

HOUSE No. 4044

The Commonwealth of Massachusetts

PRESENTED BY:

Adrian C. Madaro

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 amending the General Laws in relation to enacting the Private Vehicle Rental Act.

PETITION OF:

NAME:

Adrian C. Madaro

DISTRICT/ADDRESS:

1st Suffolk

HOUSE No. 4044

By Mr. Madaro of Boston, a petition (subject to Joint Rule 12) of Adrian C. Madaro relative to private motor vehicle rentals. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act amending the General Laws in relation to enacting the Private Vehicle Rental Act.

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. This act shall be known and may be cited as the "Private Vehicle Rental
2 Act".

3 SECTION 2. Chapter 90 of the General Laws, as appearing in the 2016 official edition,
4 is hereby amended by adding the following section:

5 Section 65. Insurance Requirements.

6 A Private Vehicle Rental Program Provider shall maintain insurance pursuant to sections
7 230 to 233, inclusive, of Chapter 175 of the General Laws.

8 SECTION 3. Said Chapter 175 of the General Laws is hereby amended by adding after
9 section 229 the following sections:

10 Section 230. Definitions. As used in sections 230 to 233, inclusive, the following words
11 shall have the following meanings:

12 (a) "Program Rental Period" or "Rental Period" means the period of time when a Renter
13 takes possession and control of a Vehicle available for Private Vehicle Rental, includes the time
14 when such Vehicle is under the control of the Program Provider, and continues until the
15 following conditions are met: (1) The Vehicle is: (i) retrieved by the Owner or Owner's
16 designee; (ii) returned to a location agreed upon by the Owner and the Renter; or (iii) returned to
17 a location designated by the Program Provider; and (2) One of the following occurs: (i) the time
18 period established through the Program expires; (ii) the Renter verifiably communicates to the
19 Program Provider or Owner that they deem the Rental Period terminated; or (iii) the Owner or
20 the Program Provider takes possession and control of the Vehicle.

21 (b) "Group policy" means an insurance policy issued pursuant to section 4 of this article.

22 (c) Terms not otherwise defined by this section shall have the meanings contained in
23 section 63 of chapter 90.

24 Section 231. Requirements and limitations for Private Vehicle Rental

25 (a) No personal passenger motor vehicle insured, or subject to being insured, by its
26 registered owner pursuant to sections 34A – 34R of chapter 90 and sections 113A – 113U of
27 chapter 175 shall be classified as a commercial vehicle, for-hire vehicle, permissive use vehicle,
28 taxicab or livery solely because its registered owner allows it to be used for Private Vehicle
29 Rental, as long as all of the following circumstances apply: (1) the Private Vehicle Rental is
30 compliant with a Personal Vehicle Rental Program as provided for in this article; (2) the Owner,
31 or Program Provider, does not knowingly place the Vehicle, or allow the Vehicle to be placed,
32 into use as a commercial vehicle, or as a vehicle for hire by a Private Vehicle Renter, while the
33 Vehicle is utilized for Private Vehicle Rental; and (3) the number of personal passenger motor

34 vehicles a single individual, or multiple individuals residing in the same household, has enrolled
35 in any Private Vehicle Rental Program, or combination of Private Vehicle Rental Programs, does
36 not exceed four.

37 (b) A personal passenger motor vehicle liability insurance company may cancel or refuse
38 coverage to an Owner solely due to the number of vehicles enrolled in Private Vehicle Rental, if
39 the number of vehicles enrolled in any Private Rental Program, or combination of Programs,
40 either by the insured, or in combination with other household residents, exceeds four.

41 (c) A Program Provider shall, for each Vehicle of which it facilitates the Rental, do all of
42 the following: (1) During the Rental Period for a Vehicle engaged in Private Vehicle Rental,
43 procure group insurance coverage for each Vehicle and authorized driver of any such Vehicle.
44 Such insurance shall, at a minimum, provide for each Vehicle: (i) liability coverage at least equal
45 to the minimum financial responsibility requirements for personal passenger motor vehicles of
46 the state in which the Vehicle is registered; and (ii) property and casualty coverage including
47 comprehensive and collision protection, as further described in subsections (d) and (e) of section
48 233 of chapter 175; (2) Provide the Registered Owner of the Vehicle engaged in Private Vehicle
49 Rental with suitable proof of compliance with the insurance requirements of this section and the
50 requirements of section 34B of chapter 90, a copy of which shall be maintained in the Vehicle by
51 the Owner during any time when the Vehicle is operated by a Renter, or person other than the
52 Owner, pursuant to a Private Vehicle Rental Program; (3) Not permit the Vehicle to be operated
53 for commercial use or as a vehicle for hire by a Renter while engaged in Private Vehicle Rental;
54 (4) Provide each Renter, for each rental transaction under the Program, at the time of each rental:
55 (i) access to an insurance identification card approved for use by the state in which the Vehicle is
56 registered; or other documentation, able to be carried in the Vehicle at all times during the Rental

57 Period, that proves the insurance coverage referred to in paragraph (1) is in full force and effect;
58 and (ii) the means, via a toll-free number, email address or such other form of communication
59 with a law enforcement police officer, a representative of the department of motor vehicles or
60 other officer of the state in which the Vehicle is registered or any political subdivision thereof, to
61 confirm in real time that insurance coverage provided for in paragraph (1) is in effect; (5)
62 Require that every Vehicle made available for Private Vehicle Rental comply with the minimum
63 financial responsibility requirements of the state in which the Vehicle is registered; (6) Require
64 that every vehicle used in a Program is a Private Motor Vehicle; (7) Facilitate the installation,
65 operation and maintenance of its own signage and computer hardware and software to the extent
66 necessary for the Vehicle to be used in the Program; (8) Indemnify and hold harmless the Owner
67 for the cost of damage or theft of equipment installed by the Program Provider under paragraph
68 (7) of this subsection for any damage caused to the Vehicle by the installation, operation or
69 maintenance of such equipment; (9) Collect, maintain and make available, to any government
70 agency as required by law, at the cost of the Program, the Owner's primary motor vehicle
71 liability insurer; the Renter's primary automobile, excess, or umbrella insurer; and the following
72 information pertaining to incidents that occurred during any Rental Period: (i) verifiable records
73 of the Rental Period for each Vehicle, and (to the extent electronic equipment for monitoring the
74 following information is installed in the Vehicle) verifiable electronic records of the time, initial
75 and final locations of the Vehicle, and (to the extent mileage is collected) miles driven; and (ii) in
76 instances where an insurance claim has been filed with a group insurer, any and all information
77 relevant to the claim, including payments by the Program Provider concerning accidents,
78 damages and injuries; (10) Ensure that the Owner and Renter are given notice prior to the first
79 use or operation of a Private Motor Vehicle pursuant to enrollment in a Private Vehicle Rental

80 Program, that: (i) during the Rental Period, the Owner's insurer may exclude any and all
81 coverage afforded to its policy and such Owner's insurer shall have the right to notify an insured
82 that it shall have no duty to defend or indemnify any person or organization for liability for any
83 loss that occurs during the Rental Period; and (ii) the group policy and physical damage coverage
84 contract may not provide coverage outside of the Rental Period; and (11) Comply with all
85 statutory and regulatory obligations for private passenger motor vehicle rental, including, but not
86 limited to compliance with the provisions of section 2 of chapter 64I; section 11 of chapter 90;
87 section 12 of chapter 90; section 20E of chapter 90; section 32C of chapter 90; section 32D of
88 chapter 90; section 32E1/2 of chapter 90; section 32E3/4 of chapter 90; section 32E7/8 of
89 chapter 90; section 33 of chapter 90; section 34 of chapter 90; and section 92A of chapter 266.

90 Section 232. Liability provisions.

91 (a) Notwithstanding any other provision of law or any provision in a private passenger
92 motor vehicle owner's automobile insurance policy, in the event of a loss or injury that occurs
93 during the Rental Period or while the Private Motor Vehicle is otherwise under the control of a
94 Private Vehicle Rental Program Provider, the Program Provider shall be deemed the owner of
95 the vehicle under section 85A of chapter 231 and such other statutes that may impose liability
96 upon an owner of a private passenger motor vehicle solely based on such ownership as if the
97 Program Provider were the registered owner of the vehicle. The Program Provider shall retain
98 such liability irrespective of a lapse in the group policy or any insurance policy under which the
99 Program is insured, or whether such liability is covered under the group policy or any insurance
100 policy under which the Program is insured.

101 (b) A Program Provider's group policy shall provide coverage during the Rental Period
102 for an Owner's Private Motor Vehicle.

103 (c) The insurer or insurers providing group liability insurance to the Private Vehicle
104 Rental Program pursuant to subsection (a) of section 233 and group physical damage insurance
105 to the Private Vehicle Rental Program pursuant to subsection (d) of section 233 shall assume
106 liability for a claim in which a dispute exists regarding who was in control of the Vehicle when
107 the loss occurred giving rise to the claim, and the Owner's private passenger motor vehicle
108 insurer shall indemnify the Private Vehicle Rental Program's group insurer or insurers, to the
109 extent of its obligation under the applicable insurance policy, if it is determined that the Vehicle's
110 Owner was in control of the Vehicle at the time of the loss. The Program shall notify the
111 Owner's insurer of any such dispute within ten business days of becoming aware that such a
112 dispute exists.

113 (d) In the event that the Owner of the Vehicle or its insurer is named as a defendant in a
114 civil action for a loss or injury that occurs during any time within the Rental Period, or otherwise
115 under the control of a Private Vehicle Rental Program, the Program's group liability insurance
116 insurer under subsection (a) of section 233 shall have the duty to defend and indemnify the
117 Vehicle's Owner and the Owner's insurer, subject to the provisions of subsection (c) of this
118 section.

119 (e) Notwithstanding any other provision of law to the contrary, while a Private Motor
120 Vehicle is used by a person other than its Owner, pursuant to Private Vehicle Rental facilitated
121 through a Private Vehicle Rental Program, all of the following shall apply: (1) the insurer of that
122 Vehicle may exclude any and all coverage for liability, uninsured, underinsured, collision

123 physical damage and comprehensive physical damage benefits and first-party benefits that may
124 otherwise be afforded pursuant to its policy; and (2) the primary and excess insurer or insurers of
125 the Owner of the Private Motor Vehicle used in a Private Vehicle Rental Program shall have the
126 right to notify the insured that it has no duty to defend or indemnify any person or organization
127 for liability for any loss that occurs during the Rental Period of the Vehicle in a Private Vehicle
128 Rental Program.

129 (f) No Owner's policy of insurance shall be cancelled, voided, terminated, rescinded, non-
130 renewed, solely on the basis that the Private Motor Vehicle has been made available for Private
131 Vehicle Rental pursuant to a Private Vehicle Rental Program that is in compliance with the
132 provisions of this section. Provided, however that: (1) the provisions of this section shall not
133 pertain to cancellations in accordance with the provisions of section 113D of chapter 175; (2) an
134 insurer may refuse to enroll a vehicle in a usage-based insurance program, where such usage-
135 based insurance program continually monitors usage electronically to determine acceleration,
136 braking, miles driven and other indicia of driving behavior, if that vehicle is used in a Private
137 Vehicle Rental Program under this article; and (3) an insurer may cancel or non-renew a policy
138 that insures a vehicle used in the Private Vehicle Rental Program if that vehicle is enrolled in
139 such a usage-based insurance program. The insurer must immediately offer the insured a new
140 policy with the same coverages and pre-existing rates, but without enrollment in the usage-based
141 insurance program.

142 Section 233. Group insurance for Private Vehicle Rental Programs.

143 (a) An insurer which is authorized or eligible to do business in the Commonwealth may
144 issue, or issue for delivery in this Commonwealth, a group policy of liability and property and

145 casualty insurance to a Private Vehicle Rental Program Provider to insure the Private Vehicle
146 Rental Program, and the Renters, authorized drivers and occupants of the Private Motor Vehicle,
147 as well as the Program Provider, its agents, employees, directors, officers and assigns; and (1)
148 that such policy shall provide first party coverage, liability, property, comprehensive, collision,
149 and uninsured/underinsured motorist coverage for the Private Motor Vehicle and its authorized
150 operators and occupants for claims and damages resulting from the use or operation of that
151 Vehicle during the rental period; (a) that such policy shall be primary with respect to any other
152 insurance available to the Owner of the Private Motor Vehicle; but (b) that such policy shall be
153 secondary with respect to any other insurance available to the Renter, authorized or permissive
154 operator and occupants of the Private Motor Vehicle; and (3) that such insurer shall comply with
155 the provisions of section 34B of chapter 90; and (4) that for the purposes of group insurance
156 written under this section only, the rates charged by the insurer for group liability insurance as
157 provided for in this section shall be filed with the commissioner on a file and use basis.

158 (b) An insurer which issues an insurance policy described in subsection (a) shall issue
159 such policy identifying the Private Vehicle Rental Program and Program Provider as the named
160 insureds; and any such policy shall include a provision that provides coverage, without prior
161 notice to the insurer, for all Private Motor Vehicles during the Rental Period and such policy
162 shall further include a provision that the Vehicles' Renters, authorized or permissive operators
163 and occupants are included as insureds under the policy to the same extent that they would be
164 insureds under a private passenger motor vehicle policy issued pursuant to sections 34A – 34R of
165 chapter 90 and sections 113A – 113U of chapter 175.

166 (c) A group policy, as provided for in subsection (a) and (b), shall only be issued in
167 accordance with the provisions of this article.

168 (d) A Program Provider may contractually assume the risk of physical damage loss to
169 Private Motor Vehicles during the time that the Vehicles are in the custody of the Private Vehicle
170 Renter or Private Vehicle Rental Program Provider; and (1) such assumption of risk of physical
171 damage loss to the Vehicle shall not be deemed to be physical damage insurance; and (2) a
172 Program Provider may offer optional vehicle protection in accordance with the provisions of
173 section 32E1/2 of chapter 90; and

174 (e) An insurer which is authorized or eligible to do business in the state may issue a
175 group policy of physical damage insurance to a Private Vehicle Rental Program and to the
176 Owners of Vehicles participating in that Program to insure against physical damage loss to
177 Vehicles while the Vehicles are in the custody of the Private Vehicle Rental Program or Private
178 Vehicle Renter. Such group policy shall provide primary coverage for physical damage loss
179 either by collision, comprehensive, or both, to the Vehicle while it is in the custody of the Private
180 Vehicle Rental Program or a Private Vehicle Renter.

181 (f) If the group coverage provided for in subsection (e) is placed with an eligible excess
182 line insurer, compliance with the excess line statutes and regulations of this state shall be
183 performed with respect to the group as a whole and not with respect to individual group
184 members.

185 (g) An insurer which issues a group insurance policy described in subsection (e) shall
186 issue such policy identifying the Private Vehicle Rental Program as the named insured, and any
187 such policy shall include a provision that provides primary coverage, without prior notice
188 to the insurer, for all Private Motor Vehicles during the Rental Period, and it shall further include

189 physical damage coverage for damage or loss to the Owner's vehicle incurred during the Rental
190 Period at a level no less than that of third party physical damage coverage.

191 (h) A group policy as provided for in subsections (e), (f), and (g) of this section shall only
192 be issued in accordance with the provisions of this section.

193 SECTION 4. Section 34J of chapter 90 is amended by inserting after the fourth
194 paragraph the following paragraphs:

195 In the case of a Private Motor Vehicle that is used in connection with a Private Vehicle
196 Rental Program, as those terms are defined in section 63, the insurance requirements set forth in
197 this section shall be met by a group insurance policy, as specified in section 233 of chapter 175,
198 issued to a Program Provider and to the Private Vehicle Renters and authorized or permissive
199 drivers of that Program for any time that the Private Motor Vehicle is being used in connection
200 with the Private Vehicle Rental Program.

201 In the case of financial security procured by a Program Provider of a Private Vehicle
202 Rental Program as set forth in section 233 of chapter 175, the Program Provider shall provide the
203 commissioner with proof of financial security in the form of a group insurance policy covering
204 itself and the Owners of all Private Motor Vehicles registered in this state that participate in the
205 Program as insured group members, covering those vehicles while they are being used in
206 conjunction with that Program. Such proof shall not be used in connection with the registration
207 of the Vehicles and no such Vehicle shall be registered unless the Owner of the Vehicle
208 separately complies with section 34B of chapter 90.

209 SECTION 5. This act shall take effect immediately upon its passage.