UNIFORM CONSUMER LEASES ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

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PREFATORY NOTE

Over recent decades the leasing of consumer goods, particularly motor vehicles, has become an increasingly popular alternative to credit sales, but consumer protection laws for lease transactions are limited. Since 1976, the federal Consumer Leasing Act (CLA), 15 U.S.C.A. Sections 1667-1667f, has specified disclosure requirements for consumer leases, implemented through the Federal Reserve Board's Regulation M, 12 C.F.R. Part 213. These regulatory requirements were substantially revised as of January 1, 1998. The federal act also establishes a general "reasonableness" standard for charges in connection with default or termination, but does not regulate other aspects of the lease relationship.

The promulgation and general adoption of Uniform Commercial Code Article 2A in the 1980s provides a statutory legal framework for leases of goods, but Article 2A does not deal extensively with consumer protection issues. Cf., F. Miller, *Consumer Leases Under Uniform Commercial Code Article 2A*, 39 Ala. L. Rev. 957 (1988).

By the early 1990s only a few states had adopted consumer protection laws specifically affecting consumer leases; some of this was by virtue of the limited treatment of leases in the Uniform Consumer Credit Code of 1974. Between 1990 and 2001 a small number of additional states enacted laws dealing with consumer leases of motor vehicles. These laws vary from state to state, tend to be fairly limited in their coverage, and do not deal with leases of goods other than motor vehicles.

This Act fills the consumer protection gap between the limited treatment in UCC Article 2A and the disclosure-oriented federal CLA in a more comprehensive and coordinated manner than existing state laws. The Act may be compared to a state retail installment sales act; *i.e.*, regulating certain lease terms and practices, and providing some additional disclosures beyond those required under federal law. Except where public policy requires restraints, this Act preserves contract flexibility for the parties and does not impose explicit price controls analogous to usury ceilings. Enforcement is through a combination of private civil actions and administrative oversight.

With a uniform state law on basic leasing relationships provided in UCC Article 2A, and national standards for consumer lease disclosure established in the federal CLA, it is appropriate that further regulation of consumer leases also be uniform. Leases of consumer goods are often marketed across state lines, and consumers should not have more or less protection depending on where they live or where their lessors are located. The differences in the existing state laws on motor vehicle leases create compliance problems for lessors operating on a regional or nationwide basis. Leasing of goods other than motor vehicles is occurring, some of it through electronic marketing on the

boundary-less Internet. All of these considerations support establishing uniform legal rules for consumer leases.

The Act applies to leases of consumer goods, but not other forms of personal or real property. A covered lease must be for a term longer than four months, for a total obligation not exceeding $150,000, and the leased goods must be intended for the personal, family or household purposes of the lessee. Thus the Act does not cover short-term lease transactions, such as weekend car or tool rentals. Nor does the Act cover rent-to-own contracts, *i.e.*, rental arrangements that are terminable at the end of any payment period but in which the consumer may become the owner of the goods on completion of a specified number of payments. Virtually every state has enacted some form of consumer protection law specifically for rent-to-own transactions.

Leases involve terminology, pricing variables, and risk allocations that are different from credit sales. Yet the two forms of transaction compete for the consumer's choice. There are long-standing and significant consumer protections in credit sales, but, until now, no parallel strictures in the lease markets. Uniform adoption of the Act will help assure a level playing field for lessors, and respectable but not intrusive protections for consumer lessees for all forms of consumer goods. This Act is meant to harmonize with the federal Consumer Leasing Act and its implementing Regulation M with respect to disclosure of lease terms and limitations on charges for default and termination, and to complement Uniform Commercial Code Article 2A [Leases] with respect to the basic rights and remedies of the parties to consumer leases.

UNIFORM CONSUMER LEASES ACT

[ARTICLE 1]

SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Consumer Leases Act.

SECTION 102. DEFINITIONS.

(a) In this [Act]:

(1) "Conspicuous," with reference to a provision or statement, means so written, displayed, or presented that a reasonable person against which it is to operate should have noticed it. Whether a provision or statement is conspicuous is a decision for the court. Conspicuous provisions or statements include the following:

(A) a heading in capitals equal in size to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(2) "Consumer lease" means a lease in which:

(A) the lessee is obligated for a term of more than four months and for a total contractual obligation of $150,000 or less, excluding residual value, payments for

options to renew or purchase, and payments to persons other than the holder, whether or not the lessee has the option to purchase or otherwise become the owner of the goods at the expiration of the lease; and

(B) when the lease is consummated, the goods are intended by the lessee primarily for personal, family, or household purposes.

(3) "Federal Consumer Leasing Act" means Chapter 5 of Title I of the Consumer Credit Protection Act, 15 U.S.C. Sections 1667-1667f [, as amended]. The term includes regulations issued by the Board of Governors of the Federal Reserve System pursuant to that Act, Regulation M, 12 C.F.R. Part 213 [, as amended].

Legislative Note: This Act incorporates by reference certain definitions, disclosure requirements and other provisions of the federal Consumer Leasing Act and its implementing Regulation M. For states where incorporation of present and future federal law is permissible, the phrase "as amended" should be retained so that the incorporation of federal law remains current. For states in which incorporation of future provisions of federal law is constitutionally impermissible, the phrase "as amended" should be omitted. It will then be necessary for those states to re-enact this definition periodically, i.e., whenever changes occur in the federal law.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Goods" means all things that are movable at the time of identification to a consumer lease, or are fixtures. The term does not include money, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, general intangibles, or minerals or the like, including oil and gas, before extraction.

(6) "Guarantor" means an individual who becomes obligated to perform as an

additional obligor under a consumer lease because the original lessee either does not meet the lessor's credit standards or is in default under the lease. The term does not include:

(A) an individual who agrees or requests to become obligated as a co-lessee; or

(B) an assignor of a consumer lease.

(7) "Holder" means a lessor or, if the lessor's interest is assigned, the assignee for the period of the assignee's ownership of the interest.

(8) "Lease" means a transfer of the right to possession and use of goods for a period in return for consideration. The term does not include a sale on approval, a sale or return, or another sale, or the retention or creation of a security interest. The term includes a sublease.

(9) "Lessee" means an individual who acquires, applies for, or is offered the right to possession and use of goods under a consumer lease. The term 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.

(10) "Lessor" means a person that transfers the right to possession and use of goods under a consumer lease.

(11) "Motor vehicle" means a vehicle required by law to be registered under [insert citation to definition of vehicles covered by appropriate vehicle registration laws of the State].

Legislative Note: Several sections of this Act impose special rules on motor vehicle leases. Cf. Sections 203(c)(5); 301(a)(3); and 407(e). The drafting intention is to cover motorized vehicles used primarily on public roadways and

registered for that purpose. Thus the citation to be inserted here is to the registration law for such vehicles, and not for such things as boats, snowmobiles, mobile homes, farm equipment, and the like. If a single registration law applies to a variety of on-road and off-road vehicles, it may be desirable to qualify this citation by excluding off-road vehicles.

(12) "Open-end consumer lease" means a consumer lease in which the lessee's liability at the expiration of the lease is based on the difference between the residual value and the realized value of the leased goods.

(13) "Realized value" means a valuation of the goods at the time the holder assesses liability on the lessee in connection with termination of the lease, as determined under Section 404.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Sign" means:

(A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

(16) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(b) The following terms used in this [Act] have the meanings ascribed in [the Uniform Commercial Code]:

(1) "Accession" [UCC] Section 9-102(a);

(2) "Agreement" [UCC] Section 1-201(b);

(3) "Contract" [UCC] Section 1-201(b);

(4) "Investment property" [UCC] Section 9-102(a);

(5) "Lien" [UCC] Section 2A-103(1);

(6) "Money" [UCC] Section 1-201(b);

(7) "Person" [UCC] Section 1-201(b);

(8) "Person related to" [UCC] Section 9-102(a);

(9) "Security interest" [UCC] Section 1-201(b); and

(10) "Send" [UCC] Section 1-201(b).

Legislative Note: These cross-referenced definitions are from UCC Article 1 (revised 2001), Article 2A, and Article 9 (revised 1999). If a State has not adopted those UCC articles, it should add comparable definitions in this Act.

(c) The following terms used in this [Act] have the meanings ascribed in the federal Consumer Leasing Act:

(1) "Adjusted capitalized cost";

(2) "Capitalized cost reduction";

(3) "Gross capitalized cost";

(4) "Rent charge"; and

(5) "Residual value".

Official Comment

1. "Conspicuous." This definition is based on the definition of the same term in UCC Article 1, but without reference to "electronic agents." Conspicuous under this Act is to be determined always by reference to human comprehension. The definition states

the general standard that to be conspicuous a provision or statement ought to be noticed by a reasonable person. Requiring that a term be conspicuous performs both a notice function (the consumer ought to notice it) and a planning function (the party relying on the term knows how to assure its effectiveness). Although the examples in the definition indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should be construed to require a result consistent with that test.

2. "Consumer lease."

a. A transaction covered by this Act must in fact be a lease, which excludes a transaction that is in reality a sale or security interest. See also Section 105 of this Act which bars re-characterization of a consumer lease in order to take it outside the coverage of this Act.

b. Under paragraph (A), a transaction is not a "consumer lease" if the contractual term of the lease obligation is four months or less. This parallels the definition in the federal Consumer Leasing Act. This refers to the period of use of the goods for which the lessee is obligated to pay rent. Thus where a consumer leases goods for a 12-month period but makes a single lump-sum payment at the outset (*i.e.*, a single-payment lease), the transaction is covered. Similarly, a lease of goods for a four month (or shorter) period of use is not covered even if the consumer makes rent payments over a time period of more than four months. The "more than four months" requirement excludes from this Act short term transactions such as weekend car or tool rentals, and also transactions such as "rent to own" contracts where the consumer is not contractually obligated to renew beyond the initial weekly or monthly term. A lease written for a term longer than four months remains covered by this Act even though the parties or the lease agreement may acknowledge that the lease can be terminated early, as by surrender of the goods and payment of an early termination fee. See Section 405.

c. A transaction is also not a "consumer lease" if the "total contractual obligation" exceeds $150,000. Leases above this magnitude are either generally non-consumer in purpose, or likely to be carefully negotiated between parties of sophistication, probably with professional advice. The sum used to measure coverage is not necessarily the same as the total of payments (disclosed under the federal Consumer Leasing Act). It includes non-refundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase option prices;

ii. Amounts collected by the lessor but paid to third parties, such as taxes, license and registration fees.

d. The "consumer purposes" part of this definition, in conjunction with the definition of lessee as an "individual," excludes from this Act a lease to an organization, which includes all forms of entities other than individuals, and any lease for a non-consumer purpose. Thus a lease of artwork to a law firm (an organization) is excluded even though the firm's employees and guests gain personal enjoyment from it. A lease of a diagnostic computer to a doctor (an individual) is excluded because its use is for business. A lease of a combine to a farmer is excluded on account of the agricultural purpose.

e. The determination of consumer purpose is made at the time the lease is consummated, and by reference to the lessee's intentions. This intention may be expressed through a simple notation or check-box on or accompanying the lease, and Section 502 of this Act protects a lessor or holder that reasonably relies on such a representation by a lessee as to the purpose for which the goods will be used. Subsequent changes in the purpose for which the goods are used do not affect coverage by this Act.

3. "Federal Consumer Leasing Act." References to this Act include the relevant Federal Reserve Board regulations (Regulation M, 12 C.F.R. Part 213) and the Official Staff Commentary (Supplement 1) to that regulation.

4. "Good faith." The standard includes both subjective honesty and more objectively measured standards of fair dealing. Section 109 applies this standard to all parties to consumer leases. It should be interpreted consistently with the same term in Section 1-201(b)(19) of the Uniform Commercial Code.

5. "Goods." This Act covers all leases of "goods," subject to the exclusions in Section 104.

6. "Guarantor." An individual becomes a guarantor on the lease obligation of another (the lessee) only when the additional obligation is necessary for the lessee to meet the lessor's credit standards, or to forestall repossession or other action on the lessee's default. Individuals who become obligated on a lease as co-lessees are not guarantors. See Comment 9(c), *infra*. A guarantor does not include the original lessor when it assigns the lease to a subsequent assignee with recourse.

7. "Holder."

a. Consumer leases are frequently sold or assigned by the original lessor to secondary financers who hold the leases for the duration of their terms. Whoever is the current owner of the lease is the "holder" under this definition. This includes the original lessor, and any subsequent transferee of the lessor's interest. As a holder, a subsequent transferee may have responsibilities and liabilities under this Act, for example with respect to post-consummation disclosures, and lease termination or foreclosure.

b. A person with a security interest in a lease as chattel paper is not a "holder" by virtue of the security interest alone. But that person becomes *de facto* the "holder" of the lease when it undertakes collection, either by agreement with, or on default by, the grantor of the security interest.

c. Securitized pools of leases present "ownership" issues, especially for leases of motor vehicles where there must be a titled and registered owner of the vehicle under the motor vehicle laws. This owner is usually the original lessor or an initial assignee, either of which may then securitize its lease portfolio for sale in the securities markets. For purposes of this definition the "holder" is the special purpose vehicle, trustee, or other entity that holds title to the leased goods. Thus the term would not include a mere servicing agent, nor the securities investors who have only beneficial or nominal ownership interests.

8. "Lease." This replicates the baseline definition of lease from UCC Article 2A.

9. "Lessee."

a. This Act protects lease customers at various stages of the consumer lease transaction, including advertising, solicitation and application processes as well as under the resulting lease contract. The term "lessee" is used to identify that customer or prospective customer in those various settings.

b. Only an "individual" – *i.e.*, a natural person rather than an organization – is a lessee under this definition. Where a person or entity acts as legal representative of, or fiduciary for, an individual in connection with a lease, the represented individual is considered a lessee under this Act. For example, private trust arrangements are sometimes used for estate planning and other forms of financial management, and may include assets held in trust for the benefit or use of an individual. If such a trust is nominally a party to a lease of goods intended for the personal, family, or household purposes of the individual beneficiary, the lease is a consumer lease under this Act, and the lessee for purposes of this Act is the individual beneficiary. Similarly, if a legal guardian enters into a consumer lease on behalf of a represented individual, that individual would be the lessee. In the same vein, if a lessor encourages or requires that an individual incorporate before entering into a lease, for the purpose of avoiding coverage by this Act, a court could properly pierce that corporate veil and recognize the individual as the true lessee.

c. An individual is not a "lessee" if that person is merely a guarantor of the obligation. Often more than one individual will execute a lease, and the lease either will not distinguish the capacity in which they sign, or will identify them simply as co-lessees. The lessor in such cases may treat them as co-lessees and need not inquire into or investigate any private agreement between those signers as to use of the goods or payment

responsibility. If, however, an individual is clearly identified on the lease as a guarantor, that individual is not a lessee. Cf., Section 205, requiring special disclosure to guarantors.

10. "Lessor." The person who enters into a contractual lease arrangement with a consumer is the "lessor" even though it may be understood, or pre-arranged, that the lease will promptly be assigned to a financing institution. This Act does not include as a lessor a person who merely "arranges" leases, such as a broker or other intermediary. In this respect this Act differs from the federal CLA which retains the "arranger" sub-definition. Since the compliance duties under this Act always rest with the contractual lessor or subsequent holder, there is no consumer protection advantage in also treating "arrangers" as lessors. An intermediary who engages in unfair or deceptive acts or practices not addressed by this Act may be liable under other consumer fraud laws of the enacting state. A person who is an "arranger" under the federal Consumer Leasing Act continues to be covered by that federal law.

A lessor is not affected by this Act until it makes the requisite number of consumer leases in the prior or current calendar year. Cf., Section 104(b).

11. "Motor vehicle." Certain provisions of this Act apply only to motor vehicle leases, and the intention is to cover those vehicles requiring registration and titling for use on public roads. Rather than attempt a universal definition of motor vehicle that could be applied in all states, this definition incorporates by reference the types of vehicles subject to specific state motor vehicle laws.

12. "Realized value." This is based on the Regulation M definition. Reg. M Section 213.2(m). See Section 404 for its determination under this Act.

13. "Record." This is a generic term to describe the memorialization of information in paper or electronic form. It includes a writing, and any form of electronic communication which is retained and can be read. The term is to be construed consistently with the same term in the Uniform Commercial Code, in the Uniform Electronic Transactions Act, and in Section 106(9) of the federal Electronic Signatures in Global and National Commerce ("E-SIGN") Act, Pub. L. No. 106-229, 15 U.S.C.A. Section 7001 *et seq.* (2000).

14. "Sign." Consumer and business transactions are being marketed, negotiated and consummated by electronic communications, without use of paper documentation or written signatures on paper. The term "sign" refers to the act by which a party identifies itself and expresses assent to or acceptance of the "record" being authenticated. (See definition of "record," *supra*.) This may be by electronic signature: an encrypted symbol or code, a PIN, or equivalent action. Paragraph (B) includes an authorization in the form of an "electronic signature" as defined in the Uniform Electronic Transactions Act

[Section 2(8)] and in Section 106(5) of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 15 U.S.C.A.Section 7001 *et seq*. (2000).

15. "State." The reference to a "state" includes the District of Columbia and U.S. territories and possessions.

16. Subsections (b) and (c) incorporate by reference other definitions from the Uniform Commercial Code and the federal Consumer Leasing Act.

SECTION 103. TIME OF CONSUMMATION, EXPIRATION, AND TERMINATION.

(a) Consummation of a consumer lease occurs when the lessee signs a record evidencing the lessee's contractual obligation under the lease. A lessee may consummate a consumer lease even if it is subject to subsequent credit or other approval by the lessor or an assignee of the lessor.

(b) Expiration of a consumer lease occurs at the scheduled end of the period covered by the lease.

(c) Termination of a consumer lease occurs when the lessee's right to continued possession and use of the goods ends by virtue of:

(1) expiration of the lease;

(2) election by one of the parties to terminate before expiration, as provided in the lease; or

(3) agreement of the parties.

Official Comment

1. The federal Consumer Leasing Act uses the term "consummation" to determine the timing of disclosures, but defers to the state law of contract formation. This Act incorporates those federal disclosures (and thus the "consummation" trigger),

and also uses "consummation" to measure the timeliness of other actions. Subsection (a) therefore complements the federal Act by specifying as consummation the time when the consumer expresses a formal commitment to the lease by authenticating a record, which may be the lease itself or a binding purchase order or similar obligation. As a practical matter, the disclosure and other obligations triggered by "consummation" usually require that the transactional details be worked out before the disclosure can be prepared. Thus a lessor cannot expect a customer to commit to a lease without having a chance to see the relevant disclosures. A lessor may condition the contract on subsequent approval of the lessee's credit or other contingency, but "consummation" for purposes of this Act nonetheless occurs when the lessee becomes committed.

2. Expiration refers to the time when the lease is scheduled to expire. If the lease is extended or renegotiated, it may have a new expiration date. Termination, on the other hand, occurs when the lessee no longer has the right to possession and use of the goods. This may be at expiration, or at an earlier time. For example, the holder may terminate the lease because of the lessee's default, or the parties may agree to an early termination. Cf., Section 405.

SECTION 104. SCOPE; EXCLUSIONS; SALE INCIDENT TO LEASE.

(a) Except as otherwise provided in subsections (b) through (e), this [Act] applies to a consumer lease.

(b) This [Act] does not apply to a consumer lease unless the lessor has leased goods under a consumer lease more than five times in the preceding calendar year or more than five times in the current calendar year.

(c) This [Act] does not apply to a lease of:

(1) a safe-deposit box;

(2) goods incidental to a lease of real property under which the lessee:

(A) has no liability for the value of the goods at the end of the lease period except for abnormal wear and use; and

(B) has no option to purchase the goods; or

(3) goods incidental to a contract for the sale of goods or services.

(d) If a transaction that is predominantly a consumer lease includes an incidental sale of goods, services, or other benefits, including accessories, insurance, an extended warranty, a maintenance agreement, or a service contract, the incidental sale is not subject to [insert citations to State credit sales laws].

(e) A provision in a consumer lease for payment of governmental, license, or registration fees; taxes related to the lease; or an amount necessary to discharge a security interest in, a lien on, or a debt with respect to, property traded in, or to satisfy an obligation owed on a previous lease, does not make the payment subject to [insert citations to laws of this State governing small loans or other forms of consumer financing].

Official Comment

1. Subsection (a) states the basic scope of the Act. The rest of this section provides that certain transactions are outside the coverage of this Act, whether or not they meet the definition of "consumer lease" in the prior section.

2. Both the federal Consumer Leasing Act and the UCC Article 2A definitions of "consumer lease" base coverage on whether the lessor "regularly" engages in consumer leasing. Regulation M refines the federal rule by adopting a bright-line test that counts the number of specific lease transactions the leasing entity has made in the prior or current year. Reg. M Section 213.2(h). Subsection (b) follows Regulation M by adopting a bright-line test of five leases in the prior or current calendar year. This excludes truly casual or isolated lease transactions, even if made by a commercial entity otherwise engaged in distributing goods. But this differs from Regulation M definition of "lessor" in that it does not count instances where a merchant "offers" or "arranges" a consumer lease. Pinpointing when an offer occurs is inherently ambiguous. The "arranger" concept is eliminated to avoid compliance uncertainties where there are multiple lessors in the same transaction. Thus there may be some instances where a person who "offers" or "arranges" leases is a lessor covered under the federal CLA but not under this Act.

If a lessor has entered into more than five consumer leases in the preceding

year, all leases in the subsequent year are covered. However, if the lessor did not enter into more than five consumer leases in the previous year, the first five leases in the subsequent year are not covered. Once a lessor makes its sixth lease in the subsequent year, that sixth lease and all subsequent leases that year are covered by this Act. But the earlier five leases were never covered, and do not become covered retroactively.

3. Paragraph (c)(1) excludes leases of safe deposit boxes. The real rental is of secure space within the financial institution, not the "box" itself.

4. Paragraph (c)(2), based on Regulation M Section 213.2(e)(3), excludes from this Act the furniture and appliances included in a lease of a furnished home or apartment where the consumer must surrender the goods at the end of the lease term. The primary rental property is the real estate, to which this Act does not apply; the "goods" are secondary or incidental.

5. Under paragraph (c)(3), if a lease of goods is merely an "incidental" component in a transaction that is predominantly a sale of goods or services, it is excluded from this Act. Cf., Regulation M Commentary paragraph 2(e)-7. Examples are home entertainment systems, security alarm systems, or propane gas service, where the consumer leases certain component devices in order to receive the specified service. Where the primary purpose of the transaction is to provide services (cable or satellite dish programming, security monitoring) or to sell other products (propane gas), the transaction as a whole is treated as a sale and no part of it is subject to this Act.

6. Under subsection (d) purchases incidental to a lease – accessories or service contracts, for example – are subsumed in the lease obligation, and are therefore not subject to piecemeal coverage by laws applicable to "credit sales" of those products. Thus, where a lessee buys and "capitalizes" a service contract on leased goods, the lessor may treat the price of the service contract as part of the capitalized cost in the lease, and need not provide separate disclosures for it as a credit sale. Similarly, if the lessee buys a vehicle accessory, e.g., a trailer hitch, as part of the lease transaction, that price may be capitalized in the lease and incorporated in lease payment calculations and disclosures. This "incidental sale" rule does not affect the substantive regulation of the price, terms or quality of such incidental items under other law which is not expressly excluded under subsection (d) or (e). Thus, insurance remains fully subject to state insurance codes as to policy coverages, premium rates, agent licensing and the like. And the purchase of the trailer hitch would still be subject to sales taxes, and to the warranty rules of UCC Article 2 [Sales of Goods].

7. "Predominance" is the test generally used by courts to determine whether hybrid transactions are sales under UCC Article 2 or leases under UCC Article 2A. Predominance relates to the core purpose of the transaction and is not necessarily measured by the relative cost of the "lease" and "sale" components. For example, a lease

of a home computer remains a lease even though, over time, the lessee may pay more for delivery, installation, software upgrades, and servicing, than for the use of the computer itself.

8. This Act does not apply to licenses of information. The definition of "goods" in Section 102(a)(5) excludes "general intangibles." This Act does not expressly address the extent to which it applies to information contained in or part of leased goods.

SECTION 105. CHARACTERIZATION OF LEASE; TRANSACTION SUBJECT TO [ACT] BY AGREEMENT.

(a) A consumer lease may not be deemed a credit sale, loan, or security interest to make the transaction subject to coverage by other law in lieu of this [Act].

(b) The parties to a lease that is not subject to this [Act] may agree in the lease, or in a contemporaneous record, that this [Act] applies to the lease.

(c) The parties to a consumer lease may not agree that the transaction is governed by other law in lieu of this [Act].

Official Comment

1. Subsection (a) limits the authority of courts or agencies to characterize the transaction as something other than a lease so as to bring it under the coverage of other law of this state. The parties to a consumer lease transaction expect that courts will respect the integrity of the transaction, and the adequacy of consumer protections accorded under this Act (and the federal Consumer Leasing Act). Thus, the characterization of a transaction as a lease is to be controlled by its contractual terms and the circumstances at the time the lease is executed, and should not be subject to judicial or administrative re-characterization after the fact. The definitions in this Act, and the related definitions of "sale" and "security interest" in the UCC, provide sufficient guidance for identifying lease transactions as of the time they are entered into.

2. Projecting the future value of consumer goods, and thus the lessor's "residual value," is inherently uncertain. Market forces or technological innovation may produce unexpected rates of depreciation or obsolescence. How the lessee uses and maintains the leased goods will also inevitably affect their future value. The mere fact that during the lease term or at lease end the goods have less residual value than originally projected does

not justify a court or agency re-characterizing the transaction as a credit sale or security interest. It is impossible at that point for the lessor to reconstruct the transaction in accordance with laws applicable to credit sales or loans. Fraudulent or deceptive practices, such as mis-characterizing as a lease a transaction that is not a lease, can be adequately policed under state fraud or deceptive practices laws outside of this Act, or under the advertising provisions of this Act.

3. Subsection (b) permits the parties to a lease to stipulate to coverage by this Act even if the lease is not for a consumer purpose, or where the "purpose" is mixed, such as where goods are used both for consumer and business or agricultural purposes, or where it is uncertain whether the lease is within the dollar threshold for coverage. This provision permits lessors to establish a safe-harbor legal framework for leases at the margins of coverage. To minimize disputes about the parties' agreement, the stipulation to coverage by this Act must either be part of the lease at the time of consummation or in a contemporaneous record. This provision operates only if the transaction is already a lease. For example, the parties to a credit sale cannot opt into this Act.

4. Merely because a lease is documented in apparent or attempted conformity with this Act does not, in and of itself, make the lease a consumer lease. For example, an auto dealer may use the same lease forms and disclosures for consumer and business leases. The business leases are not covered by this Act.

5. Under subsection (c), the parties to a consumer lease may not contract out of coverage by this Act, as by agreeing that, in lieu of coverage by this Act, the transaction is controlled by the common law or by a statute applicable to transactions other than consumer leases. A contract provision to that effect is void.

SECTION 106. SUPPLEMENTAL PROVISIONS AND PRINCIPLES OF LAW APPLICABLE. The provisions of this [Act] are supplemented by other applicable statutory provisions and by general principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause, unless those provisions or principles are displaced by or inconsistent with the provisions of this [Act].

Legislative Notes:

(1) This Act does not contain a general proscription of unfair or deceptive acts or practices in connection with consumer leases, as this is often covered by a more general consumer fraud act. See, e.g., Uniform Consumer Sales Practices Act Section 2(1) ["lease" included in definition of "consumer transaction"]. An enacting state should therefore review its statutory treatment of unfair and deceptive acts and practices to assure that it covers consumer lease transactions.

(2) Similarly, this Act does not provide a cooling-off period for leases solicited door-to-door or otherwise consummated off the dealer's premises. Cf., Uniform Consumer Credit Code Sections 3.501-3.505. An enacting state should therefore review its existing door-to-door (or off-premises) sales law and consider whether it does or should cover consumer leases.

Official Comment

1. As is the case with the Uniform Commercial Code, this Act does not completely occupy the field for the transactions it covers (UCC Section 1-103). In particular, consumer leases remain subject to UCC Article 2A (Leases) for such matters as contract formation, performance responsibilities, priority as to third parties, and basic remedies for breach. Thus, as a general proposition, UCC Article 2A supplements this Act and is the primary source of such supplementation. For example, if, by operation of UCC Section 1-103, a provision of UCC Article 2A displaces a particular common law rule, the Article 2A rule supplements this Act -- unless the Article 2A rule is itself displaced by or inconsistent with this Act.

Supplemental statutory law, referred to in this section, includes regulations and administrative interpretations of statutory law as well (for example, interpretations by federal or state agencies as to what are unfair or deceptive acts or practices), unless those regulations or interpretations are themselves displaced by or inconsistent with this Act.

2. UCC Article 2A and other principles of law and equity apply unless "displaced by" or "inconsistent" with this Act. The difference between these tests is in the degree of specificity in the clash between this Act and other law. For example, Section 305(b) of this Act [Preservation of Lessee's Claims and Defenses] would **displace** any common law or statutory right of a holder to invoke a waiver of defense clause, such as under UCC Section 9-404(a). By contrast, the statutory limits on late charges under Section 304 of this Act may have no direct counterpart in other law of this state (other than the general law of contracts). In a given case this may lead to **inconsistent** answers on permissible late charges. If so, the answer dictated by this Act controls.

3. Many consumer leases covered by this Act are also covered by the federal

Consumer Leasing Act and Federal Reserve Board's Regulation M with respect to disclosure and the reasonableness of default and termination charges. That federal law applies on the constitutional basis of federal supremacy and is not merely "supplemental" within the meaning of this section. By virtue of the "relation to state laws"provision in the federal act [Consumer Leasing Act Section 186; Regulation M Section 213.7], that act and regulation preempt any state law (including this Act) to the extent the state law is inconsistent with the federal. No such inconsistencies are intended in this Act.

SECTION 107. WAIVER; AGREEMENT TO FORGO RIGHTS IN SETTLEMENT OF CLAIM.

(a) Except as otherwise permitted by this [Act], a lessee may waive or agree to forgo rights, benefits, or remedies under this [Act] only in settling a dispute or collection claim.

(b) A settlement in which a lessee agrees to forgo a right, benefit, or remedy under this [Act] is invalid if the court finds that the settlement was unconscionable when made.

Official Comment

1. Subsection (a) generally invalidates a consumer's contractual waiver of rights under this Act, either in the lease agreement or otherwise. But disputed claims by or against a consumer, or collection claims, may be settled unless the settlement is unconscionable.

2. The unconscionability test for the validity of a settlement agreement involving waiver of rights under this Act should be applied consistently with the general unconscionability rule in Section 109 of this Act. Matters relevant to the possible unconscionability of a settlement agreement include the lessee's sophistication and familiarity with lease practices, any deception or coercion practiced upon the lessee, the nature and extent of legal advice received by the lessee, and the value of the consideration.

3. This Act takes no position on the validity of a provision in a consumer lease that some or all claims must be resolved through arbitration or other alternative dispute mechanism. Such a provision does not *per se* constitute a waiver of rights or remedies

under this Act.

SECTION 108. LIMITATION ON CHOICE OF LAW AND VENUE.

(a) The parties to a consumer lease may not choose the law of a jurisdiction unless it is a jurisdiction in which:

(1) the lessee principally resides when the lease is consummated;

(2) the lessee will principally reside within 30 days after the lease is consummated;

(3) the leased goods are to be used; or

(4) subject to subsection (b), the leased goods are received by the lessee.

(b) If the law chosen by the parties to a consumer lease under subsection (a)(4) is the law of a jurisdiction other than this State and the holder acts or initiates an action in this State to enforce rights arising from the lease against a lessee who is a resident of this State, the following rules apply:

(1) The holder's act or action is subject to Sections 105, 106,107, 109, and 110, and, except for a disclosure that would have been required by this [Act] to be made before the holder's act or action, to Sections 302 through 309, and Sections 402 through 407.

(2) The holder's act or action is subject to [Article 5] if the holder's act or action violates a provision of this [Act] made applicable by this subsection.

(c) Notwithstanding any provision in a consumer lease, an action by a holder against a lessee to enforce the holder's rights under the lease must be brought in the

venue of the lessee's residence.

(d) Notwithstanding any provision in a consumer lease, a lessee may maintain an action against a holder in any judicial forum that otherwise has jurisdiction over the holder.

Official Comment

1. Absent a choice of law clause in the lease, the normal choice-of-law rules of a judicial forum will determine whether the law of this or another state applies in a particular case. The parties may contract for coverage by the law of a particular jurisdiction, and that choice will be respected in this state if the law chosen satisfies subsection (a). There are four options for a permissible choice of law clause: The jurisdiction selected may be that of the consumer's residence when the lease is executed, or the consumer's expected residence within 30 days thereafter. Or the choice-of-law clause may refer to the law of the place where the goods are to be *used,* for example, a snowmobile or boat used at a vacation home. As a fourth possibility, discussed below, the parties may choose the law of the place where the goods are received by the lessee. Any other choice of law clause or purported agreement is unenforceable. Absent these choice-of-law limitations, there is a danger that a lessor may induce a consumer lessee to agree that the applicable law will be that of a jurisdiction with which the consumer has no contact or relationship, or a jurisdiction that has little effective consumer protection.

2. An individual may have more than one residence at the same time, in the sense that the individual regularly maintains and uses abodes in different states. For example, for reasons of climate an individual may spend half the year in one state and half in another. Or an employee might maintain a regular apartment or other residence near his workplace in addition to a more permanent home elsewhere. The individual "principally resides" in that location which is the primary homestead, or home base, of the individual and the individual's immediate family. The amount of time the individual spends in each residence is a factor, but not necessarily the controlling one.

3. Subsections (a)(4) and (b) address the common situation where a lessee visits a lessor's place of business in a state other than the lessee's residence, enters into a lease there, and takes delivery of the goods there. For example, a resident of State A may shop for and consummate a vehicle lease with a dealer in neighboring State B, and pick up the car there. If the lease specifies that State B law applies to the lease, this choice will generally be respected with regard to all aspects of the lease and obligations under it. But this result is qualified in a case where the lessee is a resident of this state, and the holder, having chosen the law of the state where the lessee received the goods, initiates collection or enforcement activity in this state. That activity, informal or by judicial action, is

subject to specified portions of this Act. That is, in pursuing its collection or enforcement rights against a local resident, the holder must comply with provisions of this Act affecting that activity, such as providing the right to cure a default, avoiding a breach of the peace on repossession, or properly assessing excess wear and use charges.

For purposes of these subsections, a lessee receives goods where the lessee (or the lessee's designee) takes physical delivery of them, and not at some other location from which the goods are shipped.

4. A holder's action against a consumer lessee must be brought in the courts of the state of the lessee's residence, and specifically in the county or other local venue of that residence. This limitation displaces any choice of forum clause in the lease. Without these limitations consumer lessees might be subject to suit in distant states, or in distant counties, boroughs, or parishes within a state. Conversely, a lessor or holder may not contractually limit the forum for actions by the lessee against the lessor or holder; absent this limitation, a lease might specify that the holder may be sued only in a jurisdiction far from the consumer's residence.

SECTION 109. OBLIGATION OF GOOD FAITH. Every contract subject to, or duty imposed by, this [Act] imposes an obligation of good faith in its performance or enforcement.

Official Comment

1. As under the Uniform Commercial Code, all parties to a consumer lease are held to a standard of good faith with respect to their rights and responsibilities under this Act. The definition of good faith [Section 102(a)(4)] has a dual aspect: subjective honesty and conformance to reasonable commercial standards of fair dealing. Commercial standards of fair dealing refer to prevailing standards of fairness in marketplace conduct, by lessees as well as lessors and holders.

2. Upon a finding of a lack of good faith by a party to a lease, the court may fashion any appropriate remedy, which may include precluding or estopping the party from enforcing rights under the lease.

SECTION 110. UNCONSCIONABILITY.

(a) If the court as a matter of law finds that a consumer lease or any provision of

the lease was unconscionable when the lease was consummated, the court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or so limit the application of an unconscionable provision as to avoid an unconscionable result.

(b) If the court as a matter of law finds that a consumer lease or any provision of a consumer lease was induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from the lease, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under subsection (a) or (b), the court shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the consumer lease, the provision, or the conduct.

(d) In an action in which the lessee claims unconscionability with respect to a consumer lease, the following rules apply:

(1) If the court finds unconscionability under subsection (a) or (b), the court shall award reasonable attorney's fees to the lessee.

(2) If the court does not find unconscionability under subsection (a) or (b) and finds that the lessee knew the lessee's claim of unconscionability to be groundless, the court shall award reasonable attorney's fees to the party against which the claim of unconscionability was made.

(3) In determining the reasonableness of attorney's fees, the amount of the recovery on behalf of the claimant under subsection (a) or (b) is not controlling.

Official Comment

1. The unconscionability principle is applicable under this Act even if the state has not enacted UCC Article 2A or has omitted or modified Section 2A-108. This section also confirms that the remedial provisions within this section (and UCC Section 2A-108) operate in conjunction with the private remedies in Section 501 of this Act, and are not displaced by that section.

2. Subsection (d)(2) permits an award of attorney's fees to a lessor or holder if the lessee has knowingly made a groundless assertion of unconscionability, either offensively as part of a claim for relief or defensively in opposition to an action for breach.

SECTION 111. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 103(b)).

Official Comment

1. This Section is an exercise of the "exemption to preemption" authorized in Section 102(a) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.A. Section 7001 et seq.[the federal "E-SIGN" law]. By virtue of this exemption, as a general matter, the use of electronic communications and documentation in consumer leases is controlled by this Act and not by the federal law. For this reason, the critical terms "record" and "sign" are defined and used in this Act [Section 102] consistently with the federal law.

2. This Act, however, explicitly does not control with respect to the matters covered by Section 101(c) of E-SIGN. That subsection requires affirmative consent from a consumer to electronic delivery of transactional disclosures that are required by state law to be in writing. Thus, where this Act requires a statement to be "written," an electronic statement may not be substituted unless the lessee has consented in accordance with E-SIGN.

[ARTICLE 2]

ADVERTISING; DISCLOSURE OF INFORMATION

SECTION 201. ADVERTISING.

(a) In this section, "advertisement" means a commercial message in any medium that directly or indirectly promotes a consumer lease.

(b) An advertisement must comply with the requirements of the federal Consumer Leasing Act for advertising. If the advertised lease is not subject to that Act, the advertisement must comply with those requirements as if the advertised lease were subject to that Act.

(c) A person may not publish, broadcast, or distribute a false, deceptive, or misleading advertisement.

(d) This section does not apply to a person acting solely as an owner or employee of a medium in which an advertisement appears or through which it is disseminated.

Official Comment

1. The advertising of the terms of consumer leases is regulated by the federal Consumer Leasing Act and its implementing regulation, Regulation M, 12 C.F.R. Section 213.7. For any consumer lease advertisement, subsection (b) makes compliance with the federal Regulation M a state law rule as well. This extends the substance of the Regulation M advertising rules to transactions outside Regulation M's scope (*i.e.*, with a contractual obligation over $25,000) but within the scope of this Act (contract obligation up to $150,000). The term "advertisement" is defined in subsection (a) consistently with the definition in Regulation M Section 213.2(b).

2. Subsection (c) is a general "false advertising" proscription in the leasing context. It applies to any "person" who advertises, not just lessors. Thus a manufacturer advertising lease arrangements through its franchised dealers would be covered. The terms "false, deceptive, or misleading" are to be interpreted consistently with the broad body of law on advertising practices developed under the Federal Trade Commission Act and comparable laws of the enacting state.

3. Subsection (d), based on Section 184(b) of the federal Consumer Leasing Act, shields from liability persons who own and operate the advertising medium when acting in that capacity. In the context of advertising over the Internet this would protect those intermediaries that merely search, relay, or link information sources, but not, for example, a lessor that maintains an advertising web site or that otherwise posts advertising messages over the Internet system.

SECTION 202. AVAILABILITY OF SAMPLE LEASE FORM.

(a) Before consummation of a consumer lease, a lessor, on request of an individual, shall promptly give a copy or reproduction of its current consumer lease form to the individual at the lessor's place of business. If a lessor contracts with lessees by mail, the lessor shall promptly send, on request by mail, a copy or reproduction of the form by mail. If a lessor contracts with lessees electronically, the lessor shall promptly make available, on electronic request, a copy or reproduction of the form by mail or electronically.

(b) A lessor shall furnish the first copy or reproduction of the current lease form to an individual without charge but may impose a reasonable charge for additional copies or reproductions furnished to the same individual.

(c) If a lessor uses more than one consumer lease form, the lessor satisfies this section by furnishing a form the lessor has reason to believe is pertinent to the type of lease about which the individual has inquired.

Official Comment

1. Lease documents may be lengthy and complex, and their terminology and standard provisions are sometimes unfamiliar to consumers. When the completed lease form, including its disclosures, is given only at consummation, this may not adequately permit consumers to study or review the lease documentation before signing, or to compare one lessor's form with another's. This section therefore requires a lessor to give

a prospective customer a copy of the lease form promptly on request, without charge.

2. The copy may be a "reproduction," as by photocopy, computer print-out, or otherwise, rather than an original of transaction documents, and it may be a blank copy without transaction details filled in. It may be accessed by an on-site computer terminal at the lessor's place of business, so long as the consumer may print and retain a hard copy. A lessor must provide forms at each of the lessor's business premises where leases are consummated. And if the lessor enters into consumer leases by mail or electronically, as by exchange of facsimile documents or over the Internet, it may provide copies by mail or in the medium the prospective customer uses to inquire. If a lessor does not enter into contracts with customers by mail or electronically, *i.e.*, if all of its leases are consummated at the lessor's premises, this section does not obligate that lessor to mail sample forms in response to telephone, mail, or electronic inquiries.

3. The lessor's obligation to furnish the copies "promptly" should be interpreted according to the circumstances. If the prospective customer is at the lessor's premises, the copy should be available while the customer is there. Where an inquiry comes in by mail or electronically, the response should be within a reasonable time considering the time of the request and the nature of the lessor's business schedule.

4. Lessors may use a number of different lease forms, for different lease products or goods, or when anticipating transfer to various assignees. The lessor is required under this section to provide only one sample, and is expected to use reasonable judgment to provide, or allow the consumer to select, one suited to the prospective customer's interests. In making that judgment the lessor is not obligated to investigate the customer's credit history, interests, or other characteristics.

SECTION 203. DISCLOSURE; FORM OF CONSUMER LEASE; COPY TO LESSEE.

(a) A lessor shall make the disclosures required by the federal Consumer Leasing Act. If the lease is not subject to that Act, the lessor shall make the disclosures as if the lease were subject to that Act.

(b) Before renegotiation or extension of a consumer lease, the holder shall make such new disclosures as are required by the federal Consumer Leasing Act. If the lease is not subject to that act, the holder shall make the disclosures as if the lease were subject to

that Act. A renegotiation occurs when a consumer lease is satisfied and replaced by a new consumer lease undertaken by the same lessee for the same goods. An extension is an agreement by the holder and the lessee of an existing consumer lease to continue the lease beyond its originally scheduled expiration, except when the continuation is the result of a renegotiation.

(c) At consummation, a consumer lease must be evidenced by a record that:

(1) clearly indicates at the beginning of the record that it is a lease;

(2) contains in a location close to the lessee's signature a conspicuous statement substantially as follows:

"NOTICE TO THE LESSEE: This is a lease. You are not buying the [goods/vehicle]. Do not sign this lease before you read it. You are entitled to a completed copy of this lease when you sign it.";

(3) identifies the place of business of the lessor and the residence of the lessee;

(4) identifies any property traded in or applied as a capitalized cost reduction or similar credit; and

(5) in a lease of a motor vehicle, itemizes the gross capitalized cost by type and amount, unless this itemization is included in a separate record accompanying the lease.

(d) A lessor may not present for the lessee to sign an application for a consumer lease or a consumer lease that contains blank spaces to be filled in after it has been signed by the lessee unless the goods are to be specially ordered for future delivery, in which case the due dates of periodic payments and specific identifying numbers, marks, or

similar information concerning the goods may be inserted in the application or lease after the lessee has signed.

(e) Promptly after consummation of a consumer lease, the lessor shall furnish to the lessee without charge a completed written copy of the lease signed by the lessor and lessee and, if not previously furnished, a written copy of all other records that the lessee has signed in connection with the transaction. As against a holder that took the lease without knowledge to the contrary, a lessee's written acknowledgment of receipt of a copy of these records creates a presumption of delivery of the copy.

Official Comment

1. An array of basic disclosures for consumer leases is provided under the federal Consumer Leasing Act and Regulation M, which in subsection (a) is adopted as state law, for all leases subject to this Act (*i.e.*, with a contractual obligation up to $150,000). Thus, for all leases covered by this Act, the lessee will receive the full set of disclosures specified in the federal law. Where the federal law requires certain additional disclosures for motor vehicle leases, Regulation M Section 213.4(f), the same disclosures must be made under this Act for motor vehicle leases. All of these disclosures must be made at the time and in the format specified for the federal disclosures in Regulation M Section 213.3. That federal regulation defers to state law to determine when consummation of the lease occurs. Cf. Section 103(a) of this Act.

Subsection (b) tracks the federal law as to when new disclosures are required for renegotiations or extensions.

2. Beyond the disclosures made in accordance with federal law, subsection (c) requires certain formalities for a consumer lease: a record signed by both parties, clearly indicating that the transaction is a lease, cautionary notices about the lessee's ownership of the goods, the parties' locations, a description of any trade-in, and -- for motor vehicle leases -- an itemization of the gross capitalized cost. The "Notice to Lessee" under subsection (c)(2) may mention a purchase option if that is provided under the lease. The notice may be appropriately modified for electronic transactions, as by using the words "enter into" for "sign."

3. The federal Consumer Leasing Act, through its Regulation M, addresses itemization of the gross capitalized cost only in conjunction with motor vehicle leases. Under Regulation M Section 213.4(f)(1), vehicle lessors have an option to provide the

itemization as a matter of course in all transactions, or to disclose to the customer that the itemization is available on request. See Reg. M Commentary paragraph 4(f)(1)-2. Lessors usually find it expedient to furnish the itemization routinely rather than disclose the option and then furnish the itemization separately. Subsection (c)(5) makes the prevailing practice mandatory for motor vehicle leases under this Act. The gross capitalized cost must be itemized by type and amount, in the level of detail required under Regulation M. This includes the agreed-upon value of the goods (which may include accessories and options, taxes, and title, license, or registration fees), and other charges and fees that are capitalized, such as insurance, a service or maintenance contract, or an outstanding balance on a prior lease or credit transaction. No precise format is required so long as the itemization presents the components of the gross capitalized cost individually or in reasonable categories.

4. These disclosure requirements assume the parties have otherwise concluded an enforceable contract, and are not pre-conditions to enforceability. Thus failure of a lessor to comply with these disclosure and formality rules subjects the lessor to the sanctions provided in Article 5 of this Act but does not in and of itself nullify or invalidate the consumer lease. For example, failure to identify the lessee's trade-in would be a violation of this Act but would not affect the parties' contract. On the other hand, omission of the lessee's signature could create a Statute of Frauds enforceability issue under UCC Section 2A-201. An oral lease that would be binding under UCC Article 2A would violate this Act if the specified disclosures were not provided in a record.

5. Subsections (d) and (e) deal with potential problems at the lease-signing stage. A lessor may not take an uncompleted lease, except where certain information can only be supplied on delivery of the goods. Under subsection (e) a lessee is entitled to copies of the lease and any other records the lessee has signed as part of the lease transaction. The "promptly" constraint recognizes that it may not be possible to furnish some documentation immediately on the lessee's signing of the lease. While a copy of the lease would usually be provided at that point, it might require some delay to get the appropriate dealer signature or to retrieve and copy an application or purchase order. If the transaction is conducted by mail or facsimile, or over the Internet, there are inherent lag times for return messages. Other transaction documents may need to be retrieved, copied and mailed or faxed. In most cases the delay should be minimal.

SECTION 204. INSURANCE; INSURANCE DISCLOSURES.

(a) A lessor may require that the lessee maintain casualty insurance on the leased goods, or liability insurance against personal injury or property damage caused to others, or both, during the period of the lease. If a lessor requires that the lessee maintain either

casualty or liability insurance, or both, unless the insurance is included in the lease for no additional charge, the lessor shall disclose in a record that the lessee may purchase the required insurance from an insurer of the lessee's choice, subject to the lessor's right to reject that insurer for reasonable cause.

(b) If casualty insurance on the leased goods is neither required nor provided in a consumer lease, the lease must contain or be accompanied by a statement in a record substantially as follows:

"No insurance coverage for physical damage to the leased goods, or loss of the leased goods, is provided under this lease.".

(c) A lessor may not require the lessee to purchase credit life, accident, health, loss-of-income, or similar insurance in connection with a consumer lease. If a lessor provides such insurance in connection with a consumer lease:

(1) the lessor shall disclose in a record that the insurance is not required; and

(2) the lessee's election to purchase the insurance is effective only if after receiving the disclosure the lessee separately signs a record requesting the insurance.

(d) If a lessee becomes obligated to pay an amount for insurance provided by or through the lessor, the lessor shall furnish or arrange to have furnished to the lessee a copy of the policy or certificate of insurance.

Official Comment

1. Leases of consumer goods often involve insurance, which may be of several types. A lessor may require the lessee to keep *casualty insurance* on the leased goods to protect the value of the goods and the lessor's residual ownership interest in them. Likewise, especially for a motor vehicle lease, a lessor may require that the lessee maintain *liability insurance* to protect the lessor against claims by third parties for damages caused by the leased goods. In either of these situations, the lessor may offer to

provide the insurance itself or the lessee may prefer to obtain the insurance on the lessee's own. In many leases, the lessor may offer the lessee a variety of *credit insurance* options that cover the lessee's obligation in case of death, accident or disability, loss of income or similar occurrences. This section assures that the optional nature of credit insurance is clearly disclosed. Whenever insurance charges are included in the lease, the federal Consumer Leasing Act and Section 203(a) of this Act require disclosure of those charges.

2. Subsection (a) authorizes lessors to require lessees to maintain casualty or liability insurance, or both. But for either type of required insurance, and with respect to any kind of leased goods (not just motor vehicles), the lessor must give the lessee the option to obtain the coverage from an insurer of the lessee's choosing.

Where lessors require insurance, this is usually at the lessee's expense. That is, either the lessee buys the insurance outside the lease, or, if the lessee elects to buy the insurance from or through the lessor, the premium is added as a separate charge. Some lessors, however, build the insurance coverage into the lease price automatically, without separate charge to the lessee. Under subsection (a) no special disclosure is required in such cases.

3. For leases where casualty insurance is not required, and is not included in the lease as an option, under subsection (b) the lessor must give the lessee a brief reminder of that fact. Thus a consumer who leases a home computer is alerted to seek casualty coverage under a homeowner's or similar casualty policy. This notice requirement does not apply to liability insurance, although a lessor is free to include in the notice reference to liability insurance as well.

4. The various kinds of credit insurance are of a different character. They do not protect the lessor's ownership interest as such, but rather the credit or payment risk that is inherent in the transaction (and that is also protected by the lessor's right to repossess the goods). Credit insurance is also subject to "reverse competition" marketing where the lessor may have little incentive to pass cost savings on to the lessee. Credit insurance therefore may only be offered on an optional basis, with the lessee's explicit signed request for it. This limitation applies only when the credit insurance is available as an add-on product in the lease transaction, and not when the lessor acts as a self-insurer or carries blanket coverages against credit or related risks in its lease portfolio.

SECTION 205. NOTICE TO GUARANTOR.

(a) The obligation of a guarantor with respect to a consumer lease is not enforceable unless:

(1) before the guarantor signs a record evidencing the obligation, the lessor provides to the guarantor a clear statement in a record which identifies the obligation, the lessor, and the lessee and reasonably informs the guarantor of the nature of the obligation; and

(2) the lessor provides to the guarantor a copy of the signed record evidencing the guarantor's obligation and, if the guarantor requests, a copy of the lease.

(b) A statement in substantially the following form complies with subsection (a)(1):

"NOTICE

NAME OF GUARANTOR: _____

_____

You agree to pay the lease obligation identified below although you may not personally receive any goods. You may have to pay this obligation even if the person who receives the goods is able to pay. This notice is not the contract that makes you responsible for the obligation. Read the lease for the exact terms of your obligation.

IDENTIFICATION OF OBLIGATION YOU MAY HAVE TO PAY:

_____

_____

_____

_____

NAME OF LESSEE: _____

_____

NAME OF LESSOR: _____

_____".

(c) As against a holder who took the consumer lease without knowledge to the contrary, a guarantor's signed acknowledgment of receipt of the records specified in subsection (b) creates a presumption of delivery of those records to the guarantor.

Official Comment

1. An individual may undertake to guarantee the obligation of a lessee to help the lessee qualify for the lease, or to forestall collection on a lease in default. That individual may be a friend or relative of the lessee, and may lack particular experience or knowledge about guarantor responsibilities. This provision therefore provides for a summary notice to the guarantor, in simple language, describing the nature of the obligation and the risk the guarantor is assuming. The timely giving of this notice is a condition to the enforceability of the guaranty. In addition to providing the notice, the lessor must give the guarantor a copy of any separate record that contains the guaranty, and a copy of the lease if the guarantor requests it.

2. This notice must be given to true guarantors and not to persons who are themselves lessees. Often more than one consumer will apply for or sign the lease agreement, perhaps spouses, or a parent and child. The lessor may assume that such customers are co-lessees, and need not inquire into any private arrangements between the customers as to use of the leased goods or payment responsibilities concerning the lease. But where for purposes of credit approval or collection forbearance the lessor explicitly requests an additional signatory, or the lessee offers to furnish one for those purposes, and that individual will be a voluntary surety for the lease obligation, the notice required by this section must be given.

SECTION 206. INFORMATION DURING TERM OF LEASE; SATISFACTION OF LEASE.

(a) During the period of a consumer lease, the following rules apply:

(1) A person that receives a payment in money from a lessee under a consumer lease shall furnish the lessee a written receipt for the payment.

(2) If a lessee so requests in a record, the holder, within two weeks after receiving the request, shall send to the lessee in a record, as requested, a statement of:

(A) the dates and amounts of the periodic payments that have been received by holders of the lease and the total amount of the remaining periodic payments;

(B) the lessee's total obligation due to satisfy the lease if terminated at a specified date before expiration, and a statement that the amount so due will be reduced by the realized value of the goods, if that is the case; and

(C) if the lease provides for a purchase option that may be exercised at the lessee's request, the purchase option price at the date specified in the request.

(3) In a statement under paragraph (2), an amount that is estimated must be so identified.

(4) A holder may not charge the lessee for furnishing one statement under each subparagraph of paragraph (2) in each 12-month period, but may charge a fee not to exceed $5 for furnishing each additional statement during the same period.

(b) A holder, within two weeks after the lessee has discharged all of the lessee's obligations under the consumer lease, shall send to the lessee at the lessee's last known address a copy of the lease marked "satisfied," "paid in full," or similar term, or a separate record indicating satisfaction of the lease. The record of satisfaction does not release the lessee from liability under the lease for acts or events discovered by the holder after sending the record.

Official Comment

1. After a lease is consummated, the lessor or subsequent holder has certain common-sense responsibilities to provide further information to the lessee. These

include receipts for cash payments, periodic statements of account (payments made and remaining), and "payoff" or "purchase option" figures during the lease term. The holder may charge a fee for the latter types of statements if requested more than once in a 12-month period.

2. The subsection (a)(2)(B) phrase "total obligation due to satisfy the lease" refers to a payoff figure that will satisfy the lessee's obligations under the lease at early termination. The "total obligation"often takes into account the actual realized value of the goods when they are turned in to the holder. It is obviously impossible for a holder to know the condition or market value of the goods when responding to a lessee's inquiry about early termination. It would be speculative, and potentially misleading to the lessee, for the lessor or holder to 'estimate' a *net* payoff figure before inspecting the goods. Thus subsection (a)(2)(B) contemplates that the lessor will tell the lessee the gross early termination obligation as a dollar figure, with the additional statement about application of the realized value.

3. Under subsection (a)(2)(C) the lessee may inquire about a purchase option price, and the holder must provide it if the lease permits a purchase of the goods before scheduled expiration of the lease.

4. A lessee's inquiry about a payoff amount or a purchase option price typically will state or infer a specific "as of" date: "What is my current payoff obligation [as of today]?" or "What can I buy the car for on the first of next August?" A quoted figure satisfies the requirements of this section if it is as of the date of the lessee's request or the holder's response, or as of a date specified or inferred from the request. The quoted figure may reflect limitations in the lease such as that early termination is always dated on the last day of the month, in which case the quoted figure may have a "good through" date.

5. A lessee may want or need documentation to confirm that the lease obligation has been fully satisfied. Subsection (b) requires the holder to furnish such documentation within two weeks after the lessee has completed payments or other obligations under the lease. No request from the lessee is necessary, but the holder may rely on its own records to determine when the lessee's obligation is discharged. The record of satisfaction does not affect the lessee's liability for matters the holder does not discover until later, such as undetected physical damage or unpaid parking tickets on a leased vehicle.

[ARTICLE 3]

LIMITATIONS ON TERMS AND PRACTICES

SECTION 301. PAYMENT OR TRADE-IN PENDING APPROVAL OF LEASE; REFUND OR RETURN.

(a) If a lessee's application for a consumer lease is not approved on the terms submitted, the following rules apply:

(1) Except as otherwise provided in paragraphs (2) and (3), the lessor:

(A) within one business day after disapproval of the application, shall tender back to the lessee any property traded in; and

(B) promptly, but in no event more than five business days after disapproval of the application, shall refund any payment received other than an application fee.

(2) If the lessee has taken delivery of the goods before the disapproval of the lessee's application, the lessor shall tender delivery of the property traded in and the refund under paragraph (1)(B) when the lessee tenders back the goods that were delivered to the lessee.

(b) In the case of a consumer lease of a motor vehicle in which the vehicle is delivered to the lessee pending approval of the lessee's application, the lessor, on or before delivery, shall give the lessee notice in a record of the rights and obligations provided in this section. If the application is not approved, the following rules apply:

(1) Except when the specified disclosure is made under paragraph (2), the lessor may not impose on the lessee any charge for the lessee's use of the vehicle.

(2) The lessor may impose a mileage charge for the lessee's use of the vehicle, at an amount not exceeding the mileage rate authorized for deduction under [[state] [federal] tax laws], but only if the fact and amount of that charge are disclosed to the lessee in a record separately signed by the lessee at the time of delivery. The lessor may offset the amount of the charge against any refund due the lessee.

Legislative Note: The bracketed reference to state tax laws should cite the appropriate state income tax law that authorizes a business deduction or adjustment for vehicle mileage. If there is no such state law, the reference should be to the federal Internal Revenue Code provision on deductible mileage.

(3) The limitations imposed by paragraphs (1) and (2) do not affect a holder's right to recover for damage to or loss of the vehicle while in the lessee's possession attributable to the lessee's tortious act or omission, or forfeiture or confiscation of the vehicle under governmental authority.

(c) A lessor may not sell or otherwise dispose of any property traded in until the lessee's application is approved.

(d) If a lessor contracts to purchase property from a prospective lessee separately from a consumer lease, the lessor may not withhold payment pending, or otherwise condition payment upon, consummation of a consumer lease.

Official Comment

1. Lessors sometimes take lease applications and signed leases from customers but reserve the right to disapprove the lease if the customer's credit is not approved or other contingencies arise. The customer may have surrendered a trade-in, made initial lease payments, and taken delivery of the leased goods. This "spot delivery" practice enhances lease marketing, and can also be a convenience for the customer as it avoids

delays in delivery and return trips to the dealership. The consumer may be left in a vulnerable position, however, if, for example, a vehicle lessor disapproves the lease application, and is unwilling or slow to return the trade-in or to refund the advance payment. The consumer has no old car, no new car, and is out of pocket the advance payment. In these circumstances the lessee may feel pressured to agree to whatever adjusted terms the lessor may offer. Recognizing that such practices can be abused, subsection (a)(1) requires the lessor in these circumstances to return any trade-in within one business day after the disapproval and refund any advance payment within 5 days. Under subsection (a)(2), if the lessee has taken delivery of the goods, the lessor and lessee have reciprocal responsibilities at this point: the lessee must return the goods and the lessor must then tender back the trade-in and refund the lessee's payments. The place of tender and return is where the lessee took delivery of the new goods, unless the parties agree otherwise.

When a customer's application is not approved, the parties may agree to go forward with a lease on modified terms. For example, the parties may agree to a higher initial payment, or to include a security deposit. When such an agreement is made before the time for return of a trade-in and before a payment refund is due, the lessor need not complete the return or refund if the trade-in and payment are included in the modified application or in the resulting lease.

2. When there is spot delivery of a motor vehicle pending approval of the lessee's credit, and the application is not approved, the vehicle may have depreciated with the lessee's use of it. Therefore, under subsection (b)(2) a motor vehicle lessor may impose a mileage charge for the interim period (between delivery and return of the vehicle) if the charge is disclosed and separately agreed to by the customer. Other than offsetting this charge, the motor vehicle lessor may not withhold return of the trade-in or refund of payments, or impose any other charge for the lessee's temporary use of the vehicle. This limitation does not preclude lessee liability on other grounds, such as conversion or negligence, if the lessee damages or destroys the vehicle or fails or is unable to return it after being notified that the application has been disapproved. But where these risks are covered by the lessor's inventory insurance, recourse against the lessee should be limited to that insurer's subrogation rights.

3. In any case, under subsection (c), the lessor may not dispose of the trade-in until approval of the customer's application is assured. This reinforces the lessor's incentive to get prompt credit approval, and to unwind the transaction quickly if the lessee's application is disapproved.

4. Occasionally a customer will agree, in advance of any lease agreement, to sell existing goods to a leasing dealer. This separate sale, from customer to dealer, may occur for a number of reasons. For example, the consumer may want to dispose of an old car before shopping for a new one. Or the customer may want to maximize the value of the old car while waiting for a new model year or a new car with custom features. Under

subsection (d) the prospective lessor cannot hold the agreed purchase price hostage until the customer agrees to a lease from that dealer.

SECTION 302. PROHIBITED LEASE PROVISIONS.

(a) A provision of a consumer lease may not:

(1) authorize the holder to accelerate the maturity of all or part of the amount owing on the lease whenever the holder deems itself insecure;

(2) require the lessee to execute an authorization to confess judgment or an assignment of wages; or

(3) authorize the holder or another person to enter upon the lessee's premises or to commit a breach of the peace in the repossession of the goods.

(b) A provision prohibited by this section is unenforceable but does not otherwise affect the validity of the lease.

Official Comment

1. While this Act generally allows the parties considerable freedom of contract with respect to the provisions of a lease, particularly its pricing, there are certain contractual provisions that are historically recognized as unfair and against public policy in a consumer credit transaction. These include provisions permitting (i) acceleration based merely on felt "insecurity," (ii) various forms of "confessed judgments" or wage assignments, and (iii) repossession involving trespass or breach of the peace. There is no contemporary justification for these provisions, and they are *per se* prohibited. Cf., UCCC Sections 3.305, 3.306; FTC Credit Practices Rule, 16 C.F.R. Section 444.2(a)(1) & (3).

2. The inclusion in a consumer lease of an unenforceable provision prohibited by this section does not in itself affect the validity of the lease, but Section 110 on unconscionability remains applicable.

SECTION 303. SECURITY INTEREST RESTRICTED; SECURITY DEPOSIT.

(a) Except as otherwise provided in subsection (b), a consumer lease or other record signed by the lessee in connection with the lease may not provide for the creation of a security interest in personal or real property of the lessee to secure the payment of obligations arising from the lease. A security interest created in violation of this section is unenforceable, but does not otherwise affect the validity of the lease.

(b) A consumer lease may provide for:

(1) a security deposit, advance lease payment, or other prepayment;

(2) a security interest in unearned insurance premiums or rebates of charges for a contract for services, or a service contract, extended warranty, or maintenance agreement regarding the leased goods;

(3) a security interest in the proceeds or benefits of insurance, or of a contract for services, service contract, extended warranty, or maintenance agreement on the leased goods, except to the extent the proceeds or benefits represent reimbursement to the lessee for expenses incurred; and

(4) a security interest in an accession to the leased goods.

(c) This section does not preclude a holder from making a permissive filing of a financing statement under [Article 9 of the Uniform Commercial Code].

(d) A holder is not required to pay interest on a security deposit, advance lease payment, or other prepayment, but is required, within two weeks after the application of a

security deposit, to account to the lessee in a record for the application of the security deposit.

Official Comment

1. Historically, creditors sometimes took sweeping security interests in all of a consumer debtor's household goods or other property to secure a particular extension of credit. The purpose of the security interest was often more for its *in terrorem* effect than for its liquidation value. Now, state law [e.g., UCCC Section 3.301], and the FTC Credit Practices Rule, 16 CFR Section 444.2, essentially limit credit sale financers to purchase-money security interests. In the lease context, the lessor retains ownership rights in the leased goods from the nature of the lease arrangement, reinforced by UCC Article 2A. Subsection (a) therefore generally prohibits a lessor from taking a security interest – separate from its leasehold interest – in the debtor's real or personal property. The taking of a prohibited security interest does not in and of itself invalidate the lease, but may be a factor in finding the lease unconscionable under Section 110.

2. A lease and a security interest are mutually exclusive characterizations under UCC Sections 2A-103(1)(j) and 1-201(b)(37). A lessor cannot simultaneously hold a security interest in the leased goods. Subsection (c) confirms, however, that the lessor/holder may, as a protective measure under UCC Section 9-505, file a UCC Article 9 financing statement. Such a permissive filing does not itself make the lease a security interest.

3. Despite the general prohibition against security interests, subsection (b) permits a lease to contain certain "security" provisions. Security deposits, advance lease payments or other prepayments are permitted, without specific limitation as to amount. It is implicit that such payments are or will be applied against the lessee's obligations under the lease, or returned to the lessee. The holder need not accrue or pay interest on such prepayments, nor must those funds be segregated or maintained in separate accounts. The economic effect of these prepayments, like the front-end payment in a single payment lease, is to reduce the lessor's risk and, ultimately, the lessee's cost. The holder must, under subsection (d), account to the lessee when a security deposit is applied.

4. Some leases, particularly for motor vehicles, include insurance coverages or service or maintenance contracts for all or part of the duration of the lease, and the charges for these items are often financed as part of the lease and built into the payment schedule. If such a lease is terminated early, some portions of those charges may be "unearned" and are rebated as cash payments or credits. Subsection (b)(2) allows the lessor to claim a security interest in such funds. This would not apply to rebates from insurance policies or service contracts bought by the lessee outside the lease. In this context, a "contract for services" refers to services provided by the holder other than

maintenance or repair of the vehicle, such as membership in a travel club or a subscription to a satellite navigation service.

5. Similarly, under subsection (b)(3), if claims or benefits are payable under insurance, a contract for services, or a service or maintenance contract, financed under the lease, the lease may claim a security interest in those proceeds. But this security interest may not extend to reimbursements due directly to the lessee to compensate for out of pocket expenses. For example, the lessee of a motor vehicle may have paid for repairs after an accident, or have paid for substitute transportation during repairs. If an insurer owes the lessee reimbursement for those expenses, its disbursement belongs to the lessee free of any "security interest" claim by the lease holder.

6. Subsection (b)(4) allows the lease to provide for a security interest in accessions to the leased goods. This is merely an authorization to contract for a security interest. The respective rights and priorities of the lessor and lessee, and any third parties, with respect to the accession are controlled by other law. Cf., UCC Sections 2A-310, 9-335.

SECTION 304. LATE FEES; DELINQUENCY AND DEFAULT CHARGES; ATTORNEY'S FEES.

(a) A holder may impose on the lessee a late charge on a periodic payment that is delinquent for 10 days or more in an amount specified in the consumer lease but not exceeding the greater of $10 or five percent of the unpaid portion of the late periodic payment. A late fee is not enforceable to the extent it exceeds this limit.

(b) A holder may not impose a late charge on a current periodic payment if the only delinquency in the current payment is an amount equal to or less than unpaid late charges imposed on earlier periodic payments, but the lease may impose an additional late charge if all or part of a periodic payment remains delinquent through an additional payment period.

(c) Subject to subsection (b) regarding late charges, a consumer lease may provide for imposition on the lessee of charges for the lessee's delinquency or default,

including collection, repossession, and court costs, at an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency or default, the difficulties of proof of loss, and the inconvenience or unfeasibility of otherwise obtaining an adequate remedy.

(d) A consumer lease may provide for the imposition on the lessee of the holder's reasonable attorney's fees, but the fees are recoverable by the holder only if the holder is represented by an attorney who is not an employee of the holder. If a consumer lease provides for recovery of attorney's fees by the holder, a lessee who successfully defends a collection action is entitled to reasonable attorney's fees from the holder.

Official Comment

1. The general rule of this section is in subsection (c), which replicates the rule stated in Section 183(b) of the federal Consumer Leasing Act. That provision recognizes that specified charges imposed by the lessor or holder for the lessee's default and delinquency are in the nature of liquidated damages and so must be reasonable in light of the stated factors. This means that while an appropriate charge is *related* to provable actual damages, it is not confined to that sum and may reflect other ingredients or purposes, such as permitting ease of calculation and discouraging breach. The language in this provision omits the reference in the federal Consumer Leasing Act to "penalties," and should not be read to authorize a charge that has no justification other than as a penalty for breach. As for the relationship between this "reasonableness" measure and the liquidated damages provision in UCC Section 2A- 504, this Act is meant to be at least as restrictive, on behalf of the consumer lessee, as the UCC provision. Thus default charges that are not reasonable under UCC Section 2A-504 are not reasonable under this Act either. This section does not apply to charges in connection with early termination [section 405] or for excess wear and use [section 407], which are dealt with in those other sections.

It is implicit in this section that default charges -- which must always be reasonable – must be specified in the lease. [See Regulation M, 12 C.F.R. Section 213.4(q) for the required disclosure.] Thus it would be impermissible for a holder or a third party collector unilaterally to impose additional fees or charges in the course of collection.

2. This provision applies to any charge that may be imposed on the lessee for breach of the terms of the lease, including default charges, collection, repossession, and court costs, and charges for incidental breaches such as remitting payment by a check that bounces. A lease may impose on the lessee the costs of collection after default, either as actual costs incurred, a fixed dollar figure, or as a percentage of the unpaid obligation, but always subject to the "reasonableness" standard in subsection (c). For example, a collection fee of 25% of the adjusted lease balance may not be reasonable if default occurs early in the lease and the charge would far exceed the actual costs of collection. Collection costs may include the holder's attorney's fees but only where the matter is referred to a non-employee attorney and only for work actually performed. An attorney's fee may be reasonable whether the method of compensating the attorney is by an hourly charge or on a contingent fee basis.

3. Subsections (a) and (b) deal separately with late charges, which are typically imposed whenever a scheduled payment is overdue and where it is easier to specify a bright-line test as to permissible amounts. Late charges specified in the lease must comply with subsection (a), which is a specific application and delimitation of what are reasonable charges. This requires at least a ten-day grace period, and the amount of the late charge cannot exceed the larger of $10 or 5 percent of the late payment. Thus, if a $150 payment is due on April 1, a late charge of $10 could be imposed on April 11. If the missed April 1 payment were $400, a $20 late charge could be imposed on April 11. But if, when a $400 payment is due, the consumer remits $200, the late charge is limited to $10 (5% of the *unpaid* $200.00 portion).

4. Subsection (b) prohibits the pyramiding of late charges, *i.e.*, imposing a new late charge merely because the consumer has not paid a previously imposed late charge. In the example in Comment 3, if the lessee remits the April 1 payment of $400 on April 20, a late charge may properly be imposed. If the lessee then remits the May payment of $400 on time, but does not pay the $20 April late charge, the holder may not impose an additional late charge on grounds the May payment is not fully paid. At the same time, this subsection does not prohibit the imposition of successive late charges if a scheduled payment (*e.g.*, a periodic lease payment of $400) itself remains unpaid in subsequent payment periods. Again in the example above, if the lessee had still not made the $400 April 1 payment by May 11(the May due date plus the ten-day grace period), the holder could assess another late charge on the missing April 1 payment.

For purposes of subsection (b), a lessee's payment is considered applied first to the current scheduled payment, then to any delinquent scheduled payments, and then to late or other charges.

5. Consumer leases often authorize the holder to collect attorney's fees as part of a default remedy but provide no reciprocal right to attorney's fees if the consumer lessee successfully defends a collection action. Subsection (d) adds that balance, as a matter of statutory reciprocity, as if the lease itself authorized attorney's fees to the successful

litigant in the collection lawsuit. This is limited to the collection setting, and would not apply otherwise. Section 501(e) of this Act separately authorizes a lessee's recovery of attorney's fees in an action against a holder for a violation of this Act.

SECTION 305. ASSIGNMENT OF LEASE; PRESERVATION OF LESSEE'S CLAIMS AND DEFENSES.

(a) Until 30 days after a lessee receives from the assignor or assignee of the lease a signed notice in a record that the consumer lease has been assigned and containing the name and address of the assignee, the lessee may discharge the lessee's obligation by paying the assignor of the lease, and the following rules apply:

(1) If timely, a payment to the assignor is not subject to a late charge.

(2) Except as otherwise provided in paragraph (3), after the 30-day period, the lessee discharges the lessee's obligation only by paying the assignee.

(3) If requested by the lessee after notice from the assignee under this subsection (a), the assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the lessee may discharge the lessee's obligation by paying the assignor.

(b) Except as otherwise provided in Section 505(b), notwithstanding any provision in a consumer lease, a holder is subject to all claims and defenses arising from the lease which the lessee could assert against a previous holder and, if the original lessor does not select, manufacture, or supply the goods, against the person from whom the lessor bought or leased the goods. A lessee's recovery from a holder under this subsection may not exceed amounts paid by the lessee to all holders under the lease.

Official Comment

1. Lessors commonly assign their leases to financial institutions or finance companies, and those institutions may assign the leases (or their servicing) again, as through a securitization. Subsection (a) protects a lessee who remits payment to a holder until 30 days after receiving notice that the lease has been assigned. Either the assignor or assignee may send the notice, and no particular format is required. For example, notice of the initial assignment from the lessor to a financing entity may be reflected in the lease itself. Until the 30-day period has run, the lessee may not be assessed a late charge for payments otherwise timely made to the prior holder. After that time the lessee must make payments to the assignee, although, under paragraph (a)(3) the lessee may require verification of the assignment from an assignee. Cf., UCC Section 9-628(c).

2. By state law (e.g., UCCC Sections 3.307, 3.404, 3.405, and equivalents) and by FTC Rule (Preservation of Consumers' Claims and Defenses, 16 C.F.R. Part 433), "holder in due course" protections for assignees of consumer *credit* contracts have effectively been abolished for many years. Subsection (b) states the parallel proposition that there can be no "holder in due course" of a consumer lease. The rationale is that, as a matter of policy, the risk that the lessor will not perform properly under the lease and this Act is better borne by the entity that finances the transaction than by the relatively powerless lessee. Assignees can, and do, contract for recourse and indemnity rights against the dealers they support, which shift the cost of consumer financial injury back to the dealer or earlier holder whose malperformance caused the injury.

3. This rule permits a lessee to defeat a holder's collection efforts by proving *defenses* such as non-delivery, failure of consideration, or fraud that could have been asserted against the original lessor or a prior holder. (For this purpose "claims and defenses" include what the Uniform Commercial Code characterizes as "claims in recoupment" under UCC Section 3-305(a)(3) with respect to negotiable instruments.) This section also permits a lessee to assert against the assignee-holder affirmative *claims* that originated against the lessor, *e.g.*, for rescission or revocation of acceptance of the lease and refund of payments made [cf., UCC 2A-517], or for actual or statutory damages for violations of this Act [Section 501, infra]. The lessee may recover affirmatively from the holder up to the total of amounts paid under the lease (whether paid to the original lessor or to a subsequent holder). For example, assume that after several months the leased goods prove to be seriously defective, and the lessee properly revokes acceptance under UCC Section 2A-517 and claims a refund of payments made and consequential damages. If the lessee proves that claim and sufficient damages, the lessee may recover from the current holder all monies paid on the lease to that point, including capitalized cost reductions paid in the first instance to the original lessor. A lessee's recovery could encompass amounts collected by a holder and disbursed to third parties, such as insurance charges, but would not include money the lessee paid independently to a third party such as a taxing authority.

4. This section affirms and limits the vicarious liability of holders for claims and defenses that arose from an earlier transaction between the lessee and the original lessor or a holder prior to the current holder. Nothing in this section limits the liability of that original lessor or earlier holder for the full range of remedies associated with its own conduct. Also the "claims and defenses" assertable against an assignee-holder must be generated out of the lease relationship between the lessee and the lessor or earlier holder. For example, if the lessee has a dispute with the lessor over a separate lease or purchase transaction, this Section does not allow the lessee to interpose claims or defenses from that transaction against the assignee in the current lease transaction.

5. In some lease arrangements, the nominal lessor is a financial institution that does not regularly deal in goods, but instead purchases the goods from a supplier and then leases them to a consumer. This includes finance leases under UCC Article 2A [defined in UCC 2A-103(1)(m)]. In the case of a finance lease, under UCC Section 2A-209 the supplier's warranties flow through to the lessee, and the consumer lessee may assert a breach of the supplier's warranty against the finance lessor (usually a bank or other financial institution). Cf., UCC Section 2A-407, Comment 2. Under this subsection (b), the finance lease concept is expanded to include any situation where the lessor does not select, manufacture or supply the goods, *i.e.*, even if the arrangement does not meet the remaining criteria for a finance lease. When the lessor and supplier collaborate to supply and lease goods to a lessee, and the lessee has a claim or defense arising from a supplier warranty, that claim or defense is assertable against an assignee of the finance lessor. Otherwise, a breach of a manufacturer's warranty that accompanies the goods leased by a dealer/lessor is not assertable against an assignee; that warranty is an obligation of the manufacturer and not the lessor, and the assignee's exposure under this section is limited to claims and defenses that the lessee could assert in the first instance against the lessor or subsequent holder.

6. The general rule that assignees are subject to claims and defenses assertable against the lessor or earlier holder includes lessee rights arising under this Act. That is, where the lessee's claim or defense is based on a *violation of this Act*, the assignee is generally subject to that claim or defense. Under the federal Consumer Leasing Act, however, an assignee is liable for violations of its disclosure provisions only if "the violation is apparent on the face of the disclosure statement." 15 U.S.C.A. Section 1641(a). Section 505 of this Act replicates this federal rule for violations of disclosure rules in this Act.

7. Both the UCCC [Section 3.405] and the FTC Holder Rule [16 C.F.R. Section 433.2(b)] regulate a related pattern where a consumer borrows directly from a lender in order to pay cash to a dealer for goods or services. Where the lender and dealer are acting in concert to generate consumer sales, those provisions make the *lender* subject to claims and defenses arising out of the ostensibly separate sale transaction. It seems unlikely that this pattern occurs very often with respect to leases. One possible instance would be where a consumer borrows from a lender in order to make a large front-end payment on a

lease (a "single payment lease"). With the UCCC provision and FTC Rule as guidance for courts, it seems unnecessary to develop a special version of that rule for this Act.

SECTION 306. SUBLEASE.

(a) Except as otherwise provided in subsection (b), a lessee under a consumer lease may sublease or assign the lessee's rights and interest.

(b) A consumer lease may contain a specific and conspicuous provision requiring the holder's consent to a sublease or assignment of the lessee's rights and interest, and payment of a reasonable fee. In a lease for a period of more than 12 months, the provision must require the holder to consent unless the holder believes in good faith that the sublease or assignment will jeopardize the holder's rights or increase the holder's risk.

(c) Unless otherwise agreed by the holder, the obligations of the lessee under a consumer lease are not affected by a sublease or assignment, and the original lessee and the sublessee or assignee are jointly and severally liable under the assigned lease.

Official Comment

1. As a general proposition under subsection (a), a consumer lessee may transfer the lessee's interest to a sublessee or assignee. Subleasing the goods may be an efficient way for the consumer to adjust to changed circumstances, or to avoid a default. At the same time, the holder may have legitimate concerns about the creditworthiness and reliability of the sublessee, or about risks relating to relocation, use and maintenance of the goods by the sublessee. Thus, a unilateral right to sublease, regardless of circumstances, would be incompatible with the lessor's expectations and with its residual ownership interest in the goods.

2. Subsection (b) permits a lease generally to require the holder's consent to a sublease and payment of a reasonable fee, so long as the lease provision is specific and conspicuous. But for leases scheduled for periods longer than a year, the holder must have a good faith belief that the sublease threatens the holder's rights and expectations under the lease. A holder that improperly refuses to permit a sublease violates this Act.

3. Under subsection (c) the original lessee – now sublessor – generally remains fully obligated on the lease along with the sublessee. The original lessor of course may agree to discharge the original lessee as part of its consent to the sublease.

SECTION 307. OPEN-END CONSUMER LEASE.

(a) In an open-end consumer lease, the estimated residual value must be a reasonable approximation of the anticipated fair market value of the goods on expiration of the lease. The estimated residual value of the goods is presumed to be unreasonable and not in good faith to the extent that the estimated residual value exceeds the realized value by more than three times the average payment allocable to a monthly period under the lease. The holder may not collect from the lessee the amount presumed to be unreasonable unless the holder succeeds in an action with respect to that amount. In all actions, the holder shall pay the lessee's reasonable attorney's fees.

(b) A presumption does not arise under subsection (a) to the extent the excess of estimated residual value over realized value is due to physical damage to the goods beyond reasonable wear and use, or to excessive use, according to standards set in the lease under Section 407.

(c) This section does not preclude a lessee, after expiration of the consumer lease, from agreeing to a final adjustment with respect to residual value.

(d) Upon expiration of an open-end consumer lease, the lessee may obtain at the lessee's expense a professional appraisal of the leased goods by an independent third party agreed to by the lessee and holder. The appraisal is final and binding on the parties.

Official Comment

1. An "open-end lease" is one where the lessee's obligation at expiration depends

on the realized value of the goods at that time. The lessee cannot simply return the goods and walk away, but rather must bear some or all of the depreciation risk. The concern is that an inflated original estimate of residual value may leave the consumer subject to a substantial end-of-term liability if the goods depreciate more rapidly than expected. For example, a lease of a $25,000 vehicle may project a residual value of $15,000 at the end of the 24 month lease term. But if the actual resale value of the car at lease end is only $9,000, the open-end lessee would be obligated for the $6,000 difference. Some states have dealt with this problem by limiting the consumer's end-of-term liability to two or three monthly payments. See, e.g., UCCC Section 3.401.

2. This section replicates the open-end lease rule from Section 183(a) of the federal Consumer Leasing Act. The federal Act in effect limits the lessee's liability under an open-end lease to an amount no greater than three monthly payments, but does it through a "presumption" about what is a reasonable measure of liability. In the example in Comment 1, if monthly payments were $600, an end-of-term liability of $1,800 (3 monthly payments) would be lawful, but any amount above that figure would be presumptively unreasonable. The presumption can be overcome by showing that the original estimate of residual value was reasonable and made in good faith. The effect of using the language of the federal act is to make the same three-monthly-payment cap applicable to all consumer leases covered by this Act, including those with contractual obligations between $25,000 and $150,000.

3. The federal Act also discourages efforts to collect more than three monthly payments by requiring the holder to sue the lessee for the extra amount and to pay the lessee's attorneys fees in both successful and unsuccessful actions. This section retains those requirements.

4. In tracking the federal Consumer Leasing Act, this section limits lessee liability only at the time of expiration of an open-end consumer lease. If an open-end lease is terminated early, it is subject to section 405 of this Act.

SECTION 308. LIMIT ON INSURANCE CHARGES; TERMINATION OR REPLACEMENT OF INSURANCE.

(a) A charge for casualty, liability, or credit insurance included in a consumer lease or added under subsection (c) may not exceed the premium imposed by the insurer for the insurance. This subsection does not preclude:

(1) the imposition of rent charges on insurance charges capitalized in the lease; or

(2) the lessor's realization of commissions, experience rebates, or similar compensation from the insurer.

(b) If insurance included in a consumer lease or added under subsection (c) is canceled or terminated, a refund of unearned insurance premiums received by the holder in excess of one dollar, at the holder's option, must be:

(1) refunded to the lessee; or

(2) credited, together with the unearned portion of the rent charge applicable to the refunded premium, to the lessee's current obligation, the final maturing periodic payments, or the lessee's obligation upon termination of the lease.

(c) If a lessee does not maintain insurance required under a consumer lease, the holder may purchase substitute insurance only against substantially the same risks, covering the interests of the lessee and the holder or the interest of either of them.

(d) An amount paid by a holder for substitute insurance under subsection (c) and added to the lessee's obligation under the lease is subject to:

(1) a rent charge as if that amount were part of the adjusted capitalized cost, from the later of the effective date of the insurance or the date on which the holder notifies the lessee of the purchase of substitute insurance, its cost, and the effect on the payment schedule; and

(2) the repayment and default provisions of the lease.

(e) This section does not preclude a holder from pursuing any other remedy for default set forth in the lease or provided by law.

Official Comment

1. Subsection (a) prohibits "upcharges" on property, liability, and credit insurance premiums. This refers to charges by the lessor above and beyond the premium payable to the insurer. Regulated insurance premium structures usually authorize compensation to the dealer through commissions or similar arrangements, and these are permitted.

2. Where insurance arranged by the lessor and included in the lease is canceled or terminated mid-term, the insurer will typically refund the unearned portion of the premium. The question is who controls or is entitled to the refund? Since insurance included in the lease is often financed as part of the capitalized cost, a cash refund to the lessee is potentially a windfall if the lessee defaults on the lease. On the other hand, to the extent the lessor has agreed to include the premium as part of the capitalized cost, any unearned premium rebate should be credited to the lessee's unamortized lease balance. Subsection (b) requires the holder to apply the refund either as a direct refund to the lessee, or as a credit to the lessee's account. If the holder applies the refund to the lessee's obligation, the holder must also credit the lessee with a rebate of unearned rent charges attributable to the refunded premium.

3. If required insurance lapses during the term of a lease, such as for non-payment of premiums by the lessee, the holder may cover its interest by obtaining its own insurance, at its own expense and on whatever terms the holder wishes, without any obligation falling on the lessee. Subsection (c) also permits the holder to "force place" insurance in specific substitution for required coverages the lessee has failed to maintain, and to charge the lessee for this replacement coverage. The substitute coverage must be substantially the same as the coverage required in the lease. For example, if the lease required liability insurance up to $300,000 and casualty insurance with a $500 deductible, the holder could not properly purchase substitute coverages with a $1 million liability cap or a $200 deductible. The cost of proper replacement insurance may, on notice to the lessee, be subject to a rent charge and otherwise added to the lessee's obligation under the lease. The adjustment of the lease obligation in this fashion is not a refinancing of the lease.

SECTION 309. REBATE OR DISCOUNT FOR REFERRALS. A person may not induce or attempt to induce a lessee to consummate a consumer lease by offering a post-consummation rebate, discount, commission, or other consideration on the condition

that the lessee provide information or assistance for the purpose of enabling a lessor or other person to lease or sell goods to another individual.

Official Comment

1. Some consumers may be vulnerable to sales tactics that offer the prospect of savings based on post-transaction referrals of other customers. For example, a merchant might promise a consumer a $100 rebate on the lease obligation for each friend or neighbor whose name the consumer supplies, if the friend or neighbor buys or leases goods from that merchant. Or perhaps the rebate only requires that the friend or neighbor visit the merchant's showroom. Whatever the promise, such referral practices may be misleading if the customer is led to believe that significant savings will accrue, when in fact the savings do not materialize because few friends or neighbors respond to the referral. This section prohibits referral inducements in the marketing of leases.

2. What is prohibited is an inducement offered *prior to* lease consummation that depends on events occurring *after* lease consummation. If before lease consummation, a lessor solicits and pays or credits a customer for referrals, the practice is not unlawful. Similarly, if after lease consummation a lessor agrees to pay or credit the lessee for referrals, that too is not an unlawful practice.

3. The sanction for a lessor who violates this section includes statutory damages under Section 501(d). In an appropriate case a lessee might also recover actual (loss of bargain) damages based on the amount or range of savings promised or implied in the referral inducement.

SECTION 310. LIMITATION ON SUPPLIER'S DISCLAIMER OF IMPLIED WARRANTY.

(a) In this section:

(1) "Magnuson-Moss Warranty Act" means 15 U.S.C. Sections 2301-2312 [, as amended,] and includes Rules, Regulations, Statements, and Interpretations issued by the Federal Trade Commission under that Act.

(2) "Service contract" means a contract in a record to perform, over a fixed period or for a specified duration, services relating to the maintenance or repair, or both, of leased goods.

(3) "Supplier" means any person engaged in the business of making leased goods directly or indirectly available to lessees through consumer leases.

(4) "Written warranty" means:

(A) an affirmation of fact in a record or promise in a record made in connection with a consumer lease of goods by a supplier to a lessee, which relates to the nature of the material or workmanship, affirms or promises that the material or workmanship is defect free or will meet a specified level of performance over a specified period, and becomes part of the basis of the bargain between the supplier and the lessee; or

(B) an undertaking in a record in connection with the lease by a supplier of goods to refund, repair, replace, or take other remedial action with respect to the leased goods if the leased goods fail to meet the specifications set forth in the undertaking, which becomes part of the basis of the bargain between the supplier and the lessee.

(b) A supplier may not disclaim or, except as otherwise provided in subsection (c), modify an implied warranty to a lessee with respect to leased goods if:

(1) the supplier makes a written warranty to the lessee with respect to the leased goods; or

(2) at the time the lessee signs the lease, or within 90 days thereafter, the supplier enters into a service contract with the lessee which applies to the leased goods.

(c) Unless a supplier has made a warranty that would qualify as a full warranty under the Magnuson-Moss Warranty Act if made in connection with a sale of goods, the supplier may limit the duration of implied warranties to the duration of a written warranty of reasonable duration, if the limitation is conscionable and conspicuously displayed on the face of the warranty.

(d) A disclaimer, modification, or limitation made in violation of this section is not enforceable.

Legislative Notes to Section 310:

1. Some states have modified their versions of UCC Section 2-316, or otherwise enacted legislation, to limit or prohibit disclaimers of warranties in consumer sales transactions. For example, some states ban disclaimers altogether; some limit or ban disclaimers on new goods; some restrict them for motor vehicles but not other goods. Consumer lessees have the right to the same expectation of quality in the goods they lease as in goods they buy. If the state imposes any limitations or restrictions on a seller's ability to disclaim implied warranties, the state should consider amending its statutes imposing those limitations or restrictions to apply to lease transactions too.

2. Almost all states have enacted "Lemon Laws" that entitle a consumer to a price refund or replacement of seriously defective goods. A state enacting this Act should consider amending its Lemon Law to afford the same protection to consumer lessees as well as buyers.

3. Subsection (a)(4) of this Section 310 incorporates by reference certain provisions of the federal Magnuson-Moss Warranty Act and its implementing rules and regulations. For states where incorporation of present and future federal law is permissible, the phrase "as amended" should be retained so that the incorporation of federal law remains current. For states in which incorporation of future provisions of federal law is constitutionally impermissible, the phrase "as amended" should be omitted. It will then be necessary for those states to re-enact this definition periodically, i.e., whenever changes occur in the federal law.

Official Comment

1. UCC Article 2A deals with warranties and disclaimers in Sections 2A-210 through 2A-216. Thus, baseline protections for a consumer lessee's expectations about the quality and performance of the leased goods are established in the Uniform Commercial Code.

2. Consumer buyers (as opposed to lessees), however, enjoy additional protection, beyond the UCC, under the federal Magnuson-Moss Warranty Act (MMWA). That Act requires disclosure of warranty content, and also bars a disclaimer of implied warranties if the seller or supplier has made a "written warranty" under that Act. This section 310 is designed to extend to consumer lessees this non-disclaimer aspect of MMWA. Like UCC Article 2A and the MMWA itself, this provision does not require a supplier or lessor of leased goods to make any express or written warranty. But if the supplier or lessor does make a "written warranty" (as defined here consistently with MMWA), then the implied warranties on those goods cannot be totally disclaimed. As under MMWA, however, if the written warranty is not a "full" warranty in MMWA terms, the implied warranties may be limited to the duration of the written warranty. This Section 310 therefore assures that consumer lessees get substantively the same warranty rights as federal law provides for consumer buyers.

[ARTICLE 4]

TERMINATION OF CONSUMER LEASE

SECTION 401. LIABILITY FOR GAP AMOUNT ON TOTAL LOSS OF GOODS.

(a) In this section, "gap amount" means the amount that would be owed by the lessee if a total loss of the goods occasioned by theft, physical damage, or other occurrence were considered an early termination of the lease, less the portion of the cash value of the goods received by the holder from the lessee's insurer or from any other source. The term does not include the deductible amount applicable to a casualty insurance policy on the goods, past due lease payments, or any other unpaid amounts owed by the lessee under the lease at the time of the total loss of the goods, or amounts by which the insurance proceeds otherwise payable are reduced on account of past due premiums or the condition of the goods before the total loss occurred.

(b) Except as otherwise provided in subsection (c), a consumer lease may not provide that the lessee is responsible for the gap amount. A provision in violation of this subsection is not enforceable.

(c) If a consumer lease so provides, the holder may recover from the lessee the portion of the gap amount attributable to:

(1) the lessee's failure to maintain in effect casualty insurance required under the lease;

(2) the lessee's fraud, intentional wrongful act or omission, or gross negligence; or

(3) the forfeiture or confiscation of the goods under governmental authority.

Official Comment

1. When leased goods are destroyed, stolen, or otherwise become a total loss during the term of the lease, this event constitutes a *de facto* early termination of the lease. Although casualty insurance will usually cover all or most of the current market value of the goods, there may be a "gap" between that sum and the amount due to terminate the lease at that point. This happens if the goods depreciate faster than the lessee's payments reduce the capitalized cost. The question is whether the lease may allocate that "gap" liability to the lessee, and whether lessors should then be able to charge the lessee for contractual protection against that liability. In the past some lessors have not allocated this gap liability to the consumer; instead the lessor protects itself through its own insurance or by absorbing these occasional losses internally. On the other hand, other lessors have contractually allocated this "gap liability" to the lessee, and used that as an opportunity to offer the consumer "gap liability waivers," "gap protection," or "gap insurance."

2. Subsection (b) mandates that the risk of gap losses must be absorbed and distributed through the holder's overall pricing structure, perhaps self-insured or covered by private insurance. With this restriction on gap liability, there is no longer a revenue opportunity represented by sales of gap liability waivers . In a sense all lessees pay a bit more to cover the occasional losses that otherwise would be borne by lessees whose leased goods suffer casualty. Casualty loss of the goods can occur at any time during the lease term, including in the early months when the "gap" between value and payoff figure is the greatest. The lessee does not *plan* to give up the goods at that point, and the lessee does not, once the goods are lost and the gap amount is calculated, have the option to continue with the lease (unless the holder substitutes comparable goods). It is altogether a forced, and unanticipated, early termination. Under this provision, the lessee's casualty insurance will pay the policy limits toward the value of the goods, and the lessee will pay the holder any deductible amount, but have no further early termination liability under the lease. Lessees thereby avoid possibly large and unexpected liabilities for gap amounts that would be due if they had not purchased gap coverage.

3. A prohibition on gap liability inhibits somewhat the parties' freedom to allocate the risk of loss by agreement. For leases generally, the general (or "default") rule is that, absent agreement otherwise, the lessor retains title to the goods, and bears the risk of loss during the lease term. UCC Section 2A-219(1). If there is no contractual allocation of risk to the lessee, and the leased goods are destroyed without fault by either the lessor or lessee, the consumer lease is "avoided." UCC Section 2A-221(a). Neither party would then have any further claim against the other. The holder could not seek further rent payments or other compensation from the lessee, nor would the lessee have a claim against the holder for nonperformance of the lease. The judgment reflected in this section is that the opportunity for lessors or others to sell gap liability coverage (and for

lessees to choose to buy, or not buy, that coverage) is an insufficient justification for such a substantial allocation of a risk that may be overlooked by consumers. This provision prevents surprise and possibly substantial liability loss for those lessees who might otherwise decline the gap liability coverage and then find themselves with a large gap responsibility if the goods are destroyed.

4. Under subsection (a) the determination of the gap amount begins by comparing two figures. One is the amount that the lessee would owe if the lease were considered to be terminated early, usually the unamortized capitalized cost on the date of the loss. The other figure is the amount the lessor or holder actually receives from the casualty insurer of the goods (or from a third party, such as a tortfeasor's liability insurer) as representing the cash value of the goods. The difference between these figures is the basic gap amount. Subsection (a) clarifies that certain other items are not part of the gap amount. These include insurance deductible amounts, amounts owed under the lease independently from the loss of the goods, and insurance proceeds reductions resulting from delinquent premium payments or write-downs of the value of the goods at the time of the total loss. This latter exclusion would apply if, for example, the insurer determined that prior to the loss of a leased vehicle it had been driven substantially more miles than the average for such a model, and the insurance proceeds were reduced accordingly. In any case the lessee cannot be required to make periodic lease payments beyond the date of loss of the goods.

5. Subsection (c) adds two qualifications. Under paragraph (1) the lease may provide that the lessee remains liable for the gap amount if the lessee has allowed required casualty insurance coverage to lapse, as by non-payment of premiums or other cancellation, and there is no substitute insurance in place. Paragraph (2) is the moral-hazard qualification. The general principle is that, although the basic risk of loss is the holder's, rather than the lessee's, the holder has a claim in the nature of subrogation against the person actually causing the loss. A lessee may not avoid gap (*i.e.*, early termination) liability by purposely destroying or "losing" the goods, or intentionally or by gross negligence allowing their destruction or loss. The burden is on the holder to show fraudulent, intentional or grossly negligent conduct by the lessee. Likewise, under paragraph (c)(3), the lease may provide that the lessee is responsible for the resulting "gap" amount if the goods are forfeited to, or confiscated by, the government, as for the transportation of illegal drugs,

SECTION 402. LESSEE'S DEFAULT; RIGHT TO CURE.

(a) A provision of a consumer lease stating events of default by the lessee is enforceable only to the extent that:

(1) the lessee does not make a payment required by the lease; or

(2) the holder establishes that the prospect of payment, performance, or realization of the holder's interest in the goods is significantly impaired.

(b) If a default is solely the lessee's failure to make a payment required under the lease and the lessee has not voluntarily surrendered the leased goods to the holder, a holder may not accelerate, take judicial action to collect, or repossess the leased goods unless the holder initiates a procedure for cure under this section and the lessee does not cure the default in a timely manner.

(c) A holder may initiate a procedure for cure by sending to the lessee, at any time after the lessee has been in default for 10 days, a notice of right to cure the default. The notice must be in a record, contain a conspicuous statement that the lessee is entitled to cure the default, and set forth the monetary amount necessary to cure the default, the date by which the curative payment is due, and the name, address, and telephone number of the holder from which information may be obtained regarding the cure. The date by which payment is due may not be less than 20 days after the notice is sent.

(d) Within the period for cure stated in the notice under subsection (c), the lessee may cure the default by tendering the amount of all unpaid sums due at the time of the tender, including any unpaid delinquency or default charges, but without additional security deposit or prepayment of periodic payments not yet due. Cure restores the rights of holder and lessee under the lease as if the default had not occurred.

(e) A lessee has the right to cure only once in any 12-month period during the period of the lease.

Official Comment

1. Default clauses in consumer leases may include a number of events of default in addition to failing to make payments due under the lease. Subsection (a)(2) restrains the holder from acting on such a default (*i.e.*, other than failure to pay) unless the holder is prepared to establish that the breach is a serious one. To be an actionable default, the lessee's conduct must threaten the holder's expectation of "payment, performance, or realization of the holder's interest in the goods." An example of the first would be the lessee's arrest and imprisonment. "Performance" might be impaired if the lessee failed to maintain required liability insurance and substitute insurance was not obtained. The holder's "realization" interest would be impaired if the goods were confiscated or impounded for violations of drug laws. The "significant impairment" standard is to be judged from the perspective of a reasonable holder at the time of the default; a judicial determination is not a pre-requisite. A holder may act on a "significant impairment" breach immediately, as by repossession or judicial action.

2. Where the lessee's breach is solely monetary – *i.e.*, a failure to make a payment – the lessee is entitled to an opportunity to "cure" the default before the holder can initiate any repossession, acceleration, or judicial collection action. A lessee may occasionally miss a payment inadvertently or because of a temporary financial bind, but be able to catch up the missed payments within a reasonable time. Subsection (b) restrains a holder from accelerating, suing, or repossessing until the "cure" procedure is initiated and the cure period has run. If the lessee covers the delinquent, un-accelerated obligation within the cure period and brings the account current, the lease continues on its original terms.

3. The effect of the cure mechanism is that the holder can initiate no acceleration, foreclosure, or judicial collection action until at least 30 days have passed after a payment is first "in default" under the lease. The minimum 30 days consists of a 10-day "grace" period and then a 20-day notice-and-cure period must be at least a 10 day grace period and then at least a 20 day cure period. The actual time span for cure may exceed 30 days if the holder defers initiating either of these steps. The process is as follows. Any time after the lessee has been in default for 10 days, the holder may send to the lessee the notice of right-to-cure. The 10 day period starts to run on the scheduled due date for the payment, without regard for any grace period before late charges are imposed. *E.g.*, if a payment is due on April 1, the trigger date for a cure notice is April 11, even if no late charge would accrue until April 15. The holder may then send a cure notice, whenever it wishes – immediately (on April 11) or later, perhaps only after a second or third missed payment. The cure notice starts a cure period, which must be no less than 20 days after the notice is sent and may be a longer time. If the lessee pays all past due amounts by the end of the cure period, the lease is restored on its original terms. If the lessee fails to cure, only then can the holder repossess or sue.

4. The "cure" amount is limited to obligations accrued under the lease to the date the lessee tenders the cure payment, including late or other delinquency charges. The holder may not impose a surcharge, in the form of a security deposit or new prepayment requirement, as a component of the cure amount.

5. The right to cure is a legal concession to a lessee temporarily in arrears. A lessee in default for failure to make a payment is therefore entitled to cure only once in any twelve-month period. Nothing in this section limits a holder's freedom to extend other accommodations to a lessee in default.

SECTION 403. REPOSSESSION; APPLICATION OF REALIZED VALUE.

(a) [Except as otherwise provided in subsection (d) and subject] [Subject] to Section 402, on a lessee's default, the holder may repossess the goods by judicial process or by self-help without a breach of the peace.

(b) After repossession of the goods on a lessee's default, the holder shall apply the realized value of the goods as provided in the lease or, if the lease contains no such provision, in the following order:

(1) default charges and collection costs imposed under the lease;

(2) obligations of the lessee that are due or in default under the lease; and

(3) the liability of the lessee on early termination of the lease.

(c) Unless otherwise agreed, a lessee is liable for any deficiency after application of the realized value. The holder may apply to the deficiency a security deposit taken under Section 303(b)(1) but shall refund to the lessee any amount of the security deposit remaining after satisfaction of the deficiency.

[(d) The use of electronic means to exercise the holder's rights under subsection (a) is prohibited in connection with a consumer lease.]

Legislative Note: Subsection (d) is bracketed as an option for state enactment. The use of electronic means to disable leased goods on default is beginning to emerge in the marketplace; for example, a vehicle lessor might electronically program a motor vehicle's ignition so that the vehicle will not start if the lessee is in default under the lease. These techniques are new; issues of propriety, safety, and reliability can be identified but are not fully resolved. The Uniform Computer Information Transactions Act prohibits electronic self-help in mass market computer-information transactions, and this subsection (d) is comparable. A state might either (1) enact this subsection for the time being, and review the issue of electronic self-help at a future time, or (2) omit this subsection and monitor electronic self-help practices as they develop.

Official Comment

1. Where a lessee is not entitled, or has failed, to cure a default under Section 402, repossession by the holder is proper. The lessee will in some cases surrender the goods voluntarily. Alternatively, the holder may proceed to recover the goods by judicial process, or the holder may repossess by self-help subject to the "breach of the peace" constraint. This is based on, and intended to be interpreted consistently with, the similar authorization in UCC Articles 2A and 9.

2. Subsection (b) states how the "realized value" of the repossessed goods is to be applied: either as the lease provides, or in the stated order. In many cases "realized value" will represent the proceeds from the resale or other disposition of the goods, but actual disposition is not required. (See Section 404 for calculation of the realized value.) The lessee normally remains liable for any deficiency if the realized value does not cover all the lessee's obligations under the lease.

3. Analytically, a security deposit is the last amount to be applied to a lessee's default obligation. Subsection (c) confirms this, and requires refund to the lessee of any security deposit surplus. Otherwise the lessee is not entitled to any surplus of realized value over the lessee's default obligation.

[4. Technology may permit a form of electronic disabling of leased goods that amounts to a repossession. This has been possible with respect to computers and computer information, where a lessor or licensor may build self-destruct or self-cancellation capabilities into the program features or software. Similar remote disabling is feasible for other kinds of "smart" devices, including motor vehicles. Electronic disabling may be useful if it saves repossession costs and reduces instances of confrontation or breach of the peace. But such disabling could present unreasonable risks to lessees under some circumstances, for example if important computer records or programs were erased or rendered non-functional, if needed household appliances became unusable, or if vehicle ignitions could be made inoperable without regard to safety, weather or related considerations. This subsection reflects the view that electronic self-

help is not appropriate in the case of consumer leases unless and until technology developments assure that it is exercised in a manner that will not create unreasonable risks.]

Legislative Note: If subsection (d) of Section 403 is enacted by a state, the applicable Official Comment is the bracketed Comment 4 just above. If subsection (d) is not enacted, the following Comment 4 is applicable.

[4. Technology permits a form of electronic disabling of leased goods that amounts to a repossession. This is possible with respect to computers and computer information, where a lessor or licensor may build self-destruct or self-cancellation capabilities into the program features or software. Similar remote disabling is feasible for other kinds of "smart" devices, including motor vehicles. Electronic disabling may be useful if it saves repossession costs and reduces instances of confrontation or breach of the peace. But such disabling could present unreasonable risks to lessees under some circumstances, for example if important computer records or programs were erased or rendered non-functional, if needed household appliances became unusable, or if vehicle ignitions could be made inoperable without regard to safety, weather or related considerations. This Section takes no position on electronic self-help *per se*. Courts of course may consider whether in particular circumstances an exercise of electronic self-help is unconscionable or constitutes a breach of the peace.]

SECTION 404. DETERMINING REALIZED VALUE.

(a) Subject to subsection (b), the amount of the realized value, if used to determine the lessee's liability on termination of a consumer lease, is the sum of:

(1) the amount of the rebate of premiums or charges for insurance, extended warranty, or service or maintenance contract to the extent the rebates are received by the holder; and

(2) one of the following:

(A) the price received by the holder on disposition of the leased goods by sale;

(B) if the goods are re-leased, the total of periodic payments plus the residual value under the new lease, reduced to present value; or

(C) if the goods are not disposed of, the higher of:

(i) the best offer for disposition of the goods; or

(ii) the fair market value of the goods.

(b) A lessee and holder under a consumer lease may agree at the time of termination on the realized value of the goods, or may agree in the lease or at the time of termination on a method for determining it, and the value so agreed upon or determined, unless unreasonable, is the realized value. An agreed realized value is not unreasonable if the value is determined by an appraiser agreed to by the holder and lessee, or by reference to a generally accepted reference source for goods of the kind.

(c) If the realized value is determined under subsection (a)(2)(A) or (B), the disposition may be by public or private sale or re-lease, at any time and place, and on any terms. Every aspect of the disposition, including the method, manner, time, place, and terms must be commercially reasonable. Disposition in a wholesale market is not unreasonable.

(d) If a disposition is to a person related to the holder, or a person obligated to the holder under an agreement for recourse, repurchase, or the like, the realized value is not less than the fair market value of the goods.

(e) If a disposition is not commercially reasonable, the realized value must be established by reference to the retail market value of goods of the kind and condition at issue.

Official Comment

1. When a consumer lease is terminated early (voluntarily or upon default), the lessee's termination liability is often measured by reference to the then-value of the

goods. (This is in contrast to comparing present-value equivalents of contract rents and market rents over the remaining lease term. Cf. UCC Section 2A-528). The same is generally true at the scheduled expiration of an "open-end lease." This section permits "realized value" to be measured in alternative ways. In all cases, the realized value includes rebates from insurance or other charges if the holder actually receives or is credited with that money.

2. Under subsection (a)(2)(A), when the holder disposes of the goods by sale, the price received is the realized value. If the disposition is by re-lease, under subsection (a)(2)(B), it is the present value of rent payments plus the estimated residual value under the new lease. If the holder retains the goods, under subsection (a)(2)(C) the realized value is the highest actual offer received or (if higher) the market value of the goods. In this context "fair market value" may be determined in any reasonable manner in the market in which the holder would otherwise dispose of the goods, which may be a wholesale market.

3. As an alternative, subsection (b) permits "realized value" to be set by agreement of the parties so long as the valuation is not unreasonable. This may be the preferable alternative for the parties where the holder either does not plan, or it is not feasible, to dispose of the goods promptly. The agreement as to value must be made at the time of lease termination, or the lease may establish a formula or method for determining the value of the goods at lease termination, such as by reference to a standard "blue book" vehicle guide. This is to assure that valuation occurs when the condition and likely market-value of the goods can be assessed. What is not allowed is agreeing in the lease that the goods will be worth a specific dollar amount two or three years in the future. The second sentence provides a safe harbor for the holder if the realized value is based on an agreed appraisal or a standard price guide as of the time of lease termination.

4. Subsections (c) through (e) address the standards for a proper sale or other disposition of the goods if the holder chooses to dispose of the goods rather than retain them. This would apply to dispositions after default and repossession, after voluntary early termination, and also at the scheduled termination of an open-end lease. In subsection (c), the basic standard is "commercial reasonableness," as under UCC Article 9. Like UCC Article 2A (but unlike UCC Article 9), this section imposes on the holder no particular responsibilities either to notify the lessee of the time or manner of disposition of the goods or to provide a particular form of accounting for the proceeds. Unlike in the foreclosure of a security interest in goods, a lessee has no right to redeem the collateral, nor any "equity interest" that may produce a surplus for the lessee, and lessees have little opportunity realistically to monitor the commercial reasonableness of what are usually private resales. If the holder pursues a deficiency claim, the holder will need to support that claim in some manner if the lessee challenges it.

5. Subsection (c) rejects the notion that the realized value must be measured by reference to a retail market. It is impracticable in most cases for the holder to sell or re-

lease at retail, and to do so would likely add resale expenses for which the lessee would be responsible, reducing any theoretical gain from a retail valuation. Returned or repossessed goods are usually liquidated quickly in a wholesale market; a legitimate wholesale market sale price is a reasonable measure of value.

6. This section does not prohibit the holder from selling the goods to related parties, at either public or private sales. But where the holder disposes of the goods to an affiliate or similarly related person, or to the originating dealer under a recourse agreement, there may be less incentive for the holder to maximize the yield on that sale. Such "insider" sales at reduced prices may be suggestive of collusion and suspect for that reason. The approach in subsection (d) is not to prohibit such an insider sale, which in fact may be an expedient mode of disposition. Rather, in an insider sale, whether public or private, the lessee must be credited with at least the fair market value as determined in the customary resale market for goods of the kind. Since the holder by definition owns the leased goods, a holder's purported sale of repossessed goods to itself is a non-event that should be disregarded in determining realized value. The phrase "person related to" has the same meaning as in UCC Section 9-102(a)(63).

7. Subsection (e) imposes a sanction on a holder whose disposition is not commercially reasonable. It directs that realized value is to be set at *retail* market value if the holder has acted improperly. The difference between the yield from an improper disposition and retail value may be considered a form of actual damages, for which the holder would be liable under Section 501(b). This sanction is in lieu of an absolute bar rule that would forfeit entirely the holder's claim to a deficiency. Cf., UCC Section 9-626(b). This is a special valuation rule to be applied retrospectively once it is determined that an actual disposition was not commercially reasonable; it permits no inference that retail valuation is required in other circumstances. See Comment 5, supra.

SECTION 405. EARLY TERMINATION LIABILITY.

(a) A consumer lease may provide a measure or formula for the lessee's liability on early termination, but only at an amount reasonable in light of the anticipated or actual harm caused by the early termination, the difficulties of proof of loss, and the inconvenience or unfeasibility of otherwise obtaining an adequate remedy. An early termination charge does not include:

(1) unpaid periodic payments, or unpaid late, delinquency, or default charges, accrued through the date of early termination;

(2) charges provided under the lease for excess wear and use or excess mileage, but only to the extent the excess wear and use or excess mileage are not otherwise accounted for in the early termination charge;

(3) other unpaid amounts for which the lessee is responsible under the lease;

(4) official fees and taxes imposed in connection with lease termination; or

(5) the greater of a reasonable disposition fee in a fixed amount disclosed in the lease or the reasonable costs incurred in retaking, storing, preparing for disposition, and disposing of the goods.

(b) A charge imposed on a lessee for early termination of a consumer lease other than an open-end consumer lease may not exceed the total of the remaining periodic payments scheduled under the lease.

Official Comment

1. Leases of goods are generally written to bind the lessee for the full term of the lease. Some leases may end in default and repossession, and are terminated early for that reason. In addition, holders will often agree to an early termination of the lease at the lessee's request, perhaps to facilitate the lessee's buying or leasing new goods. Technically, a lessee who defaults or otherwise ends the lease early is breaching the lease and, under UCC Article 2A or other general law, would be liable for damages. By comparison to real estate leases, or by reference to the default damages rule in UCC Article 2A, these damages could theoretically be measured as the present value of the lessor's expectancy under the lease. Cf., UCC Section 2A-528(1) [present value of remaining scheduled rent less present value of market rent for remainder of term]. Or the lessor's damages could be "otherwise determined pursuant to agreement of the parties." *Id*. Previously leased consumer goods are not usually re-leased, and there is rarely a meaningful market in which to assess a "market rent" for used consumer goods over the irregular time periods that correspond to the remaining term of the lease. The common practice in commercial as well as consumer leasing markets has been to include in the lease a formula or other measure for calculating the lessee's payoff figure, in the nature of liquidated damages. Cf. UCC Section 2A-504. These formulas are generally designed to assure the lessor or holder full recovery of the remaining unpaid capitalized cost of the goods, less their actual liquidation (resale) value at the time of lease termination. This section sets outside limits for the amount of such an early termination charge. It does so,

in part, by replicating the "reasonableness" standard of Section 183(b) of the federal Consumer Leasing Act, thus adopting the federal standard for early termination formulas in all leases subject to this Act.

The federal Consumer Leasing Act requires disclosure concerning early termination charges. Reg. M Section 213.4(g). There must be "a statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term; and the amount or a description of the method for determining the amount of any penalty or other charge for early termination, which must be reasonable." The Federal Reserve Board Staff Commentary paragraph 4(g)(1)-2 explains that

> a lessor may use the name of a generally accepted method of computing the unamortized cost portion . . . of its early termination charges. . . . For example, a lessor may state that the 'constant-yield' method will be utilized in obtaining the adjusted lease balance.

If such a short-hand description is used, the disclosure must specify how the resulting figure is used in computing the *total* early termination charge. And if the lessor merely refers to a named method in this manner, "the lessor must provide a written explanation of that method if requested by the consumer."

For motor vehicle leases, Regulation M Section 213.4(g)(2) also requires a specific early termination notice:

> Early Termination. You may have to pay a substantial charge if you end this lease early. *The charge may be up to several thousand dollars.* The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

2. Under subsection (a) an early termination charge must be *reasonable* in light of the stated factors. This is in lieu of requiring a calculation of damages based on estimates of market rent under the common law or UCC Section 2A-528. The "reasonableness" of an early termination formula, therefore, is ultimately measured by whether it is an acceptable alternative to those other measures. This Act uses the wording of the federal act, rather than UCC Section 2A-504(1), in order to maintain consistency of language and interpretation between the federal and state consumer leasing laws, but the intention is that any early termination charge that violates UCC Section 2A-504 also violates this Act.

3. Certain charges that the lessee may owe at early termination are not attributable to that event and so are not part of the assessment of a permissible early termination charge. This includes overdue periodic lease payments, late or delinquency charges, or other charges that have accrued under the lease. Those charges are due and payable regardless of the early termination, and remain so.

In some cases the holder may choose not to liquidate, *i.e.* sell, the leased goods (to produce a "realized value") when they are returned early, or may base the early termination charge on a published value for the vehicle and may then impose excess wear and use charges [cf., Section 407] separate from the charge for early termination. By contrast, the imposition of excess wear and use charges could be duplicative of the early termination charge if that charge is based directly on the realized value of the goods and the elements of excess wear and use have been taken into account in the lower realized value. In such a case, double counting should not be allowed. But in cases where the excess wear and use does not affect the amount of the early termination charge, the holder is entitled to excess wear and use charges in addition to the early termination charge.

4. Subsection (a)(5) allows recovery, separate from the early termination charge, of either a fixed disposition fee (generally related to the expected expense of retaking, storing and disposing of the goods), or the actual costs expended in repossessing and foreclosing after default. Thus, a lease might provide a uniform "disposition" fee in a sum certain, regardless of how or when the goods are returned to the holder. Or the lease might provide that the holder may recover a sum equal to actual out-of-pocket expenses where repossession is necessary. Or the lease might provide that the lessee will be obligated for the greater of these two measures, but not both.

5. The baseline test is whether the aggregate early termination charge is reasonable in light of the stated factors. The phrase "anticipated or actual harm" means that a proper early termination charge or formula may be specified in the lease based on a projection of likely future circumstances; or in some cases the amount of the early termination charge or a component of it may not be addressed at all until the termination occurs and "actual" harm can be assessed. The "difficulties of proof of loss" refer among other things to the lack of a readily ascertainable "market rent" that would be needed to compare the yield under a hypothetical substitute lease. The phrase "inconvenience and non-feasibility of otherwise obtaining an adequate remedy" implicitly recognizes that in the often fast-paced and high volume consumer leasing markets (including secondary market securitizations) it is important for holders to be able to clear their books of terminated leases without undue complexity or delay, and that an early termination formula may properly reflect this objective. Unlike usury laws for credit transactions, this Act does not regulate the amounts or manner of calculation of rents and related charges in consumer leases, and it is therefore not feasible to set precise dollar limits or formulas for calculating a maximum permissible "payoff" figure when a lease is terminated early. The test remains whether the early termination charge provided in the lease is *reasonable* as a form of liquidated damages.

6. The reasonableness of an early termination charge can take into account prevailing practices and standards in the market. For example, Financial Accounting Standards Board accounting conventions, such as the "constant yield method" of calculating the unamortized capitalized cost at early termination, may serve as guides to acceptable business practices. Thus, an early termination charge that is less than or equal

to the unamortized capitalized cost, calculated in accordance with the constant yield method or another generally accepted actuarial method, plus a reasonable prepayment charge disclosed in the lease, minus the realized value of the goods, may be given a rebuttable presumption of reasonableness. It bears emphasis, however, that this Act does not require any particular method of calculating early termination charges, nor does it vest any methodology with a conclusive presumption of reasonableness.

7. Subsection (b) sets an absolute cap on early termination charges for closed-end consumer leases. The lessee may not be charged more for *early* termination than what the lessee would pay if the lessee made all scheduled payments to the end of the scheduled lease term. (This limitation does not apply to open-end leases where there is a different allocation of residual value risk. Cf., Section 307.)

In many closed-end consumer leases, particularly of motor vehicles, the holder contractually bears the depreciation risk only at the scheduled termination of the lease, when the lessee can simply surrender the goods and walk away. By this view, at all intermediate points the lessee bears the depreciation risk, and the lessee's early termination liability should reflect that allocation of risk. Subsection (b) does not reject, but does qualify, this approach. The issue is whether the holder may use the occasion of an otherwise mutually agreeable early termination to allocate dramatic depreciation risks to a lessee who may not appreciate how or why the payoff figure is so high. As a general proposition, on early termination the lessee may be held responsible for a sum that represents the full amount then owing under the lease (the unpaid adjusted capitalized cost) less the current realized value of the goods. But if, for reasons other than lessee's excess wear and use or excess mileage, the goods have depreciated so dramatically as to leave a balance owing that is in excess of all remaining scheduled payments (toward depreciation and rent charge), the holder can collect no more than the amount of those remaining payments. In effect this allocates to the holder rather than to the consumer lessee a portion of the risk of bad judgment about depreciation at the time of early termination.

SECTION 406. REPORTING EARLY TERMINATION TO CONSUMER REPORTING AGENCY. If a consumer lease is terminated before its scheduled expiration by mutual agreement of the holder and lessee, the holder may not report the early termination to a consumer reporting agency as a default by the lessee or guarantor. This section does not preclude the holder from reporting to a consumer reporting agency a

previous default by the lessee or guarantor under the lease or a later default under the early termination agreement.

Official Comment

1. When a holder agrees to the lessee's request to terminate a lease early, in effect the holder waives the lessee's contractual obligation to let the lease run to term. This section recognizes this reality. In the case of an agreed-to early termination, and assuming the lessee is not otherwise in default, the holder may not report the early lease termination as a default or equivalent "derogatory" entry to a credit reporting agency if the lessee settles the early termination obligation under the lease in a timely fashion.

2. This provision does not prevent the holder of the lease from reporting previous delinquencies under the lease, such as missed or late payments. Nor does it prevent the lease holder from reporting as a default the lessee's failure to pay the early termination charge as agreed.

SECTION 407. EXCESS WEAR AND USE; EXCESS MILEAGE.

(a) A consumer lease may prescribe standards and impose liability on the lessee for excess wear and use of the leased goods if the standards and amounts of liability are reasonable and reasonably applied to compensate the holder due to damage, abuse, or lack of maintenance, but not exceeding the estimated or actual cost of repair and refurbishing.

(b) Standards for excess wear and use do not subject the lessee to liability for:

(1) ordinary and expected wear, use, and depreciation of the goods during the period of the lessee's possession and use; or

(2) damage or repair to the extent:

(A) the leased goods are covered by insurance, warranty, or by a repair, service, or maintenance agreement issued in connection with the lease;

(B) recovery or repair under the insurance, warranty, or agreement is available to the holder; and

(C) the lessee cooperates as necessary to submit, document, and process a claim under the insurance, warranty, or agreement.

(c) In connection with the expiration of a consumer lease of goods other than a motor vehicle, if the holder charges the lessee for excess wear and use, the holder shall:

(1) send to the lessee notice in a record of the nature and amount of the charges within five business days after the goods are returned to the holder; and

(2) provide reasonable time and access for the lessee or another person designated by the lessee to examine the goods.

(d) The time is reasonable under subsection (c)(2) if it is no less than 12 business days after the holder sends the notice under subsection (c)(1).

(e) In connection with the expiration of a consumer lease of a motor vehicle, if the lease provides for charges for excess wear and use, the following rules apply:

(1) The holder may impose a charge for excess wear and use only if, not more than 90 nor less than 30 days before the expiration of the lease, the holder sends the lessee notice in a record of:

(A) the lessee's rights under paragraphs (2) through (4); and

(B) the identity of one or more persons, or a class of persons, authorized to inspect the vehicle for excess wear and use.

(2) The lessee may have the vehicle inspected for excess wear and use by the holder or holder's authorized inspector, or by an independent inspector agreeable to the holder, at a reasonably accessible site within 20 days before the expiration of the lease.

(3) A report in a record of an inspection under paragraph (2) is binding on the holder if the lessee either pays the charge for the excess wear and use indicated or has necessary repairs made at the lessee's expense, by the time the vehicle is returned at the expiration of the lease. However, if the holder notifies the lessee in a record within 60 days after return of the vehicle, the lessee remains responsible for excess wear and use that the holder proves was not reasonably detectable by an inspection under paragraph (2), was incurred after the inspection and before return of the vehicle, or was the result of incomplete or improper repairs.

(4) If an inspection under paragraph (2) is not made before expiration of the lease, the holder may not impose a charge for excess wear and use unless the holder sends to the lessee notice in a record of the nature and amount of the charges within 60 days after return of the vehicle to the holder.

(f) In addition to charges for excess wear and use, a consumer lease of a motor vehicle may provide for the imposition of a reasonable charge for excess mileage.

Official Comment

1. The linchpin in pricing consumer leases, particularly closed-end motor vehicle leases, is estimating the value the goods will have at the end of the lease when the lessee may surrender the goods without further obligation. The lessor is estimating the depreciation that will occur over the lease term, expecting that the lessee's payments will generally keep pace, and projecting that the combination of those payments plus the "residual value" of the goods will cover the lessor's overall investment and expected earnings on that transaction. The lessor necessarily projects depreciation on the basis of average or typical use patterns over the lease term. Sometimes the goods may be

surrendered in damaged condition or showing signs of unusually heavy use or lack of maintenance. Subsection (a) recognizes the justification for contractual imposition on a lessee of responsibility for "excess wear and use" (EWU). The standards themselves must be reasonable, and they must be applied in a reasonable – *i.e.*, consistent, non-arbitrary – manner. Since the objective is to allow the lessor to recover its investment and expected return for the goods, the EWU charges may not exceed the estimated or actual costs of returning the goods to their expected condition.

Explicit disclosure of EWU standards is required under the federal Consumer Leasing Act [Regulation M Section 213.4(h)(2)], and this Act [Section 203(a)]. It is implicit, in any event, that EWU standards, to be enforceable, must be part of the contractual relationship between the parties.

2. Some degree of wear and depreciation is inevitable during the term of a lease; the goods will normally be used and will age, and these expected patterns may differ by type of goods. A four-year old car will likely be less pristine than a two-year old vehicle, for example. These normal patterns of depreciation cannot be treated as "excess" wear and use subject to a special charge. Likewise, a lessee cannot be required to pay as EWU charges amounts covered by insurance or a warranty or service contract under which the holder may claim. This assumes that the lessee has cooperated in any way reasonably necessary to submit, document and process the warranty or service contract claim.

3. If EWU charges are to be imposed on a lessee at lease termination, fundamental fairness requires that the lessee have a reasonable opportunity to verify whether those charges are appropriate. At the same time, it creates economic waste to require the holder to retain or store the leased goods until all possible EWU issues are resolved. Subsections (c) through (e) seek to balance these interests.

4. For leases of goods *other than* motor vehicles, subsections (c) and (d) prescribe a basic level of due process. Within a reasonably brief time after lease termination, the holder must notify the lessee of EWU charges and permit the lessee (or lessee's representative) access to the goods for inspection. If the EWU charges are contested, the lessee has a reasonable period (at least 12 business days) to arrange a reinspection by a mutually agreeable inspector. Given the variety of non-vehicle goods potentially covered by this subsection, and the varying circumstances that may exist at lease termination, this subsection does not spell out a specific dispute resolution procedure or time frames for resolving an EWU dispute. It should be sufficient protection that, under subsection (a), EWU standards must be reasonably *applied*, as well as be reasonable in their content. Nothing in this subsection precludes the parties from agreeing, in the lease or otherwise, to a more expeditious method of identifying and resolving EWU claims, such as by pre-termination inspection, as long as the lessee has an opportunity to inspect, contest the EWU charge, and obtain a reinspection.

5. Motor vehicle leases call for a somewhat different pattern to expedite resolution of EWU claims. This is partly because the vehicles themselves are more prone to damage or wear than "indoor" goods, and also because there is more justification for the holder to dispose of the vehicle quickly to maximize its value and avoid interim storage and other incidental expenses. A holder's right to collect EWU charges in a motor vehicle lease depends on following the prescribed procedure in subsection (e).

a. Within a window of 30 to 90 days before the lease will end, the holder must notify the lessee of the EWU ground rules spelled out in paragraphs (2) through (4) of subsection (e). The notification must also identify inspectors authorized to evaluate EWU damages and the costs of repair. This may be by reference to particular inspectors by name, or to a class of such inspectors, such as "any authorized [brand] dealership," or "a certified [state] inspection station." If the lessee brings the vehicle in for pre-termination inspection within 20 days before lease end, and either pays any EWU charge or has the vehicle repaired to cure the excess wear and use, that satisfies the lessee's responsibility.

b. As a qualification, under subsection (e)(3), the lessee remains responsible for latent damage, post-inspection damage, or inadequately repaired damage, provided the holder notifies the lessee within 60 days after the vehicle is returned. These kinds of damage are not self-evident, and may not be discovered until after the vehicle has been resold. If the lessee disputes the charge, the holder must be prepared to prove that the damage was pre-existing, and could not properly report non-payment as a delinquency to a credit reporting agency unless that burden were satisfied. At the same time, this subsection does not affect the holder's right to recover from the lessee for damages the lessee fraudulently caused or disguised, such as an odometer replacement or roll-back.

c. The purpose of this subsection (e) is to permit and encourage EWU vehicle inspections before scheduled expiration of the lease, so that when the vehicle is turned in the existence and amount of any EWU liability have already been resolved and the holder can dispose of the vehicle immediately. It is in the lessee's interest, as much as the holder's, to use this advance inspection procedure. If the vehicle lessee fails to use the pre-termination inspection process, subsection (e)(4) requires the holder to notify the lessee of any EWU claim within a specified period. In such a case, the holder need not retain the vehicle, allow the lessee access to it, or agree to a binding reinspection, but its assessment of EWU charges remains subject to challenge by the lessee on "reasonableness" grounds.

d. The notice and procedures required under subsection (e) are applicable only when a vehicle lease is about to expire, i.e., at the end of its scheduled term. Some leases may make the lessee responsible for EWU charges at other times, such as at early termination. No special notice or other rules apply in such a case, but the imposition of the EWU charge remains subject to the general standard of reasonableness in subsection (a).

6. Vehicle leases typically include provisions stating maximum authorized mileage during the lease, and imposing a per-mile charge for any excess miles. Subsection (f) authorizes such charges, separate and apart from EWU charges (so long as they are not duplicative). The inclusion of this explicit authorization for excess-mileage charges in vehicle leases does not prohibit comparable provisions for non-motor vehicle leases. For example, a lease of an aircraft might include a charge for excess flying hours.

7. This section applies to open-end as well as closed-end consumer leases, insofar as an open-end lease provides for charges for excess wear and use. At the expiration of an open end lease the lessee may always obtain a binding appraisal of the overall value of the goods. Cf., Section 307(d).

[ARTICLE 5]

PENALTIES; ENFORCEMENT; ADMINISTRATION

SECTION 501. PRIVATE REMEDIES.

(a) In this [article], with respect to violations of Sections 205 and 406, "lessee" includes a guarantor.

(b) A holder that violates this [Act] is liable to the lessee for actual damages. Where actual damages are claimed as a result of an alleged violation of a disclosure requirement under this [Act], the lessee must show reliance on the holder's conduct to the lessee's detriment as a necessary element to recovering the damages.

(c) Whether or not a lessee seeks or is entitled to damages, the lessee may maintain an action for declaratory or injunctive relief.

(d) Except in a class action, and except as otherwise provided in this [article], in addition to actual damages under subsection (b), a holder who violates this [Act] is liable for statutory damages of 25 percent of the amount of payments scheduled under the lease, but no less than $500 and no more than $1,000, for a violation of any of the following provisions: Sections 203(a), (b), (c)(1), (2), (4), and (5), and (d); 204; 206; 301; 303(d); 304(b); 308(c); 309; 406; and 407(c).

(e) In a successful action under this [article], a lessee is also entitled to the costs of the action and, except as otherwise provided in subsection (f), reasonable attorney's fees as determined by the court. In determining the award of attorney's fees, the amount of the lessee's recovery is not controlling.

(f) In order for a lessee as plaintiff in an action for monetary damages to recover attorney's fees under subsection (e), the following rules apply:

(1) Before the commencement of the action, the lessee must send the holder notice in a record of the alleged violation and the damages sought.

(2) If, within 20 days after the lessee's notification is sent, the holder provides the lessee with an offer of settlement in a record agreeing to pay the lessee an amount that equals or exceeds the damages eventually awarded to the lessee in the final judgment entered in the action, the lessee may not recover attorney's fees incurred after the lessee's receipt of the settlement offer. The lessee may nevertheless recover attorney's fees incurred before the receipt of the settlement offer in an amount determined by the court based on a reasonable hourly rate.

(3) Notification by the lessee under paragraph (1) tolls the statute of limitations for a period of 60 days after the date the notification is sent.

Official Comment

1. This Article refers to a "lessee" as the claimant. By virtue of the definition of lessee in Section 102(a)(9), in some circumstances private actions under this section may be brought by others who have succeeded to a lessee's rights. A lessee's trustee in bankruptcy, or the personal representative of a deceased lessee, are examples. Sections 205 and 406 of this Act, however, create obligations to guarantors, who are not included in the general definition of lessee. The definition in subsection (a) is meant to ensure that a claim based on a violation of those sections of this Act is actionable by the guarantor.

2. This Act adopts, in part, a "private attorney general" policy toward its enforcement, *i.e.*, a structure of civil liability for violators that encourages consumers to act on their own initiative to protect their interests and also to police the marketplace and sanction violators. This structure includes recovery of actual damages, injunctive or declaratory relief in appropriate cases, and statutory damages for certain violations. In addition a successful consumer litigant is entitled to recover attorney's fees and court costs. These sanctions, and defenses to them, are similar but not identical to those afforded consumers under Section 185 of the federal Consumer Leasing Act [15 U.S.C.

Section 1667d] which incorporates the civil liability rules from Section 130 of the Truth in Lending Act [15 U.S.C. Section 1640]. See the comparison chart in Comment 1 to Section 504.

3. Actual damages proved are recoverable in all cases; this includes both direct and consequential damages. Lessees may also bring declaratory judgment or injunction actions where appropriate under the normal criteria for such actions. In addition, subsection (d) permits recovery of statutory damages for violations of certain provisions of this Act, even where no actual damages are proved.

4. For a violation of the enumerated provisions of this Act, subsection (d)(1) directs an award of statutory damages measured by 25% of the total of payments called for under the lease, but with a floor of $500 and a cap of $1,000. The "total of payments" refers to scheduled periodic payments, or the single payment amount in a single-payment lease. This is a non-discretionary award: once the violation is established the lessee is entitled to the dollar sum derived through this formula. The common ingredient of the violations subject to statutory damages under this subsection is that they constitute non- or mis-disclosure of important information about the lease or rights or obligations under it. Section 308(c), on the other hand, is a prohibition of certain conduct in a lessor's purchase of substitute insurance.

5. Statutory damages are not recoverable in a class action. Statutory damages serve largely as an incentive to individual consumers to vindicate their rights. When statutory damages are aggregated across a class of hundreds or thousands of lessees, the potential exposure for lessors or holders can be out of proportion to any harm or injury involved. The threat of class action liability for statutory damages provides class plaintiffs with strong leverage to gain a settlement regardless of the ultimate merits of the claim. Widespread violations of this Act are better policed by state officials under Section 507. Class actions are still available for actual damages.

6. To achieve the private attorney general purposes of this section, the successful consumer litigant needs to be able to recover litigation expenses, including attorney's fees and court costs. The consumer is "successful" in this sense whenever a favorable court judgment or settlement is based on a violation of this Act, regardless of the amount of the consumer's monetary recovery. The attorney's fee award should reflect actual time spent resolving liability under this Act, and should not be reduced in proportion to the consumer's recovery. This Act adopts the approach of cases like Bittner v. Tri-County Toyota, Inc., 569 N.E.2d 464 (Ohio 1991), and Jordan v. Transnational Motors., Inc., 537 N.W.2d 471 (Mich. App. 1995), and rejects the approach of cases like James v. Thermal Master, Inc., 562 N.E.2d 917 (Ohio App. 1988).

7. Balanced against an aggrieved lessee's need to recover litigation expenses are the interests of lease holders and the judicial system in reaching timely settlements of disputes over violations of this Act. Subsection (f) establishes a mechanism to encourage

settlements in actions for monetary damages. This method permits a holder to make a settlement offer that becomes the benchmark for whether the lessee may recover attorney fees if the lessee rejects the settlement offer. To initiate this procedure, the lessee is first required to send the holder notice of the alleged violation of this Act, and the damages sought, before filing an action. While the lessee can then immediately file suit, the holder has 20 days after the notice is sent in which to make a settlement offer (including the lessee's reasonable attorney's fees to that point). If the lessee refuses the settlement offer and the litigation proceeds, the lessee is prohibited from recovering attorney's fees, even in a successful action, if the damages awarded are not greater than the amount that the holder offered in settlement. This mechanism removes an incentive for lessee's counsel to prolong litigation over technical violations in the hope of gaining enhanced attorney's fee settlements or awards. In order to preserve the lessee's rights from being affected by the statute of limitations during this process, the statute of limitations is tolled for 60 days after the lessee's notice and demand are sent.

The limitations in subsections (f)(1) and (2) apply when a lessee seeks either actual or statutory damages. In this context it is feasible and desirable to allow the alleged violator an opportunity to evaluate a lessee's claim and tender an offer of settlement before litigation proceeds. Where a lessee seeks solely non-damages relief, such as an injunction or other specific relief, or where the lessee as defendant is asserting a counterclaim or claim in recoupment, it is not practical to condition a successful lessee's attorney's fees on the making of a non-judicial demand for particular relief, and this subsection does not require it. In any case, nothing in this subsection requires a lessee to wait for the holder's response to the lessee's notification before filing suit.

SECTION 502. RELIANCE ON LESSEE'S REPRESENTATION. A holder is not liable to any person, and a holder's rights under a lease are not affected, because of any act or omission arising out of the holder's reasonable belief that a transaction is not a consumer lease if the holder's belief is based on its reasonable reliance on a lessee's representation in a record concerning the purpose for which the leased goods were to be used.

Official Comment

1. This section protects from liability for violating this Act a holder who concludes that a lease is not a consumer lease because the lessee has represented that the goods are not for a consumer purpose. This immunity rule, drawn from UCC Section 9-628(c), has several conditions. The lessee's representation concerning intended use must

be in a record; the lessor cannot rely on oral statements from the lessee. And the lessor must be reasonable both in relying on the lessee's representation and in drawing the conclusion that the lease is not a consumer lease.

2. No particular formality is required for the lessee's representation as to the intended use of the leased goods. A check-box in the lease itself, or in other transactional documentation, would suffice.

3. The immunity provided by this section applies both to private actions by lessees and to administrative enforcement under Section 507.

SECTION 503. STATUTE OF LIMITATIONS.

(a) Except as otherwise provided in subsections (b) through (d), an action under this [article] may not be commenced more than one year after the termination of the lease that is the subject of the action.

(b) A class action under this [article] may not be commenced more than one year after the occurrence of the violation that is the subject of the action.

(c) An action for a violation of Section 202, 203, or 204 may not be commenced more than two years after the date of the execution of the lease.

(d) A lessee's claim for actual or statutory damages under this [article] may be raised by way of recoupment in an action by the holder on the lease without regard to the periods specified in subsections (a) through (c).

Official Comment

1. Subsection (a) establishes a general one-year statute of limitations for actions for violations of this Act, measured from the *termination* of the lease and not from the occurrence of the violation. (The limitations period under the federal Consumer Leasing Act is also one year after termination of the lease.) Some compliance requirements of this Act run through the full term of the lease. Some violations also may not be readily discoverable during the term of a lease, and may only be detected when the lease terminates – either at scheduled expiration, or at early termination which may be voluntary or as a result of default. In any case, under subsection (d), a lessee may always

raise a violation of this Act as a matter of recoupment against a holder's collection action based on the lease.

2. Different statutes of limitations apply in certain situations. Under subsection (b), the limitations period for class actions (which may be brought only for actual damages) is one year from the occurrence of the alleged violation. This reduces the possibility that a lessee plaintiff can delay bringing a class action, perhaps for a number of years if the general statute of limitations applied, in order to expand the size of the class. Under subsection (c), for alleged violations that can occur only at the inception of the lease, the statute of limitations runs for two years from the execution of the lease. This refers to the time at which both lessor and lessee become mutually obligated on the lease.

3. Some courts have held that the running of a statute of limitations may be suspended where the lessor's conduct effectively masks the violation so that the lessee could not readily discover it. This Act takes no position on when or whether such "equitable tolling" may be appropriate.

SECTION 504. LIMITATIONS ON PRIVATE REMEDIES.

(a) A holder is not liable for statutory damages under Section 501(d) if, within 60 days after discovering a violation of this [Act] and before commencement of an action under Section 501 or the receipt of written notice of the violation from the lessee, the holder notifies the lessee concerned and corrects the violation, including refund, restitution, or crediting of any charges improperly disclosed or imposed.

(b) A holder is not liable for statutory damages under Section 501(d) if the holder proves by a preponderance of the evidence that the violation was unintentional and resulted from an error in good faith notwithstanding the maintenance of procedures reasonably adapted to avoid the error. For purposes of this subsection, errors in good faith include clerical errors, calculation errors, computer malfunctions and programming errors, but an error of legal judgment with respect to a holder's obligations under this [Act] is not a good faith error.

(c) There may be no more than one recovery of statutory damages under Section 501(d) for a violation of this [article] regardless of the number of lessees in the consumer lease.

(d) Liability does not arise under this [article] with respect to an act or omission in good faith conforming to:

(1) a rule or interpretation of this [Act], or to an approval by the [administrator under Section 508], even if after the act or omission occurred, the rule, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid; or

(2) with respect to requirements based on the federal Consumer Leasing Act, a rule, regulation, or interpretation of that Act by the Federal Reserve Board, even if after the act or omission occurred, the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid.

(e) Regardless of the number of violations resulting from a holder's multiple failures to comply with the provisions enumerated in Section 501(d) with respect to a single consumer lease, the lessee is entitled to a single recovery of statutory damages under this [article], but continued failure to comply after a recovery has been granted gives rise to rights to additional recoveries.

Official Comment

1. This section generally tracks provisions in Section 130 of the federal Truth in Lending Act (TILA), which, by incorporation through Section 185 of the Consumer Leasing Act (CLA), is the source of private remedies for violations of the federal Consumer Leasing Act. These provisions are basically protective ones for lessors and holders; they narrow the range of potential liability. These subsections are intended to be interpreted consistently with their counterparts in TILA Section 130 and CLA Section

185. The parallel provisions in TILA/CLA are as follows:

UCLA	TILA/CLA
501(e)	130(a)(3); 15 U.S.C.A. Section 1640(a)(3)
503(a)	185(c); 15 U.S.C.A. Section 1667d
504(a)	130(b); 15 U.S.C.A. Section 1640(b)
504(b)	130(c); 15 U.S.C.A. Section 1640(c)
504(c)	130(d); 15 U.S.C.A. Section 1640(d)
504(d)	130(f); 15 U.S.C.A. Section 1640(f)
504(e)	130(g); 15 U.S.C.A. Section 1640(g)

2. Under subsection (a), a holder may avoid liability for statutory damages if it discovers and corrects a violation on its own initiative, before notice from the affected lessee. This encourages internal compliance audits by lessors and holders. The necessary corrective measures depend on the nature of the violation, but if there has been a mis-statement of any fees or charges, the correction must include monetary adjustment of those charges to the lesser of what was disclosed or would have been permissible under this Act.

3. Subsection (b) excuses from statutory damages liability violations that were genuinely inadvertent. The burden is on the holder to demonstrate two essential elements of this bona fide error defense: (1) the violation must have occurred unintentionally and in good faith, and (2) the lessor or holder must have maintained reasonable compliance procedures to avoid such violations. Misinterpretation of this Act and its requirements does not qualify for this protection.

4. Subsections (c) and (e) limit statutory damages liability where there are multiple lessees or multiple violations in the same lease.

5. Under subsection (d)(1) a lessor or holder may not be held in violation of this Act if its conduct conforms, in fact and in good faith, with official guidance from the [administrator]. A lessor or holder who has relied on such guidance ought not be subject to liability even if the guidance is subsequently withdrawn, modified or over-ruled. Even if the holder or lessor is not aware of the administrator's interpretation at the time of a particular act or omission, conduct "conforming" to it is protected. Subsection (d)(2) provides comparable protection for a lessor or holder that acts in conformity with guidance from the Federal Reserve Board with respect to the requirements of the federal Consumer Leasing Act.

SECTION 505. CIVIL LIABILITY OF ASSIGNEES.

(a) Except as otherwise provided in subsection (b), the liability of a holder for a violation of this [Act] by a previous holder is subject to Section 305(b).

(b) An action for a violation of Section 204(d), 206, or 309, or for a violation of the disclosure requirements of Section 202, 203, or 204(a) through (c) may be maintained against a subsequent holder only if:

(1) a required disclosure is omitted or can be determined to be incomplete or inaccurate from the face of the record or other documents assigned; or

(2) the record does not contain a notice, provision or statement required to be used under this [Act].

Official Comment

1. In general, a subsequent holder may be held liable for a violation of this Act committed by a prior holder. This is consistent with the policy reflected in Section 305(b) of this Act that there is no "holder in due course" protection for an assignee with respect to claims or defenses the lessee could assert against the original lessor or a prior holder. The assignee can protect itself by reasonable due diligence in monitoring the assignor, reviewing the documentation assigned, and establishing recourse or indemnification rights against the assignor. Thus, a lessee may assert a violation of this Act as a defense or counterclaim in a collection action on the lease. Or a lessee may sue a current holder, assert a violation by a prior holder, and recover damages (up to the amounts the lessee has paid under the lease) from the current holder.

2. Subsection (b) parallels the federal law provision (TILA Section 131, 15 U.S.C.A. Section 1641) that protects assignees from liability for disclosure violations if the violation is not apparent on the face of the disclosure statement.

SECTION 506. EFFECT OF VIOLATION ON RIGHTS OF PARTIES; SINGLE RECOVERY.

(a) Except as otherwise provided in this [Act], a violation of this [Act] by a

holder does not impair the holder's rights under a consumer lease.

(b) If a holder's act or omission violates this [Act] and also violates other law, the lessee is entitled to the larger of the monetary remedies authorized by this [Act] or the other law.

Official Comment

1. A violation of this Act may give rise to a claim by the lessee for actual and statutory damages, but the violation does not nullify or void the underlying contractual agreement, nor give grounds for rescission. Where this Act declares a particular term or provision to be unenforceable, the holder may still enforce the rest of the lease.

2. Subsection (b) precludes multiple recoveries where the same conduct violates this Act and other law. This may occur, for example, with respect to an improper disclosure that may violate both this Act and the federal Consumer Leasing Act. Or a practice prohibited by this Act may also violate a state "unfair or deceptive acts or practices" statute. This subsection (b) limits the lessee to a single recovery, but does not require a lessee to elect a remedy at the commencement of an action. Where a violation of this Act merely accompanies other separately unlawful conduct (such as fraud), recoveries for both may be appropriate.

SECTION 507. ADMINISTRATIVE ENFORCEMENT. The [Attorney General, Credit Code Administrator, or similar public agency] shall enforce this [Act]. For this purpose, the [Attorney General, Credit Code Administrator, or similar public agency] has the power and is entitled to the remedies provided in the [state Unfair or Deceptive Acts or Practices Act, or comparable consumer fraud law].

Official Comments

1. Administrative enforcement is critical to the successful implementation of this Act, and that responsibility is assigned to the [administrator]. That officer or agency should have an array of investigative, injunctive, restitution and similar powers. Typically these powers are accorded under a generic Unfair or Deceptive Acts or Practices statute or similar consumer fraud statute. Since most states have assigned consumer protection responsibilities and enforcement powers to the Attorney General or other officer, there is no need for a separate articulation of enforcement powers in this

Act.

SECTION 508. ADMINISTRATION.

(a) The [designated public official or office] shall administer this [Act], and may adopt rules, issue interpretations, or give approvals designed to effectuate consumer protection under this [Act]; prevent circumvention or evasion of, and facilitate compliance with, this [Act]; avoid preemption by the federal Consumer Leasing Act; and assure consistent interpretations with those of other States enacting legislation substantially the same as this [Act].

(b) To keep the [administrator's] rules, interpretations, or approvals in harmony with those of administrators in other States that enact legislation substantially the same as this [Act], the [administrator], to the extent consistent with the provisions of this [Act], in adopting, amending, and repealing rules, interpretations, or approvals, shall take into consideration the rules, interpretations, or approvals of administrators in other States that enact legislation substantially the same as this [Act].]

Official Comment

1. This provision establishes an administrative overseer to deal with issues of interpretation of this Act, coordination with other states adopting this Act, and avoidance of inconsistencies with the federal Consumer Leasing Act. Many of the requirements of this Act are complex, and their application to various lease patterns in the future may be uncertain. The administrator for this Act should have appropriate authority to issue rules and interpretations in order to clarify compliance burdens, maintain uniformity with other states, and avoid friction with the federal Consumer Leasing Act. It is a defense to liability for violating this Act if conduct conforms in good faith to guidance from the Administrator. Cf., Section 504(d).

2. Most states assign consumer protection responsibilities generally to the Attorney General or other public official. Thus the duties of the Administrator under this Act can be combined with existing administrative structures in the state. The

Administrator under this section could also be the agency assigned enforcement authority under Section 507.

3. The instruction to the Administrator in subsection (b), to "take into consideration" the actions and interpretations of other states that enact this law, is not a cession of any authority with respect to this Act to officials of other states. Uniformity of interpretation is a general objective, but does not inhibit the Administrator from interpreting or enforcing this Act under Section 507 in a manner to enhance its effectiveness in this state.

[ARTICLE 6]

MISCELLANEOUS PROVISIONS

SECTION 601. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 602. EFFECTIVE DATE. This [Act] takes effect at[ ].

SECTION 603. TRANSITION. A consumer lease entered into before this [Act] takes effect and the rights, duties, and interests resulting from it may be terminated, completed, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this [Act] as though the repeal, amendment, or modification had not occurred. However, this [Act] applies when, after the effective date of this [Act], a consumer lease is satisfied and replaced by a new lease undertaken by the same lessee for the same goods.

Legislative Note: This Act will require significant changes in the documentation and practices used in consumer leases. To permit adequate lead time for reprinting of forms, redesign of computer systems, and retraining of personnel, an effective date of no less than eighteen months after enactment is recommended.

SECTION 604. REPEALS AND AMENDMENTS.

(a) The following acts and parts of acts are repealed:

(1)

(2)

(b) The following acts and parts of acts are amended:

(1)

(2)

SECTION 605. UNIFORMITY. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.