

SENATE No. 127

The Commonwealth of Massachusetts

PRESENTED BY:

Eric P. Lesser

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect consumers with automobile leases.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/31/2017</i>

SENATE No. 127

By Mr. Lesser, a petition (accompanied by bill, Senate, No. 127) of Eric P. Lesser and Brian M. Ashe for legislation to protect consumers with automobile leases. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to protect consumers with automobile leases.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 90 of the general laws, as so appearing in the 2014 edition, shall be
2 amended by striking section 7N and replacing it with the following section:-

3 Section 7N. Notwithstanding any disclaimer of warranty, a motor vehicle contract of sale
4 or lease may be voided by the buyer or lessee if the motor vehicle fails to pass, within seven days
5 from the date of such sale or lease, the periodic staggered inspection at an inspection station
6 licensed pursuant to section seven W; provided, that the defects which are the reasons for the
7 failure to issue a certificate of inspection were not caused by the abusive or negligent operation
8 of the motor vehicle or by damage resulting from an accident or collision occurring after the date
9 of the sale or lease; and provided, further, that the cost of repairs necessary to permit the issuance
10 of a certificate of inspection exceeds ten per cent of the purchase price of the motor vehicle, or in
11 the case of a leased vehicle the exceeds ten percent total amount of payments due by the
12 consumer to the lessor over the full term of the lease.

13 In order to void a motor vehicle sale or lease under this section the buyer or lessee shall,
14 within fourteen days from the date of sale or lease, notify the selling or leasing dealer of his
15 intention to do so, deliver the motor vehicle to the selling or leasing dealer, provide the selling or
16 leasing dealer with a written statement signed by an authorized agent of such inspection station
17 stating the reasons why the motor vehicle failed to pass the safety or combined safety and
18 emissions inspection and an estimate of the cost of necessary repairs. The buyer or lessee shall
19 be entitled to a refund of his purchase price unless the buyer or lessee and the selling or leasing
20 dealer agree in writing that the selling or leasing dealer may make the necessary repairs at his
21 own cost and expense within a reasonable period of time thereafter. This section shall apply only
22 to motor vehicles purchased for the immediate personal or family use of the buyer or lessee.

23 “Lessee” means any person who acquires the right to possession of and use of a motor
24 vehicle under a lease agreement for a term of not less than one year.

25 SECTION 2. Section 7N1/4 of chapter 90 of the general laws, as so appearing in the
26 2014 edition, shall be amended by striking subsection 1 and replacing it with the following
27 subsection:-

28 (1) For the purposes of this section the following words shall have the following
29 meanings:-

30 “Business day”, Monday to Friday, inclusive, except for state or federal holidays.

31 “Buyer” includes a lessee of a used motor vehicle

32 “Consumer”, a buyer or lessee, other than for purposes of resale, of a motor vehicle, any
33 person to whom such motor vehicle is transferred or leased during the period of any express or

34 statutory warranty under this section applicable to such motor vehicle, and any other person
35 entitled by the terms of such warranty to enforce its obligations.

36 “Dealer”, any person engaged in the business of selling or leasing, offering for sale or
37 lease, or negotiating the retail sale or retail lease of used motor vehicles or selling motor vehicles
38 as broker or agent for another, including the officers, agents and employees of such person and
39 any combination or association of dealers, but not including a bank or other financial institution,
40 or the commonwealth, its agencies, bureaus, boards, commissions, authorities, nor any of its
41 political subdivisions. A person shall be deemed to be engaged in the business of selling or
42 leasing used motor vehicles if such person has sold or leased more than three used motor
43 vehicles in the preceding twelve months.

44 “Lessee”, any consumer who acquires the right to possession of and use of a motor
45 vehicle under a lease agreement for a term of not less than one year.

46 “Motor vehicle” or “vehicle”, any motor vehicle as defined in section one, sold, leased or
47 replaced by a dealer or manufacturer, except that it shall not include auto homes, vehicles built
48 primarily for off-road use or any vehicle used primarily for business purposes.

49 “Private seller”, any person who is not a dealer and who offers to sell or sells a used
50 motor vehicle to a consumer.

51 “Purchase price”, the total of all payments made for the purchase or lease of a vehicle,
52 including but not limited to any finance charges, registration fees, payments made for credit life,
53 accident, health, and damage insurance, and collision and related comprehensive insurance
54 coverages and service contracts and the value of a trade-in.

55 “Repurchase price”, the purchase price, as defined above, less any cash award that was
56 made by the dealer in an attempt to resolve the dispute and was accepted by the consumer, and
57 less any refunds or rebates to which the consumer is entitled, plus any incidental damages not
58 previously reimbursed, including but not limited to the reasonable costs of towing from point of
59 breakdown up to thirty miles to obtain required repairs or to return the vehicle under this section,
60 and the reasonable costs of obtaining alternative transportation during the applicable warranty
61 period after the second day following each such breakdown not to exceed fifteen dollars vehicle
62 rental charges for each day in which the cost of such alternative transportation is reimbursable.

63 “Seller” other than private seller shall include the lessor of a used motor vehicle.

64 “Used motor vehicle” or “used vehicle”, any vehicle driven more than the limited use
65 necessary in moving or road testing a new vehicle prior to delivery to a consumer, including a
66 demonstrator vehicle, except that it shall not include auto homes, vehicles built primarily for off
67 road use, motorcycles, or any vehicle used primarily for business purposes.

68 SECTION 3. Section 7N1/4 of chapter 90 of the general laws is further amended by
69 adding after the word “sold,” in line 49, the following words:- “, or leased”.

70 SECTION 4. Section 7N1/4 of chapter 90 of the general laws is further amended by
71 adding after the word “sold,” in line 180, the following words:- “or leased”.

72 SECTION 5. Section 7N1/4 of chapter 90 of the general laws is further amended by
73 adding after the word “sold,” in line 276, the following words:- “or leased”.

74 SECTION 6. Chapter 93 of the general laws, as appearing in the 2014 edition, is hereby
75 amended by adding after section 114 the following section:-

76 Section 115. The provisions of 940 CMR 5.00 or any other regulations which provide for
77 consumer protection with respect to the purchase of motor vehicles, shall, to the extent
78 practicable, be interpreted to apply to the lease of motor vehicles.

79 SECTION 7. Chapter 140D of the general laws, as appearing in the 2014 edition, is
80 hereby amended by adding after section 29 the following section:-

81 Section 29A. The commissioner shall prescribe rule and regulations consistent with the
82 provisions of the portion of the federal Truth in Lending Act known as the Consumer Leasing
83 Act, 15 U.S.C. sections 1667 through 1667e, the bureau's Regulation M, 12 C.F.R. section 1013
84 et seq., the official staff commentary or a disclosure or model form and a lessor upon whom such
85 rules and regulations impose duties or obligations, shall make or give to a consumer the
86 disclosures, information and notices required of him by such rules and regulations, and such
87 disclosures, information and notices shall constitute compliance with the provisions of this
88 chapter.

89 Lessors in the commonwealth shall comply with the federal Consumer Leasing Act, 15
90 U.S.C. sections 1667 through 1667e, and regulations implemented by the bureau unless and until
91 the commissioner promulgates regulations that are substantially similar to or afford more
92 protection to consumers than those issued by the bureau.

93 The term "creditor" as used in sections 32 and 33 of this chapter shall include a lessor as
94 defined in this section and rules and regulations made thereunder.

95 SECTION 8. Section 32 of chapter 140D of the general laws, as so appearing in the 2014
96 edition, shall be amended by adding, in paragraph 2, after the word "transaction," the following
97 words:- subsection 1 and replacing it with the following subsection:- "or in the case of a

98 consumer lease under section 29A, 25 percent of the total amount of monthly payments under the
99 lease”.

100 SECTION 9. Section 32 of chapter 140D of the general laws is further amended by
101 adding after the word “thirty-one,” in line 46, the following words:- “or section thirty-nine A”.

102 SECTION 10. Chapter 255 of the general laws, as so appearing in the 2014 edition, shall
103 be amended by striking out section 13I and replacing it with the following section:-

104 Section 13I. For the purposes of this section and section 13J

105 “Consumer credit transaction” shall include a consumer lease of motor vehicle for a term
106 of more than one year;

107 “creditor” and “secured creditor” shall include the lessor of a motor vehicle; and

108 “debtor” shall include a consumer lessee of a motor vehicle.

109 (a) In any consumer credit transaction involving, or loan that is secured by, a non-
110 possessory security interest in consumer goods a provision relating to default is enforceable only
111 to the extent that the default is material and consists of the debtor’s failure to make one or more
112 payments as required by the agreement, or the occurrence of an event which substantially
113 impairs the value of the collateral.

114 (b) After a default under a consumer credit transaction by a debtor the secured creditor
115 may not bring an action against the debtor or proceed against the collateral until he gives the
116 debtor the notice required by this section. Said notice shall be deemed to be delivered when
117 delivered to the debtor or when mailed to the debtor at the debtor’s address last known to the
118 creditor. If a debtor cures a default after receiving such notice and again defaults, the creditor

119 shall give another notice before bringing action or proceeding against the collateral with respect
120 to the subsequent default, but no notice is required in connection with a subsequent default if,
121 within the period commencing on the date of the consumer credit transaction subject to this
122 section and the date of the subsequent default, the debtor has cured a default after notice three or
123 more times.

124 (c) The notice shall be in writing and shall be given to the debtor ten days or more after
125 the default. The notice shall conspicuously state the rights of the debtor upon default in
126 substantially the following form:

127 The heading shall read: 'Rights of Defaulting Consumer under Massachusetts Law.' The
128 body of the notice shall read: "You may cure your default in (describe transaction in a manner
129 enabling debtor to identify it) by paying to (name and address of lessor or creditor) (amount due)
130 before (date which is at least twenty-one days after notice is mailed).

131 If you pay this amount within the time allowed you are no longer in default and may
132 continue with the transaction (lease or loan) as though no default had occurred.

133 (d) No court shall enter a deficiency judgment against a debtor which includes a finance
134 charge or insurance premiums allocable to installments due after repossession. A debtor whose
135 goods have been repossessed shall not be liable in a civil action for a deficiency unless the
136 secured party files an affidavit signed either by the purchaser at the sale or by the secured party
137 stating the price for which the goods were sold and the date and place of sale. Such affidavit
138 shall be filed with the complaint.

139 (e) Unless the secured creditor has first notified the debtor that he has elected to
140 accelerate the unpaid balance of the obligation because of default, brought action against the

141 debtor, or proceeded against the collateral, the debtor may cure a default consisting of a failure to
142 pay money by tendering the amount of all unpaid sums due at the time of tender, without
143 acceleration, plus any unpaid delinquency or deferral charges. Cure shall restore the debtor to his
144 rights under the agreement as though the defaults cured have not occurred, subject to the
145 provisions of subsection (b).

146 SECTION 11. Chapter 255 of the general laws, as so appearing in the 2014 edition, shall
147 be amended by striking out section 13J and replacing it with the following section:-

148 Section 13J. (a) Subject to the provisions of this section a secured creditor under a
149 consumer credit transaction may take possession of collateral. In taking possession the secured
150 creditor under a consumer credit transaction may proceed without a prior hearing only if the
151 default is material and consists of the debtor's failure to make one or more payments as required
152 by the agreement or the occurrence of an event which substantially impairs the value of the
153 collateral, and only if possession can be obtained without use of force, without a breach of peace
154 and, unless the debtor consents to an entry, at the time of such entry, without entry upon property
155 owned by, or rented to the debtor.

156 (b) Except as provided in subsection (a), a creditor under a consumer credit transaction
157 may proceed against collateral only after a prior hearing. In any proceeding where possession of
158 the collateral is part of the relief sought by a creditor no court shall allow a secured creditor or
159 lessor to take possession of collateral until the right of the creditor or lessor to take possession
160 has been determined at a hearing at which the consumer has an opportunity to be heard, having
161 been notified in writing of such hearing at least seven days in advance thereof.

162 (c) The consumer under a secured consumer credit transaction may redeem the collateral
163 from the creditor or lessor at any time within twenty days of the creditor or lessor's taking
164 possession of the collateral, or thereafter until the creditor or lessor has either disposed of the
165 collateral, entered into a contract for its disposition, or gained the right to retain the collateral.

166 (d) The creditor or lessor may after gaining possession sell or otherwise dispose of the
167 collateral. Unless displaced by the provisions of this section and section thirteen I, the rights and
168 obligations of the parties, including redemption and disposition of the collateral shall be
169 governed by the provisions of Part 6 of Article 9 of chapter 106, including consumer leases of
170 motor vehicles, to the extent applicable. Notwithstanding the provisions in Part 6 of Article 9 of
171 chapter 106, if, in connection with a consumer credit transaction which involves an unpaid
172 balance of two thousand dollars or less and which is at the time of default secured by a non-
173 possessory security interest in consumer goods, the creditor or lessor takes possession of or
174 accepts surrender of the collateral, the consumer shall not be liable for any deficiency. If the
175 agreement between the creditor or lessor and consumer provides that the consumer is to obtain
176 insurance protecting the collateral against fire, theft, collision or other hazards and naming the
177 creditor or lessor as loss payee and if, prior to the repossession or surrender of the collateral, loss
178 or damage occurs which would give rise to insurance proceeds under the terms of the policy in
179 force, then nothing in this section shall be deemed to limit the creditor or lessor's rights to so
180 much of the insurance proceeds as does not exceed the fair market value of the collateral existing
181 just prior to the loss or damage and, if insurance as required by the agreement is not in force at
182 the time of the loss or damage, nothing in this section shall be deemed to limit the creditor or
183 lessor's rights in proceeding against any third party who is responsible for the loss or damage in
184 the name of the consumer or otherwise. For the purposes of this section the unpaid balance of a

185 consumer credit transaction shall be that amount which the consumer would have been required
186 to pay upon prepayment.

187 (e) (1) If the unpaid balance of the consumer credit transaction at the time of default was
188 two thousand dollars or more the creditor or lessor shall be entitled to recover from the consumer
189 the deficiency, if any, resulting from deducting the fair market value of the collateral from the
190 unpaid balance due and shall also be entitled to any reasonable repossession and storage costs,
191 provided he has complied with all provisions of this section.

192 (2) In a proceeding for a deficiency the fair market value of the collateral shall be a
193 question for the court to determine. Periodically published trade estimates of the retail value of
194 goods shall, to the extent they are recognized in the particular trade or business, be presumed to
195 be the fair market value of the collateral.

196 (f) Any secured creditor or lessor obtaining possession of a motor vehicle under the
197 provisions of this section shall, within one hour after obtaining such possession, notify the police
198 department of the city or town in which such possession occurred, giving such police department
199 a description of the vehicle involved.

200 SECTION 12: Sections 1 through 9 shall not apply to leases in existence before the
201 effective date of this Act. However, such sections shall apply when, after the effective date of
202 this Act, a consumer lease is renegotiated by the same lessee for the same motor vehicle.

203 SECTION 13. Sections 10 and 11 shall not apply to leases in default before the effective
204 date of this Act. However, such sections shall apply where a lease in default before the effective
205 date of this Act is cured, and then goes into default again after the effective date of this Act.