



# House of Representatives

**File No. 646**

General Assembly

February Session, 2014

**(Reprint of File No. 150)**

Substitute House Bill No. 5263  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 21, 2014

***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2 repealed and the following is substituted in lieu thereof (*Effective July*  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] business days after the date for performance, to determine  
49 whether performance has occurred. The manufacturer shall act in good  
50 faith in abiding by any arbitration decision. In addition, either party to  
51 the arbitration may make application to the superior court for the  
52 judicial district in which one of the parties resides or, when the court is  
53 not in 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 (d) of section 20-417i of the general statutes is  
91 repealed and the following is substituted in lieu thereof (*Effective July*  
92 *1, 2014*):

93 (d) Beginning October 1, 2000, whenever a consumer obtains a court  
94 judgment against any new home construction contractor holding a  
95 certificate or who has held a certificate under sections 20-417a to 20-  
96 417j, inclusive, within the past two years of the date of entering into  
97 the contract with the consumer, for loss or damages sustained by  
98 reason of any violation of the provisions of sections 20-417a to 20-417j,  
99 inclusive, by a person holding a certificate under said sections, such  
100 consumer may, upon the final determination of, or expiration of time  
101 for taking, an appeal in connection with any such judgment, apply to  
102 the commissioner for an order directing payment out of the New  
103 Home Construction Guaranty Fund of the amount not exceeding thirty  
104 thousand dollars unpaid upon the judgment for actual damages and  
105 costs taxed by the court against such contractor, exclusive of punitive  
106 damages. The application shall be made on forms provided by the  
107 commissioner and shall be accompanied by a certified copy of the  
108 court judgment obtained against the new home construction contractor  
109 together with a notarized affidavit, signed and sworn to by the  
110 consumer, affirming that the consumer has: (1) Complied with all the  
111 requirements of this subsection; (2) obtained a judgment, stating the  
112 amount of the judgment and the amount owing on the judgment at the  
113 date of application; and (3) made a good faith effort to satisfy any such

114 judgment in accordance with the provisions of chapter 906 which  
 115 effort may include causing to be issued a writ of execution upon such  
 116 judgment, but the officer executing the same has made a return  
 117 showing that no bank accounts or [real] personal property of such  
 118 contractor liable to be levied upon in satisfaction of the judgment  
 119 could be found, or that the amount realized on the sale of them or of  
 120 such of them as were found, under the execution, was insufficient to  
 121 satisfy the actual damage portion of the judgment or stating the  
 122 amount realized and the balance remaining due on the judgment after  
 123 application on the judgment of the amount realized, except that the  
 124 requirements of this subdivision shall not apply to a judgment  
 125 obtained by the consumer in small claims court. A true and attested  
 126 copy of such executing officer's return, when required, shall be  
 127 attached to such application and affidavit. Whenever the consumer  
 128 satisfies the commissioner or the commissioner's designee that it is not  
 129 practicable to comply with the requirements of subdivision (3) of this  
 130 subsection and that the consumer has taken all reasonable steps to  
 131 collect the amount of the judgment or the unsatisfied part of the  
 132 judgment and has been unable to collect the same, the commissioner or  
 133 the commissioner's designee may, in the commissioner's or the  
 134 commissioner's designee's discretion, dispense with the necessity for  
 135 complying with such requirement. No application for an order  
 136 directing payment out of the fund shall be made later than two years  
 137 from the final determination of, or expiration of time for taking, an  
 138 appeal of such court judgment, and no such application shall be for an  
 139 amount in excess of thirty thousand dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2014	42-181(c)
Sec. 2	July 1, 2014	21a-190l(a)
Sec. 3	July 1, 2014	20-417i(d)

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.

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***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.

House "A" (LCO 3338) is technical/procedural and results in no fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 5263 (as amended by House "A")\*****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. 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;
2. 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
3. eliminates an obsolete provision pertaining to a lemon law arbitration panel member.

\*House Amendment "A" removes a provision on contract renewal notifications and makes technical changes.

EFFECTIVE DATE: July 1, 2014

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 2 (03/13/2014)