



# Senate

## File No. 872

General Assembly

January Session, 2007

(Reprint of File No. 121)

Substitute Senate Bill No. 1059  
As Amended by Senate Amendment Schedule  
"A" and House Amendment Schedule "A"

Approved by the Legislative Commissioner  
May 24, 2007

### **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 Section 42-181 of the general statutes is repealed and the  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 employees or independent  
12 contractors 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 by such organization to hear cases shall not be  
24 affiliated with any motor vehicle manufacturer, distributor, dealer or  
25 repairer. Such arbitration organizations shall comply with the  
26 provisions of 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] arbitrator are not supported by substantial evidence in the  
139 record and that the substantial rights of the moving party have been  
140 prejudiced. If the [arbitrators fail] arbitrator fails to state findings or  
141 reasons for the award, or the stated findings or reasons are inadequate,  
142 the court shall search the record to determine whether a basis exists to  
143 uphold the award. If it is determined by the court that the  
144 manufacturer has acted without good cause in bringing an appeal of  
145 an award, the court, in its discretion, may grant to the consumer his  
146 costs and reasonable attorney's fees. If the manufacturer fails to  
147 perform all awarded remedies by the date for performance specified  
148 by the [arbitrators] arbitrator, and the enforcement of the award has  
149 not been stayed pursuant to subsection (c) of section 52-420, then each  
150 additional day the manufacturer wilfully fails to comply shall be

151 deemed a separate 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

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:

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### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 08 \$</b>	<b>FY 09 \$</b>
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.

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.

Senate "A" made a technical change and a clarifying change regarding who would hear cases, and has no fiscal impact.

House "A" made minor changes to provisions concerning independent arbitrators and has no fiscal impact.

#### **The Out Years**

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

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**OLR Bill Analysis****sSB 1059 (as amended by House "A" and Senate "A")*****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.

\*Senate Amendment "A" makes a clarifying change and a technical change.

\*House Amendment "A" makes a grammatical change.

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 of a business involved in manufacturing, distributing, selling, or servicing motor vehicles. 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 arbitrator it appoints 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)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 53 Nay 0 (05/01/2007)