

HOUSE No. 890

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 passage of the accompanying bill:

An Act further regulating consumer leasing.

PETITION OF:

NAME:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 890

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 890) of Michael A. Costello relative to further regulating consumer leasing. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act further regulating consumer leasing.

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 90 of chapter 93 of the General Laws, as so appearing, is hereby
2 amended by striking out the second paragraph and inserting in place thereof the following
3 paragraph:—

4 “Consumer lease”, a contract in the form of a lease or bailment for the use of personal
5 property by a natural person for a period of time exceeding four months, and for a total
6 contractual obligation not exceeding \$50,000, primarily for personal, family, or household
7 purposes, whether or not the lessee has the option to purchase or otherwise become the owner of
8 the property at the expiration of the lease, except that such term shall not include any of the
9 following:

10 (1) a lease or agreement which constitutes a credit sale as defined in section one of
11 chapter one hundred and forty D;

12 (2) any lease for agricultural, business, or commercial purposes;

13 (3) any lease made to the commonwealth or any political subdivisions thereof, including,
14 but not limited to, any agencies, boards, departments or other such instrumentalities of the
15 commonwealth or any political subdivisions thereof; or

16 (4) any lease made to an organization.

17 SECTION 2. Section 91 of said chapter 93, as so appearing, is hereby amended by
18 striking out the fifth paragraph and inserting in place thereof the following paragraph:

19 (d) the amount and description of other charges payable by the lessee and not included in
20 the periodic payments; and that the lessee shall be liable for the differential, if any, between the
21 anticipated fair market value of the leased property and its appraised actual value at the
22 termination of the lease, if the lessee has such liability;

23 SECTION 3. Section 91 of said chapter 93, as so appearing, is further amended by
24 striking out the tenth and eleventh paragraphs and inserting in place thereof the following
25 paragraphs:—

26 (i) the number, amount and due dates or periods of payments under the lease and the total
27 amount of such periodic payments;

28 (j) Where the lease provides that the lessee shall be liable for the anticipated fair market
29 value of the property on expiration of the lease, the fair market value of the property at the
30 inception of the lease, the aggregate cost of the lease on expiration, and the differential between
31 them; and

32 (k) a statement of the conditions under which the lessee or lessor may terminate the lease
33 prior to the end of the term, or that no such right to terminate exists, and the amount or method of
34 determining the amount of any penalty or other charge for delinquency, default, late payments,
35 or early termination.

36 SECTION 4. Chapter 93 of the General Laws is hereby amended by inserting after
37 section 91 the following section:—

38 Section 91A. (a) Where the lessee's liability on expiration of a consumer lease is based
39 on the estimated residual value of the property such estimated residual value shall be a
40 reasonable approximation of the anticipated actual fair market value of the property on lease
41 expiration. There shall be a rebuttable presumption that the estimated residual value is
42 unreasonable to the extent that the estimated residual value exceeds the actual residual value by
43 more than three times the average payment allocable to a monthly period under the lease. In
44 addition, where the lessee has such liability on expiration of a consumer lease there shall be a
45 rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent
46 that the estimated residual value exceeds the actual residual value by more than three times the
47 average payment allocable to a monthly period under the lease and such lessor shall not collect
48 from the lessee the amount of such excess liability on expiration of a consumer lease unless the
49 lessor brings a successful action with respect to such excess liability. In all actions, the lessor
50 shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not
51 apply to the extent the excess of estimated over actual residual value is due to physical damage
52 to the property beyond reasonable wear and use, or to excessive use, and the lease may set
53 standards for such wear and use if such standards are not unreasonable. Nothing in this
54 subsection shall preclude the right of a willing lessee to make any mutually agreeable final

55 adjustment with respect to such excess residual liability, provided such an agreement is reached
56 after termination of the lease.

57 (b) Penalties or other charges for delinquency, default, or early termination may be
58 specified in the lease but only at an amount which is reasonable in the light of the anticipated or
59 actual harm caused by the delinquency, default, or early termination, the difficulties of proof of
60 loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

61 (c) If a lease has a residual value provision at the termination of the lease, the lessee may
62 obtain at his expense, a professional appraisal of the leased property by an independent third
63 party agreed to by both parties. Such appraisal shall be final and binding on the parties.

64 SECTION 5. Section 93 of said chapter 93, as so appearing, is hereby amended by
65 striking out, in line 2, the word “or” and inserting in place thereof the word:— through.

66 SECTION 6. Chapter 93 of the General Laws is hereby amended by inserting after
67 section 93 the following section:—

68 Section 93A. The commissioner of banks may adopt, amend, or repeal rules and
69 regulations to aid in the administration and enforcement of sections 90 through 93 of this
70 chapter.