

**2015 DRAFTING REQUEST**

**Bill**

Received: **3/9/2015** Received By: **agary**  
For: **Jerry Petrowski (608) 266-2502** Same as LRB: **-3262**  
May Contact: By/Representing: **Lindsey Brabender**  
Subject: **Transportation - mot veh dealers** Drafter: **agary**  
Addl. Drafters:  
Extra Copies:

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

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Report of nonconformity not required to be made on DOT form; repair, replacement, and refund under new motor vehicle warranty (lemon law)

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 7/29/2015	anienaja 7/29/2015	_____	mbarman 3/18/2015		
/1			_____	mbarman 7/29/2015	lparisi 9/17/2015	

FE Sent For:

None  
Needed

<END>

**Gary, Aaron**

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**From:** Ruhland, Lane  
**Sent:** Friday, March 06, 2015 4:27 PM  
**To:** Gary, Aaron  
**Subject:** Simple lemon law change - drafting request

Good afternoon Aaron,

I'd like to request what I hope will be a simple bill draft to deal with a practical issue with one of the form requirements in the existing lemon law. Currently, under s. 218.0171(2)(a), there is a requirement that a consumer complete a "form specified in sub. (8)(a) 1." This form is separate from the "Election Form" and has caused some confusion over at DOT and with some consumers. It has been interpreted that a consumer must bring this form in every time they have their vehicle repaired. We would like to eliminate the requirement that a consumer must complete the form specified in sec. 218.0171(8)(a)1. The manufacturer already has knowledge of any repair that is completed under warranty as the consumer is already required to fill out a DATCP form, at least that is my understanding. I have included commentary from a lawyer who practices in this area below to provide additional guidance. Please let me know if you have any questions. Feel free to discuss this change with DOT or the attorney below if necessary.

Thank you,  
Lane

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**218.0171 Repair, replacement and refund under new motor vehicle warranties.**

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

And

(8)

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

1. To report a nonconformity to the manufacturer, the motor vehicle lessor, or any of the manufacturer's authorized motor vehicle dealers for the purpose of having the nonconformity repaired.
2. To elect that a manufacturer replace a motor vehicle with a comparable new motor vehicle as provided under sub. (2) (b) 2. a.
3. To elect that a manufacturer make a refund as provided under sub. (2) (b) 2. or 3.

We need to repeal on the form specified in sub. (8) (a) 1. And (8)(a)1. Otherwise, the consumer is going to get hung up on not reporting the claim on the approved form in a timely fashion before the nonconformity is repaired. [Note the (8)(a)1. Form has to have been reported "for the purpose of having the nonconformity repaired" thereby implying it has to be filled in as a prerequisite to the repair work and not after.]. Below is the email exchange I had with the DOT last year. The DOT's comments on the form's usefulness are below from last May. In order to get warranty work, you already have to have filled in a Ag. Dept form [as you do for any auto repair work] and the dealer, to get paid, submits a warranty claim to the manufacturer. So, the added form does not provide a notice to the manufacturer. The manufacturer is already getting noticed of every warranty claim. It is nothing more than a trap for the unwary consumer, who doesn't even know yet whether the warranty claim is going to turn into a real problem in the future,

resulting in a Lemon Law Claim. Meanwhile, the attorneys for the manufacturer will argue days out of service before the (8)(a)1. Notice is sent do not count under the Lemon Law.

This is what the DOT has to tell consumers:

<http://www.dot.state.wi.us/safety/consumer/docs/lemonlaw-after.pdf>

What should a new vehicle owner do?

- Keep records you might need if your vehicle turns out to have problems severe enough to qualify it for replacement under the lemon law.
  - o **When taking your vehicle in for repair, provide the dealer with a Vehicle Warranty Repair Request/Nonconformity Report form (MV2692).** You are required to provide this form when seeking repairs under 2014 changes made to the Wisconsin Lemon Law. You can ask the recipient at the dealership or manufacturer to sign your copy where indicated as proof that you provided the form.
  - o Get a Repair Order for every repair visit, even if the dealership service department doesn't diagnose the problem or attempt a repair.
    - o Each Repair Order should show the problem(s) you report, and the dates your vehicle is in the service department.
    - o Keep track of the dates your vehicle is out of service and which defect(s) caused the vehicle to be out of service on those dates
    - o Safely store your purchase contracts, warranties, and the records described above to prove you have a lemon. Don't keep these items in your car where they may get lost.

So, if you own a new car, you have to fill in and submit the DOT form MV2692 every time you go in for warranty repairs, just in case. Did you see that coming? I certainly didn't. I suspect the drafter did. Take a look at the form you have to supply. At what point in the process do you think most people will actually learn they have to use the DOT form? Then try to download it from the DOT website and you will discover not all browsers work on it. What a nightmare.

**Anthony R. Varda**

Attorney

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F: 608.252.9243

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State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1930/P1

ARG:K:...

Wanted  
Thurs 3/19

in 3/12

jld

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

§ - Note

x Gen

1 AN ACT ...; relating to: reporting a nonconformity under the law governing  
2 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 or receives (consumer) a motor vehicle having a condition or defect that substantially impairs the use, value, or safety of the motor vehicle and that is covered by an express warranty (nonconformity). If a consumer reports a nonconformity to the manufacturer or the manufacturer's authorized dealer on a form prescribed by the Department of Transportation (DOT) for reporting a nonconformity, and if the consumer makes the motor vehicle available for repair before the warranty expires or within one year after first delivery of the vehicle to a consumer, whichever is sooner, the consumer is entitled to have the nonconformity repaired. If certain requirements are satisfied and the nonconformity is not repaired, the manufacturer must provide the consumer with a comparable new motor vehicle or a refund. The DOT form for reporting a nonconformity must require the consumer to provide specified information. ✓

This bill eliminates the requirement that a consumer use a DOT form to report a nonconformity to a manufacturer under the lemon law. ✓

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

1 SECTION 1. 218.0171 (2) (a) <sup>X</sup> of the statutes is amended to read:

2 218.0171 (2) (a) If a new motor vehicle does not conform to an applicable  
3 express warranty and the consumer reports the nonconformity to the manufacturer,  
4 the motor vehicle lessor, or any of the manufacturer's authorized motor vehicle  
5 dealers ~~on the form specified in sub. (8) (a) 1.~~ <sup>✓</sup> and makes the motor vehicle available  
6 for repair before the expiration of the warranty or one year after first delivery of the  
7 motor vehicle to a consumer, whichever is sooner, the nonconformity shall be  
8 repaired.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45; 2009 a. 2; 2011 a. 32; 2013 a. 101.

9 SECTION 2. 218.0171 (8) (a) 1. of the statutes is repealed.

10 SECTION 3. 218.0171 (8) (b) 5. of the statutes is amended to read:

11 218.0171 (8) (b) 5. ~~If the form is to be used for the purpose of making an election~~  
12 described in par. (a) 2. or 3., a <sup>✓</sup> place on the form to make the election described in  
13 par. (a) 2. or 3. <sup>✓</sup>

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45; 2009 a. 2; 2011 a. 32; 2013 a. 101.

14 SECTION 4. Initial applicability.

15 (1) This act first applies to reports of nonconformity made by a consumer on the  
16 effective date of this subsection. <sup>✓</sup>

17 (END)

*D-Note*

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

LRB-1930/P1dn

ARG:.....

date

Jld

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

As requested, this draft eliminates the requirement that a report of nonconformity be provided on a DOT form.✓

In preparing this draft, I reviewed the materials provided to me that offer an interpretation of the existing statute. I do not agree with this interpretation, which concludes that the DOT form must be provided with every repair. The statute requires use of the DOT form to report a "nonconformity" (defined as a "condition or defect"), not to report each repair. The purpose of the report of nonconformity is to put the manufacturer on notice that the lemon law is at issue and to provide a trigger for the manufacturer's lemon law duties. This trigger is required only once for each "nonconformity" asserted. Once notice is given, the manufacturer has a duty to repair or, if unable to do so, to provide a refund or a replacement vehicle. The DATCP form referenced in the accompanying materials (presumably an order or invoice meeting the requirements under ATCP 132.03 or 132.08, Wis. Adm. Code) will put the manufacturer on notice that warranty repair work is being done. From this, the manufacturer could assume that one day an assertion of lemon law rights might follow. However, the fact of warranty work does not necessarily put the manufacturer on notice that a nonconformity is being asserted and that the manufacturer's duty of repair under the lemon law has been triggered.✓

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  
Senior Legislative Attorney  
(608) 261-6926  
aaron.gary@legis.wisconsin.gov

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

LRB-1930/P1dn  
ARG:jld:jf

March 18, 2015

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

As requested, this draft eliminates the requirement that a report of nonconformity be provided on a DOT form.

In preparing this draft, I reviewed the materials provided to me that offer an interpretation of the existing statute. I do not agree with this interpretation, which concludes that the DOT form must be provided with every repair. The statute requires use of the DOT form to report a "nonconformity" (defined as a "condition or defect"), not to report each repair. The purpose of the report of nonconformity is to put the manufacturer on notice that the lemon law is at issue and to provide a trigger for the manufacturer's lemon law duties. This trigger is required only once for each "nonconformity" asserted. Once notice is given, the manufacturer has a duty to repair or, if unable to do so, to provide a refund or a replacement vehicle. The DATCP form referenced in the accompanying materials (presumably an order or invoice meeting the requirements under ATCP 132.03 or 132.08, Wis. Adm. Code) will put the manufacturer on notice that warranty repair work is being done. From this, the manufacturer could assume that one day an assertion of lemon law rights might follow. However, the fact of warranty work does not necessarily put the manufacturer on notice that a nonconformity is being asserted and that the manufacturer's duty of repair under the lemon law has been triggered.

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  
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(608) 261-6926  
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State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1930/24 /  
ARG:jld:jf

in  
7/29

TODAY

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

7/29 Per Lindsey - wants /1

SAV

No changes

1 AN ACT *to repeal* 218.0171 (8) (a) 1.; and *to amend* 218.0171 (2) (a) and 218.0171  
2 (8) (b) 5. of the statutes; **relating to:** reporting a nonconformity under the law  
3 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 or receives (consumer) a motor vehicle having a condition or defect that substantially impairs the use, value, or safety of the motor vehicle and that is covered by an express warranty (nonconformity). If a consumer reports a nonconformity to the manufacturer or the manufacturer's authorized dealer on a form prescribed by the Department of Transportation (DOT) for reporting a nonconformity, and if the consumer makes the motor vehicle available for repair before the warranty expires or within one year after first delivery of the vehicle to a consumer, whichever is sooner, the consumer is entitled to have the nonconformity repaired. If certain requirements are satisfied and the nonconformity is not repaired, the manufacturer must provide the consumer with a comparable new motor vehicle or a refund. The DOT form for reporting a nonconformity must require the consumer to provide specified information.



**Basford, Sarah**

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**From:** Brabender, Lindsey  
**Sent:** Wednesday, September 16, 2015 4:44 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1930/1 Topic: Report of nonconformity not required to be made on DOT form; repair, replacement, and refund under new motor vehicle warranty (lemon law)

Please Jacket LRB -1930/1 for the SENATE.