



House of Representatives

General Assembly

File No. 150

February Session, 2014

Substitute House Bill No. 5263

House of Representatives, March 27, 2014

The Committee on General Law reported through REP. BARAM of the 15th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT MAKING MINOR AND TECHNICAL CHANGES TO DEPARTMENT OF CONSUMER PROTECTION STATUTES.

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

1 Section 1. Subsection (c) of section 42-181 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2014*):

4 (c) The Department of Consumer Protection shall investigate, gather
5 and organize all information necessary for a fair and timely decision in
6 each dispute. The commissioner may issue subpoenas on behalf of any
7 arbitrator to compel the attendance of witnesses and the production of
8 documents, papers and records relevant to the dispute. The
9 department shall forward a copy of all written testimony, including all
10 documentary evidence, to an independent technical expert certified by
11 the National Institute of Automotive Service Excellence or having a
12 degree or other credentials from a nationally recognized organization
13 or institution attesting to automotive expertise, who shall review such
14 material and be available to advise and consult with the arbitrator. [An

15 expert shall sit as a nonvoting member of an arbitration panel
16 whenever oral testimony is presented. Such experts may be
17 recommended by the Commissioner of Motor Vehicles at the request
18 of the Commissioner of Consumer Protection.] An arbitrator shall, as
19 expeditiously as possible, but not later than sixty days after the time
20 the consumer files the complaint form together with the filing fee,
21 render a fair decision based on the information gathered and disclose
22 his or her findings and the reasons therefor to the parties involved. The
23 failure of the arbitrator to render a decision within sixty days shall not
24 void any subsequent decision or otherwise limit the powers of the
25 arbitrator. The arbitrator shall base his or her determination of liability
26 solely on whether the manufacturer has failed to comply with section
27 42-179. The arbitration decision shall be final and binding as to the
28 rights of the parties pursuant to section 42-179, subject only to judicial
29 review as set forth in this subsection. The decision shall provide
30 appropriate remedies, including, but not limited to, one or more of the
31 following:

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

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

36 (3) Reimbursement for expenses and compensation for incidental
37 damages as specified in subsection (d) of [said] section 42-179;

38 (4) Any other remedies available under the applicable warranties,
39 section 42-179, this section and sections 42-182 to 42-184, inclusive, or
40 the Magnuson-Moss Warranty-Federal Trade Commission
41 Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect
42 on October 1, 1982, other than repair of the vehicle. The decision shall
43 specify a date for performance and completion of all awarded
44 remedies. Notwithstanding any provision of the general statutes or
45 any regulation to the contrary, the Department of Consumer Protection
46 shall not amend, reverse, rescind or revoke any decision or action of an
47 arbitrator. The department shall contact the consumer, within ten

48 working days after the date for performance, to determine whether
49 performance has occurred. The manufacturer shall act in good faith in
50 abiding by any arbitration decision. In addition, either party to the
51 arbitration may make application to the superior court for the judicial
52 district in which one of the parties resides or, when the court is not in
53 session, any judge thereof for an order confirming, vacating,
54 modifying or correcting any award, in accordance with the provisions
55 of this section and sections 52-417, 52-418, 52-419 and 52-420. Upon
56 filing such application the moving party shall mail a copy of the
57 application to the Attorney General and, upon entry of any judgment
58 or decree, shall mail a copy of such judgment or decree to the Attorney
59 General. A review of such application shall be confined to the record of
60 the proceedings before the arbitrator. The court shall conduct a de
61 novo review of the questions of law raised in the application. In
62 addition to the grounds set forth in sections 52-418 and 52-419, the
63 court shall consider questions of fact raised in the application. In
64 reviewing questions of fact, the court shall uphold the award unless it
65 determines that the factual findings of the arbitrator are not supported
66 by substantial evidence in the record and that the substantial rights of
67 the moving party have been prejudiced. If the arbitrator fails to state
68 findings or reasons for the award, or the stated findings or reasons are
69 inadequate, the court shall search the record to determine whether a
70 basis exists to uphold the award. If it is determined by the court that
71 the manufacturer has acted without good cause in bringing an appeal
72 of an award, the court, in its discretion, may grant to the consumer his
73 costs and reasonable attorney's fees. If the manufacturer fails to
74 perform all awarded remedies by the date for performance specified
75 by the arbitrator, and the enforcement of the award has not been
76 stayed pursuant to subsection (c) of section 52-420, then each
77 additional day the manufacturer wilfully fails to comply shall be
78 deemed a separate violation for purposes of section 42-184.

79 Sec. 2. Subsection (a) of section 21a-190l of the general statutes is
80 repealed and the following is substituted in lieu thereof (*Effective July*
81 *1, 2014*):

82 (a) The commissioner may deny, suspend or revoke the registration
83 of any charitable organization, fund-raising counsel or paid solicitor
84 which has violated any provision of sections 21a-190a to 21a-190l,
85 inclusive. The commissioner may accept a written assurance of
86 compliance when said commissioner determines that a violation of
87 said sections is [not material and] such that the public interest would
88 not be served by a denial, suspension or revocation of such
89 registration.

90 Sec. 3. Subsection (c) of section 42-126b of the general statutes is
91 repealed and the following is substituted in lieu thereof (*Effective July*
92 *1, 2014*):

93 (c) (1) Any person, firm, partnership, association or corporation that
94 sells or offers to sell any products or services used primarily for
95 personal, family or household purposes for a specified period of time
96 of more than one hundred eighty days pursuant to a written contract
97 that contains a provision for automatic renewal of the contract [for a
98 period of time of more than thirty-one days] at the end of the period of
99 time specified in the contract shall provide the recipient of such
100 products or services with a clear and conspicuous written notice that
101 the recipient may cancel such contract. Such notice shall include the
102 procedure for such cancellation. Such notice shall be given at least
103 fifteen days but not more than sixty days prior to: (A) The date upon
104 which the contract will be renewed, or (B) the expiration of the time
105 period for cancellation by the recipient, whichever time period is
106 earlier. Mailing of the written notice required by this subdivision by
107 United States mail to the address of the recipient listed in the contract
108 shall satisfy the notice requirements of this subdivision. If a contract
109 subject to the provisions of this subsection is entered into electronically
110 or the consumer agrees to receive notice electronically, the written
111 notice required by this subsection may be transmitted by electronic
112 mail.

113 (2) Any person, firm, partnership, association or corporation that
114 sells or offers to sell any products or services used primarily for

115 personal, family or household purposes for a specified period of time
116 of one hundred eighty days or less pursuant to a written contract that
117 contains a provision for automatic renewal of the contract [for a period
118 of time of more than thirty-one days] at the end of the period of time
119 specified in the contract, shall include in such contract a clear and
120 conspicuous written notice that the recipient of such products or
121 services may cancel such contract and the procedure for such
122 cancellation, provided the recipient shall not be required to exercise
123 such right of cancellation more than sixty days prior to the expiration
124 of the specified period of time.

125 (3) If such notice is not provided to the recipient in accordance with
126 subdivision (1) of this subsection or included in the contract in
127 accordance with subdivision (2) of this subsection, as the case may be,
128 any such products or services furnished to the recipient after the
129 expiration of the period of time specified in the contract shall be
130 deemed an unconditional gift under subsection (a) of this section.

131 (4) Nothing in this subsection shall be construed to apply to a health
132 club contract subject to the provisions of section 21a-219, a contract
133 subject to the provisions of sections 36a-675 to 36a-685, inclusive, or
134 any contract between a condominium or housing association and a
135 person other than an individual.

136 Sec. 4. Subsection (d) of section 20-417i of the general statutes is
137 repealed and the following is substituted in lieu thereof (*Effective July*
138 *1, 2014*):

139 (d) Beginning October 1, 2000, whenever a consumer obtains a court
140 judgment against any new home construction contractor holding a
141 certificate or who has held a certificate under sections 20-417a to 20-
142 417j, inclusive, within the past two years of the date of entering into
143 the contract with the consumer, for loss or damages sustained by
144 reason of any violation of the provisions of sections 20-417a to 20-417j,
145 inclusive, by a person holding a certificate under said sections, such
146 consumer may, upon the final determination of, or expiration of time
147 for taking, an appeal in connection with any such judgment, apply to

148 the commissioner for an order directing payment out of the New
149 Home Construction Guaranty Fund of the amount not exceeding thirty
150 thousand dollars unpaid upon the judgment for actual damages and
151 costs taxed by the court against such contractor, exclusive of punitive
152 damages. The application shall be made on forms provided by the
153 commissioner and shall be accompanied by a certified copy of the
154 court judgment obtained against the new home construction contractor
155 together with a notarized affidavit, signed and sworn to by the
156 consumer, affirming that the consumer has: (1) Complied with all the
157 requirements of this subsection; (2) obtained a judgment, stating the
158 amount of the judgment and the amount owing on the judgment at the
159 date of application; and (3) made a good faith effort to satisfy any such
160 judgment in accordance with the provisions of chapter 906 which
161 effort may include causing to be issued a writ of execution upon such
162 judgment, but the officer executing the same has made a return
163 showing that no bank accounts or [real] personal property of such
164 contractor liable to be levied upon in satisfaction of the judgment
165 could be found, or that the amount realized on the sale of them or of
166 such of them as were found, under the execution, was insufficient to
167 satisfy the actual damage portion of the judgment or stating the
168 amount realized and the balance remaining due on the judgment after
169 application on the judgment of the amount realized, except that the
170 requirements of this subdivision shall not apply to a judgment
171 obtained by the consumer in small claims court. A true and attested
172 copy of such executing officer's return, when required, shall be
173 attached to such application and affidavit. Whenever the consumer
174 satisfies the commissioner or the commissioner's designee that it is not
175 practicable to comply with the requirements of subdivision (3) of this
176 subsection and that the consumer has taken all reasonable steps to
177 collect the amount of the judgment or the unsatisfied part of the
178 judgment and has been unable to collect the same, the commissioner or
179 the commissioner's designee may, in the commissioner's discretion,
180 dispense with the necessity for complying with such requirement. No
181 application for an order directing payment out of the fund shall be
182 made later than two years from the final determination of, or

183 expiration of time for taking, an appeal of such court judgment, and no
184 such application shall be for an amount in excess of thirty thousand
185 dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	42-181(c)
Sec. 2	<i>July 1, 2014</i>	21a-1901(a)
Sec. 3	<i>July 1, 2014</i>	42-126b(c)
Sec. 4	<i>July 1, 2014</i>	20-417i(d)

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact as all changes are technical and conforming in nature with regard to the Department of Consumer Protection.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5263*****AN ACT MAKING MINOR AND TECHNICAL CHANGES TO DEPARTMENT OF CONSUMER PROTECTION STATUTES.*****SUMMARY:**

This bill makes several minor and technical changes in the Department of Consumer Protection (DCP) statutes. It:

1. requires anyone selling or offering to sell products or services primarily for personal, family, or household purposes under a written contract that contains any automatic renewal clause, instead of just those renewing the contract for more than 31 days, to notify the consumer that he or she may cancel the contract;
2. allows the DCP commissioner to accept a written assurance of compliance from a charitable organization, fund-raising counsel, or paid solicitor for all Charitable Funds Act violations, not just material violations, when he determines the public interest is not served by denying, suspending, or revoking the violator's registration;
3. conforms the law to current DCP practice by requiring an applicant seeking payment from the New Home Construction Guaranty Fund to affirm that he or she, as part of a judgment execution, failed to discover any personal, instead of real, property, that would satisfy the judgment; and
4. eliminates an obsolete provision pertaining to a lemon law arbitration panel member.

EFFECTIVE DATE: July 1, 2014

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 2 (03/13/2014)