

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

HOUSE BILL 1638

4
5 By: Representative Bradford
6
7

For An Act To Be Entitled

9 AN ACT TO REPEAL ACT 1059 OF 1999, ARKANSAS CODE 4-90-
10 601 THROUGH 4-90-607; AND FOR OTHER PURPOSES.

Subtitle

12 TO REPEAL THE CONSUMER MOTOR VEHICLE
13 LEASING ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. [THE ARKANSAS CODE REVISION COMMISSION IS NOT REQUIRED TO
20 CODIFY THIS SECTION.] The provisions of the Consumer Motor Vehicle Leasing
21 Act enacted in Arkansas in 1999 deviates substantially from federal law which
22 governs motor vehicle leasing in most states in the United States. After the
23 enactment of the Consumer Motor Vehicle Leasing Act, many motor vehicle
24 leasing companies withdrew from doing business in the State of Arkansas
25 because of the difficulty of administering the various provisions of Arkansas
26 law as compared to other states in the country. The General Assembly finds
27 that it will be beneficial to the motor vehicle leasing industry and its
28 customers in Arkansas if Arkansas laws are brought into conformity with the
29 motor vehicle consumer leasing laws in almost every other state as governed by
30 federal law pursuant to the Consumer Leasing Act, 15 U.S.C § 1667 – 1667e and
31 its implementing provisions, Regulation M, 12 C.F.R. § 213, et seq.
32

33 SECTION 2. Arkansas Code 4-90-601 through 4-90-607 are hereby repealed.
34 ~~4-90-601. Legislative finding—Declaration—Intent.~~

35 ~~The practices covered by this subchapter are matters vitally affecting~~
36 ~~the public interest and for the purpose of consumer protection. It is the~~

1 intent of the General Assembly that the enactment of this subchapter is to
2 require that Arkansas consumers be provided with all relevant information
3 necessary to make an informed decision concerning the leasing of motor
4 vehicles. It is also the intent of the General Assembly to prohibit
5 misleading and deceptive practices in relation to the offering of a lease of a
6 motor vehicle. This subchapter shall be construed liberally in order to
7 effectuate this purpose.

8

9 4-90-602. Definitions.

10 As used in this subchapter, unless the context otherwise requires:

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

14 (2) "Capitalized costs reduction" means any payments made by
15 cash, check, rebates, or similar means that are in the nature of a down
16 payment made by the lessee and any net trade-in allowance granted by the
17 lessor at the inception of the consumer lease for the purpose of reducing the
18 capitalized costs, but does not include any periodic lease payments due at the
19 inception of the lease or all of the periodic lease payments if they are paid
20 at the inception of the lease;

21 (3)(A) "Consumer lease" means a transaction through which the
22 possession or use of a motor vehicle for a commission or other compensation is
23 transferred to a lessee primarily for a personal, family, or household purpose
24 for a period of time exceeding four (4) months, including renewal periods,
25 whether or not the lessee has the option to purchase or otherwise become the
26 owner of the property at the expiration of the lease.

27 (B) The inclusion in a lease of a provision whereby the
28 lessee's or lessor's liability at the end of the lease period or upon an
29 earlier termination is based on the value of the leased property at that time
30 shall not be deemed to make the transaction other than a consumer lease.

31 (C) The term "consumer lease" does not include a lease for
32 governmental, agricultural, business, or commercial purposes;

33 (4)(A) "Gross capitalized costs" means the amount agreed upon by
34 the lessor and the lessee as the value of the leased property and any items
35 which are capitalized or amortized during the leased term.

36 (B) The adjusted capitalized cost equals the gross

1 capitalized cost less the capitalized cost reduction and is the amount used by
2 the lessor in calculating the base periodic payment.

3 (C) ~~Gross capitalized costs shall include, to the extent
4 capitalized and amortized:~~

5 (i) ~~Taxes, registration, license, acquisition,
6 administration, assignment, and other similar fees;~~

7 (ii) ~~Charges for insurance, an extended warranty, a
8 mechanical repair contract, a service contract, a vehicle maintenance
9 agreement, and any other similar charge;~~

10 (iii) ~~Charges for a waiver of the contractual
11 obligation to pay the gap amount;~~

12 (iv) ~~Charges for accessories and installation of
13 accessories;~~

14 (v) ~~Charges for delivering, servicing, repairing, or
15 improving the vehicle;~~

16 (vi) ~~Charges for other goods, services, and benefits
17 incidental to the consumer in the lease transaction; and~~

18 (vii) ~~The unpaid balance of any amount financed under
19 an outstanding vehicle loan agreement or vehicle retail installment contract
20 or the unpaid portion of the early termination obligation under any lease or
21 obligation of the lessee with respect to a vehicle or other property traded in
22 connection with a consumer lease;~~

23 (5) ~~"Lessee" means a natural person who leases or is offered a
24 motor vehicle consumer lease;~~

25 (6)(A) ~~"Lessor" means a person who regularly leases or offers to
26 lease motor vehicles.~~

27 (B) ~~A person who has leased, offered to lease, or arranged
28 to lease motor vehicles more than five (5) times in the preceding calendar
29 year or more than five (5) times in the current calendar year is subject to
30 this subchapter; and~~

31 (7)(A) ~~"Motor vehicle" or "vehicle" means any self-propelled
32 vehicle licensed, purchased, or leased in this state and primarily designed
33 for the transportation of persons or property over the public streets and
34 highways, but does not include mopeds, motorcycles, or vehicles over ten
35 thousand pounds (10,000 lbs.) gross vehicle weight rating.~~

36 (B) ~~For purposes of this definition, the limit of the ten-~~

1 ~~thousand pound gross vehicle weight rating does not apply to motor homes.~~

2

3 ~~4-90-603. Required disclosures.~~

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

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

7 ~~(A) A refundable security deposit paid by cash, check, or~~
8 ~~other similar means;~~

9 ~~(B) An advance payment;~~

10 ~~(C) A disclosure of any capitalized cost reduction stated~~
11 ~~as a total and the identity of the component and the respective amount of each~~
12 ~~component;~~

13 ~~(D) A disclosure of the capitalized costs stated as a total~~
14 ~~and the identity of the components listed in the definition of capitalized~~
15 ~~costs and the respective amount of each component;~~

16 ~~(E) A statement of adjusted capitalized costs; and~~

17 ~~(F) If the lessee trades in a motor vehicle, the amount of~~
18 ~~any sales tax redemption for the agreed value of the traded vehicle and any~~
19 ~~reduction in the periodic payments resulting from the application of the sales~~
20 ~~tax exemption;~~

21 ~~(2) Any down payment or other consideration paid to the leasing~~
22 ~~company;~~

23 ~~(3) The total of all lease payments to be paid over the terms of~~
24 ~~the lease; and~~

25 ~~(4) Whether the lessee of the vehicle may terminate the lease of~~
26 ~~the vehicle prior to the end of the lease term, and if so, the amounts, if~~
27 ~~any, which the lessee is required to pay upon the termination of the lease,~~
28 ~~based on twelve-month intervals.~~

29 ~~(b)(1) The lessor or the lessor's assignee shall disclose to a lessee,~~
30 ~~upon request and within five (5) business days, the amount of outstanding debt~~
31 ~~to the lessor or the lessor's assignee.~~

32 ~~(2)(A) The amount described in subdivision (b)(1) of this section~~
33 ~~shall be itemized and shall include all moneys owed under the lease.~~

34 ~~(B) The amount shall also include any early termination~~
35 ~~penalties which shall be described as such and the method and exact figures~~
36 ~~used in computing each of these amounts.~~

1 ~~(c) A lease shall be in writing and signed by the lessor and the~~
2 ~~lessee.~~

3 ~~(d)(1) The printed portion of the lease, other than directions for~~
4 ~~completion of the lease and the text of any assignment between the original~~
5 ~~lessor and the assignee, shall be printed in a size equal to at least 10 point~~
6 ~~type.~~

7 ~~(2) The lease shall contain the following items printed or~~
8 ~~written in a conspicuous manner:~~

9 ~~(A) At the top of the lease, the words "MOTOR VEHICLE LEASE~~
10 ~~AGREEMENT";~~

11 ~~(B) If physical damage or liability insurance coverage for~~
12 ~~bodily injury and property damage caused to others is not included in the~~
13 ~~lease, a notice substantially similar to the following: "No physical damage~~
14 ~~or property liability insurance coverage for bodily injury or personal~~
15 ~~property damage caused to others is included in this lease";~~

16 ~~(C) Directly above the acknowledgment permitted by this~~
17 ~~section, a written notice substantially similar to the following in at least~~
18 ~~10 point boldface type: "NOTICE TO THE LESSEE: THIS IS A LEASE. YOU HAVE NO~~
19 ~~OWNERSHIP RIGHTS IN THE MOTOR VEHICLE UNLESS AND UNTIL YOU EXERCISE YOUR~~
20 ~~OPTION TO PURCHASE THE MOTOR VEHICLE, IF THIS LEASE CONTAINS A PURCHASE~~
21 ~~OPTION. DO NOT SIGN THIS LEASE BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK~~
22 ~~SPACE. YOU ARE PERMITTED TO COMPLETELY FILL IN A COPY OF THIS LEASE WHEN YOU~~
23 ~~SIGN IT"; and~~

24 ~~(D) The following provision in at least 10 point boldface~~
25 ~~type:~~

26 ~~NOTICE: ANY HOLDER OF THIS CONSUMER LEASE IS SUBJECT TO ALL CLAIMS AND~~
27 ~~DEFENSES WHICH THE LESSEE COULD ASSERT AGAINST THE LESSOR OF THE MOTOR~~
28 ~~VEHICLE.~~

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

33 ~~(f) Any acknowledgment by the lessee of delivery of a copy of the lease~~
34 ~~shall be conspicuous and shall appear directly above the space reserved for~~
35 ~~the lessee's signature.~~

36 ~~(g) The lease shall state the names of the original lessor and lessee,~~

1 the place of business of the original lessor, the residence of the lessee as
2 specified by the lessee, and a description of the motor vehicle, including its
3 make, model year, model, and if known, the motor vehicle's vehicle
4 identification number or mark.

5 (h) ~~A disclosure in proximity to the lessee's signature in not less
6 than 10 point boldface type to the lessee: "WARNING! EARLY TERMINATION
7 UNDER THIS LEASE MAY RESULT IN SIGNIFICANT COSTS TO YOU THE CONSUMER. READ
8 THIS AGREEMENT CAREFULLY AND UNDERSTAND ALL PROVISIONS BEFORE SIGNING. GET
9 ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE."~~

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

15 (j)(1) ~~Upon written request from a lessee, the lessor shall give or
16 forward to the lessee a written statement of the dates and amounts of payments
17 that have been made under the lease, the amount of the lessee's remaining
18 payments, and any other amounts owed to the lessor as reflected on the
19 lessor's books and records at the time of the notice.~~

20 (2) ~~Upon written request from a lessee, the lessor shall give or
21 forward to the lessee a written estimate of the lessee's total early
22 termination liability under the lease.~~

23 (3) ~~No charge may be imposed on the lessee for preparation of the
24 statements provided for in this section, except a lessor may impose a
25 reasonable fee, not to exceed five dollars (\$5.00) per statement if the lessee
26 requests more than one (1) statement in any twelve month period and the charge
27 is disclosed in the lease.~~

28
29 4-90-604. ~~Fees for excess mileage and wear.~~

30 (a) ~~Except as otherwise provided in subdivision (a)(2) of this section,
31 a lessor may charge fees for excess wear and use or excess mileage if:~~

32 (1) ~~The right to charge the fees and methods for calculating the
33 fees are disclosed in at least 10 point boldface type in capital letters;~~

34 (2)(A) ~~At the time the vehicle is returned, the lessor conducts a
35 visual inspection of the vehicle and provides the lessee with a reasonable
36 opportunity to be present at the inspection.~~

1 ~~(B)(i) If the lessee is present, in addition to the notice~~
2 ~~required by subsection (b) of this section, the lessor shall provide the~~
3 ~~lessee at the time of the inspection with a written statement of the mileage~~
4 ~~and of the excess wear to the motor vehicle identified through the visual~~
5 ~~inspection.~~

6 ~~(ii) If the lessee is not present at the inspection,~~
7 ~~the lessor is only required to provide the lessee with the notice required by~~
8 ~~subsection (b) of this section.~~

9 ~~(b)(1) Within thirty (30) days after obtaining possession of the motor~~
10 ~~vehicle, the lessor delivers or mails to the lessee at the lessee's last known~~
11 ~~address:~~

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

14 ~~(B) A statement of the number of miles above the amount~~
15 ~~permitted by the lease and a total charge to the lessee for the excess~~
16 ~~mileage.~~

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

20 ~~(c) Except as otherwise provided in this subchapter, a lessor who fails~~
21 ~~to comply with any requirement imposed by this subchapter with respect to a~~
22 ~~person shall be liable to the person for:~~

23 ~~(1) Any actual damage sustained by the person as a result of the~~
24 ~~failures;~~

25 ~~(2) An amount equal to twenty five percent (25%) of the total~~
26 ~~amount of monthly payments under the lease, but not less than one hundred~~
27 ~~dollars (\$100) nor greater than one thousand dollars (\$1,000); and~~

28 ~~(3) Attorney's fees.~~

29
30 ~~4-90-605. Prohibited practices.~~

31 ~~A lessor or his assignees may not:~~

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

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

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

~~4-90-606. Violations.~~

~~(a) Nothing in this subchapter shall be construed to permit an activity otherwise prohibited by law.~~

~~(b) A violation of this subchapter is also a violation of Chapter 88 of Title 4, pertaining to deceptive trade practices, and is subject to all of the enforcement provisions of that chapter.~~

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

~~4-90-607. Statute of limitations.~~

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

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

Section 3. Emergency Clause. It is found and determined by the General Assembly that the motor vehicle leasing industry in Arkansas has suffered a serious setback in view of the passage of Act 1059 of 1999, resulting in many motor vehicle leasing companies withdrawing from doing business in the state of Arkansas, thereby reducing competitors in the motor vehicle leasing industry. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.