AN ACT to create subchapter XI of chapter 218 [precedes 218.60] of the statutes; relating to: repair and replacement of implements of husbandry under warranty.

Analysis by the Legislative Reference Bureau

This bill creates requirements, commonly known as a “lemon law,” for the repair and replacement of an implement of husbandry that has a condition or defect (“nonconformity”) that substantially impairs the use, value, or safety of the implement of husbandry and that is covered by an express warranty.

Under the bill, if an implement of husbandry does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, or any of the manufacturer’s authorized dealers and makes the implement of husbandry available for repair, the manufacturer, lessor, or authorized dealer must repair the nonconformity. If the same nonconformity has been subject to repair at least four times and the nonconformity continues or if the implement of husbandry is out of service for an aggregate of at least 30 days because of warranty nonconformities, the consumer is entitled to a replacement implement of husbandry or a full refund.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
SECTION 1. Subchapter XI of chapter 218 [precedes 218.60] of the statutes is created to read:

CHAPTER 218

SUBCHAPTER XI

IMPLEMENTS OF HUSBANDRY

218.60 Repair and replacement of implements of husbandry under warranty. (1) In this section:

(a) “Collateral costs” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative vehicle.

(b) “Consumer” means any of the following:

1. The purchaser of a new implement of husbandry, if the implement of husbandry was purchased from an authorized dealer for purposes other than resale.

2. A person to whom an implement of husbandry is transferred for purposes other than resale if the transfer occurs before the expiration of an express warranty applicable to the implement of husbandry.

3. A person who may enforce a warranty applicable to an implement of husbandry.

4. A person who leases an implement of husbandry from a lessor under a written lease.

(c) “Implement of husbandry” has the meaning given in s. 340.01 (24).

(d) “Nonconformity” means a condition or defect that substantially impairs the use, value, or safety of an implement of husbandry and that is covered by an express warranty applicable to the implement of husbandry or to a component of the implement of husbandry. “Nonconformity” does not include a condition or defect that
is the result of abuse, neglect, or unauthorized modification or alteration of the
implement of husbandry by a consumer.

(e) “Out of service” means that the implement of husbandry is unable to be used
by the consumer either because of a nonconformity for which at least 2 repair
attempts have been made or because the implement of husbandry is in the possession
of the manufacturer, lessor, or any of the manufacturer’s authorized dealers for the
purpose of performing repairs to correct a nonconformity.

(2) If an implement of husbandry does not conform to an applicable express
warranty and the consumer reports the nonconformity to the manufacturer, the
lessor, or any of the manufacturer’s authorized dealers and makes the implement of
husbandry available for repair before the expiration of the warranty or one year after
first delivery of the implement of husbandry to a consumer, whichever is sooner, the
manufacturer, lessor, or authorized dealer shall repair the nonconformity.

(3) If a manufacturer, lessor, or authorized dealer attempts to repair a
nonconformity not less than 4 times and the nonconformity is not repaired or if an
implement of husbandry is out of service for an aggregate of not less than 30 days,
the consumer is entitled to a replacement or refund and the manufacturer shall do
one of the following as directed by the consumer:

(a) Accept return of the implement of husbandry and replace the implement of
husbandry with a comparable new implement of husbandry and refund any
collateral costs.

(b) Accept return of the implement of husbandry and refund to the consumer
and to any holder of a perfected security interest in the consumer’s implement of
husbandry, as their interest may appear, 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.

(c) If the implement of husbandry is leased, accept return of the implement of husbandry, refund to the lessor and to any holder of a perfected security interest in the implement of husbandry, as their interest may appear, the current value of the written lease, and refund to the consumer the amount the consumer paid under the written lease plus any sales tax and collateral costs, less a reasonable allowance for use.

(4) A consumer who elects to receive a refund under sub. (3) shall notify the manufacturer. Not later than 30 days after receiving notice from a consumer, the manufacturer shall provide the consumer with the refund. Upon receipt of the refund, the consumer shall return the implement of husbandry having the nonconformity to the manufacturer and provide the manufacturer with the certificate of title and all endorsements necessary to transfer title to the manufacturer. If another person is in possession of the certificate of title, as shown by the records of the department of transportation, that person shall, upon request of the consumer, provide the certificate of title to the manufacturer upon satisfaction of any security interest in the implement of husbandry.

(5) A consumer who elects to receive a comparable new implement of husbandry under sub. (3) shall notify the manufacturer. Not later than 45 days after receiving notice from a consumer, the manufacturer shall provide either a comparable new implement of husbandry or, if a comparable new implement of husbandry does not exist or cannot be delivered within the 45-day period, a refund. Upon receipt of the new implement of husbandry or a refund, the consumer shall return the implement of husbandry having the nonconformity to the manufacturer
and provide the manufacturer with the certificate of title and all endorsements
necessary to transfer title to the manufacturer. If another person is in possession of
the certificate of title, as shown by the records of the department of transportation,
that person shall, upon request of the consumer, provide the certificate of title to the
manufacturer upon satisfaction of any security interest in the implement of
husbandry.

(6) A manufacturer, lessor, or manufacturer’s authorized dealer may not sell
or lease any nonconforming implement of husbandry returned to the manufacturer
by a consumer unless the manufacturer, lessor, or manufacturer’s authorized dealer
discloses the reasons the implement of husbandry was returned to any prospective
buyer or lessee.

(7) The department of revenue shall refund to a manufacturer any sales tax
the manufacturer refunded to a consumer under sub. (3) if the manufacturer
provides to the department of revenue a written request for a refund along with
evidence that the sales tax was paid when the implement of husbandry was
purchased and that the manufacturer refunded the sales tax to the consumer.

(8) This section does not limit rights or remedies available to a consumer under
any other law.

(9) (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 implement of husbandry
to a consumer. The court shall award a consumer who prevails in such an action the
amount of any pecuniary loss, together with costs, disbursements, and reasonable
attorney fees, and may award any equitable relief the court determines appropriate.
(b) 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 failed to reasonably cooperate with another party’s efforts to comply with obligations under this section, which hinders 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.