

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB200)

Received: 6/3/2013
Wanted: Today
For: Bill Kramer (608) 266-8580
May Contact:
Subject: Transportation - mot veh dealers

Received By: agary
Same as LRB: s0066
By/Representing: Curt David
Drafter: agary
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Kramer@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, civil actions, reasonable attempts to repair, comparable new vehicles, heavy duty vehicles

Instructions:

Assembly companion to s0066/1

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 6/3/2013	jdyer 6/3/2013	jfrantze 6/3/2013	_____			
/1	agary 6/4/2013			_____	srose 6/3/2013	srose 6/3/2013	
/2		jdyer 6/4/2013	jmurphy 6/4/2013	_____	srose 6/4/2013	srose 6/4/2013	

FE Sent For:

<END>

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/?	agary 6/3/2013	jdyer 6/3/2013	jfrantze 6/3/2013	_____			
/1		<i>2 6/4 jld</i>	<i>jm 6/4</i>	_____	srose 6/3/2013	srose 6/3/2013	

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/?	agary	1 6/3 jld		Jo 6/3			

FE Sent For:

<END>

Gary, Aaron

From: David, Curt
Sent: Friday, May 31, 2013 7:12 PM
To: Gary, Aaron
Cc: Oling, Lane; Fiocchi, Tim; David, Curt
Subject: Re: Tweaks to Sub Amendment for Lemon Law

Yes. We will need that for our exec on Wednesday.

Thanks Aaron. I know you are swamped.

Curt

On May 31, 2013, at 7:10 PM, "Gary, Aaron" <Aaron.Gary@legis.wisconsin.gov> wrote:

I have begun drafting this as a senate sub for Sen. Petrowski, since your office is providing the instructions. Do I enter the assembly sub for Rep. Kramer?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Oling, Lane
Sent: Friday, May 31, 2013 11:20 AM
To: Gary, Aaron
Cc: Fiocchi, Tim; David, Curt
Subject: FW: Tweaks to Sub Amendment for Lemon Law

Aaron,

Some tweaks to the sub amendment for the lemon law bill:

- 1) Change process when consumer elects a comparable vehicle. We would like to insert additional language that **if and only if** a consumer elects a comparable vehicle, the manufacturer must agree in writing within 30 days to either find a comparable vehicle or provide a full purchase price refund. Full purchase price refund should mean a 100% purchase price refund, as opposed to a use-reduction based refund provide for in statute. Once that agreement is entered into, then they will receive the extra time to comply (whether that is an extra 15 days or 60 days). Also, language should be included that ensures the manufacturer reserves the right to provide a full purchase price refund even if they agree to provide a comparable vehicle should that vehicle not exists or not be available for delivery. If the consumer elects a refund, nothing would change from current law under the sub amendment. It would still be subject to use reduction and required within 30 days. I have attached some potential language.
- 2) Include language in the written negotiated settlement provision that would prevent a manufacturer from using Power of Attorney on behalf of the consumer in transferring title. We want to prevent manufacturers from ignoring the branding requirement by



State of Wisconsin
2013 - 2014 LEGISLATURE

in
6/3
NOW



LRBs0066/1
ARG:jld:jf

50068/1

stays
R MNR

Assembly
SENATE SUBSTITUTE AMENDMENT,
Assembly
TO SENATE BILL 182 200

D-Note

4

Regen

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

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

7 SECTION 1. 218.0171 (1) (bt) of the statutes is created to read:
8 218.0171 (1) (bt) "Heavy-duty vehicle" means any motor vehicle used on a
9 highway in interstate commerce to transport passengers or property if any of the
10 following applies:
11 1. The motor vehicle has a gross vehicle weight rating or actual gross weight
12 of more than 10,000 pounds.

1 2. The motor vehicle is designed or used to transport more than 8 passengers,
2 including the driver, for compensation.

3 3. The motor vehicle is designed or used to transport more than 15 passengers,
4 including the driver, and is not used to transport passengers for compensation.

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

6 218.0171 (1) (g) “Out of service,” with respect to a motor vehicle, means that
7 the vehicle is unable to be used by the consumer for the vehicle’s intended purpose
8 as a result of any of the following:

9 1. The vehicle is in the possession of the manufacturer, motor vehicle lessor, or
10 any of the manufacturer’s authorized motor vehicle dealers for the purpose of
11 performing or attempting repairs to correct a nonconformity.

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

13 a. The vehicle has a nonconformity.

14 b. The consumer has reported, on the form specified in sub. (8) (a) 1., the
15 nonconformity to the manufacturer, motor vehicle lessor, or manufacturer’s
16 authorized motor vehicle dealer and the manufacturer, lessor, or dealer has refused
17 to accept the vehicle for the purpose of performing or attempting subsequent repairs.

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

19 218.0171 (2) (a) If a new motor vehicle does not conform to an applicable
20 express warranty and the consumer reports the nonconformity to the manufacturer,
21 the motor vehicle lessor, or any of the manufacturer’s authorized motor vehicle
22 dealers on the form specified in sub. (8) (a) 1. and makes the motor vehicle available
23 for repair before the expiration of the warranty or one year after first delivery of the
24 motor vehicle to a consumer, whichever is sooner, the nonconformity shall be
25 repaired.

1 **SECTION 4.** 218.0171 (2) (b) 1. of the statutes is amended to read:

2 218.0171 (2) (b) 1. If after a reasonable attempt to repair the nonconformity is
3 not repaired and if the consumer provides the manufacturer with the form specified
4 in sub. (8) (a) 2. or 3., the manufacturer shall carry out the requirement under subd.
5 2. or 3., whichever is appropriate.

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

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

10 **SECTION 6.** 218.0171 (2) (c) of the statutes is amended to read:

11 218.0171 (2) (c) 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 later than 30 days after that offer, the
15 manufacturer shall provide the consumer with the ~~comparable new motor vehicle or~~
16 refund. When the manufacturer provides the ~~new motor vehicle or~~ refund, the
17 consumer shall return the motor vehicle having the nonconformity to the
18 manufacturer and provide the manufacturer with the certificate of title and all
19 endorsements necessary to transfer title to the manufacturer. If another person is
20 in possession of the certificate of title, as shown by the records of the department of
21 transportation, that person shall, upon request of the consumer, provide the
22 certificate of title to the manufacturer ~~or to the consumer~~ upon satisfaction of any
23 security interest in the motor vehicle.

24 **SECTION 7.** 218.0171 (2) (cg) of the statutes is created to read:

1 218.0171 (2) (cg) 1. If a consumer described under sub. (1) (b) 1., 2., or 3. elects
2 a comparable new motor vehicle on the form specified in sub. (8) (a) 2., no later than
3 30 days after receiving this form the manufacturer shall agree in writing to provide
4 a comparable new motor vehicle or a full purchase price refund. Upon the consumer's
5 receipt of this writing, the manufacturer shall have until the 45th day after receiving
6 from the consumer the form specified in sub. (8) (a) 2. to either provide the
7 comparable new motor vehicle or a full purchase price refund. During this period,
8 the manufacturer shall exercise due diligence in locating and providing a comparable
9 new motor vehicle. If the manufacturer agrees to provide a comparable new motor
10 vehicle, the manufacturer retains the right to provide a full purchase price refund
11 if no comparable new motor vehicle exists or cannot be delivered within this 45-day
12 period. This subdivision does not apply with respect to heavy-duty vehicles.

13 2. If a consumer described under sub. (1) (b) 1., 2., or 3. elects a comparable new
14 motor vehicle on the form specified in sub. (8) (a) 2., no later than 30 days after
15 receiving this form the manufacturer shall agree in writing to provide a comparable
16 new motor vehicle or a full purchase price refund. Upon the consumer's receipt of
17 this writing, the manufacturer shall have until the 90th day after receiving from the
18 consumer the form specified in sub. (8) (a) 2. to either provide the comparable new
19 motor vehicle or a full purchase price refund. During this period, the manufacturer
20 shall exercise due diligence in locating and providing a comparable new motor
21 vehicle. If the manufacturer agrees to provide a comparable new motor vehicle, the
22 manufacturer retains the right to provide a full purchase price refund if no
23 comparable new motor vehicle exists or cannot be delivered within this 90-day
24 period. This subdivision applies only with respect to heavy-duty vehicles.

1 3. When a manufacturer provides a new motor vehicle under subd. 1. or 2., the
2 consumer shall return the motor vehicle having the nonconformity to the
3 manufacturer and provide the manufacturer with the certificate of title and all
4 endorsements necessary to transfer title to the manufacturer. If another person is
5 in possession of the certificate of title, as shown by the records of the department of
6 transportation, that person shall, upon request of the consumer, provide the
7 certificate of title to the manufacturer upon satisfaction of any security interest in
8 the motor vehicle.

9 **SECTION 8.** 218.0171 (2) (cq) of the statutes is amended to read:

10 218.0171 (2) (cq) Upon payment of a refund to a consumer under par. (b) 2. b.
11 or (cg) 1. or 2., the manufacturer shall provide to the consumer a written statement
12 that specifies the trade-in amount previously applied under s. 77.51 (12m) (b) 5. or
13 6. or (15b) (b) 5. or 6. toward the sales price of the motor vehicle having the
14 nonconformity and the date on which the manufacturer provided the refund.

15 **SECTION 9.** 218.0171 (2) (d) of the statutes is amended to read:

16 218.0171 (2) (d) No motor vehicle returned by a consumer or motor vehicle
17 lessor in this state under par. (b) or sub. (6m), or by a consumer or motor vehicle lessor
18 in another state under a similar law of that state, may be sold or leased again in this
19 state unless full disclosure of the reasons for return is made to any prospective buyer
20 or lessee. A manufacturer may not use a power of attorney to act as an agent of a
21 consumer for purposes of transferring title to a motor vehicle returned to the
22 manufacturer under this section.

23 **SECTION 10.** 218.0171 (5) of the statutes is amended to read:

24 218.0171 (5) This Except as provided in sub. (7) (b) and (c), this section does
25 not limit rights or remedies available to a consumer under any other law.

1 **SECTION 11.** 218.0171 (6m) of the statutes is created to read:

2 218.0171 **(6m)** Notwithstanding subs. (2) (b) and (6), if the consumer enters
3 into a negotiated written settlement with the manufacturer regarding any motor
4 vehicle nonconformity, the manufacturer shall no longer be subject to any
5 requirement of this section, except for sub. (2) (d), with respect to that motor vehicle.

6 **SECTION 12.** 218.0171 (7) of the statutes is renumbered 218.0171 (7) (a) and
7 amended to read:

8 218.0171 **(7) (a)** In addition to pursuing any other remedy, a consumer may
9 bring an action to recover for any damages caused by a violation of this section if the
10 action is commenced within 36 months after first delivery of the motor vehicle to a
11 consumer. The court shall award a consumer who prevails in such an action twice
12 the amount of any pecuniary loss, together with costs, disbursements and reasonable
13 attorney fees, and may award any equitable relief the court determines appropriate.

14 **SECTION 13.** 218.0171 (7) (b) and (c) of the statutes are created to read:

15 218.0171 **(7) (b)** Notwithstanding ss. 799.21 (3) and 805.01, a trial by jury is
16 not available in any action for a violation under this section.

17 (c) Notwithstanding any other provision of this section or ch. 802, 804, or 806,
18 in an action for a violation under this section, if a court finds that any party to the
19 action has intentionally failed to reasonably cooperate with another party's efforts
20 to comply with obligations under this section, for purposes of hindering the other
21 party's ability to comply with or seek recovery under this section, the court may
22 extend any deadlines specified in this section, reduce any damages, attorney fees, or
23 costs that may be awarded under par. (a), strike pleadings, or enter default judgment
24 against the offending party.

25 **SECTION 14.** 218.0171 (8) of the statutes is created to read:

1 218.0171 (8) (a) The department of transportation shall prescribe one or more
2 forms for consumers to use for all of the following:

3 1. To report a nonconformity to the manufacturer, the motor vehicle lessor, or
4 any of the manufacturer's authorized motor vehicle dealers for the purpose of having
5 the nonconformity repaired.

6 2. To elect that a manufacturer replace a motor vehicle with a comparable new
7 motor vehicle as provided under sub. (2) (b) 2. a.

8 3. To elect that a manufacturer make a refund as provided under sub. (2) (b)
9 2. or 3.

10 (b) The department shall make any form specified in par. (a) available on the
11 department's Internet site. Any form specified in par. (a) shall require the consumer
12 to provide all of the following information:

13 1. The consumer's contact information.

14 2. Identification of the motor vehicle dealer from which the motor vehicle was
15 purchased, the date of delivery of the motor vehicle from the dealer, and the purchase
16 price of the motor vehicle.

17 3. Identification of any holder of a perfected security interest in the consumer's
18 motor vehicle.

19 4. The mileage of the motor vehicle at the time the first nonconformity is
20 asserted to have occurred.

21 5. If the form is to be used for the purpose of making an election described in
22 par. (a) 2. or 3., a place on the form to make the election.

23 6. An itemization of any other damages claimed by the consumer.

24 (c) If any form specified in par. (a) is required under this section to be used by
25 a consumer and the consumer has not provided all information required under par.

1 (b) to the satisfaction of the manufacturer, the manufacturer may, within 30 days of
2 receiving the form, request that the consumer provide additional information
3 required under par. (b). If the manufacturer makes such a timely request for
4 additional information, any time period under sub. (2) (c), (cg) 1. or 2., or (cm) 1. does
5 not begin to elapse until the consumer provides this additional information.

6 **SECTION 15.** 227.01 (13) (yd) of the statutes is created to read:

7 227.01 (13) (yd) Relates to any form prescribed by the department of
8 transportation under s. 218.0171 (8).

9 **SECTION 16. Initial applicability.**

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

12 **SECTION 17. Effective date.**

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

15 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

June 3, 2013

LRBs0066/1dn

ARG:jld:jf



Keep

Please review the attached substitute amendment carefully to ensure that it is consistent with your intent.

Under current law, the term "full purchase price" is used without definition. I therefore do not believe it is necessary to provide a definition in this draft. I note, however, that current law affords a consumer who elects a refund with additional items of recovery beyond the full purchase price minus a reasonable allowance for use. Under s. 218.0171 (2) (b) 2. b., the manufacturer must refund "the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use." In this substitute amendment, it is unclear whether a manufacturer that provides a refund when a comparable new motor vehicle is requested must also include these additional cost items with the full purchase price.

The provision in this draft eliminating jury trials in lemon law cases might be subject to challenge as unconstitutional. See Art. I, sec. 5, of the Wisconsin Constitution ("The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy").

With regard to the DOT form to be used by a consumer, I have retained the provisions in AB-200/SB-182 that create a rule-making exception for the form, although the instructions state that DOT would have rule-making authority. The entire substitute amendment hinges on this form. After 2011 Wisconsin Act 21, the rule-making process is lengthy (possibly years long) and unpredictable and can be easily thwarted by the executive branch. For this reason, I have kept the rule-making exemption, but if you prefer the draft could provide for emergency rule-making and numerous rule-making exceptions instead.

Under current law, the lemon law does not apply to vehicle combinations such as truck-trailer or truck-semitrailer combinations. I have assumed that you do not want to expand the lemon law to apply to vehicle combinations and have therefore modified the proposed definition of "heavy-duty vehicle" accordingly.

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

*
*
*

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

LRBs0068/1dn
ARG:jld:jf

June 3, 2013

Please review the attached substitute amendment carefully to ensure that it is consistent with your intent.

Under current law, the term “full purchase price” is used without definition. I therefore do not believe it is necessary to provide a definition in this draft. I note, however, that current law affords a consumer who elects a refund with additional items of recovery beyond the full purchase price minus a reasonable allowance for use. Under s. 218.0171 (2) (b) 2. b., the manufacturer must refund “the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.” In this substitute amendment, it is unclear whether a manufacturer that provides a refund when a comparable new motor vehicle is requested must also include these additional cost items with the full purchase price.

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

Gary, Aaron

From: David, Curt
Sent: Tuesday, June 04, 2013 11:35 AM
To: Probst, Nick; Gary, Aaron; Oling, Lane
Subject: RE: Draft for Kramer
Attachments: Changes to Substitute Amendment 1 Instructions.docx

Changes to our substitute amendment (LRBs0068/1) to AB200

Aaron,

If you could make these changes we would be happy to have a /2.

Thank you again for getting this done for us.

Curt

From: Probst, Nick
Sent: Tuesday, June 04, 2013 11:20 AM
To: Gary, Aaron
Cc: David, Curt
Subject: Draft for Kramer

Aaron,

There are a few changes on the Kramer draft that Curt will send over. Please return the revisions to meet a committee deadline before 3:30.

Thanks for the help,

Nick

Nicholas Probst
Legal Counsel
Office of Assembly Speaker

Definition of Heavy Duty Vehicle: Not intended to include vehicles not covered by lemon law. Amend language of definition to get rid of “interstate commerce” language and “passenger subsections as follows:

Page 1 lines 8- 10 delete: “~~used on a highway in interstate commerce to transport passengers or property if any of the following applies:~~”

Page 1 line 11 delete “~~The motor vehicle has~~” and insert “having”

Page 2 delete lines 1-2: “~~The motor vehicle is designed or used to transport more than 8 passengers, including the driver, for compensation.~~”

Page 2 delete lines 3-4: “~~The motor vehicle is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.~~”

Final Text: ““Heavy-duty vehicle” means any motor vehicle having a gross vehicle weight rating or actual gross weight of more than 10,000 pounds.”

Jury Trial Issue: Remove this prohibition.

Page 6 delete lines 15-16: “~~Notwithstanding ss. 799.21(3) and 805.01, a trial by jury is not available in any action for a violation under this section.~~”

Amend Good Faith Provision

Page 6 line 19 delete “~~intentionally~~”

Page 6 lines 20-21 delete “~~for purposes of hindering~~” and insert “which hinder”

Amend Out of Service Definition

Page 2 line 13 delete “~~:~~” and insert “which substantially affects the use or safety of the vehicle.”

Page 2 delete lines 14 – 17 “~~The consumer has reported, on the form specified in sub. (8) (a) (1), the nonconformity to the manufacturer, motor vehicle lessor, or manufacturer’s authorized motor vehicle dealer and the manufacturer, lessor or dealer has refused to accept the vehicle for the purpose of performing or attempting subsequent repairs.~~”

“Full Purchase Price Refund”

We want this language to reflect the purchase price and other costs *without* taking into account the “reasonable use” deduction. The goal here is to completely refund the customer what he or she paid when purchasing the vehicle. For example, they paid \$20,000 for the car, the refund under this subsection should be \$20,000.

Negotiated Written Settlement

Page 6 lines 2 through 5. Amend this language so that this section only applies to consumers of heavy duty vehicles as defined by this section. Current law, with respect to a waiver of rights being void under s. 218.0171(6), would still apply consumer of non-heavy duty vehicles.

Heavy Duty Vehicles

Page 4 line 17 delete “~~90th~~” and insert “120th”



in
6/4

2

needed
today by 3:30 pm

**ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 200**

Regen

Put
in
6/4

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

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8 218.0171 (1) (bt) "Heavy-duty vehicle" means any motor vehicle used on a
9 highway in interstate commerce to transport passengers or property if any of the
10 following applies:

11 1. The motor vehicle has a gross vehicle weight rating or actual gross weight
12 of more than 10,000 pounds.

having

NO
#

NO
#

1 2. The motor vehicle is designed or used to transport more than 8 passengers,
2 including the driver, for compensation.

3 3. The motor vehicle is designed or used to transport more than 15 passengers,
4 including the driver, and is not used to transport passengers for compensation.

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

6 218.0171 (1) (g) "Out of service," with respect to a motor vehicle, means that
7 the vehicle is unable to be used by the consumer for the vehicle's intended purpose
8 as a result of any of the following:

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

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

13 a. The vehicle has a nonconformity.

14 b. The consumer has reported, on the form specified in sub. (8) (a) 1., the
15 nonconformity to the manufacturer, motor vehicle lessor, or manufacturer's
16 authorized motor vehicle dealer and the manufacturer, lessor, or dealer has refused
17 to accept the vehicle for the purpose of performing or attempting subsequent repairs.

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

19 218.0171 (2) (a) If a new motor vehicle does not conform to an applicable
20 express warranty and the consumer reports the nonconformity to the manufacturer,
21 the motor vehicle lessor, or any of the manufacturer's authorized motor vehicle
22 dealers on the form specified in sub. (8) (a) 1. and makes the motor vehicle available
23 for repair before the expiration of the warranty or one year after first delivery of the
24 motor vehicle to a consumer, whichever is sooner, the nonconformity shall be
25 repaired.

NO #

insert 2-13 ✓

no #

1 **SECTION 4.** 218.0171 (2) (b) 1. of the statutes is amended to read:

2 218.0171 (2) (b) 1. If after a reasonable attempt to repair the nonconformity is
3 not repaired and if the consumer provides the manufacturer with the form specified
4 in sub. (8) (a) 2. or 3., the manufacturer shall carry out the requirement under subd.
5 2. or 3., whichever is appropriate.

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

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

10 **SECTION 6.** 218.0171 (2) (c) of the statutes is amended to read:

11 218.0171 (2) (c) 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 later than 30 days after that offer, the
15 manufacturer shall provide the consumer with the ~~comparable new motor vehicle or~~
16 refund. When the manufacturer provides the ~~new motor vehicle or~~ refund, the
17 consumer shall return the motor vehicle having the nonconformity to the
18 manufacturer and provide the manufacturer with the certificate of title and all
19 endorsements necessary to transfer title to the manufacturer. If another person is
20 in possession of the certificate of title, as shown by the records of the department of
21 transportation, that person shall, upon request of the consumer, provide the
22 certificate of title to the manufacturer ~~or to the consumer~~ upon satisfaction of any
23 security interest in the motor vehicle.

24 **SECTION 7.** 218.0171 (2) (cg) of the statutes is created to read:

1 218.0171 (2) (cg) 1. If a consumer described under sub. (1) (b) 1., 2., or 3. elects
2 a comparable new motor vehicle on the form specified in sub. (8) (a) 2., no later than
3 30 days after receiving this form the manufacturer shall agree in writing to provide
4 a comparable new motor vehicle or a ~~full purchase price refund~~. Upon the consumer's
5 receipt of this writing, the manufacturer shall have until the 45th day after receiving
6 from the consumer the form specified in sub. (8) (a) 2. to either provide the
7 comparable new motor vehicle or a ~~full purchase price~~ refund. During this period,
8 the manufacturer shall exercise due diligence in locating and providing a comparable
9 new motor vehicle. If the manufacturer agrees to provide a comparable new motor
10 vehicle, the manufacturer retains the right to provide a ~~full purchase price~~ refund
11 if no comparable new motor vehicle exists or cannot be delivered within this 45-day
12 period. This subdivision does not apply with respect to heavy-duty vehicles.

13 2. If a consumer described under sub. (1) (b) 1., 2., or 3. elects a comparable new
14 motor vehicle on the form specified in sub. (8) (a) 2., no later than 30 days after
15 receiving this form the manufacturer shall agree in writing to provide a comparable
16 new motor vehicle or a ~~full purchase price refund~~. Upon the consumer's receipt of
17 this writing, the manufacturer shall have until the ¹²⁰~~90~~th day after receiving from the
18 consumer the form specified in sub. (8) (a) 2. to either provide the comparable new
19 motor vehicle or a ~~full purchase price~~ refund. During this period, the manufacturer
20 shall exercise due diligence in locating and providing a comparable new motor
21 vehicle. If the manufacturer agrees to provide a comparable new motor vehicle, the
22 manufacturer retains the right to provide a ~~full purchase price~~ refund if no
23 comparable new motor vehicle exists or cannot be delivered within this ¹²⁰~~90~~-day
24 period. This subdivision applies only with respect to heavy-duty vehicles.

1 3. When a manufacturer provides a new motor vehicle under subd. [✓]1. or 2., the
2 consumer shall return the motor vehicle having the nonconformity to the
3 manufacturer and provide the manufacturer with the certificate of title and all
4 endorsements necessary to transfer title to the manufacturer. If another person is
5 in possession of the certificate of title, as shown by the records of the department of
6 transportation, that person shall, upon request of the consumer, provide the
7 certificate of title to the manufacturer upon satisfaction of any security interest in
8 the motor vehicle.

9 **SECTION 8.** 218.0171 (2) (cq) of the statutes is amended to read:

10 218.0171 (2) (cq) Upon payment of a refund to a consumer under par. (b) 2. b.
11 or (cg) 1. or 2.[✓], the manufacturer shall provide to the consumer a written statement
12 that specifies the trade-in amount previously applied under s. 77.51 (12m) (b) 5. or
13 6. or (15b) (b) 5. or 6. toward the sales price of the motor vehicle having the
14 nonconformity and the date on which the manufacturer provided the refund.

15 **SECTION 9.** 218.0171 (2) (d) of the statutes is amended to read:

16 218.0171 (2) (d) No motor vehicle returned by a consumer or motor vehicle
17 lessor in this state under par. (b) or sub. (6m)[✓], or by a consumer or motor vehicle lessor
18 in another state under a similar law of that state, may be sold or leased again in this
19 state unless full disclosure of the reasons for return is made to any prospective buyer
20 or lessee. A manufacturer may not use a power of attorney to act as an agent of a
21 consumer for purposes of transferring title to a motor vehicle returned to the
22 manufacturer under this section.

23 **SECTION 10.** 218.0171 (5) of the statutes is amended to read:

24 218.0171 (5) This Except as provided in sub. (7) (b) and (c)[✓], this section does
25 not limit rights or remedies available to a consumer under any other law.

SECTION 11. 218.0171 (6m) of the statutes is created to read:

218.0171 (6m) Notwithstanding subs. (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, except for sub. (2) (d), with respect to that motor vehicle.

insert 6-5 ✓

SECTION 12. 218.0171 (7) of the statutes is renumbered 218.0171 (7) (a) and amended to read:

218.0171 (7) (a) 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 36 months after first delivery of the motor vehicle to a consumer. The court shall award a consumer who prevails in such an action ~~twice~~ the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and may award any equitable relief the court determines appropriate.

SECTION 13. 218.0171 (7) (b) and (c) of the statutes are created to read:

~~218.0171 (7) (b) Notwithstanding ss. 799.21 (3) and 805.01, a trial by jury is not available in any action for a violation under this section.~~

NO #

(c) Notwithstanding any other provision of this section or ch. 802, 804, or 806, in an action for a violation under this section, if a court finds that any party to the action has intentionally failed to reasonably cooperate with another party's efforts to comply with obligations under this section, for purposes of hindering the other party's ability to comply with or seek recovery under this section, the court may extend any deadlines specified in this section, reduce any damages, attorney fees, or costs that may be awarded under par. (a), strike pleadings, or enter default judgment against the offending party.

SECTION 14. 218.0171 (8) of the statutes is created to read:

1 218.0171 (8) (a) The department of transportation shall prescribe one or more
2 forms for consumers to use for all of the following:

3 1. To report a nonconformity to the manufacturer, the motor vehicle lessor, or
4 any of the manufacturer's authorized motor vehicle dealers for the purpose of having
5 the nonconformity repaired.

6 2. To elect that a manufacturer replace a motor vehicle with a comparable new
7 motor vehicle as provided under sub. (2) (b) 2. a. ✓

8 3. To elect that a manufacturer make a refund as provided under sub. (2) (b)
9 2. or 3.

10 (b) The department shall make any form specified in par. (a) available on the
11 department's Internet site. Any form specified in par. (a) shall require the consumer
12 to provide all of the following information:

13 1. The consumer's contact information.

14 2. Identification of the motor vehicle dealer from which the motor vehicle was
15 purchased, the date of delivery of the motor vehicle from the dealer, and the purchase
16 price of the motor vehicle.

17 3. Identification of any holder of a perfected security interest in the consumer's
18 motor vehicle.

19 4. The mileage of the motor vehicle at the time the first nonconformity is
20 asserted to have occurred.

21 5. If the form is to be used for the purpose of making an election described in
22 par. (a) 2. or 3., a place on the form to make the election.

23 6. An itemization of any other damages claimed by the consumer.

24 (c) If any form specified in par. (a) is required under this section to be used by
25 a consumer and the consumer has not provided all information required under par.

1 (b) to the satisfaction of the manufacturer, the manufacturer may, within 30 days of
2 receiving the form, request that the consumer provide additional information
3 required under par. (b). If the manufacturer makes such a timely request for
4 additional information, any time period under sub. (2) (c), (cg) 1. or 2.,[✓] or (cm) 1. does
5 not begin to elapse until the consumer provides this additional information.

6 **SECTION 15.** 227.01 (13) (yd) of the statutes is created to read:

7 227.01 (13) (yd) Relates to any form prescribed by the department of
8 transportation under s. 218.0171 (8).[✓]

9 **SECTION 16. Initial applicability.**

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

12 **SECTION 17. Effective date.**

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

15 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0068/2ins
ARG:.....

1

2

3

INSERT 2-13:

4 (no P) ~~which~~ ^{e that} substantially affects the use or safety of the vehicle

NO
P

5

6

INSERT 4-4:

7 (no P) refund of the full purchase price plus any sales tax, finance charge, amount paid
8 by the consumer at the point of sale, and collateral costs

NO
P

9

INSERT 4-16:

10 (no P) refund of the full purchase price plus any sales tax, finance charge, amount paid
11 by the consumer at the point of sale, and collateral costs

NO
P

12

13

INSERT 6-5:

14 (no P) This subsection[✓] applies only with respect to heavy-duty[✓] vehicles.

15

16