

SENATE No. 2323

The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Feeney

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:

Paul R. Feeney

Attorney General Maura Healey

DISTRICT/ADDRESS:

Bristol and Norfolk

One Ashburton Place, Boston MA 02108

SENATE No. 2323

By Mr. Feeney, a petition (accompanied by bill, Senate, No. 2323) of Paul R. Feeney and Attorney General Maura Healey for legislation to modernize protections for consumers in automobile transactions. Transportation.

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 7N¼ 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 7N½.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72 (c) The notice shall be in writing and shall be given to the buyer or lessee 10 days or
73 more after the default. The notice shall conspicuously state the rights of the buyer or lessee upon
74 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. If the creditor or lessor takes possession of the collateral, if any, you may get it
84 back by paying the full amount of your debt plus any reasonable expenses incurred by the said
85 creditor or lessor if you make the required payment within 20 days after he takes possession."

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

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

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

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

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

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