

House Bill 470

By: Representatives Parrish of the 156th, Rice of the 51st, Parham of the 141st, and Powell of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To repeal Article 28 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to motor vehicle warranty rights; to enact a new Article 28 of Chapter 1 of Title 10
3 to be known as the "Georgia Lemon Law"; to provide for a short title; to provide for
4 legislative intent; to provide for definitions; to provide for documents and information to be
5 provided to consumers; to provide for a duty of the manufacturer to repair and correct
6 nonconformities; to provide for replacement or repurchase of nonconforming vehicles; to
7 provide for an informal dispute settlement mechanism; to provide for arbitration; to provide
8 for an appeal of the arbitration decision; to require exhaustion of remedies by the consumer;
9 to provide for a new motor vehicle arbitration panel; to provide for resale of a
10 nonconforming vehicle; to provide for collection of a consumer fee; to provide for new motor
11 vehicle dealer liability; to provide for other rights and remedies; to provide for staffing; to
12 provide for rulemaking authority; to provide for severability; to provide for waiver of rights
13 under provisions as contrary to public policy; to provide for related matters; to provide an
14 effective date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Article 28 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
18 motor vehicle warranty rights, is amended by striking it in its entirety and inserting in its
19 place a new article as follows:

20 style="text-align:center">"ARTICLE 28

21 10-1-780.

22 This article shall be known and may be cited as the 'Georgia Lemon Law.'

1 10-1-781.

2 The General Assembly recognizes that a new motor vehicle is a major consumer purchase
3 and that a defectively manufactured new motor vehicle is likely to create hardship for, or
4 may cause injury to, the consumer. It is the intent of the General Assembly to create a
5 procedure for expeditious resolution of complaints and disputes concerning nonconforming
6 new motor vehicles, to provide a method for notifying consumers of their rights under this
7 article, and to ensure that consumers receive information, documents, and service necessary
8 to enable them to exercise their rights under this article. In enacting these comprehensive
9 measures, the General Assembly intends to encourage manufacturers to take all steps
10 necessary to correct nonconformities in new motor vehicles and to create the proper blend
11 of private and public remedies necessary to enforce this article.

12 10-1-782.

13 Unless the context clearly requires otherwise, as used in this article, the term:

14 (1) 'Adjusted capitalized cost' refers to the amount shown as the adjusted capitalized cost
15 in the lease agreement.

16 (2) 'Administrator' means the administrator appointed pursuant to Code Section 10-1-395
17 or his or her designee.

18 (3) 'Authorized agent' means any person, including a franchised motor vehicle dealer,
19 who is authorized by the manufacturer to service motor vehicles.

20 (4) 'Collateral charges' means charges incurred by a consumer as a result of the purchase
21 of a new motor vehicle including, but not limited to, charges attributable to factory or
22 dealer installed options, sales tax and title charges, and earned finance charges.

23 (5) 'Consumer' means the purchaser of a new motor vehicle, other than for purposes of
24 resale or lease of the vehicle. The term shall also include a lessee, or any other person
25 entitled by the terms of an express warranty to enforce the obligations of the express
26 warranty.

27 (6) 'Days' means calendar days.

28 (7) 'Express warranty' means a warranty which is given by the manufacturer in writing.

29 (8) 'Incidental costs' means any reasonable expenses incurred by a consumer in
30 connection with the repair of a new motor vehicle, including, but not limited to, payments
31 to new motor vehicle dealers for the attempted repair of nonconformities, towing charges,
32 and the costs of obtaining alternative transportation.

33 (9) 'Informal dispute settlement mechanism' means any procedure established, employed,
34 utilized, or sponsored by a manufacturer for the purpose of resolving disputes with
35 consumers under this article.

1 (10) 'Lemon law rights period' means the period ending two years after the date of the
2 original delivery of a new motor vehicle to a consumer or the first 24,000 miles of
3 operation after delivery of a new motor vehicle to a consumer, whichever occurs first.
4 The lemon law rights period shall be extended by one day for each day that repair
5 services are not available to the consumer as a direct result of a strike, war, invasion,
6 terrorist act, blackout, fire, flood, other disaster, or declared state of emergency.

7 (11) 'Lessee' means any consumer who enters into a written lease agreement or contract
8 to lease a new motor vehicle for a period of at least one year and is responsible for repairs
9 to such vehicle.

10 (12) 'Lessee cost' means the aggregate payment made by the lessee at the inception of
11 the lease agreement or contract, inclusive of any allowance for a trade-in vehicle, and all
12 other lease payments made by or on behalf of the lessee to the lessor.

13 (13) 'Lessor' means a person who holds title to a new motor vehicle that is leased to a
14 consumer under a written lease agreement or contract or who holds the lessor's rights
15 under such agreement.

16 (14) 'Manufacturer' means any person engaged in the business of constructing or
17 assembling new motor vehicles or engaged in the business of importing or receiving
18 imports of new motor vehicles into the United States for the purpose of selling or
19 distributing them to new motor vehicle dealers.

20 (15) 'New motor vehicle' means any self-propelled vehicle primarily designed for the
21 transportation of persons or property over the public highways that was leased,
22 purchased, or registered in this state by the consumer or lessor to whom the original
23 motor vehicle title was issued without previously having been issued to any person other
24 than a new motor vehicle dealer. The term 'new motor vehicle' does not include any
25 vehicle on which the title and other transfer documents show a used, rather than new,
26 vehicle. The term 'new motor vehicle' also does not include trucks with more than 12,000
27 pounds gross vehicle weight rating, motorcycles, or golf carts. If a new motor vehicle is
28 a motor home, this article shall apply to the self-propelled vehicle and chassis, but does
29 not include those portions of the vehicle designated, used, or maintained primarily as
30 living quarters, office, or commercial space.

31 (16) 'New motor vehicle dealer' means a person who holds a dealer agreement with a
32 manufacturer for the sale of new motor vehicles, who is engaged in the business of
33 purchasing, selling, servicing, exchanging, leasing, or dealing in new motor vehicles, or
34 who is licensed or otherwise authorized to utilize trademarks or service marks associated
35 with one or more makes of motor vehicles in connection with such sales.

36 (17) 'Nonconformity' means a defect, a serious safety defect, or a condition, any of which
37 substantially impairs the use, value, or safety of a new motor vehicle to the consumer or

1 renders the new motor vehicle nonconforming to a warranty. A nonconformity does not
2 include a defect, a serious safety defect, or a condition that is the result of abuse, neglect,
3 or unauthorized modification or alteration of the new motor vehicle.

4 (18) 'Panel' refers to the new motor vehicle arbitration panel as designated in this article.

5 (19) 'Person' shall have the same meaning as provided in Code Section 10-1-392.

6 (20) 'Purchase price' means, in the case of a sale of a new motor vehicle to a consumer,
7 the cash price of the new motor vehicle appearing in the sales agreement or contract,
8 inclusive of any allowance for a trade-in vehicle. In the case of a lease executed by a
9 consumer, 'purchase price' refers to the agreed upon value of the vehicle as shown in the
10 lease agreement or contract.

11 (21) 'Reacquired vehicle' means a new motor vehicle with an alleged nonconformity that
12 has been replaced or repurchased by the manufacturer as the result of any court order or
13 judgment, arbitration decision, voluntary settlement entered into between a manufacturer
14 and the consumer, or voluntary settlement between a new motor vehicle dealer and a
15 consumer in which the manufacturer directly or indirectly participated.

16 (22) 'Reasonable number of attempts' under the lemon law rights period shall be as set
17 forth in subsection (a) of Code Section 10-1-784.

18 (23) 'Reasonable offset for use' means an amount calculated by multiplying the purchase
19 price of a vehicle by the number of miles directly attributable to consumer use as of the
20 date on which the consumer first delivered the vehicle to the manufacturer, its authorized
21 agent, or the new motor vehicle dealer for repair of a nonconformity and dividing the
22 product by 120,000.

23 (24) 'Replacement motor vehicle' means a new motor vehicle that is identical or at least
24 equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed
25 at the time of purchase or execution of the lease.

26 (25) 'Serious safety defect' means a defect or malfunction that is life threatening or likely
27 to cause serious bodily injury.

28 (26) 'Superior court' means the superior court in the county where the consumer resides,
29 except if the consumer does not reside in this state, then the superior court in the county
30 where an arbitration hearing was conducted pursuant to this article.

31 (27) 'Warranty' means any manufacturer's express or implied warranty or any
32 affirmation of fact or promise made by the manufacturer in connection with the sale of
33 a new motor vehicle to a consumer concerning the vehicle's materials, workmanship,
34 operation, or performance which becomes part of the basis of the bargain, but shall not
35 include any extended coverage purchased by the consumer as a separate item.

1 10-1-783.

2 (a) The manufacturer shall publish an owner's manual and provide it to the new motor
3 vehicle dealer. The owner's manual shall include a clear and conspicuous listing of
4 addresses, e-mail addresses, facsimile numbers, and toll-free telephone numbers for the
5 manufacturer's customer service division, zone or regional offices, and customer service
6 personnel who are authorized to direct activities regarding repair of the consumer's vehicle.
7 A manufacturer shall also provide all applicable manufacturer's written warranties to the
8 new motor vehicle dealer, who shall transfer the owner's manual and all applicable
9 manufacturer's written warranties to the consumer at the time of purchase or vehicle
10 acquisition.

11 (b) At the time of purchase or vehicle acquisition, the new motor vehicle dealer shall
12 provide the consumer with a written statement that explains the consumer's rights under
13 this article. The statement shall be written by the administrator and shall contain
14 information regarding the procedures and remedies under this article.

15 (c) By October 1 of each year, the manufacturer shall forward to the administrator one
16 copy of the owner's manual and the express warranty for each make and model of current
17 year new motor vehicles it sells in this state. To the extent the instructions, terms, and
18 conditions in the owner's manuals and express warranties for other models of the same
19 make are substantially the same, submission of the owner's manual and express warranty
20 for one model and a list of all other models for that make will satisfy the requirements of
21 this subsection.

22 (d) Each time the consumer's new motor vehicle is returned from being diagnosed or
23 repaired, the manufacturer, its authorized agent, or the new motor vehicle dealer shall
24 provide to the consumer a fully itemized and legible statement or repair order containing
25 a general description of the problem reported by the consumer; the date and the odometer
26 reading when the vehicle was submitted for repair; the date and odometer reading when the
27 vehicle was made available to the consumer; the results of any diagnostic test, inspection,
28 or test drive; a description of any diagnosis or problem identified by the manufacturer, its
29 authorized agent, or the new motor vehicle dealer; and an itemization of all work
30 performed on the vehicle, including, but not limited to, parts and labor.

31 (e) Upon request of the consumer, the manufacturer, its authorized agent, or the new motor
32 vehicle dealer shall provide a copy of any report or computer reading compiled by the
33 manufacturer's representative regarding inspection, diagnosis, or test drive of the
34 consumer's new motor vehicle.

1 10-1-784.

2 (a)(1) If a consumer reports a nonconformity during the lemon law rights period, the
3 manufacturer, its authorized agent, or the new motor vehicle dealer shall be allowed a
4 reasonable number of attempts to repair and correct the nonconformity. A reasonable
5 number of attempts shall be deemed to have been undertaken by the manufacturer, its
6 authorized agent, or the new motor vehicle dealer if, during the lemon law rights period:

7 (A) A serious safety defect has been subject to repair one time and the serious safety
8 defect has not been corrected;

9 (B) The same nonconformity has been subject to repair three times, and the
10 nonconformity has not been corrected; or

11 (C) The vehicle is out of service by reason of repair of one or more nonconformities
12 for a cumulative total of 30 days.

13 If the vehicle is being repaired by the manufacturer, its authorized agent, or the new
14 motor vehicle dealer on the date that the lemon law rights period expires, the lemon law
15 rights period shall be extended until that repair attempt has been completed.

16 (2) If the manufacturer, its authorized agent, or the new motor vehicle dealer is unable
17 to repair and correct a nonconformity after a reasonable number of attempts, the
18 consumer shall give written notice to the manufacturer of the need to repair and correct
19 the nonconformity. The notice shall be sent to the address provided by the manufacturer
20 in the owner's manual. The manufacturer shall have 21 days from its receipt of the notice
21 to make a final attempt to repair and correct the nonconformity.

22 (A) By not later than the close of business on the seventh day following receipt of
23 notice from the consumer, the manufacturer shall notify the consumer of the location
24 of a repair facility that is reasonably accessible to the consumer. By not later than the
25 close of business on the fourteenth day following the manufacturer's receipt of notice,
26 the consumer shall deliver the nonconforming new motor vehicle to the designated
27 repair facility. The manufacturer shall complete the final attempt to repair and correct
28 the nonconformity by not later than the close of business on the twenty-first day
29 following its receipt of notice.

30 (B) If the manufacturer fails to complete the final attempt to repair and correct the
31 nonconformity within the 21 day time period, the requirement that it be given a final
32 attempt to repair and correct the nonconformity shall not apply. However, if the
33 consumer delivers the nonconforming new motor vehicle to the designated repair
34 facility more than 14 days from the date the manufacturer receives notice from the
35 consumer, the 21 day time period shall be extended and the manufacturer shall have
36 seven days from the date the nonconforming new motor vehicle is delivered to the
37 repair facility to complete the final attempt to repair and correct the nonconformity.

1 (3) No manufacturer, its authorized agent, or new motor vehicle dealer may refuse to
2 diagnose or repair any alleged nonconformity for the purpose of avoiding liability under
3 this article.

4 (b) If the manufacturer is unable to correct a nonconformity after the final attempt, or if
5 a vehicle has been out of service by reason of repair of one or more nonconformities for
6 30 days during the lemon law rights period, the manufacturer shall, at the option of the
7 consumer, repurchase or replace the vehicle. The consumer shall notify the manufacturer,
8 in writing, of which option the consumer elects. The manufacturer shall have 10 days from
9 receipt of the notice to repurchase or replace the vehicle.

10 (1)(A) If a consumer who is a lessee elects to receive a replacement motor vehicle, in
11 addition to providing the replacement motor vehicle, the manufacturer shall pay to the
12 lessor an amount equal to all charges that the lessor will incur as a result of the
13 replacement transaction and shall pay the lessee an amount equal to all incidental costs
14 that have been incurred by the lessee plus all charges that the lessee will incur as a
15 result of the replacement transaction. If a lessee elects to receive a replacement motor
16 vehicle, all terms of the existing lease agreement or contract shall remain in force and
17 effect, except that the vehicle identification information contained in the lease
18 agreement or contract shall be changed to conform to the vehicle identification
19 information of the replacement vehicle.

20 (B) If a consumer who is not a lessee elects to receive a replacement motor vehicle, in
21 addition to providing the replacement motor vehicle, the manufacturer shall pay to the
22 consumer an amount equal to all incidental costs incurred by the consumer plus all
23 charges that the consumer will incur as a result of the replacement transaction.

24 (2)(A) If a consumer who is a lessee elects a repurchase, the manufacturer shall pay to
25 the lessee an amount equal to all payments made by the lessee under the lease
26 agreement or contract, including, but not limited to, the lessee cost, plus all incidental
27 costs, less a reasonable offset for use of the nonconforming new motor vehicle. The
28 manufacturer shall pay to the lessor an amount equal to 110 percent of the adjusted
29 capitalized cost of the nonconforming new motor vehicle. After the lessor has received
30 payment from the manufacturer as specified herein and payment from the consumer of
31 all past due charges, if any, the consumer shall have no further obligation to the lessor.

32 (B) If a consumer who is not a lessee elects a repurchase, the manufacturer shall pay
33 to the consumer an amount equal to the purchase price of the nonconforming new
34 motor vehicle plus all collateral charges and incidental costs, less a reasonable offset
35 for use of the nonconforming new motor vehicle. Payment shall be made to the
36 consumer and lienholder of record, if any, as their interests may appear on the records
37 of ownership.

1 10-1-785.

2 (a)(1) If a manufacturer does not replace or repurchase a nonconforming new motor
3 vehicle after being requested to do so under subsection (b) of Code Section 10-1-784, the
4 consumer may move to compel replacement or repurchase by applying for arbitration
5 pursuant to Code Section 10-1-786. However, if a manufacturer has established an
6 informal dispute settlement mechanism which the administrator has certified as
7 complying with the provisions and rules of this article, the consumer shall be eligible to
8 apply for arbitration only after submitting a dispute under this article to the informal
9 dispute settlement mechanism.

10 (2) A consumer must file a claim with the manufacturer's certified informal dispute
11 settlement mechanism no later than one year after expiration of the lemon law rights
12 period.

13 (3) After a decision has been rendered by the certified informal dispute settlement
14 mechanism, the consumer is eligible to apply for arbitration pursuant to Code Section
15 10-1-786.

16 (4) If a decision is not rendered by the certified informal dispute settlement mechanism
17 within 40 days of filing, the requirement that the consumer submit his or her dispute to
18 the certified informal dispute settlement mechanism shall not apply and the consumer is
19 eligible to apply for arbitration under Code Section 10-1-786.

20 (b) Certified informal dispute settlement mechanisms shall be required to take into account
21 the principles contained in and any rules promulgated under this article and shall take into
22 account all legal and equitable factors germane to a fair and just decision. A decision shall
23 include any remedies appropriate under the circumstances, including repair, replacement,
24 refund, and reimbursement for collateral charges and incidental costs. For purposes of this
25 Code section, the phrase 'take into account the principles contained in and any rules
26 promulgated under this article' means to be aware of the provisions of this article, to
27 understand how they might apply to the circumstances of the particular dispute, and to
28 apply them if it is appropriate and fair to both parties to do so.

29 (c) A certified informal dispute settlement mechanism shall keep such records as
30 prescribed by the administrator in rules promulgated under this article and shall allow the
31 administrator, without notice, to inspect and obtain copies of the records. Copies of any
32 records requested by the administrator shall be provided promptly to the administrator at
33 no cost.

34 (d) A manufacturer may apply to the administrator for certification of its informal dispute
35 settlement mechanism. The administrator may, in his or her discretion, impose
36 requirements on an informal dispute settlement mechanism in order for it to be certified.
37 Within a reasonable time following receipt of the application, the administrator shall certify

1 the informal dispute settlement mechanism or notify the manufacturer of the reason or
2 reasons for denial of the requested certification.

3 (e) At any time the administrator has reason to believe that a certified informal dispute
4 settlement mechanism is no longer in compliance with this article, he or she may notify the
5 manufacturer of intent to revoke the informal dispute settlement mechanism's certification.
6 The notice shall contain a statement of the reason or reasons for the revocation.

7 (f) The manufacturer shall have 10 days from its receipt of notice of denial of requested
8 certification or notice of intent to revoke certification to submit a written request for a
9 hearing to contest the denial or intended revocation. If a hearing is requested, it shall be
10 held within 30 days of the administrator's receipt of the hearing request. The hearing shall
11 be conducted by the Office of State Administrative Hearings following the procedures set
12 forth in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

13 (g) No representation shall be made to a consumer that his or her dispute must be
14 submitted to an informal dispute settlement mechanism that is not certified by the
15 administrator pursuant to this Code section.

16 10-1-786.

17 (a) A consumer shall request arbitration by filing a written application for arbitration with
18 the administrator. The application must be filed no later than one year from the date of
19 expiration of the lemon law rights period or 60 days from the conclusion of the certified
20 informal dispute settlement mechanism's proceeding, whichever occurs later.

21 (b)(1) After receiving an application for arbitration, the administrator shall determine
22 whether the dispute is eligible for arbitration. Manufacturers shall be required to submit
23 to arbitration under this article if the consumer's dispute is deemed eligible for arbitration
24 by the administrator. Disputes deemed eligible for arbitration shall be assigned to an
25 arbitrator or arbitrators appointed pursuant to Code Section 10-1-789.

26 (2) A consumer whose dispute is determined to be ineligible for arbitration by the
27 administrator may appeal the determination of ineligibility to an arbitrator or arbitrators
28 appointed pursuant to Code Section 10-1-789.

29 (A) If the arbitrator or arbitrators determine that the consumer's dispute is eligible for
30 arbitration, the arbitrator or arbitrators shall retain jurisdiction and the consumer's
31 dispute shall proceed in accordance with this Code section.

32 (B) If the arbitrator or arbitrators determine that the consumer's dispute is not eligible
33 for arbitration, a written decision shall be prepared and sent to the consumer by certified
34 mail, return receipt requested.

1 (C) The decision of ineligibility may be appealed by the consumer under the provisions
2 set forth in subsection (a) of Code Section 10-1-787. On appeal, the court shall
3 consider only the issue of eligibility for arbitration.

4 (3) If the court finds that a consumer's appeal from a determination of ineligibility is
5 frivolous or has been filed in bad faith or for the purpose of harassment, the court may
6 require the consumer to pay to the administrator all costs incurred as a direct result of the
7 appeals from the administrator's determination of ineligibility.

8 (c) A lessee shall notify the lessor of the pending arbitration, in writing, within 10 days of
9 the lessee's receipt of notice that a dispute has been deemed eligible for arbitration and
10 shall provide to the arbitrator or arbitrators proof that notice was given to the lessor.
11 Within 10 days of its receipt of notice from the lessee, a lessor may petition the arbitrator
12 or arbitrators to be a party to the arbitration proceeding.

13 (d) The arbitrator or arbitrators shall make every effort to conduct the arbitration hearing
14 within 40 days from the date the dispute is deemed eligible for arbitration. The hearing
15 shall be held at a location that is reasonably convenient to the Georgia consumer. Failure
16 to hear the case within 40 days shall not divest authority of the arbitrator or arbitrators to
17 hear the dispute or void any decision ultimately rendered.

18 (e) If the arbitrator or arbitrators determine:

19 (1) That a reasonable number of attempts have been undertaken to repair and correct the
20 nonconformity and that the manufacturer was given the opportunity to make a final
21 attempt to repair and correct the nonconformity and was unable to correct it; or

22 (2) That a new motor vehicle was out of service by reason of repair of one or more
23 nonconformities for a cumulative total of 30 days within the lemon law rights period,
24 the consumer shall be awarded replacement or repurchase of the new motor vehicle as
25 provided under Code Section 10-1-784. The arbitrator or arbitrators also may award
26 attorney's fees and technical or expert witness fees to a consumer who prevails.

27 (f) The decision of the arbitrator or arbitrators shall be in writing, signed, and shall contain
28 findings of fact and conclusions of law. The original signed decision shall be filed with the
29 administrator and copies shall be sent to all parties. The filing of the decision with the
30 administrator constitutes entry of the decision.

31 (g) A decision of the arbitrator or arbitrators that has become final under the provisions of
32 subsection (a) of Code Section 10-1-787 may be filed with the clerk of the superior court,
33 shall have all the force and effect of a judgment or decree of the court, and may be enforced
34 in the same manner as any other judgment or decree.

35 (h) No arbitrator may be required to testify concerning any arbitration and the arbitrator's
36 notes or other records are not subject to discovery. This provision does not extend to

1 testimony or documents sought in connection with legal claims brought against an
2 arbitrator arising out of an arbitration proceeding.

3 10-1-787.

4 (a) The decision of the arbitrator or arbitrators is final unless a party to the arbitration,
5 within 30 days of entry of the decision, appeals the decision to the superior court. A party
6 who appeals a decision shall follow the procedures set forth in Article 2 of Chapter 3 of
7 Title 5, and any appeal shall be de novo; however, the decision of the arbitrator or
8 arbitrators shall be admissible in evidence.

9 (b) If the manufacturer appeals, the court may require the manufacturer to post security for
10 the consumer's financial loss due to the passage of time for review.

11 (c) If the manufacturer appeals and the consumer prevails, recovery, in addition to the
12 arbitrator's award, shall include all charges incurred by the consumer during the pendency
13 of, or as a result of, the appeal, including, but not limited to, continuing collateral and
14 incidental costs, technical or expert witness fees, attorney's fees, and court costs.

15 (d) A manufacturer which does not appeal a decision in favor of a consumer must fully
16 comply with the decision within 40 days of entry thereof. If a manufacturer does not fully
17 comply within the 40 day time period, the administrator may issue an order imposing a
18 civil penalty of up to \$1,000.00 per day for each day that the manufacturer remains out of
19 compliance. The provisions of Code Sections 10-1-398 and 10-1-398.1 shall apply in
20 connection with the imposition of a civil penalty under this subsection. It shall be an
21 affirmative defense to the imposition of a civil penalty under this subsection that a delay
22 or failure to comply was beyond the manufacturer's control or that a delay was acceptable
23 to the consumer.

24 10-1-788.

25 The provisions of this article are not available to a consumer in a civil action unless the
26 consumer has first exhausted all remedies provided for in this article.

27 10-1-789.

28 (a) The administrator shall establish a new motor vehicle arbitration panel to resolve
29 disputes between consumers and manufacturers arising under this article. The
30 administrator, in his or her discretion, may operate the panel by contracting with public or
31 private entities to conduct arbitrations under this article or by appointing individuals to
32 serve as panel member arbitrators. An arbitrator shall be licensed to practice law in the
33 State of Georgia and a member in good standing of the State Bar of Georgia or shall have
34 at least two years' experience in professional arbitration or dispute resolution. No

1 arbitrator shall be affiliated with or involved in the manufacture, distribution, sale, lease,
2 or servicing of motor vehicles.

3 (b) Panel member arbitrators and entities that contract with the administrator to provide
4 arbitration services shall be compensated for time and expenses at a rate to be determined
5 by the administrator.

6 (c) Each arbitration proceeding shall be conducted by either one or three arbitrators, each
7 of whom is to be assigned by the administrator or contracted entity.

8 (d) Neither the administrator, an entity with which the administrator has contracted, nor
9 any arbitrator shall be civilly liable for any decision, action, statement, or omission made
10 in connection with any proceeding under this article, except in circumstances where the
11 decision, action, statement, or omission was made with malice or gross negligence.

12 10-1-790.

13 (a) No manufacturer, its authorized agent, new motor vehicle dealer, or other transferor
14 shall knowingly resell, either at wholesale or retail, lease, transfer a title, or otherwise
15 transfer a reacquired vehicle, including a vehicle reacquired under a similar statute of any
16 other state, unless:

17 (1) The fact of the reacquisition and nature of any alleged nonconformity are clearly and
18 conspicuously disclosed in writing to the prospective transferee, lessee, or buyer; and

19 (2) The manufacturer warrants to correct such nonconformity for a term of one year or
20 12,000 miles, whichever occurs first.

21 A knowing violation of this subsection shall constitute an unfair or deceptive act or practice
22 in the conduct of consumer transactions under Part 2 of Article 15 of Chapter 1 of Title 10
23 and will subject the violator to an action by a consumer under Code Section 10-1-399.

24 (b) The manufacturer shall have 30 days to notify the administrator that a vehicle has been
25 reacquired in this state under the provisions of this article. The notice shall be legible and
26 include, at a minimum, the vehicle year, make, model, and identification number; the date
27 and mileage at the time the vehicle was reacquired; the nature of the alleged
28 nonconformity; the reason for reacquisition; and the name and address of the original
29 consumer. When the manufacturer resells, leases, transfers, or otherwise disposes of a
30 reacquired vehicle, the manufacturer shall, within 30 days of the resale, lease, transfer, or
31 disposition, notify the administrator of the vehicle year, make, model, and identification
32 number; the date of the sale, lease, transfer, or disposition of the vehicle; and the name and
33 address of the buyer, lessee, or transferee.

34 (c) If a manufacturer resells, leases, transfers, or otherwise disposes of a motor vehicle in
35 this state that it reacquired under a similar statute of any other state, the manufacturer shall,
36 within 30 days of the resale, lease, transfer, or disposition, notify the administrator of the

1 transaction. The contents of the notice shall comply with the requirements of subsection
2 (b) of this Code section.

3 (d) Manufacturers shall use forms approved by the administrator. The forms shall contain
4 the information required under this Code section and any other information the
5 administrator deems necessary for implementation of this Code section.

6 10-1-791.

7 (a) A fee of \$3.00 shall be collected by the new motor vehicle dealer from the consumer
8 at completion of a sale or execution of a lease of each new motor vehicle. The fee shall be
9 forwarded quarterly to the Office of Planning and Budget for deposit in the new motor
10 vehicle arbitration account created in the state treasury. The payments are due and payable
11 the first day of the month in each quarter for the previous quarter's collection and shall be
12 mailed by the new motor vehicle dealer not later than the twentieth day of such month.
13 The first day of the month in each quarter is July 1, October 1, January 1, and April 1 for
14 each year. Consumer fees in the account shall be used for the purposes of this article.
15 Funds in excess of the appropriated amount remaining in the new motor vehicle arbitration
16 account at the end of each fiscal year shall be transferred to the general treasury. The new
17 motor vehicle dealer shall retain \$1.00 of each fee collected to cover administrative costs.

18 (b) The administrator appointed pursuant to subsection (g) of Code Section 10-1-395 shall
19 have the power to enforce the provisions of this Code section. The administrator's
20 enforcement power shall include:

21 (1) The authority to investigate alleged violations through use of all investigative powers
22 available under Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act'; and

23 (2) The authority to initiate proceedings, pursuant to Code Section 10-1-397, in the event
24 of a violation of this Code section. Such proceedings include, without limitation,
25 issuance of a cease and desist order, a civil penalty order imposing a civil penalty up to
26 a maximum of \$2,000.00 for each violation, and proceedings to seek additional relief in
27 any superior court of competent jurisdiction. The provisions of Code Sections 10-1-398,
28 10-1-398.1, 10-1-402, and 10-1-405 shall apply to proceedings initiated by the
29 administrator under this Code section.

30 10-1-792.

31 (a) Except as provided in subsection (a) of Code Section 10-1-790, this article shall not
32 create or give rise to any cause of action by manufacturers or consumers against new motor
33 vehicle dealers. No new motor vehicle dealer shall be held liable by a manufacturer or a
34 consumer for any collateral charges, incidental charges, costs, purchase price refunds, or
35 vehicle replacements. Manufacturers and consumers may not make new motor vehicle

1 dealers party to an arbitration proceeding or any other proceeding under this article. A new
2 motor vehicle dealer that is named as a party in any proceeding brought by a consumer or
3 a manufacturer under this article, except as provided in subsection (a) of Code Section
4 10-1-790, shall be entitled to an award of reasonable attorney's fees and expenses of
5 litigation incurred in connection with such proceeding.

6 (b) The provisions of this article shall not impair any obligation under any
7 manufacturer-dealer franchise agreement; provided, however, that any provision of any
8 manufacturer-dealer franchise agreement which attempts to shift any duty, obligation,
9 responsibility, or liability imposed upon a manufacturer by this article to a new motor
10 vehicle dealer, either directly or indirectly, shall be void and unenforceable, except for any
11 liability imposed upon a manufacturer by this article which is directly caused by the gross
12 negligence of the dealer in attempting to repair the motor vehicle after such gross
13 negligence has been determined by the hearing officer, as provided in Article 22 of this
14 chapter, the 'Georgia Motor Vehicle Franchise Practices Act.'

15 10-1-793.

16 (a) A violation of this article shall constitute an unfair and deceptive act or practice in the
17 conduct of consumer transactions under Part 2 of Article 15 of this chapter, the 'Fair
18 Business Practice Act'; provided, however, that enforcement against such violations shall
19 be by public enforcement by the administrator and, except as provided in subsection (a) of
20 Code Section 10-1-790, shall not be enforceable through private action under Code Section
21 10-1-399.

22 (b) Except as otherwise provided, this article is cumulative with other laws and is not
23 exclusive. The rights and remedies provided for in this article shall be in addition to any
24 other rights and remedies that are otherwise available to a consumer under any other law.

25 10-1-794.

26 All administrative staff hired by the administrator to aid in the administration of this article
27 shall be in the unclassified service and compensated at a salary determined by the
28 administrator.

29 10-1-795.

30 The administrator shall promulgate rules and regulations and establish procedures
31 necessary to carry into effect, implement, and enforce the provisions of this article. The
32 authority granted to the administrator pursuant to this Code section shall be exercised at all
33 times in conformity with Chapter 13 of Title 50, the 'Georgia Administrative Procedure
34 Act.'

1 10-1-796.

2 If any provision of this article or its application to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or applications of this article which
4 can be given effect without the invalid provision or application, and to this end the
5 provisions of this article are severable.

6 10-1-797.

7 Any agreement entered into by a consumer that waives, limits, or disclaims the rights set
8 forth in this article shall be unenforceable as contrary to public policy."

9 **SECTION 2.**

10 Code Section 10-1-795 as enacted by this Act shall become effective on its approval by the
11 Governor or upon its becoming law without such approval; the effective date for the
12 remaining provisions of this Act shall be January 1, 2008.

13 **SECTION 3.**

14 All laws and parts of laws in conflict with this Act are repealed.