

2013 DRAFTING REQUEST

Bill

Received: **4/25/2013** Received By: **agary**

Wanted: **As time permits** Same as LRB:

For: **Jerry Petrowski (608) 266-2502** By/Representing: **Lane Oling, Tim Fiocchi**

May Contact: Drafter: **agary**

Subject: **Transportation - mot veh dealers** Addl. Drafters:
Transportation - motor vehicles
Transportation - other Extra Copies:

Submit via email: **YES**
 Requester's email: **Sen.Petrowski@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Motor vehicle warranty law (lemon law) changes relating to damages, refund information, commercial motor vehicles, civil actions, and reasonable attempts to repair

Instructions:

See attached; redraft of 2013 LRB-2179, which was redraft of 2013 LRB-1915

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 4/25/2013	jdyer 4/25/2013	jmurphy 4/25/2013	_____			
/P1	agary 4/26/2013			_____	srose 4/25/2013		
/P2	agary	jdyer	phenry	_____	sbasford		

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	4/26/2013	4/26/2013	4/26/2013	_____	4/26/2013		
/P3	agary 4/29/2013	jdyer 4/29/2013	rschluet 4/29/2013	_____	sbasford 4/29/2013		
/1		jdyer 4/29/2013	rschluet 4/29/2013	_____	mbarman 4/29/2013	mbarman 4/29/2013	

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<END>

*Not
Needed*

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/P2	agary	jdyer	pherry	_____	sbasford		

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/P1		<i>P2 4/26 jld</i>	<i>4/26 ph gm</i>	<i>gm</i>	srose 4/25/2013		

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1?	agary	PI 4/25 jld	jm 4/25	jm 4/25			

FE Sent For:

<END>

Gary, Aaron

From: David, Curt
Sent: Wednesday, April 24, 2013 3:55 PM
To: Gary, Aaron
Cc: Fiocchi, Tim; Oling, Lane
Subject: LRB-2179/P1

Gary,

Could you please work on this draft with Sen. Petrowski's office.

Thank you,

Curt
Office of Rep. Kramer

Gary, Aaron

From: Oling, Lane
Sent: Wednesday, April 24, 2013 4:44 PM
To: Gary, Aaron
Cc: David, Curt; Fiocchi, Tim
Subject: LRB - 2197/P1

Aaron,

Senator Petrowski would like to make some amendments to LRB 2197/P1 including the following:

- 1) In the draft, leave in current law under 218.0171 (6) "Any waiver by a consumer of rights under this section is void," but add a notwithstanding clause for a new sub. (6m) with the existing LRB language, "notwithstanding sub. (2)(b) or 218.0171(6), if the consumer elects to enter into a negotiated written settlement with the manufacturer regarding any motor vehicle nonconformity, etc."
- 2) Change language in Section 7 of the draft to extend the statute of limitations to 24 months instead of 18 months.
- 3) Change language in Section 7 of the draft to read, "The court or jury may award a consumer who prevails in such an action up to the amount of any pecuniary loss, etc.."
- 4) Amend the bill draft to incorporate language which resets the 30 day countdown should the consumer change his or her mind regarding whether the consumer wants a refund or a comparable vehicle. For example, if the consumer elects a refund, then on day 29 decides he or she wants a comparable vehicle, the 30 day clock would restart on the day the manufacturer receives notice of this desired change (the 29th day).
- 5) Include a provision in reference to page 4, after lines 15-21, page 6, lines 1-5 and 12-14 which articulates that the totality of the information required of the consumer will be included on a form that is created and approved by the Department of Motor Vehicles.
- 6) Keep the 120 day turn around requirement in section 4 for *commercial* vehicles in the draft, but have a 45 day period for all other vehicles.

Thank you,

Lane Oling
Office of Senator Jerry Petrowski
29th Senate District
(608) 266-2502



State of Wisconsin
2013 - 2014 LEGISLATURE

17
4/25



LRB-~~2013~~-2247/P1
ARG:jld:ph

wanted
4/26

KEEP RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

PWF
4/25
jm

Regen

- 1 AN ACT *to amend* 218.0171 (2) (c), 218.0171 (2) (cm) 1. and 2. and 218.0171 (7);
- 2 *to repeal and recreate* 218.0171 (6); and *to create* 218.0171 (1) (g) of the
- 3 statutes; **relating to:** the law governing repair, replacement, and refund under
- 4 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 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

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.

✓
24 → 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 18 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. ~~Insert ANAL-E~~ ✓

→ This bill ~~repeals the provision of the lemon law making any waiver by a consumer of rights under the lemon law void.~~ Instead, the 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:

Insert
3-1



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

2 218.0171 (1) (g) "Out of service," with respect to a motor vehicle, means that
3 the vehicle is unable to be used by the consumer for the vehicle's intended purpose
4 as a result of any of the following:

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

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

9 a. The vehicle has a nonconformity that substantially affects the use or safety
10 of the vehicle and that has been subject to a previous repair attempt to correct the
11 same nonconformity.

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

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

****NOTE: Given the new changes in the latest proposed provisions, this new treatment needs to be added.

9 **SECTION 3.** 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. If the consumer elects a refund, no later than 30 days after that the offer
16 under subd. 1., the manufacturer shall provide the consumer with the comparable
17 new motor vehicle or refund. During or prior to this 30-day period, the consumer
18 shall provide to the manufacturer ^{insert 4-18} all information timely requested and required by
19 the manufacturer and any written consent to allow the manufacturer to provide the
20 refund. If the consumer fails to provide any of this information by the end of this
21 30-day period, the consumer may not bring an action under sub. (7).

22 ⁴ 5. ^{4.} When the manufacturer provides the new motor vehicle or refund, the
23 consumer shall return the motor vehicle having the nonconformity to the

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.

***NOTE: In this provision, I modified the proposed text by changing "when" to "if." Under our drafting protocol, we use "if" and not "when" if an event might not occur. I also changed "lien interest" to "security interest" because that is the proper statutory term. See, e.g., ss. 342.19 and 342.22, as well as s. 218.0171 (2) (b) 2. b.

7

SECTION 4. 218.0171 (2) (c) 3. ^{X and 4.} of the statutes ^{is} 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 ⁹⁴⁵ 120 days after the offer under subd.

10

1, the manufacturer shall provide the consumer with the comparable new motor

11

vehicle. The manufacturer shall exercise due diligence in locating and providing a

12

comparable new motor vehicle within this ⁹⁴⁵ 120-day period. If no comparable new

13

motor vehicles exists or if a comparable new motor vehicle is otherwise unavailable

14

for delivery within this ⁹⁴⁵ 120-day period, the manufacturer shall provide a refund in

15

lieu of providing a comparable new motor vehicle and shall provide this refund no

16

later than ⁹⁴⁵ 120 days after the offer under subd. 1. ^{Insert 5-16}

***NOTE: I made some changes to the proposed text for purposes of technical accuracy and clarity.

17

SECTION 5. 218.0171 (2) (cm) 1. and 2. of the statutes are amended to read:

18

218.0171 (2) (cm) 1. To receive a refund due under par. (b) 3., a consumer

19

described under sub. (1) (b) 4. shall offer to the manufacturer of the motor vehicle

20

having the nonconformity to return that motor vehicle to that manufacturer. No

21

later than 30 days after that offer, the manufacturer shall provide the refund to the

Insert 5-10

Insert 5-17

1 consumer. During or prior to this 30-day period, the consumer shall provide to the
2 manufacturer ^{insert 6-2 ✓} all information timely requested and required by the manufacturer
3 and any written consent to allow the manufacturer to provide the refund. If the
4 consumer fails to provide any of this information by the end of this 30-day period,
5 the consumer may not bring an action under sub. (7). When the manufacturer
6 provides the refund, the consumer shall return the motor vehicle having the
7 nonconformity to the manufacturer.

8 2. To receive a refund due under par. (b) 3., a motor vehicle lessor shall offer to
9 the manufacturer of the motor vehicle having the nonconformity to transfer title of
10 that motor vehicle to that manufacturer. No later than 30 days after that offer, the
11 manufacturer shall provide the refund to the motor vehicle lessor. During or prior
12 to this 30-day period, the consumer shall provide to the manufacturer ^{insert 6-12 ✓} all
13 information timely requested and required by the manufacturer and any written
14 consent to allow the manufacturer to provide the refund. When the manufacturer
15 provides the refund, the motor vehicle lessor shall provide to the manufacturer the
16 certificate of title and all endorsements necessary to transfer title to the
17 manufacturer. If another person is in possession of the certificate of title, as shown
18 by the records of the department of transportation, that person shall, upon request
19 of the motor vehicle lessor, provide the certificate to the manufacturer or to the motor
20 vehicle lessor.

***NOTE: This provision (subd. 2.) incorporates changes made in the latest proposed language. With these changes, if a motor vehicle lessor requests a refund, the consumer (lessee), not the lessor, is required to provide information and consent to the manufacturer. In addition, the latest proposed language eliminates previous changes at the end of subd. 2.

21 **SECTION 6.** 218.0171 (6) of the statutes is repealed and recreated to read:

insert
7-1 ✓

1

218.0171 ^(b) ~~(6)~~ Notwithstanding sub^s (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 with respect to that motor vehicle. ✓

****NOTE: Several changes from the proposed language are made in this provision. First, I have attempted to correct the incorrect cross-reference. Second, I have revised language to conform to LRB drafting style. Finally, I have tried to clarify or refine the proposed language. For example, the language "agrees to" is superfluous because the settlement itself connotes the agreement. Also, the use of the plural "nonconformities" is inaccurate because the provision applies if there is only one nonconformity. I also believe it is necessary to clarify that release of the manufacturer from the lemon law applies only with respect to the dispute at issue, not with respect to all other vehicles as well.

5

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

6

218.0171 (7) ~~In~~ Subject to subs. (2) (c) 2. and (cm) 1. and (3), 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 18 ✓ ²⁴ months after first delivery of the motor vehicle to a consumer. The court shall or jury may award a consumer who prevails in such an action [✓] twice ^{up to} the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate. ✓

insert
7-12 ✓

13

SECTION 8. Initial applicability.

14

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

16

SECTION 9. Effective date.

17

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

19

(END)

D-Note

LRS-Inserts out of
Order

1

2

INSERT ANAL-A:

~~¶~~ 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. ~~NO~~
~~¶~~

3

INSERT ANAL-B:

~~(no ¶)~~ later of the election or offer. ~~NO~~
~~¶~~

4

INSERT ANAL-C:

~~(no ¶)~~ 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.

5

INSERT ANAL-D:

~~(no ¶)~~ , in a form and manner prescribed by the [✓]Department of Transportation, ~~NO~~
~~¶~~

6

INSERT ANAL-E:

~~(no ¶)~~ and instead allows an award of up to the amount of the prevailing consumer's pecuniary loss ~~NO~~
~~¶~~

7

8

INSERT 3-1:

9

[✓]**SECTION 1.** 218.0171 (1) (am) of the statutes is created to read:

10

218.0171 (1) (am) "Commercial motor vehicle"[✓] means a motor vehicle designed

11

to transport passengers or property and having one or more of the following

12

characteristics:[✓]



1 **INSERT 5-10:**

2 (no H) or the election of the new motor vehicle, whichever is later. NO H

3

4 **INSERT 5-16:**

5 (no H) or the election of the new motor vehicle, whichever is later. This subdivision
6 does not apply with respect to commercial motor vehicles.

7

8 **INSERT 5-17:**

9 H 4. Except as provided in this subdivision, if the consumer elects a comparable
10 new commercial motor vehicle, no later than 120 days after the offer under subd. 1.
11 or the election of the new commercial motor vehicle, whichever is later, the
12 manufacturer shall provide the consumer with the comparable new commercial
13 motor vehicle. The manufacturer shall exercise due diligence in locating and
14 providing a comparable new commercial motor vehicle within this 120-day period.
15 If no comparable new commercial motor vehicles exists or if a comparable new
16 commercial motor vehicle is otherwise unavailable for delivery within this 120-day
17 period, the manufacturer shall provide a refund in lieu of providing a comparable
18 new commercial motor vehicle and shall provide this refund no later than 120 days
19 after the offer under subd. 1. or the election of the new commercial motor vehicle,
20 whichever is later.

21

22

23 **INSERT 6-2:**

24 (no H) in a form and manner prescribed by the department of transportation. NO H

25

(end ins)

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16

INSERT 6-12:

(no #)

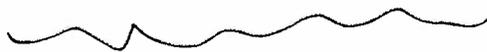
. in a form and manner prescribed by the department of transportation,

NO #

INSERT 7-12:

SECTION 3. 218.0171 (8) of the statutes is created to read:

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



SECTION 4. 227.01 (13) of the statutes is created to read:

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

(end ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2247/P1dn

ARG:.....

date

JLD

Please review the attached draft carefully to ensure that it is consistent with your intent. This draft reflects the contents of 2013 LRB-2179/P1, with the requested changes.

Regarding item 4) of the requested changes, it is easy to assume in reading s. 218.0171 (2) (b) and (c) that the process described in these provisions is chronological; that is, that the election of the refund or new vehicle always occurs only before the offer to transfer title to the old vehicle. This draft makes the applicable time period start running from the later of the election or the offer. The result of this change is, as you requested, to restart the countdown from the latest election.

In this draft, I have created a definition of "commercial motor vehicle" instead of cross-referencing the definition in s. 340.01 (8). Part of the definition in s. 340.01 (8) defines "commercial motor vehicle" according to how the vehicle is being used, which is something neither the manufacturer nor dealer may know when the vehicle is sold and the warranty issued. This draft defines "commercial motor vehicle" according to the design of the vehicle rather than actual use so that it is more clear to the manufacturer and dealer that the vehicle is or is not a commercial motor vehicle at the point of sale. Please let me know if you would prefer to use the definition in s. 340.01 (8) or have no definition.

The provisions of ch. 227 are somewhat ambiguous as to whether prescribing a form constitutes rulemaking by an agency. As a matter of caution, I included s. 227.01 (13) (yd) to clarify that DOT does not need to engage in rulemaking to prescribe this form. Please advise if you would like me to remove this provision, either because you want to require rulemaking or because you or DOT believes that rulemaking is not necessary under current law and the provision is therefore superfluous.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2247/P1dn
ARG:jld:jm

April 25, 2013

Please review the attached draft carefully to ensure that it is consistent with your intent. This draft reflects the contents of 2013 LRB-2179/P1, with the requested changes.

Regarding item 4) of the requested changes, it is easy to assume in reading s. 218.0171 (2) (b) and (c) that the process described in these provisions is chronological; that is, that the election of the refund or new vehicle always occurs only before the offer to transfer title to the old vehicle. This draft makes the applicable time period start running from the later of the election or the offer. The result of this change is, as you requested, to restart the countdown from the latest election.

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Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Oling, Lane
Sent: Friday, April 26, 2013 8:51 AM
To: Gary, Aaron
Subject: LRB 2247/P1

Good morning Aaron,

The draft looks great. The commercial vehicle definition is fine and we don't want to the DOT to do rulemaking for the form so the provision you have included from 227 should remain. There is one additional change I forgot to mention. We would like a provision specifically if the consumer elects to receive a refund requiring that the manufacturer has at least 10 days after receiving the information on the DOT form to give the refund. For example, if the consumer provides the DOT form on the 29th day of the 30 days allowed, we would like the manufacturer to have 10 additional days to give the refund before the civil suit provision kicks in. We want the manufacturer to have 10 days or until the end of the 30 days, whichever is longer.

Let me know if you have any questions. Again, this is time sensitive. Also, thanks so much for your quick turn-around so far.

Lane Oling
Office of Senator Jerry Petrowski
29th Senate District
(608) 266-2502