

Wisconsin Lemon Law Reform

Q&A on LRB 2179

Why is the Current Double Damages Provision a Problem?

- Under Wisconsin’s lemon law, the manufacturer must provide a comparable new vehicle or refund for a “lemon” within 30 days of the vehicle owner’s request.
 - This fundamental remedy of the lemon law – timely refund or a new vehicle – is not impeded by LRB 2179.
 - Instead, the reforms in LRB 2179 will encourage swift resolution of lemon law disputes by removing the key incentive for delay; the double damage provision.
- Wisconsin’s lemon law *requires* the courts to award a consumer who prevails in a case double any pecuniary loss, together with costs, disbursements and attorney fees.
 - The courts have interpreted “pecuniary loss” to include the vehicle’s purchase price.
 - The manufacturers have no meaningful affirmative defense; that is, if they fail to deliver the refund or new vehicle within 30 days, whatever the reason, they are liable for double damages, attorney fees and other costs. See *Marquez v. Mercedes-Benz USA, LLC, 2012 WI 57*.¹
 - Thus, the mandatory double damages provision, coupled with attorney fees, provides a disincentive to resolve the case during the 30-day period.
 - Simply put, by delaying the process one day beyond the 30-day statutory deadline, vehicle owners and their attorneys hit the judicial jackpot, which in the *Marquez* case, was \$618,000 for a \$56,000 car.
- *Wisconsin is the only state in the nation to provide for mandatory double damages under a lemon law, making us an outlier at the expense of manufacturers. The state should be providing inducements to add jobs not litigate.*

What are the Reasons for the other Changes in LRB 2179?

- 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 the vehicle is unable to be used for its intended purpose because it is in the shop for repairs or in the possession of the consumer with problems that substantially affects the use or safety of the vehicle.
- Timeline for 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 all others.

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

- In many cases, obtaining a replacement vehicle in 30 days is a commercial impossibility. For example, very popular models are not typically available on a local dealer's lot and vehicles with certain accessories or packages require special orders.
- For RVs and commercial truck/tractors – which are most often built to owner specifications – a comparable vehicle may have to be ordered and built. It is virtually impossible to build and deliver a comparable commercial vehicle within 30 days as required by the Wisconsin law.
- When Comparable New Vehicles are Unavailable. The bill requires the manufacturer to 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 shall provide a refund within that timeframe.
 - While the additional time for delivery of a new comparable vehicle is essential, and manufacturers much prefer putting their customers back in their brand, a comparable new vehicle sometimes does not exist or will still be unavailable by the deadline.
 - A refund in these exceptional cases is a better outcome than litigation.
- 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.
 - This change is intended to provide manufacturers time to comply with the law when consumers change their mind at the last minute, like in the *Marquez* case, about which remedy they desire, making it nearly impossible to deliver the refund or comparable new vehicle in the limited time remaining.
- 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.
 - This change ensures manufacturers have all the information from the consumer necessary to comply with the law.
 - In the *Marquez* case, the manufacturer could have complied with the law and avoided going to court if the consumer was forthcoming with required information.
 - Using a DMV form provides consistency and ensures consumers are only asked for the necessary information.
- Allowing Negotiated Settlements. As an alternative to a refund or comparable new vehicle remedy, the bill allows for negotiated settlements.
 - When a replacement vehicle is the desired remedy, but the consumer no longer wants the same style or the manufacturer is unable to produce a comparable vehicle, this provision will allow the consumer and manufacturer to negotiate an acceptable alternative replacement.

- Establishing a Statute of Limitation. The bill’s 24-month statute of limitations is consistent with other states where the limitation periods range from 12 to 24 months.
 - Under current law, a vehicle can only be a lemon 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.

Will the Consumer still get a Refund or Comparable Vehicle in a Timely Manner?

- 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.
- While there is an exception to providing a comparative new vehicle if it is unavailable, the manufacturer must still provide the refund within the initial timeframe.
- Current law does not recognize a meaningful affirmative defense if the manufacturer misses the deadline for a refund or comparable vehicle. The courts require they prove by “clear and convincing” evidence that the consumer intentionally prevented the manufacturer from providing the refund or vehicle within that time period.
 - This is an impossible burden, as noted by Wisconsin Supreme Court Justice Roggensack in her *Marquez* case dissent:

... under the majority opinion's reasoning, no affirmative defense of thwarting a refund will lie unless the manufacturer can prove that the plaintiff had the requisite knowledge of the legal effect of his conduct on the statutory obligations that the Lemon Law places on the manufacturer. ... The requisite knowledge of the manufacturer's statutory obligations will be absent for most Lemon Law plaintiffs and therefore, beyond proof at trial.

- **The manufacturer will have every incentive to provide a timely refund or comparable new vehicle. With no meaningful defense, the manufacturers will still be subject to substantial awards beyond the value of the vehicle if they miss the delivery deadlines.**