



2013 SENATE BILL 182

May 16, 2013 - Introduced by Senators PETROWSKI, FARROW and VUKMIR, cosponsored by Representatives KRAMER, LEMAHIEU, WILLIAMS, CRAIG, KUGLITSCH, THIESFELDT, SCHRAA, CZAJA, MURPHY, TITTL, JACQUE, STONE, KLEEFISCH, STEINEKE, SUDER, NEYLON, MURTHA, NYGREN, SEVERSON, BALLWEG, A. OTT, JAGLER, NERISON, PETRYK, AUGUST, MURSAU, KAUFERT, SANFELIPPO, LOUDENBECK, KESTELL, RIPP, TAUCHEN, WEATHERSTON, SPIROS, SWEARINGEN, BIES, BORN, HONADEL, T. LARSON, KNODL, STROEBEL, STRACHOTA, WEININGER, BERNIER, KOYENGA and PRIDEMORE. Referred to Committee on Transportation, Public Safety, and Veterans and Military Affairs.

1 **AN ACT to renumber and amend** 218.0171 (2) (c); **to amend** 218.0171 (2) (b)
2 2. a., 218.0171 (2) (cm) 1. and 2. and 218.0171 (7); and **to create** 218.0171 (1)
3 (am), 218.0171 (1) (g), 218.0171 (2) (c) 3., 4. and 5., 218.0171 (2) (cm) 4., 218.0171
4 (6m), 218.0171 (8) and 227.01 (13) (yd) of the statutes; **relating to:** the law
5 governing repair, replacement, and refund under a motor vehicle warranty.

Analysis by the Legislative Reference Bureau

Currently the law governing repair, replacement, and refund under a motor vehicle warranty, commonly referred to as the “lemon law,” provides remedies for a person who purchases, receives, or leases (consumer) a motor vehicle that is under an express warranty and that has a nonconformity. A “nonconformity” is defined as a condition or defect that substantially impairs the use, value, or safety of the motor vehicle and that is covered by an express warranty, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle by the consumer.

Under current law, if a consumer reports a nonconformity to the manufacturer or manufacturer’s agent such as the importer or distributor (manufacturer), the lessor of the motor vehicle (lessor) if the consumer is leasing the vehicle, or any of the manufacturer’s authorized motor vehicle dealers (authorized dealers) and if the consumer makes the motor vehicle available for repair before the warranty expires or within one year after first delivery of the motor vehicle to a consumer, whichever is sooner, the consumer is entitled to have the nonconformity repaired. If, after a

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reasonable attempt to repair, the nonconformity is not repaired, the manufacturer must provide the consumer with a comparable new motor vehicle or a refund, at the consumer's option. "Reasonable attempt to repair" is defined as any of the following occurring within the warranty period or within one year after first delivery of the motor vehicle to a consumer, whichever is sooner: 1) the same nonconformity is subject to repair by the manufacturer, lessor, or authorized dealer at least four times and the nonconformity continues; or 2) the motor vehicle is out of service for an aggregate of at least 30 days because of nonconformities. To receive a comparable new motor vehicle or a refund, the consumer must offer to transfer title of the vehicle with the nonconformity to the manufacturer and, within 30 days after this offer, the manufacturer must provide the consumer with the comparable new motor vehicle or refund. When the manufacturer provides the new motor vehicle or refund, the consumer must return the vehicle with the nonconformity to the manufacturer along with necessary vehicle title documents. If another person is in possession of the vehicle's certificate of title, that person must provide the certificate to the manufacturer or to the consumer. In addition to the new replacement vehicle or refund, the consumer may bring a civil action to recover damages caused by a lemon law violation. If the consumer prevails, the court must award the consumer twice the amount of any pecuniary loss, along with costs and reasonable attorney fees.

This bill creates a definition of "out of service," which affects whether a "reasonable attempt to repair" has been made under item 2), above. Under the bill, "out of service" means that a motor 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, lessor, or authorized dealer for the purpose of performing or attempting repairs to correct a nonconformity; or 2) the vehicle is in the consumer's possession and all of the following apply: a) the vehicle has a nonconformity that substantially affects the use or safety of the vehicle and that has been subject to a previous repair attempt to correct the same nonconformity; and b) the consumer has reported, in writing, the nonconformity to the manufacturer, lessor, or authorized dealer and the manufacturer, lessor, or dealer has refused to accept the vehicle for the purpose of performing or attempting subsequent repairs.

Under the bill, if a consumer elects to receive a comparable new motor vehicle or a refund and offers to transfer title of the vehicle with the nonconformity to the manufacturer, the deadline for the manufacturer to provide the consumer with the comparable new motor vehicle or refund, discussed further below, is measured from the later of the election or the offer, except as discussed below. The bill also requires a consumer requesting a refund to provide to the manufacturer, in a form and manner prescribed by the Department of Transportation (DOT), all information timely requested and required by the manufacturer and any written consent to allow the manufacturer to provide the refund. The consumer must provide this information during or prior to the 30-day period that commences with the later of the consumer's election of the refund or the consumer's offer to transfer title to the manufacturer of the vehicle with the nonconformity. If the consumer fails to provide any of this information by the end of this 30-day period, the consumer may not bring a civil action to recover damages caused by a lemon law violation. Also, if a consumer

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elects to receive a refund, the deadline for the manufacturer to provide the consumer with the refund can be no earlier than ten days after the manufacturer receives from the consumer the required information and consent in the form and manner prescribed by DOT.

The bill also extends the time in which a manufacturer must provide a comparable new motor vehicle to a consumer who elects to receive a comparable new motor vehicle, from 30 days to 45 days after the later of the election or offer. If no comparable new motor vehicle is available for delivery within this 45-day period, the manufacturer must provide a refund in lieu of providing the comparable new motor vehicle. The manufacturer must exercise due diligence in locating and providing a comparable new motor vehicle during this 45-day period. These changes also apply if the comparable new motor vehicle is a commercial motor vehicle, except that the applicable period is 120 days rather than 45 days.

The bill also imposes additional limitations on civil actions brought to recover damages caused by lemon law violations. Under the bill, any action must be commenced within 24 months after first delivery of the motor vehicle to a consumer. The bill also makes an award for pecuniary loss, costs, and attorney fees to a prevailing consumer in such an action discretionary with the court or jury rather than mandatory. The bill further eliminates the provision requiring the award of twice the amount of a prevailing consumer's pecuniary loss and instead allows an award of up to the amount of the prevailing consumer's pecuniary loss.

This bill specifies that, if a consumer enters into a negotiated written settlement with the manufacturer regarding a vehicle nonconformity, the manufacturer is no longer subject to any requirement under the lemon law with respect to that vehicle.

Also under this bill, if a consumer returns a vehicle with a nonconformity to the manufacturer and another person is in possession of the vehicle's certificate of title, that person must provide the certificate of title to the manufacturer, not the consumer, upon satisfaction of any security interest in the vehicle.

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

- 1 **SECTION 1.** 218.0171 (1) (am) of the statutes is created to read:
- 2 218.0171 (1) (am) 1. Subject to subd. 2., "commercial motor vehicle" means a
- 3 motor vehicle designed to transport passengers or property and having one or more
- 4 of the following characteristics:

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1 a. The vehicle is a single vehicle with a gross vehicle weight rating of 26,001
2 or more pounds or the vehicle's registered weight or actual gross weight is more than
3 26,000 pounds.

4 b. The vehicle is a combination vehicle with a gross combination weight rating,
5 registered weight or actual gross weight of 26,001 or more pounds inclusive of a
6 towed unit with a gross vehicle weight rating, registered weight or actual gross
7 weight of more than 10,000 pounds.

8 c. The vehicle is designed to transport the driver and 15 or more passengers.
9 If the vehicle is equipped with bench type seats intended to seat more than one
10 person, the passenger-carrying capacity shall be determined under s. 340.01 (31) or,
11 if the vehicle is a school bus, by dividing the total seating space measured in inches
12 by 13.

13 2. "Commercial motor vehicle" does not include a motor home, as defined in s.
14 340.01 (33m).

15 **SECTION 2.** 218.0171 (1) (g) of the statutes is created to read:

16 218.0171 (1) (g) "Out of service," with respect to a motor vehicle, means that
17 the vehicle is unable to be used by the consumer for the vehicle's intended purpose
18 as a result of any of the following:

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

22 2. The vehicle is in the possession of the consumer and all of the following apply:

23 a. The vehicle has a nonconformity that substantially affects the use or safety
24 of the vehicle and that has been subject to a previous repair attempt to correct the
25 same nonconformity.

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1 b. The consumer has reported, in writing, the nonconformity to the
2 manufacturer, motor vehicle lessor, or manufacturer's authorized motor vehicle
3 dealer and the manufacturer, lessor, or dealer has refused to accept the vehicle for
4 the purpose of performing or attempting subsequent repairs.

5 **SECTION 3.** 218.0171 (2) (b) 2. a. of the statutes is amended to read:

6 218.0171 (2) (b) 2. a. Accept return of the motor vehicle and, subject to par. (c)
7 3. and 4., replace the motor vehicle with a comparable new motor vehicle and refund
8 any collateral costs.

9 **SECTION 4.** 218.0171 (2) (c) of the statutes is renumbered 218.0171 (2) (c) 1. and
10 amended to read:

11 218.0171 (2) (c) 1. To receive a comparable new motor vehicle or a refund due
12 under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer
13 to the manufacturer of the motor vehicle having the nonconformity to transfer title
14 of that motor vehicle to that manufacturer. No

15 2. Subject to subd. 5., if the consumer elects a refund, no later than 30 days after
16 that the offer under subd. 1. or the election of the refund, whichever is later, the
17 manufacturer shall provide the consumer with the comparable new motor vehicle or
18 refund. During or prior to this 30-day period, the consumer shall provide to the
19 manufacturer, in a form and manner prescribed by the department of transportation,
20 all information timely requested and required by the manufacturer and any written
21 consent to allow the manufacturer to provide the refund. If the consumer fails to
22 provide any of this information by the end of this 30-day period, the consumer may
23 not bring an action under sub. (7).

24 6. When the manufacturer provides the new motor vehicle or refund, the
25 consumer shall return the motor vehicle having the nonconformity to the

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1 manufacturer and provide the manufacturer with the certificate of title and all
2 endorsements necessary to transfer title to the manufacturer. If another person is
3 in possession of the certificate of title, as shown by the records of the department of
4 transportation, that person shall, upon request of the consumer, provide the
5 certificate of title to the manufacturer ~~or to the consumer~~ upon satisfaction of any
6 security interest in the motor vehicle.

7 **SECTION 5.** 218.0171 (2) (c) 3., 4. and 5. of the statutes are created to read:

8 218.0171 (2) (c) 3. Except as provided in this subdivision, if the consumer elects
9 a comparable new motor vehicle, no later than 45 days after the offer under subd. 1.
10 or the election of the new motor vehicle, whichever is later, the manufacturer shall
11 provide the consumer with the comparable new motor vehicle. The manufacturer
12 shall exercise due diligence in locating and providing a comparable new motor
13 vehicle within this 45-day period. If no comparable new motor vehicles exists or if
14 a comparable new motor vehicle is otherwise unavailable for delivery within this
15 45-day period, the manufacturer shall provide a refund in lieu of providing a
16 comparable new motor vehicle and shall provide this refund no later than 45 days
17 after the offer under subd. 1. or the election of the new motor vehicle, whichever is
18 later. This subdivision does not apply with respect to commercial motor vehicles.

19 4. Except as provided in this subdivision, if the consumer elects a comparable
20 new commercial motor vehicle, no later than 120 days after the offer under subd. 1.
21 or the election of the new commercial motor vehicle, whichever is later, the
22 manufacturer shall provide the consumer with the comparable new commercial
23 motor vehicle. The manufacturer shall exercise due diligence in locating and
24 providing a comparable new commercial motor vehicle within this 120-day period.
25 If no comparable new commercial motor vehicles exists or if a comparable new

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1 commercial motor vehicle is otherwise unavailable for delivery within this 120-day
2 period, the manufacturer shall provide a refund in lieu of providing a comparable
3 new commercial motor vehicle and shall provide this refund no later than 120 days
4 after the offer under subd. 1. or the election of the new commercial motor vehicle,
5 whichever is later.

6 5. A manufacturer is not required to provide a consumer with a refund under
7 subd. 2. less than 10 days after the manufacturer receives from the consumer the
8 information and consent required under subd. 2., in the form and manner specified
9 in sub. (8).

10 **SECTION 6.** 218.0171 (2) (cm) 1. and 2. of the statutes are amended to read:

11 218.0171 (2) (cm) 1. To receive a refund due under par. (b) 3., a consumer
12 described under sub. (1) (b) 4. shall offer to the manufacturer of the motor vehicle
13 having the nonconformity to return that motor vehicle to that manufacturer. ~~No~~
14 Subject to subd. 4., no later than 30 days after that offer, the manufacturer shall
15 provide the refund to the consumer. During or prior to this 30-day period, the
16 consumer shall provide to the manufacturer, in a form and manner prescribed by the
17 department of transportation, all information timely requested and required by the
18 manufacturer and any written consent to allow the manufacturer to provide the
19 refund. If the consumer fails to provide any of this information by the end of this
20 30-day period, the consumer may not bring an action under sub. (7). When the
21 manufacturer provides the refund, the consumer shall return the motor vehicle
22 having the nonconformity to the manufacturer.

23 2. To receive a refund due under par. (b) 3., a motor vehicle lessor shall offer to
24 the manufacturer of the motor vehicle having the nonconformity to transfer title of
25 that motor vehicle to that manufacturer. ~~No~~ Subject to subd. 4., no later than 30 days

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1 after that offer, the manufacturer shall provide the refund to the motor vehicle lessor.
2 During or prior to this 30-day period, the consumer shall provide to the
3 manufacturer, in a form and manner prescribed by the department of transportation,
4 all information timely requested and required by the manufacturer and any written
5 consent to allow the manufacturer to provide the refund. When the manufacturer
6 provides the refund, the motor vehicle lessor shall provide to the manufacturer the
7 certificate of title and all endorsements necessary to transfer title to the
8 manufacturer. If another person is in possession of the certificate of title, as shown
9 by the records of the department of transportation, that person shall, upon request
10 of the motor vehicle lessor, provide the certificate to the manufacturer or to the motor
11 vehicle lessor.

12 **SECTION 7.** 218.0171 (2) (cm) 4. of the statutes is created to read:

13 218.0171 (2) (cm) 4. A manufacturer is not required to provide a consumer with
14 a refund under subd. 1. or a motor vehicle lessor a refund under subd. 2. less than
15 10 days after the manufacturer receives from the consumer the information and
16 consent required under subd. 1. or 2., in the form and manner specified in sub. (8).

17 **SECTION 8.** 218.0171 (6m) of the statutes is created to read:

18 218.0171 (6m) Notwithstanding subs. (2) (b) and (6), if the consumer enters
19 into a negotiated written settlement with the manufacturer regarding any motor
20 vehicle nonconformity, the manufacturer shall no longer be subject to any
21 requirement of this section with respect to that motor vehicle.

22 **SECTION 9.** 218.0171 (7) of the statutes is amended to read:

23 218.0171 (7) ~~In~~ Subject to subs. (2) (c) 2. and (cm) 1. and (3), in addition to
24 pursuing any other remedy, a consumer may bring an action to recover for any
25 damages caused by a violation of this section if the action is commenced within 24

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1 months after first delivery of the motor vehicle to a consumer. The court ~~shall~~ or jury
2 may award a consumer who prevails in such an action ~~twice~~ up to the amount of any
3 pecuniary loss, together with costs, disbursements and reasonable attorney fees, and
4 any equitable relief the court determines appropriate.

5 **SECTION 10.** 218.0171 (8) of the statutes is created to read:

6 218.0171 (8) The department of transportation shall prescribe a form and
7 manner for consumers to provide information and consent to manufacturers for
8 purposes of sub. (2) (c) 2. and (cm) 1. and 2.

9 **SECTION 11.** 227.01 (13) (yd) of the statutes is created to read:

10 227.01 (13) (yd) Relates to any form or manner of providing information and
11 consent prescribed by the department of transportation under s. 218.0171 (8).

12 **SECTION 12. Initial applicability.**

13 (1) This act first applies with respect to motor vehicles for which the express
14 warranty commences on the effective date of this subsection.

15 **SECTION 13. Effective date.**

16 (1) This act takes effect on the first day of the 3rd month beginning after
17 publication.

18

(END)