



2009 ASSEMBLY BILL 439

September 23, 2009 - Introduced by Representatives VRUWINK, KAUFERT, RIPP, TOWNSEND, A. OTT, ZEPNICK and KESTELL, cosponsored by Senators HANSEN, HOLPERIN, TAYLOR, ELLIS, COWLES and SCHULTZ. Referred to Committee on Tourism, Recreation and State Properties.

1 **AN ACT** *to amend* 165.25 (4) (ar); and *to create* subchapter XI of chapter 218
2 [precedes 218.60] of the statutes; **relating to:** powersports vehicle
3 manufacturers, distributors, and dealers and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates provisions governing the relationship between powersports vehicle manufacturers and distributors, including their agents, officers, factory representatives, and affiliates (collectively referred to as franchisors), and powersports vehicle dealers (dealers). Under the bill, a powersports vehicle is an all-terrain vehicle, snowmobile, lightweight utility vehicle, personal watercraft, or off-road motorcycle. The bill imposes numerous restrictions on franchisors, including prohibiting franchisors from doing any of the following:

1. Discriminating between dealers in certain ways, including: not offering the same wholesale order programs to all powersports vehicle dealers; tying dealer incentives for retail customers to placement of dealer orders; and providing for an unfair, unreasonable, or inequitable method for the allocation, scheduling, or delivery of new powersports vehicles, parts, or accessories to dealers.

2. Making secret payments or providing other secret compensation to dealers if certain consequences result.

3. Giving preferential treatment to some powersports vehicle dealers over others in the delivery of new powersports vehicles, parts, or accessories.

4. Competing with a dealer by, for more than one year, acting as a dealer or owning, operating, or controlling a dealership in this state.

ASSEMBLY BILL 439

5. Taking certain actions related to the capital structure, financing, or location of dealerships.

6. Failing to hold harmless and indemnify dealers in certain circumstances.

7. Preventing a dealer from receiving reasonable compensation for a powersports vehicle or from freely associating with other dealers.

8. Charging dealers increased prices without specified prior notice.

9. Reimbursing anyone other than an authorized dealer for warranty service.

10. Paying less than the amount of the franchisor's suggested retail price for parts used by dealers to perform warranty work.

11. Paying dealers an amount for labor that is less than the amount dealers charge their retail customers for labor.

12. Requiring or coercing dealers to grant rights of first refusal or other preferences related to purchasing dealer franchises.

13. Requiring that arbitration or legal proceedings take place outside this state.

The bill also specifies that a franchisor may, without violating the restrictions identified above, offer by auction powersports vehicles to all dealers and provide certain programs to dealers.

Under the bill, a franchisor may be required to forfeit not less than \$100 nor more than \$1,000 for each violation of these restrictions. The Department of Agriculture, Trade and Consumer Protection (DATCP) has jurisdiction to investigate and enforce these restrictions, and DATCP, represented by the Department of Justice, or a district attorney may bring an action on behalf of the state. In addition, any dealer injured by a violation of these restrictions may bring a civil action against the violating franchisor for temporary or permanent injunctive relief or for damages or both. The dealer may recover actual damages caused by the violation, as well as costs and reasonable attorney fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 165.25 (4) (ar) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 165.25 (4) (ar) The department of justice shall furnish all legal services
4 required by the department of agriculture, trade and consumer protection relating
5 to the enforcement of ss. 91.68, 93.73, 100.171, 100.173, 100.174, 100.175, 100.177,
6 100.18, 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37,

ASSEMBLY BILL 439

1 100.42, 100.50, 100.51, 100.55, and 846.45, subch. XI of ch. 218, and chs. 126, 136,
2 344, 704, 707, and 779, together with any other services as are necessarily connected
3 to the legal services.

4 **SECTION 2.** Subchapter XI of chapter 218 [precedes 218.60] of the statutes is
5 created to read:

CHAPTER 218**SUBCHAPTER XI****POWERSPORTS VEHICLE MANUFACTURERS,****DISTRIBUTORS, AND DEALERS**

10 **218.60 Definitions.** In this subchapter:

11 (1) "Affiliate" means, with respect to a powersports vehicle manufacturer or
12 powersports vehicle distributor or factory branch of either, a parent company, wholly
13 or partially owned subsidiary, or any other person controlled by or under common
14 control with the powersports vehicle manufacturer, powersports vehicle distributor,
15 or factory branch.

16 (2) "All-terrain vehicle" has the meaning given in s. 340.01 (2g).

17 (3) "Business entity" has the meaning given in s. 13.62 (5).

18 (4) "Department" means the department of agriculture, trade and consumer
19 protection.

20 (5) "Golf cart" means a vehicle whose speed attainable in one mile does not
21 exceed 20 miles per hour on a paved, level surface, and is designed and intended to
22 convey one or more persons and equipment to play the game of golf in an area
23 designated as a golf course.

24 (6) "Lightweight utility vehicle" means an engine-driven device having a gross
25 weight of more than 700 pounds but not more than 1,999 pounds that is designed to

ASSEMBLY BILL 439**SECTION 2**

1 travel on 4 or more low-pressure tires, is equipped with a cargo area, and is used
2 primarily off-highway. “Lightweight utility vehicle” does not include golf carts or
3 low-speed vehicles.

4 (7) “Low-pressure tire” means a tire that is designed to be mounted on a rim
5 with a maximum diameter of 14 inches and to be inflated with an operating pressure
6 not to exceed 20 pounds per square inch as recommended by the manufacturer.

7 (8) “Low-speed vehicle” means a low-speed vehicle, as defined in 49 CFR
8 571.3, that satisfies the equipment standards under 49 CFR 571.500 and that was
9 originally manufactured to meet the applicable equipment standards under 49 CFR
10 571.500. “Low-speed vehicle” does not include a golf cart.

11 (9) “Off-road motorcycle” means a motorcycle, as defined in s. 340.01 (32), that
12 is not required to be registered under ch. 341.

13 (10) “Personal watercraft” has the meaning given in s. 30.50 (9d).

14 (11) “Powersports vehicle” means an all-terrain vehicle, snowmobile,
15 lightweight utility vehicle, personal watercraft, or off-road motorcycle.

16 (12) (a) “Powersports vehicle dealer” means any of the following:

17 1. A business entity engaged in the business of selling any powersports vehicle
18 for a profit to retail customers in this state.

19 2. An all-terrain vehicle dealer registered with the department of natural
20 resources under s. 23.33 (2) (dm) 1.

21 3. A snowmobile dealer registered with the department of natural resources
22 under s. 350.12 (3) (c) 1.

23 (b) “Powersports vehicle dealer” does not include any dealer licensed under
24 subch. I of this chapter with respect to any category of powersports vehicle for which
25 that license applies or any dealer located outside this state.

ASSEMBLY BILL 439

1 **(13)** (a) “Powersports vehicle distributor” means any of the following:

2 1. A business entity that is engaged in the business of selling or distributing
3 any powersports vehicle to powersports vehicle dealers or that maintains distributor
4 representatives.

5 2. An all-terrain vehicle distributor registered with the department of natural
6 resources under s. 23.33 (2) (dm) 1.

7 3. A snowmobile distributor registered with the department of natural
8 resources under s. 350.12 (3) (c) 1.

9 4. A factory branch of any powersports vehicle distributor described in subds.
10 1. to 3.

11 (b) “Powersports vehicle distributor” does not include any distributor licensed
12 under subch. I of this chapter with respect to any category of powersports vehicle for
13 which that license applies.

14 **(14)** (a) “Powersports vehicle manufacturer” means any of the following:

15 1. A business entity engaged in the business of manufacturing any powersports
16 vehicle for sale to the public.

17 2. An all-terrain vehicle manufacturer registered with the department of
18 natural resources under s. 23.33 (2) (dm) 1.

19 3. A snowmobile manufacturer registered with the department of natural
20 resources under s. 350.12 (3) (c) 1.

21 4. A factory branch of any powersports vehicle manufacturer described in
22 subds. 1. to 3.

23 (b) “Powersports vehicle manufacturer” does not include any manufacturer
24 licensed under subch. I of this chapter with respect to any category of powersports
25 vehicle for which that license applies.

ASSEMBLY BILL 439**SECTION 2**

1 **(15)** “Retail sales program” means a program offered to a powersports vehicle
2 dealer by either a powersports vehicle manufacturer or a powersports vehicle
3 distributor intended to provide to a retail customer an incentive, such as an instant
4 rebate, an extended warranty, cash, or financing, to purchase a powersports vehicle,
5 part, or accessory.

6 **(16)** “Snowmobile” has the meaning given in s. 340.01 (58a).

7 **(17)** “Wholesale order program” means a sales program offered by a
8 powersports vehicle manufacturer or a powersports vehicle distributor to a
9 powersports vehicle dealer in which the powersports vehicle dealer purchases
10 powersports vehicles directly from the powersports vehicle manufacturer or
11 powersports vehicle distributor for the purpose of reselling the powersports vehicles
12 to retail customers.

13 **218.61 Prohibited practices by powersports vehicle manufacturers**
14 **and distributors.** No powersports vehicle manufacturer or powersports vehicle
15 distributor, and no agent, officer, factory representative, or affiliate of a powersports
16 vehicle manufacturer or powersports vehicle distributor, may do any of the following:

17 **(1)** Discriminate between powersports vehicle dealers by doing any of the
18 following:

19 (a) Selling or offering to sell a powersports vehicle to one powersports vehicle
20 dealer under a wholesale order program and not offering the same wholesale order
21 program to all powersports vehicle dealers. This paragraph does not prohibit a
22 wholesale order program from providing different benefits to different powersports
23 vehicle dealers based on the level of the wholesale orders placed by the powersports
24 vehicle dealers if the benefits are not tied to incentives or benefits available to the
25 powersports vehicle dealers under a retail sales program.

ASSEMBLY BILL 439

1 (b) Tying incentives that a powersports vehicle dealer receives under any retail
2 sales program to any order that a powersports vehicle dealer places under a
3 wholesale order program.

4 (c) Offering any retail sales program that includes parts, accessories, prepaid
5 maintenance, and warranties tied to a wholesale order program.

6 (d) Adopting a method or changing an existing method for the allocation,
7 scheduling, or delivery of new powersports vehicles, parts, or accessories to its
8 dealers that is not fair, reasonable, and equitable. Upon the request of a powersports
9 vehicle dealer, a powersports vehicle manufacturer shall disclose in writing to the
10 dealer the general method by which new powersports vehicles, parts, and accessories
11 are allocated, scheduled, or delivered to its dealers handling the same line or make
12 of vehicles.

13 (2) Make to a powersports vehicle dealer a secret payment or allowance of
14 rebates, refunds, commissions, or unearned discounts, whether in the form of money
15 or an extension of special services or privileges to some but not all powersports
16 vehicle dealers purchasing upon like terms and conditions, if the payment or
17 allowance tends to destroy competition and causes injury to any competitor of the
18 powersports vehicle dealer.

19 (3) Give preferential treatment to some powersports vehicle dealers over
20 others by refusing or failing to deliver, in reasonable quantities and within a
21 reasonable time after receipt of an order, to any dealer holding a franchise for a line
22 or make of powersports vehicles sold or distributed by the manufacturer, any new
23 powersports vehicle, part, or accessory, if the powersports vehicle, part, or accessory
24 is being delivered to other dealers.

ASSEMBLY BILL 439**SECTION 2**

1 (4) Compete with a powersports vehicle dealer by, for more than one year,
2 acting in the capacity of a powersports vehicle dealer or owning, operating, or
3 controlling, whether directly or indirectly, a powersports vehicle dealership in this
4 state.

5 (5) Prevent or attempt to prevent a dealer from making reasonable changes in
6 the capital structure of a dealership or in the means by which the dealership is
7 financed if the powersports vehicle dealer meets the reasonable, written, and
8 uniformly applied capital requirements determined by the manufacturer.

9 (6) Unreasonably require the powersports vehicle dealer to change the location
10 of, or require any substantial alterations to, the powersports vehicle dealer's place
11 of business. This subsection does not prohibit a powersports vehicle manufacturer
12 or powersports vehicle distributor and a powersports vehicle dealer from entering
13 into an arms-length agreement in which the parties exchange bargained-for
14 consideration and part of the bargained-for consideration is changing locations of
15 the dealership or altering the powersports vehicle dealer's place of business.

16 (7) Fail to hold harmless and indemnify a powersports vehicle dealer against
17 losses, including lawsuits and court costs, arising from any of the following:

18 (a) The manufacture or performance of any powersports vehicle, part, or
19 accessory if the lawsuit involves representations by the manufacturer on the
20 manufacture or performance of a powersports vehicle, and there is no claim of
21 negligence on the part of the powersports vehicle dealer.

22 (b) Damage to merchandise in transit where the manufacturer specifies the
23 carrier.

ASSEMBLY BILL 439

1 (c) The manufacturer's failure to defend product liability suits concerning the
2 powersports vehicle, part, or accessory provided to the dealer where there is no
3 independent claim against the powersports vehicle dealer.

4 (d) Any other act performed by the manufacturer that is not requested by the
5 powersports vehicle dealer.

6 (8) Unfairly prevent or attempt to prevent a powersports vehicle dealer from
7 receiving reasonable compensation for the value of a powersports vehicle.

8 (9) Deny a powersports vehicle dealer the right of free association with any
9 other powersports vehicle dealer for any lawful purpose.

10 (10) Charge increased prices without having given written notice to the
11 powersports vehicle dealer at least 30 days before the effective date of the price
12 increase.

13 (11) Reimburse anyone other than an authorized powersports vehicle dealer
14 for warranty service performed on a powersports vehicle.

15 (12) Pay less than the amount of the manufacturer's suggested retail price for
16 parts used by powersports vehicle dealers to perform warranty work under a
17 manufacturer's warranty provided to a retail customer.

18 (13) Pay to a powersports vehicle dealer an amount for labor that is less than
19 the amount the dealer charges its retail customers for labor.

20 (14) Require or coerce a powersports vehicle dealer to grant a manufacturer a
21 right of first refusal or other preference to purchase the dealer's franchise or place
22 of business or both unless there is not another financially qualified purchaser.

23 (15) Require that any arbitration proceeding or legal action between the
24 parties take place in a jurisdiction other than this state.

ASSEMBLY BILL 439**SECTION 2**

1 **218.62 Approved practices by powersports vehicle manufacturers and**
2 **distributors.** Notwithstanding s. 218.61, a powersports vehicle manufacturer or
3 powersports vehicle distributor, and its respective agents, officers, factory
4 representatives, and affiliates, may do any of the following:

5 (1) Offer by auction powersports vehicles to all powersports vehicle dealers
6 under the same terms and not based on a wholesale order program.

7 (2) Provide tiered wholesale programs, tiered wholesale flooring plans, tiered
8 retail programs, and tiered demonstration unit programs to powersports vehicle
9 dealers.

10 (3) Offer programs to all powersports vehicle dealers based on customer
11 satisfaction scores that provide benefits to powersports vehicle dealers that obtain
12 a customer satisfaction score set by the powersports vehicle distributor or
13 powersports vehicle manufacturer.

14 **218.63 Penalties and civil actions.** (1) Any person who violates s. 218.61
15 may be required to forfeit not less than \$100 nor more than \$1,000 for each separate
16 violation.

17 (2) The department shall investigate violations of s. 218.61. The department
18 or the department of justice, after consulting with the department, or any district
19 attorney, upon informing the department, may on behalf of the state:

20 (a) Bring an action for temporary or permanent injunctive or other relief for any
21 violation of s. 218.61. The court may, upon entry of final judgment, award restitution
22 when appropriate to any person suffering loss because of a violation of s. 218.61 if
23 proof of such loss is submitted to the satisfaction of the court.

24 (b) Bring an action in any court of competent jurisdiction for the penalties
25 authorized under sub. (1).

ASSEMBLY BILL 439

1 (3) In addition to any other available remedies, any person injured by a
2 violation of s. 218.61 may bring a civil action against the person who violated s.
3 218.61 for temporary or permanent injunctive relief or for damages or both. Upon
4 finding that the defendant is violating or has violated s. 218.61, the court shall enjoin
5 the defendant from continuing the violation, regardless of whether the plaintiff has
6 suffered actual damages. In any action authorized under this subsection, any person
7 who violates s. 218.61 shall be liable for the amount of actual damages caused by the
8 violation and, notwithstanding s. 814.04 (1), the costs of the action, including
9 reasonable attorney fees.

SECTION 3. Initial applicability.

10 (1) This act first applies to actions taken, and events occurring, on the effective
11 date of this subsection.
12

SECTION 4. Effective date.

13 (1) This act takes effect on the first day of the 3rd month beginning after
14 publication.
15

16 (END)