

**NOTICE OF PROPOSED RULEMAKING
AND
OPPORTUNITY TO COMMENT**

**PROPOSED AMENDMENT TO RULES AND REGULATIONS
OF
GOVERNOR'S OFFICE OF CONSUMER PROTECTION**

To All Interested Persons:

Pursuant to the provisions of the Georgia Administrative Procedures Act, Official Code of Georgia Annotated (O.C.G.A.) Chapter 50-13 and by authority of O.C.G.A. § 10-1-780, *et seq.*, the Governor's Office of Consumer Protection hereby gives notice of its intent to amend its Rules.

The proposed amendment is made to reflect the agency's name change. Pursuant to an Executive Order dated September 10, 2010, the agency was changed from the "Governor's Office of Consumer Affairs" to the "Governor's Office of Consumer Protection."

Comments to this proposed amendment must be received by September 6, 2011, at the close of business. Please send all comments to the agency's Administrator, John D. Sours

By mail to the Governor's Office of Consumer Protection, 2 Martin Luther King, Jr. Dr., Suite 356, Atlanta, Georgia 30334-9077;

By facsimile to 404-463-8683; or

By e-mail to John.Sours@ocp.ga.gov.

The Governor's Office of Consumer Protection shall review all comments, may contact commenters to discuss their suggestions, and will prepare the final Rules after the comment period has closed. The Office will consider the proposed amendments for adoption at a meeting at 10 a.m. on September 12, 2011, at the office of the Governor's Office of Consumer Protection, 2 Martin Luther King, Jr. Dr., Suite 356 East, Atlanta, Georgia 30334-4600. Notice and a copy of the final Rules adopted will be e-mailed to persons who have made a special request, and will be made available on our website at <http://www.consumer.ga.gov>.

2011 RULES AND REGULATIONS

PROPOSED CHANGES: PURPOSE AND SYNOPSIS

Purpose:

These Rule changes are proposed in order to modify the name of the agency within the body of the Rules. Since September 2010, the agency has been known as the Governor's Office of Consumer Protection. Public-facing materials, including, but not limited to the agency web site, letterhead, envelopes, and business cards, now bear the name of Governor's Office of Consumer Protection, as opposed to Governor's Office of Consumer Affairs. In the interest of consistency and to avoid confusion to consumers, the agency proposes amending the Georgia Lemon Law Act of 2008 Rules to reflect that name change.

Synopsis:

Title

The title "Rules of Governor's Office of Consumer Affairs" is amended to state "Rules of Governor's Office of Consumer Protection."

Rule 122-18-.01 Manufacturer Reporting Responsibilities.

Subsection (3) is amended to reflect the agency's name change to "Governor's Office of Consumer Protection."

Rule 122-20-.01 Lemon Law Rights Statement.

The text of the Lemon Law Rights Statement Form is amended, so that the agency is identified therein as the "Governor's Office of Consumer Protection" in the address section and in the final bullet point. The identifier in the statement's footer has been amended to state "OCP—LL—01/01/09."

Rule 122-21-.03 Certified Mechanism Dispute Resolution Procedures.

Subsection (i)(6) is amended to state "Governor's Office of Consumer Protection."

Rule 122-21-.09 Prior Resort to Mechanism.

Subsection (2)(e) is amended to state "Governor's Office of Consumer Protection."

Rule 122-22-.01 Arbitration Application.

Subsection (1) is amended to state "Governor's Office of Consumer Protection."

[PROPOSED]

**RULES OF
GOVERNOR'S OFFICE OF CONSUMER PROTECTION
GEORGIA LEMON LAW ACT OF 2008**

**Chapter 122-18
Georgia Lemon Law
Manufacturer Reporting Responsibilities**

122-18-.01 Manufacturer Reporting Responsibilities.

(1) Each manufacturer of motor vehicles sold or registered in this state must provide to the Administrator, in writing, the name, title, mailing address, e-mail address, telephone number, and facsimile number of the manufacturer's representative or other designated representative responsible for each of the following:

(a) Submission of owner's manuals and express warranties for current year makes and models pursuant to O.C.G.A. § 10-1-783(c).

(b) Submission of copies of repair orders or examination reports to the consumer, if not provided by the new motor vehicle dealer, pursuant to O.C.G.A. § 10-1-783(d) and (e).

(c) Receipt of the consumer's final repair request notice pursuant to O.C.G.A. § 10-1-784(a)(2)(A).

(d) Receipt of the consumer's motor vehicle repurchase or replacement request notice pursuant to O.C.G.A. § 10-1-784(b)(1).

(e) Application for certification, if applicable, of an informal dispute settlement mechanism pursuant to O.C.G.A. § 10-1-785(d).

(f) Receipt of notice of certification denial or revocation, if applicable, pursuant to O.C.G.A. § 10-1-785(d) and (e).

(g) Receipt of notice that a consumer's application for arbitration has been deemed eligible pursuant to O.C.G.A. § 10-1-786(b)(1).

(h) Receipt of an arbitration decision sent pursuant to O.C.G.A. § 10-1-786(f).

(i) Receipt of notice that a consumer appealed the decision of the new motor vehicle arbitration panel in superior court pursuant to O.C.G.A. § 10-1-787(a).

(j) Receipt of notice of noncompliance with an arbitration award pursuant to O.C.G.A. § 10-1-787(d).

(k) Submission of notice that a motor vehicle has been reacquired, resold, leased, transferred or disposed of in this state pursuant to O.C.G.A. § 10-1-790(b) and (c).

(l) Administration of manufacturer-dealer franchise agreement obligations pursuant to O.C.G.A. § 10-1-792(b).

(m) Receipt of notice of a violation of the Georgia Lemon Law pursuant to O.C.G.A. § 10-1-793(a).

(2) Each manufacturer shall provide to the Administrator the name and address of each of its franchised dealers in this state and one copy of an owner's manual and express warranty for each make of new motor vehicles it sells in this state. This information must be updated annually.

(3) The information required under this Rule shall be submitted initially by January 31, 2009. Information shall be sent to the Administrator, addressed as follows: Governor's Office of Consumer Protection, 2 M. L. King, Jr. Drive, Suite 356, Atlanta, GA, 30334.

(4) If any information submitted pursuant to this Rule changes, the manufacturer shall provide written notice of the changes to the Administrator within twenty (20) days. Until the Administrator receives written notice of a change, the contact information on file with the Administrator will be deemed correct for all notifications to the manufacturer.

(5) Any manufacturer whose new motor vehicles are first offered for sale in this state after the effective date of these Rules shall submit the information required pursuant to this Rule within ten (10) days from the date on which its first vehicle is sold in Georgia.

Authority O.C.G.A. §§ 10-1-783(c),(d) and (e); 10-1-784 (a)(2)(A) and (b)(1); 10-1-785(d) and (e); 10-1-786(b)(1); 10-1-787(a) and (d); 10-1-790(b) and (c); 10-1-792(b); 10-1-793(a); and, 10-1-795

**Chapter 122-20
Georgia Lemon Law
Lemon Law Rights Statement**

122-20-.01 Lemon Law Rights Statement.

(1) At the time of each purchase or lease of a new motor vehicle, the dealer shall provide the consumer with a written statement that explains the consumer's rights under the Georgia Lemon Law. The statement shall be printed in 11 point type, arial font, on the front side of a sheet of standard, letter-sized paper, yellow in color. The statement shall read as follows:

**The Georgia Lemon Law
Statement of Consumer Rights**

Governor's Office of Consumer Protection
2 M. L. King Jr. Drive, Suite 356
Atlanta, GA 30334
(404) 656-3790

The information presented on this rights statement is a general summary of the law. To obtain materials which explain the Georgia Lemon Law in much greater detail and include sample notification forms, you can visit our website at www.consumer.ga.gov.

The Georgia Lemon Law:

- The vehicle must be purchased, leased, or registered in Georgia.
- Covers new motor vehicles or demonstration vehicles, if titled as new.
- Covers new trucks up to 12,000 pounds gross vehicle weight rating and the self-propelled and chassis portion of new motor homes.
- Covers nonconformities first reported within the lemon law rights period, which is the first two years or 24,000 miles of operation of the vehicle, whichever occurs first.
- A vehicle may qualify under the lemon law after the manufacturer or its authorized dealer has been given a reasonable number of attempts to repair the same nonconformity within the lemon law rights period, but has not been able to repair the nonconformity.
- Under the lemon law, a reasonable number of attempts is deemed to be: (a.) **one attempt**, if the nonconformity is a serious safety defect; (b.) **three attempts**, if the nonconformity, although not a serious safety defect, substantially impairs the use, value, or safety of the vehicle; or, (c.) a **cumulative total of 30 days** during which the vehicle is out of service for repair of one or more nonconformities.
- After a reasonable number of attempts to repair a serious safety defect or any other nonconformity (**either a. or b. above**), the consumer must notify the manufacturer and provide the manufacturer with a final opportunity to repair the nonconformity.
- If the manufacturer fails to correct the nonconformity after the final repair attempt, or if the vehicle is out of service by reason of repair of one or more nonconformities for a cumulative total of 30 days, the consumer may be eligible for a refund for the purchase price of the vehicle or a replacement vehicle.
- It is **very important** to keep copies of all work orders, reports (such as vehicle inspection, diagnosis, or test drive reports) and written correspondence with the manufacturer. Remember, you are entitled to receive a fully itemized and legible statement or repair order each time you take your vehicle in for diagnosis or repair.

- To assert your rights under the law, other requirements may apply. For further information, contact the Governor's Office of Consumer Protection.

Consumer Signature

Date

Printed Name

This Statement of Consumer Rights delivered by _____,
(Printed Name of Dealer Representative)

as required by law on _____.
(Date)

OCP-LL-01/01/09

(2) The consumer shall sign and date the Georgia Lemon Law Statement of Consumer Rights at the time of receipt. The name of the dealer's representative and the date on which the Statement was delivered to the consumer shall also be printed on the Statement. The dealer shall retain a legible copy of the signed statement at its primary place of business for a period of at least three (3) years.

Authority O.C.G.A. §§ 10-1-783(b) and 10-1-795

122-21-.03 Certified Mechanism Dispute Resolution Procedures.

(1) The certified mechanism shall establish written procedures for resolution of disputes. The procedures shall include, at a minimum, those items specified below:

(a) The certified mechanism shall immediately inform both the manufacturer and the consumer of the filing of a dispute. Filing is deemed to have occurred when the consumer has provided the certified mechanism with his or her name and address, the vehicle year, make, model and VIN, and a statement as to the nature of the problem or other complaint;

(b) The certified mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision. The certified mechanism shall not require any information not reasonably necessary to decide the dispute;

(c) When potentially relevant information submitted by or on behalf of a party, by an independent technical expert or by another source, tends to contradict information submitted by the other party, the certified mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information and its source, and shall provide both parties a reasonable opportunity to explain or rebut the information and to submit additional materials;

(d) The certified mechanism shall decide the dispute as expeditiously as possible, but at least within forty (40) days of the filing of the dispute;

(e) If the dispute is settled, the terms of the settlement agreement shall be reduced to writing. The manufacturer shall perform its obligations under the settlement agreement within thirty (30) days of the date of the settlement, unless the consumer consents, in writing, to a later performance date;

(f) If the dispute is not settled, it shall be decided by the certified mechanism. The consumer shall have the right to present evidence relating to the dispute in writing, or to make an oral presentation, either in person, by telephone, or, if available, by video conference or other form of transmission. If the consumer submits evidence of and/or facts relating to the dispute in writing, the manufacturer shall submit its response in writing. If the consumer elects to make an in-person oral presentation, the hearing will be held at a location that is reasonably convenient to the Georgia consumer. If the consumer elects to make an in-person oral presentation and the manufacturer elects to participate by telephone, the certified mechanism shall notify the consumer that he or she has the same opportunity to participate by telephone;

(g) If the consumer elects to make an oral presentation, the certified mechanism shall inform the parties of the date, time and place for the hearing, and provide an explanation of the hearing process, including both parties' rights to bring witnesses and/or counsel;

(h) Based upon the information gathered by the certified mechanism and evidence presented at an oral hearing, if applicable, the decisionmaker(s) shall:

1. Determine:

(i) Whether the new motor vehicle has a nonconformity, and, if so,

(ii) Whether the manufacturer had a reasonable number of attempts to correct the nonconformity, and, if so,

(iii) Whether the manufacturer was given a final opportunity to repair the nonconformity if required by law, but failed to correct the nonconformity during the final opportunity. Notwithstanding anything contained herein to the contrary, no final attempt to repair is required if a vehicle that was purchased on or after January 1, 2009 was out of service by reason of repair of one or more nonconformities for a cumulative total of thirty (30) days within the lemon law rights period.

2. Upon an affirmative determination of the elements specified in subsection (h)1, award the consumer any remedies appropriate under the circumstances, which may include, but shall not be limited to, the relief provided for under O.C.G.A. § 10-1-784(b).

3. Upon a determination that the consumer failed to demonstrate either the elements specified in subsection (h)1, award the consumer any other remedy appropriate under the circumstances or dismiss the dispute.

4. In reaching the determination required under this subsection (h), the decisionmaker shall utilize the definitions set forth in Rule 122-9-.01 in connection with all vehicles purchased, leased or registered in Georgia prior to January 1, 2009.

(i) The decisionmaker(s) shall prepare a written decision reflecting his or her findings. The decision, copies of which shall be sent to both parties and the Administrator, shall include the following:

1. A summary of any relevant and material evidence to support the determination made regarding those elements specified in subsection (h) of this Rule;

2. A description of the relief awarded, which shall contain, as appropriate, an itemization of any refund awarded, including, but not limited to, any incidental costs, collateral charges, or reasonable offset for use; or, a description of a replacement vehicle and an itemization of costs or charges; or a description of any other remedy awarded to the consumer;

3. A specific time period, not to exceed thirty (30) days, within which the manufacturer is required to comply with the award;

4. A statement that the decision is binding upon the manufacturer, but not on the consumer;

5. A statement that the consumer has twenty (20) days from the date of receipt of the decision to accept or reject it;

6. A statement that if the decision is accepted, but the manufacturer fails to comply with the terms of the decision, or if the decision is rejected, the consumer may still pursue the remedy of a repurchase or replacement of the vehicle by timely requesting arbitration with the Georgia Governor's Office of Consumer Protection. The statement shall explain the time within which the arbitration application is required to be filed; and

7. A statement that the consumer may obtain, at a reasonable cost, copies of all documents held by the certified mechanism relating to the dispute;

(j) The consumer shall have twenty (20) days from his or her receipt of the decision to notify the certified mechanism whether the decision is accepted or rejected. The date on which notice is sent, as shown by a postmark or other receipt, is deemed to be the date of notice to the certified mechanism;

(k) If the consumer accepts an award, the manufacturer shall have up to thirty (30) days from the date it receives notice of the consumer's acceptance to comply, unless a shorter period is specified in the decision;

(l) If the manufacturer has been directed to perform any obligations, either as part of a settlement agreed to or as a result of a decision, the certified mechanism shall ascertain from the consumer within fourteen (14) days of the date for performance whether performance has occurred;

(m) The requirement that a consumer resort to a certified mechanism prior to a request for arbitration with the Administrator pursuant to O.C.G.A. § 10-1-786(a) shall be satisfied if a decision has not been rendered by the certified mechanism within forty (40) days from the date of the filing of the dispute with the certified mechanism; and

(n) The decision of a certified mechanism shall be binding on the manufacturer, but not the consumer. A copy of the written procedures shall be provided to the consumer at no cost after the certified mechanism receives notice of the dispute, or to any person upon request, at a reasonable cost.

(2) The decisionmaker(s) may request an inspection of the consumer's motor vehicle. An inspection may be performed by the decisionmaker or an independent technical expert. An inspection, which may include a test drive, examination or diagnosis of the vehicle, shall be conducted at a mutually agreeable time and place. The consumer shall be informed in writing that an inspection is voluntary. The failure of the consumer to provide the motor vehicle for inspection shall not extend the time period in which a certified mechanism has to render a decision.

Authority O.C.G.A. §§ 10-1-785 and 10-1-795

122-21-.09 Prior Resort to Mechanism.

(1) If the Administrator revokes or denies the renewal of a mechanism's certification, or a manufacturer voluntarily discontinues use of its certified mechanism, a consumer may remove his or her pending dispute from the mechanism and apply for arbitration pursuant O.C.G.A. § 10-1-786(a), provided that the arbitration application is filed within sixty (60) days from the date the consumer receives notice from the manufacturer in accordance with subsection (2) or one (1) year from the expiration of the lemon law rights period, whichever occurs later.

(2) If the Administrator revokes or denies the renewal of a mechanism's certification, or a manufacturer voluntarily discontinues use of its certified mechanism, the manufacturer shall send written notice, by certified mail, return receipt requested, to all consumers with disputes pending with the mechanism that:

- (a) The mechanism is no longer functioning as a certified mechanism for that manufacturer;
- (b) The consumer is no longer required to resort to a mechanism;
- (c) The consumer may elect to have the dispute removed from the mechanism;
- (d) The consumer may pursue the remedy of a repurchase or replacement of the vehicle by requesting arbitration; and

(e) The arbitration application must be filed with the Georgia Governor's Office of Consumer Protection by no later than sixty (60) days from the date the consumer received the notice from the manufacturer, or one (1) year from the date of the expiration of the lemon law rights period, whichever occurs later.

A copy of the notice must be sent to the Administrator by the manufacturer.

(3) Within ninety (90) days of the date on which certification of the manufacturer's mechanism is voluntarily withdrawn, revoked or not renewed, the manufacturer shall modify or remove any reference to the certified mechanism and the certified mechanism requirement from the materials provided to consumers pursuant to Rule 122-21-.01.

(4) If a manufacturer's mechanism is certified after a consumer has purchased or leased a new motor vehicle, but before the manufacturer receives the consumer's request to repurchase or replace the vehicle pursuant to O.C.G.A. § 10-1-784(b), the consumer shall be required to submit the dispute to the certified mechanism prior to requesting an arbitration. The manufacturer shall, within twenty (20) days:

- (a) Notify the consumer in writing of the requirement that the dispute be submitted to the certified mechanism, and
- (b) Provide the information required by Rule 122-21-.01.

Chapter 122-22
Georgia Lemon Law
Arbitration

122-22-.01 Arbitration Application.

(1) The Administrator shall create and adopt an application form, to be completed by the consumer in requesting arbitration. This application may require consumer consent to the release of information by third parties. The application may be obtained by the consumer from the Administrator upon request. The consumer shall file the completed application and supporting documents with the Georgia Governor's Office of Consumer Protection.

(2) The Administrator shall forward eligible applications and supporting documents to the panel. The period within which a hearing is to be conducted pursuant to O.C.G.A. § 10-1-786(d) shall commence on the date that the application is forwarded.

(3) If an application is incomplete, the Administrator shall notify the consumer. In the event a consumer does not have or cannot obtain necessary documentation, the Administrator may accept a written statement providing the necessary information and explaining the absence of the documentation.

(4) If the consumer fails to file a completed application, including all necessary documentation, within ninety (90) days of the Administrator's notice, the application shall be deemed ineligible. The Administrator, in his or her discretion, may extend the ninety (90) days for good cause shown.

(5) If the Administrator rejects an application as ineligible, the consumer shall be notified, in writing, of the rejection and the reason(s) for it. Each of the following shall be grounds for a determination of ineligibility:

(a) The application was filed more than one (1) year from the expiration of the lemon law rights period or more than sixty (60) days from the conclusion of a certified mechanism's proceeding, whichever occurs later;

(b) The person seeking arbitration does not meet the definition of a consumer;

(c) The vehicle does not meet the definition of a new motor vehicle;

(d) The manufacturer was not allowed a reasonable number of attempts to repair the nonconformity during the lemon law rights period;

(e) The consumer no longer has possession of the vehicle and cannot reacquire it;

(f) The application was initially determined to be incomplete by the Administrator and the consumer failed to take corrective actions for reconsideration of eligibility as required by the Administrator; or

(g) Any other reason that would render the application ineligible for arbitration.

(6) If the Administrator rejects an application as ineligible, the consumer may appeal the determination of ineligibility. Notice of appeal shall be given, in writing, to the Administrator within ninety (90) days of the date of the determination of ineligibility. The appeal shall be forwarded to the panel and assigned to an arbitrator or arbitrators.

(7) If the consumer's application is rejected as ineligible, the consumer, in lieu of an appeal, may file a new state arbitration application if the time period provided in O.C.G.A. § 10-1-786(a) has not expired.

Authority O.C.G.A. §§ 10-1-786 and 10-1-795