



Senate

General Assembly

File No. 121

January Session, 2007

Substitute Senate Bill No. 1059

Senate, March 26, 2007

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE NEW MOTOR VEHICLE LEMON LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-181 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) The Department of Consumer Protection, shall provide an
4 independent arbitration procedure for the settlement of disputes
5 between consumers and manufacturers of motor vehicles which do not
6 conform to all applicable warranties under the terms of section 42-179.
7 The [commissioner] Commissioner of Consumer Protection shall
8 [establish one or more automobile dispute settlement panels which
9 shall consist of three members appointed by the Commissioner of
10 Consumer Protection, only one of whom may be directly] appoint as
11 arbitrators individuals, who shall not be an employee or independent
12 contractor with any business involved in the manufacture,
13 distribution, sale or service of any [product. Members shall be persons
14 interested in consumer disputes] motor vehicle. The arbitrator shall be
15 a member of an arbitration organization and shall serve [without] with

16 compensation. [for terms of two years at the discretion of the
17 commissioner. In lieu of referring an arbitration dispute to a panel
18 established under the provisions of this section, the] The Department
19 of Consumer Protection may refer an arbitration dispute to the
20 American Arbitration Association or other arbitration organization in
21 accordance with regulations adopted in accordance with the
22 provisions of chapter 54, provided such organization and any
23 arbitrators appointed to hear cases shall not be affiliated with any
24 motor vehicle manufacturer, distributor, dealer or repairer. Such
25 arbitration organizations shall comply with the provisions of
26 subsections (b) and (c) of this section.

27 (b) If any motor vehicle purchased at any time on or after October 1,
28 1984, or leased at any time on or after June 17, 1987, fails to conform to
29 such applicable warranties as defined in said section 42-179, a
30 consumer may bring a grievance to an [arbitration panel] arbitrator if
31 the manufacturer of the vehicle has not established an informal dispute
32 settlement procedure which the Attorney General has certified as
33 complying in all respects with the requirements of said section 42-179.
34 The consumer may initiate a request for arbitration by calling a toll-
35 free telephone number designated by the commissioner or by
36 requesting an arbitration hearing in writing. The consumer shall file,
37 on forms prescribed by the commissioner, any information deemed
38 relevant to the resolution of the dispute and shall return the form
39 accompanied by a filing fee of fifty dollars. [Such complaint form shall
40 offer the consumer a choice of presenting any subsequent testimony
41 orally or in writing.] Prior to submitting the complaint to an
42 [arbitration panel] arbitrator, the Department of Consumer Protection
43 shall conduct an initial review of the complaint. The department shall
44 determine whether the complaint should be accepted or rejected for
45 arbitration based on whether it alleges that the manufacturer has failed
46 to comply with section 42-179. The filing fee shall be refunded if the
47 department determines that a complaint does not allege a violation of
48 any applicable warranty under the requirements of said section 42-179.
49 Upon acceptance of the complaint, the commissioner shall notify the
50 manufacturer of the filing of a request for arbitration and shall obtain

51 from the manufacturer, in writing on a form prescribed by the
52 commissioner, any information deemed relevant to the resolution of
53 the dispute. The manufacturer shall return the form within fifteen days
54 of receipt, together with a filing fee of two hundred fifty dollars. Upon
55 written agreement of the parties, the case may be presented to the
56 arbitrator solely based on the written documents submitted by such
57 parties. A lessee who brings a grievance to an [arbitration panel]
58 arbitrator under this section shall, upon filing the complaint form
59 provided for in this section, provide the lessor with notice by
60 registered or certified mail, return receipt requested, and the lessor
61 may petition the [arbitration panel] arbitrator to be made a party to the
62 arbitration proceedings. Initial determinations to reject a complaint for
63 arbitration shall be submitted to an [arbitration panel] arbitrator for a
64 final decision upon receipt of a written request from the consumer for
65 a review of the initial eligibility determination and a filing fee of fifty
66 dollars. If a complaint is accepted for arbitration, an [arbitration panel]
67 arbitrator may determine that a complaint does not allege that the
68 manufacturer has failed to comply with section 42-179 at any time
69 before such [panel] arbitrator renders its decision on the merits of the
70 dispute. The fee accompanying the consumer's complaint form shall be
71 refunded to the consumer and the fee accompanying the form filed by
72 the manufacturer shall be refunded to the manufacturer if the
73 [arbitration panel] arbitrator determines that a complaint does not
74 allege a violation of the provisions of section 42-179.

75 (c) The Department of Consumer Protection shall investigate, gather
76 and organize all information necessary for a fair and timely decision in
77 each dispute. The commissioner may issue subpoenas on behalf of any
78 [arbitration panel] arbitrator to compel the attendance of witnesses and
79 the production of documents, papers and records relevant to the
80 dispute. The department shall forward a copy of all written testimony,
81 including all documentary evidence, to an independent technical
82 expert certified by the National Institute of Automotive Service
83 Excellence or having a degree or other credentials from a nationally
84 recognized organization or institution attesting to automotive
85 expertise, who shall review such material and be available to advise

86 and consult with the [arbitration panel] arbitrator. An expert shall sit
87 as a nonvoting member of an arbitration panel whenever oral
88 testimony is presented. Such experts may be recommended by the
89 Commissioner of Motor Vehicles at the request of the Commissioner of
90 Consumer Protection. An [arbitration panel] arbitrator shall, as
91 expeditiously as possible, but not later than sixty days after the time
92 the consumer files the complaint form together with the filing fee,
93 render a fair decision based on the information gathered and disclose
94 [its] his or her findings and the reasons therefor to the parties involved.
95 The failure of the [arbitrators] arbitrator to render a decision within
96 sixty days shall not void any subsequent decision or otherwise limit
97 the powers of the [arbitrators] arbitrator. The [arbitration panel]
98 arbitrator shall base [its] his or her determination of liability solely on
99 whether the manufacturer has failed to comply with section 42-179.
100 The arbitration decision shall be final and binding as to the rights of
101 the parties pursuant to section 42-179, subject only to judicial review as
102 set forth in this subsection. The decision shall provide appropriate
103 remedies, including, but not limited to one or more of the following:

104 (1) Replacement of the vehicle with an identical or comparable new
105 vehicle acceptable to the consumer;

106 (2) Refund of the full contract price, plus collateral charges as
107 specified in subsection (d) of said section 42-179;

108 (3) Reimbursement for expenses and compensation for incidental
109 damages as specified in subsection (d) of said section 42-179;

110 (4) Any other remedies available under the applicable warranties,
111 section 42-179, this section and sections 42-182 to 42-184, inclusive, or
112 the Magnuson-Moss Warranty-Federal Trade Commission
113 Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect
114 on October 1, 1982, other than repair of the vehicle. The decision shall
115 specify a date for performance and completion of all awarded
116 remedies. Notwithstanding any provision of the general statutes or
117 any regulation to the contrary, the Department of Consumer Protection
118 shall not amend, reverse, rescind or revoke any decision or action of an

119 [arbitration panel] arbitrator. The department shall contact the
120 consumer, within ten working days after the date for performance, to
121 determine whether performance has occurred. The manufacturer shall
122 act in good faith in abiding by any arbitration decision. In addition,
123 either party to the arbitration may make application to the superior
124 court for the judicial district in which one of the parties resides or,
125 when the court is not in session, any judge thereof for an order
126 confirming, vacating, modifying or correcting any award, in
127 accordance with the provisions of this section and sections 52-417, 52-
128 418, 52-419 and 52-420. Upon filing such application the moving party
129 shall mail a copy of the application to the Attorney General and, upon
130 entry of any judgment or decree, shall mail a copy of such judgment or
131 decree to the Attorney General. A review of such application shall be
132 confined to the record of the proceedings before the [arbitration panel]
133 arbitrator. The court shall conduct a de novo review of the questions of
134 law raised in the application. In addition to the grounds set forth in
135 sections 52-418 and 52-419, the court shall consider questions of fact
136 raised in the application. In reviewing questions of fact, the court shall
137 uphold the award unless it determines that the factual findings of the
138 arbitrators are not supported by substantial evidence in the record and
139 that the substantial rights of the moving party have been prejudiced. If
140 the [arbitrators fail] arbitrator fails to state findings or reasons for the
141 award, or the stated findings or reasons are inadequate, the court shall
142 search the record to determine whether a basis exists to uphold the
143 award. If it is determined by the court that the manufacturer has acted
144 without good cause in bringing an appeal of an award, the court, in its
145 discretion, may grant to the consumer his costs and reasonable
146 attorney's fees. If the manufacturer fails to perform all awarded
147 remedies by the date for performance specified by the [arbitrators]
148 arbitrator, and the enforcement of the award has not been stayed
149 pursuant to subsection (c) of section 52-420, then each additional day
150 the manufacturer wilfully fails to comply shall be deemed a separate
151 violation for purposes of section 42-184.

152 (d) The department shall maintain such records of each dispute as
153 the commissioner may require, including an index of disputes by

154 brand name and model. The department shall annually compile and
155 maintain statistics indicating the record of manufacturer compliance
156 with arbitration decisions and the number of refunds or replacements
157 awarded. A copy of the statistical summary shall be filed with the
158 Commissioner of Motor Vehicles and shall be considered [by him] a
159 factor in determining the issuance of any manufacturer license as
160 required under section 14-67a. The summary shall be a public record.

161 (e) If a manufacturer has not established an informal dispute
162 settlement procedure certified by the Attorney General as complying
163 with the requirements of said section 42-179, public notice of the
164 availability of the department's automobile dispute settlement
165 procedure shall be prominently posted in the place of business of each
166 new car dealer licensed by the Department of Motor Vehicles to
167 engage in the sale of such manufacturer's new motor vehicles. Display
168 of such public notice shall be a condition of licensure under sections
169 14-52 and 14-64. The Commissioner of Consumer Protection shall
170 determine the size, type face, form and wording of the sign required
171 by this section, which shall include the toll-free telephone number and
172 the address to which requests for the department's arbitration services
173 may be sent.

174 (f) Any consumer injured by the operation of any procedure which
175 does not conform with procedures established by a manufacturer
176 pursuant to subsection (b) of section 42-182 and the provisions of Title
177 16 Code of Federal Regulations Part 703, as in effect on October 1, 1982,
178 may appeal any decision rendered as the result of such a procedure by
179 requesting arbitration de novo of the dispute by an [arbitration panel]
180 arbitrator. Filing procedures and fees for appeals shall be the same as
181 those required in subsection (b) of this section. The findings of the
182 manufacturer's informal dispute settlement procedure may be
183 admissible in evidence at such arbitration [panel hearing] and in any
184 civil action subsequently arising out of any warranty obligation or
185 matter related to the dispute. Any consumer so injured may, in
186 addition, request the Attorney General to investigate the
187 manufacturer's procedure to determine whether its certification shall

188 be suspended or revoked after proper notice and hearing. The
189 Attorney General shall establish procedures for processing such
190 consumer complaints and maintain a record of the disposition of such
191 complaints, which record shall be included in the annual report
192 prepared in accordance with the provisions of subsection (a) of section
193 42-182.

194 (g) The Commissioner of Consumer Protection shall adopt
195 regulations, in accordance with the provisions of chapter 54, to carry
196 out the purposes of this section. Written copies of the regulations and
197 appropriate arbitration hearing procedures shall be provided to any
198 person upon request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	42-181

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Consumer Protection, Dept.	Lemon Law Fund - See Below	See Below	See Below

Municipal Impact: None

Explanation

This bill requires the Department of Consumer Protection (DCP) to appoint an arbitrator, and has no fiscal impact.

The arbitrator would be compensated approximately \$85,000 per year, the cost of which would be paid by the Lemon Law Fund. Revenues, on average, exceed expenditures by approximately \$255,000 each fiscal year and are anticipated to cover arbitrator costs.

Approximately 175 applications for the Lemon Law are received by DCP each year.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future.

OLR Bill Analysis

sSB 1059

AN ACT CONCERNING THE NEW MOTOR VEHICLE LEMON LAW.

SUMMARY:

This bill (1) replaces the arbitration panels that hear new motor vehicle lemon law disputes with single arbitrators, (2) sets standards for the arbitrators, (3) allows the consumer protection commissioner to refer cases to more arbitration organizations, and (4) revises the conditions under which disputes may be settled solely on the basis of written documents.

EFFECTIVE DATE: October 1, 2007

ARBITRATOR AND ARBITRATION ORGANIZATIONS

The bill requires the consumer protection commissioner to appoint individuals as arbitrators who are not employees or independent contractors with a business involved in the manufacture, distribution, sale, or service of a motor vehicle. Appointed arbitrators must be paid and be members of an arbitration organization. Under current law, (1) the commissioner must appoint three-member panels, only one of whom may be directly involved in the production and sale of a product; (2) all three members must serve without compensation and be interested in consumer disputes; and (3) appointments are for two years at the commissioner's discretion.

The bill allows the commissioner to refer disputes to other arbitration organizations in addition to the American Arbitration Association and prohibits the organization and any appointed arbitrator from being affiliated with a motor vehicle manufacturer, distributor, dealer, or repairer. It requires the organizations to follow the lemon law's statutorily established arbitration procedures.

ORAL OR WRITTEN TESTIMONY

Current law requires a consumer's lemon law complaint form to state that the consumer has the choice of presenting additional testimony orally or in writing. The bill eliminates this requirement. It allows the consumer and the motor vehicle manufacturer to agree in writing that the case may be presented to the arbitrator solely based on the parties' written documents.

BACKGROUND***Lemon Law***

The Lemon Law establishes a consumer's right to a refund or a replacement vehicle if, after a reasonable number of repair attempts, it cannot be made to conform to applicable express warranties. A "reasonable number of repair attempts" has been made when the vehicle has a defect that substantially impairs its use, safety, or value, and the vehicle (1) has been repaired four or more times during the first 24,000 miles or two years of service; (2) has been out of service for a total of 30 days during the same period and the defect remains; or (3) has been repaired two or more times during the first year or the warranty term, whichever is shorter, and the defect is likely to cause death or serious bodily injury if the vehicle is driven.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/08/2007)