



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 200

**Assembly Substitute
Amendment 1, As Amended**

Memo published: June 13, 2013

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This memorandum describes 2013 Assembly Bill 200, relating to the law governing repair, replacement, and refund under a motor vehicle warranty (often referred to as the “lemon law”); Assembly Substitute Amendment 1 to the bill; and Assembly Amendment 1 to Assembly Substitute Amendment 1.

Current Law

Under current law, if, after a reasonable attempt to repair, a nonconformity in new motor vehicle is not repaired, the manufacturer must accept return of the motor vehicle and: (1) for a purchased vehicle, either replace it with a comparable new motor vehicle or provide a refund to the consumer of 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; or (2) for a leased vehicle, provide a refund to the consumer of the amount the consumer paid under the written lease plus any sales tax and collateral costs, less a reasonable amount for use. Within 30 days after the consumer offers to transfer the title of the motor vehicle to the manufacturer or to return the motor vehicle to the manufacturer, the manufacturer must provide the consumer with a comparable new motor vehicle or refund. When the manufacturer provides the new motor vehicle or refund, the consumer must return the motor vehicle to the manufacturer and provide the certificate of title. If another person is in possession of the certificate of title, that person must, upon request of the consumer (or, if applicable, the motor vehicle lessor), provide the certificate to the manufacturer or the consumer (or, if applicable, the motor vehicle lessor).

If a manufacturer violates the “lemon law,” the consumer may bring an action in court to recover damages. In such action, the court must award a prevailing consumer twice the amount of any pecuniary loss, together with costs, disbursements, reasonable attorney fees, and any equitable relief the court determines appropriate.

2013 Assembly Bill 200

Assembly Bill 200 makes the following changes to current law:

- Retains the 30-day time period for refunds, but creates a 45-day time period for comparable new motor vehicles and 120-day time period for comparable new commercial motor vehicles. If the consumer changes his or her election for a comparable new motor vehicle or refund, the bill provides that the time period restarts.
- Requires a manufacturer to exercise due diligence in locating and providing a comparable new motor vehicle. If the manufacturer is unable to provide a comparable new motor vehicle for certain reasons, the manufacturer must provide a refund in lieu of a comparable new motor vehicle within the 45-day time period (or, for a commercial motor vehicle, the 120-day time period).
- Requires a consumer to provide certain information to the manufacturer, in a form and manner prescribed by the Department of Transportation (DOT), if the consumer requests a refund. If this information is not provided within the 30-day time period, the consumer may not bring an action in court. In addition, a manufacturer is not required to provide a refund less than 10 days after the manufacturer receives this information.
- Requires that, if another person is in possession of the certificate of title, that person must provide the certificate to the manufacturer (or, if applicable, the motor vehicle lessor), and not the consumer.
- Exempts a manufacturer from the “lemon law” if the consumer enters into a negotiated written settlement with the manufacturer regarding the motor vehicle nonconformity.
- Provides that an action in court must be commenced within 24 months after first delivery of the motor vehicle to a consumer.
- Provides that the damages in an action in court are awarded at the discretion of the court or jury.
- Removes the requirement to award twice the amount of any pecuniary loss in an action in court.
- Creates a definition for “out of service,” which is used in the definition of “reasonable attempt to repair” under current law. In the bill, “out of service,” with respect to a motor vehicle, means that the vehicle is unable to be used by the consumer for the vehicle’s intended purpose as a result of any of the following:
 - The vehicle is in the possession of the manufacturer, motor vehicle lessor, or any of the manufacturer’s authorized motor vehicle dealers for the purpose of performing or attempting repairs to correct a nonconformity.
 - The vehicle is in the possession of the consumer and all of the following apply: (1) the vehicle has a nonconformity that substantially affects the use or safety of the

vehicle and that has been subject to a previous repair attempt to correct the same nonconformity; and (2) the consumer has reported, in writing, the nonconformity to the manufacturer, motor vehicle lessor, or manufacturer's authorized motor vehicle dealer and the manufacturer, lessor, or dealer has refused to accept the vehicle for the purpose of performing or attempting subsequent repairs.

Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 makes the following changes to current law:

- Retains the 30-day time period for refunds, but creates a 45-day time period for comparable new motor vehicles and 120-day time period for heavy-duty vehicles.
- Requires a consumer to complete a form prescribed by DOT to report a nonconformity for repair or to elect a comparable new motor vehicle or refund. If the consumer does not provide all information on the form, the time period for a manufacturer to act in providing a comparable new motor vehicle or refund may not begin until the consumer provides additional information.
- Provides that, if the consumer elects a comparable new motor vehicle, no later than 30 days after receiving the DOT form, the manufacturer must agree, in writing, to provide the consumer with the comparable new motor vehicle or refund of the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale, and collateral costs.
- Requires a manufacturer to exercise due diligence in locating and providing a comparable new motor vehicle. If the manufacturer agrees to provide a comparable new motor vehicle, the manufacturer retains the right to provide the refund if the manufacturer is unable to provide a comparable new motor vehicle for certain reasons within this 45-day period (or, for a heavy-duty vehicle, 120-day period).
- Requires that, if another person is in possession of the certificate of title, that person must provide the certificate to the manufacturer (or, if applicable, the motor vehicle lessor), and not the consumer.
- Provides that, for purposes of transferring title to a motor vehicle returned to the manufacturer, a manufacturer may not use a power of attorney to act as an agent of a consumer.
- Exempts a manufacturer from the "lemon law" if the consumer enters into a negotiated written settlement with the manufacturer regarding the motor vehicle nonconformity and the motor vehicle is a heavy-duty vehicle. However, this provision does not waive the requirement in current law that a motor vehicle returned to the manufacturer may not be sold or leased until full disclosure of the reasons for the return is made to any prospective buyer or lessee.

- Provides that an action in court must be commenced within 36 months after first delivery of the motor vehicle to a consumer.
- Removes the requirement to award twice the amount of any pecuniary loss in an action in court.
- Provides that if a court finds that any party has failed to reasonably cooperate with another party's efforts to comply with obligations under the "lemon law" that hinders the other party's ability to comply with or seek recovery, the court may extend any deadlines; reduce any damages, attorney fees, or costs that may be awarded; strike pleadings; or enter default judgment against the offending party.
- Creates a definition for "out of service," which is used in the definition of "reasonable attempt to repair" under current law. In the substitute amendment, "out of service," with respect to a motor vehicle, means that the vehicle is unable to be used by the consumer for the vehicle's intended purpose as a result of any of the following:
 - The vehicle is in the possession of the manufacturer, motor vehicle lessor, or any of the manufacturer's authorized motor vehicle dealers for the purpose of performing or attempting repairs to correct a nonconformity.
 - The vehicle is in the possession of the consumer and the vehicle has a nonconformity that substantially affects the use or safety of the vehicle.

Assembly Amendment 1 to Assembly Substitute Amendment 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 removes the provision in the substitute amendment that prohibits a manufacturer from using a power of attorney to act as an agent of a consumer.

In addition, the amendment modifies the second bulletpoint, above, in the definition of "out of service" in the substitute amendment. Specifically, the amendment provides that a vehicle that is in the possession of the consumer and that has a nonconformity that substantially affects the use or safety of the vehicle is "out of service" if *the nonconformity has been subject to an attempt to repair on at least two occasions.*

Bill History

Assembly Substitute Amendment 1, and Assembly Amendment 1 to Assembly Substitute Amendment 1, were offered by Representative Kramer.

On June 5, 2013, the Assembly Committee on Judiciary recommended adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 8; Noes, 0. On that same date, the committee recommended passage of Assembly Bill 200, as amended, on a vote of Ayes, 6; Noes, 2.

On June 12, 2013, the Assembly adopted Assembly Amendment 1 to Assembly Substitute Amendment 1, and Assembly Substitute Amendment 1, as amended, on voice votes. On that same date, the Assembly passed Assembly Bill 200, as amended, on a vote of Ayes, 88; Noes, 8.

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