection:

1. The summons and complaint shall be prepared by an attorney or at the direction of an attorney.

2. The name or names of the creditor or creditors shall appear in the pleadings and in the caption of the case as the real party or parties in interest and the licensee's name shall not appear in the caption or pleadings.

3. The creditor or creditors in each instance shall be given the opportunity either to select an attorney to commence the action or to designate, as a part of the authorization process, the collection agency as the agent of the creditor or creditors to retain an attorney and forward the claim or claims to the attorney on behalf of the creditor or creditors.

(b) In any action caused to be brought by a licensee under this subsection, the licensee shall not appear on behalf of any creditor or creditors before any court, including the clerk of any small claims court in an action on the debt or in garnishment proceedings, except when called as a witness by the plaintiff's attorney in open court.

(9m) DELINQUENT COLLECTION AGENCIES; DIVISION MAY TAKE POSSESSION. (a) If the division finds that a licensee is insolvent or that the licensee has collected accounts but has failed to remit money due to any claimant or forwarder within 30 days from the end of the month in which collection was made, and it is necessary to protect the interest of the public or when the license of a collection agency has expired or has terminated for any reason whatsoever, the division may take possession of the assets and the books and records of the licensee for the purpose of liquidating its business, and for such other relief as the nature of the case and the

interest of the claimants or forwarders may require. The liquidation of business shall be made by and under the supervision of the division either in the name of the division or in the name of the licensee and the division shall be vested with title to all of the assets including the proceeds of the bond or bonds which have been filed with the division as provided for under sub. (3) (d), and the proceeds of any and all money paid direct to the claimant or forwarder by the debtor prior to the date said license has terminated. Money paid to the licensee or to the division after the termination of the license shall be disposed of by the division with the approval of the circuit court.

(b) In taking possession of the property and business of any such collection agency, the division shall forthwith give notice to any and all banks or other financial institutions holding or in possession of any bank balances or assets of such agency and thereafter such assets shall be held subject to the order of the division.

(c) In addition to the authority conferred by par. (b), the division may, with the approval of the circuit court for the county wherein the main office is located, for the purposes of collection or liquidation, sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of such collection agency under such terms and conditions as the division may deem for the best interests of the claimants of such collection agency.

(d) The provisions of s. 220.08 (3b), (4), (6), (7), (8), (13), (14) and (17) shall apply to this section insofar as they are applicable.

(e) The division shall cause notice to be given by publication of a class 3 notice, under ch. 985, if no action has been commenced under par. (f), calling on all persons who may have claims against such licensee, to present the same to the division, and make legal proof thereof at a place and within a time, to be therein specified. The division may mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the division on the sworn reports required to be furnished the division according to the provisions of sub. (10). Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be considered as a preferred claim for the amount actually due the claimant or forwarder after deducting any commission or fee that may be due and owing the licensee. If the division doubts the justice and validity of any claim, the division may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the division. An action upon a claim so rejected must be brought in the circuit court for the county wherein the licensee is located within 30 days after such service of such notice of rejection of claim has been filed. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the court. The court may fix a date after which all claims shall be barred.

(f) Whenever any agency, of whose assets and business the division has taken possession, as aforesaid, deems itself aggrieved thereby, it may, at any time within 10 days after such taking possession, apply to the circuit court for the county in which the main office of such agency is located to enjoin further proceedings; and such court, after citing the division to show cause why further proceedings should not be enjoined and hearing the allegations and proofs of the parties and determining the facts, may, upon the merits dismiss such application or enjoin the division from further proceedings, and direct the division to surrender such business and property to such agency.

(g) Whenever the division shall have paid to each and every claimant or forwarder of such collection agency whose claims as such claimant or forwarder have been duly proved and allowed the full amount of such claims and shall have made proper provisions for unclaimed and unpaid collections and shall have paid all the expenses of the liquidation, the division shall liquidate the remaining assets exclusive of the proceeds of the bond or bonds for the benefit of the general creditors; or if no claims have been filed by or in behalf of the general creditors, the division shall turn over the remaining assets to the circuit court for further disposition.

(h) All accounts and valuable papers given to the agency by the claimant or forwarder in possession of the division, pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarded by the division within 30 days after verification of the claim has been made.

(10) ANNUAL REPORT; RECORDS. (a) Each licensee shall annually, on or before the fifteenth day of March, file a report with the division giving such reasonable and relevant information as the division may, by general or special order, require concerning the business and operations conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the division.

(b) The division shall require the licensee to keep such books and records in the licensee's place of business as will enable the division to determine whether the provisions of this section are being complied with. Every such licensee shall preserve the records of final entry used in such business for a period of at least 6 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been paid.

(11) SUBTERFUGE. The provisions of this chapter shall apply to any licensee or other person who, by any device, subterfuge or pretense whatever, shall make a pretended purchase or a pretended assignment of accounts from any other person for the purpose of evading the provisions of this section.

(12) PENALTIES. Any person who shall violate any provision of this section shall be guilty of a misdemeanor and, for each and every such offense shall, upon conviction thereof, be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

(13) ENFORCEMENT. The division shall have the duty, power, jurisdiction and authority to investigate, ascertain and determine whether this section or the lawful orders issued hereunder are being violated and for such purposes the division shall have all the powers conferred by subs. (4) and (5). The division shall report all violations to the district attorney of the proper county for prosecution.

History: 1971 c. 125, 164, 239; 1973 c. 3; 1979 c. 102 s. 236 (4); 1979 c. 162 s. 38 (3); 1979 c. 341 s. 12 (2); 1983 a. 189; 1989 a. 336; 1991 a. 221, 269, 316; 1993 a. 112, 179; 1995 a. 27, 329; 1997 a. 27, 191, 237; 1999 a. 9, 32; 2003 a. 138; 2005 a. 158, 462; 2007 a. 20, 96; 2009 a. 404; 2011 a. 209, 233; 2013 a. 36; 2015 a. 239.

Cross−reference: See also ch. DFI−Bkg 74, Wis. adm. code.

The requirement under this section that a foreign collection agency maintain a Wisconsin office with records may not violate the commerce clause. 69 Atty. Gen. 113.

SUBCHAPTER IV

COMMUNITY CURRENCY EXCHANGES

218.05 Community currency exchanges. (1) DEFINITIONS. As used in this section:

(b) "Community currency exchange" means any person, except a bank incorporated under the laws of this state, a federal bank organized pursuant to the laws of the United States, a savings bank organized under ch. 214, a savings and loan association organized under ch. 215 and a credit union organized under ch. 186, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. Nothing in this section shall be held to apply to any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable documents, jewels or other property of great monetary value nor to any person engaged in the business of selling tangible

personal property at retail nor to any person licensed to practice a profession or licensed to engage in any business in this state, who, in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

(d) "Division" means the division of banking.

(2) LICENSES REQUIRED. After July 1, 1945, no person, firm, association, partnership or corporation shall engage in the business of a community currency exchange without first securing a license to do so from the division as required by this section.

(3) LICENSES; APPLICATIONS; FEES; BOND. (a) Application for such license shall be in writing, under oath, on a form to be prescribed by the division. Each application shall contain the following information:

1. The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership, limited liability company or association, of every member thereof, and the name and business address if the applicant is a corporation.

2. The county and municipality, with street and number, if any, where the community currency exchange is to be conducted; and

3. Such other information as the division may require.

(am) 1. In addition to the information required under par. (a) and except as provided in subd. 3., an application for a license under this section shall include the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

b. The division may disclose information under subd. 1. a. to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

3. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(b) An application shall be accompanied by a nonrefundable fee of $300 for the cost of investigating the applicant. If the cost of an investigation exceeds $300, the applicant shall, upon demand of the division, pay the excess cost. At the time of the application, the applicant shall pay an additional $300 as an annual license fee for a period ending on the last day of the current calendar year.

(c) Before any license is issued to a community currency exchange the applicant shall file annually with and have approved by the division a surety bond in the principal sum of $5,000, issued by an insurer authorized to do business in this state. The bond shall run to the state of Wisconsin and shall be for the benefit of any creditors of the community currency exchange for any liability incurred for any sum due to any payee of any check, draft or money order left with the community currency exchange for collection, and also for any penalties that may be imposed under this section. If the division finds at any time the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the division shall be filed by the licensee within 30 days after written demand by the division.

(4) LICENSES; ISSUANCE; DENIAL. (a) The division shall issue to the applicant qualifying under this section a license to operate a community currency exchange at the location specified in the application. The license shall remain in full force and effect until it is surrendered by the licensee or revoked by the division if the division finds after investigation that all of the following conditions are met:

1. The applicant is trustworthy and reputable.

2. The applicant has business experience qualifying the applicant to competently conduct, operate, own, or become associated with a community currency exchange.

3. The applicant has a good business reputation and is worthy of a license.

(b) If the division finds that the conditions under par. (a) 1. to 3. are not met, the division shall not issue the license and shall notify the applicant of the denial, retaining the investigation fee to cover the cost of investigating the applicant. The division shall approve or deny every application within 30 days from the filing thereof. No application shall be denied unless the applicant has had notice of a hearing on the application and an opportunity to be heard thereon. If the application is denied, the division shall, within 20 days thereafter, prepare and keep on file with the division a written order of denial which shall contain the division's findings with respect thereto and the reasons supporting the denial. The division shall mail a copy of the order of denial to the applicant at the address set forth in the application, within 5 days after the filing of the order.

(c) In addition to the grounds for denial of a license under par. (a), the division shall deny an application for a license under this section if any of the following applies:

1. The applicant fails to provide any information required under sub. (3) (am) 1.

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose application is denied under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

2m. The department of workforce development certifies under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose application is denied under this subdivision for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

3. The applicant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this subdivision for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any notice or hearing under par. (b).

(5) FORBIDDEN TO ACT AS DEPOSITORY. No community currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community currency exchange shall be permitted to act as bailee or agent for persons, to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof and deliver such money or proceeds of evidence of money upon request or direction of such owner.

(6) INSURANCE. Before any license is issued to a community currency exchange or renewed for a community currency exchange, the applicant shall file with, and have approved by, the division a policy or policies of insurance, which shall be issued by an insurer authorized to do business in this state and shall insure the applicant against loss by burglary, larceny, robbery, forgery or embezzlement in a principal sum, and with such deductibles, as determined by the division.

(8) OTHER BUSINESS FORBIDDEN. A community currency exchange shall not be conducted as a unit of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcohol beverages for consumption on the premises. This subsection shall not apply when such other business is subject to any statute which provides for supervision and examination by the division.

(9) TOKENS. No community currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

(10) LICENSES; POSTING; ASSIGNMENT; NUMBER; CHANGE OF LOCATION. (a) Such license shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) No more than one place of business shall be maintained under the same license, but the division may issue more than one license to the same licensee upon the compliance with the provisions of this section governing an original issuance of a license, for each new license.

(c) Whenever a licensee shall wish to change the licensee's place of business to any location other than that originally set forth in the license, the licensee shall give written notice thereof to the division and if the change is approved the division shall attach to the license, in writing, a rider stating the new address or location of the community currency exchange.

(11) RENEWAL. Every licensee shall, on or before December 20, pay to the division the sum of $300 as an annual license fee for the next succeeding calendar year and, at the same time, shall file with the division the annual bond and insurance policy or policies in the same amount and of the same character as required by subs. (3) (c) and (6). The division may not renew a license under this section if any of the following applies:

(a) The renewal applicant fails to provide any information required under sub. (3) (am) 1.

(b) The department of revenue certifies under s. 73.0301 that the renewal applicant is liable for delinquent taxes. An applicant whose application is not renewed under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(bm) The department of workforce development certifies under s. 108.227 that the renewal applicant is liable for delinquent unemployment insurance contributions. An applicant whose application is not renewed under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The renewal applicant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this subsection for delinquent payments or failure to comply with a subpoena or warrant is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(12) REVOCATION; RESTRICTION AND SUSPENSION. (a) The division may, upon 10 days' notice to the licensee by mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if the division shall find that:

1. The licensee has failed to pay the annual license fee or to maintain in effect the required bond or insurance policy or policies or to comply with any order, decision or finding of the division made pursuant to this section.

2. The licensee has violated any provision of this section or any regulation or direction made by the division under this section.

3. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing the issuance of the license.

(am) The division shall restrict or suspend any license issued under this section if the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(ar) The division shall revoke a license under this section if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(at) The division shall revoke a license under this section if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(b) The division may revoke only the particular license with respect to which grounds for revocation may occur or exist, or if the division shall find that such grounds for revocation are of general application to all offices or to more than one office operated by such licensee, the division may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply. A revocation under pars. (am) to (at) applies to all of the licenses issued to the licensee.

(c) A licensee may surrender any license by delivering to the division written notice that the licensee surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the licensee's bond, or entitle such licensee to a return of any part of the annual license fee.

(d) Every license issued hereunder shall remain in force until the same has been surrendered or revoked in accordance with this section, but the division may on the division's own motion issue new licenses to a licensee whose license or licenses shall have

been revoked if no fact or condition then exists which clearly would have warranted the division in refusing originally the issuance of such license under this section.

(e) Except as provided under pars. (am) to (at), no license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the division shall within 20 days thereafter, prepare and keep on file with the division, a written order or decision of revocation which shall contain the division's findings with respect thereto and the reasons supporting the revocation and shall send by mail a copy thereof to the licensee at the address set forth in the license within 5 days after the filing with the division of such order, finding or decision.

(14) ANNUAL REPORT; RECORDS; EXAMINATION. (a) A licensee shall annually, on or before February 15, file a report with the division that shall be used only for the official purposes of the division giving relevant information that the division may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within this state. The report shall be made under oath and shall be in the form prescribed by the division.

(b) 1. A licensee shall keep books, accounts and records to enable the division to determine if the licensee is complying with this section and with rules promulgated by and orders issued by the division.

2. A licensee shall keep within this state the books, accounts and records required by this paragraph at the licensee's place of business or a place readily accessible to the division.

(c) 1. The division may investigate the business and examine the books, accounts and records of a licensee at any time. For that purpose, the division shall have free access to the offices and places of business and to the books, accounts and records of a licensee. The division may examine any person under oath or affirmation whose testimony the division requires relative to the licensee. An employee of the division may administer an oath or affirmation to a person called as a witness. An employee of the division may conduct the examination.

2. The division shall determine the cost of an examination. A licensee shall pay the cost of an examination within 30 days after the division demands payment.

(15) A person who violates this section may be fined not more than $2,000 or imprisoned for not more than 9 months or both.

History: 1971 c. 125; 1979 c. 102; 1981 c. 79 s. 17; 1989 a. 336; 1991 a. 221, 316; 1993 a. 112; 1995 a. 27, 225; 1997 a. 27, 35, 191, 237; 1999 a. 9, 32; 2005 a. 212; 2007 a. 20; 2011 a. 233; 2013 a. 36.

SUBCHAPTER VI

RECREATIONAL VEHICLE DEALERS

218.10 Definitions. In this subchapter:

(1g) "Dealer", unless the context requires otherwise, means a person who, for a commission or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale or exchange of an interest in a recreational vehicle or who is engaged wholly or in part in the business of selling recreational vehicles, whether or not the recreational vehicles are owned by the person, but does not include:

(a) A receiver, trustee, personal representative, guardian, or other person appointed by or acting under the judgment or order of any court.

(b) Any public officer while performing that officer's official duty.

(c) Any employee of a person enumerated in par. (a) or (b).

(d) Any lender as defined in s. 421.301 (22).

(e) A person transferring a recreational vehicle registered in that person's name and used for that person's personal, family or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.

(1m) "Department" means the department of transportation, unless the context requires otherwise.

(1r) "License period" means the period during which a license issued under s. 218.11 or 218.12 is effective, as established by the department under s. 218.11 (2) (b) 1. or 218.12 (2) (b) 1.

(1x) "Manufacturer" means any person within or without this state who manufactures or assembles recreational vehicles for sale in this state.

(7) "New recreational vehicle" means a recreational vehicle which has never been occupied, used or sold for personal or business use.

(8m) "Recreational vehicle" has the meaning given in s. 340.01 (48r).

(8t) "Salesperson", unless the context requires otherwise, means any person who is employed by a manufacturer or dealer to sell or lease recreational vehicles.

(9) "Used recreational vehicle" means a recreational vehicle which has previously been occupied, used or sold for personal or business use.

History: 1973 c. 116, 132; 1989 a. 31; 1991 a. 39, 269, 316; 1999 a. 9; 2001 a. 102; 2007 a. 11.

218.11 Recreational vehicle dealers regulated. (1) No person may engage in the business of selling recreational vehicles to a consumer or to the retail market in this state unless first licensed to do so by the department.

(2) (a) Application for license and renewal license shall be made to the licensor on forms prescribed and furnished by the licensor, accompanied by the license fee required under par. (c) or (d).

(am) 1. In addition to any other information required under par. (a) and except as provided in subd. 4., an application by an individual for the issuance or renewal of a license under this section shall include the individual's social security number and, if the application is made by a person who is not an individual for the issuance or renewal of a license under this section shall include the person's federal employer identification number.

2. The department shall deny an application for the issuance or renewal of a license if the information required under subd. 1. is not included in the application.

3. The department may not disclose any information received under subd. 1. to any person except to the department of children and families for purposes of administering s. 49.22, to the department of revenue for the sole purpose of requesting certifications under s. 73.0301, and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

4. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(b) 1. The department shall promulgate rules establishing the license period under this section.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in par. (d), the fee for a license issued under this section equals $50 multiplied by the number of years in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) If the department issues a license under this section during the license period, the fee for the license shall equal $50 multiplied by the number of calendar years, including parts of calendar years,

during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(3) A license shall be issued only to persons whose character, fitness and financial ability, in the opinion of the department, is such as to justify the belief that they can and will deal with and serve the buying public fairly and honestly, will maintain a permanent office and place of business and an adequate service and parts department during the license year, and will abide by all the provisions of law and lawful orders of the department.

(5) A licensee shall conduct the licensed business continuously during the license year.

(5m) Any person who violates any provision of this section may be required to forfeit not less than $25 nor more than $100 for the first offense and may be fined not less than $25 nor more than $100 for a 2nd or subsequent conviction within 3 years.

(6) The department may deny, suspend or revoke a license on the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(d) Willful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Willfully defrauding any retail buyer to the buyer's damage.

(f) Willful failure to perform any written agreement with any retail buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.

(j) Employment of fraudulent devices, methods or practices in connection with compliance with the statutes with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods.

(k) Having indulged in any unconscionable practice relating to said business.

(m) Having sold a retail installment contract to a sales finance company not licensed hereunder.

(n) Having violated any law relating to the sale, distribution or financing of recreational vehicles.

(6m) (a) A license under this section shall be denied, restricted, limited or suspended if an applicant or licensee is an individual who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(b) The licensor shall suspend or revoke a license if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is suspended or revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The licensor shall suspend or revoke a license if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is suspended or revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(7) (a) The department may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the division of hearings and appeals, as defined in s. 218.0101 (9), to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness. This paragraph does not apply to denials of applications for licenses under sub. (6m).

(b) No license may be suspended or revoked except after a hearing thereon. The department shall give the licensee at least 5 days' notice of the time and place of such hearing. The order suspending or revoking such license shall not be effective until after 10 days' written notice thereof to the licensee, after such hearing has been had; except that the department, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license. Matters involving suspensions and revocations shall be heard and decided upon by the division of hearings and appeals. This paragraph does not apply to licenses that are suspended or revoked under sub. (6m).

(c) The department may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by such licensee so examined within 30 days after demand therefor by the department and the department may maintain an action for the recovery of such costs in any court of competent jurisdiction.

History: 1971 c. 239; 1973 c. 116; Stats. 1973 s. 218.11; 1977 c. 29 ss. 1373, 1654 (7) (a), (e); 1981 c. 45; 1981 c. 347 s. 80 (2); 1983 a. 192; 1989 a. 31; 1991 a. 39, 269; 1993 a. 16; 1997 a. 191, 237; 1999 a. 9, 32, 185, 186; 2001 a. 38; 2007 a. 20; 2011 a. 32; 2013 a. 36, 370.

Cross−reference: See also chs. Trans 140 and 142, Wis. adm. code.

218.12 Recreational vehicle salespersons regulated. **(1)** No person may engage in the business of selling recreational vehicles to a consumer or to the retail market in this state without a license therefor from the department. If a dealer acts as a salesperson the dealer shall secure a salesperson's license in addition to the license for engaging as a dealer.

(2) (a) Applications for a salesperson's license and renewals thereof shall be made to the department on such forms as the department prescribes and furnishes and, except as provided in par. (e), shall be accompanied by the license fee required under par. (c) or (d). Except as provided in par. (am) 3., the application shall include the applicant's social security number. In addition, the application shall require such pertinent information as the department requires.

(am) 1. Except as provided in subd. 3., the department shall deny an application for the issuance or renewal of a license if an individual has not included his or her social security number in the application.

2. The department may not disclose a social security number obtained under par. (a) to any person except to the department of children and families for the sole purpose of administering s. 49.22, to the department of revenue for the sole purpose of requesting certifications under s. 73.0301, and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

3. If an applicant does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false

statement submitted by an applicant under this subdivision is invalid.

(b) 1. The department shall promulgate rules establishing the license period under this section.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in pars. (d) and (e), the fee for a license issued under this section equals $4 multiplied by the number of years in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) Except as provided in par. (e), if the department issues a license under this section during the license period, the fee for the license shall equal $4 multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(e) No license fee is required under par. (c) or (d) for an individual who is eligible for the veterans fee waiver program under s. 45.44.

(3) Every licensee shall carry his or her license when engaged in his or her business and display the same upon request. The license shall name his or her employer, and in case of a change of employer, the salesperson shall immediately mail his or her license to the department, which shall endorse such change on the license without charge.

(3m) (a) A license shall be denied, restricted, limited or suspended if the applicant or licensee is an individual who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(b) The licensor shall suspend or revoke a license if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is suspended or revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The licensor shall suspend or revoke a license if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is suspended or revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(5) The provision of s. 218.0116 relating to the denial, suspension and revocation of a motor vehicle salesperson's license shall apply to the denial, suspension and revocation of a salesperson's license so far as applicable, except that such provision does not apply to the denial, suspension or revocation of a license under sub. (3m).

(6) The provisions of ss. 218.0116 (9) and 218.0152 shall apply to this section, recreational vehicle sales practices and the regulation of recreational vehicle salespersons, as far as applicable.

History: 1973 c. 116; Stats. 1973 s. 218.12; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1979 c. 221; 1989 a. 31; 1991 a. 269; 1997 a. 191, 237; 1999 a. 9, 31, 186; 2007 a. 20; 2011 a. 32, 209; 2013 a. 36.

218.15 Sale or lease of used recreational vehicles. In the sale or lease of any used recreational vehicle, the sales invoice or lease agreement shall contain the point of manufacture of the used recreational vehicle, the name of the manufacturer and the name and address of the previous owner.

History: 1973 c. 116; 1973 c. 132 s. 5; 1999 a. 9.

218.17 Penalties. **(2)** In any court action brought by the department for violations of this subchapter, the department may recover all costs of testing and investigation, in addition to costs otherwise recoverable, if it prevails in the action.

(3) Nothing in this subchapter prohibits an aggrieved customer from bringing a civil action against a dealer or salesperson. If judgment is rendered for the customer based on an act or omission by the dealer or salesperson, which constituted a violation of this subchapter, the plaintiff shall recover actual and proper attorney fees in addition to costs otherwise recoverable.

History: 1973 c. 116; 1991 a. 39, 269; 1993 a. 490; 1999 a. 9.

Sub. (3) allows a customer to recover attorney fees when an incomplete warranty or no warranty has been tendered, but it does not allow recovery for a breach of warranty. Lightcap v. Steenberg Homes, Inc. 160 Wis. 2d 607, 466 N.W.2d 904 (1991).

SUBCHAPTER VII

MOTOR VEHICLE SALVAGE DEALERS

Cross−reference: See also ch. Trans 136, Wis. adm. code.

218.20 Definitions. In this subchapter:

(1) "Department" means the department of transportation.

(1g) "License period" means the period during which a license issued under s. 218.22 is effective, as established by the department under s. 218.22 (2) (b) 1.

(1r) "Motor vehicle salvage dealer" means a person who purchases and resells motor vehicles for wrecking, processing, scrapping, recycling, or dismantling purposes or who carries on or conducts the business of wrecking, processing, scrapping, or dismantling motor vehicles or selling parts of motor vehicles so processed. Motor vehicle salvage dealer includes a motor vehicle scavenger.

(1t) "Motor vehicle scavenger" means a person who carries on or conducts the business of purchasing motor vehicles and reselling the vehicles to a motor vehicle salvage dealer or scrap metal processor.

(2) "Scrap metal processor" means a motor vehicle salvage dealer who sells no motor vehicles or motor vehicle parts and whose business is limited to a fixed location at which machinery and equipment are utilized for the processing and manufacturing of iron, steel or nonferrous metallic scrap into prepared grades and whose principal product is scrap iron, scrap steel or nonferrous metal scrap for sale for remelting purposes.

History: 1987 a. 351; 1989 a. 31; 2015 a. 55.

218.205 Motor vehicle salvage dealers to be licensed. **(1)** No person may carry on or conduct the business of a motor vehicle salvage dealer unless licensed to do so by the department. Any person violating this section may be required to forfeit not less than $500 nor more than $5,000 for the first offense and may be fined not less than $500 nor more than $5,000 or imprisoned for not more than 60 days or both for a second or subsequent conviction within 5 years.

(2) This section shall not apply to:

(a) Motor vehicle dealers licensed under s. 218.0114 who remove, but do not sell, as such, parts of motor vehicles prior to sale of such vehicles to motor vehicle salvage dealers or scrap metal processors.

(b) Scrap metal processors and portable scrap metal crushers who accept motor vehicles from only:

1. Licensed motor vehicle dealers;

2. Licensed motor vehicle salvage dealers; or

3. Municipalities, all of whom shall submit titles and reports to the department and retain records.

(c) Any person who acquires a motor vehicle for salvage purposes for his or her own use and then sells the remainder to a motor vehicle salvage dealer or to another person who will further use that motor vehicle for salvage purposes for his or her own use before selling it to a motor vehicle salvage dealer.

(d) Collectors of special interest vehicles who purchase or sell parts cars in compliance with s. 341.266.

History: 1971 c. 40; 1975 c. 288; 1977 c. 29 s. 1654 (7) (a); 1977 c. 415; 1987 a. 351 s. 2; Stats. 1987 s. 218.205; 1997 a. 120; 1999 a. 31; 2013 a. 218.

Cross−reference: See also s. Trans 136.01, Wis. adm. code.

218.21 Application for salvage dealer's license. **(1)** Application for license shall be made to the department, at such time, in such form or in an automated format as prescribed by the department and contain such information as the department requires and shall be accompanied by the required fee. Except as provided in sub. (1m), the department may require in the application, or otherwise, information relating to the applicant's solvency, financial standing or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the department in determining the fitness of the applicant to engage in business as set forth in this section.

(1m) The department may not require information relating to the applicant's solvency or financial standing if the applicant provides a bond in the amount provided in sub. (4) and under conditions specified in s. 218.0114 (20) (b).

(2) Application for a motor vehicle salvage dealer's license shall be made upon the form prescribed by the department and, except as provided in sub. (2f), shall contain:

(a) The name under which the applicant is transacting business within the state.

(ag) If the applicant is an individual, the social security number of the individual.

(am) If the applicant is a person who is not an individual, the person's federal employer identification number.

(b) The place or places where the business is to be conducted, which must be an established place of business.

(c) If the applicant is a sole proprietorship, the personal name and address of the applicant.

(d) If the applicant is a partnership, the name and address of each partner.

(dL) If the applicant is a limited liability company, the name and address of each member.

(e) If the applicant is a corporation, the names and addresses of its principal officers.

(eg) A copy of correspondence on department of natural resources letterhead indicating that the applicant has permit coverage under s. 283.33, or a statement from the department of natural resources that the applicant is not required to have a permit under s. 283.33.

(em) A copy of correspondence on department of natural resources letterhead indicating that the applicant has registered or certified its compliance with refrigerant recovery to the department of natural resources, under its rules promulgated pursuant to s. 285.59, or a statement from the department of natural resources that the applicant is not required to register or certify under rules promulgated by the department of natural resources pursuant to s. 285.59.

(f) Such other pertinent information as may be required by the department for the purpose of determining the eligibility of the applicant to be licensed.

(2f) (a) If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a motor vehicle salvage dealer's license, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families.

(b) Any motor vehicle salvage dealer's license issued or renewed in reliance upon a false statement submitted by an applicant under par. (a) is invalid.

(2m) (a) The department shall deny an application for the issuance or renewal of a license if any information required under sub. (2) (ag) or (am) is not included in the application or if a document required under sub. (2) (eg) and (em) is not included with the application.

(b) The department of transportation may not disclose any information received under sub. (2) (ag) or (am) to any person except to the department of children and families for purposes of administering s. 49.22, the department of revenue for the sole purpose of requesting certifications under s. 73.0301, and the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(3) Every application shall be executed by the applicant, if an individual, or in the event the applicant is a partnership, limited liability company or corporation, by a partner, member or officer thereof. Every such application shall be accompanied by the fee required by law.

(4) (a) Unless the applicant furnishes a bond, or other adequate collateral as security, of not less than $25,000 under conditions provided by s. 218.0114 (20) (b), every application shall be accompanied by a current financial statement to determine the applicant's solvency as required under sub. (1). Except as provided in par. (b), this paragraph does not apply to the application of a scrap metal processor.

(b) Paragraph (a) does not preclude the department from requiring an applicant who is a scrap metal processor to provide information relating to the applicant's solvency or financial standing if the applicant does not furnish a bond or other collateral as specified in par. (a) and the department has reasonable cause to believe that the applicant is financially insolvent.

(5) (a) Except as provided in par. (b), when a motor vehicle salvage dealer has an established place of business in more than one municipality in this state, he or she shall make separate application and submit a separate license fee remittance for each such municipality. A motor vehicle salvage dealer who fails to apply for each such separate license may be required to forfeit not more than $200.

(b) A scrap metal processor with an established place of business in more than one municipality may make a single application listing all places of business to be licensed and pay a single fee for the licensing of the listed places of business.

(6) A bond may be required under conditions as provided by s. 218.0114 (20) (b).

(7) Any person who knowingly makes a false statement in an application for a motor vehicle salvage dealer license is guilty of a Class H felony.

History: 1975 c. 288; 1977 c. 29 s. 1654 (7) (a); 1977 c. 272, 415, 447; 1979 c. 32; 1987 a. 351; 1991 a. 39; 1993 a. 112; 1997 a. 191, 237, 283; 1999 a. 9, 31, 32; 2001 a. 109; 2005 a. 339; 2007 a. 20; 2013 a. 36.

Cross−reference: See also s. Trans 136.01 and ch. Trans 140, Wis. adm. code.

218.22 When department to license salvage dealers. **(1)** The department shall issue a license to the applicant for a motor vehicle salvage dealer's license upon the receipt of a properly completed application form accompanied by the fee required under sub. (2) (c) or (d), upon being satisfied that the applicant is financially solvent or that the applicant has furnished a bond, or other adequate collateral as security, of not less than $25,000 under conditions provided by s. 218.0114 (20) (b), and of good character and:

(a) If the application is for renewal of an existing license, upon being satisfied that the applicant has complied with and will comply with this subchapter;

(b) If the application is for an original license, upon being satisfied that:

1. The applicant will comply with this subchapter; and

2. The proposed site or operation will comply with all laws, the rules promulgated by the department and the locally applicable zoning or permit requirements, before beginning operations, including all laws, rules and local requirements already enacted as promulgated as of the date of application and scheduled to take effect at a later date.

(2) (a) A motor vehicle salvage dealer's license entitles the licensee to carry on and conduct the business of a motor vehicle salvage dealer during the license period.

(b) 1. The department shall promulgate rules establishing a license period.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in par. (d), the fee for a license issued under this section equals $75 multiplied by the number of years in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) If the department issues a license under this section during the license period, the fee for the license shall equal $75 multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(2m) License fees collected under this subchapter shall be deposited in the transportation fund.

(3) The department may deny, suspend or revoke a license on any of the following grounds:

(a) Proof of financial insolvency or other unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(d) Willful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Willfully defrauding any retail buyer to the buyer's damage.

(f) Willful failure to perform any written agreement with any retail buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.

(j) Employment of fraudulent devices, methods or practices in connection with compliance with the statutes with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods.

(k) Having indulged in any unconscionable practice relating to said business.

(L) Having charged interest in excess of 15 percent per year.

(m) Having sold a retail installment contract to a sales finance company not licensed under ss. 218.0101 to 218.0163.

(n) Having violated any law relating to the sale, distribution or financing of salvaged parts.

(o) Failure to comply with this subchapter.

(3m) (a) The department shall deny, restrict, limit or suspend a license if the applicant or licensee is an individual who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(b) The department of transportation shall suspend or revoke a license if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is suspended or revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The department of transportation shall suspend or revoke a license if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is suspended or revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(4) PROCEDURE IN DENIAL, SUSPENSION OR REVOCATION. (a) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the division of hearings and appeals to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness. This paragraph does not apply to denials of applications for licenses under sub. (3m).

(b) No license shall be suspended or revoked except after a hearing thereon. The licensor shall give the licensee at least 5 days' notice of the time and place of such hearing. The order suspending or revoking such license shall not be effective until after 10 days' written notice thereof to the licensee, after such hearing has been had; except that the licensor, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the division of hearings and appeals. This paragraph does not apply to licenses that are suspended or revoked under sub. (3m).

(c) The licensor may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by such licensee so examined within 30 days after demand therefor by the licensor, and the licensor may maintain an action for the recovery of such costs in any court of competent jurisdiction.

(5) No salvage dealer licensed under ss. 218.205 to 218.23 shall be licensed as a dealer under s. 218.0114 at his or her salvage dealer location, provided that nothing herein shall prohibit licensing and transacting of both businesses at the same location where the salvage operations are physically separated.

History: 1975 c. 288; 1977 c. 29 ss. 1373m, 1374, 1654 (7) (a), (e); 1977 c. 415; 1979 c. 110 s. 60 (13); 1981 c. 347 s. 80 (2); 1983 a. 192; 1987 a. 351; 1989 a. 31; 1991 a. 39, 316; 1993 a. 16; 1997 a. 191, 237; 1999 a. 31; 2007 a. 20; 2009 a. 177; 2013 a. 36.

Cross−reference: See also s. Trans 136.01, Wis. adm. code.

218.23 Licensee to maintain records; purchase and sale of vehicles by licensee. (1) Whenever a licensed motor vehicle salvage dealer acquires a motor vehicle for the purpose of wrecking it, the dealer shall mail or deliver the certificate of title or if the transfer to the salvage dealer was by a bill of sale, the bill of sale, for such vehicle to the department within 30 days after the vehicle is delivered to the salvage yard unless the previous owner already has done so or, if another person is in possession of the certificate of title, as shown by the records of the department of transportation, that person already has done so. If the dealer subsequently wishes to transfer such vehicle to another person, the dealer shall make such transfer only by bill of sale. In such bill of sale, the dealer shall describe the vehicle and shall state that the certificate of title for the vehicle has been mailed or delivered to the department because the vehicle was to have been junked.

(1d) No motor vehicle scavenger may acquire a motor vehicle by a bill of sale for the purpose of wrecking or junking the motor vehicle.

(1g) Before a licensed motor vehicle salvage dealer may acquire a motor vehicle for the purpose of wrecking or junking the motor vehicle, the dealer shall examine the certificate of title for the motor vehicle, or examine the title records of the department if the person transferring the motor vehicle is not in possession of the certificate of title, to determine whether there is any security

interest in the motor vehicle. A licensed motor vehicle salvage dealer who demonstrates that the dealer has acted in accordance with this subsection is not liable for any damages incurred by a person who asserts a security interest in a motor vehicle and who is not named on the certificate of title of the vehicle.

(1r) No licensed motor vehicle salvage dealer may acquire a motor vehicle for the purpose of wrecking or junking the motor vehicle if the certificate of title for the motor vehicle identifies a holder of a security interest in the motor vehicle.

(2) Every licensed motor vehicle salvage dealer shall maintain a record of every vehicle which is bought or otherwise acquired and wrecked by the salvage dealer, which record shall state the name and address of the person from whom such vehicle was acquired and the date thereof. The record shall be in the form prescribed by the department.

(3) (a) Any person violating sub. (1) or (2) may be fined not less than $25 nor more than $200 or imprisoned not more than 60 days or both.

(b) Any person knowingly violating sub. (1d), (1g), or (1r) may be fined not more than $250 for a first offense, not more than $750 for a 2nd offense, and not more than $1,500 for a 3rd or subsequent offense. Each day on which a licensed motor vehicle salvage dealer knowingly violates sub. (1g) or (1r) constitutes a separate offense.

History: 1971 c. 164 s. 83; 1975 c. 288; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 2011 a. 32; 2015 a. 55.

Cross−reference: See also s. Trans 136.03, Wis. adm. code.

218.24 Salvage dealer license number displayed on trucks and truck−tractors. (1) Each motor vehicle salvage dealer licensed under this subchapter shall prominently display his or her salvage dealer license number on both sides of each truck or truck−tractor owned by such dealer and operated for hauling, towing or pushing salvage vehicles.

(2) The letters "DMV SAL" shall be placed directly ahead of the assigned license certificate number.

(3) The markings required by this section shall be not less than 2 inches in height and not less than one−fourth inch brush stroke, and in sharp color contrast to the background on which it is applied. Such identification shall be maintained in such manner as to remain legible while the vehicle is in operation.

(4) Any person violating this section may be fined not less than $25 nor more than $200 or imprisoned not more than 60 days or both.

History: 1975 c. 288.

218.25 Rules. The department shall make rules under ch. 227 and establish the standards necessary to carry out the purposes of this subchapter and to provide for the orderly operation of motor vehicle salvage sites.

History: 1975 c. 288; 1977 c. 29 s. 1654 (7) (a).

Cross−reference: See also ch. Trans 136, Wis. adm. code.

SUBCHAPTER VIII

MOTOR VEHICLE AUCTION DEALERS

Cross−reference: See also ch. Trans 138, Wis. adm. code.

218.30 Definitions. In this subchapter:

(1) "Department" means the department of transportation.

(2) "License period" means the period during which a license issued under s. 218.32 is effective, as established by the department under s. 218.32 (2) (b) 1.

History: 1989 a. 31.

218.305 Motor vehicle auction dealers to be licensed. No person shall carry on or conduct the business of auctioning motor vehicles at wholesale unless licensed to do so by the department. Any person violating this section may be fined not less than $25 nor more than $200 or imprisoned not more than 60 days, or both.

History: 1971 c. 40; 1977 c. 29 s. 1654 (7) (a); 1989 a. 31 s. 2487dp; Stats. 1989 s. 218.305.

218.31 Application for auction dealer's license. (1) Application for a motor vehicle auction dealer's license shall be made upon the form prescribed by the department and, except as provided in sub. (1f), shall contain:

(a) The name and address of the applicant.

(ag) When the applicant is an individual, the social security number of the individual.

(am) When the applicant is a person who is not an individual, the person's federal employer identification number.

(b) When the applicant is a partnership, the name and address of each partner.

(bL) When the applicant is a limited liability company, the name and address of each member.

(c) When the applicant is a corporation, the names of the principal officers of the corporation and the name of the state in which incorporated.

(d) The place or places where the business is to be conducted and the nature of the business.

(e) Such other pertinent information as may be required by the department for the purpose of determining the eligibility of the applicant to be licensed.

(1f) (a) If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a motor vehicle auction dealer's license, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families.

(b) Any motor vehicle auction dealer's license issued or renewed in reliance upon a false statement submitted by an applicant under par. (a) is invalid.

(1m) (a) The department shall deny an application for the issuance or renewal of a license if any information required under sub. (1) (ag) or (am) is not included in the application.

(b) The department of transportation may not disclose any information received under sub. (1) (ag) or (am) to any person except to the department of children and families for purposes of administering s. 49.22, the department of revenue for the sole purpose of requesting certifications under s. 73.0301, and the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(2) Every application shall be executed by the applicant, if an individual, or in the event the applicant is a partnership, limited liability company or corporation, by a partner, member or officer thereof. Every such application shall be accompanied by the fee required by law.

History: 1977 c. 29 s. 1654 (7) (a); 1993 a. 112; 1997 a. 191, 237; 1999 a. 9, 32; 2007 a. 20; 2013 a. 36.

218.32 When department to license auction dealer. (1) The department shall issue a license certificate to the applicant for a motor vehicle auction dealer's license upon receipt of a properly completed application form accompanied by the fee required under sub. (2) (c) or (d) and upon being satisfied that the applicant is of good character and that, so far as can be ascertained, the applicant has complied with and will comply with the laws of this state with reference to ss. 218.305 to 218.33.

(2) (a) A motor vehicle auction dealer's license entitles the licensee to carry on and conduct the business of a motor vehicle auction dealer during the license period.

(b) 1. The department shall promulgate rules establishing a license period.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in par. (d), the fee for a license issued under this section equals $50 multiplied by the number of years in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) If the department issues a license under this section during the license period, the fee for the license shall equal $50 multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(3) The department may deny, suspend or revoke a license on the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(d) Willful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Willfully defrauding any buyer to the buyer's damage.

(f) Willful failure to perform any written agreement with any buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the buyer.

(k) Having indulged in any unconscionable practice relating to said business.

(L) Having charged interest in excess of 15 percent per year.

(n) Having violated any law relating to the sale, distribution or financing of motor vehicles.

(o) Failure to comply with ss. 218.305 to 218.33.

(3m) (a) The department shall deny, restrict, limit or suspend a license if the applicant or licensee is an individual who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(b) The department of transportation shall suspend or revoke a license if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is suspended or revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The department of transportation shall suspend or revoke a license if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is suspended or revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(4) (a) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the division of hearings and appeals to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness. This paragraph does not apply to denials of applications for licenses under sub. (3m).

(b) No license shall be suspended or revoked except after a hearing thereon. The licensor shall give the licensee at least 5 days' notice of the time and place of such hearing. The order suspending or revoking such license shall not be effective until after 10 days' written notice thereof to the licensee, after such hearing has been had; except that the licensor, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the division of hearings and appeals. This paragraph does not apply to licenses that are suspended or revoked under sub. (3m).

(c) The licensor may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by such licensee so examined within 30 days after demand therefor by the licensor, and the licensor may maintain an action for the recovery of such costs in any court of competent jurisdiction.

History: 1977 c. 29 ss. 1375, 1654 (7) (a), (e); 1977 c. 273; 1979 c. 110 s. 60 (13); 1981 c. 347 s. 80 (2); 1983 a. 192; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1997 a. 191, 237; 1999 a. 141; 2007 a. 20; 2009 a. 177; 2013 a. 36.

Cross−reference: See also ch. Trans 138, Wis. adm. code.

218.33 Motor vehicle auction dealer to be bonded; conduct of auction business. (1) Each licensee under s. 218.32 shall furnish and maintain a corporate surety bond in the amount of $25,000 in such form as the department approves, conditioned upon the licensee's complying with the laws applicable to the licensee and as indemnity for any loss sustained by any person by reason of acts of the licensee constituting grounds for refusal or revocation of the auction dealer's license. The bond shall run to the state of Wisconsin for the benefit of aggrieved parties, but the aggregate liability of the surety for all such parties shall not exceed the amount of said bond.

(2) The following rules shall govern the conduct of motor vehicle auction sales:

(a) Sales of motor vehicles shall be confined to those offered by licensed motor vehicle dealers and shall be made only to a person who is qualified under s. 218.34 to purchase, or submit a bid for the purchase of, a motor vehicle from a motor vehicle auction.

(b) For each motor vehicle offered for sale by a motor vehicle dealer, the transferring dealer shall provide the motor vehicle auction dealer with clear title or shall furnish title insurance at the time of the sale. For each motor vehicle sold at an auction, the motor vehicle auction dealer shall enter on the certificate of title, or on the form or in the automated format used to reassign the title, any information that the department requires to indicate that ownership of the vehicle was transferred through an auction sale.

(c) Payment for motor vehicles bought and sold shall be made immediately after sale.

(2m) Section 342.157 applies to motor vehicle auction sales under this section.

(3) Any person violating this section may be fined not less than $25 nor more than $200 or imprisoned not more than 60 days, or both.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1993 a. 159; 1997 a. 27; 2003 a. 216.

218.34 Purchases from a motor vehicle auction. (1) No person may purchase or submit a bid for the purchase of a motor vehicle from a motor vehicle auction unless the following conditions are satisfied:

(a) The person holds a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license.

(b) If licensed as a motor vehicle buyer, the person bids on a vehicle for only one motor vehicle dealer at a time, and uses that dealer's funds when purchasing the vehicle.

(c) The person displays his or her valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license to the motor vehicle auction and includes his or her license number on

each sheet of any bid submitted to a motor vehicle auction for the purchase of a motor vehicle or other document evidencing the purchase of a motor vehicle from a motor vehicle auction.

(2) No motor vehicle auction may accept a bid for the purchase of a motor vehicle or complete the sale transaction unless the person who submits the bid or offers to purchase a motor vehicle from the motor vehicle auction satisfies the requirements of sub. (1) and the motor vehicle auction verifies that the motor vehicle dealer license, motor vehicle wholesaler license, or motor vehicle buyer license number displayed on the person's license and included on each sheet of that person's bid or other document evidencing the purchase of a motor vehicle are identical.

(3) For each motor vehicle sold by a motor vehicle auction, the motor vehicle auction shall enter on the certificate of title, or on the form or in the automated format used to reassign the title, any information that the department requires to indicate that ownership of the vehicle was transferred by a motor vehicle auction.

History: 2003 a. 216.

SUBCHAPTER IX

MOPED DEALERS

218.40 Definitions. In this subchapter:

(1) "Department" means the department of transportation.

(1m) "License period" means the period during which a license granted under s. 218.41 is effective, as established by the department under s. 218.41 (2m) (a) 1.

(2) "Moped" has the meaning designated in s. 340.01 (29m).

(3) "Moped dealer" means any person, firm or corporation, who is engaged wholly or in part in the business of selling mopeds, except that a person, firm or corporation who is also a motor vehicle dealer under ss. 218.0101 to 218.0163 shall be governed and regulated by the provisions of ss. 218.0101 to 218.0163 and not this section.

History: 1977 c. 288; 1981 c. 20; 1989 a. 31; 1999 a. 31.

218.41 Moped dealers regulated. (1) No person may engage in the business of selling mopeds in this state without a license therefor as provided in this section.

(2) (a) Application for license shall be made to the department at such time and in such form, and containing such information, as the department requires.

(am) 1. In addition to any other information required under this subsection and except as provided in subd. 3., an application for a license under this section shall include the following:

a. In the case of an individual, the individual's social security number.

b. In the case of a person that is not an individual, the person's federal employer identification number.

2. The department of transportation may not disclose any information received under subd. 1. a. or b. to any person except to the department of children and families for the sole purpose of administering s. 49.22, the department of revenue for the sole purpose of requesting certifications under s. 73.0301, and the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

3. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(b) The application shall be accompanied by the fee required under sub. (2m) (b) or (c).

(c) The department may require in such application, or otherwise, information relating to the applicant's solvency, financial standing or other pertinent matter, commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the department in determining the fitness of the applicant to engage in business as set forth in this section.

(d) All licenses shall be granted or refused within 30 days after the department receives the application for the license.

(e) Each license shall specify the location of the office or branch for which it is issued and must be available for inspection there. In case such location is changed, the department shall endorse the change of location on the license without charge if it is within the same municipality. A change of license to another municipality shall require a new license.

(2m) (a) 1. The department shall promulgate rules establishing a license period.

2. The department may promulgate rules establishing a uniform expiration date for all licenses granted under this section.

(b) The department shall establish by rule the amount of the fee for a license granted under this section. The fee may not exceed a total of $50 per year for each year that the license is effective. The fee shall be prorated if the license period is not evenly divisible into years.

(c) If the department grants a license under this section during the license period, the fee for the license shall equal the annual amount established under par. (b) multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the total license fee for the entire license period under par. (b).

(3) A license may be denied, suspended or revoked on any of the following grounds:

(a) Proof of unfitness of applicant.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(d) Willful failure to comply with any provision of this section or any rule or regulation promulgated by the department under this section.

(e) Willfully defrauding any retail buyer to the buyer's damage.

(f) Willful failure to perform any written agreement with any retail buyer.

(3m) (a) A license shall be denied, restricted, limited or suspended if the applicant or licensee is an individual who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(b) 1. A license shall be denied if the applicant fails to provide any information required under sub. (2) (am) 1.

2. A license shall be suspended or revoked if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is suspended or revoked under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

3. A license shall be suspended or revoked if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is suspended or revoked under this subdivision for delinquent unemployment insurance

contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(4) The department may without notice deny the application for a license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the division of hearings and appeals shall set the time and place of hearing a review of such denial, the same to be heard with reasonable promptness. This subsection does not apply to denials of applications for licenses under sub. (3m).

(5) (a) No license may be suspended or revoked except after a hearing thereon.

(b) Except as provided in par. (c), the division of hearings and appeals shall give the licensee at least 5 days' notice of the time and place of the hearing. The order suspending or revoking the license shall not be effective until after 10 days' written notice thereof to the licensee, after the hearing has been had.

(c) When the department finds that the best interest of the public or the trade demands such action, the department may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license.

(d) This subsection does not apply to licenses that are suspended or revoked under sub. (3m).

(6) The department may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by the licensee so examined within 30 days after demand therefor by the department, and the department may maintain an action for the recovery of the costs in any court of competent jurisdiction.

(7) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership or limited liability company, has been guilty of any act or omission which would be cause for refusing, suspending or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all salespersons while acting as the licensee's agent, if the licensee approved of or had knowledge of the acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

(8) Any department or other person in interest being dissatisfied with an order of the division of hearings and appeals may have a review thereof as provided in ch. 227.

History: 1977 c. 288; 1981 c. 347 s. 80 (2); 1989 a. 31; 1991 a. 39; 1993 a. 16, 112; 1997 a. 191, 237; 1999 a. 9; 2007 a. 20; 2013 a. 36.

218.42 Examination by department. No licensee is subject to examination or audit by the department under this subchapter other than as provided in s. 218.41 (6).

History: 1977 c. 288.

218.43 Penalty. Any person violating s. 218.41 or a lawful rule or order issued thereunder may be required to forfeit not less than $25 nor more than $100 for the first offense and may be fined not less than $25 nor more than $100 for a 2nd or subsequent conviction within 3 years.

(1) The department may cancel the license of the convicted licensee.

(2) The license issued to any convicted licensee shall be surrendered to any police officer upon direction of the department without any refund of the fees paid.

(3) Any license canceled under this section may not be renewed for 12 months.

History: 1977 c. 288; 2013 a. 370.

SUBCHAPTER X

MOTOR VEHICLE SALVAGE POOLS AND BUYER IDENTIFICATION

218.50 Definitions. In this subchapter:

(1) "Buyer identification card" means a card issued by the department authorizing the cardholder to bid on and purchase motor vehicles being held and offered for sale by a motor vehicle salvage pool and containing the full name, business and residence address and a brief description of the cardholder, the buyer identification number assigned to the cardholder by the department, either a facsimile of the cardholder's signature or a space upon which the cardholder shall write his or her name immediately upon receipt of the card and such other information as the department specifies.

(1m) "Buyer identification card period" means the period during which a buyer identification card issued under s. 218.51 is effective, as established by the department under s. 218.51 (3) (b) 1.

(2) "Buyer identification number" means the distinguishing sequence of numbers or numbers and letters assigned by the department to a cardholder and appearing on that cardholder's buyer identification card.

(3) "Cardholder" means a person to whom the department has issued a buyer identification card.

(4) "Department" means the department of transportation.

(5) "Motor vehicle salvage pool" means a person who is engaged primarily in the business of selling or distributing damaged motor vehicles at wholesale, whether or not the motor vehicles are owned by that person.

(6) "Qualified applicant" means a motor vehicle dealer, wholesaler salvage dealer licensed under this chapter, a motor vehicle dealer, wholesaler or salvage dealer licensed in another jurisdiction or an employee of a motor vehicle dealer, wholesaler or salvage dealer under this subsection.

History: 1987 a. 349; 1989 a. 31, 56.

218.505 Salvage pools to be licensed as wholesalers. No motor vehicle salvage pool may engage in business as such unless licensed as a wholesaler under ss. 218.0101 to 218.0163.

History: 1987 a. 349; 1999 a. 31.

218.51 Buyer identification cards. (1) The department shall issue buyer identification cards to qualified applicants who wish to purchase or submit bids for the purchase of used or damaged motor vehicles from a motor vehicle salvage pool. The department shall specify the form of the buyer identification card.

(2) A buyer identification card entitles a cardholder to purchase or submit bids for the purchase of a motor vehicle from a motor vehicle salvage pool during the buyer identification card period.

(3) (a) The department shall administer this section and specify the form of the application for a buyer identification card and the information required to be provided in the application.

(am) 1. In addition to any other information required under par. (a) and except as provided in subd. 3., an application for a buyer identification card shall include the following:

a. In the case of an individual, the individual's social security number.

b. In the case of a person that is not an individual, the person's federal employer identification number.

2. The department of transportation may not disclose any information received under subd. 1. a. or b. to any person except to the department of children and families for the sole purpose of administering s. 49.22, the department of revenue for the sole pur-

pose of requesting certifications under s. 73.0301, and the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

3. If an applicant for the issuance or renewal of a buyer identification card is an individual who does not have a social security number, the applicant, as a condition of applying for or applying to renew the buyer identification card, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any buyer identification card issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(b) 1. The department shall promulgate rules establishing the buyer identification card period.

2. The department may promulgate rules establishing a uniform expiration date for all buyer identification cards issued under this section.

(c) The department shall establish by rule the amount of the fee for a buyer identification card issued under this section. The department may not require a fee for an individual who is eligible for the veterans fee waiver program under s. 45.44 for a buyer identification card issued under this section.

(d) If the department issues a buyer identification card under this section during the buyer identification card period, the fee for the buyer identification card shall equal the amount established under par. (c), expressed at an annual rate, multiplied by the number of calendar years, including parts of calendar years, during which the buyer identification card remains in effect. A fee determined under this paragraph may not exceed the total buyer identification card fee for the entire buyer identification card period under par. (b).

(4) The department may deny, suspend or revoke a buyer identification card on any of the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in the application for a buyer identification card.

(c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(d) Willful failure to comply with any provision of this subchapter or any rule promulgated by the department under this subchapter.

(e) Failure or refusal to furnish and keep in force any bond required.

(f) Having made a fraudulent transaction or having permitted the fraudulent use of his or her buyer identification card.

(g) Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars required under this subchapter to be stated or furnished to a motor vehicle salvage pool.

(h) Having violated any law relating to the sale, distribution or financing of salvaged parts.

(4m) (a) The department shall deny, restrict, limit or suspend a license if the applicant or licensee is an individual who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, or who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(b) 1. A buyer identification card shall be denied if the applicant fails to provide any information required under sub. (3) (am) 1.

2. A buyer identification card shall be suspended or revoked if the department of revenue certifies under s. 73.0301 that the cardholder is liable for delinquent taxes. A cardholder whose buyer identification card is suspended or revoked under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

3. A buyer identification card shall be suspended or revoked if the department of workforce development certifies under s. 108.227 that the cardholder is liable for delinquent unemployment insurance contributions. A cardholder whose buyer identification card is suspended or revoked under this subdivision for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(5) (a) The department may without notice deny the application for a buyer identification card within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the division of hearings and appeals to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness. This paragraph does not apply to denials of applications for licenses under sub. (4m).

(b) No buyer identification card may be suspended or revoked except after a hearing thereon. The department shall give the cardholder at least 5 days' notice of the time and place of such hearing. The order suspending or revoking a buyer identification card shall not be effective until after 10 days' written notice thereof to the cardholder, after such hearing has been had; except that the department, when in its opinion the best interest of the public or the trade demands it, may suspend a buyer identification card upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the buyer identification card. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the division of hearings and appeals. This paragraph does not apply to licenses that are suspended or revoked under sub. (4m).

(c) The department may inspect the pertinent books, records, letters and contracts of a cardholder. The actual cost of each such examination shall be paid by the cardholder so examined within 30 days after demand therefor by the department, and the department may maintain an action for the recovery of such costs in any court of competent jurisdiction.

History: 1987 a. 349; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1997 a. 191, 237; 1999 a. 9; 2007 a. 20; 2011 a. 209; 2013 a. 36.

Cross−reference: See also ch. Trans 147, Wis. adm. code.

218.52 Purchases from motor vehicle salvage pools.

(1) No person may purchase or submit a bid for the purchase of a motor vehicle from a motor vehicle salvage pool unless the following conditions are satisfied:

(a) The person is a cardholder and the person's buyer identification card has not been suspended or revoked.

(b) The person displays his or her valid buyer identification card to the salvage pool and includes his or her buyer identification number on each sheet of any bid submitted to a motor vehicle salvage pool for the purchase of a motor vehicle or other document evidencing the purchase of a motor vehicle from a motor vehicle salvage pool.

(2) No motor vehicle salvage pool may accept a bid for the purchase of a motor vehicle or complete the sales transaction unless the person who submits the bid or offers to purchase a motor vehicle from the motor vehicle salvage pool satisfies the conditions under sub. (1) (b) and the motor vehicle salvage pool verifies that the buyer identification number displayed on the person's buyer identification card and included on each sheet of that person's bid or other document evidencing the purchase of a motor vehicle are identical.

(3) For each motor vehicle sold by a motor vehicle salvage pool, the motor vehicle salvage pool shall enter on the certificate of title, or on the form or in the automated format used to reassign

the title, any information that the department requires to indicate that ownership of the vehicle was transferred by a motor vehicle salvage pool.

(4) Section 342.157 applies to motor vehicles sold by a motor vehicle salvage pool under this section.

History: 1987 a. 349; 1993 a. 159; 1997 a. 27.

Cross−reference: See also ch. Trans 147, Wis. adm. code.

218.53 Penalties. Any person who violates this subchapter shall be fined not less than $1,000 nor more than $10,000 and may be imprisoned for not more than 90 days or both.

History: 1987 a. 349.