



# TIP McGUIRE

## WISCONSIN STATE REPRESENTATIVE

October 24, 2019

***Assembly Committee on Consumer Protection***  
***Assembly Bill 335***  
***Representative Tip McGuire***

Chair Pronschinske, Vice Chair Tittl, and members of the Assembly Committee on Consumer Protection; thank you for holding a public hearing on 2019 Assembly Bill 335, which is a common sense bill that prevents auto manufacturers from passing unilateral surcharges on to local auto dealers as retaliation for those local dealers seeking fair compensation for their work.

As you are aware, Wisconsin's motor vehicle franchise law regulates and maintains a balance between auto manufacturers and local auto dealers. Under current law, dealers are permitted to seek reasonable compensation for their covered work, such as addressing defective parts for the consumer on behalf of the manufacturer. The appropriate level of compensation is determined by factors articulated in the vehicle franchise law. In recent years, some manufacturers have soured on a provision contained in the previous agreement, and have subsequently imposed unilateral, punitive surcharges on dealers who avail themselves of the provisions within the law.

As a result, the dealers challenged the punitive surcharges in court and lost. In the Court's decision, the court made clear that the plain language of the statute does not prohibit surcharges designed for punitive purposes. AB 335 seeks to close that loophole.

There are strong policy reasons in support of closing this loophole. These punitive surcharges are designed to coerce auto dealers into not exercising their statutory privileges. These surcharges are often levied against certain auto dealers that exercise these privileges, and therefore distorts the market. Closing this loophole will ensure that consumers have fair pricing regardless of which auto dealer they use.

Recently, I met with several of my local auto dealers to discuss the challenges facing their industry. The potential for financial punishment by auto manufacturers as a consequence of exercising their statutory privileges was the primary issue facing these auto dealers. As a whole, auto dealers contribute a great deal to our communities, both through employment, as well as through other work in the community. Currently, there are over 500 franchised auto and truck dealerships in Wisconsin that employ over 30,000 Wisconsin workers. The economic benefit provided by these small businesses could be adversely impacted if we don't close the loophole that is causing these issues.

Thank you for your time in reviewing this legislation. I support passage of AB 335, as I believe that Wisconsin can protect our small businesses and consumers by restoring balance to the relationship between auto dealers and auto manufacturers.



# JOAN BALLWEG

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CO-CHAIR, JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

41<sup>st</sup> ASSEMBLY DISTRICT

**Assembly Bill 335: Prohibited practices of motor vehicle manufacturers, importers, and distributors and providing a penalty**  
**Testimony of State Representative Joan Ballweg**  
**Assembly Committee on Consumer Protection**  
**October 24, 2019**

Thank you, Chair Pronschinske, and members of the Assembly Committee on Consumer Protection for holding this public hearing on AB 335. This bill would prohibit manufacturers from assessing surcharges on Wisconsin motor vehicle dealers for utilizing the Wisconsin statutory formula for reimbursement of warranty work.

I authored this bill with Senator Marklein at the request of local automobile dealers who have had difficulty working with General Motors (GM) within the confines of current law. They have asked us to consider changes to state statute to further protect businesses in our state and ensure that our laws do not put them at a competitive disadvantage with neighboring states.

When a car owner brings their car in for warranty work, the dealer performs the work on behalf of the manufacturer. The rates at which the dealer is reimbursed are determined through the dealer's contract and state franchise law. In October of 2018, General Motors began assessing a surcharge between \$178 and \$279 per vehicle sold on select GM dealers who had requested to be reimbursed at the statutory reimbursement rate. Additionally, Nissan currently surcharges all of their dealers \$75 per vehicle.

This action by GM and Nissan attempts to coerce their dealers into waiving their right to fair compensation as negotiated in 2011 Act 91. This puts in-brand dealers and those on state borders at a competitive disadvantage, and ultimately Wisconsin consumers pay more for the purchase price of a new vehicle and for non-warranty repairs. The cost for warranty work is already built into the price of the vehicle from the manufacturer to the dealer. It harms small business when a surcharge allows the manufacturer to pick and choose dealers to selectively raise the price of a new vehicle, rather than raising the invoice price to all dealers.

Currently, an individual dealer does not have the ability to negotiate these surcharges with the manufacturer through their contract. That is why the parameters of these contracts need to be set on a statewide basis through franchise law. AB 335 levels the playing field, and it gives auto dealers the ability to negotiate reasonable compensation for warranty work with the manufacturers. This legislation would prohibit manufacturers from assessing surcharges on Wisconsin motor vehicle dealers as retaliation for utilizing the Wisconsin law. There are currently 19 states that prohibit manufacturer's retaliatory surcharges. Requiring a manufacturer to compensate a dealer

at the average customer pay rate protects Wisconsin consumers from subsidizing the manufacturer's warranty repair obligations.

The surcharge puts in-brand dealers and those on state borders at a competitive disadvantage and ultimately Wisconsin consumers pay more for the purchase price of a new vehicle in addition to non-warranty repair costs.

The Wisconsin Automobile and Truck Dealers Association, Inc. and the Wisconsin Recreational Vehicle Dealers Alliance registered in support of this bill.

Thank you for your consideration of AB 335. Please feel free to contact my office with any questions that you may have.



October 24, 2019

To: Members, Assembly Committee on Consumer Protection  
From: David Bright, Attorney  
Date: October 24, 2019  
Re: Testimony in opposition of AB 335

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On behalf of the Alliance of Automobile Manufacturers, we ask that the committee oppose AB 335. The Alliance is a trade association representing twelve leading car and light duty truck manufacturers: BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Cars North America. Together, Alliance members represent more than 70% of the car and light duty trucks sold in the United States each year. This bill raises the cost of doing business for manufacturers in Wisconsin while also creating a risk of harm to Wisconsin automobile consumers.

AB 335 exacerbates an existing problem in Wisconsin's motor vehicle franchise law. This problem is unique to Wisconsin and dramatically different than every other state's law. The law, §218.0125(3m), requires the manufacturer to pay the dealer at its retail rate for parts and labor used to repair a vehicle that is under warranty. Basic math teaches that the hourly rate for such labor would be calculated by taking the dollars charged to retail customers and dividing by the number of hours billed to those customers. The problem is that §218.0125 does not do that and uses a flawed formula instead. The law calculates the rate as dollars charged to retail customers divided by the number of hours that would have been billed if the dealer had used the manufacturer's warranty time guide, which is tailored to warranty repairs not general retail service. Warranty repairs and general retail service should not be conflated. The vehicles are different in terms of their makes, their age, the types of problems, the availability of special tools, and complications such as rusted or stripped parts. Because of those differences, a warranty repair time guide is likely to have shorter time amounts than a time guide designed for general retail repairs. By calculating the rate as dollars charged divided by the warranty guide instead of the hours actually billed, Wisconsin's law divides by a smaller number. Thus the statutory formula results in an hourly rate that is incorrect and higher than what retail customers actually pay, yet it is what manufacturers are forced to pay under the law. Wisconsin is the only state in the nation with this problem in its automobile franchise law. It is unreasonable and costly for manufacturers.

AB 335 makes the problem worse because it prohibits manufacturers from utilizing a surcharge to recover those unreasonable, Wisconsin-specific costs. Even worse, AB 335 includes several vague provisions that seem designed to encourage litigation. For example, it prohibits nonrandom audits of a dealer and limiting vehicle allocations if they are "in retaliation" for a dealer using the problematic warranty reimbursement law. But there are many valid business reasons for manufacturers to conduct a nonrandom audit (e.g. red flags

triggered in the system) or limit vehicle allocations (e.g. limited availability) and SB 204 would create a chilling effect on those business decisions if anything that could be alleged to be retaliatory could trigger a lawsuit. AB 335 also forbids manufacturers from increasing prices “for the purpose of recovering costs of compensating dealers under s. 218.0125.” In other words, the law causes costs to go up, but also prohibits prices from going up as a result of those costs. That is not a reasonable way to regulate commerce.

The Alliance respectfully asks this committee not to report AB 335, which would make Wisconsin’s uniquely unreasonable warranty reimbursement law even worse.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Bright". The signature is stylized and cursive.

David E. Bright  
Attorney

Breakdown of 3 claims:

Retail, Normal Warranty, and Special Warranty Wisconsin for Labor and Parts & Handling (P&H)

Dealer A- Retail Labor \$830	Dealer B – Warranty Labor \$816.86	Dealer C – Special Warranty Labor \$1636.64
Dealer A P&H \$6249.19 Cost 22% mark up in parts	Dealer B \$7648.85 (40% mark up)	Dealer C \$10,491.10 (92% mark up)
Dealer A – Retail Total: \$7079.19	Dealer B -Warranty \$8507.71	Dealer C - Special \$13,352.74

Dealer B vs. Dealer C – both on warranty - C was Double on Labor Cost

Dealer B vs. C – on parts, Dealer Cs **are 57% higher** than a typical warranty claim.

\*Almost 3-year-old vehicle with approximately 50,000 miles.

Who would pay \$13,352.74 to replace the engine?

Would you pay it?

Would you pause and maybe go some other place?

We cannot do that. We must pay it because it is mandated in statute.



**AUTO ALLIANCE**  
DRIVING INNOVATION®

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WISCONSIN MANUFACTURERS  
& COMMERCE

To: Members, Assembly Committee on Consumer Protection  
From: Alliance of Automobile Manufacturers  
Wisconsin Manufacturers & Commerce  
Date: October 23, 2019  
Subject: Oppose AB 335 – “Dealer surcharge bill”

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The above organizations respectfully request legislators oppose AB 335. This bill raises the cost of doing business for manufacturers in Wisconsin while also creating a risk of harm to Wisconsin automobile consumers. While similar legislation was introduced last session, this new version goes much further in using the legislature to create one of the most lopsided franchise laws in the country. **This bill sets a “big government” precedent for the legislature to intervene whenever there is a contractual dispute between two business entities.**

- This bill will further incentivize car dealers to **overcharge consumer for standard repair costs**, which by Wisconsin statute, are used to justify higher warranty repair claims from the car manufacturers.
- In 2011, the legislature passed the Motor Vehicle Franchise law (Act 91), which created new Wisconsin-specific costs for manufacturers’ warranties.
- Due to an oversight in the 2011 negotiations, the warranty reimbursement rate that is existing law has a mathematical error that *some* dealers have used to claim wildly unrealistic reimbursement rates. In addition, the current formula incentivizes dealers to charge customers more than necessary.
- Wisconsin is the **ONLY STATE** in the country with a mathematically incorrect labor rate calculation. If any business is incurring higher costs in a state because of a state-specific law, then that business should be able to recover its added costs rather than having the business absorb the cost or spread it around the country.
- *Most* Wisconsin dealers have chosen *to not* utilize the statutory mathematically incorrect formula. Utilizing the current formula to claim exorbitant reimbursement rates is an individual dealer’s business decision and until the formula is fixed, it remains critical that manufacturers can recover costs.
- The bill aims to penalize manufacturers for everyday ordinary business practices by defining them as “adverse actions” and prohibiting them under threat of damages.
- In September 2018, a federal district court in Milwaukee concluded that GM’s surcharge does not violate the plain language of the statute, denying the dealer’s request for an injunction and an order finding the surcharges illegal. This legislation supersedes the legal process, which is still ongoing in at least two cases.

**We ask that legislators not interfere with these incremental franchise issues that impact a subset of dealers and manufacturers and prevent this legislation from advancing any further.**

For questions on this issue contact Andy Engel or Caty McDermott at Hamilton Consulting: (608) 258-9506.

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October 24, 2019

Chairman Pronschinske and Members of the Assembly Committee on Consumer Protection:

On behalf of thousands of Americans for Prosperity – Wisconsin activists, thank you for the opportunity to provide comments opposing Assembly Bill 335, which would make changes to current law governing motor vehicle franchises.

Americans for Prosperity – Wisconsin opposes any efforts by the government to tip the scales in favor of one private company over another through onerous regulations.

AB 335 would set a dangerous precedent for the legislature to intervene when there is a contractual dispute between two private companies by compelling manufacturers to pass on all warranty costs to customers and dealers.

It is for these reasons that I ask you to oppose AB 335. Thank you for the opportunity to provide comments on this bill today.

Sincerely,

Megan Novak  
Legislative Director  
Americans for Prosperity - Wisconsin