TO: Members of the Assembly Judiciary Committee

FROM: Jason Culotta
Director, Tax & Transportation Policy
Wisconsin Manufacturers & Commerce

DATE: May 29, 2013

RE: Support for Assembly Bill 200

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to provide input on Assembly Bill 200, which would reform our state lemon law by repealing the mandatory double damages provided for under current law.

WMC is the state’s largest business trade association, with over 3,500 members in the manufacturing, service, health care, retail, energy, banking and insurance sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business, and toward that end, we support legislation encouraging a legal environment that provides fairness under the law and the application of reasonable and clear standards. With those principles in mind, we respectfully request your support of Assembly Bill 200.

Our current lemon law requires a manufacturer to provide a comparable new vehicle or a refund for a lemon within 30 days of the vehicle owner’s request. The principle tenets of the law, providing the owner with a new vehicle or a refund in a timely fashion, remain under Assembly Bill 200.

By removing the double damage provision, an incentive would be removed for delaying the resolution of lemon law disputes.

In Section 218.0171(7) of the statutes it is stated: The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, along with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate.

The courts have interpreted “pecuniary loss” to include the vehicle’s purchase price, meaning that the vehicle owner is awarded twice the vehicle’s cost.

Manufacturers who fail to deliver the refund or a new vehicle within 30 days, for whatever reason, are liable for double damages, attorney fees, and other costs.
The mandatory double damage provision coupled with the recovery of attorney fees allowed for under current law encourages delay in resolution of these cases beyond the 30-day statutory deadline.

The Wisconsin Supreme Court’s recent ruling in Marquez v. Mercedes-Benz USA, LLC, 2012 WI 57, amply demonstrates this point.

After being alerted that the car was a lemon, the manufacturer began working with the owner and his attorney to arrange for a comparable vehicle. While the owner did initially seek a comparable vehicle, he changed his mind with five days left under the 30-day statutory deadline and instead requested a refund.

Due to this request being made the day before Thanksgiving, an agent of the manufacturer arrived in Wisconsin on the Monday following that weekend to issue a refund check to the owner. That same day, the agent contacted the owner’s bank to obtain the auto loan information necessary to write the check. The bank told the agent that due to privacy concerns the owner would need to call and authorize the release of information.

The agent made this request of the owner, who agreed to call the bank but then declined to do so. The agent then called the owner’s attorney, who could not be reached.

Consequently, the manufacturer could not issue the refund check due to the lack of necessary information. The owner’s attorney filed a lemon law suit against the manufacturer the following day.

The subsequent court action resulted in a ruling from the state Supreme Court that replaced the cost of a $58,000 vehicle with over $700,000 in damages.

Rulings like these issued under the current lemon law encourage attorneys to run out the 30-day statutory deadline, hit the lemon law jackpot, and give our state a reputation of being a hostile place in which to do business.

Assembly Bill 200 will continue to allow consumers to receive a comparable new vehicle or a full refund in a timely fashion similar to current law, but without the excess of the current double damage provision. Thank you for your thoughtful consideration of our support for Assembly Bill 200.