

Chapter 296
2007 / S 0804
Enacted 07/07/07

AN ACT
RELATING TO MOTOR VEHICLES – REPOSSESSION ACT

Introduced By: Senators McCaffrey, and C Levesque
Date Introduced: March 07, 2007

It is enacted by the General Assembly as follows:

SECTION 1. Title 6 of the General Laws entitled “COMMERCIAL LAW – GENERAL REGULATORY PROVISIONS” is hereby amended by adding thereto the following chapter:

CHAPTER 50

THE RHODE ISLAND AUTOMOBILE REPOSSESSION ACT

6-50-1. Legislative findings – The general assembly finds and declares that:

(a) Rhode Island consumers who have purchased, through an extension of credit, or leased an automobile may fall behind on payments during difficult economic or emotional times and should be allowed to cure a default on the loan or lease within the time provided under this chapter.

(b) If the consumer is unable to cure such a default and the lessor or secured party repossesses the automobile, the repossession cannot take place on the property owned, or rented by the consumer without their consent except as provided by this chapter. In the event of repossession a consumer is allowed to redeem the automobile within the time provided by this chapter.

(c) The lessor or secured party who holds title to the automobile shall be allowed to dispose of the automobile after repossession in order to recover the fair market value of the vehicle and expenses from the repossession according to the provisions of this chapter and any other applicable laws of this state.

6-50-2. Definitions – For purposes of this chapter:

(a) “Automobile” means any self propelled, motored device in, upon or by which any person is, or may be, transported or drawn upon a highway and is used or brought for use primarily for personal, family, or household purposes and shall include:

(1) An automobile as defined by subsection 31-1-3 (d):

(2) A motorcycle as defined by subsection 31-1-3 (i):

(3) A suburban vehicle as defined by subsection 31-1-3 (u):

(b) "Automobile lease agreement" means the bargain, with the respect to the lease, of the lessor and the consumer in fact as found in their language and the term includes a sublease agreement.

(c) "Automobile loan agreement" means a transaction that creates or provides for a security interest in an automobile in which: (i) an individual incurs an obligation primarily for personal, family, or household purposes; (ii) a security interest secures the obligation; and (iii) the automobile is held or acquired primarily for personal, family, or household purposes.

(d) "Consumer" means any natural person: (1) in an automobile lease agreement who acquires, applies for, or is offered the right to possession and use of goods under an automobile lease and includes a legal representative of, fiduciary for, or successor in interest to, an individual who is a lessee, but does not include a guarantor on a consumer lease; or (2) in an automobile loan agreement with respect to an obligation secured by a security interest in the automobile: (i) owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable in whole or part for payment or other performance of the obligation and the term does not include issuers or nominated persons under a letter of credit.

(e) "Lessor" means a person or business who transfers the right to possession, and use of an automobile under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(f) "Secured party" means a person or business that holds a security interest arising under an automobile loan agreement.

6-50-3. Default, Notice, Right to Cure, Reinstatement – (a) The default provisions of a consumer automobile lease or automobile loan agreement are enforceable only to the extent that:

(1) The consumer does not make one or more payments required by the lease or loan agreement; or

(2) The lessor or secured party establishes that the prospect of payment, performance or realization of the lessor's or secured party's interest in the automobile is significantly impaired.

(b) After a default under an automobile lease or loan agreement by the consumer, the lessor or secured party may not be accelerated, take judicial action to collect, or repossess the automobile until the lessor or secured party gives the consumer the notice required by this section and the consumer does not cure the default in the time allowed under this section. A lessor or secured party may initiate a procedure for cure by sending to the consumer, at any time, after the consumer has been in default for ten (10) days, a notice of the right to cure the default. Said notice shall be delivered via certified mail, return receipt requested, at the consumer's address last known to the lessor or secured party. The time when notice is given shall be the date the

consumers signs the receipt or, if the notice is undeliverable, the date the post office last attempts to deliver it.

(c) The notice shall be in writing and shall conspicuously state the rights of the consumer upon default in substantially the following form:

The heading shall read: "Rights of Defaulting consumer under Rhode Island General Laws." The body of the notice shall read: "You may cure your default in (describe automobile lease or loan agreement in a manner enabling the consumer to identify it) by paying to (name and address of lessor or secured party) (amount due) before (date which is at least twenty-one (21) days after notice is delivered). If you pay this amount within the time allowed you are no longer in default and may continue with the automobile (lease or loan) agreement as though no default has occurred.

If you do not cure your default by the date stated above, (the lessor or secured party) may sue you to obtain a judgment for the amount of the debt, or may take possession of the automobile.

If (the lessor or secured party) takes possession of the automobile, you may get it back by paying the full amount of your debt, plus any reasonable expenses incurred by the (lessor or secured party) if you make the required payment within twenty (20) days after (the lessor or secured party) takes possession.

You have the right to cure a default only once in any twelve (12) month period during the period of the automobile (lease or loan) agreement. If you default again within the next twelve (12) months in making your payments, we may exercise our rights without sending you another right to cure notice. If you have questions, telephone (name of lessor or secured party) at (phone number).

(d) Within the period for cure stated in the notice, under this section, the consumer may cure the default by tendering the amount of all unpaid sums due at the time of tender, including any unpaid delinquency or default charges, but without additional security deposit or prepayment of period payments not yet due. Cure restores the rights of the lessor or secured party and consumer under the automobile loan or lease agreement as if the default had not occurred.

(e) A consumer has the right to cure only once in any twelve (12) month period during the period of the automobile lease or loan agreement.

6-50-4. - Repossession of an automobile as a result of default under a loan or lease agreement – (a) subject to the provisions of section 3, of this chapter, a lessor or secured party under a consumer automobile lease or loan agreement may take possession of the automobile. In taking possession, the lessor or secured party, under a consumer automobile lease or loan agreement may proceed without prior hearing, pursuant to section 6-50-3, and only if the possession can be obtained without a breach of peace and,

unless the consumer consents to an entry, at the time of such entry, without entry upon property owned by, or rented to the consumer, except as provided for in chapter 39-12.1.

(b) Any lessor or secured party obtaining possession of an automobile under the provisions of this chapter shall notify the police department of the city or town in which such possession occurred pursuant to section 6A-6-609(B)(2).

(c) The consumer under an automobile lease or loan agreement may redeem the automobile from the lessor or secured party and have the automobile lease or loan agreement reinstated at any time within twenty (20) days of the lessor's or secured party's taking possession of the automobile, or thereafter until the lessor or secured party has either disposed of the automobile, entered into a contract for its disposition, or gained the right to retain the automobile.

(d) The lessor or secured party may, after gaining possession of the automobile, sell or otherwise dispose of the automobile after the twenty (20) day redemption period provided for in subsection (c) of this section.

6-50-5. Statute of limitations – An action for default under an automobile lease or loan agreement, including breach of warranty or indemnity, must be commenced within two (2) years after the cause of action accrued. By the original lease or loan agreement, the parties may reduce the period of limitations to not less than one year.

SECTION 2. This act shall take effect upon passage.