

UNIFORM CONSUMER LEASES ACT

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1
2 **UNIFORM CONSUMER LEASES ACT**

3 **Part 1. SHORT TITLE; SCOPE; DEFINITIONS; GENERAL PROVISIONS**

4 **Section 101. Short Title; Scope**

5 (a) This Act shall be known and may be cited as the Uniform
6 Consumer Leases Act.

7 (b) This Act applies to a transaction that is a consumer
8 lease as defined in Section 102(a)(1).

9 Reporter's Notes: As a matter of Conference style,
10 this section, or at least subsection (b), may not be
11 needed at all.
12
13

14 **Section 102. General Definitions.**

15 (1) "Conspicuous" means distinguished from other terms by
16 type-size or in some other manner. A term in at least 10-point
17 bold type is conspicuous.

18 Reporter's Notes: Is this adequate for electronic as
19 well as written documents? Is the safe-harbor of 10-
20 point type appropriate?
21

22 (2) "Consummation" means the time when a lessee becomes
23 contractually obligated on a lease transaction

24 Reporter's Notes: From the Reg. M Commentary. In the
25 federal regulation, this ultimately depends on the
26 state law of contract formation. Since this Act is
27 state law, do we need an unequivocal bright-line test?
28

29 (3) "Consumer lease" means a contract -

30 (A) between a lessor and lessee for the transfer of the
31 right to possession and use of goods for a term in return for
32 consideration;

1 (B) for a period exceeding four months and for a total
2 contractual obligation not exceeding \$150,000 (excluding the
3 residual value and any payments for options to renew or buy),
4 whether or not the lessee has the option to purchase or otherwise
5 become the owner of the property at the expiration of the lease;
6 and

7 (C) the lessee is an individual who takes under the
8 lease primarily for a personal, family, or household purpose.
9 Unless the context indicates otherwise, in this Act "lease" means
10 "consumer lease."

11 [A lease is not to be characterized as a credit sale, loan
12 or security interest if -

- 13 * the lessor holds title to the goods;
- 14 * the lessor reasonably expects that the goods will
15 have more than minimal remaining useful life and market value at
16 the end of the lease term, and bears the risk if they do not; and
- 17 * any purchase option is for at least the anticipated
18 market value of the goods at the time the option may be
19 exercised.]

20
21 Reporter's Notes: Rewritten as of 6/97 to tighten
22 language and reflect earlier Drafting Committee
23 discussions. The earlier Options are collapsed
24 together into a single version that combines the
25 essential features of a consumer lease from UCC Art. 2A
26 and from Reg. M.

27
28 Subparagraphs (A) through (C) are cumulative.
29 (A) states the nature of the contract [from Art. 2A].
30 (B) adds the dollar amount and four-month limitations.
31 (C) adds the "consumer purpose" criterion.
32

1 Under (B) it is not a "consumer lease" if the
2 total amount payable exceeds \$150,000, or if the lease
3 obligation is for less than four months. This latter
4 criterion has the effect of excluding from this Act
5 short term transactions such as weekend car or tool
6 rentals, and also transactions such as "rent to own"
7 contracts where the consumer is not obligated to renew
8 beyond the initial weekly or monthly term. I added the
9 parenthetical to clarify "total contractual
10 obligation."

11
12 The separate definition of "lessor," below, deals
13 with the "regularly engaged in leasing" aspect.
14

15 The bracketed paragraph at the end is an attempt
16 to nip off arguments that a lease is really not a lease
17 but a credit sale or other form of transaction subject
18 to other laws and regulations. Such "re-
19 characterizations" have been a significant problem in
20 the non-vehicle leasing markets. See Letter from
21 Christian Jones of Newcourt Financial, 5/15/97. The
22 suggested criteria draw on distinctions in the UCC
23 between "true" leases and security interests.
24

25 (4) "Federal Consumer Leasing Act" means Chapter 5 of
26 Title I of the Consumer Credit Protection Act, 15 U.S.C.A. §
27 1667, and includes regulations and interpretations issued from
28 time to time by the Board of Governors of the Federal Reserve
29 System pursuant to that Act (Regulation M, 12 C.F.R. Part 213).

30 Reporter's Notes: Patterned on U3C § 1.302, but citing
31 specifically to the federal leasing statute and Reg. M.
32
33

34 (5) "Good faith" means honesty in fact in the conduct
35 or transaction concerned and in the case of a merchant includes
36 observance of reasonable commercial standards of fair dealing in
37 the trade.

38 Reporter's Notes: This term, including its "fair
39 dealing" criterion for merchants, is taken from UCC §
40 2-103(1)(b) which is incorporated in Art. 2A [Leases]
41 in § 2A-103(3). Query: do we need to repeat
42 definitions of terms from the UCC? If so, do we need a

1 separate definition of "merchant," or is that fairly
2 incorporated via UCC § 2A-103(2) and § 2-104(1)?
3

4 (6) "Goods" means all things that are movable at the
5 time of identification to the lease contract, or are fixtures
6 (UCC § 2A-309), but the term does not include money, documents,
7 instruments, accounts, chattel paper, general intangibles, or
8 minerals or the like, including oil and gas, before extraction.
9 The term also includes the unborn young of animals.

10 Reporter's Notes: Verbatim from UCC 2A-103(1)(h). Is
11 it apt for this Act? Are we agreed that this Act
12 generally covers all "goods," and not just vehicles?
13 And that this Act does not cover any other forms of
14 "personal property"?
15

16 (7) "Holder" means a person with a leasehold interest
17 in a consumer lease. The term includes the lessor for the period
18 of the lessor's leasehold interest and, if the leasehold interest
19 is assigned, the assignee for the period of the assignee's
20 interest. The term does not include a creditor holding a
21 security interest in the lease [as chattel paper] or the owner or
22 beneficiary of an interest in a trust that owns consumer leases.

23 Reporter's Notes: This is drawn from Model act, except
24 that it uses the phrase "leasehold interest" from UCC §
25 2A-103(1)(m) instead of the term "ownership of the
26 lease."
27

28 It seems useful to have a term to refer to whoever
29 currently owns the lease; this may be the original lessor,
30 but in many cases it will be a subsequent assignee. Both
31 the lessor and assignee have responsibilities and
32 liabilities under this Act.
33

34 The last sentence purports to insulate indirect
35 financiers from vicarious liability. Query: even if such
36 secondary parties are not "holders" within this definition,
37 are they not likely to be treated as assignees or
38 transferees of the lessor, and so subject to exposure on
39 that basis?

1
2 (8) "Lessee" means

3 [Option A] a natural person who enters into or is offered a
4 consumer lease.

5 [Option B] a person who acquires the right to possession and
6 use of goods under a lease. [Where the context so indicates, the
7 term includes a sublessee and a prospective lessee or applicant
8 for a lease. ?]

9 Reporter's Notes: Option A is from Reg. M. Option B
10 is derived from the Model and various state acts.
11

12 (9) "Lessor" means a person who regularly leases,
13 offers to lease, or arranges for the lease of goods under a
14 consumer lease. A person who has leased, offered, or arranged to
15 lease goods more than five times in the preceding calendar year
16 or more than five times in the current calendar year is subject
17 to this Act.

18 Reporter's Notes: This is from Reg. M, which uses the
19 bright-line test of five transactions in a year for
20 inclusion. It also includes an "arranger" of leases
21 which may necessitate some sub-definition.
22

23 "Lessee" and "lessor" need to include prospective
24 lessees and lessors in some provisions relating to pre-
25 lease activity.
26

27 UCC Art. 2A deals with subleases; thus the
28 contextual reference to them. Retain if subleases are
29 treated in this Act; otherwise delete the phrase.
30

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

34 (11) "Sign" means to identify a record by means of a
35 signature, mark, or other symbol with intent to authenticate it.

1 Reporter's Notes: These last two definitions come from
2 the UCC Articles 2, 2B, and 9 revisions. They are
3 meant to accomodate electronic messaging by accepting
4 non-paper documentation with authentications by other
5 than hand-written signature. We probably should use
6 these same terms consistently throughout this Act.
7

8 (b) Other defined terms in this Act and the sections in
9 which they appear are:

10 [List other defined terms with § references]

11 (c) Unless the context clearly indicates otherwise, other
12 terms used in this Act have the same meaning as in Uniform
13 Commercial Code Article 2A - Leases.

14 Reporter's Notes: Patterned on U3C § 1.303, this
15 generally adopts UCC 2A definitions for terms used
16 occasionally in this Act, e.g., "Leasehold interest,"
17 "Sublease," "Supplier," etc.
18
19
20

21 **Section 103. Supplementary General Principles of Law Applicable.**

22 The principles of law and equity, including the Uniform
23 Commercial Code, the law relative to capacity to contract,
24 principal and agent, estoppel, fraud, misrepresentation, duress,
25 coercion, mistake, bankruptcy, unfair or deceptive acts or
26 practices, or other validating or invalidating cause supplement
27 the provisions of this Act, unless displaced by the particular
28 provisions of this Act. [In the event of inconsistency between
29 the Uniform Commercial Code and this Act the provisions of this
30 Act control.] [?]

31 Reporter's Notes: Based on UCC § 1.103. This
32 specifically references the UCC; thus Article 2A
33 (Leases) provides a broad foundation for this Act:
34 Other principles of law apply unless "displaced by" or
35 "inconsistent" with this Act; these can be two

1 different forms of nullification.
2

3 The phrase "unfair or deceptive acts or practices"
4 is added to make clear that state UDAPs remain
5 applicable.
6
7

8 **Section 104. Waiver; Agreement to Forego Rights; Settlement of**
9 **Claim**

10 (a) Except as otherwise permitted in this Act, a lessee may
11 waive or agree to forego rights or benefits under this Act only
12 in settlement of a bona fide dispute.

13 (b) A settlement in which the lessee waives or agrees to
14 forego rights or benefits under this Act is invalid if the court
15 finds the settlement to have been unconscionable at the time it
16 was made. Matters relevant to unconscionability include the
17 competence of the lessee, any deception or coercion practiced upon
18 the lessee, the nature and extent of the legal advice received by
19 the lessee, and the value of the consideration.

20 Reporter's Notes: Based on U3C § 1.107. Subsection
21 (a) generally invalidates any contractual waiver by a
22 consumer of rights under this Act, either in the lease
23 agreement or otherwise. But, under (b), (c), and (d),
24 disputed claims by or against a consumer, or collection
25 claims, may be settled unless unconscionable.
26
27

28 **Section 105. Transactions Subject to Act by Agreement.**

29 If the parties to a lease transaction that is not a consumer
30 lease [acknowledge] [agree in a writing signed by them] that the
31 transaction is subject to the provisions of this Act, the
32 transaction is a consumer lease for the purposes of this Act.

1 Reporter's Notes: Based on U3C § 1.109. This allows
2 the parties to stipulate to coverage by this Act even
3 if the lease is not for a consumer purpose or where the
4 "purpose" is unclear, such as in a small business or
5 agricultural context. This seems a useful way for
6 lessors to establish a safe-harbor legal framework for
7 leases at the margins of coverage.
8
9

10 **Section 106. Incidental Sale or Lease**

11 (a) A lease may include the purchase of goods, services or
12 benefits incidental to the lease, including but not limited to
13 accessories and insurance. So long as the lease aspects of the
14 transaction predominate, the incidental purchases are part of the
15 consumer lease.

16 (b) A lease of goods incidental to a contract for the sale
17 of goods or services is not subject to this Act.

18 Reporter's Notes: New; Reporter's language, to sort
19 out "mixed" transactions that are partly a lease and
20 partly a sale.
21

22 Subsection (a) reflects a notion that is implicit
23 in UCC Art. 2A and in the federal CLA, and is explicit
24 in some of the state leasing laws. Purchases
25 incidental to the lease -- insurance, accessories,
26 service contracts, for example -- are subsumed in the
27 lease, and are therefore not subject to piecemeal
28 coverage by laws applicable to "credit sales" of those
29 products. "Predominance" is the test generally used by
30 courts to determine whether hybrid transactions are
31 sales of goods under UCC Art. 2. Presumably the same
32 idea will be applied to leases under UCC Art. 2A.
33

34 Subsection (b) is the flip side of the issue: a
35 lease component is "incidental" to a transaction that
36 is predominantly a sale. This comes from the
37 Commentary to Reg. M., which gives as examples home
38 entertainment systems, security alarm systems, or
39 propane gas service, where the consumer must lease
40 certain components in order to receive the specified
41 service.
42
43

1 **Section 107. Obligation of Good Faith.**

2 Every contract or duty within this Act imposes an obligation
3 of good faith in its performance or enforcement.

4 Reporter's Notes: Same as UCC § 1-203. "Good faith" is
5 defined in Section 102. Query: do we need this at all,
6 given general applicability of UCC?
7
8

9 **Section 108. Unconscionability.**

10 Reporter's Notes: No specific text proposed. UCC §
11 2A-108 is a comprehensive statement on
12 unconscionability, including particular applications in
13 consumer leases, patterned on UCC § 2-302 [Sales of
14 Goods] and U3C § 5.108. There seems no need to
15 reproduce that provision here unless we mean to change
16 it.
17
18

19 **Section 109. Territorial Application; Limitation on Choice of**
20 **Applicable Law and Forum**

21 Option A:

22 (a) This Act applies to a lease if the lessee resides in
23 this state at the time the lease is consummated and the leased
24 goods are to be kept primarily in this State.

25 (b) This Act also applies if the parties to a lease
26 understand at the time the lease is consummated that the lessee
27 will, within 30 days after consummation, reside and keep the
28 goods primarily in this state, and the lessee does so.

29 (c) A provision in a lease in contravention of subsections
30 (a) or (b) is unenforceable.

31 (d) If a judicial forum chosen by the parties to a lease is
32 a forum that would not otherwise have jurisdiction over the

1 lessee, the choice is not enforceable.

2 Reporter's Notes: This Option A is meant as a simple
3 choice of law provision, aimed at protecting local
4 residents. This Act would apply when the lessee lives
5 here and keeps the leased goods here, and also when the
6 parties understand the lessee soon will live and keep
7 the goods here. Contractual choice-of-law (and choice
8 of forum) provisions to the contrary would be
9 unenforceable. Thus lessors would need to learn where
10 their customers live and could not routinely contract
11 under the law of the state where the lessors are
12 located. Conversely, an in-state lessor would not be
13 bound by this Act in leases with out-of-state
14 customers.
15

16 Option B:

17 (a) Except as otherwise provided in this section, this Act
18 applies to a lease transaction entered into in this State. A
19 lease is entered into in this State if either a record evidencing
20 the lease obligation or offer of a lessee is received by the
21 lessor in this State, or the lessor induces a lessee who is a
22 resident of this State to enter into the transaction by face-to-
23 face solicitation in this State.

24 (b) With respect to a lease to which this Act does not
25 otherwise apply, if a prospective lessee who is a resident of
26 this State, pursuant to solicitation in this State, sends a
27 record evidencing the lease obligation or an offer of the lessee
28 to a lessor in another state [and keeps or maintains the leased
29 goods in this State ??];

30 (1) the lessor may not contract for or receive charges
31 exceeding those permitted by this Act; and

32 (2) [Section 5.106 on Administration of this Act
33 applies as though the lease were entered into in this State. ?]

1 (c) The limitations on creditors' remedies in Sections
2 _____ apply to actions or other proceedings
3 brought in this State to enforce rights arising from leases
4 wherever entered into.

5 (d) Except as provided in subsection (b), a lease to which
6 this Act does not apply entered into with a lessee who is a
7 resident of this State at the time of the transaction is valid
8 and enforceable in this State to the extent that it is valid and
9 enforceable under the laws of another jurisdiction, but:

10 (1) a holder may not collect through actions or other
11 proceedings in this State an amount exceeding the amount
12 permitted if this Act were applicable; and

13 (2) a holder may not enforce rights against a lessee in
14 this State with respect to the provisions of the lease that
15 violate the provisions of Sections _____ .

16 (e) Except as otherwise provided in subsections (b), (c),
17 and (d), a lease entered into in another jurisdiction is valid
18 and enforceable in this State according to its terms to the
19 extent it is valid and enforceable under the laws of the other
20 jurisdiction.

21 (f) For the purposes of this Act, the residence of a lessee
22 is the address given by the lessee as a residence in a record the
23 consumer signs in connection with a lease until the lessee
24 notifies the holder of a different address as the residence.
25 After notice is given, the new address is the residence.

26 (g) Notwithstanding other provisions of this section:

1 (1) except as otherwise provided in subsection (c),
2 this Act does not apply if the lessee is not a resident of this
3 State at the time the lease is consummated and the parties have
4 agreed that the law of the lessees's residence applies; and

5 (2) this Act applies if the lessee is a resident of
6 this State at the time the lease is consummated and the parties
7 have agreed that the law of the lessee's residence applies.

8 (h) Each of the following agreements or provisions of an
9 agreement by a lessee who is a resident of this State at the time
10 a lease is consummated is invalid with respect to the
11 transaction:

12 (1) that the law of another jurisdiction apply;

13 (2) that the lessee consents to be subject to the
14 process of another jurisdiction;

15 (3) that the lessee appoints an agent to receive
16 service of process;

17 (4) that fixes venue; and

18 (5) that the lessee consents to the jurisdiction of a
19 court that does not otherwise have jurisdiction.

20 (i) [The following provisions of this Act specify the
21 applicable law governing certain cases:

22 (Sections dealing with powers of Administrator)].

23 Reporter's Notes: Option B is based on U3C § 1.201.
24 Subsection (a) omits a U3C paragraph dealing with mail
25 applications for open-end credit which seems
26 inapplicable here. Subsection (b) references where the
27 leased goods are kept, rather than the U3C reference to
28 where loan proceeds are received. Otherwise
29 essentially verbatim.
30

1 This option covers any lease "entered into" in
2 this state [subsection (a)], but also has some extra-
3 territorial reach to protect local residents. Thus it
4 covers the price terms of a lease 'solicited' in this
5 state [subsection (b)], and it limits an out-of-state
6 lessor's enforcement rights in this state [subsections
7 (c) and (d)]. Otherwise out-of-state leases are
8 respected [subsections (e) and (g)]. Subsection (h)
9 bars a resident consumer's waiver of the coverage of
10 this Act and of the jurisdiction, venue and process
11 rules of local courts.
12
13

14 **Section 110. Exclusions.**

15 This Act does not apply to:

16 (1) a lease to an organization, or to any person primarily
17 for an agricultural or business purpose;

18 (2) a transaction under a public utility or common carrier
19 tariff if a subdivision or agency of this State or of the United
20 States regulates the charges for the leased goods or services
21 involved;

22 (3) a license or other agreement for the use of computer
23 software or other intellectual property; or

24 (4) a lease of goods which is incidental to a lease of real
25 property and which provides that:

26 (A) The lessee has no liability for the value of the
27 goods at the end of the lease term except for abnormal wear and
28 tear; and

29 (B) The lessee has no option to purchase the leased
30 goods.

31 (5) [Other unique transactions?? Medical assistive devices?
32 Livestock? Etc.]

1 Reporter's Notes: This section seems helpful if
2 certain categories of transactions are to be clearly
3 excluded. Item (1) excludes a lease to an
4 organization, defined in UCC § 1-201(28) to include all
5 forms of entities other than individuals, and any lease
6 for a non-consumer purpose. Item (2) would exclude,
7 e.g., leases of telephone equipment. Item (3) confirms
8 that software licenses are not covered by this Act;
9 this defers to UCC Art. 2B, in process. Item (4) is
10 from Reg. M; it excludes the furniture portion of a
11 lease of a furnished home or apartment where the
12 consumer must surrender the furniture at the end of the
13 lease term. [Item (4) might better be moved to Section
14 106(b) if that section is retained.] Item (5) is a
15 catch-all.
16

1 **Part 2. CONSUMER LEASES GENERALLY**

2 **Section 201. Lease Advertising.**

3 (a) An advertisement for a lease must comply with the
4 advertising requirements of the federal Consumer Leasing Act
5 [whether or not the advertised lease is covered by that Act].
6 For purposes of this Section, "advertisement" has the same
7 meaning as in that Act.

8 (b) A person may not publish, broadcast or distribute, or
9 cause to be published, broadcast or distributed, an advertisement
10 for a lease that is false, deceptive, or misleading, or that
11 misrepresents -

12 (1) the material terms or conditions of a lease; or

13 (2) that the transaction is other than a lease.

14 This subsection does not apply to the owner or employees, as
15 such, of any medium in which an advertisement appears or through
16 which it is disseminated.

17 Reporter's Notes: For any consumer lease
18 advertisement, subsection (a) makes compliance with
19 Reg. M a state law rule as well. This is meant to
20 extend the Reg. M advertising rules to transactions
21 outside Reg. M's scope (i.e., over \$25,000) but within
22 the scope of this Act (up to \$150,000).
23

24 Subsection (b) is a general "false advertising"
25 proscription in the leasing context. It applies to any
26 "person" who advertises, not just lessors. Thus a
27 vehicle manufacturer advertising lease arrangements
28 through its franchised dealers would be covered.
29
30

31
32 **Section 202. Pre-Lease Availability of Sample Form.**

33 Upon request, a lessor must make a blank sample of its

1 current lease form readily available [at its place of business]
2 for examination by a prospective lessee on request before the
3 consummation of a lease. If a lessor uses more than one lease
4 form, the lessor satisfies this requirement by making available
5 either a commonly used form or the form pertinent to the type of
6 lease about which the prospective lessee has inquired.

7 Reporter's Notes: The first sentence reflects a common
8 provision in recent state leasing legislation, and
9 seems generally useful. The phrase "at its place of
10 business" is included so that lessors need not respond
11 to telephone or mail inquiries. The second sentence
12 allows the lessor flexibility where it uses a variety
13 of forms, either for different types of leases or from
14 different prospective assignees.
15
16

17 **Section 203. Disclosure; Lease Document.**

18 (a) A lessor must make the disclosures required by the
19 federal Consumer Leasing Act [whether or not the lease is subject
20 to that Act].

21 (b) A lease agreement must:

22 (1) be [a record, and if]in writing, in at least ____
23 point type;

24 [FYI only:] This is 8 point type

25 This is 10 point type

26 This is 12 point type

27 (2) clearly indicate that it is a lease agreement;

28 (3) identify the lessor and lessee, the goods to be
29 leased, and any goods traded in or applied as a capitalized
30 cost reduction or similar credit; and

31 (4) be signed by the [lessor and ?] lessee.

1 (c) Promptly on consummation of a lease the lessor must
2 deliver to the lessee a completed copy of the lease [, and a copy
3 of any other transaction record signed by the lessee].
4

5 Reporter's Notes: Subsection (a) adopts Reg. M disclosures
6 as state law as well for all leases subject to this Act,
7 i.e., up to \$150,000. Is the parenthetical language needed
8 to make this clear?
9

10 Subsections (b) and (c) are basic formalities for all
11 leases: a written, signed lease document identified as such,
12 with a copy to the consumer. Should subsection (c) also
13 require copies of other documents? Routinely, or only at
14 lessee's request?
15
16

17 **Section 204. Cosigner Notice.**

18 (a) For purposes of this section, "cosigner" means a
19 natural person who assumes liability for the obligation of
20 another person without compensation, [but does not include a co-
21 lessee entitled to possession and use of the leased goods]. The
22 term includes any person whose signature is requested as a
23 condition of making a lease to another person, or as a condition
24 for forbearance on collection of another person's obligation that
25 is in default. A person who does not receive goods, services, or
26 money in return for a lease obligation does not receive
27 compensation within the meaning of this definition. A person is
28 a cosigner within the meaning of this definition whether or not
29 he or she is designated as such on a lease obligation.

30 (b) A lessor or holder may not [accept] [request] [require]
31 a cosigner on a lease unless, prior to the cosigner becoming
32 obligated, the lessor gives the prospective cosigner a separate
33 statement in substantially the following form:

Notice to Cosigner

You are being asked to guarantee this lease. Think carefully before you do. If the lessee doesn't pay, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the lease obligation if the lessee does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The lessor can collect this obligation from you without first trying to collect from the lessee. The lessor can use the same collection methods against you that can be used against the lessee, such as suing you, garnishing your wages, etc. If this lease is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you
liable for the lease obligation.

Reporter's Notes: This is based on the FTC Credit Practices Rule, 16 CFR § 444.3, but substituting "lessor/lessee" for "creditor/borrower," and "obligation" for "debt." A similar provision is in U3C § 3.208. The FTC Rule applies only to lenders and installment sellers, and a parallel co-signer disclosure for leases seems appropriate.

Query: should we consider a special notice to the cosigner at the time of default?

Section 205. Rebate or Discount for Referrals.

1 A lessor [person ?] may not induce or attempt to induce any
2 person to consummate a consumer lease by offering a subsequent
3 [post-consummation ?] rebate, discount, commission or other
4 consideration, on the condition that the lessee provide
5 information or assistance for the purpose of enabling the lessor
6 to lease or sell goods to another person.

7 Reporter's Notes: Based on provisions in U3C, and
8 Model, CA, NH, NY acts, targeted on "referral sales"
9 gimmicks that are inherently deceptive. I'm still
10 uncertain of the need for it in a leasing law. The
11 practice would probably violate a state UDAP Act in any
12 event. Note that it applies only to pre-lease
13 inducements where the customer is vulnerable to the
14 promise of discounts.
15

16 The more elaborate version in U3C § 3.309 provides a
17 more severe sanction for violations, i.e., the consumer may
18 retain the property without having to pay for it.
19
20

21 **Section 206. Prohibited Lease Terms.**

22 (a) A lease may not contain a provision by which:

23 (1) the holder may arbitrarily and without reasonable
24 cause accelerate the maturity of any part or all of the amount
25 owing on the lease;

26 (2) the lessee gives a cognovit, power of attorney or
27 other authorization to confess judgment, or an assignment of
28 wages;

29 (3) the lessee gives the holder or any other person
30 authority to enter upon the lessee's premises unlawfully, or to
31 commit any breach of the peace in the repossession of the goods;

32 (4) the lessee waives any right of action against the
33 holder for any illegal act committed in the collection of

1 payments under the consumer lease or in the repossession of the
2 goods; or

3 (5) the lessee agrees not to assert claims or defenses
4 arising from the lease against a subsequent holder of the lease.

5 (b) An agreement, waiver or provision prohibited by this
6 Section is unenforceable but does not otherwise affect the
7 validity of a lease.

8 Reporter's Notes: Based on provisions in U3C, Model,
9 NH, NY, MD acts. These are baseline restrictions in
10 consumer credit transactions. Subsection (a)(5) may be
11 redundant if Section 313 is moved to Part 2.
12
13
14

15 **Section 207. Security Interest Prohibited.**

16 (a) A lease or other document executed by the lessee in
17 connection with the lease may not provide for the creation of a
18 security interest in personal or real property of the lessee to
19 secure the payment of the obligations arising from the lease.
20 This prohibition does not apply to the taking of a security
21 deposit [Section 208], advance lease payment or other prepayment,
22 or the taking of a security interest in the proceeds of insurance
23 on the leased goods.

24 (b) A security interest taken in violation of this section
25 is void but does not otherwise affect the validity of the lease.

26 (c) Nothing in this Section precludes a lessor or holder
27 from making a permissive financing statement filing under Uniform
28 Commercial Code Section 9-408.

1 Reporter's Notes: Based on U3C § 3.301, and Model, CA,
2 NH, NY, MD, WI acts. The U3C provision, and the
3 analogous FTC Credit Practices Rule, 16 CFR § 444.2,
4 essentially limit sale creditors to purchase-money
5 security interests. In the lease context, the lessor
6 retains comparable rights in the leased goods from the
7 nature of the lease arrangement, and should not need to
8 encumber other property of the lessee. If the lease is
9 truly a lease, the lessor's interest should be safe
10 from third-party claimants including the lessee's
11 trustee in bankruptcy. Also, allowing the lessor to
12 layer a UCC Article 9 security interest onto the lease
13 may complicate the transaction, especially on
14 repossession and foreclosure. Which rules control,
15 this Act, or UCC Article 9 (or perhaps the U3C)?
16

17 The new subsection (c) allows the lessor/holder to
18 file a UCC Art. 9 financing statement as a protective
19 measure under UCC § 9-408. This may be a prudent thing
20 for the lessor to do in some cases, as a precaution
21 lest a court later characterize the transaction as a
22 credit sale. But such a permissive filing does not
23 itself make the lease a security interest.
24
25

26 **Section 208. Security Deposit**

27 [Cf. RJR memo of Sept. 19, 1996]

28 **Option A:** In § 203 [Disclosures], add a new subsection _____:

29 "(__) If a lease requires a security deposit or pre-
30 payment of periodic rental payments not then due, a statement
31 whether interest will accrue on the amount of the security
32 deposit or prepayment and whether any accrued interest will be
33 retained by the lessor, remitted to the lessee, or applied to the
34 lessee's obligation on termination of the lease."
35

36 **Option B:** Insert at some appropriate point:

37 "(__) Notwithstanding any other provision of law, a holder

1 is not required to pay interest on any security deposit under a
2 lease."

3
4 **Option C:** Add a new Section 208 [Security Deposit]:

5 "(a) For purposes of this Act, 'security deposit' means a
6 prepayment of periodic lease payments not yet due. A security
7 deposit is not a security interest.

8 "(b) A lease may require the lessee to make a security
9 deposit in an amount not to exceed __[2?] periodic lease payments
10 scheduled under the lease. In the case of a single-payment lease
11 the security deposit may not exceed twice the sum of the net
12 capitalized cost plus the lease charge, divided by the number of
13 months in the lease term.

14 "(c) When a security deposit is applied or refunded, the
15 holder must credit the lessee with [any interest earned]
16 [reasonable interest] on that deposit for the period the deposit
17 was held."

18 Reporter's Notes: Option A would handle security
19 deposits, and interest accruals on them, simply as a
20 disclosure matter. It would neither limit the amount
21 of a security deposit nor require the lessor to invest
22 the deposit at interest, nor would it require the
23 lessor to credit any such interest to the lessee.
24

25 Option B is taken from the recently adopted
26 Wisconsin act. The "notwithstanding" clause is meant
27 to assure that UCC § 9-207(2)(c) does not control; this
28 may be redundant in light of Section 103 of this draft.
29

30 Option C is the Reporter's draft. It expressly
31 authorizes a security deposit, but limits the amount.
32 Like UCC § 9-207(2)(c) it requires that the lessee be

1 credited with any interest actually earned, but does
2 not require the holder to invest or otherwise accrue
3 interest on the deposit. If we want to require the
4 holder to segregate, invest and pay interest on the
5 security deposit in all cases, we could use words such
6 as "reasonable interest," and perhaps define that
7 phrase in terms of some reference point (prevailing
8 bank rates, e.g.).
9

10
11 **Section 209. Warranties of Quality and Title.**

12 A lease under this Act is subject to the provisions of
13 sections 2A-209 through 2A-216 of the Uniform Commercial Code -
14 Leases [, except that, notwithstanding subsections (1), (2), and
15 (3) of section 2A-214 of that Code, no words or conduct are
16 effective to negate an express warranty, or to exclude or modify
17 an implied warranty.]

18 Reporter's Notes: Subsection (a) is essentially an
19 incorporation-by-reference of the warranty rules in UCC
20 Article 2A. There seems no particular value in copying
21 them fully into this Act unless we expect to make
22 significant changes.
23

24 One possible change is the parenthetical language
25 above, which would bar warranty disclaimers. I.e., the
26 lessor or supplier of the leased goods cannot disclaim
27 express or implied warranties otherwise made. This would
28 track non-uniform amendments to UCC § 2-316 [disclaimers in
29 sale contracts] adopted in about a half-dozen states.
30

31 Some revision of the basic warranty rules in UCC
32 Article 2 may emerge from the current Article 2 project.
33 Presumably these would be carried into Article 2A as well,
34 and so would become applicable to consumer leases through
35 this Act. Is there any need to try to anticipate those
36 changes here?
37

38 I believe the federal Magnuson-Moss Warranty Act would
39 still apply in the lease context to any written warranty by
40 a manufacturer or supplier (including a lessor). So those
41 additional protections are retained here without needing to
42 say so expressly.

1
2

1
2 **Part 3. CONSUMER LEASE OF MOTOR VEHICLE**

3 **Section 301. Coverage of This Part.**

4 (a) This Part (Sections 301-322) applies only to a lease of
5 a motor vehicle.

6 (b) Except as specifically noted, the provisions of this
7 Part apply in addition to, and not in lieu of, the provisions of
8 Parts 1, 2, 5 and 6 of this Act.

9 Reporter's Notes: This "scope" provision confirms that
10 this sub-set of rules applies only to vehicle leases,
11 in addition to the general provisions earlier in this
12 Act.
13

14 **Section 302. Definitions for Motor Vehicle Leases.**

15 For purposes of this Part:

16 Reporter's Notes: Most of the definitions that follow
17 are stated as options. One set of options is based on
18 the Model act, and versions of them appear in the CA,
19 FL, IN, NH, NY and WI acts. These fairly intricate
20 definitions are necessary to parse out the lease cost
21 structure, including gap coverage and early termination
22 liability, and to permit calculation and possibly
23 disclosure of the Rent Charge and Lease Rate.
24

25 The recent revision of Reg. M significantly
26 affects this set of definitions, I believe. Thus,
27 where Reg. M defines a term that is exactly or nearly
28 the same as one in the Model and state acts, this draft
29 uses the Reg. M term, and sets out the Reg. M
30 definition as an option for this Act. Definitions in
31 this Act relating to disclosures and calculations
32 should be consistent with those in the federal Consumer
33 Leasing Act. Otherwise they may be preempted by Reg.
34 M. E.g., this draft uses and defines the term "rent
35 charge" the same as in Reg. M, instead of using the
36 term "lease charge" as in the Model and various state
37 acts. Indeed, since Reg. M controls disclosure and
38 contains a federal "reasonableness" standard for

1 termination liabilities, there seems more reason to
2 synchronize these definitions with Reg. M than with UCC
3 Art. 2A.
4

5 Might it be possible to adopt en masse all the
6 relevant definitions from Reg. M, without restating
7 them here? E.g., "The following terms have the same
8 meaning as in the federal Consumer Leasing Act: (list
9 terms)."
10
11

12 (1) "Adjusted capitalized cost" means

13 **[Option A]** the gross capitalized cost less the capitalized
14 cost reduction, and is the amount used by the lessor in
15 calculating the base periodic payment.

16 **[Option B]** means the amount which serves as the basis for
17 determining the base lease payment, computed by subtracting from
18 the capitalized cost any capitalized cost reduction.

19 Reporter's Notes: This is the functional equivalent of
20 the "amount financed" in a credit transaction. Option
21 A is the Reg. M definition. Option B is from the Model
22 and state acts.
23
24

25 (2) "Base periodic payment" means that portion of the
26 periodic lease payment which is the sum of the amortizing
27 depreciation and the rent charge attributable to that payment
28 period.

29 Reporter's Notes: This is the "principal and interest"
30 portion of the monthly payment, without adding taxes or
31 other incidentals. The term is used, but not
32 specifically defined, in Reg. M. I think this
33 definition is consistent with Reg. M usage.
34
35

1 (3) "Capitalized cost reduction" means

2 [Option A] the total amount of any rebate, cash payment, net
3 trade-in allowance, and noncash credit that reduces the gross
4 capitalized cost.

5 [Option B] any payment made by cash, check, rebate or
6 similar means that is in the nature of a down payment by the
7 lessee and any net trade-in allowance granted by the lessor at
8 the inception of the lease for the purpose of reducing the
9 capitalized cost. The term does not include any base lease
10 payment due at the inception of the lease.

11 Reporter's Notes: This is essentially the down payment
12 including any trade-in. Option A is verbatim from Reg.
13 M. Option B is from the Model and various state acts.
14

15 (4) "Constant yield method" means -

16 (a) in the case of a periodic payment lease, the method
17 of determining the rent charge portion of each base lease payment
18 pursuant to which the rent charge for each computational period
19 is earned in advance by multiplying the constant periodic rate
20 implicit in the lease times the balance subject to rent charge as
21 it declines during the lease term. At any point during the
22 scheduled term of a periodic payment lease, the balance subject
23 to rent charge is the difference between the adjusted capitalized
24 cost and the sum of (i) all depreciation amounts accrued during
25 the preceding computational periods and (ii) the first base lease
26 payment;

27 (b) in the case of a single payment lease, the method

1 of determining the periodic earning of the rent charge portion of
2 the single lease payment pursuant to which the rent charge for
3 each computational period is earned in advance by multiplying the
4 constant rate implicit in the lease times the balance subject to
5 rent charge as it increases during the lease term. At any point
6 during the term of a single payment lease, the balance subject to
7 rent charge is determined by subtracting from the residual value
8 the total lease charge scheduled to be earned over the lease term
9 and adding to the difference all rent charges accrued during the
10 preceding computational periods; and

11 (c) in the case of either a periodic payment lease or a
12 single payment lease, the periodic rent charge calculation is
13 based on the assumption that the holder will receive the lease
14 payment or payments on the exact due date or dates and that the
15 lease goes to its full term.

16 Reporter's Notes: Basically a simple-interest formula
17 for allocating periodic payment components to rent
18 charge (interest) and capitalized cost (principal), but
19 with periodic rent charges considered "earned" at the
20 beginning of the period. It does not include the
21 somewhat similar "Rule of 78s" method, nor the
22 distinctive "straight-line" method.
23

24 (5) "Gross capitalized cost" means

25 **[Option A]** the amount agreed upon by the lessor and the
26 lessee as the value of the leased property and any items that are
27 capitalized or amortized during the lease term, including but not
28 limited to taxes, insurance, service agreements, and any
29 outstanding balance from a prior loan or lease.

1 **[Option B]** the amount which, when reduced by the amount of
2 the capitalized cost reduction, equals the adjusted capitalized
3 cost. The term includes all items that are capitalized in the
4 lease and, after the application of the capitalized cost
5 reduction, amortizes to the residual value by the depreciation
6 portions of the periodic lease payments over the term of the
7 lease. For a single payment lease, the capitalized cost
8 amortizes to the residual value by the depreciation portion of
9 the single lease payment. The capitalized cost may include,
10 without limitation, taxes, registration, license, acquisition,
11 administration, assignment and other fees, and charges for
12 insurance, gap protection, accessories and their installation,
13 delivering, servicing, repairing or improving the goods, and
14 other services and benefits incidental to the consumer lease.
15 The term also may include, with respect to any property traded in
16 connection with a lease, the unpaid balance of any amount
17 financed under an outstanding credit agreement or the unpaid
18 portion of the early termination obligation under any lease or
19 other obligation of the lessee. The term capitalized cost does
20 not include any rent charge.

21 Reporter's Notes: This is generally comparable to the
22 "amount financed," or principal balance, in a credit
23 transaction.
24

25 Option A is verbatim from Reg. M. Option B is
26 from the Model and various state acts.
27
28

1 (6) "Group credit insurance" means group credit life
2 insurance, group credit accident insurance, group credit health
3 insurance, group credit accident and health insurance, group
4 disability insurance or group credit unemployment insurance.

5 (7) "Lease rate" means that nominal annual percentage rate
6 which reflects the amortization of the adjusted capitalized cost
7 to the residual value over the term of the lease, calculated in
8 accordance with Section 322.

9 Reporter's Notes: This is the functional equivalent of
10 the "annual percentage rate" in credit transactions.
11 This term is not currently used in Reg. M or in any
12 state leasing law (although a recent Canadian law
13 requires such a disclosure).
14

15 The complex mathematics for calculating this rate
16 are deferred to a separate section.
17
18

19 (8) **Option A:** "Motor Vehicle" means a device propelled or
20 drawn by any power other than muscular power, upon or by which a
21 person or property is or may be transported or drawn upon a
22 public highway, road or street, and which is required by law to
23 be registered for such use.

24 **Option B:** "Motor vehicle" means a device in, upon, or by
25 which a person or property is or may be transported or drawn upon
26 a highway, except a device moved by human power or used
27 exclusively upon stationary rails or tracks, and which is
28 required by law to be registered for such use.]

29 Reporter's Notes: Option A is from the Model act.
30 Option B is from the Uniform Motor Vehicle Certificate

1 of Title and Anti-Theft Act. Reg. M deals with "motor
2 vehicle leases" but the Reg. M Commentary expressly
3 leaves the definition to state law. Is there a better
4 generic definition somewhere?
5

6 (9) "Open-end lease" means a lease in which the lessee's
7 liability at the end of the lease term is based on the difference
8 between the estimates residual value of the leased property and
9 its realized value.

10 Reporter's Notes: Verbatim from Reg. M.

11 (10) "Periodic" means monthly, weekly, quarterly, or any
12 other period as specified in the consumer lease.

13 (11) "Realized value" means

14 **[Option A]** (a) The price received by the lessor for the
15 leased property at disposition;

16 (b) The highest offer for disposition of the leased
17 property; or

18 (c) The fair market value of the leased property at
19 the end of the lease term.

20 **[Option B]** the valuation of the leased goods at the
21 termination of the lease, determined under Section 318.

22 Reporter's Notes: Option A is from Reg. M. Option B
23 refers to § 318 where various methods of calculating
24 "realized value" are set out. Option B is broader than
25 the Reg. M definition, by including valuations based on
26 appraisals or agreement of the parties.
27

28 (12) "Rent charge" means the difference between the total
29 of base periodic payments over the lease term minus the
30 depreciation and any amortized amounts. [The term does not

1 include any amount included in the capitalized cost, or any
2 delinquency, default, disposition, early termination, collection,
3 or reinstatement charge. The term does not include any amount
4 for taxes, registration, license, acquisition, administration,
5 assignment and other fees, or charges for insurance, for
6 accessories or their installation, for delivering, servicing,
7 repairing or improving the vehicle and for other goods, benefits
8 or services incidental to the consumer lease, whether such amount
9 is included in the capitalized cost, paid separately at lease
10 inception by cash, check, credit card or similar means, or paid
11 on a periodic basis in addition to the base lease payment.]

12 Reporter's Notes: This is the functional equivalent of
13 the "finance charge" in credit transactions. The first
14 sentence is verbatim the same as in Reg. M. The
15 remainder, from the Model and several state laws, seems
16 a helpful though possibly unnecessary amplification
17 that is not inconsistent with (or preempted by) the
18 federal definition.
19

20 (13) "Residual value" means

21 **[Option A]** the value of the leased property at the end of
22 the lease term, as estimated or assigned at consummation by the
23 lessor, used in calculating the base periodic payment.

24 **Option B]** the estimated value of the goods at the end of the
25 scheduled lease term, used by the lessor in determining the base
26 lease payment, as established by the lessor at the time the
27 lessor and lessee enter into a lease.

28 Reporter's Notes: Option A is from Reg. M. Option B
29 is from the Model act.
30

1 (14) "Single Payment Lease" means a consumer lease for
2 which a single payment is required to be paid at the beginning of
3 the lease for the scheduled term of the lease.

4
5 **Section 303. Payment or Trade-in Pending Execution of Lease;**
6 **Refund or Return.**

7 (a) If a prospective lessee has made a payment to a lessor
8 or has delivered possession of trade-in goods pending the
9 consummation of a lease, and the lease application is [withdrawn
10 or] not approved, the lessor must promptly [immediately?], and in
11 no event more than [10] days after the payment or surrender,
12 return the trade-in goods and refund any payment made. The
13 lessor may not sell or transfer the trade-in goods until
14 consummation of the lease.

15 (b) If a lessor contracts with a prospective lessee to
16 purchase property of the prospective lessee separately from a
17 lease, the lessor may not withhold or otherwise condition payment
18 pending consummation of a lease.

19 Reporter's Notes: The earlier draft was based on the
20 Model, CA, NH, WI acts, with some re-write. This now
21 reflects Drafting Committee changes as of 2/97.
22

23 Subsection (a) requires the lessor to return
24 "promptly" any trade-in and refund any advance payment
25 if a lease deal is not closed. The Committee did not
26 settle on a precise time limit, but 10 days seemed to
27 be the consensus. Since the lessor may not dispose of
28 the trade-in goods in the meantime, the period should
29 be fairly short.
30

31 The earlier version of subsection (b) would have

1 permitted a lessor who "bought" the lessee's trade-in
2 car outright to retain the agreed price for up to 30
3 days in anticipation of applying it to the eventual
4 lease, or up to 75 days for a special-order vehicle.
5 The Committee voted 7-0 to delete this provision,
6 finding no justification for a lessor to "buy" the
7 consumer's trade-in car and retain the price for any
8 extended period of time. While it is a revenue source
9 for the lessor (and the industry says such retainages
10 help keep overall costs down for the lessor, no doubt
11 it provides leverage to keep the customer on the hook,
12 and may be prone to abuse for that reason. But by
13 deleting the earlier provision, the statute, by
14 silence, would appear to authorize contractual
15 "retainage" agreements of this sort. Thus the new
16 subsection (b) simply prohibits the lessor's retaining
17 the purchase price.
18
19

20 **Section 304. Refund of Excess Fees.**

21 [Deleted by Drafting Committee, 2/97]
22

23 **Section 305. Content and Form of Lease.**

24 (a) In addition to the disclosures required by Section 203,
25 a lease must contain the following information clearly and
26 conspicuously, in a record:

27 (1) A designation of the lease as a "**MOTOR VEHICLE**
28 **LEASE,**" or words of similar specification, and a notice
29 substantially as follows:

30 **"NOTICE TO THE LESSEE: This is a lease. You have no**
31 **ownership rights in the vehicle unless and until you**
32 **exercise your option to purchase the vehicle, if this**
33 **lease contains a purchase option. Do not sign this**
34 **lease before you read it. You are entitled to a**

1 **completed copy of this lease when you sign it."**

2 (2) Identification of the lessor and lessee, the place
3 of business of the lessor, the residence of the lessee, and a
4 description of any goods traded in.

5 (3) The disclosures required by Section 310 relating
6 to insurance.

7
8 **(4) The "Lease Rate," using that term, and a**
9 **descriptive explanation such as "the cost of your lease as an**
10 **annual rate."**

11 (5) In the case of a finance lease, a statement
12 identifying express warranties or guarantees available to the
13 lessee made by the supplier of the leased vehicle.

14 (6) If the lease includes charges payable to third
15 parties, such as group credit insurance, service or maintenance
16 contract or the like, a statement that the lessor may receive or
17 retain a portion of those charges.

18 (b) A lessor may not present for the lessee's signature a
19 lease that contains blank spaces to be filled in after it has
20 been signed except that, if the vehicle is to be specially
21 ordered for future delivery to the lessee, the due dates of
22 periodic payments and specific identifying numbers, marks or
23 similar information concerning the vehicle may be inserted in the
24 lease after its execution.

25 (c) [At the consumer's request,] the lessor shall, no later

1 than consummation of the lease, provide the lessee a copy of any
2 document, worksheet, purchase order, application or other record
3 submitted or signed by the lessee in connection with the lease
4 transaction.

5 (d) A lessee's written [or otherwise authenticated]
6 acknowledgment of receipt of a copy of the lease shall be
7 presumptive proof of delivery of the copy in any action or
8 proceeding by or against a holder who took the lease without
9 knowledge to the contrary.

10 Reporter's Notes: The Model act, and every state law,
11 have a set of elementary warnings and disclosures like
12 these. It may be arguable that some additional
13 information should be required, but probably not less.

14
15 This section has been redone pursuant to drafting
16 Committee instructions as of 2/97.

17
18 For vehicle leases this list adds to the
19 disclosures required under Section 203 (primarily the
20 federal Reg. M disclosures which Section 203
21 incorporates by reference). This section therefore
22 need not repeat items required to be disclosed under
23 Reg. M. Thus subsection (a)(2) requires identification
24 of trade-in goods, but not the leased vehicle itself
25 (which is a Reg. M disclosure).

26
27 Subsection (a)(1) combines the "caption" and
28 "health warning" items that previously were (a)(1) and
29 (a)(5). In light of developments in UCC Arts. 2, 2A,
30 and 2B, I have begun using the term "record" to refer
31 to both paper and electronic writings. The term will
32 be defined consistently with the UCC in Part 1 of this
33 Act.

34
35 Subsection (a)(3) is essentially a cross-reference
36 to Section 310 on insurance. The modifications to
37 earlier subsections (a)(3) and (a)(4), directed by the
38 Drafting Committee, are included in Section 310.

39
40 Item (a)(4) leaves open the issue of whether a

1 lease rate, generally comparable to the APR in credit
2 transactions should be required. A Committee task
3 force is reviewing that matter.
4

5 Re Subsection (a)(5) [(a)(8) in prior draft]: Reg.
6 M requires disclosure of warranties made by the lessor
7 or manufacturer, but not by the supplier of the vehicle
8 in a finance lease, typically a car dealer. Supplier
9 warranties in fact flow to the lessee under UCC 2A-209,
10 but that UCC section requires no particular disclosure
11 of them. This subsection is meant to fill that gap.
12

13 Item (a)(5) is the Reporter's notion, to address
14 the somewhat contentious issue of upcharges. Does it
15 help simply to tell the consumer that the lessor makes
16 money on third-party charges? Cf. Gibson v. Bob Watson
17 Chevrolet Geo, Inc., 1997 WL 196704 (7th Cir.
18 1997)[enclosed with this distribution]: under TILA,
19 creditor misdisclosed extended warranty by showing
20 whole amount paid to third-party when in fact creditor
21 retained a portion.
22

23 Subsection (b) is cleaned up to clarify that the
24 "due dates" phrase relates only to future-delivery
25 vehicles. We may need a better phrase than "blank
26 spaces" to accomodate electronic writings.
27

28 Subsection (c) is new, in response to the
29 Committee's request. It obligates the lessor to give
30 the consumer a copy of any documentation (other than
31 the lease itself) that the consumer submitted or
32 executed. As an option, the bracketed phrase would
33 require copies only if the consumer asked for them.
34

35 Subsection (d) is former (c).
36
37
38

39 **Section 306. Information During Lease Term.**

40 (a) During the term of a lease:

41 (1) The holder must provide the lessee a written
42 receipt for any payment made in cash.

43 (2) Upon record request from the lessee the holder
44 must promptly provide to the lessee a [record] statement of the

1 dates and amounts of the periodic lease payments that have been
2 received by the holder under the lease and the total amount of
3 the remaining periodic lease payments. An amount in the
4 statement that is estimated must be so identified.

5 (3) Upon written request from the lessee the holder
6 must provide to the lessee a written statement or estimate of the
7 lessee's current early termination obligation. [**Option A:** If the
8 statement is based on an estimate of realized value, the
9 statement must so indicate and show the amount of that estimated
10 realized value as a projected deduction from the early
11 termination obligation.] [**Option B:** The statement must indicate
12 that the early termination obligation will be reduced by the
13 realized value of the vehicle, if that is the case.]

14 (b) A holder may not charge the lessee for providing one
15 statement under subsection (a)(2) or (a)(3) of this Section in a
16 12-month period. The holder may impose a reasonable fee for
17 providing additional statements in a 12-month period if that fee
18 is disclosed at the time of the lessee's inquiry.

19 Reporter's Notes: This subsection is based on
20 provisions in the Model, MD, NY and WV acts, requiring
21 certain follow-on information from the lessor/holder.
22

23 Subsection (a)(3) is re-written at the Committee's
24 direction. The difference between the options is that
25 Option B would require the holder to put a dollar
26 figure on the estimated realized value.
27
28

29 **Section 307. Renegotiation or Extension.**

30 (a) The requirements of Section 305 of this Act apply to a

1 renegotiation of a lease, but not to an extension of a lease for
2 a period of six months or less. A renegotiation occurs when a
3 lease is satisfied and replaced by a new lease undertaken by the
4 same lessee.

5 [(b) A renegotiation does not constitute a transaction
6 subject to warranty or other provisions that apply to the sale of
7 used vehicles under the laws of this State.]

8 Reporter's Notes: Subsection (a) is drawn from the
9 Model and various state acts. It also parallels Reg.
10 M, including its definition of "renegotiation." A
11 significant re-writing of the lease will require all
12 new disclosures.

13
14 Bracketed Subsection (b), from the Model act, is
15 to avoid an implication that the renegotiated lease
16 falls under "used car" sales laws. Q. Appropriate
17 here?

18
19
20 **Section 308. Satisfaction of Lease.**

21 When a lessee has satisfied [performed?] all obligations
22 under the lease, the holder must deliver or send to the lessee at
23 the lessee's last known address documentation to indicate payment
24 in full. This documentation does not operate to release the
25 lessee from liability for events discovered by the holder after
26 sending the documentation.

27 Reporter's Notes: Drawn from the Model and various
28 state acts. A receipt or "paid in full" copy of the
29 lease seems appropriate. The lessor's obligation is
30 automatic and does not require a request from the
31 consumer.

32
33
34 **Section 309. Inoperable Vehicle; "Lemon Law".**

[Deleted by Drafting Committee, 2/97]

Reporter's Notes: The earlier draft included a mini-lemon law for leased vehicles. This was thought unnecessary for two reasons: (1) The formal Lemon Laws in many states already cover leased vehicles; and (2) under UCC 2A-508(6) a lessee may always deduct damages to which he is entitled under the lease contract from rent still due. (Note that this holds true for consumer "finance leases" as well: UCC 2A-407.)

Section 310. Insurance.

(a)(1) With respect to liability insurance against personal injury or property damage caused to others, the lease must disclose -

(A) the amounts and types of coverage the lessee is required to maintain;

(B) that the lessee may purchase the required insurance from an agent or broker of the lessee's choice subject to the lessor's right to reject that insurer for reasonable cause; and

(C) the premium [for the initial coverage period] for required or optional liability insurance that is purchased from or through the lessor.

(2) If liability insurance is not included in a lease, the lease must contain a statement substantially as follows:

No liability insurance coverage for bodily injury or property damage caused to others is provided under this lease. [Obtaining such insurance is the lessee's responsibility.]

1 (b)(1) With respect to casualty [physical damage?] insurance
2 on the leased vehicle, the lease must disclose -

3 (A) the amounts and types of coverage required
4 [, including any maximum deductible amounts];

5 (B) that the lessee may purchase the required
6 insurance from an agent or broker of the lessee's choice subject
7 to the lessor's right to reject that insurer for reasonable
8 cause; and

9 (C) the premium [for the initial coverage period]
10 for required or optional casualty insurance that is purchased
11 from or through the lessor.

12 (2) If casualty insurance on the leased vehicle is not
13 included in the lease, the lease must contain a statement
14 substantially as follows:

15 **No insurance coverage for physical damage or loss of**
16 **the leased vehicle is provided under this lease.**

17 **[Obtaining such insurance is the lessee's**
18 **responsibility.]**

19 (3) If subsections (a)(2) and (b)(2) of this section
20 are both applicable in a particular lease, the lease may include
21 a single combined notice.

22 Reporter's Notes: Prior subsection (a), stating that
23 insurance must be issued by an authorized company, is
24 deleted per Committee instruction.
25

26 New subsections (a) and (b) respond to the
27 Committee's suggestion that disclosures about casualty
28 and liability insurance be separated, and that we

1 consider expanding the information given. As drafted
2 here, the two subsections are almost verbatim the same.
3 They call for information about the types of insurance
4 the lessor may require, that the consumer may obtain
5 the insurance on his own, and the cost of any insurance
6 purchased from the lessor (including optional coverages
7 included in the lease).

8
9 Vehicle leases almost always require the lessee to
10 maintain casualty and liability insurance. Cf., sample
11 lease forms distributed earlier. Thus the "warning"
12 notices in subsections (a)(2) and (b)(2) will usually
13 apply in situations where the consumer elects to buy
14 required insurance from another supplier, and the
15 lessor or holder will usually demand evidence of such
16 insurance. The warning, in this respect, reinforces the
17 lessee's contract obligation to get the insurance.
18 Query: is this an adequate justification for the
19 warning? Note that the language (and intent) would
20 require the warning even if the insurance were
21 optional, i.e., not required.
22
23

24 (c)(1) If a lease includes group credit insurance the lease
25 must disclose -

26 (A) the term of insurance coverage and the premium
27 for the initial period of coverage; and

28 (B) that the group credit insurance is not
29 required.

30 (2) A lease may not be conditioned on the lessee's
31 purchase of group credit insurance. A lessee's election to
32 purchase group credit insurance is effective only if the lessee
33 [signs or initials an affirmative written request for]
34 [authenticates a record requesting] the insurance after receiving
35 the disclosures specified in this subsection.

36 Reporter's Notes: Subsections (1) and (2) are based on

1 the disclosure rules for credit insurance in Reg. Z §
2 226.4(d)(1), to assure that the voluntary nature of the
3 insurance is clear to the lessee.
4

5 (d)(1) If liability, casualty, or group credit insurance is
6 canceled [or terminated], a refund of unearned insurance premiums
7 received by the holder must be, at the holder's option:

8 (A) refunded to the lessee; or

9 (B) credited, together with the unearned portion of the
10 lease charge applicable to the refunded premium, either to (i)
11 the lessee's current obligation, (ii) the final maturing lease
12 payments, or (iii) to the lessee's obligation upon early or
13 scheduled termination.

14 (2) No credit or refund need be made under this
15 subsection if the amount would be less than one dollar.
16

17
18 Reporter's Notes: As instructed by the Committee,
19 this Subsection (d) combines former Subsections (b)(2)
20 and (c)(3) to deal with refunds of unearned premiums of
21 any kind of insurance all in one place.
22

23 The question is who controls or is entitled to the
24 refund? Since insurance included in the lease is
25 usually financed as part of the capitalized cost, a
26 cash refund to the lessee would be a windfall. This
27 draft allows the holder to apply the refund in various
28 ways (subject of course to the good faith standard).
29 If it is held for future crediting, the holder must
30 also credit the lessee with a rebate of unearned lease
31 charges attributable to the refunded premium.
32

33 (e) If insurance in connection with a consumer lease is
34 provided by or through the lessor, the lessor must provide or
35 arrange to have provided to the lessee a copy of the policy or
36 certificate of insurance.

1 Reporter's Notes: Drawn generally from the state acts.
2 And see U3C § 4.105. If the lessee is buying insurance
3 through the lessor, the lessor should provide coverage
4 information.
5

6 (f)(1) If a lessee fails to maintain insurance required
7 under the lease, the holder may buy [**Option A:** substitute
8 insurance for substantially the same risks for either the
9 interests of the lessee and the holder or the interest of either
10 of them] [**Option B:** other insurance that satisfies the lease
11 requirements]. An amount paid by the holder for this insurance -

12 (A) is subject to a rent charge, as though that
13 amount was part of the capitalized cost, from the date the holder
14 notifies the lessee of the purchase of substitute insurance, and

15 (B) is subject to the repayment and default
16 provisions of the consumer lease.

17 (2) Nothing in this subsection prevents the holder
18 from pursuing any other remedy for default set forth in the
19 consumer lease or provided by law.

20 Reporter's Notes: Modified to reflect drafting
21 Committee instructions, 2/97.
22

23 Based on the Model and various state acts. This
24 permits a holder to buy replacement coverage if the
25 lessee lets insurance coverage lapse; it is an example
26 of "advances to perform covenants" (cf. U3C § 2.506).
27 But force-placed insurance can be problematic: unduly
28 narrow (or broad) coverages, high prices, lessor/seller
29 upcharges, etc. Query: does this draft (either A or B)
30 adequately deal with the overcharging problem?
31

32 Note that Subsection (1)(A) incorporates a de
33 facto notice requirement: the holder cannot charge
34 "interest" on the substitute insurance premium until
35 the lessee is notified.

1 (g) A charge for insurance included in the lease or added
2 to the lease obligation under subsection (f) may not exceed the
3 premium actually imposed by the insurer for such insurance.

4 Reporter's Notes: Modified per Committee direction,
5 2/97.
6

7 This subsection puts an outside limit on the cost
8 of insurance. The earlier, now-deleted "permitted by
9 law" option would have allowed a lessor to charge the
10 legal ceiling rate even though the particular insurer's
11 charges may be lower, i.e., an upcharge. The "actually
12 imposed" option restricts premiums to the insurer's
13 actual charge; even here the lessor will likely realize
14 commission revenues.
15
16

17 **Section 311. Delinquency, Default, and Collection Charges;**
18 **Attorney's Fees.**

19 (a) A lease may provide for the holder's right to collect
20 from the lessee a late charge on a lease payment that is
21 delinquent for a period of 10 days or more in an amount provided
22 in the lease but not to exceed the greater of \$10.00 or 5 percent
23 of the unpaid portion of the late payment. A holder may not
24 assess or collect a late charge under this subsection when the
25 only delinquency is late charge(s) assessed on an earlier lease
26 payment or payments.

27 Reporter's Notes: This allows a late charge, but bars
28 the pyramiding of those charges.
29

30 (b) A lease may provide for the holder's right to recover
31 from the lessee, upon default, reasonable collection costs
32 including court costs and attorney's fees on referral to an

1 attorney not a salaried employee of the holder.

2 Reporter's Notes: As modified by Drafting Committee,
3 2/97.

4
5 This is based on the Model act, and would permit a
6 holder broad recovery of collection costs. Section
7 183(b) of the federal CLA allows such charges, so long
8 as they are reasonable under the circumstances. It now
9 includes attorney's fees which were previously treated
10 separately in subsection (c).

11
12 The earlier Option B would have restricted default
13 charges to a specified few. Such state-law limitations
14 are not preempted by the federal provision mentioned
15 above.

16
17 The issue of "reciprocal" attorney's fees -- i.e.,
18 if the holder could have collected attorney's fees, the
19 consumer has a reciprocal right -- is deferred to Part
20 5 on Enforcement. It has a broader application than
21 merely in the collection context. Cf. § 9-628 of the
22 April 1997 redraft of UCC Art. 9.

23
24 (d) Where a lessee's default results in a renegotiation
25 or extension of a lease, the holder may impose a reasonable
26 charge for the renegotiation or extension.

27 Reporter's Notes: Reporter's suggestion; maybe helpful,
28 possibly unnecessary. A separate charge for writing a
29 renegotiation or extension is not directly a
30 "collection cost." But where the re-write is in fact a
31 work-out arrangement, it seems logical to impose a
32 comparable reasonableness test.

33
34
35 **Section 312. Gap Liability.**

36
37 (a) In this section "gap amount" means the difference
38 between (i) the amount that would be owed by the lessee under the
39 lease if a total loss of the vehicle prior to the end of the
40 lease term occasioned by its theft, physical damage, or other
41 occurrence, were considered an early termination of the lease,

1 and (ii) the portion of the actual cash value of the vehicle
2 actually received by the holder from the insurance company or
3 from any other person. The gap amount does not include the
4 deductible amount applicable to an insurance policy maintained by
5 the lessee, or past due payments owed by the lessee at the time
6 the lessor receives the insurance proceeds, or any other amount
7 due because of the lessee's delinquency or default.

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

11 (c) Subsection (b) does not apply if [holder establishes
12 that] the total loss of the vehicle is occasioned by the lessee's
13 fraud, intentional act, or gross negligence.

14 Reporter's Notes: Modified to reflect Committee vote
15 (7-0) to bar gap liability.
16

17 Some current vehicle leases do not impose any gap
18 liability on the consumer, while many do and use that
19 as an opportunity to sell the consumer "gap
20 protection." Subsection (b) mandates the former
21 approach. It means that the risk of gap losses would
22 be absorbed and distributed through the holder's
23 overall pricing structure, perhaps self-insured or
24 covered by relatively inexpensive private insurance.
25 Lessors would lose the profit opportunity represented
26 by sales of gap waivers. Lessees would avoid possibly
27 large and unexpected liabilities for gap amounts that
28 would be due if they hadn't purchased gap coverage.
29

30 Subsection (a) is the definition that previously
31 was in Section 302, somewhat modified by removing
32 references to "gap protection" which is now moot.
33

34 Subsection (c) is the moral-hazard qualification.
35 A lessee should not be able to avoid gap (i.e., early
36 termination) liability by purposefully destroying or

1 "losing" the vehicle.
2
3

4 **Section 313. Assignment of Lease; Preservation of Lessee's**
5 **Claims and Defenses.**

6 (a) Until [30] days after a lessee has notice that the
7 lease has been assigned or transferred, the lessee may make
8 payments to the last known holder of the lease. If otherwise
9 timely, such a payment to the last known holder is not subject to
10 a late charge.

11 Reporter's Notes: Drawn from the Model and other state
12 acts. Cf. U3C § 3.204. This protects the lessee who
13 sends payments to a holder after the lease has been
14 sold or transferred. Indirectly it requires any
15 transferee who expects to receive payments to notify
16 the lessee, but it does not specify the form or content
17 of that notice. Should it?
18

19 (b)(1) Notwithstanding any provision in a lease or other
20 law, a holder of a consumer lease is subject to all claims and
21 defenses arising from the lease which the lessee could assert
22 against the lessor or supplier. A lessee's recovery from a
23 holder under this subsection may not exceed amounts paid by the
24 lessee under the lease.

25 (2) A lessor or holder may not take or receive a
26 consumer lease which fails to contain the following provision in
27 at least 10-point bold type:

28 [Option A] NOTICE
29 ANY HOLDER OF THIS CONSUMER LEASE IS SUBJECT TO ALL CLAIMS AND
30 DEFENSES WHICH THE LESSEE COULD ASSERT AGAINST THE LESSOR [OR

1 SUPPLIER] OF THE LEASED GOODS. RECOVERY HEREUNDER BY THE LESSEE
2 SHALL NOT EXCEED AMOUNTS PAID BY THE LESSEE HEREUNDER.
3

4 [Option B] NOTICE

5 This lease [will] [may] be transferred to a company other than the
6 lessor, and you will make your rental payments to that company.
7 You retain all the legal rights you have against the lessor [and
8 supplier] and may assert them against the company that holds the
9 lease, except that you cannot recover from that company more than
10 you have paid under the lease.

11 Reporter's Notes: Redone at Committee's instruction,
12 2/97, to state a substantive rule, not just require a
13 notice.
14

15 By FTC Rule, "holder in due course" protections
16 for assignees of consumer credit contracts have
17 effectively been abolished for 20 years. Subsection
18 (b)(1) states the parallel proposition that there can
19 be no "holder in due course" of a consumer lease. This
20 rule permits a lessee to defeat a holder's collection
21 efforts by proving defenses such as breach of warranty
22 or fraud. It also permits the lessee to recover
23 affirmatively from the holder up to the total of
24 amounts paid under the lease. For example, assume
25 after four months the leased vehicle proves to be a
26 total lemon, and the lessee properly revokes acceptance
27 under UCC 2A-517. Lessee has a claim to recover all
28 monies paid to that point from the holder.
29

30 Note that this draft preserves claims against a
31 "supplier" as well as against the original lessor. If
32 the lease is a "finance lease," the supplier will
33 likely have made warranties to the lessee. Cf. UCC 2A-
34 209. If such a warranty is breached, the lessee may
35 assert it against the holder. A "hell or high water
36 clause," or a statutory version of it, would not
37 operate to cut off the lessee's rights. UCC 2A-407,
38 Comment 2, recognizes that any other result "is not
39 tenable" under long-standing caselaw and statutory
40 precedents for consumer obligations.
41

42 Subsection (b)(2) would require a parallel notice

1 to that required by the FTC "Holder in Due Course"
2 Rule, 16 CFR Part 433, which applies only to credit
3 transactions. It preserves against an assignee the
4 lessee's substantive contract and warranty rights
5 against the lessor and any supplier of the vehicle. The
6 FTC used this "notice" technique (destroying holder-in-
7 due-course rights on the face of the contract) rather
8 than attempt a direct substantive intrusion on state
9 law.

10
11 It may be arguable that, with the substantive rule
12 stated expressly in (b)(1), the Notice is not necessary
13 at all. Does it serve an informational purpose for
14 consumers (I have added an Option B notice that seems
15 more intelligible than the FTC's). Or is it a
16 disincentive for abuse by lessors? I am unaware of any
17 reported case where a consumer lease assignee has
18 claimed to be a HDC.
19
20
21

22 **Section 314. Sublease.**

23
24 (a) A lessee under a lease with a term of one year or more
25 may sublease or assign the lessee's rights and interests only
26 with [the written][a record containing] consent of the holder. A
27 holder's withholding of consent is lawful unless the lessee
28 demonstrates that the holder lacked a good faith belief that the
29 sublease or assignment jeopardizes its rights under the lease.

30 (2) Unless otherwise agreed by the holder, the
31 obligations of a lessee under the lease are not affected by a
32 sublease or assignment, and the original lessee and the sublessee
33 or assignee are jointly and severally liable under the assigned
34 lease.

35 Reporter's Notes: Based on a proposed provision in
36 Connecticut. A lessor and lessee are always free to
37 negotiate and agree on a modification of the lease,
38 including a "sublease" or "assignment" by the lessee --

1 like an "assumption" of a mortgage. It seems useful to
2 reinforce that possibility by statute, applying a good
3 faith test to the holder's conduct. This draft puts
4 the burden of proof on the consumer to show the holder
5 had no good grounds for refusing to consent to the
6 sublease.ies
7
8
9

10 **Section 315. Lessee's Default; Right to Cure**

11 **Option A:**

12 (a) A lease may provide for events constituting default by
13 the lessee. A holder may act on an event of default other than
14 the lessee's failure to make a payment as required by the lease
15 only if the holder has a good faith belief that such event
16 significantly impairs its rights under the lease.

17 **Option B [U3C]:**

18 (a) An agreement of the parties to a lease with respect to
19 default on the part of the lessee is enforceable only to the
20 extent that:

21 (1) the lessee fails to make a payment as required by
22 agreement; or

23 (2) the prospect of payment, performance, or
24 realization of the holder's interest in the vehicle is
25 significantly impaired; the burden of establishing the prospect
26 of significant impairment is on the holder.

27 Reporter's Notes: Option A is the Reporter's. Option B
28 is from UCCC 5-109. Both options have the same
29 objective: to put some restraint on assertions of
30 default other than non-payment. "A" uses a good-faith-
31 belief test; "B" uses a prospect-of-impairment test.
32

1 (b)(1) After a lessee has been in default for 10 days
2 solely by reason of failure to make a timely lease payment and
3 any applicable late charge, the holder may send the lessee a
4 notice of default. The notice of default must contain a
5 conspicuous statement that the lessee is entitled to cure the
6 default, set forth the dollar amount necessary to cure the
7 default, the date by which the cure payment must be made and the
8 name, address and telephone number of the holder from which
9 information may be obtained regarding the cure. The date by
10 which payment must be made may be no less than 20 days after the
11 notice is sent. The holder may take no action to accelerate [?]
12 the lessee's obligation or foreclose on the vehicle until
13 expiration of the period for cure stated in the notice.

14 (2) Until expiration of the period for cure stated in
15 the notice under subsection (b)(1), the lessee may cure the
16 default by tendering the amount of all unpaid sums due at the
17 time of the tender, plus any unpaid delinquency charges, but
18 without additional security deposit or prepayment of periodic
19 lease payments not yet due. Cure restores the rights of holder
20 and lessee under the lease as though the default had not
21 occurred.

22 (3) A lessee is entitled to the right to cure under
23 this subsection only once [in any 12 month period] during the
24 term of the lease.

25 Reporter's Notes: Drawn from Model, NH, NJ, NY, MD

1 acts. A more elaborate default/cure provision is in
2 U3C §§ 5.109, 5.110, 5.111. The right to cure is
3 fairly standard fare where the consumer's default is a
4 failure to pay; other defaults do not trigger cure
5 rights.

6
7 Note that this is a pre-repossession cure right.
8 A comparable post-repossession "reinstatement" right
9 appears in the next section. We probably want one or
10 the other but not both.

11
12 The details and timing of the mechanism are
13 important to understand. The holder can take no
14 collection or foreclosure action until 10 days after a
15 payment is delinquent; this means 10 days after the
16 nominal due date plus any grace period. The holder may
17 then send a cure notice whenever it wishes --
18 immediately or later (perhaps only after a second
19 missed payment). The cure notice sets a cure date,
20 which must be no less than 20 days after sending and
21 may be a longer time. If the lessee settles up by the
22 due date, the lease is restored on its original terms,
23 without penalty. If the lessee fails to cure, only
24 then can the holder repossess or sue.

25
26 The UCCC limits the lessee to one cure over the
27 term of the contract. Is there any reason in the lease
28 setting to permit cure more often?
29
30

31 **Section 316. Repossession; Reinstatement**

32 (a) Except as provided in Section 315, and unless the
33 lessee voluntarily surrenders the leased vehicle to the holder,
34 the holder may on default repossess the vehicle by judicial
35 process or by self-help provided there is no breach of the peace.

36 **Option A:**

37 (b) (1) If at the time a holder takes possession of the
38 vehicle the lessee has paid 60 percent of the capitalized cost of
39 the vehicle, the lessee may cure a default consisting only of the

1 failure to make a required payment and may reinstate the lease
2 [without acceleration (?)] by tendering the unpaid amount of the
3 lease obligation due at the time of tender, including charges for
4 delinquency, default, or deferral, and reasonable expenses and
5 attorney's fees of the type described in Section ____.

6 (2) A tender of payment under subsection (b)(1) is
7 ineffective to cure a default or reinstate a lease unless made
8 before the later of:

9 (A) 21 days after the holder sends a notification
10 of disposition under Section ____ to the lessee [and any consumer
11 who is a secondary obligor]; and

12 (B) the time the holder disposes of the vehicle or
13 enters into a contract for its disposition under Section ____.

14 (3) A tender of payment under subsection (b)(1)
15 restores to the lessee and a consumer who is a secondary obligor
16 their respective rights as if the default had not occurred and
17 all payments had been made when scheduled, including the lessee's
18 right to possess the vehicle. Promptly upon the tender, the
19 holder shall take all steps necessary to cause any judicial
20 process affecting the collateral to be vacated and any pending
21 action based on the default to be dismissed.

22 (4) A lease may be reinstated under this subsection
23 only once.

24 (5) [The lessee's rights under this subsection may not
25 be waived or varied by agreement.]

1 **Option B:**

2 (b) If the vehicle has not previously been repossessed under
3 the same lease, the holder must within ____ days after
4 repossession give the lessee [written] [a record containing]
5 notice of the amount due in order to reinstate the lease and the
6 time, place and manner at or after which the holder proposes to
7 dispose of the vehicle. For this purpose the 'amount due in
8 order to reinstate' is all amounts currently owed or in default
9 under the lease (without acceleration) and the costs of
10 repossession and storage, and may include a reasonable additional
11 security deposit for the reinstated lease. The notice must also
12 state that on disposition of the vehicle the lessee will remain
13 liable for any unpaid portion of the early termination liability.
14 [The notice may also state an amount and payment terms for which
15 the holder is willing to sell the vehicle in full satisfaction of
16 the lessee's obligations under the lease.]

17 Reporter's Notes: The earlier draft of this section was
18 based on the MD and NY acts.
19

20 In this version, Subsection (a) states the
21 permissible methods of repossession: voluntary
22 surrender, judicial process, or self-help.
23

24 Subsection (b) has two options. Both create a
25 "cure" right similar to the pre-repossession cure right
26 in the preceeding section. Option A is drawn from the
27 April 1997 draft revision of UCC Art. 9 (§ 9-622). It
28 is a bit cumbersome because it references a number of
29 other sections of Article 9 which may not have
30 analogues in this Act. Option B is the same as the
31 earlier draft of this section. It requires a notice of
32 default and intent to dispose of the vehicle, somewhat
33 comparable to current UCC § 9-504(3). Presumably

1 reinstatement will be a rare occurrence, as the lessee
2 is almost by definition in serious financial trouble.

3
4 Industry opposes having both pre- and post-
5 repossession cure rights. One or the other, they say,
6 preferably post-repossession. A problem with post-
7 repossession cure, however, is that it requires the
8 holder to retain the vehicle through the cure period.

9
10 The Reporter suggests the parenthetical sentence
11 in Option B as a way for the holder to broach a full-
12 payoff, or purchase, figure. Does this help? Might it
13 be made mandatory?

14
15 (c) Where a lessee is not entitled to reinstate under
16 subsection (b), or if so entitled, does not do so by the date
17 stated in the notice, the holder must apply the realized value of
18 the vehicle, determined under Section 318(b), and any security
19 deposit, in order, to --

20 (1) the reasonable expenses of collection and
21 enforcement (including preparation of the vehicle for sale) and,
22 to the extent provided for by agreement and not prohibited by
23 law, reasonable attorney's fees and legal expenses incurred by
24 the holder;

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

27 (3) the early termination liability of the lessee.
28 Except as provided in Section 319(f), unless otherwise agreed the
29 lessee is liable for any deficiency.

30 Reporter's Notes: This tracks the state acts and UCC
31 Article 9 on how sale proceeds are to be applied. It
32 assumes the lessee will be liable for a deficiency, the
33 amount of which will be controlled by the early
34 termination rules in Section 319.

1 The notion in the earlier draft that the lessee
2 would be entitled to a "surplus" has been deleted.
3

4 **Section 317. Rights and Duties When Vehicle is in Holder's**
5 **Possession**

6 **[Deleted at Reporter's initiative]**

7 Reporter's Notes: The earlier draft tracked UCC § 9-207
8 to place a "reasonable care" responsibility on the
9 holder while the car is in its possession. There is no
10 equivalent provision in UCC Art. 2A for leases
11 generally, and on reflection none is needed here
12 either. UCC § 9-207 is important in the secured
13 transactions setting because in many security interests
14 (i.e., pledges) the creditor holds possession of the
15 collateral through the duration of the agreement. That
16 is never the case with vehicle leases.
17
18
19

20 **Section 318. Determining Realized Value.**

21 **Option A:**

22 Realized value is a valuation of the vehicle at early or
23 scheduled termination of the lease where the lessee does not have
24 or does not exercise a purchase option. Realized value is
25 determined in one of the following ways:

26 Reporter's Notes: This whole Option A is essentially
27 what was in the earlier draft. It is based on the
28 Model and several state acts.
29

30 (1) Unless the lease otherwise provides, a lessee who does
31 not have or does not exercise a purchase option may obtain, at
32 the lessee's expense and within __ days after the termination, an
33 appraisal of the value which could be realized at sale of the
34 vehicle, by an appraiser mutually acceptable to the lessee and

1 the holder. The appraisal is final and binding upon the parties
2 and is the realized value used in determining the lessee's
3 liability on lease termination.

4 Reporter's Notes: Subsection (1) confirms that an
5 appraisal valuation obtained by a lessee establishes
6 "realized value" for measuring the lessee's termination
7 liability. Should it be qualified by "unless otherwise
8 agreed"? I.e., what if lease specifies that realized
9 value will be based on Blue Book, or that car will
10 always be sold off? Do we intend that an appraisal
11 preempts those options?
12

13 (2) If a consumer lease so provides, the realized value on
14 lease termination may be determined by reference to a Blue Book
15 or comparable reference source, with or without adjustments for
16 excess wear and use. If excess wear and use are considered, the
17 requirements of Section 320 apply.

18 Reporter's Notes: Reporter's suggestion. Might a
19 lease use a Blue Book benchmark (perhaps adjusted by
20 wear and use) instead of accounting for specific
21 proceeds of sale, one car at a time?
22

23 (3) A lessee and holder may, at the time of lease
24 termination, agree on the realized value of the goods and [unless
25 unconscionable] the value so agreed upon is final and binding
26 upon the parties as the realized value.

27 Reporter's Notes: This alternative allows the parties
28 simply to agree on a realized value, on any basis they
29 choose, so long as the result is not unconscionable.
30 There is a rough analogue in UCC § 9-505(2) which
31 allows the parties to settle a security interest
32 foreclosure by post-foreclosure agreement.
33

34 [(4) **Deleted**]

35 Reporter's Notes: Old item (4) dealt with realized
36 value for "gap liability" purposes. That is now moot

1 in light of treatment of gap liability in Section 312.

2
3 (5) In a case not covered by subsections (1)-(4) of
4 this Section, the realized value is the amount received on sale
5 or other disposition of the vehicle. Disposition of the vehicle
6 may be by public or private sale, at any time and place, and on
7 any terms, but every aspect of the disposition including the
8 method, manner, time, place and terms must be commercially
9 reasonable. The holder may buy at any public sale. A transfer
10 of the vehicle to the holder, or to a recourse party or a related
11 party, is not a sale or disposition under this Section. For
12 purposes of this subsection, a "recourse party" means..... A
13 "related party" means.....

14 Reporter's Notes: This catch-all provision, modeled on
15 UCC § 9-504(3), establishes realized value through an
16 actual disposition of the vehicle. It implicitly
17 assumes that sale in a wholesale market is commercially
18 reasonable.
19

20 This draft takes the approach that realized value
21 is not established by a recourse sale back to the
22 dealer, or by a sale to an affiliate company; these
23 sales simply don't count, and it is the next sale that
24 measures realized value. There are other ways to deal
25 with this issue: e.g., the April 1997 revision draft
26 for UCC Art. 9, § 9-614(e), provides that if the
27 proceeds of such a sale are "unreasonably low," then
28 you figure what a "commercially reasonable" yield would
29 have been and use that as realized value.
30
31

32 **Option B:**

33 **Section 318. Manner of Disposition of Vehicle on Termination of**
34 **Lease**

1 (a) When the realized value that determines lessee's
2 liability on early or scheduled termination of the lease is
3 obtained by disposing of the vehicle, the disposition may be by
4 public or private sale, at any time and place, and on any terms,
5 but every aspect of the disposition including the method, manner,
6 time, place [, amount of proceeds,] and other terms must be
7 commercially reasonable. The holder may buy at any public sale.

8 Alternative 1:

9 (b) A transfer of the vehicle to the holder, to an affiliate
10 of the holder, or to a secondary obligor [obligated to the holder
11 under a recourse, warranty or similar agreement] is not a sale or
12 disposition under this Section.

13 Alternative 2:

14 (b) If the purchaser is the holder, an affiliate of the
15 holder, or a secondary obligor [obligated to the holder under a
16 recourse, warranty or similar agreement] the sale or disposition
17 satisfies this Section only if the amount of proceeds is
18 commercially reasonable.

19 Reporter's Notes: This is a wholly different approach
20 than in Option A. Instead of describing all the
21 various ways of reaching "realized value," it assumes
22 that an adequate definition of realized value (perhaps
23 that of Reg. M) is stated back in Section 302. This
24 section then addresses only the standards for a proper
25 sale of the vehicle by the holder. This would apply to
26 resales after default and repossession, after voluntary
27 early terminations, and also at the scheduled
28 termination of an open-end lease.

29
30 In subsection (a), the basic standard is
31 "commercial reasonableness," as under UCC Art. 9. The

1 words "amount of proceeds" are from the current
2 revision draft of § 9-610(b); if included, "amount of
3 proceeds" would have to be commercially reasonable in
4 all cases (not just insider sales).
5

6 The alternative versions of subsection (b) address
7 the issue of "insider" sales, often at reduced prices.
8 One approach is to say that a sale to the holder or a
9 related or recourse party just doesn't count. It is
10 the next sale that measures realized value. The
11 approach in Alternative 2 is basically the same as what
12 is included in proposed UCC 9-610(b); the insider sale
13 is OK if the proceeds are adequate. If this alternative
14 is used, the words "amount of proceeds" probably should
15 be deleted from subsection (a).
16

17 **Section 319. Early Termination Liability.**

18 (a)(1) **Option A:** A lease may provide a period of time not
19 to exceed one year during which termination of the lease by the
20 lessee constitutes an event of default. A voluntary termination
21 by the lessee outside that period, or at any time with the
22 holder's agreement, is not a default under the consumer lease.

23 **Option B:** Notwithstanding the term for which a lessee is
24 obligated to make payments under the lease, the holder may agree
25 to early termination of the lease at any time.

26 Reporter's Notes: Option A is based on the Model and
27 several state acts, but re-written for style. The
28 objective is to allow a minimum period for the
29 lessor/holder to recoup depreciation and lease charges
30 before the lessee is "entitled" to terminate. The
31 sanction for a lessee who terminates within the
32 proscribed period is exposure to default charges and
33 adverse credit reports, as well as possibly very large
34 early termination liability.
35

36 Option B is the Reporter's version. It
37 acknowledges that the lessee is contractually obligated
38 for the full term of the lease. This avoids the

1 implication that a lessee can cancel the lease at will,
2 which would take it outside this act because the lessee
3 would not be "obligated" for more than a month at a
4 time. But this option also confirms that the lessor
5 may agree to early termination, and can set a formula
6 for early termination liability.
7

8 (2) A holder may not report the voluntary early
9 termination of a lease to a consumer reporting agency as a
10 default unless the lessee fails to satisfy the lessee's early
11 termination obligations within the time periods set forth in the
12 lease.

13 Reporter's Notes: From the Model, NH and NY acts. The
14 language may need adjusting depending on which version
15 of subsection (a)(1) is used.
16

17 (b) A lease may provide a measure or formula for the
18 lessee's liability on early termination, but only at an amount
19 which is reasonable in the light of the anticipated or actual
20 harm caused by the early termination, the difficulties of proof
21 of loss, and the inconvenience or nonfeasibility of otherwise
22 obtaining an adequate remedy.

23 Reporter's Notes: This is taken verbatim from § 183(b)
24 of the federal CLA which puts these substantive limits
25 on early termination formulas. The CLA in effect
26 authorizes "liquidated damages" formulas in consumer
27 leases, instead of requiring a complex calculation
28 based on common law or UCC §2A-528, which states the
29 lessor's basic measure of damages for lessee default.
30 That Art. 2A measure is essentially the current value
31 of the lessor's expectancy under the lease. The
32 "reasonableness" of an early termination formula,
33 therefore, is ultimately measured by reference to that
34 underlying measure of damages.
35

36 As written, this seems to say that the total
37 charge ("only in an amount") must be reasonable, but

1 not that each of its components must be. Do we intend
2 that the lessor will have to justify each item in the
3 formula separately as well as the total?
4

5 (c) A lessee's early termination obligation may not exceed
6 an amount equal to the sum of:

7 Reporter's Notes: What follow are the permissible
8 components of that formula, based on the Model, NH, NY
9 and WI acts.

10 (1) unpaid periodic lease payments that accrued through
11 the date of early termination;

12 (2) other unpaid amounts for which the lessee is
13 responsible under the lease;

14 (3) official fees and taxes imposed in connection with
15 lease termination:

16 (4) either (i) a disposition fee in an amount set forth
17 in the lease, or (ii) [if the vehicle was foreclosed after
18 default pursuant to Section 316,] the actual and reasonable costs
19 of retaking, storing, preparing for sale and selling the goods
20 [to the extent those costs exceed the amount of the disposition
21 fee];

22 Reporter's Notes: The Model act states (4)(i) and
23 (4)(ii) as two separate components, although it seems
24 they cover essentially the same costs. The
25 parentheticals in (ii) suggest how it can be applied
26 cumulatively to (i): repossession costs may exceed the
27 "routine" disposition fee; if so the excess cost is
28 recoverable as well as the fee.
29

30 Query: should a disposition fee on early
31 termination be permitted only if it is also charged at
32 expiration of the lease? The holder's "disposition"
33 burden is the same in either case.

1
2 (5) the amount, if any, by which (i) the balance
3 subject to rent charge plus the rent charge earned in advance for
4 the computational period in which the early termination occurs,
5 calculated in accordance with the constant yield method [or any
6 other generally accepted lease accounting method ??] exceeds (ii)
7 the realized value of the goods; and

8 Reporter's Notes: This is based on the Model and other
9 state acts, and is the heart of early termination
10 liability. It allows the holder to collect the
11 unamortized adjusted capitalized cost (in credit terms,
12 the unpaid principal balance). The "constant yield
13 method" is essentially a simple interest calculation,
14 except that rent payments are due at the beginning of
15 the month rather than at the end.
16

17 Questions: What is the rationale and basis for
18 considering lease payments earned at beginning of
19 month? One apparent effect, in the formula stated
20 here, is that the lessee owes a whole month's rent
21 charge regardless of when during the month he/she
22 terminates the lease.
23

24 The bracketed language would seem to approve other
25 amortization methods, such as "Rule of 78s" and
26 "straight line" formulas which are less generous in
27 determining the payoff figure. Do we want to prohibit
28 expressly use of these alternative methods? Or limit
29 the circumstances in which they can be used. E.g.,
30 federal law (15 USC 1615) bars use of Rule of 78s in
31 precomputed transactions longer than 61 months; U3C §
32 2-510 similarly prohibits Rule of 78s in transactions
33 longer than 48 months.
34

35 Keep in mind that the new Reg. M disclosure about
36 early termination is a very summary one (a "description
37 of the method," e.g., "constant yield method") plus a
38 "health warning" about a possible "substantial charge
39 if you end this lease early." Thus consumers are not
40 likely to comprehend from the disclosures the dollar
41 effects of different payoff formulas.
42

43 (6) any other [reasonable] early termination charge

1 expressly disclosed in the lease.

2 Reporter's Notes: From the Model and other state acts.
3 This would appear to permit unlimited prepayment
4 penalties. But the whole formula remains subject to
5 the "reasonableness" standard. Is that enough
6 constraint? Does it help to repeat "reasonable" here,
7 as shown in brackets?
8

9 (d) As an alternative to the constant yield and other
10 generally accepted lease accounting methods of determining the
11 depreciation amounts accrued through the date of early
12 termination of a precomputed lease transaction, those amounts may
13 be determined under subsection (c) (5) of this Section by using a
14 [formula] [lease provision] under which the lease charge is
15 calculated on the adjusted capitalized cost for the time
16 outstanding according to a generally accepted actuarial method.
17 This section does not [otherwise] limit or restrict the manner of
18 calculating the lessee's early termination obligation, whether by
19 way of unamortized capitalized cost, discounted present value of
20 remaining lease payments, multiples of monthly payments or
21 otherwise.

22 Reporter's Notes: Combines provisions from the Model,
23 NH, NY, and WI acts. This gives the lessor the option,
24 in a "precomputed" transaction [which most leases are]
25 to use an actuarial method applied to the date of
26 termination for computing early termination payoffs. I
27 believe this can only be more generous to the consumer.
28 But is this provision even necessary in light of
29 paragraph (c) (5) above?
30

31 The last sentence means the lease can use a
32 variety of arithmetical methods or units of measurement
33 for early termination liability. But the total charge
34 can't exceed the formula stated above, including the
35 reasonableness test.

1
2 (e) If it is determined that the holder has violated
3 Section 316 [Repossession; Reinstatement] or subsection ____ of
4 Section 318 on disposition of the vehicle, there is a rebuttable
5 presumption that the realized value equals the total of the
6 amounts authorized under paragraphs (4), (5), and (6) of
7 subsection (c) of this Section. The presumption may be rebutted
8 by [clear and convincing] proof that notwithstanding the
9 violation the reasonably determined value of the vehicle is less
10 than the total of the amounts authorized under those paragraphs.

11 Reporter's Notes: This is perhaps imperfect language
12 to raise the question whether the holder loses its
13 rights to any "deficiency" -- the rest of the lessee's
14 early termination obligation -- if the holder mis-
15 conducts the repossession or disposition of the
16 vehicle. This has been a controversial topic under UCC
17 Article 9: the April 1997 revision draft of Article 9
18 [§ 9-625] contains two alternatives, one an "absolute
19 bar rule, and the other a "rebuttable presumption"
20 approach (which is what this draft reflects). U3C §
21 5.103 bars a deficiency claim altogether unless the
22 creditor acts in good faith and in a commercially
23 reasonable manner.
24

25 In leases, disposition of the vehicle on early
26 termination almost inevitably leaves a "deficiency" in
27 the early termination liability. The question is
28 whether a holder should forfeit this recovery on
29 account of improper conduct of the repossession or
30 disposition.
31
32

33 **Section 320. Excess Wear and Use; Excess Mileage.**

34 Reporter's Notes: This section is a composite of Model
35 and various state acts, but substantially re-written.
36 The capture of excess wear and use charges is an
37 important device for lessors to avoid loss of expected
38 residual value at lease end. This can also be a source

1 of abuse if those charges are not subject to scrutiny.

2
3 The primary objective here is to provide a
4 mechanism to assure that consumers have a fair chance
5 to question or challenge excess wear and use charges
6 without ham-stringing the holder's efforts to evaluate
7 and dispose of the returned vehicle without delay.

8
9 (a)(1) A lease may provide that the lessee is responsible
10 for excess wear and use of the vehicle, and for excess mileage,
11 according to standards stated in the lease [or accompanying
12 documents ?] --

13 (A) at the scheduled termination of a lease that
14 is not an open-end lease; and

15 (B) at early termination of a lease when [special
16 circumstances??].

17 Reporter's Notes: I am assuming that "excess wear and
18 use" [EWU] is usually only relevant when the lease
19 expires on schedule (and is not relevant to an open-end
20 lease). For an early termination, diminished value of
21 the vehicle is reflected in the realized value. But is
22 this always the case? Are there some situations where
23 EWU charges are apt on early termination?
24

25 (2) A charge for excess wear and use, or excess
26 mileage, may not be assessed if the lessee exercises a purchase
27 option provided in the consumer lease.

28 Reporter's Notes: If the lessee buys the car at the
29 option price in the lease, the lessor/holder gets its
30 full bargain in that price, and can't tack on charges
31 for EWU.
32

33 (3) A holder may not prohibit the lessee from being
34 present at any inspection for excess wear and use, and must
35 permit the lessee reasonable access to the vehicle for purposes

1 of an appraisal on the lessee's behalf.

2 (b) If a lease requires the lessee, or gives the lessee the
3 option, to have the vehicle inspected by the holder prior to
4 scheduled termination of the lease, the holder must so notify the
5 lessee at least ____ days prior to the last date available for the
6 inspection (which shall not be earlier than 15 days prior to
7 scheduled termination). If the holder inspects the vehicle
8 pursuant to this subsection, the holder must proceed as required
9 by subsection (d) of this Section.

10 Reporter's Notes: The Model, NH, NY and WI acts
11 require some notice to the lessee where the lease
12 anticipates pre-termination inspection by the holder.
13

14 (c) If a lease does not require, or give the lessee the
15 option to have, an inspection of the vehicle by the holder prior
16 to scheduled termination of the lease, the holder shall mail or
17 deliver to the lessee, not more than [40 ?] days nor less than
18 [20 ?] days before the scheduled termination a notice advising
19 the lessee that:

20 (1) the lessee may return the vehicle at the scheduled
21 termination date with an itemized appraisal of excess wear and
22 use under the standards for excess wear and use stated in the
23 lease;

24 (2) the lessee may obtain the appraisal from or through
25 the holder, if that is the case, or from an appraiser mutually
26 agreeable to the lessee and the holder; and

27 (3) the appraisal will be conclusive on the condition

1 of the vehicle, but not on whether the condition is covered as
2 excess wear and use under the lease.

3 Reporter's Notes: Drawn from the Model and various
4 state acts. This gives the lessee a chance to preempt
5 disputes over EWU by getting an appraisal of his own.
6

7 (d) In order to hold a lessee responsible for excess wear
8 and use the holder must provide the lessee the notices and
9 counter-inspection rights provided in this subsection:

10 (1) If the holder has inspected the vehicle prior to
11 scheduled termination of the lease under subsection (b) of this
12 Section, or the lessee returns the vehicle at scheduled
13 termination without an appraisal authorized by subsection (c) of
14 this Section, the holder must within ____ business days after the
15 [earlier of the] inspection or return provide to the lessee an
16 itemized bill identifying the items of excess wear and use and
17 the amounts to be paid by the lessee on account of the excess
18 wear and use. The itemized bill must include or be accompanied
19 by a notice to the lessee that, if the lessee disputes the
20 itemized bill and charges for excess wear and use, the lessee may
21 within ____ business days after receiving the itemized bill obtain
22 an appraisal on the lessee's own behalf from an appraiser
23 mutually agreeable to the lessee and the holder, and that
24 appraisal will be conclusive on the condition of the goods but
25 not on whether such condition is covered as excess wear and use
26 under the lease. If the lessee does not obtain such an
27 appraisal, the holder's appraisal is conclusive. A notice in

1 substantially the following form satisfies the notice requirement
2 of this subsection:

3 **"You are being asked to pay this amount for**
4 **excess wear and use. If you do not agree with**
5 **this amount and want to preserve valuable**
6 **rights, you must obtain from an appraiser we**
7 **approve, and deliver to us, within ____ days**
8 **after hand delivery or ____ days after mailing**
9 **of this bill, an itemized appraisal and**
10 **estimate of the cost of repairing the excess**
11 **wear and use. You must also pay any [repair**
12 **costs] [charges] due under the appraisal you**
13 **obtained. If you submit such an appraisal and**
14 **pay any amounts due, that appraisal is**
15 **binding on us. If you fail to do so, our**
16 **inspection and appraisal is conclusive."**

17 (e) If the holder inspects the vehicle pursuant to
18 subsection (b), the itemized bill must also contain a statement
19 substantially as follows:

20 **"This inspection report was prepared by us**
21 **[the holder] prior to the scheduled**
22 **expiration of your lease. You may avoid**
23 **excess wear and use charges by having those**
24 **items satisfactorily repaired prior to**
25 **returning the vehicle. We may inspect the**

1 **vehicle on its return and may seek additional**
2 **charges only by giving you written notice of**
3 **wear and use incurred after the date of our**
4 **inspection. Any charges for excess wear and**
5 **use are due when your lease expires."**

6 Reporter's Notes: Subsections (d) and (e) resemble the
7 Model and several state acts. Lessor/holder wants to
8 close on EWU issues quickly and dispose of the vehicle;
9 lessee wants to avoid gouging on EWU charges. Does
10 this draft retain appropriate flexibility for the
11 holder while also giving lessee a realistic counter-
12 inspection opportunity? Should this Act try to
13 anticipate every possible dispute wrinkle? Should it
14 include more elaborate ADR mechanisms, as in NY?

15
16 (f) As used in this section:

17 (1) An "itemized bill" is a listing of the items of
18 excess wear and damage and the amounts to be paid by the lessee.
19 An itemized bill may be comprised of separate documents delivered
20 or mailed separately. [??] An itemized bill may also include
21 identified charges for excess mileage and other amounts due under
22 the lease. Mere acknowledgment by the lessee of receipt of an
23 itemized bill is not an admission of the existence, nature,
24 obligation to pay, or amount of any of the items therein.

25 (2) An "appraisal" must (i) be conducted [by a person
26 licensed for such purpose under the _____ Law of this state or]
27 by an independent third party agreed to by holder and lessee,
28 (ii) describe conditions of excess wear and use, and (iii)
29 estimate the cost of repair.

30 (3) An appraisal or itemized bill is "conclusive" on

1 the information contained in it, except to the extent that such
2 wear and damage was obscured or concealed or is reasonably
3 believed by the holder to have occurred after a pre-termination
4 inspection.

5 (g) Notwithstanding any other provision of this section or
6 any provision of the lease, if the itemized bill is not based on
7 an appraisal by a licensed appraiser, the holder may not collect
8 an amount for excess wear and use beyond the actual costs of
9 repair.

10 Reporter's Notes: From the NY act. If the holder's
11 bill for EWU is not prepared by a licensed appraiser
12 (whose estimates are presumably reliable), the holder
13 can't collect more than actual repair costs.
14

15 (h) Nothing in this Section -

16 (1) requires a holder to send an itemized bill or
17 notice if the holder does not claim an excess wear and use
18 charge;

19 (2) limits a lessee's obligation for a charge for
20 excess mileage stated in the lease;

21 (3) prohibits a post-termination agreement between
22 lessee and holder relating to wear and damage if such agreement
23 is consistent with the rights given to the lessee in this
24 Section; or

25 (4) limits a lessee's liability to the holder for
26 odometer rollbacks or obscured or concealed structural or safety
27 related damage discovered by the holder after the return of the

1 goods or after the lessee receives an itemized bill.

2
3 **Section 321. [Open-end lease]**

4 Reporter's Notes: No text proposed at this time.
5 "Open-end lease" refers to one where the lessee's
6 obligation at expiration depends on the realized value
7 of the vehicle at that time. The lessee cannot simply
8 return the car, but rather must bear some or all of the
9 depreciation risk.

10
11 The federal Consumer Leasing Act § 183 effectively
12 restricts the lessee's liability under an open-end
13 lease to an amount no greater than three monthly
14 payments. There is a comparable limitation in U3C §
15 3.401. Several states (CA, NH) restate this
16 substantive limitation in their leasing acts.

17
18 Query: (1) do we want to adopt this federal
19 limitation into state law?; (2) is any other special
20 treatment appropriate for open-end leases?

21
22
23 **Section 322. Calculation of Lease Rate.**

24
25 Reporter's Notes. No text proposed at this time. If
26 the Committee determines to require disclosure of a
27 Lease Rate, this section would set out the
28 computational formula.
29

1
2
3
4 **Part 4. SPECIAL PROVISIONS (OTHER THAN MOTOR VEHICLES)**

5
6 [Reserved for future use]

7
8 [With experience and the passage of time it may become
9 appropriate to add provisions dealing with discrete forms of
10 consumer leases other than those involving motor vehicles.
11 The Conference does not recommend such provisions at this
12 time.]

13
14 Reporter's Notes: This merely leaves a logical place
15 in the Act to expand its coverage to other kinds of
16 consumer leases at some future time.

17
18
19
20 **Part 5. PENALTIES; ENFORCEMENT; ADMINISTRATION**

21
22 **Section 501 [Civil liability]**

23
24 Reporter's Notes: This section generally parallels the
25 civil liability section of the Truth in Lending Act,
26 and is similar to U3C §§ 5.201 and 5.203. The focus is
27 on liability for violating this Act; remedies for
28 contractual breaches of the lease are covered in UCC
29 Article 2A.

30
31 The objective here is give lessees incentives to
32 police lessor misconduct, primarily through recovery of
33 statutory damages and court costs and attorney's fees.
34 It is not intended to create a minefield of potential
35 liability for the leasing industry. Thus the
36 effectiveness, and fairness, of these civil liability
37 depends on the clarity and precision of compliance
38 responsibilities stated throughout this Act.
39

1 (a) A lessee who has suffered a loss due to a violation of
2 any provision of this Act by a lessor or holder is entitled to
3 recover the lessee's actual damages from the lessor or holder who
4 has violated this Act.

5 (b) A lessor who fails to return goods which the lessee
6 left with the lessor pending the expected consummation of a
7 consumer lease contrary to the provisions of Section 303 of this
8 Act, is liable to the lessee for the value of the goods traded-in
9 and [consequential and incidental damages ?] [all costs and
10 expenses ?] incurred by the lessee because of the failure to
11 return the goods.

12 (c) In an action [other than a class action] in which it is
13 determined that a lessor or holder has violated any of the
14 following provisions of this Act, the lessee is entitled to an
15 award of statutory damages of [Option A] \$_____ [Option B] the
16 greater of \$100 or the amount of [#] periodic payments provided
17 for in the consumer lease:

18 Reporter's Notes: The parenthetical poses the question
19 whether class actions should be allowed for statutory
20 damages. The sections listed below are those that
21 include explicit and fairly precise requirements for
22 lessors and holders; most apply only to vehicle leases.
23

24 Sec. 204 [Co-Signer Notice]

25 Sec. 205 [Rebate or Discount for Referrals]

26 Sec. 206 [Prohibited Lease Terms]

27 Sec. 207 [Security Interest Prohibited]

1 Sec. 208 [Security Deposit]
2 Sec. 303 [Payment or Trade-in Pending Execution
3 Lease; Refund or Return]
4 Sec. 305 [Content and Form of Lease Agreement;
5 Disclosure]
6 Sec. 306 [Information During Lease Term]
7 Sec. 307 [Renegotiations and Extensions]
8 Sec. 310 [Insurance]
9 Sec. 311 [Delinquency and Default Charges]
10 Sec. 3312 [Gap Liability]
11 Sec. 315 [Lessee's Default; Right to Cure]
12 Sec. 316 [Repossession; Reinstatement]
13 Sec. 319 [Early Termination Liability]
14 Sec. 320 [Assessment of Excess Wear and Use]

15 (d) In a successful action under subsections (a), (b), or
16 (c) of this Section, a lessee is also entitled to the costs of
17 the action and reasonable attorney's fees. In determining the
18 award of attorney's fees, the amount of the lessee's recovery is
19 not controlling.

20 (e) Notwithstanding the provisions of subsections (b), and
21 (c) of this section, if within [60 ?] days after discovering a
22 violation of the provisions of this Act, and prior to the
23 institution of an action under this section or the receipt of
24 written notice of the violation from the lessee, a holder
25 corrects the violation(s) [including refund or restitution of

1 charges improperly disclosed], neither the lessor nor the holder
2 has liability under subsection (c) of this Section.

3 (f) A lessor or holder is not liable for a violation of
4 this Act that was unintentional and resulted from a bona fide
5 error notwithstanding the maintenance of procedures reasonably
6 adapted to avoid any such error. Examples of bona fide errors
7 include, but are not limited to, clerical errors, calculation
8 errors, computer malfunctions and programming errors, except that
9 an error of legal judgment with respect to a person's obligations
10 under this Act is not a bona fide error.

11 (g) An action may not be brought under this Section more
12 than two years after the occurrence of the act or practice which
13 is the subject of the action. An action is "brought" for
14 purposes of this subsection -

15 (1) when a lessee initiates an action against a holder;
16 or

17 (2) when a lessee raises a violation of this Act as a
18 defense, counterclaim, [or claim in recoupment ?] in an action
19 initiated against the lessee [(including proceedings in
20 insolvency) ?].

21 Reporter's Notes: How long and how tight should the
22 statute of limitations be? Both the federal CLA and
23 the U3C have basically a 1-year SOL, but permit
24 "recoupment" counterclaims beyond that point.
25

26 (i) A recovery under this Section may not exceed the total
27 amount to be paid by the lessee under the terms of the consumer

1 lease, exclusive of the purchase option price, if any.[?]

2 Reporter's Notes: From the Model Act. What is the
3 point of so limiting a lessee's possible recovery?
4

5 (j) Notwithstanding the provisions of Sections 206() and
6 313() of this Act, and except where the assignment is
7 involuntary, a civil action for a violation of this Act which may
8 be brought against a lessor or holder may be maintained against a
9 subsequent holder only if the violation for which the action or
10 proceeding is brought is apparent on the face of the consumer
11 lease. For purposes of this subsection, a violation is apparent
12 on the face of the consumer lease if:

13 (1) a required disclosure can be determined to be
14 incomplete or inaccurate from the face of the consumer lease or
15 other documents assigned; or

16 (2) the consumer lease contains a prohibited provision
17 or does not contain the notices, legend or items required by this
18 Act.

19 Reporter's Notes: This insulates a subsequent assignee
20 from liability under this section for any violation
21 committed by a prior holder which the current holder
22 could not identify from the lease documentation.
23

24 (k) [Other possible refinements: class action caps; multiple
25 lessees; multiple violations; lessee offsets, etc.]
26

27 **Section 502. Criminal Liability.**

28 Reporter's Notes: No text proposed at this time. Do
29 any provisions of this Act deserve criminal sanctions?
30

1 Note that under U3C § 5.301 criminal sanctions
2 attach only to "willfully and knowingly" (1) making
3 excess charges in 'supervised' loans, (2) lending
4 without a license, and (3) not making reports or paying
5 license fees. Section 112 of the Truth in Lending Act,
6 applicable to consumer leases, provides criminal
7 sanctions for certain non-disclosures.
8
9

10 **Section 503. Effect of Violation on Rights of Parties;**
11 **Election of Remedies]**

12 (1) Except as otherwise specifically provided, a violation
13 of this Act by a lessor or holder does not impair rights on the
14 consumer lease.

15 (2) If an action or omission that violates this Act also
16 violates other law, the lessee is entitled to but a single
17 remedy.

18 Reporter's Notes: This is the Reporter's proposal.
19 Subsection (1) is to make clear that a violation of
20 this Act does not nullify or undercut the lessee's
21 obligation on the lease. Cf. U3C § 5.201(4).
22 Subsection (2) is to prevent multiple recoveries for
23 the same violation. Cf. U3C § 5.203(8).
24
25
26

27 **Section 504. Administrative Enforcement.**

28 The provisions of this Act shall be enforced by the
29 [Attorney General, Credit Code Administrator, or similar public
30 agency]. For this purpose a violation of this Act shall
31 constitute an unfair or deceptive act or practice within the
32 meaning of the [state UDAP act].

33 Reporter's Notes: This section would assign
34 enforcement authority to a public agency, presumably

1 one that has investigative, cease-and-desist, and
2 similar powers. That agency would have the same
3 enforcement powers as under the state UDAP Act or
4 similar consumer fraud act.
5
6

7 **Section 505. Administration of Act.**

8 The [designate public official or office] shall administer
9 the provisions of this Act, and shall have the authority to issue
10 regulations and interpretations designed to effectuate the
11 purposes of this Act, to prevent circumvention or evasion
12 thereof, to facilitate compliance therewith, and to assure
13 consistent interpretations with those of other states enacting
14 this uniform Act.

15 Reporter's Notes. Is there need for an Administrator
16 for this Act? Indeed, is it wise to permit regulations
17 and interpretations beyond the text of the statute,
18 when this can lead to non-uniform interpretations of
19 the Act?
20
21

22 **Part 6: INTERPRETATION OF ACT; TRANSITION**

23 **Section 601. Purposes; Rules of Construction.**

24 (a) This Act shall be liberally construed and applied to
25 promote its underlying purposes and policies.

26 (b) The underlying purposes and policies of this Act are:

- 27 (1) to simplify, clarify, and modernize the law
28 governing the leasing of consumer goods;
29 (2) to recognize the unique characteristics and
30 legitimate role of leasing in the marketing of consumer goods;

1 (3) to further consumer understanding of the terms of
2 lease transactions and to foster competition among suppliers of
3 consumer leases so that consumers may lease goods at reasonable
4 cost;

5 (4) to protect consumers against unfair practices by
6 some suppliers of consumer leases, having due regard for the
7 interests of legitimate and scrupulous lessors;

8 (5) to permit and encourage the development of fair and
9 economically sound consumer leasing practices;

10 (6) to conform the regulation of disclosure in consumer
11 lease transactions to the federal Consumer Leasing Act; and

12 (7) to make uniform the law, including administrative
13 rules, among the various jurisdictions.

14 Reporter's Notes: Based on U3C § 1.102. Paragraph
15 (2)(b) is proposed new language, to replace a U3C
16 reference to setting rate ceilings.
17

18 This whole section may be outside Conference style
19 guidelines!
20
21
22

23 **Section 602. Construction Against Implicit Repeal.**

24 This Act being a general act intended as a unified coverage
25 of its subject matter, no part of it shall be construed to be
26 impliedly repealed by subsequent legislation if that construction
27 can reasonably be avoided.

28 Reporter's Notes: Boilerplate. Same as U3C § 1.104.
29

1 **Section 603. Severability.**

2 If any provision of this Act or the application thereof to
3 any person or circumstance is held invalid, the invalidity does
4 not affect other provisions or applications of this Act which can
5 be given effect without the invalid provision or application, and
6 to this end the provisions of this Act are severable.

7 Reporter's Notes: Boilerplate. Same as U3C § 1.105.

8
9 **Section 604. Effective Date; Transition.**

10 (a) This Act takes effect at 12:01 a.m. on [].

11 (b) A transaction entered into before this Act takes effect
12 and the rights, duties and interests flowing from it thereafter
13 may be terminated, completed, consummated or enforced as required
14 or permitted by any statute, rule of law, or other law amended,
15 repealed, or modified by this Act as though the repeal,
16 amendment, or modification had not occurred; but this Act applies
17 to

18 (a) a renegotiation made after this Act takes effect as
19 to a consumer lease whenever entered into;

20 (b) a consumer lease entered into before this Act takes
21 effect insofar as the remedies of holders are limited by Sections
22 206 [Prohibited lease terms], 315 [Lessee's default; right to
23 cure], 316 [Repossession; reinstatement], and 318(b)(5)
24 [Disposition of vehicle at lease termination].

25 Reporter's Notes: Based on U3C § 9.101.

1 **Section 605. Specific Repealer and Amendments.**

2 (1) The following acts and parts of acts are repealed:

3 (a)

4 (b)

5 (2) The following acts and parts of acts are amended:

6 (a)

7 (b)

8 Reporter's Notes: Based on U3C § 9.103. As this Act
9 is meant as comprehensive coverage of consumer leases,
10 it would be necessary to identify existing state
11 statutes that deal with consumer leases and repeal or
12 amend them as appropriate.

13
14
15 -- END OF DRAFT --
16