HOUSE DOCKET, NO. 657 FILED ON: 1/16/2023

HOUSE . . . . . No. 3421

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron L. Saunders

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 relative to motor vehicle leasing parity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Aaron L. Saunders	*7th Hampden*	*1/16/2023*
Vanna Howard	*17th Middlesex*	*1/31/2023*
Jacob R. Oliveira	*Hampden, Hampshire and Worcester*	*4/21/2023*

HOUSE DOCKET, NO. 657 FILED ON: 1/16/2023

HOUSE . . . . . No. 3421

By Representative Saunders of Belchertown, a petition (accompanied by bill, House, No. 3421) of Aaron L. Saunders and Vanna Howard relative to motor vehicle leasing parity. Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3555* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to motor vehicle leasing parity.

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

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

Section 7N. Notwithstanding any disclaimer of warranty, a motor vehicle contract of sale or lease may be voided by the buyer or lessee if the motor vehicle fails to pass, within seven days from the date of such sale or lease, the periodic staggered inspection at an inspection station licensed pursuant to section seven W; provided, that the defects which are the reasons for the failure to issue a certificate of inspection were not caused by the abusive or negligent operation of the motor vehicle or by damage resulting from an accident or collision occurring after the date of the sale or lease; and provided, further, that the cost of repairs necessary to permit the issuance of a certificate of inspection exceeds ten per cent of the purchase price of the motor vehicle, or in

the case of a leased vehicle the exceeds ten percent total amount of payments due by the consumer to the lessor over the full term of the lease.

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

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

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

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

"Business day", Monday to Friday, inclusive, except for state or federal holidays.

"Buyer" includes a lessee of a used motor vehicle

"Consumer", a buyer or lessee, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred or leased during the period of any express or statutory warranty under this section applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce its obligations.

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

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

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

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

"Purchase price", the total of all payments made for the purchase or lease of a vehicle, including but not limited to any finance charges, registration fees, payments made for credit life,

accident, health, and damage insurance, and collision and related comprehensive insurance coverages and service contracts and the value of a trade-in.

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

"Seller" other than private seller shall include the lessor of a used motor vehicle.

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

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

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

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

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

Section 115. A motor vehicle dealer shall not assess or represent the value of a motor vehicle in a lease agreement in an amount greater than what the dealer has advertised or otherwise represented as that vehicle's purchase price. A dealer's failure to comply with the provisions of this section shall constitute an unfair or deceptive act under the provisions of chapter 93A.

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

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

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

The term “creditor” as used in sections 32 and 33 of this chapter shall include a lessor as defined in this section and rules and regulations made thereunder.SECTION 8. Section 32 of chapter 140D of the general laws, as so appearing in the 2014 edition, shall be amended by adding, in paragraph 2, after the word “transaction,”, the following words:- subsection 1 and replacing it with the following subsection:- “or in the case of a consumer lease under section 29A, 25 percent of the total amount of monthly payments under the lease”.

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

SECTION 10: Chapter 231 of the general laws, amended by striking out section 85J and replacing it with the following section:-

Whoever, by deceit or fraud, sells or leases personal property shall be liable in tort to a purchaser or lessee in treble the amount of damages sustained by such purchaser or lessee.

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

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

“Collateral” shall mean consumer goods secured or motor vehicles leased by a consumer credit transaction which are located in commonwealth at the time of default.

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

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

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

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

(b) After a default under a consumer credit transaction by a debtor the secured creditor may not bring an action against the debtor or proceed against the collateral until he gives the debtor the notice required by this section. Said notice 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 debtor cures a default after receiving such notice and again defaults, the creditor shall give another notice before bringing 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 subject to this section and the date of the subsequent default, the debtor has cured a default after notice three or more times.

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

The heading shall read:' 'Rights of Defaulting Consumer under Massachusetts Law." The body of the notice shall read: "You may cure your default in (describe transaction in a manner

enabling debtor to identify it) by paying to (name and address of lessor or creditor) (amount due) before (date which is at least twenty-one days after notice is mailed).

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

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

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

SECTION 12. Chapter 255 of the general laws, as so appearing in the 2014 edition, shall be amended by striking out section 13J and replacing it with the following section:-

Section 13J. (a) Subject to the provisions of this section and section 13I, a secured creditor under a consumer credit transaction may take possession of collateral. In taking possession the secured creditor under a consumer credit transaction may proceed without a prior

hearing only if the default is material and consists of the debtor's failure to make one 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 a breach of peace and, unless the debtor consents to an entry, at the time of such entry, without entry upon property owned by, or rented to the debtor.

(b) Except as provided in subsection (a), a creditor under a consumer credit transaction 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 creditor 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 consumer has an opportunity to be heard, having been notified in writing of such hearing at least seven days in advance thereof.

(c) The consumer under a secured consumer credit transaction may redeem the collateral from the creditor or lessor at any time within twenty days of the creditor 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.

(d) The creditor or lessor may after gaining possession sell or otherwise dispose of the collateral. Unless displaced by the provisions of this section and section thirteen I, the rights and obligations of the parties, including redemption and disposition of the collateral shall be governed by the provisions of Part 6 of Article 9 of chapter 106, including consumer leases of motor vehicles, to the extent applicable. Notwithstanding the provisions in Part 6 of Article 9 of chapter 106, if, in connection with a consumer credit transaction which involves an unpaid balance of two thousand dollars or less and which is at the time of default secured by a non-

possessory security interest in consumer goods, the creditor or lessor takes possession of or accepts surrender of the collateral, the consumer shall not be liable for any deficiency. If the agreement between the creditor or lessor and consumer provides that the consumer is to obtain insurance protecting the collateral against fire, theft, collision or other hazards and naming the creditor or lessor as loss payee and if, prior to the repossession or surrender of the collateral, loss or damage occurs which would give rise to insurance proceeds under the terms of the policy in force, then nothing in this section shall be deemed to limit the creditor or lessor's rights to so much of the insurance proceeds as does not exceed the fair market value of the collateral existing just prior to the loss or damage and, if insurance as required by the agreement is not in force at the time of the loss or damage, nothing in this section shall be deemed to limit the creditor or lessor's rights in proceeding against any third party who is responsible for the loss or damage in the name of the consumer or otherwise. For the purposes of this section the unpaid balance of a consumer credit transaction shall be that amount which the consumer would have been required to pay upon prepayment.

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

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

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

SECTION 13: Sections 1 through 9 shall not apply to leases in existence before the effective date of this Act. However, such sections shall apply when, after the effective date of this Act, a consumer lease is renegotiated by the same lessee for the same motor vehicle.

SECTION 14. Sections 10 and 11 shall not apply to leases in default before the effective date of this Act. However, such sections shall apply where a lease in default before the effective date of this Act at is cured, and then goes into default again after the effective date of this Act.