



General Assembly

**Substitute Bill No. 5263**

February Session, 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2 repealed and the following is substituted in lieu thereof (*Effective July*  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 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-190*l* 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-190*l*,

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.*