

HOUSE No. 377

The Commonwealth of Massachusetts

PRESENTED BY:

Carlos González

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 modernizing protections for consumers in automobile transactions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/10/2021</i>
<i>Maura Healey, Attorney General</i>		<i>2/18/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>2/26/2021</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>3/15/2021</i>

HOUSE No. 377

By Mr. González of Springfield, a petition (accompanied by bill, House, No. 377) of Carlos González and others relative to modernizing protections for consumers in automobile transactions. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act modernizing protections for consumers in automobile transactions.

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. Section 7N of chapter 90 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out, in line 3, the words “such sale” and inserting
3 in place thereof the following:- delivery.

4 SECTION 2. Said section 7N of said chapter 90 is hereby further amended by striking
5 out, in lines 9 and 13, the word “sale” and inserting in place thereof, in each instance, the
6 following:- delivery.

7 SECTION 3 Section 7N¹/₄ of said chapter 90 is hereby amended by striking out clauses
8 (i), (ii), and (iii) of paragraph (2)(B) and inserting in place thereof the following:- (i) For a used
9 motor vehicle which, at the time of sale, has been operated less than 50,000 miles, 90 days or
10 3,750 miles, whichever occurs first. Said 90 days or 3,750 mile warranty is in addition to any
11 right the consumer may have under section 7N¹/₂.

(ii) For a used motor vehicle which, at the time of sale, has been operated 50,000 miles or more, but less than 100,000 miles, 60 days or 2,500 miles, whichever first occur.

(iii) For a used motor vehicle which, at the time of sale, has been operated 100,000 miles or more, but less than 200,000 miles, 30 days or 1,250 miles, whichever first occur.

SECTION 4. Paragraph (1) of subsection (c) of section 58 of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out “\$25,000” and inserting in place thereof the following:- \$50,000.

SECTION 5. Said subsection (c) of said section 58 of said chapter 140 is hereby further amended by striking out paragraph (2) and inserting in place thereof the following:- (2) Any person, or the attorney general, may make a claim for recovery against the bond for an act or omission on which the bond is conditioned if the act or omission occurred during the term of the bond. Every bond shall also provide that no claim may be made against the bond unless the claimant provides the bondholder notice of the claim within 1 year after the event giving rise to the claim.

SECTION 6. Said subsection (c) of said section 58 of said chapter 140 is hereby further amended by adding the following paragraph:- (9) The attorney general may recover from the bond or its equivalent on behalf of a person or a class of persons who suffer loss on account of clauses (i) – (vi) of paragraph (1).

SECTION 7. Section 1 of chapter 255B of the General Laws is hereby amended by striking out the definition of “Holder” and inserting in place thereof the following 3 definitions:-

“Holder”, the retail seller of the motor vehicle under or subject to a retail instalment contract, lease agreement or, if the contract is purchased by a financing agency or other assignee, the sales finance company or other assignee.

“Lease agreement” or “lease”, a contract, signed by the lessee in this state, that includes payment for the use of a motor vehicle for a period of time exceeding 4 months.

“Lessee”, a person, or any legal successor in interest to such person, who executes a lease agreement or lease on a motor vehicle for use primarily for personal, family or household purposes.

SECTION 8. Said section 1 of said chapter 255B is hereby further amended by striking out the definition of “retail instalment contract” and inserting in place thereof the following definition:-

“Retail instalment contract” or “contract”, an agreement, signed by the buyer in this state, pursuant to which the title to, the property in or a lien upon a motor vehicle, which is the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment of a motor vehicle by which the bailee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.

SECTION 9. Said section 1 of said chapter 255B is hereby further amended by striking out the definition of “Retail seller” and inserting in place thereof the following definition:-

“Retail seller” or “seller”, a person who sells or leases a motor vehicle to a retail buyer or lessee under or subject to a retail instalment contract or lease agreement.

SECTION 10. Said chapter 255B is hereby further amended by striking out section 20A, and inserting in place thereof the following section:-

Section 20A. (a) An agreement of the parties in a retail installment contract or lease agreement defining default is enforceable only to the extent that the default is material and consists of the buyer’s or lessee’s failure to make 1 or more installments as required by the agreement; or the occurrence of an event which substantially impairs the value of the collateral.

(b) After a default by a buyer or lessee under a consumer credit transaction or lease agreement, the secured creditor or lessor may not bring an action against the buyer or lessee or proceed against the collateral until he gives the buyer or lessee the notice described in this section. The notice so required shall be deemed to be delivered when delivered to the debtor or when mailed to the debtor at the debtor’s address last known to the creditor. If a buyer or lessee cures a default after receiving notice and again defaults, the creditor or lessor shall give another notice before bringing an action or proceeding against the collateral with respect to the subsequent default, but no notice is required in connection with a subsequent default if, within the period commencing on the date of the consumer credit transaction or lease agreement subject to this section and the date of the subsequent default, the debtor has cured a default after notice 3 or more times.

(c) The notice shall be in writing and shall be given to the buyer or lessee 10 days or more after the default. The notice shall conspicuously state the rights of the buyer or lessee upon default in substantially the following form:—

75 The heading shall read:—"Rights of Defaulting Buyer or Lessee under the Massachusetts
76 Motor Vehicle Installment Sales Act." The body of the notice shall read:—"You may cure your
77 default in (describe transaction in a manner enabling buyer or lessee to identify it) by paying to
78 (name and address of creditor or lessor) (amount due) before (date which is at 21 days after
79 notice is mailed). If you pay this amount within the time allowed, you are no longer in default
80 and may continue on with the transaction as though no default had occurred.

81 If you do not cure your default by the date stated above, the said creditor or lessor may
82 sue you to obtain a judgment for the amount of the debt or, if applicable, may take possession of
83 the collateral.

84 If the creditor or lessor takes possession of the collateral, if any, you may get it back by
85 paying the full amount of your debt plus any reasonable expenses incurred by the said creditor or
86 lessor if you make the required payment within 20 days after he takes possession."

87 (d) During the 21-day period after delivery of the notice required by this section the
88 creditor or lessor may not because of that default accelerate the unpaid balance of the obligation,
89 bring action against the buyer or lessee, or proceed against the collateral.

90 (e) Unless the secured creditor or lessor has first notified the buyer or lessee that he has
91 elected to accelerate the unpaid balance of the obligation because of default, brought action
92 against the buyer or lessee, or proceeded against the collateral, the buyer or lessee may cure a
93 default consisting of a failure to pay money by tendering the amount of all unpaid sums due at
94 the time of tender, without acceleration, plus any unpaid delinquency or deferral charges. Such a
95 cure shall restore the buyer or lessee to his rights under the agreement as though the defaults had
96 not occurred subject to the provisions of subsection (b).

SECTION 11. Section 20B of said chapter 255B is hereby amended by striking out subsections (a) to (c), inclusive, and inserting in place thereof the following 3 subsections:-

(a) Subject to the provisions of this section and section 20A a secured creditor or lessor under a consumer credit transaction or lease agreement may take possession of collateral. In taking possession the secured creditor or lessor under a consumer credit transaction or lease agreement may proceed without a prior hearing only if the default is material and consists of the debtor's failure to make 1 or more payments as required by the agreement or the occurrence of an event which substantially impairs the value of the collateral and only if possession can be obtained without use of force, without breach of peace and unless the debtor consents to an entry, at the time of such entry, without entry on property owned by or rented to the debtor.

(b) Except as provided in subsection (a) a creditor or lessor under a consumer credit transaction or lease agreement may proceed against collateral only after a prior hearing. In any proceeding where possession of the collateral is part of the relief sought by a holder no court shall allow a secured creditor or lessor to take possession of collateral until the right of the creditor or lessor to take possession has been determined at a hearing at which the buyer or lessee has an opportunity to be heard having been notified in writing of said hearing at least 7 days in advance thereof.

(c) The buyer or lessee under a consumer credit transaction or lease agreement may redeem the collateral from the holder at any time within 20 days of the creditor's or lessor's taking possession of the collateral, or thereafter until the creditor or lessor has either disposed of the collateral, entered into a contract for its disposition, or gained the right to retain the collateral in satisfaction of the buyer's or lessee's obligation.