

1985 Assembly Bill 434

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1985 Wisconsin Act 205

AN ACT to repeal 218.015 (1) (g); to amend 218.01 (9) (a), 218.015 (1) (f), 218.015 (2) (b) and (d) and 218.015 (7); to repeal and recreate 218.015 (1) (d) and 218.015 (3) and (4); and to create 20.835 (2) (cq), 218.01 (3) (a) 35, 218.015 (1) (bd) and (bp) and 218.015 (2) (e) of the statutes, relating to various changes with respect to the law governing repair, replacement and refund under new motor vehicle warranties and making an appropriation.

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

SECTION 1. 20.835 (2) (eq) of the statutes is created to read:

20.835 (2) (eq) *Sales tax refunds.* A sum sufficient to pay refunds under s. 218.015 (2) (e).

SECTION 1b. 218.01 (3) (a) 35 of the statutes is created to read:

218.01 (3) (a) 35. Being a manufacturer, factory branch or distributor who engages in any action which transfers to a motor vehicle dealer any responsibility of the manufacturer, factory branch or distributor under s. 218.015.

SECTION 1d. 218.01 (9) (a) of the statutes is amended to read:

218.01 (9) (a) Any licensee suffering pecuniary loss because of a violation by any other licensee of sub. (3) (a) 4, 11, 15, 16, 17, 23, 24, 26 ~~or~~, 32 ~~or~~ 35 or because of any unfair practice found by the commissioner or office of the commissioner of transportation under sub. (5) (a) may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss together with costs including a reasonable attorney fee.

SECTION 1m. 218.015 (1) (bd) and (bp) of the statutes are created to read:

218.015 (1) (bd) "Demonstrator" means used primarily for the purpose of demonstration to the public.

(bp) "Executive" means used primarily by an executive of a licensed manufacturer, distributor or dealer, and not used for demonstration to the public.

SECTION 2. 218.015 (1) (d) of the statutes is repealed and recreated to read:

218.015 (1) (d) "Motor vehicle" means any motor driven vehicle required to be registered under ch. 341, including a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor vehicle dealer, which a consumer purchases or accepts transfer of in this state. "Motor vehicle" does not mean a moped, semitrailer or trailer designed for use in combination with a truck or truck tractor.

SECTION 2m. 218.015 (1) (f) of the statutes is amended to read:

218.015 (1) (f) "Nonconformity" means a condition or defect which substantially impairs the use, value or safety of a motor vehicle, and is covered by an express warranty applicable to the motor vehicle or to a component of the motor vehicle, but does not include a condition or defect which is the result of abuse, neglect or unauthorized modification or alteration of the motor vehicle by a consumer.

SECTION 3. 218.015 (1) (g) of the statutes is repealed.

SECTION 4. 218.015 (2) (b) and (d) of the statutes are amended to read:

218.015 (2) (b) If after a reasonable attempt to repair the nonconformity ~~cannot be~~ is not repaired, the manufacturer shall, at the direction of the consumer, either replace the motor vehicle with a comparable new motor vehicle or accept return of the motor vehicle and refund to the consumer and to any holder of a perfected security interest in the motor vehicle, as their interest may appear, the full purchase price plus any ~~amounts~~ sales tax, finance charge, amount paid by the consumer at the point of sale and ~~all collateral costs~~ cost associated with the repair of the nonconformity, less a reasonable allowance for use ~~to the consumer and any holder of a perfected security interest in the motor vehicle, as their interests may appear.~~ A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a motorcycle, 20,000, and the numerator of which is the number of miles the motor vehicle was driven before the consumer first reported the nonconformity to the motor vehicle dealer.

(d) No motor vehicle returned by a consumer in this state under par. (b), or by a consumer in another state under a similar law of that state, may be resold in this state unless full disclosure of the reasons for return is made to any prospective buyer.

SECTION 4m. 218.015 (2) (e) of the statutes is created to read:

218.015 (2) (e) The department of revenue shall refund to the manufacturer any sales tax which the manufacturer refunded to the consumer under par. (b) 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 motor vehicle was purchased and that the manufacturer refunded the sales tax to the consumer.

SECTION 5. 218.015 (3) and (4) of the statutes are repealed and recreated to read:

218.015 (3) If there is available to the consumer an informal dispute settlement procedure which is certified under sub. (4), the consumer may not bring an action under sub. (7) unless he or she first resorts to that procedure.

(4) (a) The department of transportation shall adopt rules specifying the requirements with which each informal dispute settlement procedure shall comply. The rules shall require each person establishing an informal dispute settlement procedure to do all of the following:

1. Provide rights and procedures at least as favorable to the consumer as are required under 16 CFR Part 703, in effect on November 3, 1983.

2. If after a reasonable attempt to repair the non-conformity is not repaired, require the manufacturer to provide a remedy as set forth under sub. (2) (b).

(b) The department of transportation shall investigate each informal dispute settlement procedure provided in this state to determine whether it complies with the rules adopted under par. (a). The department shall certify each informal dispute settlement procedure which complies. The department may revoke certification if it determines that an informal dispute settlement procedure no longer complies with the rules promulgated under par. (a). Annually, the department shall publish a report evaluating the infor-

mal dispute settlement procedures provided in this state, stating whether those procedures are certified and stating the reasons for the failure of any procedure to obtain certification or for the revocation of any certification.

(c) Any person who establishes an informal dispute settlement procedure the certification of which is denied or revoked by the department of transportation may appeal that denial or revocation under ch. 227.

(d) Annually, any person who establishes an informal dispute settlement procedure shall file with the department of transportation a copy of the annual audit required under 16 CFR Part 703 or a substantially similar audit and any additional information the department requires in order to evaluate informal dispute settlement procedures.

(e) The department of transportation may consider whether a manufacturer obtains certification under this subsection in determining whether to issue a manufacturer's license to do business in this state.

SECTION 6. 218.015 (7) of the statutes is amended to read:

218.015 (7) In addition to pursuing any other remedies remedy, a consumer damaged may bring an action to recover for any damages caused by a violation of this section ~~may bring an action for~~. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs and disbursements and reasonable attorney fees, and for any equitable relief determined by the court determines appropriate.

SECTION 7. **Nonstatutory provisions.** This act applies to any motor vehicle, as defined in section 218.015 (1) (d) of the statutes, as affected by this act, with respect to which the contract to purchase is entered into on or after the effective date of this SECTION.

SECTION 7m. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.431 (intro.)	none	218.015 (2) (e)

SECTION 8. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
218.015 (1) (c)	218.01 (1) (n)	218.01 (1) (L)
218.015 (1) (e)	218.01 (1) (a)	218.01 (1) (n)