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L A W F I R M

The Wisconsin Fair Dealership Law: Wis. Stat. Ch. 135

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The Wisconsin Fair Dealership Law (“WFDL”), Wis. Stat. Ch. 135, protects businesses that fall within the statute’s definition of a “dealer” from certain business practices that the statute deems unfair. In particular, the WFDL prohibits a grantor of a dealership from terminating, or substantially changing the competitive circumstances of, the dealer’s dealership agreement without good cause. The statute also requires a grantor to give the dealer at least 90 days’ prior written notice of termination, nonrenewal, or substantial change in competitive circumstances, and a 60-day period to rectify any deficiency claimed by the grantor.

The protections of the WFDL apply only to businesses that qualify as a “dealer,” which the statute defines as “a person who is a grantee of a dealership situated in this state.” A “dealership” means an agreement “by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling, or distributing goods or services at wholesale, retail, by lease, agreement, or otherwise.”

The Wisconsin Supreme Court has said that in evaluating whether the parties’ business relationship constitutes a dealership, a court must consider a “a wide variety of facets” of the relationship, including: how long the parties have dealt with each other; the extent and nature of the obligations imposed on the parties in the contract or agreement between them; what percentage of time or revenue the alleged dealer devotes to the alleged grantor’s products or services; what percentage of the gross proceeds or profits of the alleged dealer derives from the alleged grantor’s products or services; the extent and nature of the alleged grantor’s grant of territory to the alleged dealer; the extent and nature of the alleged dealer’s uses of the alleged grantor’s proprietary marks (such as trademarks or logos); the extent and nature of the alleged dealer’s financial investment in inventory, facilities, and good will of the alleged dealership; the personnel which the alleged dealer devotes to the alleged dealership; how much the alleged dealer spends on advertising or promotional expenditures for the alleged grantor’s products or

services; the extent and nature of any supplementary services provided by the alleged dealer to consumers of the alleged grantor's products or services.

The provision of any contract purporting to avoid the effect of the WFDL is void and unenforceable.

The Wisconsin Franchise Investment Law: Wis. Stat. Ch. 553

The Wisconsin Franchise Investment Law ("WFIL") protects prospective franchisees by imposing certain registration and disclosure requirements on franchisors. The WFIL is concerned with "franchises" as opposed to the WFDL, which governs "dealerships". However, given the broad definitions of franchises and dealerships, there is often overlapping application of the two laws. Generally, the definition of a franchise in Wisconsin mirrors the definition under the Federal Trade Commission rule, although there is no threshold fee provision. Unless the franchisor qualifies for an exemption, the WFIL requires registration by notice filing with the state (and payment of the applicable fee). The registration is effective upon receipt by the Wisconsin Department of Financial Institutions of the registration materials.