

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

A Bill

HOUSE BILL 1958

4 **By: Representatives von Gremp, Shaver, Blair, Smith, K. Wood, J. Wilson, Pryor, Young,**
5 **Bryant, Bennett, Cash, Wallis, M. Owens, Molinaro, Hall, and Riable**

6

7

8

For An Act To Be Entitled

9 "AN ACT TO PROHIBIT SUBLEASING OR TRANSFER OF A MOTOR
10 VEHICLE SUBJECT TO A SECURITY INTEREST, LEASE, OR LIEN
11 WITHOUT THE CONSENT OF THE SECURED PARTY, LESSOR, OR
12 LIENHOLDER; TO PROVIDE THAT A SUBLEASE OR TRANSFER IN
13 VIOLATION SHALL CONSTITUTE A DECEPTIVE TRADE PRACTICE; TO
14 PROVIDE FOR CIVIL REMEDIES; AND FOR OTHER PURPOSES."

15

16

Subtitle

17 "PROHIBITING SUBLEASE OR TRANSFER OF A MOTOR VEHICLE
18 SUBJECT TO A SECURITY INTEREST, LEASE, OR LIEN WITHOUT THE
19 CONSENT OF THE SECURED PARTY, LESSOR, OR LIENHOLDER."

20

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. Definitions. As used in this act unless the context
25 requires otherwise,

26 (1) "Lease" means the grant of use and possession of a motor vehicle
27 for consideration, whether or not the grant includes an option to buy the
28 vehicle;

29 (2) "Motor vehicle" means a device in, on, or by which a person or
30 property is or may be transported or drawn on a highway, except a device used
31 exclusively on stationary rails or tracks;

32 (3) "Security interest" means an interest in personal property or
33 fixtures that secures payment or performance of an obligation;

34 (4) "Third party" means a person other than the actor or the owner of
35 the vehicle;

1 (5) "Transfer" means to transfer possession, whether or not another
2 right is also transferred, by means of a sale, lease, sublease, lease
3 assignment, or other property transfer.

4

5 SECTION 2. Prohibited practices.

6 (a) A person engages in an act of unlawful subleasing or transfer of a
7 motor vehicle if all of the following conditions are met:

8 (1) The vehicle is subject to a lease contract, an installment
9 sales agreement, or a security agreement, the terms of which prohibit the
10 transfer or assignment of any right or interest in the vehicle or under the
11 lease contract, installment sales agreement, or security agreement without
12 consent of the lessor, seller, or secured party.

13 (2) The person is not a party to the lease contract, installment
14 sales agreement, or security agreement.

15 (3) The person transfers or assigns, or purports to transfer or
16 assign, a right or an interest in the vehicle to a person who is not a party
17 to the lease contract, installment sales agreement, or security agreement.

18 (4) The person does not obtain, before the transfer or assignment
19 described in paragraph (3) above, written consent to the transfer or
20 assignment from the vehicle's lessor, seller, or secured party.

21 (5) The person receives compensation or some other consideration
22 for the transfer or assignment described in subdivision (3).

23 (b) A person engages in an act of unlawful subleasing or transfer of a
24 motor vehicle when the person is not a party to the lease contract,
25 installment sales agreement, or security agreement and assists, causes, or
26 arranges an actual or purported transfer or assignment described as a
27 violation of this Act.

28 (c) It is not a defense to prosecution under this Act that the motor
29 vehicle's owner has violated a contract creating a security interest, lease,
30 or lien in the motor vehicle.

31

32 SECTION 3. Remedies and penalties.

33 (a) Any sublease or transfer, or attempted sublease or transfer in
34 violation of this act shall constitute a deceptive trade practice as defined
35 by Arkansas Code § 4-88-101 et seq., and any and all remedies available

1 thereto shall be available to the Attorney General for enforcement of this
2 Act.

3 (b) Any person injured or damaged by reason of any act in violation of
4 this Act may file a civil action to recover damages based on the violation
5 with the following remedies:

6 (1) The greater of three times the amount of any actual damages
7 or fifteen hundred dollars (\$1500);

8 (2) Reasonable attorney fees and costs; and

9 (3) Any other relief which the court deems just.

10 (c) A person who knowingly or intentionally engages in an act of
11 unlawful subleasing or transfer of a motor vehicle as described by this Act
12 shall be guilty of a Class D felony.

13

14 SECTION 4. All provisions of this act of a general and permanent nature
15 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
16 Revision Commission shall incorporate the same in the Code.

17

18 SECTION 5. If any provision of this act or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall not affect
20 other provisions or applications of the act which can be given effect without
21 the invalid provision or application, and to this end the provisions of this
22 act are declared to be severable.

23

24 SECTION 5. All laws and parts of laws in conflict with this act are
25 hereby repealed.

26

27

28

29

30

31

/s/Jim von Gremp, et al

32

33

34

35

As Engrossed: 3/12/93

HB 1958

1

2

mhf696