

Fiscal Estimate Narratives

DOT 3/1/2004

LRB Number	03-3152/1	Introduction Number	AB-856	Estimate Type	Original
Subject					
Lemon law changes					

Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF AB 856:

1. Existing law:

Under the existing Lemon Law, a vehicle is considered a "lemon" if it has one or more defects that substantially impairs its use, value or safety, and the vehicle has had four or more unsuccessful attempts to repair the same problem, or has had 30 days out of service during the first year. Such defects must be covered by warranty, and problems must occur in the vehicle's first year of warranty coverage. A consumer whose vehicle meets the definition of a lemon needs to first contact the manufacturer to offer to transfer title of the lemon back to the manufacturer and request a refund or replacement. The manufacturer has 30 days to replace the vehicle or refund the consumer's costs. Once the replacement or refund is made, the consumer transfers title of the lemon to the manufacturer.

If the manufacturer does not respond or offer a refund or a comparable new replacement vehicle, within the 30 days, the manufacturer has violated the Lemon Law and the consumer has a private right of action to sue the manufacturer in court.

A manufacturer may participate in a Wisconsin Department of Transportation- certified Alternative Dispute Resolution (ADR) process. An ADR is an organization, such as the Better Business Bureau, which offers arbitration for the dispute between the manufacturer and the consumer. One ADR organization may contract with multiple manufacturers to provide arbitration services, but each contract between a manufacturer and an ADR is separate, and DOT certifies each manufacturer separately.

Statute requires that DOT adopt rules specifying the requirements with which a manufacturer's ADR must comply, if the manufacturer wishes to have the ADR certified to handle the manufacturer's dispute resolution. Statute also mandates that DOT investigate each manufacturer's ADR to determine if it complies with regulations, and that DOT may revoke or deny certification of a manufacturer's ADR that DOT determines does not comply.

DOT certification involves assurances that the ADR organization is sufficiently independent from influence by the manufacturer, that the arbitrators are sufficiently trained in the Lemon Law, that the ADR properly applies the Lemon Law in individual cases, and similar assurances. Requirements are detailed in administrative rule. DOT also is mandated to monitor the performance of the ADR, to assure continuing compliance. If DOT determines that the manufacturer's ADR is not in compliance, the statute gives DOT authority to revoke the certification of that manufacturer's ADR.

Under existing law, if the manufacturer participates in a certified ADR, the consumer must resort to the ADR process before bringing court action. If the manufacturer does not participate, the consumer may go directly to court. If a court finds in favor of the consumer, the court must award the consumer double damages. The double-damage provision is the only penalty for a manufacturer who violates the Lemon Law.

2. Provisions of AB 856:

This bill eliminates the double damage provision if the consumer receives any relief or award from a manufacturer's certified ADR process (not just a refund or a comparable new replacement vehicle which would be full Lemon Law relief).

In addition, this bill requires that the consumer not simply resort to but fully complete the ADR process before bringing court action.

The bill also changes the definition of "out of service" so that only the time that the vehicle is actually in the custody of the manufacturer or authorized repair facility is counted toward the 30-day out of service criterion.

The bill establishes that the manufacturer, not the consumer, chooses whether to give the consumer a refund or replacement vehicle. If the manufacturer chooses to give the consumer a refund, the manufacturer refunds the full purchase price. Under current law, the manufacturer may reduce the refund to the consumer by a "reasonable use allowance" amount. This amount reduces the refund by the portion of the purchase price represented by use before the defect is first reported. For example, if a defect first appears at 5,000 miles, the manufacturer is exempted from refunding the portion of the purchase price that represents 5,000 miles of use.

The bill establishes a statute of limitations of 2 years after the first delivery of the vehicle. Currently, statute is silent on the statute of limitations, thus the normal contract law 6-year statute of limitations applies.

The bill also expands the number of repair attempts for commercial vehicles and recreational vehicles and the length of time a manufacturer has to obtain comparable commercial vehicle. The bill limits what may be considered a nonconformity, for recreational vehicles. The bill reduces the refund a manufacturer must make for recreational vehicles by increasing the reasonable allowance deduction. The bill also limits the amount subject to calculating double damages for commercial vehicles.

FISCAL IMPACT:

The existing law is "self-enforcing" through the double damages penalty. Under this bill, DOT would significantly increase enforcement of certified ADR processes. In addition, under this bill, manufacturers would have an incentive to participate in DOT-certified ADR processes. Currently about 100 manufacturers are licensed in Wisconsin. DOT estimates that about one-third – or 33 manufacturers – would participate in a certified ADR process (currently, 8 manufacturers have certified ADR processes in Wisconsin).

California operates an Arbitration Certification Program under conditions similar to those envisioned in this bill. The State certifies and enforces certification of manufacturers' ADR processes. California monitors individual arbitration hearings, investigates consumer complaints, and reviews individual dispute case files to determine that the manufacturer's certified ADR process properly applies the California Lemon Law. California conducts on-site inspections of ADR operations, monitors ADR training and reviews ADR arbitrators' qualifications, to determine that the ADR maintains adequate professional capacity and qualifications.

California's program involves about .43 FTE per manufacturer participating in a certified ADR process. In California, about 5 times as many new vehicles are sold annually, as in Wisconsin. Thus, it is reasonable to expect about 5 times as many arbitrated cases per manufacturer as in Wisconsin. To the extent that enforcement involves reviewing individual case files and monitoring individual hearings, Wisconsin workload would be reduced by 4/5 compared to California. However, manufacturer certification would require the same amount of time, and further, the California staffing figure excludes staff time involved in appeals of revocation and denial of manufacturer certification.

Therefore, this fiscal estimate assumes 0.10 FTE per manufacturer, which is 23% of the California staffing number. DOT would require an increase of 3.3 FTE permanent positions to certify and enforce ADR certification of 33 manufacturers.

Annual cost of salary and fringe benefits would be \$133,700. Annual operations cost would be \$54,300. Total annual cost would be \$188,000. The bill does not fund this cost and DMV cannot absorb this cost within its current budget.

In addition, because of the increased number of manufacturers and close enforcement, the bill would likely result in increased appeals, if DOT denies or revokes ADR certification for a manufacturer. This would affect workload in the Department of Transportation's Office of General Counsel, and could cause delays in other work currently being performed. The bill would also affect the Department of Administration's Division of Hearings and Appeals.

One-time cost to equip positions is \$34,600. The bill does not fund this cost and it cannot be absorbed within DMV's current budget.

This bill has no impact on revenues to the Transportation Fund.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2003 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 03-3152/1		Introduction Number AB-856	
Subject			
Lemon law changes			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):			
One-time cost to equip positions of \$34,600. The bill does not fund this cost and the cost cannot be absorbed within DMV's current budget.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$133,700	
(FTE Position Changes)		(3.3 FTE)	
State Operations - Other Costs		54,300	
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category		\$188,000	\$
B. State Costs by Source of Funds			
GPR			
FED			
PRO/PRS			
SEG/SEG-S		188,000	
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
		Increased Rev	Decreased Rev
GPR Taxes		\$	\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues		\$	\$
NET ANNUALIZED FISCAL IMPACT			
		State	Local
NET CHANGE IN COSTS		\$188,000	\$
NET CHANGE IN REVENUE		\$-0-	\$
Agency/Prepared By		Authorized Signature	Date
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