

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

SENATE BILL 885

4
5 By: Senator Fitch
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For An Act To Be Entitled

8
9 "AN ACT TO CREATE THE ARKANSAS CONSUMER MOTOR VEHICLE
10 LEASING ACT; CREATING CERTAIN DEFINITIONS; DEFINING
11 CERTAIN TERMS; TO REQUIRE CERTAIN DISCLOSURES IN ALL
12 CONSUMER MOTOR VEHICLE LEASES; TO PROVIDE PENALTIES
13 AND REMEDIES FOR A VIOLATION OF THE ACT; CREATING A
14 CERTAIN LIMITATION PERIOD FOR BRINGING AN ACTION UNDER
15 THIS ACT; AND GENERALLY RELATING TO CONSUMER MOTOR
16 VEHICLE LEASING CONTRACTS. "

Act

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19 "THE ARKANSAS CONSUMER MOTOR VEHICLE
20 LEASING ACT. "

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

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

27 (1) "Adjusted capitalized costs" means the agreed upon amount that
28 serves as the basis for determining the periodic lease payment, computed by
29 subtracting from the capitalized costs any capitalized costs reduction;

30 (2) "Capitalized costs reduction" means any payments made by cash,
31 check, rebates, or similar means that are in the nature of a down payment made
32 by the lessee and any net trade-in allowance granted by the lessor at the
33 inception of the consumer lease for the purpose of reducing the capitalized
34 costs, but does not include any periodic lease payments due at the inception
35 of the lease or all of the periodic lease payments if they are paid at the
36 inception of the lease;

1 (3) "Consumer lease" means a transaction through which the possession
2 or use of a motor vehicle for a commission or other compensation is
3 transferred to a lessee primarily for a personal, family, or household purpose
4 for a period of time exceeding four (4) months, including renewal periods;
5 whether or not the lessee has the option to purchase or otherwise become the
6 owner of the property at the expiration of the lease. The inclusion in a
7 lease of a provision whereby the lessee's or lessor's liability at the end of
8 the lease period or upon an earlier termination, is based on the value of the
9 leased property at that time, shall not be deemed to make the transaction
10 other than a consumer lease. The term "consumer lease" does not include a
11 lease for governmental, agricultural, business, or commercial purposes;

12 (4) "Gross capitalized costs" means the amount agreed upon by the
13 lessor and the lessee as the value of the leased property and any items which
14 are capitalized or amortized during the leased term. The adjusted capitalized
15 cost equals the gross capitalized cost less the capitalized cost reduction,
16 and is the amount used by the lessor in calculating the base periodic payment.

17 Gross capitalized costs shall include, to the extent capitalized and
18 amortized:

19 (A) Taxes, registration, license, acquisition, administration,
20 assignment, and other similar fees;

21 (B) Charges for insurance, an extended warranty, mechanical
22 repair contract, service contract, vehicle maintenance agreement, and any
23 other similar charge;

24 (C) Charges for a waiver of the contractual obligation to pay the
25 gap amount;

26 (D) Charges for accessories and installation of accessories;

27 (E) Charges for delivering, servicing, repairing or improving the
28 vehicle;

29 (F) Charges for other goods, services and benefits incidental to
30 the consumer in the lease transaction; and

31 (G) The unpaid balance of any amount financed under an
32 outstanding vehicle loan agreement or vehicle retail installment contract or
33 the unpaid portion of the early termination obligation under any lease or
34 obligation of the lessee with respect to a vehicle or other property traded in
35 connection with a consumer lease.

36 (5) "Lessee" means a natural person who leases or is offered a motor

1 vehicle consumer lease;

2 (6) "Lessor" means a person who regularly leases or offers to lease
 3 motor vehicles. A person who has leased, offered, or arranged to lease motor
 4 vehicles more than five times in the preceding calendar year or more than five
 5 times in the current calendar year is subject to this act; and

6 (7) "Motor vehicle" or "vehicle" means any self-propelled vehicle
 7 licensed, purchased, or leased in this state and primarily designed for the
 8 transportation of persons or property over the public streets and highways,
 9 but does not include mopeds, motorcycles, or vehicles over ten thousand pounds
 10 (10,000 lbs.) gross vehicle weight rating. For purposes of this definition,
 11 the limit of the ten thousand pounds (10,000 lbs.) gross vehicle weight rating
 12 does not apply to motor homes.

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 14 SECTION 2. Required Disclosures.

15 (a) A consumer lease of a motor vehicle shall include:

16 (1) The total amounts of any payments to be paid by the lessee at
 17 the consummation of the lease including, but not limited to:

18 (A) Refundable security deposit paid by cash, check, or
 19 other similar means;

20 (B) Advance payment;

21 (C) A disclosure of any capitalized cost reduction stated
 22 as a total and the identity of the component and respective amount of each
 23 component;

24 (D) A disclosure of the capitalized costs stated as a total
 25 and the identity of the components listed in the definition of capitalized
 26 costs and the respective amount of each component;

27 (E) A statement of adjusted capitalized costs; and

28 (F) If the lessee trades in a motor vehicle, the amount of
 29 any sales tax redemption for the agreed value of the traded vehicle and any
 30 reduction in the periodic payments resulting from the application of the sales
 31 tax exemption;

32 (2) Any down payment or other consideration paid to the leasing
 33 company;

34 (3) The total of all lease payments to be paid over the terms of
 35 the lease; and

36 (4) Whether the lessee of the vehicle may terminate the lease of

1 the vehicle prior to the end of the lease term, and if so, the amounts, if
 2 any, which the lessee is required to pay upon the termination of the lease,
 3 based on twelve month intervals.

4 (b) The lessor or the lessor's assignee, shall disclose to a lessee,
 5 upon request, within five (5) business days, the amount of outstanding debt to
 6 the lessor or the lessor's assignee.

7 (1) The amount described in subsection (b) of this section shall
 8 be itemized and shall include all monies owned under the lease.

9 (2) The amount shall also include any early termination penalties
 10 which shall be described as such and the method and exact figures used in
 11 computing each of these amounts.

12 (c) A lease shall be in writing and signed by the lessor and the
 13 lessee.

14 (d) The printed portion of the lease, other than directions for
 15 completion of the lease and the text of any assignment between the original
 16 lessor and the assignee, shall be printed in a size equal to at least 10 point
 17 type. The lease shall contain the following items printed or written in a
 18 conspicuous manner:

19 (1) At the top of the lease, the words "MOTOR VEHICLE LEASE
 20 AGREEMENT";

21 (2) If physical damage or liability insurance coverage for bodily
 22 injury and property damage caused to others is not included in the lease, a
 23 notice substantial similar to the following: "No physical damage or property
 24 liability insurance coverage for bodily injury or personal property damage
 25 caused to others is included in this lease";

26 (3) Directly above the acknowledgment permitted by this section,
 27 a written notice substantially similar to the following, in at least 10 point
 28 bold face type: "NOTICE TO THE LESSEE: THIS IS A LEASE. YOU HAVE NO
 29 OWNERSHIP RIGHTS IN THE MOTOR VEHICLE UNLESS AND UNTIL YOU EXERCISE YOUR
 30 OPTION TO PURCHASE THE MOTOR VEHICLE, IF THIS LEASE CONTAINS A PURCHASE
 31 OPTION. DO NOT SIGN THIS LEASE BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK
 32 SPACE. YOU ARE PERMITTED TO COMPLETELY FILL IN A COPY OF THIS LEASE WHEN YOU
 33 SIGN IT"; and

34 (4) The following provision in at least 10 point bold face type:
 35 NOTICE: ANY HOLDER OF THIS CONSUMER LEASE IS SUBJECT TO ALL
 36 CLAIMS AND DEFENSES WHICH THE LESSEE COULD ASSERT AGAINST THE LESSOR OF THE

1 MOTOR VEHICLE.

2 (e) The lessor shall deliver a copy of the lease signed by the lessor,
3 either at the time the lessee signs the lease, or by mailing a copy of the
4 lease within three (3) business days, to the lessee's address shown on the
5 lease.

6 (f) Any acknowledgment by the lessee of delivery of a copy of the lease
7 shall be conspicuous and shall appear directly above the space reserved for
8 the lessee's signature.

9 (g) The lease shall state the names of the original lessor and lessee,
10 the place of business of the original lessor, the residence of the lessee as
11 specified by the lessee, and a description of the motor vehicle, including its
12 make, model year, model, and if known, the motor vehicle's vehicle
13 identification number or mark.

14 (h) A disclosure in proximity to the lessee's signature, in not less
15 than 10 point, bold face type to the lessee: "WARNING!: EARLY TERMINATION
16 UNDER THIS LEASE MAY RESULT IN SIGNIFICANT COSTS TO YOU THE CONSUMER. READ
17 THIS AGREEMENT CAREFULLY AND UNDERSTAND ALL PROVISIONS BEFORE SIGNING. GET
18 ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE."

19 (i) No lease shall be signed by a party if it contains blank spaces to
20 be filled in after it has been signed, unless delivery of the motor vehicle is
21 not made at the time of execution of the lease and the motor vehicle's
22 identifying numbers, marks, or similar information may be filled in after
23 execution of the lease.

24 (j) Upon written request from a lessee, the lessor shall give or
25 forward to the lessee a written statement of the dates and amounts of payments
26 that have been made under the lease and the amount of the lessee's remaining
27 payments and any other amounts owed to the lessor as reflected on the lessor's
28 books and records at the time of the notice.

29 (1) Upon written request from a lessee the lessor shall give or
30 forward to the lessee a written estimate of the lessee's total early
31 termination liability under the lease.

32 (2) No charge may be imposed on the lessee for preparation of the
33 statements provided for in this section, except a lessor may impose a
34 reasonable fee, not to exceed \$5.00 per statement, if the lessee requests more
35 than one statement in any twelve month period and the charge is disclosed in
36 the lease.

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2 SECTION 3. Fees for Excess Mileage and Wear.

3 Except as otherwise provided in subsection (b) of this section, a lessor
4 may charge fees for excess wear and use or excess mileage if:

5 (a) The right to charge the fees and methods for calculating the fees
6 are disclosed in at least 10 point Bold type in capital letters;

7 (b) At the time the vehicle is returned, the lessor conducts a visual
8 inspection of the vehicle and provides the lessee with a reasonable
9 opportunity to be present at the inspection. If the lessee is present, in
10 addition to the notice required by subsection (c) of this section, the lessor
11 shall provide the lessee at the time of the inspection with a written
12 statement of the mileage and of the excess wear to the motor vehicle
13 identified through the visual inspection. If the lessee is not present at the
14 inspection, the lessor is only required to provide the lessee with the notice
15 required by subsection (c) of this section;

16 (c)(1) Within thirty (30) days after obtaining possession of the motor
17 vehicle, the lessor delivers or mails to the lessee at the lessee's last known
18 address:

19 (A) An itemized list of excess wear to the motor vehicle
20 and the estimated or actual costs of repairing or replacing each item; and

21 (B) A statement of the number of miles above the amount
22 permitted by the lease and a total charge to the lessee for the excess
23 mileage.

24 (2) A lessor may not charge fees for excess wear and use or
25 excess mileage if the lessee exercises an option to purchase the leased motor
26 vehicle.

27 (d) Except as otherwise provided in this act, a lessor who fails to
28 comply with any requirement imposed by this act with respect to a person shall
29 be liable to the person for:

30 (1) Any actual damage sustained by the person as a result of the
31 failures;

32 (2) An amount equal to 25% of the total amount of monthly
33 payments under the lease, but not less than \$100 nor greater than \$1,000; and

34 (3) Attorney's fees.

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36 SECTION 4. Prohibited practices:

1 A lessor or his assignees may not:

2 (1) Make any false, disparaging, or misleading oral or written
 3 statement, description, or other representation of any kind that has the
 4 capacity, tendency, or effect of deceiving or misleading a consumer or lessee;

5 (2) Advertise or offer to the public any motor vehicle without the
 6 intent to lease it as advertised or offered; or

7 (3) Misrepresent a lease of a motor vehicle as a sale.

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 9 SECTION 5. Violations

10 (a) Nothing in this act shall be construed to permit an activity
 11 otherwise prohibited by law.

12 (b) A violation of this act is also a violation of Title 4, Act 88 of
 13 the Arkansas Code pertaining to deceptive trade practices, and is subject to
 14 all of the enforcement provisions of that act.

15 (c) The relief provided in this section is in addition to remedies or
 16 penalties otherwise available in regards to the same conduct under law or
 17 other statutes of this state.

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 19 SECTION 6. Statute of Limitations

20 (a) Any action brought under this act shall be commenced within five
 21 (5) years of the date of original delivery of the motor vehicle to the lessee.

22 (b) Notwithstanding the limitation in subsection (a) of this section, a
 23 lessee at any time may assert a violation of this act in an action to collect
 24 the debt at the matter of the defense, by recoupment or setoff.

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 26 SECTION 9. Legislative Finding, Declaration, and Intent.

27 The practices covered by this act are matters vitally affecting the
 28 public interest and for the purpose of consumer protection. It is the intent
 29 of the General Assembly that the enactment of this act to require that
 30 Arkansas consumers be provided with all relevant information necessary to make
 31 an informed decision concerning the leasing of motor vehicles, it is also the
 32 intent of the General Assembly to prohibit misleading and deceptive practices
 33 in relation to the offering of a lease of a motor vehicle. This act shall be
 34 construed liberally in order to effectuate this purpose.

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 36 SECTION 10. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

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4 SECTION 11. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

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10 SECTION 12. All laws and parts of laws in conflict with this act are
11 hereby repealed.