

**TO:** Wisconsin State Legislature

**FROM:** Alliance of Automobile Manufacturers  
Recreational Vehicle Industry Association  
Truck and Engine Manufacturers Association  
Wisconsin Automobile & Truck Dealers Association  
Wisconsin Civil Justice Council  
Wisconsin Manufacturers & Commerce

**RE:** Lemon Law Legislation (LRB 2179)

**DATE:** April 30, 2013

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Rep. Kramer and Sen. Petrowski are circulating legislation, LRB 2179, relating to revisions to Wisconsin's Lemon Law. The above groups respectfully request you consider signing onto the bill as a co-sponsor.

**Wisconsin is universally known among automobile, motorcycle, truck, and recreational vehicle manufacturers as having the worst lemon law in the country.** The law places unreasonable and unworkable requirements on vehicle manufacturers that allows lawyers like self-proclaimed "Lemon Law King" Vince Megna to win outsized awards that have no nexus to fairness or the underlying goals of the law. For example, in *Marquez v. Mercedes-Benz*, the cost of the vehicle was roughly \$56,000. Had the owner provided the manufacturer the necessary bank account information in a timely manner, the owner would have been given a check for the vehicle, plus other costs. However, the current law creates a substantial incentive for owners and their lawyers to impede resolution of a lemon law claim. By delaying the process one day beyond the 30-day statutory deadline, vehicle owners and their attorneys hit the jackpot, which in the *Marquez* case, was \$700,000. (See *Marquez v. Mercedes-Benz USA, LLC*, 2012 WI 57<sup>1</sup>, and Vielmetti, Bruce, High court upholds record lemon law award. *Milwaukee Journal Sentinel*, May 25, 2012<sup>2</sup>.)

**Wisconsin is the only state in the nation to provide for mandatory double damages under a lemon law, which is the main reason for our poor lemon law reputation.** Under Wisconsin's Lemon Law, if the manufacturer fails to provide a comparable vehicle or refund for a "lemon" within 30 days of the vehicle owner's request, the law *requires* the courts to award him or her double any pecuniary loss, together with costs, disbursements and reasonable attorney fees. The courts have interpreted "pecuniary" loss to include the vehicle's purchase price.

*This bill would repeal the nondiscretionary double-damage requirement, but the fundamental obligation that a manufacturer provide a comparable vehicle or refund remains unchanged. The law will still allow a consumer to bring an action to recover any pecuniary loss (including the cost of the vehicle), along with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate, if the manufacturer fails to provide the vehicle or refund within the specified deadline. Thus, manufacturers still have every incentive to provide a timely*

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<sup>1</sup> <http://wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=82986>.

<sup>2</sup> <http://www.jsonline.com/news/wisconsin/high-court-upholds-record-lemon-law-award-in-case-against-mercedesbenz-ak5hr-ci-153697725.html>.

refund or vehicle, but lawyers like the Lemon Law King will have less incentive to delay resolution of the dispute.

The bill makes other changes that bring our law more in line with other states:

- Clarifying Out of Service. Under existing law, a vehicle is considered a lemon if within one year of delivery the vehicle is subject to repair at least four times for the same problem or if the vehicle is out of service for 30 days or more due to nonconformities with the warranty. The bill clarifies that “out of service” means that the vehicle is unable to be used for its intended purpose.
- Providing Comparable New Vehicle. The bill provides a more reasonable time period to provide a comparable vehicle – 120 days for commercial vehicles and 45 days for others. In addition, the bill requires the manufacturer exercise due diligence in locating and providing a comparable new vehicle within the applicable time period. However, if no comparable new vehicle exists, or is otherwise unavailable for delivery within the applicable period, the manufacturer must provide a refund within that timeframe.
- Changing Election. If the consumer makes a change in his or her choice of refund or new comparable vehicle, the applicable time period to deliver the refund or vehicle is reset.
- Providing Needed Information. The bill requires a consumer requesting a refund to provide the manufacturer needed information on a form approved by the Wisconsin Department of Motor Vehicles. The manufacturer must provide the refund 10 days after receiving the information or 30 days from the refund request, whichever is later.
- Allowing Negotiated Settlements. As an alternative to a refund or comparable new vehicle, the bill allows for negotiated settlements.
- Establishing a Statute of Limitation. A vehicle can only be a lemon under the law as a result of problems arising while under the term of the warranty or within a year after first delivery, whichever is sooner. Thus, waiting six years to file a claim, as is currently allowed, is an unnecessary delay. The bill’s 24-month statute of limitations is consistent with other states where the limitation periods range from 12 to 24 months.

***Please consider supporting this legislation. It continues to provide remedies to the consumer while making Wisconsin’s business climate less hostile.***

If you have any questions, please feel free to contact Andy Cook or Bob Fassbender at (608) 258-9506.