

**Testimony of Terrence Polich  
on behalf of the  
Wisconsin Association for Justice  
before the  
Senate Committee on Transportation, Public Safety,  
and Veterans and Military Affairs**

**Sen. Jerry Petrowski, Chair  
2013 Assembly Bill 200 and 2013 Senate Bill 182  
July 18, 2013**

Senator Petrowski and Committee members, my name is Terrence Polich. I am a partner with the Madison law firm of Clifford & Raihala. I serve on the Board of Directors for the Wisconsin Association for Justice (WAJ). Thank you for giving me the opportunity to speak in favor of the Assembly-passed version of AB-200.

Wisconsin's Lemon Law protects everyone who buys a new motor vehicle in this state. Since the Lemon Law passed in the mid-1980s, thousands of Wisconsin motor vehicle buyers have been able to obtain a refund or a replacement for a defective motor vehicle. The law has been a tremendous success and has even helped improve the quality of new vehicles sold in Wisconsin.

WAJ opposed AB-200 and SB-182 because it weakened current law. However, significant changes were made in the Assembly bill. While the double damage provision of the current law was removed, the Assembly-passed version allows consumers to recover all their pecuniary losses and attorney fees. The retention of these remedies is crucial for consumers seeking access to the courts if a manufacturer does not meet its obligations under the Lemon Law.

I have provided a comparison between current law, SB-182 and LRB draft and AB-200 Substitute Amendment, which shows where the changes were made to current law and the original bill. I would be happy to answer any questions about the changes.

The Assembly-passed version of AB-200 is a reasonable compromise between the parties. Therefore, WAJ now supports the Assembly-passed version of the bill.

Thank you.

**JEFFREY A. PITMAN**  
*PRESIDENT  
MILWAUKEE*

**CHRISTOPHER D. STOMBAUGH**  
*PRESIDENT-ELECT  
PLATTEVILLE*

**ANN S. JACOBS**  
*VICE-PRESIDENT  
MILWAUKEE*

**RUSSELL T. GOLLA**  
*SECRETARY  
STEVENS POINT*

**BENJAMIN S. WAGNER**  
*TREASURER  
MILWAUKEE*

**EDWARD J. VOPAL**  
*PAST PRESIDENT  
GREEN BAY*

**JANE E. GARROTT**  
*EXECUTIVE DIRECTOR*

# Lemon Law Comparison

## Current Law, SB-182, AB-200 Substitute Amendment

	<b>Current Law</b>	<b>SB-182 and LRB-0066/1</b>	<b>AB-200 Substitute Amendment</b>
<b>Out of Service</b>	<p>There is no definition in the statute of out of service. The Wisconsin Court of Appeals has held that "out of service" "includes those periods when the vehicle is not capable of rendering service as warranted due to a warranty nonconformity, even though the vehicle may be in possession of the consumer and may still be driven in the performance of other services by the consumer."</p> <p><i>Vultaggio v. GM</i>, 145 Wis. 2d 874, 886, 429 N.W.2d 93, 97 (Ct. App. 1988).</p>	<p>Creates a definition of "out of service"</p> <ol style="list-style-type: none"> <li>1. The vehicle is in the <b>possession</b> of the manufacturer, lessor or dealer to <b>repair a nonconformity</b>; or</li> <li>2. the vehicle is in the <b>consumer's possession</b> and               <ol style="list-style-type: none"> <li>a) the vehicle's nonconformity <b>substantially affects the use or safety of the vehicle</b> and there was a <b>previous attempt to repair</b>; and</li> <li>b) the consumer has <b>reported, in writing, the nonconformity</b> to the manufacturer, lessor or dealer and they have <b>refused to make the repairs</b>.</li> </ol> </li> </ol>	<p>Creates a definition of "out of service"</p> <ol style="list-style-type: none"> <li>1. The vehicle is in the <b>possession</b> of the manufacturer, lessor or dealer to <b>repair a nonconformity</b>; or</li> <li>2. The vehicle is in the <b>consumer's possession</b> and the vehicle has a nonconformity <b>substantially affects the use or safety of the vehicle</b> <u>and that has been subject to an attempt to repair on at least 2 occasions.</u></li> </ol>
<b>Definition of motor vehicle</b>	Applies to all motor vehicles required to be registered under ch. 314.	<b>Adds new definition of commercial vehicle</b> , which is over 26,000 lbs.	<b>Creates definition of "heavy-duty vehicle"</b> which is more than 10,000 lbs. Deletes "commercial vehicle" definition.
<b>Election of Refund</b>	Manufacturer must respond within <b>30</b> days	Manufacturer must respond within <b>30</b> days if a refund is requested.	If the consumer <b>requests a refund</b> , manufacturers must provide the refund within <b>30 days</b> .
<b>Election of Replacement vehicle</b>	Manufacturer must provide substantially similar vehicle within <b>30</b> days	Manufacturer must respond within <b>45</b> days for non-commercial vehicles if a replacement vehicle is requested and <b>120</b> days for commercial vehicles if a replacement vehicle is requested.	<p>If the <b>consumer requests a replacement vehicle</b>, the manufacturer has <b>30 days to agree in writing to provide the vehicle or a refund</b> of the full purchase price plus other taxes, fee and collateral costs. It then gives the manufacturer <b>15 days – 45 days total – to provide the comparable new vehicle or refund</b>.</p> <p>For heavy duty vehicles, the manufacturer must inform the <b>consumer within 30 days of the notice to provide a comparable vehicle or a refund</b>. The manufacturer then has another <b>90 days – 120 days altogether – to provide the comparable vehicle or refund</b>.</p> <p><b>If a refund is provided there is no deduction for reasonable allowance.</b></p>

# Lemon Law Comparison

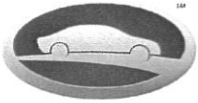
## Current Law, SB-182, AB-200 Substitute Amendment

	<b>Current Law</b>	<b>SB-182 and LRB-0066/1</b>	<b>AB-200 Substitute Amendment</b>
<b>Statute of Limitations</b>	Six years based on contact	<b>24 months (Two years)</b> from the date the vehicle was first delivered to the consumer.	<b>36 months (Three years)</b> from the date the vehicle was first delivered to the consumer.
<b>Damages</b>	People who prove their car is a Lemon <b>SHALL recover pecuniary losses, together with costs, disbursements and reasonable attorney fees</b> and any other equitable relief.	People who prove their car is a Lemon <b>MAY</b> receive the purchase price, finance charges, collateral cost, point of sale options, licensing fees and attorney fees.	Consumers <b>shall recover pecuniary losses, together with costs, disbursements and reasonable attorney fees</b> and the Court may award any other equitable relief.
<b>Double Damages</b>	Double Damages allowed.	<b>Eliminated</b>	<b>Eliminated.</b>
<b>Branding of Title</b>	Manufacturer must <b>brand the title – Manufacture Buyback</b> and disclose the reasons it was bought back. Manufacturers must also give a new 12 month warranty.	If a court or jury determines the car is a Lemon, the title must be branded. However, if a consumer enters into a negotiated written settlement agreement, <b>then no provision of the Lemon Law SHALL apply to the vehicle</b> , including branding the title.	The Manufacturers must <b>brand the title and disclose the reasons</b> for motor vehicle's return to any prospective buyer.
<b>Written Settlements</b>	No provision in current statute.	If a consumer enters into a written settlement agreement, <b>then no provision of the Lemon Law SHALL apply to the vehicle.</b> Applies to all vehicles. A manufacturer could offer the consumer something less than a refund or replacement vehicle and the consumer would not have any recourse under the Lemon Law.	If a heavy vehicle consumer enters into a written settlement agreement, <b>then no provision of the Lemon Law SHALL apply to the vehicle.</b>
<b>Right to Jury Trial</b>	Jury trials allowed	<b>Prohibit jury trials</b>	<b>Jury trials continue to be allowed.</b>
<b>Require parties to act in good faith</b>	No requirement	No requirement.	If a party <b>failed to reasonably cooperate</b> to meet the obligations of this bill and <b>hinders the other party's ability to comply</b> , the Court may extend deadlines, reduce damages, attorneys or costs, strike pleadings or enter a default judgment against the offending party.

# Lemon Law Comparison

## Current Law, SB-182, AB-200 Substitute Amendment

	<b>Current Law</b>	<b>SB-182 and LRB-0066/1</b>	<b>AB-200 Substitute Amendment</b>
<b>Form for manufacturers</b>	DOT has developed a form, by rule, which is optional for the consumer to use.	Required the DOT to develop a form, by rule, that met the requirements of the law.	Requires the <b>Department of Transportation to develop forms for consumers</b> that a) report a nonconformity to the manufacturer; b) elect a replacement vehicle or c) elect a refund. Any form must contain the following information: <ol style="list-style-type: none"> <li>1. The consumer's contact information.</li> <li>2. Identification of the motor vehicle dealer from which the motor vehicle was purchased, the date of delivery of the motor vehicle from the dealer, and the purchase price of the motor vehicle.</li> <li>3. Identification of any holder of a perfected security interest in the consumer's motor vehicle.</li> <li>4. The mileage of the motor vehicle at the time the first nonconformity is asserted to have occurred.</li> <li>5. If the form is to be used for the purpose of making an election described in par. (a) 2. or 3., a place on the form to make the election.</li> <li>6. An itemization of any other damages claimed by the consumer.</li> </ol>
<b>Failure to provide information</b>	Nothing in statute	If the consumer misses a deadline or fails to provide the necessary information by the end of the 30 day period, <b>the consumer may not bring an action under the Lemon Law.</b>	If any information on the required form is <b>incomplete</b> , within <b>30 days</b> the <b>manufacturer can return the form and request the consumer provide the additional information.</b> If this is done, the time period does not elapse until the consumer provides the additional information.



**AUTO ALLIANCE**  
DRIVING INNOVATION®

Alliance of Automobile Manufacturers

Statement in Support of AB 200

July 18, 2013

Chairman Petrowski and Senate Committee Members:

On behalf of the Alliance of Automobile Manufacturers, thank you for the opportunity to express our strong support for Assembly Bill 200. The Alliance is a trade association of twelve passenger car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen, and Volvo.

AB 200 closes loopholes and amends specific unfair provisions that have been repeatedly abused and led to absurd results. AB 200's changes will fix these problems and make the Lemon Law logical, strong, and effective.

This legislation, as amended in the Assembly, includes real reforms that will benefit both Wisconsin consumers and motor vehicle manufacturers. These improvements include:

Eliminating Mandatory Double Damages. Wisconsin is the only state in the nation to require double damages linked to the purchase price of the vehicle without any evidence of bad faith in efforts to comply with the lemon law. Deletion of this requirement is the single most important policy needed to reform our lemon law.

Adding Time for Delivery of a Comparable Vehicle. Existing law requires a manufacturer to provide a comparable new vehicle within 30 days. The bill provides more reasonable time periods: 120 days for heavy-duty vehicles and 45 days for other vehicles.

Reducing the Statute of Limitations. Waiting six years to file a claim, as currently allowed, is an unnecessary and unfair delay given a claim can only arise during the first year. The bill has a more reasonable 36-month statute of limitations from time of delivery.

Providing a Refund Option if a Comparable Vehicle is Unavailable. The bill allows the manufacturer, after a due diligence search, to provide a refund when no comparable new vehicle exists or is otherwise unavailable.

Adding a Good Faith Requirement. The bill allows a court to extend deadlines, reduce damages, attorney fees and costs, and provide other remedies if it finds a party has failed to reasonably cooperate with another party's efforts to comply with the law.

Allowing Negotiated Settlements. As an alternative to a refund or comparable new vehicle, the bill allows for negotiated settlements for heavy-duty vehicles.

Clarifying Out of Service. The law still creates legal risks not found in other states by allowing certain days that the vehicle is in the possession of the consumer to be counted toward the 30-day out of service requirement.

---

Alliance of Automobile Manufacturers

BMW Group • Chrysler Group LLC • Ford Motor Company • General Motors Company • Jaguar Land Rover • Mazda •  
Mercedes-Benz USA • Mitsubishi Motors • Porsche • Toyota • Volkswagen • Volvo

1401 Eye Street, N.W., Suite 900, Washington, DC 20005-6562 • Phone 202.326.5500 • Fax 202.326.5567 • [www.autoalliance.org](http://www.autoalliance.org)

However, the bill improves this area of the law by requiring in those instances that the vehicle be unable to be used by the consumer for the vehicle's intended purpose due to a nonconformity that substantially affects its use or safety. Also in those instances, the vehicle must be subject to two repair attempts.

Providing Fair Notice of Nonconformities. Lacking needed information is a major impediment to compliance for manufacturers. The bill requires necessary information be provided on forms from the Department of Transportation. If the required information is not provided to the satisfaction of the manufacturer, upon their timely request for such information, the time periods to provide refunds or comparable new vehicles do not begin.

The bill before you contains compromises worked out this spring with the authors, the motor vehicle manufacturers, and other groups including the Wisconsin Association for Justice. We appreciate all of their efforts to develop what can fairly be called a consensus bill.

Thank you for your consideration and support.

Sincerely,

Renée Wadsworth  
Senior Manager, State Affairs  
Alliance of Automobile Manufacturers



July 18, 2013

**Re: 2013 Senate Bill 182 / House Assembly Bill 200**

Dear Members of the Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs:

My name is Roshan Rajkumar, and I am General Motors LLC's warranty counsel for the State of Wisconsin. I have represented General Motors, as well as several other motor vehicle manufacturers, in Wisconsin Lemon Law matters for over twelve years. In this time, I have witnessed Wisconsin consumer and commercial vehicle owners and their attorneys utilize the Wisconsin Lemon Law both reasonably and in patently abusive manners.

Today I am prepared to answer questions regarding Senate Bill 182 and House Assembly Bill 200, and the proposed changes to the Wisconsin Lemon Law. The Wisconsin Lemon Law is known as one of the worst lemon laws in the country. Currently as written, should a manufacturer fail to provide a Wisconsin consumer or commercial vehicle owner with either a comparable vehicle or refund for a "lemon" within thirty (30) days of written notice, the Wisconsin Lemon Law provides for mandatory double damages and automatic recovery of attorneys' fees and costs. The statute, in its effort to provide Wisconsin consumer and commercial vehicle owners with a remedy for a perceived "lemon", has provided the local and national plaintiff's lemon law bar a method to manipulate the requirements of and abuse the process for utilizing the Wisconsin Lemon Law.

General Motors has a strong investment in Wisconsin and its people. General Motors has almost 600 employees in offices and customer care facilities, as well as 10,000 General Motors' retirees statewide. General Motors has 56 suppliers in Wisconsin that receive over \$1.2 billion annually in business. General Motors also has over 1.9 million registered GM vehicles in the state. And General Motors has approximately 145 authorized dealerships in the State of Wisconsin. In short, General Motors has been and always will be committed to Wisconsin, its citizens and its economy.

Therefore I am here today to ask for your support of Senate Bill 182 and House Bill 200 and its amendments to the Wisconsin Lemon Law. Through these changes to the Lemon Law, Wisconsin will ensure its consumers have a strong remedy for relief from a "lemon" vehicle, but provide a remedy through a process that is both fair and equitable.

**Senate Public Hearing  
Committee on Transportation, Public Safety, and  
Veterans and Military Affairs**

**July 18, 2013**

**Public Testimony of the Truck and Engine Manufacturers Association  
On Wisconsin Assembly Bill 200/Senate Bill 186**

**Presented by  
Joseph L. Suchecki  
Director, Public Affairs**

Mr. Chairman and Members of the Committee:

I am Joe Suchecki, Director of Public Affairs with the Truck and Engine Manufacturers Association (EMA). EMA is the trade association that represents all the major manufacturers of heavy-duty trucks as well as the manufacturers of engines used in a variety of on-highway vehicles and nonroad equipment; lawn, garden and utility equipment; and stationary generators. EMA represents our 28 member companies on state and federal legislation and regulation related to emissions, safety, manufacturing, and warranty and franchise issues. Several EMA members have facilities and operations here in Wisconsin including Briggs and Stratton, Caterpillar, Cummins, Inc., John Deere, GE Waukesha Engines, Kohler and Navistar.

I am here today to voice EMA's strong support for Assembly Bill 200/Senate Bill 182 that provides practical and well-reasoned amendments to Wisconsin's lemon law. Wisconsin's lemon law was crafted to help assure that consumer complaints regarding motor vehicle warranty issues are resolved quickly. It is one of the very few state lemon laws in the country that applies to commercial and heavy-duty vehicles.

The changes to existing law as passed by the Assembly earlier this year in AB 200 are needed for two main reasons.

First, the existing law applies the same process and requirements to resolve warranty issues for medium and heavy-duty vehicles as it does for light-duty automobiles. For example, if a vehicle owner requests a replacement truck, a manufacturer must deliver a comparable truck within 30 days. Because almost all commercial and heavy-duty vehicles are custom built to the specifications of the purchaser, it is often impossible to provide a comparable vehicle under the current law within a 30-day time period. Truck and bus manufacturers simply cannot go to a dealer's lot somewhere and find a comparable vehicle – they need to be manufactured and assembled to specifications. The fact that essentially all heavy-duty trucks are not mass-produced but built to owner specifications can subject truck manufacturers to double damages



under current law because there is no way they can physically comply with the required timeline that is based on a light-duty automobile model where the cars are mass-produced.

Another key difference between commercial vehicles and cars is that car manufacturers are vertically integrated and truck and bus manufacturers are not. A heavy-duty truck is likely to have a chassis from the vehicle manufacturer, an engine from another manufacturer, a transmission or axle from another manufacturer and a body from yet another manufacturer. For that reason, the actual vehicle manufacturer may not have warranty responsibility for all components. For example, under federal law, the emissions warranty and certification requirements remain with the engine manufacturer. The lack of complete vertical integration in the heavy-duty vehicle industry creates a need to address the real differences between car and truck manufacturers on this issue.

Second, the existing law creates opportunities to abuse the system by providing incentives to vehicle owners and their attorneys to game the system in order to obtain larger cash settlements from manufacturers. Under current law, any rewards are automatically doubled if the 30-day time period to supply a replacement is not met. Owners can use defective vehicles for years and then require a new replacement under the law. Owners often demand new vehicles or refunds and claim that non-essential component of the vehicle affect use and performance.

As a result of the current law, truck manufacturers have been subject to the same problems and unjust settlements experienced by the light-duty sector. Some examples include:

- One manufacturer was forced to pay double damages, as well as transaction fees and interest payments even though the manufacturer offered the vehicle owner a settlement check but the vehicle owner refused to accept the check within the 30-day time period and then sued for the double damages.
- Another manufacturer was forced to pay a vehicle owner more than 1.5 times the value of the original truck even though the vehicle owner drove the truck for over two years and put on more than 200,000 miles before making his claim. In this way, the owner essentially got the manufacturer to pay for the owner's loans on the vehicle.
- Out of state trucking companies are claiming delivery to a Wisconsin address and then making a lemon law claim under Wisconsin law to get double damages, even though the truck was never registered or used in Wisconsin.
- Vehicle owners are making an initial warranty claim, and then driving the vehicle for years before making a lemon law claim, and thus gaming the system to get a new vehicle at no cost. This has resulted in manufacturers providing a brand new replacement vehicle even though the owner kept the vehicle in service and doing work for many years before making a claim. Some of those claims are for frivolous repairs, such as door seal leaks that do not significantly affect the overall performance of the vehicle.

Assembly Bill 200 addresses those issues by more clearly defining out-of-service, deleting automatic double damages and leaving the determination of appropriate awards to the courts,

providing a more reasonable time frame for the owner to make a claim, and for heavy-duty vehicles, extending the time period allowed for replacement vehicles to 120 days rather than 30 days.

The proposed amendments to the Wisconsin lemon law in AB 200 and SB 182 do not change the basic consumer protections inherent in the current lemon law for vehicle owners in Wisconsin, but they do close the loopholes and incentives that allow abuse and inappropriately large settlements, awards and attorney fees. The language in the current law not only results in unjustified and high costs for manufacturers doing business in Wisconsin but also is bad for Wisconsin consumers since they are the ones who must eventually pay for those large settlements through increased vehicles costs in the state.

EMA and its members support the need to ensure that motor vehicle owners in Wisconsin continue to have a fair and reasonable process to resolve vehicle warranty disputes. The proposed amendments do nothing to take away that process.

Thank you for the opportunity to speak today, and I would be happy to answer any questions that you may have.

July 18, 2013

To: Members, Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs

From: Daniel A. Young, P. O. Box 14, Madison, WI 53701

Re: Wisconsin Lemon Law, Assembly Bill 200 and Senate Bill 182

When the Wisconsin Legislature approved the Lemon Law in 1983, only one legislator voted against its enactment. Ironically, when he was later sentenced for his misconduct in office, the judge gave him double damages, so to speak, doubling the 30 days in jail sentence that prosecutors recommended.

In 1997, there was an effort by Republicans to use the budget to gut the Lemon Law, by eliminating the double damages provision. Fortunately, back then, the Republican chairman of the Assembly Committee on Consumer Affairs, (who I worked for as committee clerk), fought that anti-consumer effort and won. Unfortunately, in this session, even most of the usually more consumer friendly Democrats are siding with the Republicans to gut the law! And, the Wisconsin Department of Transportation, which once also fought for the consumer to protect the law now sits idling by the roadside doing nothing to protect this jewel of consumer protection.

The double damages provision of the law is what makes the law work and gives auto manufacturers the incentive to settle with a customer who has purchased a lemon. This legislation takes that incentive away.

This legislation does not create one single job! In fact, it could cause jobs to be lost, because if an individual running a business dependent upon the use of a motor vehicle gets a lemon, his/her business could fail, if they have no leverage to get a new vehicle. This legislation is anti-business.

It should also be noted that no auto manufacturer has gone out-of-business because of our Lemon Law.

AB 200 and SB 182 are about protecting the profits of big business on the backs of consumers and small businesses. And, the "compromise" substitute amendment seems to be about protecting trial lawyers. That's very disappointing since many of them strongly supported the existing law in the past.

When the law was passed there was bi-partisan support for protecting the little guy. But now, it appears that we are headed for bi-partisan support of legislation that forgets the little guy, leaving him on the roadside with a lemon and no toolbox to fix the problem.

Also, WATDA should be ashamed of supporting this proposal that hurts its members' customers! The current law makes clear that auto dealers are not at fault when they sell a new car that turns out to be a lemon.

For any of you supporting this legislation I hope that you might reconsider your position. Please do **not** shaft the little guy by voting to send the existing Lemon Law to the junkyard.

Wisconsin State Senate  
Committee on Transportation, Public Safety, and Veterans and Military Affairs  
**Hearing on Assembly Bill 200 and Senate Bill 182**  
**Testimony of Rick Soletski**

I'm pleased to appear before this august panel to testify AGAINST the passage of AB 200 and SB 182. Mr. Chairman, it is nice to see you again. I staffed the Law Enforcement Committee on Vehicle Registration for the Department of Transportation while you served on it. And I'm privileged to personally know 4 of the 5 members of the Committee, even though it's been over 25 years since I worked at the capitol.

In fact, I went door to door campaigning for one of you when you ran for the Assembly for Green Bay. Of course Rob, that was when you ran as a Democrat.

I would like to thank you Mr. Chairman, and your staff, for seeing that I received timely notice of the hearing.

First, let me say, I don't believe anyone purposely builds a lemon. I don't believe a dealer purposely doesn't try to fix a lemon. Motor vehicles are machines, built by humans and other machines, and lemons do happen.

As I mentioned, I worked for WisDOT, for 27 years. From 2005 to 2011, I was the Lemon Law Specialist for WisDOT.

My job, in the Dealer section, entailed working with manufacturers, dealers and consumers to inform each of their rights and responsibilities under the Wisconsin Lemon Law.

Not being an attorney, (that should be worth at least 6 months' less time in Purgatory) , I made clear that I was not giving legal advice, or directing consumers towards a specific path or action, but rather gave them an overview of their rights so that they could make informed decisions.

I'm afraid that these consumer rights will be greatly diminished by these bills.

Many states passed Lemon Laws in the early 80s. It was a response to consumers' complaints that they were buying defective, sometimes dangerous products and had little recourse in getting the manufacturers to work with them to rectify the situation.

Wisconsin's law is unique. When it was passed, the state and nation were in the midst of an economically troubled period. Now, this could have been an excuse to do nothing. But, the Legislature in its wisdom decided to move forward. It received overwhelming support, from both parties, including a freshman Republican Assemblyman, who now sits on this committee.

In some states, the state itself decides if a vehicle is a lemon. Some have state employees conduct hearings, some administer and train volunteer panels to hear cases and some are a little more like Wisconsin, in that they also certify dispute resolution, or arbitration programs. Most assign more staff than Wisconsin has to administer the program. I suspect it was designed here with the idea that here are your rights, and here is how you enforce them. It is decentralized and privatized for the most part.



But I have always described the Wisconsin Lemon Law as the strongest in the nation. And that is something, I think, to take pride in.

These bills really take the slingshot out of David's hand in going up against giant international corporations with huge and experienced legal staffs.

In previous testimony before the Assembly Committee, manufacturer lobbyists called our lemon law "onerous," "the worst in the country," that it's used in "patently abusive manners" "citing frivolous repairs." They call these bills "reform."

Well, you say tomato, and I say tomahto but let's call this whole "reform" thing off.

Two aspects of our lemon law in particular, seem to draw the most hostility by the manufacturers' representatives. One is our provision for double damages.

Double damages is the 2 by 4 a consumer uses to get the mule's attention.

It is the incentive for manufacturers to treat their customers right when they sell them a lemon.

For most consumers, a new vehicle is the first or second most expensive investment that they'll ever make in their lives, after buying a home. In fact, I've known people who've retired who have sold their homes and invested in an RV, and that is their home as they travel America. And they should have less rights in dealing with a lemon?

"For unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more."

And when they get sold a lemon, they should have the expectation that the manufacturer will make them whole without resorting to court. And if the manufacturer misjudges, and goes to court to defend a lemon, they should receive a penalty for that.

Make no mistake, if a consumer goes to court, he or she is still on the hook for paying for that lemon until the case is decided. So, double damages, are unfair? But there's no problem in adding insult to injury by requiring a consumer to continue paying for a defective product that diminishes its safety, use or value?

And talk about acting or not acting in good faith, how about a company dragging a consumer through circuit, appeals and ultimately the Supreme Court over the course of 3 years because she didn't use the magic words, "I offer to surrender my title if you take back your lemon."

That is the reason WisDOT's lawyers came up with **this form** so that it couldn't be a sticking point in the future.

By the way, that decision that essentially said the manufacturer was not proceeding in good faith was written by that well-known anti-business Supreme Court Justice, David Prosser. For the out-of-state hired guns, I'm being facetious.

I'm concerned about language in the bill that if the new DOT form isn't filled out exactly right, it can be sent back to the consumer, and the clock doesn't begin ticking. It seems more like a mechanism for "gotcha" than a sound requirement. The motor vehicle industry keeps all kind of records and data, and they know exactly what's been done to that vehicle. After all, they're paying the dealers to make them. In fact, this requirement might cause consumers to contact an attorney right from the start, instead of trying to work it out in dispute resolution through an arbitration program where an attorney isn't required. Essential information should be required, but marks for crossing every T and dotting every I shouldn't be used as an excuse to delay.

The other thing the manufacturer's like to trot out, are the "outrageous" awards that consumers have won. It's their McDonald's hot cup of coffee on wheels. So they talk about the 4, 5, 6, \$800,000 awards and how terrible that it is. But they go from A to J, without highlighting B,C,D,E,F,G,H and I. Because in those cases, the manufacturer chose not to settle, chose to go to court and fight every appeal, and keep losing. And then they complain about a high award. And, going back to double damages, they are a minor, not major part of those awards. I think there is brinkmanship and varying degrees of faith on both sides.

Every 5 or so years since the Lemon Law was approved in 1983, there has been an effort to weaken or outright gut it. The Assembly author is quoted in the media that he had no intention to gut the lemon law. Well, if this doesn't gut it, it sure Nancy Kerrigans it.

In every other instance when the law has been threatened, heroes have stood up and fought back. In 1997 there was an effort to insert language in the budget to weaken the law, and State Representative Cliff Otte, Chair of the Consumer Affairs Committee worked to remove it. By the way, Cliff is a life-long Republican and father of the Salvage Title Branding Law, another important consumer protection. Oops, maybe I shouldn't be giving people ideas.

Every other time the law has been threatened, WisDOT has actively worked to protect it and the consumers who rely on it. Every person from the lemon law specialist through the bureau and division management, and up to the Secretary's office supported the law to the hilt.

I'm deeply disappointed that this time WisDOT has chosen to take no position on these bills. I'm told the rationale is that this is a "policy decision" for the legislature and the Secretary's Office doesn't want to get involved. Hmmm, that didn't seem to be a problem for them when they wanted to stop doing the analyses that showed that private contractors were greatly more expensive than WisDOT employees. No problem in lobbying on that "policy decision."

I'm deeply disappointed in the Assembly Democrats for caving on this issue, and that no consumer minded Republicans existed to vote against it. I'm told because of some changes, the trial attorneys are okay with it. Well, as long as the attorneys are okay with it! See my previous comment about Purgatory.

I hope the Senate Dems and consumer minded Republicans don't get wobbly on this issue.

I am also disappointed that my old friends at the Auto & Truck Dealers Association are so front and center in working to gut the law. I always took great pains to point out to consumers that their beef is between them and the manufacturer, not them and the dealer who is trying to fix their lemon. I've had dealers contact me on behalf of their customers, so that they could advise them on their rights.

But now WATDA has come down clearly on the side of the lemon purveyors, and not their customers.

And there is some uncertainty about whether or not manufacturers will have to submit titles of vehicles they buy back, short of going through the lemon law for branding as a manufacturer buyback, as they do now. So, some of these vehicles may end up in WATDA dealer inventories, and neither the dealer nor later unhappy second consumer will have a clue.

I would also point out to WATDA that Iowa and Minnesota have better lemon laws in this regard, they cover new vehicles for 2 years or 24,000 miles, or more. My advice to someone buying a new vehicle who lives close to the border or is willing to drive to shop, is to do some research on whether those states' lemon laws would apply to a purchase by a Wisconsin resident. By the way, I believe Minnesota also has licensed auto brokers to get consumers the best deal. I bet they'd get the consumer that answer on the lemon law too.

How's that for Wisconsin competitiveness?

Finally, speaking of competitiveness, some of the manufacturers, in their Assembly testimony, said the lemon law is harming Wisconsin's competitiveness. I'm happy to tell them, that while Wisconsin has a Cuba City, our streets do not look like downtown Havana, with only 57 Chevys and 55 Packards. Hundreds of thousands of new Toyotas, Fords, Hondas, Chryslers, Mercedes, GM cars and all the rest are still sold here. Even with the strongest Lemon Law in the country.

Keep it!