

MASSACHUSETTS

Consumer Leases

General Laws of Massachusetts, as amended.

Added by Laws 1986, Ch. 419, approved October 8, 1986, effective January 6, 1987

Ch. 93, Sec. 90.

For the purposes of sections ninety to ninety-three, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:

"Consumer lease," a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time of four months or less, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any of the following:

- (1) A lease or agreement which constitutes a credit sale as defined in section one of chapter one hundred and forty D;
- (2) Any lease for agricultural, business, or commercial purposes;
- (3) Any lease made to the commonwealth or any political subdivisions thereof, including, but not limited to, any agencies, boards, departments or other such instrumentalities of the commonwealth or any political subdivisions thereof;
- (4) Any lease made to an organization;
- (5) A lease or agreement which constitutes a retail installment transaction as defined in section one of chapter two hundred and fifty-five D;
- (6) Any lease or rental of motor vehicles, as defined in section one of chapter ninety, or tools or garden equipment; and
- (7) Any lease or rental of an item of personal property that is leased or rented for fewer than seven consecutive days, including all renewals and extensions of the lease or rental agreement.

"Lessee," a natural person who leases or is offered a consumer lease.

"Lessor," a person who is regularly engaged in leasing, offering to lease, or arranging

to lease under a consumer lease.

"Security" and "security interest," any interest in property which secures payment or performance of an obligation.

Sec. 91.

Each lessor shall give to the lessee prior to the execution of the lease a dated written statement on which the lessor and lessee are identified, setting out accurately and in a clear and conspicuous manner the following information with respect to such lease, as applicable:

- (a) A brief description or identification of the leased property, including whether the property is new or used;
- (b) The amount of any payment required by the lessee at or before the execution of the lease;
- (c) The amount paid or payable by the lessee for fees or taxes;
- (d) The amount and description of other charges payable by the lessee and not included in the periodic payments;
- (e) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term of the lease and whether or not the lessee has the option to purchase the leased property and the price at which the leased property may be purchased at the end of the lease, and if an ongoing option to purchase shall exist, the method of determining the purchase price at any point in time;
- (f) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
- (g) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;
- (h) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;
- (i) The number, amount and due dates or periods of payments under the lease and the total amount of such periodic payments; and
- (j) A statement of the conditions under which the lessee or lessor may terminate the lease

prior to the end of the term, or that no such right to terminate exists, and the amount or method of determining the amount of any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee, or may be made in a separate written document which shall be attached to the lease contract. Any of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know the exact information.

Sec. 92.

- (a) If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement shall also clearly and conspicuously state the following items, as applicable:
 - (1) That the transaction advertised is a lease;
 - (2) The total of initial payments required at or before execution of the lease or delivery of the property, whichever is later;
 - (3) That a security deposit is required, if applicable;
 - (4) The number, amounts, and timing of scheduled payments;
 - (5) For a lease in which the liability of the lessee at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

- (b) If an advertisement for a consumer lease refers to or states the amount of any payment and that the lessee has the right to acquire ownership of any particular item, the advertisement shall further clearly and conspicuously state the following items, as applicable:
 - (1) The total of payments necessary to acquire ownership if ownership is acquired through the accumulation of periodic payments, or the price at which the leased property may be purchased at the end of the lease, and if an ongoing option to purchase shall exist, the method of determining the purchase price at any point in time if acquired through the exercise of the option to purchase;
 - (2) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid or the option to purchase is not exercised by payment of the purchase price.

- (c) Any owner or the agents or employees of any owner of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

Sec. 93.

- (a) Any lessee who suffers harm due to the lessor's failure to comply with any requirement imposed under section ninety-one or section ninety-two shall be entitled to recover from such lessor:
 - (1) Any actual damages sustained by the lessee as a result of such failure;
 - (2) Twenty-five percent of the total amount of monthly payments under the lease, except that the liability imposed under this subsection shall not be less than one hundred nor more than one thousand dollars; and
 - (3) In case of any successful action to enforce the foregoing liability, the costs of such action, together with a reasonable attorney's fees as determined by the court.
- (b) Such actions alleging a failure to disclose or otherwise comply with the requirements of section ninety-two shall be brought within one year of the termination of the lease agreement.
- (c) A lessor shall not be held liable in any action brought under this section if he shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. A bona fide error shall include, but shall not be limited to, clerical, calculation, computer malfunction and programming and printing errors; provided, however, that an error of legal judgment with respect to a person's obligation under section ninety-one or section ninety-two shall not be a bona fide error.
- (d) A lessor shall not be deemed liable under subsection (a) of this section for a violation of subsection (a) of this section for a violation of the provisions of section ninety-one if within sixty days after discovering the error, and before an action is filed in accordance with the provisions of this section or written notice of the error is received from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the account necessary to ensure that the consumer shall not be required to pay an amount in excess of the amounts actually disclosed. This provision shall apply whether the discovery of the error was made through the lessor's own procedures, or otherwise.
- (e) When there is more than one lessee in an consumer lease, there shall be no more than

one recovery of damages under said subsection (a) for a violation of section ninety-one or section ninety-two.

- (f) The continued or repeated failure to disclose to any person any information required under section ninety-one or section ninety-two to be disclosed in connection with a consumer lease, shall entitle a person to a single recovery under said subsection (a); provided, however, that continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.
- (g) A person may not take any action to offset any amount for which a lessor is potentially liable to such person under said subsection (a) against any amount owed by such person, unless the amount of the lessor's liability under sections ninety-one to ninety-three, inclusive, has been determined by judgment of a court of competent jurisdiction in an action in which such person was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of section ninety-one or section ninety-three as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under said section ninety-one or said section ninety-three.

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