



2003 ASSEMBLY BILL 856

February 19, 2004 - Introduced by Representatives GUNDRUM, GRONEMUS, PLOUFF, MONTGOMERY, HUEBSCH, KESTELL, SUDER, FREESE, HONADEL, MUSSER, LADWIG, AINSWORTH, J. FITZGERALD, HUNDERTMARK, NISCHKE, VRAKAS, MCCORMICK and TOWNS, cosponsored by Senator ZIEN. Referred to Committee on Judiciary.

1 **AN ACT to amend** 218.0171 (1) (f), 218.0171 (1) (h) 2., 218.0171 (2) (a), 218.0171
2 (2) (b) 1., 218.0171 (2) (b) 2. (intro.), 218.0171 (2) (b) 2. a., 218.0171 (2) (b) 2. b.,
3 218.0171 (2) (c), 218.0171 (3) and 218.0171 (7); and **to create** 218.0171 (1) (am)
4 of the statutes; **relating to:** repair, replacement, and refund under new motor
5 vehicle warranties.

Analysis by the Legislative Reference Bureau

Currently the law governing repair, replacement and refund under a motor vehicle warranty, commonly called the “lemon law,” provides remedies to a person who purchases or leases a new motor vehicle. Among other things, the lemon law requires a motor vehicle dealer to repair a nonconformity (a condition or defect that substantially impairs the use, value, or safety of the motor vehicle) that is covered by an express warranty applicable to a new motor vehicle sold or leased to a consumer, and that was not caused by the consumer’s use or neglect. In general, if the nonconformity cannot be repaired and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor or any of the manufacturer’s authorized motor vehicle dealers within one year after the first delivery of the motor vehicle to the consumer or before the expiration of the express warranty, then the consumer may require the manufacturer to do one of the following: 1) accept return of the motor vehicle and replace it with a comparable new motor vehicle and refund any collateral costs incurred by the consumer; or 2) accept return of the motor vehicle and refund the full purchase price of the motor vehicle plus any sales tax, finance charge,

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amount paid by the consumer at the point of sale, and collateral costs, less a reasonable amount for use.

Under this bill, a manufacturer may opt to refund the purchase price of a motor vehicle unless the consumer opts for a replacement vehicle when the consumer offers to transfer title to the manufacturer in order to receive a replacement or refund. The bill also provides that a vehicle must be out of service and in the custody of the manufacturer or its agent for 30 days before the customer becomes eligible for a replacement or refund.

The bill also excludes from the definition of a “nonconformity” those portions of a motor home that are used or designed primarily as living facilities. Finally, the bill changes the lemon law as it relates to commercial motor vehicles by granting a manufacturer a final attempt to cure within a certain time frame before a replacement or refund may be granted, and extends the time for a replacement of the commercial motor vehicle if a final cure cannot be effected. However, if the manufacturer cannot replace a commercial motor vehicle within 30 days, the manufacturer must, upon request by the consumer, provide a vehicle for the consumer’s temporary use until the manufacturer can provide the replacement commercial motor vehicle.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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) “Commercial vehicle” means a motor vehicle designed or
3 used to transport passengers or property for commercial purposes and having at
4 least one of the following characteristics:

5 1. The vehicle is a single vehicle with a gross vehicle weight rating, registered
6 weight, or actual gross weight of 16,001 or more pounds.

7 2. The vehicle is a combination vehicle with a gross combination weight rating,
8 registered weight, or actual gross weight of 16,001 or more pounds inclusive of a
9 towed unit with a gross weight weight rating, registered weight, or actual gross
10 weight of more than 10,000 pounds.

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

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1 218.0171 (1) (f) “Nonconformity” means a condition or defect which
2 substantially impairs the use, value or safety of a motor vehicle, and is covered by
3 an express warranty applicable to the motor vehicle or to a component of the motor
4 vehicle, ~~but~~. “Nonconformity” does not include a condition or defect which is the
5 result of abuse, neglect or unauthorized modification or alteration of the motor
6 vehicle by a consumer, or a condition or defect affecting those portions of a motor
7 home designed, used, or maintained primarily as living facilities. Living facilities
8 of a motor home include the flooring, appliances, plumbing system and fixtures, roof
9 air conditioner, television and entertainment systems, furnace, generator, electrical
10 systems other than automotive circuits, the side entrance door, exterior
11 compartments, and any windows other than the windshield and driver and front
12 passenger windows.

13 **SECTION 3.** 218.0171 (1) (h) 2. of the statutes is amended to read:

14 218.0171 (1) (h) 2. The motor vehicle is out of service and in the custody of the
15 manufacturer, an authorized dealer, or an appropriate authorized warranty repair
16 facility due to repair attempts for an aggregate of at least 30 days because of
17 warranty nonconformities. Time spent in the custody of the manufacturer,
18 authorized dealer, or authorized warranty repair facility during the final attempt to
19 cure provided under sub. (2) (a) may not be included in the 30-day time period under
20 this paragraph.

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

22 218.0171 (2) (a) If a new motor vehicle does not conform to an applicable
23 express warranty and the consumer reports the nonconformity to the manufacturer,
24 the motor vehicle lessor or, any of the manufacturer’s authorized motor vehicle
25 dealers, or an appropriate authorized warranty repair facility and makes the motor

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1 vehicle available for repair before the expiration of the warranty or one year after
2 first delivery of the motor vehicle to a consumer, whichever is sooner, the
3 nonconformity shall be repaired. In the case of a commercial vehicle or a motor home,
4 if the manufacturer, its agent, its authorized dealer, or an appropriate authorized
5 warranty repair facility is unable to repair or correct any nonconformity in a new
6 motor vehicle after a reasonable attempt to repair, the consumer shall notify the
7 manufacturer by certified mail, return receipt requested, at the address provided by
8 the manufacturer. The manufacturer shall, within 7 days after receipt of such
9 notification, notify the consumer of a reasonably accessible repair facility and, after
10 delivery of the vehicle to the designated repair facility by the consumer, the
11 manufacturer shall, within 14 days, conform the motor vehicle to the warranty. If
12 the manufacturer fails to notify the consumer of a reasonably accessible repair
13 facility or perform the repairs within the time periods prescribed in this subsection,
14 the requirement that the manufacturer of the commercial vehicle or motor home be
15 given a final attempt to cure the nonconformity does not apply.

16 **SECTION 5.** 218.0171 (2) (b) 1. of the statutes is amended to read:

17 218.0171 (2) (b) 1. If after a reasonable attempt to repair or a final attempt to
18 cure provided under par. (a) the nonconformity is not repaired, the manufacturer
19 shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

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

21 218.0171 (2) (b) 2. (intro.) ~~At the direction of a consumer described under sub.~~
22 ~~(1) (b) 1., 2. or 3.,~~ The manufacturer shall do one of the following:

23 **SECTION 7.** 218.0171 (2) (b) 2. a. of the statutes is amended to read:

24 218.0171 (2) (b) 2. a. Accept return of the motor vehicle and replace the motor
25 vehicle with a comparable new motor vehicle and refund any collateral costs. The

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1 consumer has the option of selecting a comparable new vehicle under this paragraph,
2 except that, in lieu of a comparable new vehicle, the manufacturer may elect to
3 provide a refund under this paragraph upon waiver by the manufacturer of the
4 allowance for a use deduction provided under this paragraph. If the consumer selects
5 a comparable new vehicle, he or she shall inform the manufacturer in the offer made
6 pursuant to par. (c).

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

8 218.0171 (2) (b) 2. b. Accept return of the motor vehicle and refund to the
9 consumer and to any holder of a perfected security interest in the consumer's motor
10 vehicle, as their interest may appear, the full purchase price plus any sales tax,
11 finance charge, amount paid by the consumer at the point of sale and collateral costs,
12 less a reasonable allowance for use. Under this subdivision, a reasonable allowance
13 for use may not exceed the amount obtained by multiplying the full purchase price
14 of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a
15 motorcycle, 20,000, or, for a motor home, 60,000, and the numerator of which is the
16 number of miles the motor vehicle was driven before the consumer first reported the
17 nonconformity to the motor vehicle dealer. The consumer has the option of selecting
18 a refund under this paragraph. If the consumer selects a refund, he or she shall
19 inform the manufacturer in the offer made pursuant to par. (c), and the manufacturer
20 shall provide a refund.

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

22 218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due
23 under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer
24 to the manufacturer of the motor vehicle having the nonconformity to transfer title
25 of that motor vehicle to that manufacturer. No later than 30 days after that offer, the

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1 manufacturer shall provide the consumer with the comparable new motor vehicle or
2 refund, except that, if the motor vehicle is a commercial vehicle, the manufacturer
3 shall provide the owner, within 30 days after the offer, with a refund or with a
4 commitment in writing that the manufacturer will provide the owner with a
5 comparable new commercial vehicle within 120 days from the date of the written
6 commitment. The commercial vehicle manufacturer shall exercise due diligence in
7 providing a comparable commercial vehicle. If the commercial vehicle manufacturer
8 opts to provide a comparable vehicle but is unable to do so within 30 days, the
9 manufacturer shall provide, at the direction of the consumer, a vehicle for the
10 temporary use by the consumer until the manufacturer provides the comparable new
11 vehicle. When the manufacturer provides the new motor vehicle or refund, the
12 consumer shall return the motor vehicle having the nonconformity to the
13 manufacturer and provide the manufacturer with the certificate of title and all
14 endorsements necessary to transfer title to the manufacturer.

15 **SECTION 10.** 218.0171 (3) of the statutes is amended to read:

16 218.0171 (3) If there is available to the consumer an informal dispute
17 settlement procedure ~~which~~ that is certified under sub. (4), the consumer may not
18 bring an action under sub. (7) or make an offer specified in sub. (2) (c) or (cm) unless
19 he or she first ~~resorts to~~ completes that procedure and provides written notice to the
20 manufacturer that he or she rejects the decision rendered in the procedure.

21 **SECTION 11.** 218.0171 (7) of the statutes is amended to read:

22 218.0171 (7) In addition to pursuing any other remedy, a consumer may bring
23 an action to recover for any damages caused by a violation of ~~this section.~~ The sub.
24 (2) (b). If the consumer has been awarded relief under an informal dispute
25 settlement procedure that is certified under sub. (4) the court shall award a

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1 consumer who prevails in an action brought under this section the remedies of sub.
2 (2) (b) 2. a. or b., together with costs, disbursements, and reasonable attorney fees,
3 and any equitable relief the court determines appropriate. If the manufacturer does
4 not have an informal dispute settlement procedure that is certified under sub. (4),
5 or if the consumer is not granted an award under the certified procedure, the court
6 shall award a consumer who prevails in such an action twice the amount of any
7 pecuniary loss, together with costs, disbursements and reasonable attorney fees, and
8 any equitable relief the court determines appropriate. If the vehicle is a commercial
9 vehicle, the portion of pecuniary loss subject to doubling is limited to the purchase
10 price of the vehicle's components installed or warranted by the manufacturer, less
11 a reasonable allowance for use. An action must be commenced within 2 years after
12 first delivery of the motor vehicle except that the period is tolled by participation in
13 an informal dispute settlement procedure as specified in sub. (3).

14 (END)