

**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   leases 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           (a)   In this Act --

16                   (1)   "Consumer lease" means

17                       **[Option A]** a lease that a lessor regularly engaged in  
18   the business of leasing or selling goods of the kind makes to a  
19   lessee who is an individual and who takes under the lease  
20   primarily for a personal, family, or household purpose, if --

21                           (A) the total payments to be made under the lease,  
22   excluding the amount of the residual value and any payments for  
23   options to renew or buy, do not exceed \$150,000, and

24                           (B) the lessee is obligated under the lease for a  
25   period of time exceeding four months.

26                       **[Option B]** a contract between a lessor and lessee for  
27   the transfer of the right to possession and use of goods for a  
28   term in return for consideration, for a period exceeding four  
29   months and for a total contractual obligation not exceeding

1     [\$150,000] (excluding the residual value and any payments for  
2     options to renew or buy), whether or not the lessee has the  
3     option to purchase or otherwise become the owner of the property  
4     at the expiration of the lease. Unless the context indicates  
5     otherwise, in this Act "lease" means "consumer lease."

6     Reporter's Notes: In Option A the main paragraph is  
7     verbatim from UCC 2A-103(1)(e). Note that the lessor  
8     must regularly lease or sell consumer goods "of the  
9     kind"; thus a car dealer is covered when he makes his  
10    first lease transaction. Subparagraphs (A) and (B) add  
11    limitations on the definition: it is not a "consumer  
12    lease" if the total amount payable exceeds \$150,000, or  
13    if the lease obligation is for less than four months.  
14    This latter criterion has the effect of excluding from  
15    this Act short term transactions such as weekend car or  
16    tool rentals, and also transactions such as "rent to  
17    own" contracts where the consumer is not obligated to  
18    renew beyond the initial weekly or monthly term.

19  
20     Option B is based on Reg. M. It is essentially  
21    the same in substance as Option A. I added the  
22    parenthetical to clarify "total contractual  
23    obligation." The definitions of "lessor" and "lessee"  
24    fill out the consumer character of covered leases.

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

32     Reporter's Notes: Patterned on U3C § 1.302, but citing  
33     specifically to the federal leasing statute and Reg. M.  
34  
35

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

1 the trade.

2 Reporter's Notes: This term, including its "fair  
3 dealing" criterion for merchants, is taken from UCC §  
4 2-103(1)(b) which is incorporated in Art. 2A [Leases]  
5 in § 2A-103(3). Query: do we need to repeat  
6 definitions of terms from the UCC? If so, do we need a  
7 separate definition of "merchant," or is that fairly  
8 incorporated via UCC § 2A-103(2) and § 2-104(1)?  
9  
10

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

17 Reporter's Notes: Verbatim from UCC 2A-103(1)(h). Is  
18 it apt for this Act? Are we agreed that this Act  
19 generally covers all "goods," and not just vehicles?  
20 And that this Act does not cover any other forms of  
21 "personal property"?  
22  
23

24 (5) "Holder" means a person with a leasehold interest  
25 in a consumer lease. The term includes the lessor for the period  
26 of the lessor's leasehold interest and, if the leasehold interest  
27 is assigned, the assignee for the period of the assignee's  
28 interest. The term does not include a creditor holding a  
29 security interest in the lease or the owner or beneficiary of an  
30 interest in a trust that owns consumer leases.

31 Reporter's Notes: This is drawn from Model act, except  
32 that it uses the phrase "leasehold interest" from UCC §  
33 2A-103(1)(m) instead of the term "ownership of the  
34 lease."  
35

36 It seems useful to have a term to refer to whoever

1 currently owns the lease; this may be the original lessor,  
2 but in many cases it will be a subsequent assignee. Both  
3 the lessor and assignee have responsibilities and  
4 liabilities under this Act.  
5

6 The last sentence purports to insulate indirect  
7 financiers from vicarious liability. Query: even if such  
8 secondary parties are not "holders" within this definition,  
9 are they not likely to be treated as assignees or  
10 transferees of the lessor, and so subject to exposure on  
11 that basis?  
12  
13

14 (6) "Lease" means a transfer of the right to  
15 possession and use of goods for a term in return for  
16 consideration, but a sale on approval or a sale or return, or  
17 retention or creation of a security interest is not a lease.  
18 [Unless the context clearly indicates otherwise, the term  
19 includes a sublease. ?]

20 Reporter's Notes: Verbatim from UCC § 2A-103(1)(j).  
21 Query: Do we need to repeat core Art. 2A definitions  
22 here? If so, do we also need to replicate Art. 2A  
23 definition of "Finance lease" and "Supplier" to deal  
24 with the pattern where the formal lessor is a financing  
25 entity, such as a bank?  
26

27 If we use Option B of subsection (a)(1), above, as  
28 the definition of "consumer lease," this definition of  
29 "lease" is unnecessary.  
30  
31

32 (7) "Lessee" means  
33 **[Option A]** a natural person who enters into or is offered a  
34 consumer lease.

35 **[Option B]** a person who acquires the right to possession and  
36 use of goods under a lease. [Where the context so indicates, the  
37 term includes a sublessee and a prospective lessee or applicant  
38 for a lease. ?]

1        Reporter's Notes: Option A is from Reg. M. Option B  
2        is derived from the Model and various state acts.  
3  
4

5                (8) "Lessor" means

6                **[Option A]** a person who transfers the right to possession  
7        and use of goods under a lease. [Where the context so indicates,  
8        the term includes a sublessor and a prospective lessor.?.]

9                **[Option B]** a person who regularly leases, offers to lease,  
10       or arranges for the lease of goods under a consumer lease. A  
11       person who has leased, offered, or arranged to lease [personal  
12       property] [goods] more than five times in the preceding calendar  
13       year or more than five times in the current calendar year is  
14       subject to this Act.

15       Reporter's Notes: Option A is drawn from UCC 2A-  
16       103(1)(p). Option B is from Reg. M, which uses the  
17       bright-line test of five transactions in a year for  
18       inclusion.  
19

20                "Lessee" and "lessor" need to include prospective  
21       lessees and lessors in some provisions relating to pre-  
22       lease activity.  
23

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

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

32                [List other defined terms with § references]  
33

34                (c) Unless the context clearly indicates otherwise, other  
35       terms used in this Act have the same meaning as in Uniform

Commercial Code Article 2A - Leases.

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

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

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

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

The phrase "unfair or deceptive acts or practices" is added to make clear that state UDAPs remain applicable.

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

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

(b) A settlement in which the consumer waives or agrees to



1 forego rights or benefits under this Act is invalid if the court  
2 finds the settlement to have been unconscionable at the time it  
3 was made. Matters relevant to unconscionability include the  
4 competence of the consumer, any deception or coercion practiced  
5 upon the consumer, the nature and extent of the legal advice  
6 received by the consumer, and the value of the consideration.

7 Reporter's Notes: Based on U3C § 1.107. Subsection  
8 (a) generally invalidates any contractual waiver by a  
9 consumer of rights under this Act, either in the lease  
10 agreement or otherwise. But, under (b), (c), and (d),  
11 disputed claims by or against a consumer, or collection  
12 claims, may be settled unless unconscionable.  
13  
14

#### 15 **Section 105. Transactions Subject to Act by Agreement.**

16 If the parties to a lease transaction thereof that is not a  
17 consumer lease [acknowledge] [agree in a writing signed by them]  
18 that the transaction is subject to the provisions of this Act,  
19 the transaction is a consumer lease for the purposes of this Act.

20 Reporter's Notes: Based on U3C § 1.109. This allows  
21 the parties to stipulate to coverage by this Act even  
22 if the lease is not for a consumer purpose or where the  
23 "purpose" is unclear, such as in a small business or  
24 agricultural context. This seems a useful way for  
25 lessors to establish a safe-harbor legal framework for  
26 leases at the margins of coverage.  
27  
28

#### 29 **Section 106. Sale Incident to Consumer Lease.**

30 A consumer lease may include the purchase of goods, services  
31 or benefits incidental to the lease, including but not limited to  
32 accessories and insurance. So long as the lease aspects of the  
33 transaction predominate, the incidental purchases are part of the  
34 consumer lease.

1       Reporter's Notes: New. This reflects a notion that is  
2       implicit in UCC Art. 2A and in the federal CLA, and is  
3       explicit in some of the state leasing laws. Purchases  
4       incidental to the lease are subsumed in the lease, and are  
5       therefore not subject to piecemeal coverage by laws  
6       applicable to "credit sales" of those products.

7  
8       "Predominance" is the test generally used by courts to  
9       determine whether hybrid transactions are sales of goods  
10      under UCC Art. 2. Presumably the same idea will be applied  
11      to leases under UCC Art. 2A.  
12  
13

#### 14      **Section 107. Obligation of Good Faith.**

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

17      Reporter's Notes: Same as UCC § 1-203. "Good faith" is  
18      defined in Section 102. Query: do we need this at all,  
19      given general applicability of UCC?  
20  
21

#### 22      **Section 108. Unconscionability.**

23      Reporter's Notes: No specific text proposed. UCC §  
24      2A-108 is a comprehensive statement on  
25      unconscionability, including particular applications in  
26      consumer leases, patterned on UCC § 2-302 [Sales of  
27      Goods] and U3C § 5.108. There seems no need to  
28      reproduce that provision here unless we mean to change  
29      it.  
30  
31

#### 32      **Section 109. Territorial Application; Limitation on Choice of** 33                      **Applicable Law and Forum**

##### 34      Option A:

35           (a) This Act applies to a consumer lease if the lessee  
36      resides in this state at the time the lease agreement becomes  
37      enforceable or within thirty days thereafter and the leased goods  
38      are to be used primarily in this State. A provision in a

1 consumer lease in contravention of this subsection is  
2 unenforceable.

3 (b) If a judicial forum chosen by the parties to a consumer  
4 lease is a forum that would not otherwise have jurisdiction over  
5 the lessee, the choice is not enforceable.

6 **Option B:**

7 (a) Except as otherwise provided in this section, this Act  
8 applies to a consumer lease transaction entered into in this  
9 State. A consumer lease is entered into in this State if either  
10 a signed writing evidencing the lease obligation or offer of a  
11 lessee is received by the lessor in this State, or the lessor  
12 induces a lessee who is a resident of this State to enter into  
13 the transaction by face-to-face solicitation in this State.

14 (b) With respect to a consumer lease to which this Act does  
15 not otherwise apply, if a consumer who is a resident of this  
16 State, pursuant to solicitation in this State, sends a signed  
17 writing evidencing the lease obligation or an offer of the  
18 consumer to a lessor in another state [and keeps or maintains the  
19 leased goods in this State ??];

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

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

24 (c) The limitations on creditors' remedies in Sections  
25 \_\_\_\_\_ apply to actions or other proceedings  
26 brought in this State to enforce rights arising from consumer

1 lease transactions wherever entered into.

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

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

11 (2) a holder may not enforce rights against a consumer  
12 in this State with respect to the provisions of the agreement  
13 that violate the provisions of Sections \_\_\_\_\_ .

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

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

25 (g) Notwithstanding other provisions of this section:

26 (1) except as otherwise provided in subsection (c),

1 this Act does not apply if the consumer is not a resident of this  
2 State at the time of a consumer lease transaction and the parties  
3 have agreed that the law of the consumer's residence applies; and

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

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

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

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

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

17 (4) that fixes venue; and

18 (5) that the consumer 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 A is intended as a short-form  
24 choice-of-law provision. Subsection (a) applies this  
25 Act to leases involving residents of this state if the  
26 leased goods are used in this state. Subsection (b)  
27 bars a choice of forum clause where the designated  
28 court would not otherwise have jurisdiction over the  
29 consumer lessee.  
30

1        Option B is based on U3C § 1.201. Subsection (a) omits  
2 a U3C paragraph dealing with mail applications for open-end  
3 credit which seems inapplicable here. Subsection (b)  
4 references where the leased goods are kept, rather than the  
5 U3C reference to where loan proceeds are received.  
6 Otherwise essentially verbatim.  
7

8        This option covers any lease "entered into" in this  
9 state [subsection (a)], but also has some extra-territorial  
10 reach to protect local residents. Thus it covers the price  
11 terms of a lease 'solicited' in this state [subsection (b)],  
12 and it limits an out-of-state lessor's enforcement rights in  
13 this state [subsections (c) and (d)]. Otherwise out-of-  
14 state leases are respected [subsections (e) and (g)].  
15 Subsection (h) bars a resident consumer's waiver of the  
16 coverage of this Act and of the jurisdiction, venue and  
17 process rules of local courts.  
18  
19

## 20        **Section 110. Exclusions.**

21        This Act does not apply to:

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

24        (2) a transaction under a public utility or common carrier  
25 tariff if a subdivision or agency of this State or of the United  
26 States regulates the charges for the leased goods or services  
27 involved;

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

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

32                (A) The lessee has no liability for the value of the  
33 goods at the end of the lease term except for abnormal wear and  
34 tear; and

35                (B) The lessee has no option to purchase the leased

goods.

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

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

## **Part 2. CONSUMER LEASES GENERALLY**

### **Section 201. Lease Advertising.**

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

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

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

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

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

1     Reporter's Notes: For any consumer lease  
2     advertisement, subsection (a) makes compliance with  
3     Reg. M a state law rule as well. This is meant to  
4     extend the Reg. M advertising rules to transactions  
5     outside Reg. M's scope (i.e., over \$25,000) but within  
6     the scope of this Act (up to \$150,000).  
7

8             Subsection (b) is a general "false advertising"  
9     proscription in the leasing context. It applies to any  
10    "person" who advertises, not just lessors. Thus a vehicle  
11    manufacturer advertising lease arrangements through its  
12    franchised dealers would be covered.  
13  
14

## 15   **Section 202. Pre-Lease Availability of Sample Form.**

16            Upon request, a lessor must make a blank sample of its  
17    current consumer lease form readily available at its place of  
18    business for examination by a prospective lessee before the  
19    consummation of a consumer lease. If a lessor uses more than one  
20    lease form, the lessor satisfies this requirement by making  
21    available either a commonly used form or the form pertinent to  
22    the type of lease about which the prospective lessee has  
23    inquired.

24     Reporter's Notes: The first sentence reflects a common  
25    provision in recent state leasing legislation, and  
26    seems generally useful. The phrase "at its place of  
27    business" is included so that lessors need not respond  
28    to telephone or mail inquiries. The second sentence  
29    allows the lessor flexibility where it uses a variety  
30    of forms, either for different types of leases or from  
31    different prospective assignees.  
32  
33

## 34   **Section 203. Disclosure; Lease Document.**

35            (a) A lessor in a consumer lease must make the disclosures  
36    required by the federal Consumer Leasing Act [whether or not the  
37    lease is subject to that Act].



(b) A consumer lease agreement must:

(1) be in writing, and if printed, in at least \_\_\_\_  
point type;

[FYI only: ] This is 8 point type

This is 10 point type

This is 12 point type

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

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

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

(c) Promptly on consummation of the consumer lease the  
lessor must deliver to the lessee a completed copy of the lease.

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

Subsections (b) and (c) are basic formalities for all  
leases: a written, signed lease document identified as such,  
with a copy to the consumer.

#### **Section 204. Cosigner Notice.**

(a) For purposes of this section, "cosigner" means a  
natural person who assumes liability for the obligation of  
another person without compensation, [but does not include a co-  
lessee entitled to possession and use of the leased goods]. The  
term includes any person whose signature is requested as a  
condition of making a consumer lease to another person, or as a  
condition for forbearance on collection of another person's

1 obligation that is in default. A person who does not receive  
2 goods, services, or money in return for a lease obligation does  
3 not receive compensation within the meaning of this definition.  
4 A person is a cosigner within the meaning of this definition  
5 whether or not he or she is designated as such on a lease  
6 obligation.

7 (b) A lessor or holder may not [accept] [request] [require]  
8 a cosigner on a consumer lease unless, prior to the cosigner  
9 becoming obligated, the lessor gives the prospective cosigner a  
10 separate document in substantially the following form:

11 **Notice to Cosigner**

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

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

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

1           **record.**

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

4       Reporter's Notes: This is almost verbatim from the FTC  
5       Credit Practices Rule, 16 CFR § 444.3, but substituting  
6       "lessor/lessee" for "creditor/borrower," and  
7       "obligation" for "debt." A similar provision is in U3C  
8       § 3.208. The FTC Rule applies only to lenders and  
9       installment sellers, and a parallel co-signer  
10       disclosure for leases seems appropriate.

11  
12           Query: should we consider a special notice to the  
13       cosigner at the time of default?  
14

15       **Section 205. Rebate or Discount for Referrals.**

16           A lessor [person ?] may not induce or attempt to induce any  
17       person to consummate a consumer lease by offering a subsequent  
18       [post-consummation ?] rebate, discount, commission or other  
19       consideration, on the condition that the lessee provide  
20       information or assistance for the purpose of enabling the lessor  
21       to lease or sell goods to another person.

22       Reporter's Notes: Based on provisions in U3C, and  
23       Model, CA, NH, NY acts, targeted on "referral sales"  
24       gimmicks that are inherently deceptive. I'm still  
25       uncertain of need for it in a leasing law. The  
26       practice would probably violate a state UDAP Act in any  
27       event. Note that it applies only to pre-lease  
28       inducements where the customer is vulnerable to the  
29       promise of discounts.  
30

31           The more elaborate version in U3C § 3.309 provides a  
32       more severe sanction for violations, i.e., the consumer may  
33       retain the property without having to pay for it.  
34  
35

36       **Section 206. Prohibited Lease Terms.**

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

2 (1) the holder may arbitrarily and without reasonable  
3 cause accelerate the maturity of any part or all of the amount  
4 owing on the lease;

5 (2) the lessee gives a cognovit, power of attorney or  
6 other authorization to confess judgment, or an assignment of  
7 wages;

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

11 (4) the lessee waives any right of action against the  
12 holder for any illegal act committed in the collection of  
13 payments under the consumer lease or in the repossession of the  
14 goods; or

15 (5) the lessee agrees not to assert claims or defenses  
16 arising from the consumer lease against a subsequent holder of  
17 the consumer lease.

18 (b) An agreement, waiver or provision prohibited by this  
19 Section is unenforceable but does not otherwise affect the  
20 validity of a consumer lease.

21 Reporter's Notes: Based on provisions in U3C, Model,  
22 NH, NY, MD acts. These are baseline restrictions in  
23 consumer credit transactions. Subsection (a) (5) may be  
24 redundant in light of the anti-holder-in-due-course  
25 Notice required under Section 313(c).  
26  
27  
28

29 **Section 207. Security Interest Prohibited.**

1 (a) A consumer lease or other document executed by the  
2 lessee in connection with the lease may not provide for the  
3 creation of a security interest in personal or real property of  
4 the lessee to secure the payment of the obligations arising from  
5 the lease. This prohibition does not apply to the taking of a  
6 security deposit [Section 208], advance lease payment or other  
7 prepayment, or the taking of a security interest in the proceeds  
8 of insurance on the leased goods.

9 (b) A security interest taken in violation of this section  
10 is void but does not otherwise affect the validity of a consumer  
11 lease.

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

15 Reporter's Notes: Based on U3C § 3.301, and Model, CA,  
16 NH, NY, MD, WI acts. The U3C provision, and the  
17 analogous FTC Credit Practices Rule, 16 CFR § 444.2,  
18 essentially limit sale creditors to purchase-money  
19 security interests. In the lease context, the lessor  
20 retains comparable rights in the leased goods from the  
21 nature of the lease arrangement, and should not need to  
22 encumber other property of the lessee. If the lease is  
23 truly a lease, the lessor's interest should be safe  
24 from third-party claimants including the lessee's  
25 trustee in bankruptcy. Also, allowing the lessor to  
26 layer a UCC Article 9 security interest onto the lease  
27 may complicate the transaction, especially on  
28 repossession and foreclosure. Which rules control,  
29 this Act, or UCC Article 9 (or perhaps the U3C)?  
30

31 The new subsection (c) allows the lessor/holder to  
32 file a UCC Art. 9 financing statement as a protective  
33 measure under UCC § 9-408. This may be a prudent thing  
34 for the lessor to do in some cases, as a precaution  
35 lest a court later characterize the transaction as a

1 credit sale. But such a permissive filing does not  
2 itself make the lease a security interest.  
3  
4

5 **Section 208. Security Deposit**

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

7 **Option A:** In § 203 [Disclosures], add a new subsection \_\_\_\_\_:

8 "(\_) If a lease requires a security deposit or pre-  
9 payment of periodic rental payments not then due, a statement  
10 whether interest will accrue on the amount of the security  
11 deposit or prepayment and whether any accrued interest will be  
12 retained by the lessor, remitted to the lessee, or applied to the  
13 lessee's obligation on termination of the lease."  
14

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

16 "(\_) Notwithstanding any other provision of law, a holder  
17 is not required to pay interest on any security deposit under a  
18 consumer lease."  
19

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

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

24 "(b) A consumer lease may require the lessee to make a  
25 security deposit in an amount not to exceed \_\_[2?] periodic lease  
26 payments scheduled under the lease. In the case of a single-

1 payment lease the security deposit may not exceed twice the sum  
2 of the net capitalized cost plus the lease charge, divided by the  
3 number of months in the lease term.

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

8 Reporter's Notes: Option A would handle security  
9 deposits, and interest accruals on them, simply as a  
10 disclosure matter. It would neither limit the amount  
11 of a security deposit nor require the lessor to invest  
12 the deposit at interest, nor would it require the  
13 lessor to credit any such interest to the lessee.

14  
15 Option B is taken from the recently adopted  
16 Wisconsin act. The "notwithstanding" clause is meant  
17 to assure that UCC § 9-207(2)(c) does not control; this  
18 may be redundant in light of Section 103 of this draft.

19  
20 Option C is the Reporter's draft. It expressly  
21 authorizes a security deposit, but limits the amount.  
22 Like UCC § 9-207(2)(c) it requires that the lessee be  
23 credited with any interest actually earned, but does  
24 not require the holder to invest or otherwise accrue  
25 interest on the deposit. If we want to require the  
26 holder to segregate, invest and pay interest on the  
27 security deposit in all cases, we could use words such  
28 as "reasonable interest," and perhaps define that  
29 phrase in terms of some reference point (prevailing  
30 bank rates, e.g.).

### 31 32 33 **Section 209. Warranties of Quality and Title.**

34 A consumer lease under this Act is subject to the  
35 provisions of sections 2A-209 through 2A-216 of the Uniform  
36 Commercial Code - Leases [, except that, notwithstanding  
37 subsections (1), (2), and (3) of section 2A-214 of that Code, no

1 words or conduct are effective to negate an express warranty, or  
2 to exclude or modify an implied warranty.]

3 Reporter's Notes: Subsection (a) is essentially an  
4 incorporation-by-reference of the warranty rules in UCC  
5 Article 2A. There seems no particular value in copying  
6 them fully into this Act unless we expect to make  
7 significant changes.  
8

9 One possible change is the parenthetical language  
10 above, which would bar warranty disclaimers. I.e., the  
11 lessor or supplier of the leased goods cannot disclaim  
12 express or implied warranties otherwise made. This would  
13 track non-uniform amendments to UCC § 2-316 [disclaimers in  
14 sale contracts] adopted in about a half-dozen states.  
15

16 Some revision of the basic warranty rules in UCC  
17 Article 2 may emerge from the current Article 2 project.  
18 Presumably these would be carried into Article 2A as well,  
19 and so would become applicable to consumer leases through  
20 this Act. Is there any need to try to anticipate those  
21 changes here?  
22

23 I believe the federal Magnuson-Moss Warranty Act would  
24 still apply in the lease context to any written warranty by  
25 a manufacturer or supplier (including a lessor). So those  
26 additional protections are retained here without needing to  
27 say so expressly.  
28  
29

### 30 **Part 3. CONSUMER LEASE OF MOTOR VEHICLE**

#### 31 **Section 301. Coverage of This Part.**

32 (a) This Part (Sections 301-322) applies to a consumer  
33 lease of a motor vehicle. As used hereafter in this Part the  
34 term "consumer lease" or "lease" means a lease of a motor  
35 vehicle.

36 (b) Except as specifically noted, the provisions of this  
37 Part apply in addition to, and not in lieu of, the provisions of  
38 Parts 1 and 2 of this Act.



1       Reporter's Notes: This "scope" provision confirms that  
2       this sub-set of rules applies to vehicle leases, in  
3       addition to the general provisions earlier in this Act.  
4

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

6               For purposes of this Part:

7       Reporter's Notes: Most of these definitions that  
8       follow are stated as options. One set of options are  
9       based on the Model act, and versions of them appear in  
10      the CA, FL, IN, NH, NY and WI acts. These fairly  
11      intricate definitions are necessary to parse out the  
12      lease cost structure, including gap coverage and early  
13      termination liability, and to permit calculation and  
14      possibly disclosure of the Rent Charge and Lease Rate.  
15

16              The recent revision of Reg. M significantly affects  
17      this set of definitions, I believe. Thus, where Reg. M  
18      defines a term that is exactly or nearly the same as one in  
19      the Model and state acts, this draft uses the Reg. M term,  
20      and sets out the Reg. M definition as an option for this  
21      Act. Definitions in this Act relating to disclosures and  
22      calculations should be consistent with those in the federal  
23      Consumer Leasing Act. Otherwise they may be preempted by  
24      Reg. M. E.g., this draft uses and defines the term "rent  
25      charge" the same as in Reg. M, instead of using the term  
26      "lease charge" as in the Model and various state acts.  
27      Indeed, since Reg. M controls disclosure and contains a  
28      federal "reasonableness" standard for termination  
29      liabilities, there seems more reason to synchronize these  
30      definitions with Reg. M than with UCC Art. 2A.  
31

32              Might it be possible to adopt en masse all the  
33      relevant definitions from Reg. M, without restating  
34      them here? E.g., "The following terms have the same  
35      meaning as in the federal Consumer Leasing Act: (list  
36      terms)."  
37  
38

39              (1) "Adjusted capitalized cost" means

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

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

4           Reporter's Notes: This is the functional equivalent of  
5 the "amount financed" in a credit transaction. Option  
6 A is the Reg. M definition. Option B is from the Model  
7 and state acts.  
8  
9

10           (2) "Base periodic payment" means that portion of the  
11 periodic lease payment which is the sum of the amortizing  
12 depreciation and the rent charge attributable to that payment  
13 period.

14           Reporter's Notes: This is the "principal and interest"  
15 portion of the monthly payment, without adding taxes or  
16 other incidentals. The term is used, but not  
17 specifically defined, in Reg. M. I think this  
18 definition is consistent with Reg. M usage.  
19  
20

21           (3) "Capitalized cost reduction" means  
22           **[Option A]** the total amount of any rebate, cash payment, net  
23 trade-in allowance, and noncash credit that reduces the gross  
24 capitalized cost.

25           **[Option B]** any payment made by cash, check, rebate or  
26 similar means that is in the nature of a down payment by the  
27 lessee and any net trade-in allowance granted by the lessor at  
28 the inception of the consumer lease for the purpose of reducing  
29 the capitalized cost. The term does not include any base lease  
30 payments due at the inception of the lease.

1        Reporter's Notes: This is essentially the down payment  
2        including any trade-in. Option A is verbatim from Reg.  
3        M. Option B is from the Model and various state acts.  
4  
5

6            (4) "Conspicuous" means distinguished from other terms by  
7        type size or in some other manner. A term in at least 10-point  
8        **[?]** bold type is conspicuous.  
9

10          (5) "Constant yield method" means -

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

22            (b) in the case of a single payment lease, the method  
23        of determining the periodic earning of the rent charge portion of  
24        the single lease payment pursuant to which the rent charge for  
25        each computational period is earned in advance by multiplying the  
26        constant rate implicit in the lease times the balance subject to  
27        rent charge as it increases during the lease term. At any point

1 during the term of a single payment lease, the balance subject to  
2 rent charge is determined by subtracting from the residual value  
3 the total lease charge scheduled to be earned over the lease term  
4 and adding to the difference all rent charges accrued during the  
5 preceding computational periods; and

6 (c) in the case of either a periodic payment lease or a  
7 single payment lease, the periodic rent charge calculation is  
8 based on the assumption that the holder will receive the lease  
9 payment or payments on the exact due date or dates and that the  
10 lease goes to its full term.

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

20 (6) "Gap amount" means the difference between the amount  
21 owed (or which would be owed in the absence of gap protection) by  
22 the lessee under the consumer lease in the event of a total loss  
23 of the vehicle prior to the end of the lease term occasioned by  
24 its theft, physical damage, or other occurrence as specified in  
25 the consumer lease, and the actual cash value or portion of the  
26 actual cash value of the vehicle actually received by the holder  
27 from the insurance company or from any other person. The gap  
28 amount does not include any deductible amount applicable to any  
29 insurance policy maintained by the lessee or any past due

1 payments owed by the lessee at the time the lessor receives the  
2 insurance proceeds, or any other amount due because of the  
3 lessee's default.

4  
5 (7) "Gap protection" means a contractual undertaking by the  
6 lessor to waive, or by a third person to pay, the gap amount.  
7 For purposes of Section 310 [Insurance] gap protection is not  
8 "liability insurance or other insurance on the goods."

9  
10 (8) "Gross capitalized cost" means  
11 **[Option A]** the amount agreed upon by the lessor and the  
12 lessee as the value of the leased property and any items that are  
13 capitalized or amortized during the lease term, including but not  
14 limited to taxes, insurance, service agreements, and any  
15 outstanding balance from a prior loan or lease.

16 **[Option B]** the amount which, when reduced by the amount of  
17 the capitalized cost reduction, equals the adjusted capitalized  
18 cost. The term includes all items that are capitalized in the  
19 lease and, after the application of the capitalized cost  
20 reduction, amortizes to the residual value by the depreciation  
21 portions of the periodic lease payments over the term of the  
22 lease. For a single payment lease, the capitalized cost  
23 amortizes to the residual value by the depreciation portion of  
24 the single lease payment. The capitalized cost may include,  
25 without limitation, taxes, registration, license, acquisition,

1 administration, assignment and other fees, and charges for  
2 insurance, gap protection, accessories and their installation,  
3 delivering, servicing, repairing or improving the goods, and  
4 other services and benefits incidental to the consumer lease.  
5 The term also may include, with respect to any property traded in  
6 connection with a lease, the unpaid balance of any amount  
7 financed under an outstanding credit agreement or the unpaid  
8 portion of the early termination obligation under any lease or  
9 other obligation of the lessee. The term capitalized cost does  
10 not include any rent charge.

11 Reporter's Notes: This is generally comparable to the  
12 "amount financed," or principal balance, in a credit  
13 transaction.  
14

15 Option A is verbatim from Reg. M. Option B is  
16 from the Model and various state acts.  
17  
18

19 (9) "Group credit insurance" means group credit life  
20 insurance, group credit accident insurance, group credit health  
21 insurance, group credit accident and health insurance, group  
22 disability insurance or group credit unemployment insurance.  
23

24 (10) "Lease rate" means that nominal annual percentage rate  
25 which reflects the amortization of the adjusted capitalized cost  
26 to the residual value over the term of the lease, calculated in  
27 accordance with Section 322.

28 Reporter's Notes: This is the functional equivalent of  
29 the "annual percentage rate" in credit transactions.

1 This term is not currently used in Reg. M or in any  
2 state leasing law (although a recent Canadian law  
3 requires such a disclosure).  
4

5 The complex mathematics for calculating this rate  
6 are deferred to a separate section.  
7  
8

9 (11) "Motor Vehicle" means any device propelled or drawn by  
10 any power other than muscular power, upon or by which any person  
11 or property is or may be transported or drawn upon a public  
12 highway, road or street, and which is required by law to be  
13 registered for such use.

14 Reporter's Notes: This is from the Model act. Reg. M  
15 deals with "motor vehicle leases" but does not define  
16 the term, although a de facto definition may emerge in  
17 the Commentary.  
18  
19

20 (12) "Open-end lease" means a consumer lease in which the  
21 lessee's liability at the end of the lease term is based on the  
22 difference between the residual value of the leased property and  
23 its realized value.

24 Reporter's Notes: Verbatim from Reg. M.  
25

26 (13) "Periodic" means monthly, weekly, quarterly, or any  
27 other period as specified in the consumer lease.  
28

29 (14) "Realized value" means

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

1 (b) The highest offer for disposition of the leased  
2 property; or

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

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

7 Reporter's Notes: Option A is from Reg. M. Option B  
8 refers to § 318 where various methods of calculating  
9 "realized value" are set out. Option B is broader than  
10 the Reg. M definition, by including valuations based on  
11 appraisals or agreement of the parties.  
12  
13

14 (15) "Rent charge" means the difference between the total  
15 of base periodic payments over the lease term minus the  
16 depreciation and any amortized amounts. [The term does not  
17 include any amount included in the capitalized cost, or any  
18 delinquency, default, disposition, early termination, collection,  
19 or reinstatement charge. The term does not include any amount  
20 for taxes, registration, license, acquisition, administration,  
21 assignment and other fees, or charges for insurance, for  
22 accessories or their installation, for delivering, servicing,  
23 repairing or improving the vehicle and for other goods, benefits  
24 or services incidental to the consumer lease, whether such amount  
25 is included in the capitalized cost, paid separately at lease  
26 inception by cash, check, credit card or similar means, or paid  
27 on a periodic basis in addition to the base lease payment.]

28 Reporter's Notes: This is the functional equivalent of



1 the "finance charge" in credit transactions. The first  
2 sentence is verbatim the same as in Reg. M. The  
3 remainder, from the Model and several state laws, seems  
4 a helpful though possibly unnecessary amplification  
5 that is not inconsistent with (or preempted by) the  
6 federal definition.  
7  
8

9 (16) "Residual value" means

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

13 **Option B]** the estimated value of the goods at the end of the  
14 scheduled lease term, used by the lessor in determining the base  
15 lease payment, as established by the lessor at the time the  
16 lessor and lessee enter into a consumer lease.

17 Reporter's Notes: Option A is from Reg. M. Option B  
18 is from the Model act.  
19  
20

21 (17) "Single Payment Lease" means a consumer lease for  
22 which a single payment is required to be paid at the beginning of  
23 the lease for the scheduled term of the lease.  
24

25 **Section 303. Payment or Trade-in Pending Execution of Lease;**  
26 **Refund or Return.**

27 (a) Except as provided in subsection (b) of this Section, if  
28  
29 a prospective lessee has made a payment to a lessor or has

1 surrendered possession of trade-in goods pending the consummation  
2 of a consumer lease, and the consumer lease application is  
3 [withdrawn or] not approved, the lessor must promptly, and in no  
4 event more than [30] days after the payment or surrender,  
5 return the trade-in goods and refund any payment made. The  
6 lessor may not sell or transfer the trade-in goods until  
7 consummation of the consumer lease.

8 (b)(1) A prospective lessee may, before consummation of a  
9 consumer lease, sell a vehicle to a prospective lessor under a  
10 separate contract of sale **and defer receipt of the sale price** if  
11 the contract of sale -

12 (i) is dated as of the sale date, and is signed by  
13 the parties;

14 (ii) provides that the contract price establishes  
15 the value of the goods to be used as a capitalized cost reduction  
16 under a consumer lease subsequently consummated by the parties or  
17 as the amount payable promptly to the lessee in the event the  
18 parties fail to consummate a consumer lease within [30] days;  
19 and

20 (iii) if the motor vehicle to be leased is to be  
21 [specially] ordered from a manufacturer [supplier ?] or is not  
22 yet in production as of the date of the agreement, provides that  
23 the prospective lessee agrees to leave the contract price on  
24 deposit with the prospective lessor pending delivery of that

1 vehicle but not beyond [75] days beyond the date of the  
2 contract.

3 Reporter's Notes: Based on Model, CA, NH, WI acts,  
4 with some re-write. Subsection (a) requires the lessor  
5 to return "promptly" any trade-in and refund any  
6 advance payment if a lease deal is not closed.  
7

8 Subsection (b) carves out an exception, permitting  
9 the lessee to sell the trade-in car outright to the  
10 prospective lessor. Presumably the consumer definitely  
11 wants to dump the old car but is still considering  
12 lease/purchase alternatives; a prompt sale avoids  
13 further depreciation. In this case the lessor can  
14 retain the agreed price for up to 30 days in  
15 anticipation of applying it to the eventual lease, or  
16 up to 75 days for a special-order vehicle.  
17

18 Subsection (b) is somewhat problematic. It is  
19 unclear why the lessor should be able to "buy" the  
20 consumer's trade-in car and retain the price for any  
21 extended period of time. It is a revenue source for  
22 the lessor and the industry says such retainages  
23 (security deposit is another) help keep overall costs  
24 down for the lessor. No doubt it provides leverage to  
25 keep the customer on the hook, and may be prone to  
26 abuse for that reason. Maybe shorten the periods? Or  
27 require the lessor to credit interest on the retained  
28 funds?  
29  
30

#### 31 **Section 304. Refund of Excess Fees.**

32 If a lessee pays to the lessor an amount for fees owed to  
33 the state for the licensing [, registration,] or transfer of  
34 title of the motor vehicle, and the amount paid exceeds the  
35 actual fees due for such licensing or transfer (including any  
36 excess over the amount the lessor paid to the state prior to  
37 consummation of the lease in order to avoid penalties that would

1 have accrued because of late payment of such fees), the lessor  
2 shall promptly return such excess amount to the lessee.

3 Reporter's Notes: Based on NH act. I am not quite  
4 certain of the problem perceived, especially that  
5 described in the parenthetical.  
6

7 Some lessors (or sellers) may charge a lump-sum  
8 figure for official fees, which may be more than the  
9 actual official fees incurred. I.e., there is a dealer  
10 mark-up ("upcharge") on these fees. Query: should this  
11 Act restrict that practice, and if so how? An  
12 alternative might be to deal with this in a separate  
13 section on permissible charges.  
14  
15

### 16 **Section 305. Content and Form of Lease.**

17 (a) A consumer lease must contain the following information  
18 clearly and conspicuously, in writing:

19 (1) At the top of the consumer lease, in at least ten-  
20 point [?], bold capitalized type, the words "**MOTOR VEHICLE**  
21 **LEASE**";

22 (2) Identification of the lessor and lessee, the place  
23 of business of the lessor, the residence or place of business of  
24 the lessee [as specified by the lessee], and a description of any  
25 goods traded in or applied as a capitalized cost reduction.

26 (3) If physical damage or liability insurance coverage  
27 for bodily injury and property damage caused to others is not  
28 included in the consumer lease, a notice in at least 10-point,  
29 bold capitalized type, substantially similar to the following:

30 **"NO PHYSICAL DAMAGE OR LIABILITY INSURANCE COVERAGE FOR**

1           **BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS IS**  
2           **INCLUDED IN THIS LEASE"**

3           (4) The disclosures required by Section 310 relating  
4 to insurance, and by Section 312 relating to gap protection.

5           (5) Directly above the acknowledgment required by  
6 paragraph (6) of this subsection, a notice substantially similar  
7 to the following:

8           **"NOTICE TO THE LESSEE: This is a lease. You have no**  
9           **ownership rights in the vehicle unless and until you**  
10           **exercise your option to purchase the vehicle, if this**  
11           **lease contains a purchase option. Do not sign this**  
12           **lease before you read it. You are entitled to a**  
13           **completed copy of this lease when you sign it."**

14           (6) An acknowledgment by the lessee of delivery of a  
15 copy of the consumer lease, appearing directly above the space  
16 reserved for the lessee's signature. [Should it be separately  
17 signed/initialed? Or on a separate acknowledgement document?]

18           **(7) The "Lease Rate," using that term, and a**  
19           **descriptive explanation such as "the cost of your lease as an**  
20           **annual rate."**

21           (8) In the case of a finance lease, a statement  
22 identifying any express warranties or guarantees available to the  
23 lessee made by the supplier of the leased vehicle.

24           (9) If the lease includes charges payable to third

1 parties, such as group credit insurance, gap protection, service  
2 contract or the like, a statement that the lessor may receive or  
3 retain a portion of those charges.

4 (b) A lessor may not present for the lessee's signature a  
5 consumer lease that contains blank spaces to be filled in after  
6 it has been signed except that, if the vehicle is to be specially  
7 ordered for future delivery to the lessee, specific identifying  
8 numbers or marks or similar information concerning the vehicle,  
9 and the due date of periodic payments, may be inserted in the  
10 consumer lease after its execution.

11 (c) A lessee's written acknowledgment of delivery of a copy  
12 of the consumer lease (subsection (a)(6) of this section) shall  
13 be [conclusive] [presumptive] proof of delivery of the copy in  
14 any action or proceeding by or against a holder who took the  
15 lease without knowledge to the contrary.

16 Reporter's Notes: The Model act, and every state law,  
17 have a set of elementary warnings and disclosures like  
18 those in paragraphs (a)(1) through (a)(6) . It may be  
19 arguable that some additional information should be  
20 required, but probably not less.

21  
22 This list need not repeat items required to be  
23 disclosed under Reg. M. Thus subsection (a)(2)  
24 requires identification of trade-in goods, but not the  
25 leased vehicle itself (which is a Reg. M disclosure).

26  
27 There is room to debate the form of the consumer's  
28 acknowledgement of receipt of a copy of the lease  
29 [subsection (a)(5)], and how conclusive that acknowledgement  
30 will be against subsequent holders [subsection (c)].

31  
32 Item (a)(7) raises the issue of whether a lease

1 rate, generally comparable to the APR in credit  
2 transactions should be required.

3  
4 Re Item (a)(8), Reg. M requires disclosure of  
5 warranties made by the lessor or manufacturer, but not by  
6 the supplier of the vehicle in a finance lease, typically a  
7 car dealer. Supplier warranties in fact flow to the lessee  
8 under UCC 2A-209, but that UCC section requires no  
9 particular disclosure of them. This Item (a)(8) is meant to  
10 fill that gap.

11  
12 Item (a)(9) is the Reporter's notion, to address the  
13 somewhat contentious issue of upcharges. Does it help  
14 simply to tell the consumer that the lessor makes money on  
15 third-party charges?

16  
17 **Section 306. Information During Lease Term.**

18 (a) During the term of the consumer lease:

19 (1) A holder must provide the lessee a written receipt  
20 for any payment made in cash.

21 (2) Upon written request from a lessee the holder must  
22 promptly provide to the lessee a written statement of the dates  
23 and amounts of the periodic lease payments that have been  
24 received by the holder under the consumer lease and the total  
25 amount of the remaining periodic lease payments. An amount in  
26 the statement that is estimated must be so identified.

27 (3) Upon written request from a lessee the holder must  
28 provide to the lessee a written statement of the lessee's current  
29 early termination obligation. If the statement is based on an  
30 estimate of realized value, the statement must so indicate.

31 (b) A holder may not charge the lessee for providing one

1 statement under subsection (a)(2) or (a)(3) of this Section in a  
2 12-month period. The holder may impose a reasonable fee, not to  
3 exceed \$20 [?] per statement, for providing additional statements  
4 in a 12-month period, if that charge has been disclosed in the  
5 lease.

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

### 9 10 **Section 307. Renegotiation or Extension.**

11 (a) The requirements of Section 305 of this Act apply to  
12 the renegotiation of a consumer lease, i.e., when a lease is  
13 satisfied and replaced by a new lease undertaken by the same  
14 lessee, but do not apply to an extension of a consumer lease for  
15 a period of six months or less.

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

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

24  
25 Subsection (b), from the Model act, is to avoid an  
26 implication that the renegotiated lease falls under "used  
27 car" sales laws. Q. Appropriate here?  
28  
29

### 30 **Section 308. Satisfaction of Lease.**



1           When a holder has received payment of all sums for which the  
2   lessee is obligated under the consumer lease [, and upon the  
3   lessee's written request,] the holder must send to the lessee at  
4   the lessee's last known address documentation to indicate payment  
5   in full. This documentation does not operate to release the  
6   lessee from liability for events discovered by the holder after  
7   sending the documentation.

8   Reporter's Notes: Drawn from the Model and various  
9   state acts. A receipt or "paid in full" copy of the  
10   lease seems appropriate. Why should the consumer have  
11   to request it in writing? If so, the lease probably  
12   ought to disclose that fact.  
13  
14

15   **Section 309. Inoperable Vehicle; "Lemon Law".**

16           (a) A lessee is entitled to a pro rata adjustment in the  
17   amount of base periodic payments for any period in excess of  
18   \_\_\_[3? 10?] consecutive days in which the leased vehicle is  
19   inoperable or otherwise unavailable to the lessee on account of  
20   warranty defects for which the holder is responsible. This  
21   paragraph does not limit a lessee's other remedies for breach of  
22   warranty.

23           (b) A vehicle that is the subject of a consumer lease under  
24   this Act [may also be] [is also] subject to [cite to state "lemon  
25   law"].

26   Reporter's Notes: Subsection (a) is the Reporter's  
27   creation. Unlike a credit purchase where the consumer  
28   is buying outright ownership of a car, a lessee is

1 buying its use for a finite period of time; if  
2 warranted defects deprive the lessee of some  
3 significant part of that use, some adjustment seems  
4 appropriate.  
5

6 Subsection (b) states the obvious: leased vehicles  
7 may be covered by a state lemon law, allowing  
8 cancellation of the lease if the vehicle is seriously  
9 defective. The lemon law may be restricted to new  
10 cars, or to "purchase" transactions, so its  
11 applicability to leases is not automatic.  
12  
13

#### 14 **Section 310. Insurance.**

15 (a) Insurance for which a charge is included in the  
16 consumer lease must be issued by an insurance company authorized  
17 to do that kind of insurance business in this state.

18 Reporter's Notes: This is from the Model, and several  
19 state acts, to assure that insurance products are  
20 authorized in the state.  
21

22 (b) (1) If a lease requires the lessee to maintain liability  
23 insurance or casualty insurance on the vehicle, the lease must  
24 disclose -

25 (A) the premium for the insurance if purchased  
26 from or through the lessor; and

27 (B) that the lessee may purchase the required  
28 insurance coverage from an agent or broker of the lessee's choice  
29 subject to the lessor's right to reject that insurer for  
30 reasonable cause.

31 (2) If a required policy of liability insurance or  
32 casualty insurance on the goods is canceled, an unearned

1 insurance premium refund (including any applicable unearned rent  
2 charge) received by the holder may be:

3 (A) refunded to the lessee;

4 (B) credited to the obligation of the lessee upon  
5 early or scheduled termination, or

6 (C) applied toward payment for similar insurance  
7 under subsection (d) of this Section.

8 (3) A refund or credit need not be made if the amount  
9 would be less than one dollar.

10 Reporter's Notes: This subsection (b) is based partly  
11 on the Model and several of the state acts, with the  
12 disclosure aspects drawn from Truth in Lending, Reg. Z  
13 § 226.4(d).

14  
15 Paragraph (1) allows a lessor to require property or  
16 liability insurance on the leased vehicle, but lets the  
17 lessee obtain the insurance on his own.

18  
19 Paragraphs (2) and (3) give the lessor options for  
20 applying rebated premiums. Should the holder be able just  
21 to bank a refund against "final maturing payments" that may  
22 be months or years away?

23  
24 (c)(1) If a consumer lease includes group credit insurance  
25 the lease must disclose -

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

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

30 (2) A consumer lease may not be conditioned on the  
31 lessee's purchase of group credit insurance. A lessee's election

1 to purchase group credit insurance is effective only if the  
2 lessee signs or initials an affirmative written request for the  
3 insurance after receiving the disclosures specified in this  
4 subsection.

5 (3) If group credit insurance is canceled the refund of  
6 unearned insurance premiums received by the holder shall be

7 **[Option A]:** either: (A) refunded to the lessee; or (B)  
8 credited, together with the unearned portion of the lease charge  
9 applicable thereto, either to the lessee's obligation, including,  
10 without limitation, to the final maturing lease payments or, at  
11 the holder's option, to the obligation of the lessee upon early  
12 or scheduled termination, but no credit or refund need be made if  
13 the amount would be less than one dollar.

14 **[Option B]:** promptly refunded to the lessee.

15 Reporter's Notes: Subsections (1) and (2) are based on  
16 the disclosure rules for credit insurance in Reg. Z §  
17 226.4(d)(1), to assure that the voluntary nature of the  
18 insurance is clear to the lessee.

19  
20 Subsection (3) deals with refunds of group insurance  
21 premiums; the question is who controls the refund? Option A  
22 lets the holder apply the refund on the lease obligation;  
23 Option B requires a refund to the lessee. Since this  
24 insurance is voluntary [unlike casualty coverage], and can  
25 be cancelled at any time, arguably the lessee should get the  
26 cash refund. But if the premium is being financed as part of  
27 the capitalized cost, a cash refund to the lessee would be a  
28 windfall.

29  
30 (d) If insurance in connection with a consumer lease is  
31 provided by or through the lessor, the lessor must provide or

1 arrange to have provided to the lessee a copy of the policy or  
2 certificate of insurance.

3 Reporter's Notes: Drawn generally from the state acts.  
4 And see U3C § 4.105. If the lessee is buying insurance  
5 through the lessor, the lessor should provide coverage  
6 information.  
7

8 (e)(1) If a lessee fails to maintain insurance required  
9 under the lease, the holder may buy [reasonably equivalent ?]  
10 insurance for substantially the same risks for either the  
11 interests of the lessee and the holder or the interest of either  
12 of them. An amount paid by the holder for this insurance -

13 (A) may be subject to a rent charge from the date  
14 the amount was paid by the holder, as though that amount was part  
15 of the capitalized cost; and

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

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

21 Reporter's Notes: From the Model and various state  
22 acts. This permits a holder to buy replacement  
23 coverage if the lessee lets coverage lapse; it is an  
24 example of "advances to perform covenants" (cf. U3C §  
25 2.506). But force-placed insurance can be problematic:  
26 unduly narrow (or broad) coverages, high prices,  
27 lessor/seller upcharges, etc. The "reasonably  
28 equivalent" parenthetical might be one way to constrain  
29 these problems. Are there other ways?  
30

31 (f) A charge for insurance included in the lease or added

1 to the lease obligation under subsection (e) may not exceed the  
2 premium [permitted by law] [actually imposed by the insurer] for  
3 such insurance.

4 Reporter's Notes: This subsection puts outside limits  
5 on the cost of insurance. The "permitted by law"  
6 option may allow a lessor to charge the legal ceiling  
7 rate even though the particular insurer's charges may  
8 be lower, i.e., an upcharge. The "actually imposed"  
9 option restricts premiums to the insurer's actual  
10 charge; even here the lessor will likely realize  
11 commission revenues.  
12  
13

14 **Section 311. Delinquency, Default, and Collection Charges;**  
15 **Attorney's Fees.**

16 (a) (1) A consumer lease may allow the holder to collect  
17 from the lessee a late charge on a lease payment that is  
18 delinquent for a period of 10 days or more in an amount provided  
19 in the lease but not to exceed the [greater] [lesser] of \$\_\_\_ or  
20 5 percent of the late payment.

21 (2) A holder may not assess or collect a late charge  
22 under paragraph (a) of this subsection when the only delinquency  
23 is late charge(s) assessed on an earlier lease payment or  
24 payments.

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

28 (b) **[Option A]** A consumer lease may provide for the  
29 holder's right to recover from the lessee, upon default,  
30 reasonable collection costs, including court costs.

1           **[Option B]** Except for delinquency charges and  
2 attorney's fees under subsections (a) and (b) of this Section,  
3 and the costs of foreclosure authorized under Sections 316 and  
4 319, a consumer lease may not provide that the lessee is liable  
5 for collection costs or other charges for default. A provision  
6 in violation of this subsection is unenforceable.

7           Reporter's Notes: Option A is from the Model act, and  
8 would permit a holder broad recovery of collection  
9 costs. Section 183(b) of the federal CLA allows such  
10 charges, so long as they are reasonable under the  
11 circumstances.  
12

13           Option B is similar to U3C § 3.402, restricting  
14 default charges to a specified few. Such state-law  
15 limitations are not preempted by the federal provision  
16 mentioned above.  
17

18           (c) **[Option A]** A consumer lease may not provide for  
19 payment by the lessee of attorney's fees. A provision in  
20 violation of this section is unenforceable.

21           **[Option B]** A consumer lease may provide for payment by the  
22 lessee of reasonable attorney's fees not in excess of 15 percent  
23 of the lease obligation [remaining at] after default and [upon]  
24 referral to an attorney not a salaried employee of the holder. A  
25 provision in violation of this section is unenforceable.

26           **Option C]** (1) (Same as Option B, above)

27                           (2) If a consumer lease provides for the holder's  
28 attorney's fees under paragraph (1) of this subsection, the  
29 lessee has a reciprocal right to attorney's fees from the holder

1 upon the lessee's successful assertion of rights under the lease  
2 or this Act.

3 Reporter's Notes: Option A forbids attorney's fees  
4 provisions. Option B generally allows them. Options A  
5 and B are alternatives offered in U3C § 2.507. Option  
6 C reflects a new approach being considered in the UCC  
7 revisions; it gives the lessee an automatic, reciprocal  
8 right to attorney's fees if the lease claims them for  
9 the lessor/holder. The language may need refinement.

10  
11 (d) Charge for renegotiation or extension:  
12

13 Reporter's Notes: No text proposed. U3C §§ 2.503 and  
14 2.504 set precise limits on charges that may be imposed  
15 for deferral, extension, consolidation, or other  
16 refinancing arrangements, often triggered by the  
17 consumer's actual or imminent default. These fit in  
18 the U3C pattern of regulating credit rates and charges,  
19 but seem unnecessary in the leasing context. Maybe a  
20 brief "reasonableness" rule for any such charges?  
21  
22

### 23 **Section 312. Gap Liability.**

24 Reporter's Notes: Maybe move relevant "gap"  
25 definitions into this section?  
26

#### 27 **[Option A]:**

28 A consumer lease may not provide that the lessee is  
29 responsible for the gap amount. A provision in violation of this  
30 Section is unenforceable.

31 Reporter's Notes: Some current vehicle leases do not  
32 impose any gap liability on the consumer. Should this  
33 approach be mandatory? It would mean that the risk of  
34 gap losses would be absorbed and distributed through  
35 the lessor's overall pricing structure, perhaps covered  
36 by relatively inexpensive private insurance. Lessors  
37 would lose the profit opportunity represented by sales  
38 of gap waivers. Lessees would avoid possibly large and  
39 unexpected liabilities for gap amounts that would be



1 due if they hadn't purchased gap coverage.

2  
3 **[Option B]**

4 (a) Unless a consumer lease imposes no liability on the  
5 lessee for the gap amount, the lease must disclose:

6 (1) That the lessee is responsible, or would be  
7 responsible in the absence of gap protection, for the gap amount;

8 (2) Whether the lessor offers gap protection that the  
9 lessee may obtain from the lessor or a third party, and if so the  
10 amount of the charge for the gap protection.

11 (3) That the purchase of gap protection is voluntary  
12 and is not a condition of the lease.

13 (b) A lessee's agreement to purchase gap protection is  
14 unenforceable unless the lessee signs or initials an affirmative  
15 written request for gap protection after receiving the notice  
16 specified in subsection (a).

17 (c) Failure to provide the notice specified in subsection  
18 (a) invalidates a lease provision which otherwise would obligate  
19 a lessee to pay the gap amount.

20 (d) A lessor's waiver of its contractual right to hold the  
21 lessee liable for the gap amount may be conditioned upon receipt  
22 by the lessor of:

23 (1) all amounts due under the consumer lease as of the  
24 date of lessor's receipt of the insurance proceeds or equivalent  
25 amount under subsection (d)(3) of this Section, if such date is

1 specified in the lease, or if that date is not specified, as of  
2 the date of total loss of the vehicle;

3 (2) the amount of the lessee's deductible and any  
4 other subtractions from the actual cash value under the lessee's  
5 insurance policy; and

6 (3) actual cash value proceeds from the insurance  
7 policy required under the lease, or the equivalent amount of the  
8 value of the vehicle.

9 (e) Gap protection is not considered insurance under the  
10 laws of this state and no license is required of lessors who  
11 offer to waive the right to the gap amount [, or third parties  
12 who offer gap protection]. A third party that supplies gap  
13 protection must be an entity authorized to do business in this  
14 state.

15 Reporter's Notes: This is based on the Model, and NH,  
16 NJ, NY, and WI acts. It deals with the lessee's  
17 potential liability when the vehicle is destroyed,  
18 stolen, or otherwise unusable. Insurance proceeds  
19 usually cover only the actual cash value of the car,  
20 while the lessee's amortizing obligation under the  
21 lease typically exceeds that amount. Thus the "gap."  
22 This provision assumes generally that the lessee can be  
23 held liable for the gap amount.

24  
25 Subsection (a) requires disclosure of possible gap  
26 liability and voluntary options for the lessee to cover it  
27 with "gap protection" -- a quasi-insurance agreement.

28  
29 Subsections (b) and (c) require lessee's explicit  
30 assent to purchase gap coverage, and penalize the  
31 lessor who doesn't disclose properly.

32  
33 Subsection (d) sets permissible conditions on effective

1 gap protection.  
2

3 Subsection (e) allows lessors and third-parties to  
4 offer gap protection without regard to insurance laws.  
5  
6  
7

8 **Section 313. Assignment of Lease; Preservation of Lessee's**  
9 **Claims and Defenses.**

10 (a) Notwithstanding any contrary provision of this Act or  
11 other laws of this state [?]:

12 (1) a holder may purchase or sell an interest in a  
13 consumer lease or a vehicle subject to a consumer lease, on such  
14 terms and conditions and for such price as may be mutually agreed  
15 upon; and

16 (2) no filing of the sale or transfer, no notice to the  
17 lessee of the sale or transfer, and no requirement that the  
18 holder be deprived of dominion over payments due under the  
19 consumer lease or over the vehicle if repossessed by or returned  
20 to the holder, is necessary to the validity of a written sale or  
21 transfer of a consumer lease as against creditors, subsequent  
22 purchasers, or encumbrancers of the seller or transferor.

23 Reporter's Notes: This is from the Model, MD, NY, and  
24 WI acts. Subsection (a)(1) generally authorizes any  
25 transfer of leasehold interests. Subsection (b)  
26 appears to allow leases, or portfolios of them, to be  
27 validly transferred without formalities and without  
28 regard for third-party claims. This seems to displace  
29 the UCC Article 9 rules on perfecting transfers of, or  
30 security interests in, consumer leases as chattel  
31 paper. Is that the intent? Why? And why put this

1 provision in a consumer statute? Shouldn't issues  
2 relating to hypothecation or securitization of leases  
3 be handled in UCC Art. 2A?  
4

5 (b)(1) Until a lessee has [written ?] notice that the lease  
6 has been sold or transferred, the lessee may make payments to the  
7 last known holder of the lease. For [60] days after a holder  
8 has notified the lessee that the lease has been sold or  
9 transferred, a payment timely made to the prior holder is not  
10 subject to a late charge.

11 (2) A holder who sells or transfers a lease and  
12 thereafter receives payment from the lessee must forward the full  
13 amount of that payment to the current holder, unless the current  
14 holder agrees that the prior holder may retain the payment.

15 Reporter's Notes: Drawn from the Model and other state  
16 acts. Cf. U3C § 3.204. This protects the lessee who  
17 sends payments to a holder after the lease has been  
18 sold or transferred. Indirectly it requires any  
19 transferee who expects to receive payments to notify  
20 the lessee, but it does not specify the form or content  
21 of that notice. Should it?  
22

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

26 **NOTICE**

27 **ANY HOLDER OF THIS CONSUMER LEASE IS SUBJECT TO ALL**  
28 **CLAIMS AND DEFENSES WHICH THE LESSEE COULD ASSERT**  
29 **AGAINST THE LESSOR [OR SUPPLIER] OF THE LEASED GOODS.**

1           **RECOVERY HEREUNDER BY THE LESSEE SHALL NOT EXCEED**  
2           **AMOUNTS PAID BY THE LESSEE HEREUNDER.**

3           Reporter's Notes: This is a parallel notice to that  
4           required by the FTC "Holder in Due Course" Rule, 16 CFR  
5           Part 433, which applies only to credit transactions.  
6           It prevents any transferee of the lease from claiming  
7           the protections of holder-in-due-course status. It  
8           preserves against an assignee the lessee's substantive  
9           contract and warranty rights against the lessor and any  
10          supplier of the vehicle.

11  
12          Most often a lessee would be asserting rights  
13          defensively to defeat a holder's collection efforts.  
14          But the second sentence of the notice also permits a  
15          lessee to get a positive recovery of money from the  
16          holder in some circumstances (as where the lessee  
17          revokes acceptance of a defective car) [Cf. UCC § 2A-  
18          517]; but any such recovery is limited to a refund of  
19          amounts the lessee has already paid under the lease.  
20          The holder, in other words, does not become a total  
21          insurer of the lessor's performance under the lease.

22  
23          The bracketed phrase ["OR SUPPLIER"] raises a  
24          significant issue that does not arise under the FTC  
25          Notice for credit sales. In "finance leases" the  
26          lessee is beneficiary of the supplier's warranties and  
27          the immediate lessor typically makes none. Should a  
28          lessee then be able to raise, against the lessor's  
29          assignee, warranty claims against the supplier? On the  
30          surface the answer is no, because the lessee could not  
31          assert supplier warranties against the lessor itself.

32  
33          Is the phraseology of the Notice adequate? Is  
34          further elaboration needed on how this notice operates  
35          to preserve claims and defenses? The drafting  
36          intention is that this Notice have the same scope as  
37          the FTC Notice in credit transactions, no more and no  
38          less. Assignees get some additional insulation from  
39          vicarious liability for violations of this Act under  
40          Section 501, *infra*.

41  
42          Should this Notice requirement be put in Part 2 of  
43          this Act, where it would apply to all leases, not just

1 motor vehicles?  
2  
3

4 **Section 314. Sublease.**  
5

6 (a) A lessee under a consumer lease with a term of one year  
7 or more may sublease or assign the lessee's rights and interests  
8 [only] with the written consent of the holder. The holder may  
9 require that the sublessee or assignee meet the lessor's or  
10 holder's underwriting criteria for the lease, but the holder may  
11 not delay or withhold consent without a good faith belief that  
12 the sublease or assignment [jeopardizes] [substantially impairs]  
13 its rights under the lease.

14 (2) Unless otherwise agreed by the holder, the  
15 obligations of a lessee under the lease are not affected by a  
16 sublease or assignment, and the original lessee and the sublessee  
17 or assignee are jointly and severally liable under the assigned  
18 lease.

19 Reporter's Notes: Based on a proposed provision in  
20 Connecticut. A lessor and lessee are always free to  
21 negotiate and agree on a modification of the lease,  
22 including a "sublease" or "assignment" by the lessee --  
23 like an "assumption" of a mortgage. Does it help  
24 measurably to reinforce that possibility by statute?  
25 Is the universal good-faith/fair-dealing standard a  
26 sufficient incentive for lessors to consider subleases?  
27 Will it unduly burden second or third level holders to  
28 have to assess "reasonable cause" and whether a  
29 sublessee meets "underwriting criteria"?  
30  
31  
32

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

2           (a)   A consumer lease may provide for events constituting  
3   default by the lessee, except that a claimed default [based on  
4   relocation of the lessee or the vehicle, or ?] because the holder  
5   otherwise deems itself insecure, may be acted upon only if the  
6   holder has a good faith belief that such [relocation or]  
7   insecurity [jeopardizes] [significantly impairs] its rights under  
8   the lease.

9           Reporter's Notes:   This limits a default clause where  
10   the lessee has moved or the holder feels "insecure":  
11   there needs to be some basis for treating the lease as  
12   in default.   "Jeopardizes" is from Model act;  
13   "significantly impairs" is from U3C § 5.109.  
14

15          (b) After a lessee has been in default for 10 days solely by  
16   reason of failure to make a timely lease payment and any  
17   applicable late charge, the holder may [declare the lessee to be  
18   in default and may ??] send the lessee a notice of default.   A  
19   lessee who receives a notice of default and who has not  
20   previously been afforded the right to cure a default is entitled  
21   to cure the default.   The notice of default must contain a  
22   conspicuous statement that the lessee is entitled to cure the  
23   default, setting forth the dollar amount necessary to cure the  
24   default, the date by which the cure payment must be made and the  
25   name, address and telephone number of the holder from which  
26   information may be obtained regarding the cure.   The date by

1    which payment must be made may be no less than 20 days after the  
2    notice is sent. The holder may take no action to accelerate the  
3    lessee's obligation or foreclose on the vehicle until expiration  
4    of the period for cure stated in the notice.

5           (c) Until expiration of the period for cure stated in the  
6    notice under subsection (b), the lessee may cure the default by  
7    tendering the amount of all unpaid sums due at the time of the  
8    tender, plus any unpaid delinquency charges, but without  
9    acceleration, additional security deposit, or prepayment of  
10   periodic lease payments not yet due. Cure restores the rights of  
11   holder and lessee under the lease as though the default had not  
12   occurred.

13           Reporter's Notes: Drawn from Model, NH, NJ, NY, MD  
14   acts. A more elaborate default/cure provision is in  
15   U3C §§ 5.109, 5.110, 5.111. The right to cure is  
16   fairly standard fare where the consumer's default is a  
17   failure to pay; other defaults do not trigger cure  
18   rights.  
19  
20

## 21    **Section 316. Repossession; Reinstatement**

22           (a) Except as provided in Section 315, and unless the  
23   lessee voluntarily surrenders the leased vehicle to the holder,  
24   the holder may on default repossess the vehicle by judicial  
25   process or by self-help provided there is no breach of the peace  
26   or trespass on private premises.



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

18       Reporter's Notes: Drawn from the MD and NY acts. It  
19 requires a notice of default and intent to dispose of  
20 the vehicle, comparable to UCC § 9-504(3). It speaks  
21 of a post-repossession right to "reinstate" the lease,  
22 rather than "redemption" which does not quite fit where  
23 the lessee has no equity interest. Cf., UCC § 9-506.  
24 Presumably reinstatement will be a rare occurrence, as  
25 the lessee is almost by definition in serious default  
26 and probably will have had a pre-repossession chance to  
27 cure under the preceding section. Query, then, whether  
28 such a "reinstatement" mechanism needs to be spelled

1 out by statute, or can be accomplished informally  
2 through the parties' negotiation?  
3

4 The Reporter suggests the parenthetical sentence  
5 as a way for the holder to broach a full-payoff, or  
6 purchase, figure. Does this help? Might it be made  
7 mandatory?  
8

9 (c) If the lessee does not reinstate the lease by the date  
10 stated in the notice, the lessee may dispose of the goods  
11 pursuant to Section 318(b) and apply the realized value [and any  
12 security deposit], in order, to -

13 (1) the expenses of repossession and sale (including  
14 preparation of the goods for sale);

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

17 (3) the early termination liability of the lessee.  
18 [Any surplus shall be returned to the lessee, and,] [E]xcept as  
19 provided in Section 319(f),] unless otherwise agreed the lessee  
20 is liable for any deficiency.

21 Reporter's Notes: This tracks the state acts and UCC  
22 Article 9 on how sale proceeds are to be applied. It  
23 assumes the lessee will be liable for a deficiency, the  
24 amount of which will be controlled by the early  
25 termination rules in Section 319.  
26

27 The bracketed phrase relates to a possible  
28 surplus. In a lease -- as opposed to a credit sale --  
29 who is entitled to any excess value in the leased  
30 vehicle? Arguably this may be considered part of the  
31 lessor's residual value. On the other hand, if  
32 disposition of the vehicle pays off everything due at  
33 early termination, the lessor has gotten full

1 compensation pursuant to its contract, and should give  
2 the surplus to the lessee. (All of this may be more  
3 theoretical than real.)  
4  
5

6 **Section 317. Rights and Duties When Vehicle is in Holder's**  
7 **Possession**

8 (a)(1) The holder must use reasonable care in the custody  
9 and preservation of a vehicle in the holder's possession  
10 following surrender or repossession.

11 (2) Unless otherwise agreed, when the leased vehicle  
12 is in the holder's possession or custody -

13 (A) reasonable expenses (including the cost of any  
14 insurance and payment of taxes) incurred in the custody or  
15 preservation of the vehicle are chargeable to the lessee;

16 (B) the risk of accidental loss or damage is on  
17 the [holder?] [lessee ?] to the extent of any deficiency in  
18 effective insurance coverage; and

19 (C) the holder must keep the leased vehicle  
20 identifiable, and may not sell, re-lease or otherwise encumber it  
21 except as authorized under Section 316.

22 (3) The holder is liable for any loss caused by  
23 failure to meet any obligation imposed by the preceding  
24 subsections but does not lose its leasehold interest.

25 Reporter's Notes: Based on UCC § 9-207, to place a

1 "reasonable care" responsibility on the holder while  
2 the car is in its possession. But note there is no  
3 equivalent provision in UCC Art. 2A for leases  
4 gegnerally.  
5  
6  
7

8 **Section 318. Determining Realized Value.**

9 (a) This section applies when the lessee's liability on  
10 early termination of the lease (including foreclosure on default  
11 under Section 316), or on expiration of the lease term, is  
12 determined by reference to the realized value of the vehicle, and  
13 the lessee does not have or does not exercise a purchase option.

14 (b) Realized value is determined as follows:

15 (1) If a consumer lease is terminated voluntarily,  
16 either before scheduled termination or, in the case of an open-  
17 end lease, at scheduled termination, a lessee who does not have  
18 or does not exercise a purchase option may obtain, at the  
19 lessee's expense and within \_\_ days after the termination, an  
20 appraisal of the [wholesale] [retail] value which could be  
21 realized at sale of the vehicle, by an appraiser mutually  
22 acceptable to the lessee and the holder. The appraisal is final  
23 and binding upon the parties and is the realized value used in  
24 determining the lessee's termination liability.

25 Reporter's Notes: Based on the Model and several state  
26 acts. This confirms that an appraisal valuation  
27 obtained by a lessee establishes "realized value" for  
28 measuring the lessee's termination liability. Does

1 this need some mandatory disclosure? Should it be  
2 qualified by "unless otherwise agreed"? I.e., what if  
3 lease specifies that realized value will be based on  
4 Blue Book, or that car will always be sold off? Do we  
5 intend that an appraisal preempts those options?  
6

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

12 Reporter's Notes: Reporter's imagination. Might a  
13 lease use a Blue Book benchmark (adjusted by wear and  
14 use) instead of accounting for specific proceeds of  
15 sale, one car at a time?  
16

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

21 Reporter's Notes: This option allows the parties simply  
22 to agree on a realized value, on any basis they choose,  
23 so long as the result is not unconscionable. There is  
24 a rough analogue in UCC § 9-505(2) which allows the  
25 parties to settle a security interest foreclosure by  
26 post-foreclosure agreement.  
27

28 (4) In the event of a total loss of the vehicle  
29 occasioned by theft, physical damage, or other occurrence  
30 specified in the lease prior to the end of the lease term, the  
31 realized value is the sum of: the actual cash value of the  
32 vehicle received by the holder from the lessee's insurance

1 company or from any other party in payment of the loss; and the  
2 amount of the lessee's deductible under the lessee's insurance  
3 policy.

4 Reporter's Notes: This establishes realized value for  
5 gap purposes. From the Model Act.  
6

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

18 Reporter's Notes: This catch-all provision, modeled on  
19 UCC § 9-504(3), establishes realized value through an  
20 actual disposition of the vehicle. It implicitly  
21 assumes that sale in a wholesale market is commercially  
22 reasonable. But realized value is not established by a  
23 recourse sale back to the dealer, or by a sale to an  
24 affiliate; these sales simply don't count, and it is  
25 the next sale that measures realized value.  
26  
27

## 28 **Section 319. Early Termination Liability.**

29 (a)(1) **Option A:** A consumer lease may provide a period of

1 time not to exceed one year during which termination of the lease  
2 by the lessee constitutes an event of default. A voluntary  
3 termination by the lessee outside that period, or at any time  
4 with the holder's agreement, is not a default under the consumer  
5 lease.

6 **Option B:** Notwithstanding the term for which a lessee is  
7 obligated to make payments under the lease, the lessor may agree  
8 to early termination of the lease at any time.

9 Reporter's Notes: Option A is based on the Model and  
10 several state acts, but re-written for style. The  
11 objective is to allow a minimum period for the  
12 lessor/holder to recoup depreciation and lease charges  
13 before the lessee is "entitled" to terminate. The  
14 sanction for a lessee who terminates within the  
15 proscribed period is exposure to default charges and  
16 adverse credit reports, as well as possibly very large  
17 early termination liability.  
18

19 Option B is the Reporter's version. It  
20 acknowledges that the lessee is contractually obligated  
21 for the full term of the lease. This avoids the  
22 implication that a lessee can cancel the lease at will,  
23 which would take it outside this act because the lessee  
24 would not be "obligated" for more than a month at a  
25 time. But this option also confirms that the lessor  
26 may agree to early termination, and can set a formula  
27 for early termination liability.  
28

29 (2) A holder may not report the voluntary early  
30 termination of the consumer lease to a consumer reporting agency  
31 as a default unless the lessee fails to satisfy the lessee's  
32 early termination obligations within the time periods set forth  
33 in the consumer lease.

1        Reporter's Notes: From the Model, NH and NY acts.

2        (b) A consumer lease may provide a measure or formula for  
3 the lessee's liability on early termination, but only at an  
4 amount which is reasonable in the light of the anticipated or  
5 actual harm caused by the early termination, the difficulties of  
6 proof of loss, and the inconvenience or nonfeasibility of  
7 otherwise obtaining an adequate remedy.

8        Reporter's Notes: This is taken verbatim from § 183(b)  
9 of the federal CLA which puts these substantive limits  
10 on early termination formulas. The CLA in effect  
11 authorizes "liquidated damages" formulas in consumer  
12 leases, instead of requiring a complex calculation  
13 based on UCC §2A-528, which states the lessor's basic  
14 measure of damages for lessee default. That Art. 2A  
15 measure is essentially the current value of the  
16 lessor's expectancy under the lease. The  
17 "reasonableness" of an early termination formula,  
18 therefore, is ultimately measured by reference to that  
19 underlying measure of damages.  
20

21        As written, this seems to say that the total  
22 charge ("only in an amount") must be reasonable, but  
23 not that each of its components must be. Do we intend  
24 that the lessor will have to justify each item in the  
25 formula separately as well as the total?  
26

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

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

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



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

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

5 (4) either (i) a disposition fee in an amount set forth  
6 in the consumer lease, or (ii) [if the vehicle was repossessed  
7 under Section 316,] the actual and reasonable costs of retaking,  
8 storing, preparing for sale and selling the goods [to the extent  
9 those costs exceed the amount of the disposition fee];

10 Reporter's Notes: The Model act states (4)(i) and  
11 (4)(ii) as two separate components, although it seems  
12 they cover essentially the same costs. The  
13 parentheticals in (ii) suggest how it can be applied  
14 cumulatively to (i): repossession costs may exceed the  
15 "routine" disposition fee; if so the excess cost is  
16 recoverable as well as the fee.

17  
18 Query: should a disposition fee on early  
19 termination be permitted only if it is also charged at  
20 expiration of the lease? The holder's "disposition"  
21 burden is the same in either case.

22  
23 (5) the amount, if any, by which (i) the balance  
24 subject to rent charge plus the rent charge earned in advance for  
25 the computational period in which the early termination occurs,  
26 calculated in accordance with the constant yield method [or any  
27 other generally accepted lease accounting method ??] exceeds (ii)  
28 the realized value of the goods; and

29 Reporter's Notes: This is based on the Model and other  
30 state acts, and is the heart of early termination

1 liability. It allows the holder to collect the  
2 unamortized adjusted capitalized cost (in credit terms,  
3 the unpaid principal balance). The "constant yield  
4 method" is essentially a simple interest calculation,  
5 except that rent payments are due at the beginning of  
6 the month rather than at the end.  
7

8 Questions: What is the rationale and basis for  
9 considering lease payments earned at beginning of  
10 month? One effect, in the formula stated here, is that  
11 the lessee owes a whole month's rent regardless of when  
12 during the month he/she terminates the lease.  
13

14 The bracketed language would seem to approve other  
15 amortization methods, such as "Rule of 78s" and  
16 "straight line" formulas which are less generous in  
17 determining the payoff figure. Do we want to prohibit  
18 expressly use of these alternative methods? Or limit  
19 the circumstances in which they can be used. E.g.,  
20 federal law (15 USC 1615) bars use of Rule of 78s in  
21 precomputed transactions longer than 61 months; U3C §  
22 2-510 similarly prohibits Rule of 78s in transactions  
23 longer than 48 months.  
24

25 Keep in mind that the new Reg. M disclosure about  
26 early termination is a very summary one (a "description  
27 of the method," e.g., "constant yield method) plus a  
28 "health warning" about a possible "substantial charge  
29 if you end this lease early." Thus consumers are not  
30 likely to comprehend from the disclosures the dollar  
31 effects of different payoff formulas.  
32

33 (6) any other [reasonable] early termination charge  
34 expressly disclosed in the consumer lease.

35 Reporter's Notes: From the Model and other state acts.  
36 This would appear to permit unlimited prepayment  
37 penalties. But the whole formula remains subject to  
38 the "reasonableness" standard. Is that enough  
39 constraint? Does it help to repeat "reasonable" here,  
40 as shown in brackets?  
41

42 (d) As an alternative to the constant yield and other

1 generally accepted lease accounting methods of determining the  
2 depreciation amounts accrued through the date of early  
3 termination of a precomputed lease transaction, those amounts may  
4 be determined under subsection (c) (5) of this Section by using a  
5 [formula] [lease provision] under which the lease charge is  
6 calculated on the adjusted capitalized cost for the time  
7 outstanding according to a generally accepted actuarial method.  
8 This section does not [otherwise] limit or restrict the manner of  
9 calculating the lessee's early termination obligation, whether by  
10 way of unamortized capitalized cost, discounted present value of  
11 remaining lease payments, multiples of monthly payments or  
12 otherwise.

13 Reporter's Notes: Combines provisions from the Model,  
14 NH, NY, and WI acts. This gives the lessor the option,  
15 in a "precomputed" transaction, of using an actuarial  
16 method applied to the date of termination for computing  
17 early termination payoffs. I believe this can only be  
18 more generous to the consumer. But is this provision  
19 even necessary in light of paragraph (c) (5) above?  
20

21 The last sentence means the lease can use a  
22 variety of arithmetic methods or units of measurement  
23 for early termination liability. But the total charge  
24 can't exceed the formula stated above, including the  
25 reasonableness test.  
26

27 (e) If it is determined that the holder has violated  
28 Section 316 [Repossession; Reinstatement] or subsection (g) of  
29 Section 318 on disposition of the leased vehicle, there is a  
30 rebuttable presumption that the realized value equals the total

1 of the amounts authorized under paragraphs (4), (5), and (6) of  
2 subsection (c) of this Section. The presumption may be rebutted  
3 by [clear and convincing] proof that notwithstanding the  
4 violation the reasonably determined value of the vehicle is less  
5 than the total of the amounts authorized under those paragraphs.

6 Reporter's Notes: This is perhaps imperfect language  
7 to raise the question whether the holder loses its  
8 rights to any "deficiency" -- the rest of the lessee's  
9 early termination obligation -- if the holder mis-  
10 conducts the repossession or disposition of the  
11 vehicle. This has been a controversial topic under UCC  
12 Article 9: the current revision draft of Article 9 [§  
13 9-507(c)(2)(i)] proposes a version of this  
14 "presumption" approach. U3C § 5.103 bars a deficiency  
15 claim altogether unless the creditor acts in good faith  
16 and in a commercially reasonable manner.  
17

18 In leases, disposition of the vehicle on early  
19 termination almost inevitably leaves a "deficiency" in  
20 the early termination liability. The question is  
21 whether a holder should forfeit this recovery on  
22 account of improper conduct of the repossession or  
23 disposition.  
24  
25

## 26 **Section 320. Excess Wear and Use; Excess Mileage.**

27 Reporter's Notes: This section is a composite of Model  
28 and various state acts, but substantially re-written.  
29 The capture of excess wear and use charges is an  
30 important device for lessors to avoid loss of expected  
31 residual value at lease end. This can also be a source  
32 of abuse if those charges are not subject to scrutiny.  
33

34 The primary objective here is to provide a  
35 mechanism to assure that consumers have a fair chance  
36 to question or challenge excess wear and use charges  
37 without ham-stringing the holder's efforts to evaluate  
38 and dispose of the returned vehicle without delay.

1  
2 (a)(1) A consumer lease may provide that the lessee is  
3 responsible for excess wear and use of the vehicle, and for  
4 excess mileage, according to standards stated in the lease [or  
5 accompanying documents ?] --

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

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

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

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

21 Reporter's Notes: If the lessee buys the car at the  
22 option price in the lease, the lessor/holder gets its  
23 full bargain in that price, and can't tack on charges  
24 for EWU.  
25

26 (3) A holder may not prohibit the lessee from being  
27 present at any inspection for excess wear and use, and must  
28 permit the lessee reasonable access to the vehicle for purposes  
29 of an appraisal on the lessee's behalf.

30 (b) If a lease requires the lessee, or gives the lessee the

option, to have the vehicle inspected by the holder prior to scheduled termination of the lease, the holder must so notify the lessee at least \_\_\_\_ days prior to the last date available for the inspection (which shall not be earlier than 15 days prior to scheduled termination). If the holder inspects the vehicle pursuant to this subsection, the holder must proceed as required by subsection (d) of this Section.

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

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

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

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

(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

1 under the lease. If the lessee does not obtain such an  
2 appraisal, the holder's appraisal is conclusive. A notice in  
3 substantially the following form satisfies the notice requirement  
4 of this subsection:

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

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

22 **"This inspection report was prepared by us**  
23 **[the holder] prior to the scheduled**



1            expiration of your lease. You may avoid  
2            excess wear and use charges by having those  
3            items satisfactorily repaired prior to  
4            returning the vehicle. We may inspect the  
5            vehicle on its return and may seek additional  
6            charges only by giving you written notice of  
7            wear and use incurred after the date of our  
8            inspection. Any charges for excess wear and  
9            use are due when your lease expires."

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

19  
20        (f) As used in this section:

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

1           (2) An "appraisal" must (i) be conducted [by a person  
2   licensed for such purpose under the \_\_\_\_\_ Law of this state or]  
3   by an independent third party agreed to by holder and lessee,  
4   (ii) describe conditions of excess wear and use, and (iii)  
5   estimate the cost of repair.

6           (3) An appraisal or itemized bill is "conclusive" on  
7   the information contained in it, except to the extent that such  
8   wear and damage was obscured or concealed or is reasonably  
9   believed by the holder to have occurred after a pre-termination  
10   inspection.

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

16          Reporter's Notes: From the NY act. If the holder's  
17   bill for EWU is not prepared by a licensed appraiser  
18   (whose estimates are presumably reliable), the holder  
19   can't collect more than actual repair costs.  
20

21          (h) Nothing in this Section -

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

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

27               (3) prohibits a post-termination agreement between

1 lessee and holder relating to wear and damage if such agreement  
2 is consistent with the rights given to the lessee in this  
3 Section; or

4 (4) limits a lessee's liability to the holder for  
5 odometer rollbacks or obscured or concealed structural or safety  
6 related damage discovered by the holder after the return of the  
7 goods or after the lessee receives an itemized bill.

#### 8 9 **Section 321. [Open-end lease]**

10 Reporter's Notes: No text proposed at this time.  
11 "Open-end lease" refers to one where the lessee's  
12 obligation at expiration depends on the realized value  
13 of the vehicle at that time. The lessee cannot simply  
14 return the car, but rather must bear some or all of the  
15 depreciation risk.

16  
17 The federal Consumer Leasing Act § 183 effectively  
18 restricts the lessee's liability under an open-end  
19 lease to an amount no greater than three monthly  
20 payments. There is a comparable limitation in U3C §  
21 3.401. Several states (CA, NH) restate this  
22 substantive limitation in their leasing acts.

23  
24 Query: (1) do we want to adopt this federal  
25 limitation into state law?; (2) is any other special  
26 treatment appropriate for open-end leases?

#### 27 28 29 **Section 322. Calculation of Lease Rate.**

30  
31 Reporter's Notes. No text proposed at this time. If  
32 the Committee determines to require disclosure of a  
33 Lease Rate, this section would set out the  
34 computational formula.

#### 35 36 37 38 **Part 4. SPECIAL PROVISIONS (OTHER THAN MOTOR VEHICLES)**

1 [Reserved for future use]

2  
3 [With experience and the passage of time it may become  
4 appropriate to add provisions dealing with discrete forms of  
5 consumer leases other than those involving motor vehicles.  
6 The Conference does not recommend such provisions at this  
7 time.]

8  
9 Reporter's Notes: This merely leaves a logical place  
10 in the Act to expand its coverage to other kinds of  
11 consumer leases at some future time.  
12  
13  
14

## 15 **Part 5. PENALTIES; ENFORCEMENT; ADMINISTRATION**

### 16 **Section 501 [Civil liability]**

17  
18  
19 Reporter's Notes: This section generally parallels the  
20 civil liability section of the Truth in Lending Act,  
21 and is similar to U3C §§ 5.201 and 5.203. The focus is  
22 on liability for violating this Act; remedies for  
23 contractual breaches of the lease are covered in UCC  
24 Article 2A.  
25

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

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

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

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

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

20 Sec. 204 [Co-Signer Notice]

21 Sec. 205 [Rebate or Discount for Referrals]

22 Sec. 206 [Prohibited Lease Terms]

23 Sec. 207 [Security Interest Prohibited]

24 Sec. 208 [Security Deposit]

25 Sec. 303 [Payment or Trade-in Pending Execution  
26 Lease; Refund or Return]

27 Sec. 305 [Content and Form of Lease Agreement;

Disclosure]

Sec. 306 [Information During Lease Term]

Sec. 307 [Renegotiations and Extensions]

Sec. 310 [Insurance]

Sec. 311 [Delinquency and Default Charges]

Sec. 3312 [Gap Liability]

Sec. 315 [Lessee's Default; Right to Cure]

Sec. 316 [Repossession; Reinstatement]

Sec. 319 [Early Termination Liability]

Sec. 320 [Assessment of Excess Wear and Use]

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

(e) Notwithstanding the provisions of subsections (b), and (c) of this section, if within [60 ?] days after discovering a violation of the provisions of this Act, and prior to the institution of an action under this section or the receipt of written notice of the violation from the lessee, a holder corrects the violation(s) [including refund or restitution of charges improperly disclosed], neither the lessor nor the holder has liability under subsection (c) of this Section.

(f) A lessor or holder is not liable for a violation of this Act that was unintentional and resulted from a bona fide

1 error notwithstanding the maintenance of procedures reasonably  
2 adapted to avoid any such error. Examples of bona fide errors  
3 include, but are not limited to, clerical errors, calculation  
4 errors, computer malfunctions and programming errors, except that  
5 an error of legal judgment with respect to a person's obligations  
6 under this Act is not a bona fide error.

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

11 (1) when a lessee initiates an action against a holder;  
12 or

13 (2) when a lessee raises a violation of this Act as a  
14 defense, counterclaim, [or claim in recoupment ?] in an action  
15 initiated against the lessee [(including proceedings in  
16 insolvency) ?].

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

22 (i) A recovery under this Section may not exceed the total  
23 amount to be paid by the lessee under the terms of the consumer  
24 lease, exclusive of the purchase option price, if any.[?]

25 Reporter's Notes: From the Model Act. What is the  
26 point of so limiting a lessee's possible recovery?  
27

28 (j) Notwithstanding the provisions of Sections 206( ) and  
29 313( ) of this Act, and except where the assignment is

1 involuntary, a civil action for a violation of this Act which may  
2 be brought against a lessor or holder may be maintained against a  
3 subsequent holder only if the violation for which the action or  
4 proceeding is brought is apparent on the face of the consumer  
5 lease. For purposes of this subsection, a violation is apparent  
6 on the face of the consumer lease if:

7 (1) a required disclosure can be determined to be  
8 incomplete or inaccurate from the face of the consumer lease or  
9 other documents assigned; or

10 (2) the consumer lease contains a prohibited provision  
11 or does not contain the notices, legend or items required by this  
12 Act.

13 Reporter's Notes: This insulates a subsequent assignee  
14 from liability under this section for any violation  
15 committed by a prior holder which the current holder  
16 could not identify from the lease documentation.  
17

18 (k) [Other possible refinements: class action caps; multiple  
19 lessees; multiple violations; lessee offsets, etc.]  
20

## 21 **Section 502. Criminal Liability.**

22 Reporter's Notes: No text proposed at this time. Do  
23 any provisions of this Act deserve criminal sanctions?  
24

25 Note that under U3C § 5.301 criminal sanctions  
26 attach only to "willfully and knowingly" (1) making  
27 excess charges in 'supervised' loans, (2) lending  
28 without a license, and (3) not making reports or paying  
29 license fees. Section 112 of the Truth in Lending Act,  
30 applicable to consumer leases, provides criminal  
31 sanctions for certain non-disclosures.  
32  
33



1     **Section 503.   Effect of Violation on Rights of Parties;**  
2                     **Election of Remedies]**

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

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

9             Reporter's Notes:   This is the Reporter's proposal.  
10     Subsection (1) is to make clear that a violation of  
11     this Act does not nullify or undercut the lessee's  
12     obligation on the lease.   Cf. U3C § 5.201(4).  
13     Subsection (2) is to prevent multiple recoveries for  
14     the same violation.   Cf. U3C § 5.203(8).  
15  
16  
17

18     **Section 504.   Administrative Enforcement.**

19             The provisions of this Act shall be enforced by the  
20     [Attorney General, Credit Code Administrator, or similar public  
21     agency].   For this purpose a violation of this Act shall  
22     constitute an unfair or deceptive act or practice within the  
23     meaning of the [state UDAP act].

24             Reporter's Notes:   This section would assign  
25     enforcement authority to a public agency, presumably  
26     one that has investigative, cease-and-desist, and  
27     similar powers.   That agency would have the same  
28     enforcement powers as under the state UDAP Act or  
29     similar consumer fraud act.  
30  
31

32     **Section 505.   Administration of Act.**

33             The [designate public official or office] shall administer

1 the provisions of this Act, and shall have the authority to issue  
2 regulations and interpretations designed to effectuate the  
3 purposes of this Act, to prevent circumvention or evasion  
4 thereof, to facilitate compliance therewith, and to assure  
5 consistent interpretations with those of other states enacting  
6 this uniform Act.

7 Reporter's Notes. Is there need for an Administrator  
8 for this Act? Indeed, is it wise to permit regulations  
9 and interpretations beyond the text of the statute,  
10 when this can lead to non-uniform interpretations of  
11 the Act?  
12  
13

#### 14 **Part 6: INTERPRETATION OF ACT; TRANSITION**

##### 15 **Section 601. Purposes; Rules of Construction.**

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

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

19 (1) to simplify, clarify, and modernize the law  
20 governing the leasing of consumer goods;

21 (2) to recognize the unique characteristics and  
22 legitimate role of leasing in the marketing of consumer goods;

23 (3) to further consumer understanding of the terms of  
24 lease transactions and to foster competition among suppliers of  
25 consumer leases so that consumers may lease goods at reasonable  
26 cost;

27 (4) to protect consumers against unfair practices by  
28 some suppliers of consumer leases, having due regard for the

1 interests of legitimate and scrupulous lessors;

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

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

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

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

11  
12 This whole section may be outside Conference style  
13 guidelines!

14  
15  
16  
17 **Section 602. Construction Against Implicit Repeal.**

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

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

23  
24 **Section 603. Severability.**

25 If any provision of this Act or the application thereof to  
26 any person or circumstance is held invalid, the invalidity does  
27 not affect other provisions or applications of this Act which can  
28 be given effect without the invalid provision or application, and  
29 to this end the provisions of this Act are severable.

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

2  
3     **Section 604.     Effective Date; Transition.**

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

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

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

14            (b)     a consumer lease entered into before this Act takes  
15    effect insofar as the remedies of holders are limited by Sections  
16    206 [Prohibited lease terms], 315 [Lessee's default; right to  
17    cure], 316 [Repossession; reinstatement], and 318(b) (5)  
18    [Disposition of vehicle at lease termination].

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

20  
21     **Section 605.     Specific Repealer and Amendments.**

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

23                 (a)

24                 (b)

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

1 (a)

2 (b)

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

8  
9

10 -- END OF DRAFT --  
11