

**The original documents are located in Box 41, folder “1976/03/23 HR8835 Consumer Leasing Act of 1976” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

3/23/76

APPROVED

MAR 23 1976

Ceremony + remarks -  
Rose Garden  
approx 2 pm

ACTION

THE WHITE HOUSE  
WASHINGTON  
March 18, 1976

Last Day: March 23

To Archives  
3/23/76

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

H.R. 8835 - Consumer Leasing  
Act of 1976

Attached for your consideration is H.R. 8835, sponsored by Representative Annunzio and eight others, which amends the Truth and Lending Act to protect consumers from inadequate and misleading information in connection with leasing personal property for personal, family or household purposes.

A discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 8835 at Tab B. (At ceremony)



A



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAR 17 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8835 - Consumer Leasing  
Act of 1976  
Sponsor - Rep. Annunzio (D) Ill. and 8 others

Last Day for Action

March 23, 1976 - Tuesday

Purpose

To protect consumers from inadequate and misleading information in connection with leasing personal property for personal, family, or household purposes.

Agency Recommendations

Office of Management and Budget	Approval
Federal Reserve Board	Approval (Informally)
Department of Health, Education, and Welfare	Approval
Department of Justice	No objection
Department of Transportation	No objection
Department of Commerce	No objection
Department of the Treasury	No objection

Discussion

The enrolled bill had its origin in recommendations made by the Federal Reserve Board to extend the Truth in Lending Act (which currently applies only to credit sales transactions) to consumer lease transactions. The Board's recommendations were prompted by the rapidly increasing popularity of consumer leasing of "durable" items, particularly automobiles, color television sets and furniture, as an alternative to the credit sales of such personal property items. With this growth in consumer leasing, the Board had experienced a sharp rise in the number of complaints about inadequate or misleading disclosure of lease terms and conditions.



H.R. 8835 would apply to leases for the use of personal property for a period of more than four months and for a total obligation not exceeding \$25,000. The leases would have to be primarily used for personal, family or household purposes; agricultural, commercial, and governmental transactions would be excluded. The bill would amend the Truth in Lending Act to:

-- require the lessor to provide a dated, written statement disclosing eleven specific items to the lessee. These items must be disclosed prior to the consummation of the lease, may be included in the lease contract itself, and include the down payment, charges on the lessee not covered by the periodic payments and the number, amount and due dates of the periodic payments required. Where the lessee is liable for the anticipated fair market value of the property upon expiration of the lease, the statement must include the fair market value of the property at the lease's inception, the aggregate cost of the lease on expiration and the difference between them.

-- limit the lessee's liability on expiration or termination of the lease. A rebuttable presumption of unreasonableness is created where the lessee's liability for the estimated residual value of the property exceeds the actual residual value by three times the average monthly payment under the lease. This is intended to discourage leases with large "balloon" or final payment terms.

-- require advertising concerning leases to contain certain warning disclosures to consumers including the fact that the transaction is a lease and the number, amounts, due dates and total of payments under the lease.

The individual civil liability penalties pertaining to violations of the credit sales transactions under the Truth in Lending Act would generally be extended by H.R. 8835 to cover violations of lease transactions. However, the enrolled bill raises the ceiling on class action civil liability to \$500,000 or 1 per cent of net worth, whichever is less, and makes this provision applicable to the entire Truth in Lending Act. Current class action civil liability under that Act is the lesser of \$100,000 or 1 per cent of net worth.

Finally, the enrolled bill would permit States to continue to enact and enforce their own consumer lease laws so long as they are not inconsistent with this bill, as determined by the Federal Reserve Board.

H.R. 8835 would take effect one year after the date of enactment.

*James M. Frey*  
Assistant Director  
for Legislative Reference

Enclosures

To  
Cavanaugh  
3-17-76



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAR 17 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8835 - Consumer Leasing Act of 1976  
Sponsor - Rep. Annunzio (D) Ill. and 8 others

Last Day for Action

March 23, 1976 - Tuesday

Purpose

To protect consumers from inadequate and misleading information in connection with leasing personal property for personal, family, or household purposes.

Agency Recommendations

Office of Management and Budget	Approval
Federal Reserve Board	Approval (Informally)
Department of Health, Education, and Welfare	Approval
Department of Justice	No objection
Department of Transportation	No objection
Department of Commerce	No objection
Department of the Treasury	No objection

Discussion

The enrolled bill had its origin in recommendations made by the Federal Reserve Board to extend the Truth in Lending Act (which currently applies only to credit sales transactions) to consumer lease transactions. The Board's recommendations were prompted by the rapidly increasing popularity of consumer leasing of "durable" items, particularly automobiles, color television sets and furniture, as an alternative to the credit sales of such personal property items. With this growth in consumer leasing, the Board had experienced a sharp rise in the number of complaints about inadequate or misleading disclosure of lease terms and conditions.

H.R. 8835 would apply to leases for the use of personal property for a period of more than four months and for a total obligation not exceeding \$25,000. The leases would have to be primarily used for personal, family or household purposes; agricultural, commercial, and governmental transactions would be excluded. The bill would amend the Truth in Lending Act to:

-- require the lessor to provide a dated, written statement disclosing eleven specific items to the lessee. These items must be disclosed prior to the consummation of the lease, may be included in the lease contract itself, and include the down payment, charges on the lessee not covered by the periodic payments and the number, amount and due dates of the periodic payments required. Where the lessee is liable for the anticipated fair market value of the property upon expiration of the lease, the statement must include the fair market value of the property at the lease's inception, the aggregate cost of the lease on expiration and the difference between them.

-- limit the lessee's liability on expiration or termination of the lease. A rebuttable presumption of unreasonableness is created where the lessee's liability for the estimated residual value of the property exceeds the actual residual value by three times the average monthly payment under the lease. This is intended to discourage leases with large "balloon" or final payment terms.

-- require advertising concerning leases to contain certain warning disclosures to consumers including the fact that the transaction is a lease and the number, amounts, due dates and total of payments under the lease.

The individual civil liability penalties pertaining to violations of the credit sales transactions under the Truth in Lending Act would generally be extended by H.R. 8835 to cover violations of lease transactions. However, the enrolled bill raises the ceiling on class action civil liability to \$500,000 or 1 per cent of net worth, whichever is less, and makes this provision applicable to the entire Truth in Lending Act. Current class action civil liability under that Act is the lesser of \$100,000 or 1 per cent of net worth.

Finally, the enrolled bill would permit States to continue to enact and enforce their own consumer lease laws so long as they are not inconsistent with this bill, as determined by the Federal Reserve Board.



H.R. 8835 would take effect one year after the date of enactment.

*James M. Frey*  
Assistant Director  
for Legislative Reference

Enclosures



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
OFFICE OF CONSUMER AFFAIRS  
WASHINGTON, D.C. 20201

March 12, 1976

MEMORANDUM

**TO:** James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management & Budget

**FROM:** Michael A. Sterlacci *MAS*  
General Counsel  
Office of Consumer Affairs

**SUBJ:** Enrolled Bill H. R. 8835, an Act "To amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes."

The Office of Consumer Affairs strongly supports this amendment to the Truth-in-Lending Act which extends new consumer protection rights to the important area of consumer leasing. This legislation should go far toward providing consumers with more meaningful information with which to make more intelligent lease decisions. The disclosure requirement appears to adequately and comprehensively address the relevant financial concerns which are at issue in the typical lease transaction.

Its requirement of a reasonable approximation "test" of anticipated fair market value for property on which leases have expired appears to offer adequate protection against the potential loss which consumers frequently suffer in the area of miscalculation of residual value. The "three monthly payment" benchmark creating a presumption of unreasonableness to be rebutted by the lessor appears to be an adequate solution to the difficult problem

of depreciation calculation, one which equitably balances the rights and obligations of both lessor and lessee.

The criticism has been made that this disclosure requirement imposes an unreasonable paperwork burden on business and might particularly handicap small business. We do not agree. It would appear to us that the cost burden of compliance is not substantial, since it would appear mainly to consist of codifying at one point of disclosure, items of information which should be easily available and/or obtainable by the lessor before entering on the lease.

We have some small concern that the requirement that lease advertising which contains specific payment information (number, size of payments or downpayment) must also carry additional information as to the nature of the transaction, may unduly discourage provision of useful payment or downpayment information in ads, since firms may be reluctant to incur higher marginal costs of featuring such payment information. While we cannot evaluate such a possibility at this time, implementation of this particular provision of the Act should be closely monitored and evaluated to assess whether firms become more reluctant to furnish payments information in their advertising. Thus we recommend that the President approve the legislation.

**Department of Justice**  
**Washington, D.C. 20530**

March 16, 1976

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 8835, "To amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosures of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes and for other purposes." The Act is to be cited as the "Consumer Leasing Act of 1976."

Senate Report 94-590, printed January 1, 1976, outlines the concerns which led to the enactment of the "Consumer Leasing Act of 1976." The Federal Reserve Board had requested this type of legislation in both its 1973 and 1974 reports to Congress. The Board noted that the Truth in Lending Act applied only to leases with option to purchase at a nominal price, and that this makes the Truth in Lending Act inapplicable to most leases.

Senate Report 94-590 reviews the increase and significant number of leases to individuals of consumer goods, especially automobiles, and concludes that the lease is actually an alternative to installment sales contracts. Further, although on its face, the lease terms appear more favorable than an installment contract to buy the same item, in actual practice, obligations to pay a difference between residual and fair market values, balloon payments, etc. make the lease much more expensive to complete.

Section 181 of the bill defines terms such as "consumer lease" which is a lease for use of personal property by a natural person for a period of more than four months not exceeding \$25,000.00, primarily for personal, family or household purposes. "Consumer lease" specifically excludes agricultural, commercial, and governmental transactions. This section also defines "lessee," "lessor," "personal property," "security," and "security interest."

Section 182 of the bill requires the lessor to provide a dated, written statement disclosing, where applicable, eleven specific items to the lessee. The disclosures must be made prior to the consummation of the lease, but may be included in the lease contract itself. These disclosures are reasonably calculated to effectuate the purposes of the bill. The specific disclosures include the down payment, lessee's payments for official fees, registration, title, taxes, charges on the lessee not covered by the periodic payments, insurance provided, warranties available, and the number, amount, and due dates of the periodic payments required. Where the lessee is liable for the anticipated fair market value of the property on expiration of the lease, the lessor must disclose this value at the start of the lease, the aggregate cost of the lease at expiration, and the differential between these figures.

Section 183 of the bill governs and limits the lessee's liability on expiration or termination of the lease. Paragraph (a) of this section creates a rebuttable presumption of unreasonableness where the lessee's liabilities for estimated residual value exceeds the amount of three months of payments due under the lease. Paragraph (b) limits penalties and delinquency charges to amounts reasonable in light of actual harm or harm reasonably anticipated by the lessor, and (c) provides that the lessee may retain, at his expense, an appraisal, by a person acceptable to the lessor, who will place a residual value on the property which will be binding on both sides.

Section 184 penalizes advertising, exempting advertising and media personnel, of or in aid or promotion of a lease without certain warning disclosures to consumers. These required warnings advise a consumer that the transaction is a lease, of potential liability for residual value at the close of the lease, and other significant provisions found in a lease.

Section 185 provides civil liability in the same fashion as currently exists in Truth in Lending Act cases under Section 130 of that Act codified at 15 U.S.C. 1640. The one difference is that liability under Section 184, regulating the disclosures required in lease advertising, is limited to complainants who suffer actual harm.

Section 186 provides that the Consumer Leasing Act of 1976 will not annul, supersede or prevent state legislation which provides equal or greater protection to consumers.

The Truth in Lending Act would be amended by incorporating a second paragraph in 15 U.S.C.A. 1601 to include the coverage of lease transactions within the findings and purpose of the Act. The bill conforms Truth in Lending Act Section 130, 15 U.S.C. 1640, to include the violations of lease disclosures in the civil penalty scheme as envisioned in Section 185 of the bill. The bill also raises the alternative limitation of liability on class action recoveries in Section 130 from the lesser of \$100,000.00 or one per centum of the creditor's net worth to the lesser of \$500,000.00 or one per centum of the creditor's net worth.

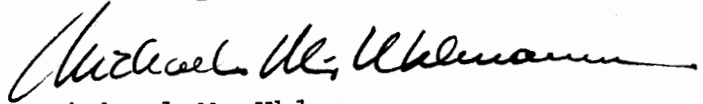
The bill goes into effect one year after its passage which provides ample time for the Federal Reserve Board to consider its actions under the bill, and to provide ample warning to affected lessors of personal property.

If the bill exerts any economic influence, it would be toward increased competition since lessors who compete with retail installment sellers will be required to provide consumers with disclosures permitting ready comparison of the buy and lease options.

This bill may increase litigation in federal district courts. Nevertheless, since litigation will probably follow the pattern of Truth in Lending Act litigation, which usually terminates in summary judgment with the Court comparing the disclosures made against the applicable regulations, this increase in litigation should be a minimal burden.

The Department of Justice has no objection to Executive approval of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned above the typed name and title.

Michael M. Uhlmann  
Assistant Attorney General



**GENERAL COUNSEL OF THE  
UNITED STATES DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

**MAR 15 1976**

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H. R. 8835, an enrolled enactment

"To amend the Truth in Lending Act to protect consumers against inadequate and misleading information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes,"

to be cited as the "Consumer Leasing Act of 1976."

H. R. 8835 amends the Truth in Lending Act (15 U. S. C. 1601-1665) by adding to the Act a new Chapter headed - Consumer Leases. Briefly stated, the principal purpose of the new chapter is to require meaningful disclosure of the essential terms of consumer leases (as defined in the Act) and to require inclusion of certain specified information in consumer lease advertising so as to protect consumers against inadequate and misleading leasing information. The requirements would apply only to consumer leases of personal property for more than four months, where the total obligation is \$25,000 or less, and where the property is to be used primarily for personal, family, or household purposes. The legislation excludes leases for agricultural, business, or commercial purposes, or to a government or an organization. In addition, the legislation includes provisions restricting the lessee's liability at the expiration or termination of a lease, and raising the ceiling amount on class action recoveries under the Truth in Lending Act.

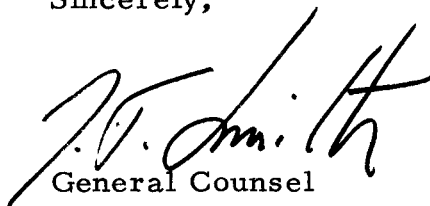




This Department would have no objection to approval by the President of H. R. 8835.

Enactment of this legislation is not expected to involve any increase in the budgetary requirement of this Department.

Sincerely,



J. V. Smith  
General Counsel



THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

MAR 16 1976

Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for Legislative  
Reference

Sir:

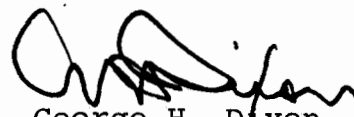
Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 8835, the "Consumer Leasing Act of 1976."

The enrolled enactment would amend the Truth in Lending Act to require lessors of personal property to give lessees a written statement providing specific information with respect to a lease.

In July 24, 1975, testimony before the Senate Banking Committee on S. 1900 and S. 1961, bills with a similar purpose, Deputy Secretary Gardner recommended deletion of a provision that would prohibit lump sum payments at the end of a lease term in excess of a multiple of the average monthly payment under the lease. The analogous provision of the enrolled enactment would create a rebuttable presumption that the balloon payment is unreasonable to the extent that it exceeds three monthly payments and would prohibit the lessor from collecting the excess liability. However, the enrolled enactment would permit the lessor to seek recovery in the courts of amounts in excess of three monthly payments.

In the circumstances, the Department would not oppose a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,



George H. Dixon

Date: March 17

Time: 600pm

FOR ACTION: Kathy Ryan  
 Paul Leach  
 Dick Parsons ✓  
 Judy Hope  
 Ken Lazarus

cc (for information): Jack Marsh  
 Jim Cavanaugh  
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 8835 - Consumer Leasing Act of 1976

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

APPROVAL - [Signature]

Please return to Judy Johnston, Ground Floor West Wing

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
 For the President

Date: March 17

Time: 600pm

FOR ACTION: Kathy Ryan ✓  
 Paul Leach  
 Dick Parsons  
 Judy Hope  
 Ken Lazarus

cc (for information): Jack Marsh  
 Jim Cavanaugh  
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 8835 - Consumer Leasing Act of 1976

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Approved - CAR*

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
 For the President

Date: March 17

Time: 600pm

FOR ACTION: Kathy Ryan  
 Paul Leach  
 Dick Parsons  
 Judy Hope ✓  
 Ken Lazarus

cc (for information): Jack Marsh  
 Jim Cavanaugh  
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 8835 - Consumer Leasing Act of 1976

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*No objection, JPH*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
 For the President

*no*

Date: March 17

Time: 600pm

FOR ACTION: Kathy Ryan  
 Paul Leach  
 Dick Parsons  
 Judy Hope  
 Ken Lazarus ✓

cc (for information): Jack Marsh  
 Jim Cavanaugh  
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 8835 - Consumer Leasing Act of 1976

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection -- Ken Lazarus 3/18/76

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
 For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 17

Time: 600pm

FOR ACTION: Kathy Ryan *oh*  
Paul Leach *oh*  
Dick Parsons *oh*  
Judy Hope *oh*  
Ken Lazarus *oh*

cc (for information): Jack Marsh  
Jim Cavanaugh  
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 18

Time: 300pm

SUBJECT:

H.R. 8835 - Consumer Leasing Act of 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

\_\_\_\_\_  
K. R. COLE, JR.  
For the President

## TRUTH IN LEASING ACT

OCTOBER 8, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REUSS, from the Committee on Banking, Currency and Housing, submitted the following

### REPORT

together with

### ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 8835]

The Committee on Banking, Currency and Housing, to whom was referred the bill (H.R. 8835) to amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, line 18, after the quotation marks and before "For" insert "(a)".

On page 2, line 19, strike out "(a)" and insert "(1)".

On page 3, line 5, strike out "(b)" and insert "(2)".

On page 3, line 7, strike out "(c)" and insert "(3)".

On page 3, line 10, strike out "(d)" and insert "(4)".

On page 3, line 14, strike out "(e)" and insert "(5)".

On page 3, immediately after line 16, insert the following:

(b) Nothing in this chapter shall be deemed to constitute a Congressional finding or determination as to the permissibility or impermissibility of the making of a consumer lease, as defined herein, by a national bank or bank holding company or bank holding company subsidiary.

On page 4, line 9, strike out "payment" and insert "payments".

On page 4, line 22, strike out "and/".

On page 5, at the end of line 21, strike out "and".

On page 5, line 23, strike out the period and insert "; and".



On page 5, immediately after line 23, insert the following:

(n) (1) In the case of a special order item whose price may be subject to change by reason of manufacturing decisions, the disclosure statement shall be the best and/or last available reliable price carrying with it a clear and conspicuous notation that it is or may be subject to change but only to the amount of change which corresponds with the change in the manufacturer's price. Official fees, registration, certificate of title or license fees or taxes whose rates are computed on the base amount of the special order item shall also be clearly and conspicuously noted and unless so noted shall not change from the best and/or last available amount which shall be shown in the lease contract.

(2) Any information subject to change with respect to subsection (1) of this subsection shall be incorporated into the lease contract at the time of delivery of the leased goods.

(3) Where a special order item whose registration number or model number are not available at the time of the execution of the lease agreement, it shall be clearly and conspicuously noted upon the contract and subsequently incorporated into the contract at the time of delivery of the leased goods.

On page 6, line 4, strike out "substantial damage" and insert "physical damage beyond reasonable wear and use".

On page 6, beginning in line 9, strike out "A consumer" and all that follows down through "lease payment." in line 13.

On page 6, line 17, strike out "individual" and insert "independent".

On page 7, at the end of line 8, insert "and".

On page 11, line 3, strike out "185 (i)" and insert "185 (h)".

#### HISTORY OF LEGISLATION

H.R. 4657 was introduced on March 12, 1975. Hearings on the legislation were held on July 8, 1975. On July 17, 1975, the Subcommittee met in executive session and adopted a number of amendments to the legislation. The Subcommittee ordered a clean bill introduced and recommended favorably to the full Committee by a vote of 8 to 0. On July 23, 1975, Mr. Annunzio, the Subcommittee Chairman, introduced the clean bill, H.R. 8835, for himself and eight other members of the Consumer Affairs Subcommittee. The full Committee met in executive session on October 1 and October 2, 1975 and by a vote of 30 to 0 ordered the bill favorably reported with amendments.

#### NEED FOR THE LEGISLATION

The Committee finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered with inadequate and misleading lease information. Leasing consumer personal property such as automobiles or furniture is a rapidly expanding business. Automobile manufacturers have estimated that 40% of their production will be leased rather than sold by 1980.

From 1963 to 1973 new car sales increased only 42%, while lease and fleet registrations on new cars increased by 127%.

Although leasing is expanding, consumers are not well informed about leasing contract terms.

The Committee believes that consumers can be misled by deceptive lease advertising which focuses on monthly payments lower than those for an outright purchase of a car, but fails to disclose the undetermined residual value liability (which will likely involve a huge balloon payment) or the cost of credit. The ultimate fee may include a charge equivalent to an annual percentage rate of interest of 23%.

The information available to a consumer about leasing personal property is frequently misleading or inadequate. Important aspects of the lease contract may not be clearly explained. Consequently, consumers are unable to compare the advantage or disadvantage of one lease arrangement with another or compare a lease arrangement to a retail credit sale.

Unfortunately, the Truth in Lending Act only applies to leases having an option to purchase for no additional charge or for only a nominal charge.

This legislation will cover other kinds of leases and the Committee believes it will remedy problems consumers are having with such leases.

#### GENERAL COMMENTS

Several general comments on H.R. 8835 are in order. The terms "expiration" and "termination" as used in this legislation have the following meanings: the term "expiration" refers to the end of a lease when it concludes at its original mutually agreed upon date, while the "termination" refers to either a lease ending upon its expiration date or to a lease ending prior to its expiration date, by mutual contractual agreement, i.e. leases frequently have "early termination" provisions.

The exception of section 185 (h) from State exemption in section 3 Conforming Amendments, is for the following reasons: There is controversy and litigation over whether the Truth in Lending Act's exemption for a substantially similar State law applies only to exempting the State law's requirements (as the Board contends) or also extends to exemption of the State's civil liability provisions (as others contend).

If the latter view prevails in court, then as the Truth in Lending Act is presently drafted, a State could request the Board to exempt it from all of the civil liability section including the subsection affording concurrent jurisdiction, i.e. the important opportunity to bring an action in Federal as well as in State court would be foreclosed. Expressly excepting subsection (h) from State exemption is to insure that this Act's concurrent jurisdiction provision cannot be exempted.

The concluding paragraph of Section 1, Definitions, states that this legislation takes no position on the issue of whether or not financial institutions should be allowed to engage in personal property leasing. For more than ten years there has been a controversy over the right of financial institutions to engage in personal property leasing. The issue is still in litigation. The Committee feels that if it is silent on the subject, i.e. by not placing this additional language in the bill, someone will argue that since the Committee did not say it was not taking a position, its silence should be interpreted as support for one side of the issue or the other.

Opponents of this legislation have argued that since whether or not financial institutions should engage in personal property leasing is a disputed issue, it would be desirable and appropriate for Congress to make a determination on this issue in this legislation. This contention is demonstrably without merit. The Committee feels that using this legislation to make such a determination would be a disservice to consumers meant to be protected in personal property leasing because it would involve the Truth in Lending Act in unnecessary controversy over an issue not germane to this Act.

Such a determination in this Act would also be a disservice to the proper resolution of the "financial institutions in personal property leasing" issue for the following reasons:

The issue of personal property leasing by banks, bank holding companies, and bank holding company subsidiaries is an important and legitimate subject of concern for Congress. At the present time, the immediate decision on the fate of such leasing is in the hands of the courts. Once the judicial procedure has been used in its entirety, then Congress should make a determination on this question. This should not take place in a bill which is intended to protect consumers by disclosure requirements and liability limitation.

Whether one is for or against bank leasing, the Committee feels a vote on such an important issue should come in appropriate circumstances. The question should properly be met head on: by introduction of legislation dealing directly with this issue followed by thorough hearings and Congressional action.

Consequently, the Committee feels it is both necessary and proper to expressly declare in this legislation that nothing in this Act constitutes a Congressional finding or determination as to the permissibility or impermissibility of financial institutions engaging in consumer leasing.

Section 183, Limitations of liability, is one of the most important sections of this legislation. Basically, it will limit a lessee's ultimate liability to three times a monthly payment. Presently, disreputable lessors deceive consumers by offering deceptively low monthly payments and no down payment. What is not clear to the consumer is his ultimate liability: the balloon payment. The lessee is not in fact offered an inexpensive lease arrangement. The lessor must make a profit so the balloon payment makes up for not requiring a down-payment and for the unrealistically low monthly payments.

Furthermore, since the ultimate liability depends on the resale value (or appraised value) of the leased goods at the end of the lease, without a liability limit, the lessor is encouraged to give the lessee an unrealistic or fraudulently low appraisal of the leased goods. This low appraisal results in a larger balloon payment being owed.

This liability limitation is needed to protect consumers and force lessors to be honest and realistic in their periodic payment rates and their appraisal of the leased goods at the end of the lease.

The three times a month limit is a fair limitation.

The banking industry has claimed that this liability limitation will not permit lessors to recover their original value on the leased goods. This simply is not true.

In unusual cases of low resale value, the limitation will cover the deficiency. The facts reflect this.

The Comptroller of the Currency's chief counsel, in a letter to Mr. Wylie last July, stated that a car retains 30 percent or more of its original value. Yet, Mr. James Smith, testifying before the Consumer Affairs Subcommittee as the representative of the American Bankers Association and the Consumer Banker Association cited the Committee an example where after two years a car's wholesale value was 50 percent.

Using the 50% resale figure on an original car value of \$4,800 (\$168.00 per month) the lessee gets a rebate of \$480 without touching the three times formula. With a 40% resale value the lessor and lessee break even without touching the three times formula. With a 30% resale value there is a deficiency of \$480. The three times formula equals \$504 so the deficiency is covered and \$24 is left over.

So, at a low resale value, 20% lower than that projected by the Bankers' representative, Mr. Smith, banks still would be able to recover the original value of their investment.

Furthermore, the liability limitation does not even apply in case of physical damage beyond reasonable wear and use or default.

This limitation is equitable to lessors and vitally important to the protection of consumer lessees.

#### STATEMENTS REQUIRED IN ACCORDANCE WITH HOUSE RULES

In compliance with clause 2(1)(3) and 2(1)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A) of clause 3, relating to oversight findings, the Committee finds, in keeping with clause 2(b)(1) of Rule X, that this legislation is in full compliance with the provision of this rule of the House, which states:

In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee . . .

The objective of the bill is to amend the Truth in Lending Act by adding a new chapter: Chapter 5—Consumer Leases, to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes.

In compliance with subdivision (B) of clause 3, the Committee states that changes made by this bill involve no new budget authority.

With respect to subdivisions (C) and (D) of clause 3, the Committee advises that no estimate or comparison has been prepared by the Director of the Congressional Budget Office relative to any provisions of H.R. 8835, nor have any oversight findings or recommendations been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 8835.

In compliance with clause 2(1)(4) of Rule XI of the House of Representatives, the Committee states that H.R. 8835 is not expected to have any measurable inflationary impact on prices and costs in the operation of the national economy. The additional enforcement and

rule-writing responsibilities established by the bill can be carried out with the existing staffs of the agencies involved.

In compliance with clause 2(1)(2)(B) of Rule XI of the House of Representatives, the following statement is made relative to the record vote on the motion to report H.R. 8835: The legislation was reported unanimously by a 30 to 0 vote.

#### SECTION-BY-SECTION ANALYSIS OF H.R. 8835

**SEC. 1.**—This section declares that the purpose of this Act is to: (1) assure meaningful disclosure of the terms of leases of personal property primarily for personal, family, or household purposes so that the consumer lessee can compare these lease terms with other lease terms available to him or compare these lease terms with credit terms where appropriate; (2) assure meaningful and accurate disclosures of lease terms in advertising; and (3) place a limit on a consumer lessee's liability under such leases.

**SEC. 2.**—This section provides that the Truth in Lending Act (15 U.S.C. 1601-65) is amended by adding at the end of it a new chapter, "Chapter 5—Consumer Leases" as follows:

**SEC. 180. SHORT TITLE.**—This section provides that this chapter may be cited as the "Truth in Leasing Act".

**SEC. 181. DEFINITIONS.**—This section defines for the purposes of this Act the meaning of the following terms: consumer lease, lessee, lessor, personal property, security, and security interest.

The concluding paragraph of this section is a disclaimer to the effect that nothing in this chapter shall be construed to constitute a Congressional finding or determination as to whether or not a national bank or bank holding company or bank holding company subsidiary is permitted to engage in consumer leasing, as defined in this chapter. The legal status of financial institutions engaging in consumer leasing is currently at issue. This disclaimer is intended to make it unequivocally clear that this legislation does not take a position either for or against consumer leasing by national banks, bank holding companies or bank holding company subsidiaries.

**SEC. 182. CONSUMER LEASE DISCLOSURES.**—This section provides that with respect to a consumer lease, the lessor shall make the enumerated disclosures as applicable in a clear and conspicuous manner. The lessor shall: make these disclosures in the lease contract, shall make these disclosures prior to consummation of the lease, shall identify the lessor and lessee, shall date the contract, and shall provide the lessee with a copy of the lease contract when it is executed.

Subsection (d) of this section requires among other things that the lessor disclose that the lessee shall be liable for the differential, if any, between the anticipated fair market cash value of the leased goods and their appraised actual value at the termination of the lease, if the lessee has such liability. This disclosure refers to a term frequently in consumer lease contracts that states that the lessee has a responsibility to return to the lessor the leased property's original value. Another way to state this lessee liability is that the lessee is liable for the differential, if any, between the cost of the leased goods and the com-

bined value of the depreciation payments made during the lease and the appraised actual value of the leased goods upon the end of the lease.

**SEC. 183. LIMITATIONS OF LIABILITY.**—This section provides that no liability of the lessee under the terms of a consumer lease for any payment upon the end of a lease may exceed three times an amount determined by dividing the total of scheduled payments by the number of months in the term of the lease. This liability limitation does not apply if there is default or if there is physical damage beyond reasonable wear and use.

In consumer leases that provide for lessee liability for the residual value of the leased property upon the end of the lease, the lessee may obtain at his expense, a professional appraisal of the leased goods by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties. The appraisal provision is intended to protect lessees from unscrupulous lessors who appraise the leased goods at the end of a lease at an unreasonably low or fraudulent value so as to require more lessee payment to achieve the residual value. A professional appraisal by an independent third party should assure that the leased goods receive a fair and objective evaluation.

**SEC. 184. CONSUMER LEASE ADVERTISING.**—Subsection (a) provides that if an advertisement to aid, promote, or assist directly or indirectly any consumer lease states the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease, such advertisement shall also state clearly, conspicuously, and in equal size print, and in accordance with regulations issued by the Board each of the enumerated items of information which is applicable.

Subsection (b) provides an exemption from liability for violation of this section to any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

**SEC. 185. CIVIL LIABILITY.**—Subsection (a) provides that any lessor who fails to comply with any requirement imposed under this chapter with respect to any person shall be liable to such person in an amount equal to the sum of—

(1) any actual damages sustained by such person as a result of the failure;

(2) (A) in the case of an individual action five times the amount attributable to a monthly payment under the lease except that liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of \$100,000 or 1 per centum of the net worth of the lessor; and

(3) in the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual

damages sustained, the frequency and persistence of failure of compliance by the lessor, the resources of the lessor, the number of persons adversely affected, and the extent to which the lessor's failure of compliance was intentional.

Subsection (d) provides that, except as otherwise specifically provided in this chapter, any civil action for a violation of this chapter which may be brought against the original lessor in any lease transaction may be maintained against any subsequent assignee of the original lessor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

Subsection (e) provides that a person may not take any action to offset any amount for which a lessor is potentially liable to such person under subsection (a)(2) (which deals with individual and class action liability) against any amount owing to such lessor by such person, unless the amount of the lessor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.

Subsection (g) provides that the multiple failure to disclose any information required under this chapter to be disclosed in connection with a single lease transaction shall entitle the person to a single recovery under this section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

Subsection (b), (c), and (f) respectively, provide exemptions from liability under this section as follows:

(1) A lessor shall not be liable if within fifteen days after discovery of an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the lessor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay any amount in excess of the amount that should correctly have been disclosed;

(2) A lessor may not be held liable for a violation of this chapter if the lessor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error and such error has been rectified; and

(3) No provision of this section imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

The first part of subsection (h) provides for concurrent jurisdiction.

The second part of subsection (h) provides a one year statute of limitations on bringing an action alleging a failure to disclose or otherwise comply with the requirements of this chapter. The time limit starts from the date of the termination of the lease agreement.

SEC. 3. CONFORMING AMENDMENTS.—This section provides that section 123 of the Truth in Lending Act (15 U.S.C. 1633) is amended

by inserting "(a)" immediately before "The" and by adding at the end thereof the following new subsection:

(b) The Board shall by regulation exempt any State from the provisions of chapter 5 of this title (except section 185(h)), if it determines that under the law of that State, requirements and restrictions are substantially similar to those imposed under chapter 5 and that there is adequate provision for enforcement. Expressly excepting subsection (h) from State exemption is to insure that this Act's concurrent jurisdiction provision cannot be exempted.

SEC. 4. EFFECTIVE DATE.—This section provides that the amendments made by this Act shall take effect upon the expiration of one year after the date of its enactment.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### TRUTH IN LENDING ACT

#### TITLE I—CONSUMER CREDIT COST DISCLOSURE

\* \* \* \* \*

#### CHAPTER 2—CREDIT TRANSACTIONS

\* \* \* \* \*

#### § 123. *Exemption for State-regulated transactions*

(a) The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement.

(b) *The Board shall by regulation exempt any State from the provisions of chapter 5 of this title (except section 185(h)), if it determines that under the law of that State, requirements and restrictions are substantially similar to those imposed under chapter 5 and that there is adequate provision for enforcement.*

\* \* \* \* \*

#### Chapter 5—CONSUMER LEASES

#### § 180. *Short title*

*This chapter may be cited as the "Truth in Leasing Act".*

#### § 181. *Definitions*

(a) *For the purposes of this chapter:*

(1) *The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property (other than farm equipment) by a natural person for a period of time exceeding four*

months, and for a specified rent not exceeding \$25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that any lease included in the definition of "credit sale" in section 103(g) of the Truth in Lending Act shall not be subject to this chapter.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms "security" and "security interest" mean any interest in property which secures payment or performance of an obligation.

(b) Nothing in this chapter shall be deemed to constitute a Congressional finding or determination as to the permissibility or impermissibility of the making of a consumer lease, as defined herein, by a national bank or bank holding company or bank holding company subsidiary.

### § 182. Consumer lease disclosures

With respect to a consumer lease, the lessor shall give the lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out in a clear and conspicuous manner the following information, as applicable:

(a) a brief description or identification of the leased goods, including the year of manufacture, the manufacturer of the goods, and the registration number and model number of the goods;

(b) the amount of any payment by the lessee required at the inception of the lease;

(c) the amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(d) the amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market cash value of the leased goods and their appraised actual value at the termination of the lease, if the lessee has such liability;

(e) a statement identifying and describing all warranties and guarantees by the manufacturer or the lessor with respect to the leased goods (and if none apply, a statement to that effect) and the party responsible for maintaining or servicing the leased goods together with a description of the responsibility;

(f) a brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(g) a description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(h) the number, amount, and due dates or period of payments under the lease and the total amount of such periodic payments;

(i) a statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, or early termination;

(j) a statement of the liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased goods and at what price and time;

(k) the default, delinquency, or similar charges payable in the event of late payments, whether they are periodic rent payments, or a final balance payment;

(l) the fair market cash value of the leased goods at the inception of the lease, the aggregate cost of the lease, and the differential between them;

(m) the anticipated fair market cash value of the leased goods at the expiration of the lease; and

(n) (1) In the case of a special order item whose price may be subject to change by reason of manufacturing decisions, the disclosure statement shall be the best and/or last available reliable price carrying with it a clear and conspicuous notation that it is or may be subject to change but only to the amount of change which corresponds with the change in the manufacturer's price. Official fees, registration, certificate of title or license fees or taxes whose rates are computed on the base amount of the special order item shall also be clearly and conspicuously noted and unless so noted shall not change from the best and/or last available amount which shall be shown in the lease contract.

(2) Any information subject to change with respect to subsection (1) of this subsection shall be incorporated into the lease contract at the time of delivery of the leased goods.

(3) Where a special order item whose registration number or model number are not available at the time of the execution of the lease agreement, it shall be clearly and conspicuously noted upon the contract and subsequently incorporated into the contract at the time of delivery of the leased goods.

The disclosure required by this section shall be made before the lease is signed, and shall be made by disclosing this information in the lease contract, a copy of which shall be provided to the lessee when executed.

### § 183. Limitations of liability

(a) Except in event of physical damage beyond reasonable wear and use or default, no liability of the lessee under the terms of a consumer lease for any payment upon expiration or termination of a lease may exceed three times an amount determined by dividing the total of scheduled payments by the number of months in the term of the lease.

(b) If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased goods by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

### § 184. Consumer lease advertising

(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other



payment is required at inception of the lease unless the advertisement also states clearly, conspicuously, and in equal size print, and in accordance with regulations issued by the Board each of the following items of information which is applicable:

- (1) the transaction advertised is a lease;
  - (2) the amount of any payment required at inception of the lease, if any;
  - (3) the number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease; and
  - (4) that the lessee shall be liable for the differential, if any, between the anticipated fair market cash value of the leased goods and their appraised actual value at the termination of the lease, if the lessee has such liability.
- (b) There shall be no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

### § 185. Civil liability

(a) Except as otherwise provided by this section, any lessor who fails to comply with any requirement imposed under this chapter with respect to any person shall be liable to such person in an amount equal to the sum of—

(1) any actual damages sustained by such person as a result of the failure:

(2) (A) in the case of an individual action five times the amount attributable to a monthly payment under the lease except that liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of \$100,000 or 1 per centum of the net worth of the lessor; and

(3) in the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages sustained, the frequency and persistence of failure of compliance by the lessor, the resources of the lessor, the number of persons adversely affected, and the extent to which the lessor's failure of compliance was intentional.

(b) A lessor shall not be liable under this section if within fifteen days after discovery of an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the lessor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay any amount in excess of the amount that should correctly have been disclosed.

(c) A lessor may not be held liable in any action brought under this section for a violation of this chapter if the lessor shows by a preponderance of evidence that the violation was not intentional

and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error and such error has been rectified.

(d) Except as otherwise specifically provided in this chapter, any civil action for a violation of this chapter which may be brought against the original lessor in any lease transaction may be maintained against any subsequent assignee of the original lessor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is voluntary.

(e) A person may not take any action to offset any amount for which a lessor is potentially liable to such person under subsection (a) (2) against any amount owing to such lessor by such person, unless the amount of the lessor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.

(f) No provision of this section imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) The multiple failure to disclose any information required under this chapter to be disclosed in connection with a single lease transaction shall entitle the person to a single recovery under this section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

(h) Any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement.

\* \* \* \* \*

## ADDITIONAL VIEWS OF MRS. FENWICK

I agree with the conclusion of Mr. Wylie's supplemental views: I favor neither banks nor automobile dealers. I am concerned with the welfare of the consumer and believe that competition promotes it.

I favor the following amendment which is contained in the Senate version of the bill:

The making of a consumer lease, within the meaning of this Act, shall not be deemed to be an impermissible activity for a national bank or at a bank holding company subsidiary, where the making of such a lease is otherwise permissible under applicable laws and regulations, solely because the lessee's liability at the conclusion of the lease is limited in accordance with the provisions of this section.

MILLCENT FENWICK.

SUPPLEMENTAL VIEWS OF THE HONORABLE CHALMERS P. WYLIE, ALBERT W. JOHNSON, AND WILLIS D. GRADISON

TRUTH-IN-LEASING, H.R. 8835

We fully support the Truth-In-Leasing Bill as a necessary and desirable extension of the Consumer Credit Protection Act. As the title suggests, H.R. 8835 requires a variety of aggregate cost disclosures to the customer before negotiating a lease so that he may have the benefit of comparative shopping. We also endorse the concept of residual liability limitation for the consumer which is contained in Section 183 of the bill.

This supplemental view speaks to one issue that has been the source of controversy and misunderstanding, largely due to the complexities in the leasing field as it relates to financial institutions. Our purpose is elucidation and not persuasion.

*Legal Status of Finance Type Leasing By Banks*

In order to protect the safety and soundness of banks, strict limitations are placed on their business-oriented activities compared to their banking-oriented activities. A fundamental rule in this respect is that banks cannot go beyond lending unless the new activity is functionally related to banking.

Applying this rule to the field of leasing, banks can engage in leasing only if the arrangement is the functional equivalent of an extension of credit. Thus, banks must deal exclusively in financing-type leases. Such leases are called "open ended" where all of the asset risk is borne by the customer lessee. At the end of the lease, when the item is turned in, the bank cannot look to the residual value of the item for a partial return on its credit investment.

However, in adopting regulations governing leasing activities of banks and bank-related lessors, the Comptroller of the Currency and the Federal Reserve Board have taken a realistic view by recognizing that items turned in at the end of a lease do have some value. Under these regulations, banks can look, to a limited extent, to the residual or remaining value of an item for partial payment of a credit transaction. This permits banks to engage in a limited version of closed end leasing and still be in keeping with safe and sound banking.

*Court Actions on Credit Leasing*

National banks have engaged in leasing since 1963, only insofar as the lease is the functional equivalent of credit extension. Many state banks have been in leasing for longer periods. At least twenty-three states by statute have authorized state banks to engage in leasing activities.

Recently, the authority for national banks to engage in credit-type leasing has been challenged in *M&M Leasing Corporation vs. Seattle*



*First National Bank* Nos. 508-73 and 509-73 (W.D. Wash. March 13, 1975). In its decision, the federal district court determined that only "open ended" leases are the functional equivalent of credit extension, where asset risk is borne entirely by the lessee customer. Furthermore, the court went on to say that when a bank lessor looked to any extent upon the residual value of leased property to realize its financial return that it had left the business of banking and entered the realm of speculative venture. Therefore, banks are prohibited from the use of closed end leases in any form.

The court has taken an absolute approach and rejected the infinite series of gradations between the two extremes of open ended and closed ended leases.

The Comptroller of the Currency and the Fed have taken a more flexible approach and defined credit-type leases to include an arrangement whereby some of the residual asset risk is shared by the bank with the lessee-consumer at the expiration of the lease. In short, the bank would look to the residual value of the product at the end of the lease to satisfy part of the debt. This is a closed end lease. Conversely, under an open ended lease, the bank can only look to the customer lessee to satisfy the debt.

Another case in the United States Circuit Court of Appeals for the District of Columbia entitled *National Automobile Dealers Association v. Board of Governors of the Federal Reserve System* No. 74-1431 (D.C. Cir. filed 1974) challenged, among other procedural issues, the authority of bank holding companies in much the same way as did the *M & M Leasing* case.

#### *Catch 22*

Here is the dilemma. It is a two-edged sword, cutting both ways. Since the court in *M & M Leasing* has determined that bank lessors can only engage in open ended leasing where all the asset risk is born by the consumer, then banks are expressly prohibited from engaging in closed end leasing. Banks and bank-related lessors are thrown out of the leasing business, since Section 183 of the bill by its residual liability limitation provision makes all consumer leases closed end. Consumers lose the benefits associated with increased competition and lose the convenience option of credit-type leasing.

#### *Conclusion*

We do not favor the banks nor do we favor the automobile dealer, though we are partial to competition and partial to the consumer. We urge the adoption of the following language as a neutral technical amendment designed to preserve the status quo in the credit leasing field which is contained in the Senate version of the bill:

The making of a consumer lease, within the meaning of this Act, shall not be deemed to be an impermissible activity for a national bank or a bank holding company subsidiary, where the making of such a lease is otherwise permissible under applicable laws and regulations, solely because the lessee's liability at the conclusion of the lease is limited in accordance with the provisions of this section.

It is also well to note that the Senate Consumer Affairs Subcommittee held extensive hearings on this specific issue, while the House Subcommittee made only passing reference to it. In the deliberative process, Congress should be aware of pending litigation; nonetheless, Congress should never be intimidated by pending court action. We must face up to our responsibility of policy determination. Policy is the province of the Congress and not the Courts.

In adopting the One Bank Holding Company Act of 1970 it was not the intention of Congress to determine what was functionally related to banking. On the other hand, Congressional intent was to put the functionally related test at the discretion of the Fed. Since the Fed has exercised the authority we have given it, then Congress should support it. Similarly, the Comptroller of the Currency has exercised its authority under the incidental powers clause of the National Bank Act. Both government agencies utilized their expertise in the field of banking before making their determinations.

CHALMERS P. WYLIE  
ALBERT W. JOHNSON  
WILLIS D. GRADISON, JR.

○

---

## TRUTH IN LEASING ACT

---

OCTOBER 20, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. REUSS, from the Committee on Banking, Currency and Housing, submitted the following

### SUPPLEMENTAL REPORT

[To accompany H.R. 8835]

In compliance with clause 7(a) (1) and (2) of rule XIII of the House of Representatives, the following statement is made with respect to the Truth-in-Leasing Act:

No costs will be incurred by the Federal Government in carrying out the provisions of this bill either in this fiscal year or in the next succeeding 5 fiscal years. The additional enforcement and rulewriting responsibilities established by the bill can be carried out with existing staffs of the agencies involved.



CONSUMER LEASING ACT OF 1976

---

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING  
AND URBAN AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

H.R. 8835

TOGETHER WITH

ADDITIONAL VIEWS



JANUARY 21, 1976.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

**COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS**

**WILLIAM PROXMIRE, Wisconsin, *Chairman***

<b>JOHN SPARKMAN, Alabama</b>	<b>JOHN TOWER, Texas</b>
<b>HARRISON A. WILLIAMS, Jr., New Jersey</b>	<b>EDWARD W. BROOKE, Massachusetts</b>
<b>THOMAS J. MCINTYRE, New Hampshire</b>	<b>BOB PACKWOOD, Oregon</b>
<b>ALAN CRANSTON, California</b>	<b>JESSE HELMS, North Carolina</b>
<b>ADLAI E. STEVENSON, Illinois</b>	<b>JAKE GARN, Utah</b>
<b>JOSEPH R. BIDEN, Jr., Delaware</b>	
<b>ROBERT MORGAN, North Carolina</b>	

**KENNETH A. MCLEAN, *Staff Director***

**ANTHONY T. CLUFF, *Minority Staff Director***

**RALPH J. ROHNER, *Assistant Counsel***

**JOHN PATTEN ABSHIRE, *Minority Assistant Counsel***

(II)

**CONTENTS**

	<b>Page</b>
History of the legislation.....	
Nature and scope of the legislation.....	
Need for the legislation.....	
Explanation of the legislation:	
Scope of the act.....	
Lease disclosures.....	
Lease advertising.....	
Lessee's liability on expiration or termination.....	
The bank leasing question.....	
Civil liability.....	
Relation to State law.....	
Cost of legislation.....	
Cordon rule.....	
Section-by-section summary.....	
Additional views of Mr. Helms.....	

(III)

## CONSUMER LEASING ACT OF 1976

JANUARY 21, 1976.—Ordered to be printed

Mr. BIDEN, from the Committee on Banking, Housing and Urban Affairs, submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany H.R. 8835]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (H.R. 8835) to amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

#### HISTORY OF THE LEGISLATION

The Consumer Leasing Act had its origin in recommendations made by the Federal Reserve Board in its 1973 and 1974 Reports to Congress on Truth in Lending. Two bills were introduced in the Senate, S. 1900 by Senators Garn and Morgan, and S. 1961, by Senators Biden and Proxmire, and hearings were held on them on July 15, 17, and 24, 1975, by the Subcommittee on Consumer Affairs. The Subcommittee met on September 29 and recommended an amended composite of the two bills to the full Committee. On December 15, 1975, the full Committee approved the bill as recommended, with one additional amendment. In the meantime the House had passed a bill on the same subject, H.R. 8635, which had been sent to the Senate and referred to the Committee. The Committee therefore substituted the text of its bill for that of H.R. 8835, which without objection is herewith reported.

## NATURE AND SCOPE OF THE LEGISLATION

In its 1974 Annual Report the Federal Reserve Board pointed out that the existing Truth in Lending Act had no application to leases (other than leases with an option to purchase at a nominal price). At the same time the leasing of consumer durables—especially automobiles—is becoming an increasingly common alternative to outright purchase of those goods. The Board therefore recommended aggregate cost disclosures both in lease advertising and prior to the time leases are consummated, and such disclosures are called for in this legislation.

The Board also urged that some formula be devised to protect consumer lessees against unrealistic estimates of the residual value of leased property in leases where the consumer's end-of-term liability depends on such value. The bill responds to that recommendation by imposing a direct obligation on lessors to calculate residual values reasonably and with care.

The purpose of the legislation is to provide consumers with meaningful information about the component and aggregate costs of consumer leases, so that they can make better informed choices between leases, and between leases and credit sales. These purposes, and the general framework of the bill itself, were strongly supported by consumer representatives, by the Federal Reserve Board and by banks, auto dealers and other lessors. The provisions of the bill would be added as a new Chapter 5 to the Truth in Lending Act, and would incorporate the civil liability provisions of that Act.

## NEED FOR THE LEGISLATION

The growth of personal property leasing by consumers has been rapid and substantial. The Federal Reserve testified as follows:

"Available statistics on the growth of consumer leasing indicate that the so-called "big-ticket durables," such as automobiles, color television sets, and home furnishings are the most common goods leased by consumers. Automobiles presently constitute the most popular leased goods, and this aspect of consumer leasing will no doubt absorb much of the Subcommittee's attention during its deliberations on this legislation.

Automobile leasing has experienced rapid growth over the past decade. According to statistics from the National Automobile Dealers Association, in 1965, more than 1.5 million, some 14 percent of the total number of automobiles produced, were leased, and one-fifth of this total was leased to individuals. By 1970, the percentage of automobile production that was leased had grown to 24 per cent (2.6 million), more than a quarter of which represented leases to individuals. As of 1974, 2.8 million, about 26 percent of the total number of cars made, were leased, and 36 percent of this total was leased to individuals. Thus, over almost a decade, the percentage of total automobile production leased to individuals has tripled in size: from less than 3 percent in 1965 to 9.2 percent in 1974. Projections from automakers in Detroit, moreover, estimate that 80 percent of the growth in leasing through 1980 will be seen in leases to individuals."

For the individual consumer, the lease may be an attractive way to acquire the use of goods on an installment plan where the monthly "rentals" are low, thus requiring a smaller cash flow. The long-term lease is therefore an alternative to traditional sales financing. Yet the Truth in Lending Act's careful and thorough disclosure requirements do not apply to any lease unless it contains an option to purchase at no, or a nominal, additional cost. The bulk of current leases, either have no purchase option or involve much more than a nominal extra cost, and so do not contain all the information a consumer needs to make an intelligent comparison between leases, or between the lease and a credit purchase. The bill specifies the disclosures to be made both in lease advertising and also prior to the consummation of each lease transaction.

The need for useful comparative information is heightened by the fact that one of the common forms of open-end leases with which this Committee is concerned is the so-called "net" or "finance" lease which guarantees the lessor a specified return, or guarantees him in whole or in part against loss of income. This type of lease is the most widely used form of lease for motor vehicles. Under such a lease, the lessor contracts with a lessee that the lessee meet monthly rental payments which are designed both to reimburse the lessor for the reduction in market value of his vehicle (i.e., depreciation) and to provide him with a specified return.

At the expiration of such a lease, the vehicle is sold. If the vehicle is sold for less than its depreciated value, as originally estimated, the lessee is responsible for reimbursing the lessor for the difference between this value and the sales price. Conversely, if the vehicle is sold for more than such depreciated value, the lessee receives the excess as a retrospective adjustment in rent. Most lessors offer this form of lease because the lessee or user holds possession and control of the leased vehicle and, through adequate or inadequate maintenance, has the power to enhance or reduce the value of such leased property.

It is possible under such a lease arrangement, however, to set the periodic specified rents so low during the lease term that a substantial deficiency is destined to result. If so, and the lessee is not apprised of this distinct probability, the lessee will not be cognizant of the full extent of his lease obligations. Governor Bucher of the Federal Reserve Board described a typical transaction and the danger it presents:

For example a typical two-year auto lease on a \$5,400 car might call for 24 \$100 installment payments and set an end-term depreciated value of \$3,000 on the car. Under such an agreement, the lessee may have no understanding of how much the lease may cost, unless he can accurately predict the secondhand market value of the product. For example, in this case, the depreciated value of the car might be \$2,500, which under the lease contract would leave the lessee liable for an additional \$500 balloon payment. Thus, if the contract sets an unrealistically high depreciated value on the leased goods, the contingent liability of the lessee will increase accordingly, and the lessor can offer deceptively low monthly rental payments to an unwary public.

Thus consumers need protection not only against inadequate cost disclosure, but also against miscalculations of residual value that en-

tice them into leases with low monthly payments but that turn out to involve large balloon payment obligations. Consumers generally are in no position to second-guess or challenge a commercial lessor's estimate of residual value, for only the lessor has the experience and the access to information to make reasonable estimates. The bill therefore contains explicit protections against this kind of deceptive practice.

#### EXPLANATION OF THE LEGISLATION

##### *Scope of the Act*

Consistently with its inclusion in the Truth in Lending title of the Consumer Credit Protection Act, this bill applies only to "consumer leases" for more than four months, where the total obligation is \$25,000 or less, and where the property is to be used principally for personal, family or household purposes. This legislation therefore does not apply to commercial leasing activities, even where the commercial lessee happens to be an individual. Nor would it apply to a shorter term convenience-type lease arrangement where the lessee is not obligated at the outset to a term of more than four months.

With these qualifications, the Act applies to any lease or bailment agreement respecting personal property, whether that lease or bailment is for a fixed term or on a renewable basis, and whether the agreement is a straight lease (where the lessee simply surrenders the goods at the end of the term) or a so-called financing lease (where the lessee's obligation is to pay the full market value of the leased goods). Those occasional leases which include an option to purchase at no or a nominal extra charge are left subject to the Truth in Lending Act, however, on the theory that they are closer equivalents to credit sales and ought to include finance charge and annual percentage rate disclosures.

##### *Lease disclosures*

The disclosures called for in the Act must be made before the final signing of the lease, and can be made in the lease document itself. The Committee intends that when an on-going lease is substantially rewritten—as for example to extend the term, or to substitute new goods—it should be treated as a new lease with accompanying disclosure.

The necessary disclosures are spelled out in the Act, and include identification of the leased property, the amount of any downpayment, security deposit or similar charge imposed at the inception of the lease, the amounts of any incidental fees payable by the lessee, the number, amount and due dates of periodic payments and the total of such payments. The bill also calls for descriptions of insurance involved in the lease, and of any security interest retained by the lessor.

Since the bulk of consumer leasing activity involves automobiles, the Committee also included a requirement that express warranties made either by the manufacturer or by the lessor be identified in the lease disclosure. The Committee does not intend that the full content of such warranties necessarily be spelled out in the lease disclosure, but does expect that any such warranty will be referenced in such a

way that the lessee will know whether essential warranty protections are included in the agreement. For the same reason, the disclosure must indicate and describe the maintenance responsibility for the goods.

For financing leases—often called open-end, net, or full-payout leases—where the lessee's obligation includes paying the full value of the goods, and where this obligation is calculated by reference to an estimated residual value of the goods at the expiration of the lease, further disclosures are required. Subsection 183(11) requires lessors to disclose the amount or method of determining any end-of-term liabilities of the lessee. Using the example submitted by Governor Bucher, a lease might call for 24 monthly payments of \$100, and set an end-of-term depreciated value of \$3,000; the liability for the \$3,000 balance must be disclosed, as well as its nature as an estimate of residual value. Under subsection 182(9), in addition, the lessor must calculate and disclose the difference between the total lease obligation and the market value of the goods at the inception of the lease. The market value would normally be the lessor's cost plus its usual profit. These figures then will provide an easy comparison between the cost of the lease and the cost of an outright cash purchase, and the differential figure provides a rough comparison to the amount of finance charge which would be involved in a credit purchase. The consumer lessee therefore will have at hand the essential data to compare leases, and to evaluate alternatives to leasing.

The Committee is aware that some have argued for the mandatory disclosure of an "interest rate" for consumer leases, so that consumers might even more readily compare leases with credit sales (where the Truth in Lending Act does require statements of "annual percentage rates.") The Committee does not believe that such a requirement is needed at this time. Calculations of interest-rate equivalents for leases would be very complex. Moreover leasing is a distinct and valuable form of marketing of consumer goods, and ought not be forced into the mold of traditional financing transactions. While testimony shows that the percentage yield of the lease portfolios of some lessors exceed the yields from their auto loan portfolios, the Committee leaves the matter of interest rate disclosure in leases for future study.

Testimony in the Subcommittee hearings indicated that a large number of auto leases were terminated prior to their scheduled expiration. Sometimes this was on account of the customer's default, but more often the early termination was at the customer's request, in order to enter into a new lease for different goods. Whether the early termination is voluntary or involuntary from the customer's point of view, the bill requires full disclosure of any charges incident to such termination. It also requires disclosures of any charges for delinquency or default.

##### *Lease advertising*

Because leases often permit monthly payments less than would be available in a financed sale, and because many leases require no down payment or similar charge, there is a great possibility that advertisements for leases might mislead consumers by selectively emphasizing one or more of these features. The bill therefore requires that



any lease advertisement which mentions the size or number of payments, or the size of any "downpayment," must contain sufficient additional information to put consumers on notice of the nature of the advertised transaction.

As in the Truth in Lending Act, the media which may carry lease advertisements are not liable for their content. Also, enforcement of the advertising restrictions is left exclusively to the public enforcement agencies, rather than to individual actions for civil penalties. The Committee believes it is inappropriate to subject lessor-advertisers to private civil penalties in favor of consumers with whom they have no privity of contract and who have suffered no measurable damages.

#### *Lessee's liability on expiration or termination*

The Committee was concerned that consumers be protected from the risk—described by Governor Bucher of the Federal Reserve Board, and other witnesses—that lessors might intentionally overestimate the residual value of leased goods so as to entice consumers into such leases by the low monthly payments. Early drafts of the bill include a provision absolutely limiting the consumer's liability to no more than three monthly payments (in addition to surrender of the goods or payment of their value on lease termination). This draft provision created several difficulties, one of which is the bank leasing question discussed below. The final version of the bill focuses instead on the reasonableness of the lessor's estimate of residual value, providing that whenever the lessee's end-of-term liability is calculated on that basis, the estimate of residual value must be "a reasonable approximation of the anticipated actual fair market value of the property on lease expiration." "Fair market value" in this context means the value the property would have when sold in a commercially reasonable manner in the customary market for such property.

The lessor's obligation under this language is to make a good faith and rational estimate of future residual value, based on circumstances and information available at the time the lease is written. If the lessor does so, the lessee bears the risk of unanticipated fluctuations in market value and the lessor is assured of full recovery under the lease. Again to use the Federal Reserve Board's example, a lease may call for 24 monthly payments of \$100, and a guaranteed residual value payment of \$3,000. If the property is in fact worth only \$2,500 when the lease expires, and if the \$3,000 estimate was reasonable at the outset, the lessor may collect the full \$3,000.

A presumption of unreasonableness arises in any case where the deficiency between actual and estimated residual value exceeds three monthly payments. This presumption is intended to shift the burden of proof and require the lessor to show that his original estimate of residual value was reasonable. He does not meet this burden by showing that the lessee "voluntarily" assumed a higher risk or otherwise waived the protection offered by this section. According to testimony in the hearings, lessors rarely miscalculate by more than three payments unless as part of an unscrupulous and intentional effort to trap the consumer lessee in an unexpected balloon obligation. The costs of litigation, plus the burden of rebutting the presumption of unreasonableness, should deter the unscrupulous lessor from intentionally over-

estimating residual value or not adequately compensating for depreciation during the lease term.

In any case, the lessor is free to recover from the lessee any lost value attributable to physical damage or overuse of the leased property, and can write reasonable standards for the expected physical condition of the goods.

Subsection 183(b) is intended to protect consumers from unwarranted penalties or forfeitures for delinquency or default, or whenever the lease is terminated prior to its scheduled expiration. It thus does not overlap subsection (a). The language is taken from the Uniform Commercial Code's provision on liquidated damages, and should be applied flexibly. Its purpose is to set a general guideline for lessors in writing their agreements, and, like other provisions of this Act, may be amplified in Board regulations.

#### *The Bank leasing question*

The original version of section 183(a)—limiting the consumer's balloon liability to three monthly payments—gave rise to a totally unanticipated problem. In short, when juxtaposed on that part of the recent decision of the U.S. District Court for the Western District of Washington in *M & M Leasing v. Seattle-First National Bank*, 391 F.Supp. 1290 (W.D. Wash. 1975), prohibiting a lessor national bank from relying on the residual value of leased property to recover the cost to the lessor of such property, such a limitation could exclude national banks, bank holding companies and their subsidiaries, from personal property leasing transactions subject to this Act. It is the judgment of this Committee, as it was the judgment of the House in its version of this bill, that this Act does not provide an appropriate forum for deciding the future of national bank and bank holding company involvement in consumer personal property leasing. Until Congress elects to consider this matter directly the controversy should continue to be addressed by the courts, and the permissibility of consumer leasing by financial institutions should be determined under the applicable provisions of either the National Bank Act or the Bank Holding Company Act.

The Committee therefore amended section 183(a), eliminating the fixed limitation on the lessee's guarantee of the residual value of the leased property. To the extent that the lessor's estimation of residual value at the inception of the lease is made reasonably at the outset the lessee will be liable for the actual residual value of the leased property at expiration. Thus, a lessor need not look to the residual value of the leased property to realize its financial return.

The final version of section 183(a) does not constitute any Congressional finding on the authority of national banks, bank holding companies and their subsidiaries to engage in personal property leasing. The Congressional consideration of this matter is accordingly deferred until a more appropriate time and the pending, as well as any future, litigation on this matter should be unaffected. Furthermore, the interests of the consumer are not forsaken. If the difference between the estimated residual value and the actual residual value of the leased property at expiration exceeds three monthly payments, the lessor's estimation is presumptively unreasonable and the lessor has the burden of rebutting that presumption.



### Civil liability

Section 185 of this bill incorporates the civil penalty provisions of the existing Truth in Lending Act, and makes clear that the term "creditor" in those provisions includes lessors under this Act.

The formula for individual penalty recoveries in Truth in Lending (twice the finance charge in the transaction) is inappropriate for violations of this Act since leases generally do not contain identifiable finance charges. This bill therefore sets as the measure of recovery for leasing violations 25% of the total of monthly payments under the lease; this amount is intended to represent a civil penalty equivalent in dollar amount to that imposed on other creditors.

The chief enforcement tool will continue to be private actions for actual damages and civil penalties. Much of the testimony received in the hearings, and much of the debate in Subcommittee and Committee centered on the adequacy of the recovery ceiling for civil penalties in class actions. The present law sets that ceiling at the lesser of \$100,000 or 1% of the creditor's net worth. The Subcommittee had recommended that this be changed to the *greater* of \$50,000 or 1%. The Committee eventually compromised at a level of \$500,000 or 1% of the creditor's net worth, whichever is less.

The setting of *any* ceiling on class action liability is meant to limit the exposure of creditors to vast judgments whose size would depend on the number of members who happened to fall within the class. The *risk* of any ceiling on class action recoveries is that, if it is too low, it acts as a positive disincentive to the bringing of such actions and thus frustrates the enforcement policy for which class actions are recognized. Under the present Truth in Lending Act, where the class action ceiling is \$100,000, several courts have noted the incompatibility of that ceiling with the effective use of the class action device. *Boggs v. Alto Trailer Sales, Inc.* (No. 74-1605, 5th Cir., April 14, 1975); *Weathersby v. Fireside Thrift Co.* (No. C-73-0563 AJZ, N.D. Calif., Feb. 25, 1975).

The Committee wishes to avoid any implication that the ceiling on class action recovery is meant to discourage use of the class action device. The recommended \$500,000 limit, coupled with the 1% formula, provides, we believe, a workable structure for private enforcement. Small businesses are protected by the 1% measure, while a potential half million dollar recovery ought to act as a significant deterrent to even the largest creditor. Creditors are also protected by the list of factors a court should consider in determining any class action award.

The Committee is aware of the many difficulties surrounding the use of class actions for civil penalties or punitive damages. The largest obstacle to class actions may lie in the procedural rules applicable to them—as, for example, the notification requirements under the case of *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974)—rather than in any necessarily arbitrary ceiling on recovery. For this reason the Committee, through its Subcommittee on Consumer Affairs, intends to look at alternative private enforcement procedures such as the so-called *qui tam* or private attorney general action. We are hopeful that there may be workable and effective substitutes for the class action as a consumer enforcement device not only for this Act but also for other similar legislation.

### Relation to State law

The Committee believes that this federal law on consumer leasing ought not foreclose the states from initiating or maintaining their own laws on the same subject unless those laws are incompatible with this legislation. The same policy has been adopted by the Congress with respect to the Truth in Lending Act and more recently with the Fair Credit Billing Act, and is continued in section 186 of this bill.

State law will be displaced by this Act only to the extent of inconsistencies between them, and the Board may determine whether such inconsistencies exist. The Committee appreciates that the limitation set on the Board's authority in his regard—that the Board cannot find state law inconsistent if it "gives greater protection and benefit to the consumer—is somewhat imprecise. But the Committee believes it is better to use a familiar standard in this area than to attempt a separate laundry list of inconsistencies for new chapters of the Truth in Lending title. The Committee intends that those state laws which give greater protection to the applicant, as determined by the Board, will apply equally to all lessors doing business in the state.

This section also permits states to be exempted from the requirements of this Act if their laws are substantially similar or stronger than the federal provisions. The exemption is from this Act's "requirements" and not from its remedies. Thus aggrieved consumers retain their access to the federal courts, and the federal enforcement agencies retain their authority to act against violators. It is expected, however, that these agencies will generally defer to the appropriate state officials.

### COST OF LEGISLATION

In compliance with Sec. 252(a) (1) of the Legislative Reorganization Act of 1970, as amended (2 U.S.C. 190j), the Committee estimates that there will be no cost to the Federal Government in carrying out the provisions of this legislation.

### CORDON RULE

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

## SECTION-BY-SECTION SUMMARY

The Act is cited as "The Consumer Leasing Act of 1976."

SEC. 2. *Findings and Purpose*—This section amends the declaration of purpose section of the Truth in Lending Act by adding an additional subparagraph (b) which makes a Congressional finding that there has been a recent trend toward the leasing of consumer goods as an alternative to installment credit sales without adequate cost disclosure. The purpose of the new title is to assure a meaningful disclosure of the terms of a consumer lease so as to enable the lessee to compare more readily the various lease terms available to him, to limit balloon payments, to enable comparison of lease terms with other credit terms, and to assure meaningful and accurate advertisements.

SEC. 3. *Disclosure of Lease Terms*—This section provides that the Truth in Lending Act is amended by adding at the end a new chapter, "Chapter 5—Consumer Leases" as follows:

SEC. 181. *Definitions*—This section defines for the purposes of the Act the meaning of the following terms: consumer lease, lessee, lessor, personal property, security, and security interest. The consumer lease is defined as a contract for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$25,000, primarily for personal, family or household purposes. The definition specifically excludes a lease for agricultural, business or commercial purposes or to a governmental agency.

SEC. 182. *Consumer Lease Disclosures*—This section provides that each lessor shall give a lessee prior to the consummation of a consumer lease the following disclosures in a clear and conspicuous manner:

- (1) a description of the property leased;
- (2) the down payment;
- (3) the fees and taxes due;
- (4) the amount or method of determining other charges;
- (5) the identity of all express warranties and of the party responsible for maintaining the property together with a description of the obligation;
- (6) the insurance to be provided by the lessor or the lessee;
- (7) the security interest retained by the lessor;
- (8) the amount, number and due dates or periodic payments and total amount of such payments;
- (9) where the lessee is liable for the anticipated fair market value on termination, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them;
- (10) the conditions under which the lessee or lessor may terminate the lease; and

(10)

(11) the liabilities imposed upon the lessee at the end of the term and whether or not the lessee has the option to purchase the property and at what price.

The disclosures required under this section may be made in the lease contract signed by the lessee and the Federal Reserve Board may by regulation provide for the giving of estimates where the exact information is not available.

SEC. 183. *Limitation of Liability*—Subsection (a) provides that where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on the lease's expiration. There is a rebuttable presumption that the estimated residual value is unreasonable to the extent that it exceeds the actual residual value by more than three times the average monthly payment, excepting physical damage beyond reasonable wear and tear.

Subsection (b) provides that penalties or other charges for delinquency, default, or early termination must be reasonable.

SEC. 184. *Consumer Lease Advertising*—Subsection (a) provides that if an advertisement to aid, promote, or assist directly or indirectly any consumer lease states the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease, such advertisement shall also state clearly, conspicuously, in accordance with regulations issued by the Board each of the enumerated items of information which is applicable.

Subsection (b) provides an exemption from liability for violation of this section to any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

SEC. 185. *Civil Liability*—This section provides that any lessor who fails to comply with any requirement imposed under section 182 or 183 of the chapter shall be liable as provided under the civil liability section 130 of the Truth in Lending Act.

SEC. 186. *Relation to State Laws*—Subsection (a) provides that the chapter does not exempt any person from complying with State law except to the extent that those laws are inconsistent with any provision of the chapter, and then only to the extent of the inconsistency. The Board is authorized to determine such inconsistencies and shall not construe any laws as being inconsistent if that State law gives greater protection and benefit to the consumer than the Federal law.

Subsection (b) requires the Board by regulation to exempt from the requirements of the chapter any class of lease transactions with any State if it determines that under State law that class of transactions is subject to requirements substantially similar to the Federal law or gives greater protection or benefit to the consumer and has adequate provision for enforcement.

SEC. 4. *Amendments to Section 130 of Truth in Lending*—This section amends the civil liability section of the Truth in Lending Act to provide that in the case of an individual action relating to a consumer lease the liability for failure to comply with the chapter shall be 25

per cent of the total amount of monthly payments under the lease, but not less than \$100 nor greater than \$1,000; and also amends the civil liability class action recovery provision to provide that the total in such action shall not be more than the lesser of \$500,000 or 1 per cent of the net worth of the creditor.

SEC. 5. *Conforming Amendments*—This section conforms the table of chapters of the Truth in Lending Act to include consumer leases.

SEC. 6. *Effective Date*—This section provides that the amendments made by the Act shall take effect one year after the date of its enactment.

#### ADDITIONAL VIEWS OF MR. HELMS

Unquestionably, the stated goals of H.R. 8835, the Consumer Leasing Act, are meritorious. No one is likely to quarrel with intent of those who wish to ensure greater equity and fairness with respect to consumer leasing. I certainly do not.

However, in my view, the means employed in H.R. 8835 to achieve those goals is a proper cause for concern. And, it is that means—which is indicative of the underlying philosophy of the legislation—that I feel obligated to address. In my judgment, adherence to the fundamental principles of decentralized government, with a minimum of interference with private enterprise, is essential to the maintenance of a desirable level of productivity and our national, economic well-being. Otherwise, in countless instances, we will compromise traditional principles to the point that they cease to provide any meaningful guide to legislative action.

Specifically, H.R. 8835 will preempt State laws to the extent that they are inconsistent with the Act. To do so, in my view, will continue a broad pattern of Federal encroachment into areas that are properly state prerogatives. I have opposed that encroachment in many other instances on the basis of my belief in divided sovereignty and the reserved powers of the states; and I oppose it in this instance. A number of states have enacted legislation in the field of consumer leasing, and it is included in the Uniform Consumer Credit Code. While most states have not elected to do so, I reject the argument that the failure of such states to enact legislation is a sound reason for Federal preemption. Indeed, no action by certain state legislatures may itself have involved consideration of the question and a decision.

The bill contains provisions respecting disclosures and stipulating the content of advertisements thereby creating more burdensome "red tape" and complicating otherwise simple business activities. In this connection, the Federally-mandated forms will be costly for both the industry and the consumer.

As a punitive measure for violations, it permits civil recoveries in class action suits in the amount \$500,000 or 1 percent of the net worth of the business, whichever is less, even though no substantive damages are proven and there is no showing of willfulness. While there is precedent for such a provision in current law (which contains a \$100,000 limitation), it is nonetheless in derogation of common law principles both because of the lack of a requirement respecting substantive harm and the obvious use of the civil law to provide an essentially criminal sanction. I did not favor this departure from traditional legal principles in previous enactments, and I do not favor it now.

Moreover, in the areas of so-called "consumer legislation," we have witnessed a great proliferation of proposals, many of which have become law. Indeed, in the name of the "consumer," Congress is

placing layer after layer of technical regulations upon the business community. Taking each proposal independently, the level of Federal preemption and the cost of implementation and compliance may be relatively slight, but viewing the total regulatory environment thus created, I fear that the burden will be greater than many smaller businesses can bear. The obvious result, of course, will be a situation where only the large, broad-based corporate entities can survive. This, if it does nothing else, will limit competition, stifle enterprise, and increase unemployment.

There is but one certainly associated with this legislation: as business costs increase, consumer prices will increase. One wonders the extent to which consumers, faced as they are with never-ending inflation, will really benefit from this and similar legislation.

JESSE HELMS.



## CONSUMER LEASING ACT OF 1976

MARCH 4, 1976.—Ordered to be printed

Mr. REUSS, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 8835]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 8835) to amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*That this Act may be cited as the "Consumer Leasing Act of 1976".*

#### FINDINGS AND PURPOSE

*SEC. 2. Section 102 of the Truth in Lending Act (15 U.S.C. 1601) is amended by inserting "(a)" before the first sentence, and adding the following subsection:*

*"(b) The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this title to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosure of lease terms in advertisements."*

## DISCLOSURE OF LEASE TERMS

SEC. 3. The Truth in Lending Act (15 U.S.C. 1601-1665) is amended by adding at the end thereof a new chapter as follows:

## "CHAPTER 5—CONSUMER LEASES

"Sec.

"181. Definitions.

"182. Consumer lease disclosures.

"183. Lessee's liability on expiration or termination of lease.

"184. Consumer lease advertising.

"185. Civil liability.

"186. Relation to State laws.

## "§ 181. Definitions

"For purposes of this chapter—

(a) The term 'consumer lease' means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 103(g). Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

"(2) The term 'lessee' means a natural person who leases or is offered a consumer lease.

"(3) The term 'lessor' means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

"(4) The term 'personal property' means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

"(5) The terms 'security' and 'security interest' mean any interest in property which secures payment or performance of an obligation.

## "§ 182. Consumer lease disclosures.

"Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

"(1) A brief description or identification of the leased property;

"(2) The amount of any payment by the lessee required at the inception of the lease;

"(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

"(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property

and its appraised actual value at the termination of the lease, if the lessee has such liability;

"(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

"(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

"(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

"(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

"(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

"(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

"(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

## "§ 183. Lessee's liability on expiration or termination of lease

"(a) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease, and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor



shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

"(b) Penalties or other charges for delinquency, default or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

"(c) If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

#### "§ 184. Consumer lease advertising

"(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

"(1) That the transaction advertised is a lease.

"(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

"(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

"(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

"(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

"(b) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

#### "§ 185. Civil liability

"(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130.

"(b) Any lessor who fails to comply with any requirement imposed under section 184 of this chapter with respect to any person who suf-

fers actual damage from the violation is liable to such person as provided in section 130.

For the purposes of this section, the term 'creditor' as used in sections 115, 130, and 131 shall include a lessor as defined in this chapter.

"(c) Notwithstanding section 130(e), any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement.

#### "§ 186. Relation to State laws

"(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection and benefit to the consumer.

"(b) The Board shall by regulation exempt from the requirements of this chapter any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement."

#### AMENDMENTS TO SECTION 130

SEC. 4. Section 130 of the Truth in Lending Act is amended as follows:

(1) In subsection (a), after "chapter 4" insert "or 5".

(2) In clause (2)(A) of subsection (a), insert "(i)" after "(a)", and insert after "transaction" a comma and the following: "or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease".

(3) In paragraph (2)(B) of subsection (a), strike out "lesser of \$100,000" and insert in lieu thereof "lesser of \$500,000".

(4) In subsection (b), insert "or chapter 5" after "this chapter" and strike out the word "finance".

(5) In subsection (g), after "this chapter", insert "or chapter 4 or 5 of this title", and insert after "consumer loan" a comma and "consumer lease".

#### CONFORMING AMENDMENT

SEC. 5. The table of chapters of the Truth in Lending Act is amended by adding at the end thereof the following:

"5. Consumer Leases-----181"

## EFFECTIVE DATE

Sec. 6. This Act takes effect one year after the date of its enactment.  
And the Senate agree to the same.

HENRY REUSS,  
FRANK ANNUNZIO,  
LEONOR K. SULLIVAN,  
GLADYS NOON SPELLMAN,  
WILLIAM A. BARRETT,  
CHALMERS P. WYLIE,  
MILLICENT FENWICK,  
*Managers on the Part of the House.*  
WILLIAM PROXMIRE,  
J. R. BIDEN, JR.,  
JAKE GARN,  
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE  
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 8835) to amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The House bill was called the "Truth in Leasing Act". The Senate amendment was called the "Consumer Leasing Act of 1976". The House receded to the Senate amendment.

The House bill refers to leased "goods" in this legislation while the Senate amendment refers to leased "property". The House receded to the Senate amendment.

The House bill definition of "consumer lease" referred to those leases that are for a specified rent not exceeding \$25,000, while the Senate amendment referred to those leases that are for a total contractual obligation not exceeding \$25,000. The House receded to the Senate amendment. The Senate amendment definition of "consumer lease" specifically excluded leases for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization. The House bill specifically excluded only farm equipment. The House receded to the Senate amendment. The House bill provided a disclaimer as to anything in the chapter constituting a Congressional finding or determination as to the permissibility or impermissibility of the making of a consumer lease, as defined in this legislation by a national bank, bank holding company or bank holding company subsidiary. The Senate amendment had no comparable provision. The House receded to the Senate amendment.

The House bill provided for the manner in which lessors were to make specified disclosures, including clearly and conspicuously, and that the disclosures were to be in the lease contract and a copy given to the lessee when executed. The Senate amendment was comparable,



except that it additionally required that disclosures be accurate and could be either in the lease contract or in a written statement. There was no express requirement for a copy to be given to the lessee. The House receded to the Senate amendment. The House bill provided for a disclosure of a brief description or identification of the leased property including the manufacturer of the goods, registration numbers and other details. The Senate amendment provided for a disclosure of a brief description or identification of the lease property. The House receded to the Senate amendment. The House bill provided for a disclosure of the amount of non-periodic charges. The Senate amendment was comparable, except that it permitted disclosure of the method of determining the non-periodic charges rather than the actual amount. The Senate receded to the House bill. The House bill provided for a disclosure of a description of all warranties or if none, a statement to that effect. The Senate amendment provided for disclosure of identification of express warranties. The House receded to the Senate amendment. The House bill provided for disclosure as to special order lease items. The Senate amendment had no comparable provision. The House receded to the Senate amendment. The Senate amendment provided that the Federal Reserve Board may by regulation permit estimates of certain disclosure of information requirements when the lessor is not in a position to know exact information. The House bill had no comparable provision. The House receded to the Senate amendment. The House bill provided for disclosure of default, delinquency or late payment charges in two similar provisions. The Senate amendment had one comparable provision except it did not refer expressly to late payments. The Senate receded to the House bill. The House bill provided that the lessor disclose that the lessee had residual value liability if such was the case. The Senate amendment had no comparable provision, but did provide for disclosure of a statement of the amount or method of determining the amount of any end of term liabilities. The Conferees agreed to include both the House bill and the Senate amendment provisions. The House bill required disclosure of a brief description of insurance including the costs. The Senate amendment was comparable, except no disclosure of insurance costs was required. The Senate receded to the House bill. The House bill required that if the lessee had an option to purchase the leased property, the lessor must disclose the time when the lessee could exercise the option. The Senate amendment had a similar provision with respect to an option to purchase, except it did not require disclosure of the time when the lessee could exercise the option.

The Senate receded to the House bill. The House bill provided for disclosure of information as to the aggregate cost of the lease. The Senate amendment was comparable, except: (1) the disclosure only had to be made with respect to leases in which the lessee had liability for the anticipated fair market value of the property at the end of the lease; and (2) the provision specified that the disclosure was to refer to the aggregate cost of the lease "on expiration," while the House bill did not specify. The House receded to the Senate amendment on both parts of the provision. The House bill provided for disclosure of the anticipated fair market cash value of the leased property at the expiration of the lease. The Senate amendment had no comparable provision. The House receded to the Senate amendment.

The House bill provided for limitation on the lessee's liability at the expiration or termination of a lease to the effect that such liability could not exceed three times a monthly payment under the lease, unless there had been physical damage to the leased property beyond reasonable wear and use or default. The Senate amendment had a related provision which differed in several respects. The Senate amendment provided that where the lessee's liability on expiration of a lease was based on the estimated residual value of the property, such estimated residual value had to be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent it exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. The presumption had no application to the extent that the excess of estimated over actual residual value was due to physical damage to the property beyond reasonable wear and use, or to excessive use. The House receded to the Senate amendment with an amendment to the effect that where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease, and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use.

The Senate amendment had a provision providing that the lease may set standards for wear and use so long as such standards are not unreasonable. The House bill had no comparable provision. The House receded to the Senate amendment. The House bill provided that if a lease has a residual value provision at the termination of the lease, the lessee may at his expense obtain a professional appraisal of the leased property by an independent third party agreed to by both parties. The appraisal shall be final and binding on the parties. The Senate amendment had no comparable provision. The Senate receded to the House bill. The Senate amendment provided that penalties or other charges for delinquency, default, or early termination may be specified in the lease, but only at an amount that is reasonable in light of certain stated factors. The House bill had no comparable provision. The House receded to the Senate amendment.

The House bill provided for a lease advertising disclosure that the lessee had residual value liability on termination of the lease if such was the case. The Senate amendment had no comparable provision. The Conferees agreed to include the House bill with an amendment that provides that lease advertisements also disclose a statement of the amount or method of determining the amount of any end of term liabilities and whether or not the lessee has the option to purchase the leased property and at what price and time. The House bill provided that lease advertising disclosures had to be clear, conspicuous and in

print equal in size to certain advertised lease information. The Senate had a comparable provision, except there was no equal in size print requirement. The House receded to the Senate amendment.

The Senate amendment provided that for purposes of the civil liability section, the term "creditor" as used in sections 115, 130, and 131 of the Truth in Lending Act shall include a lessor as defined in this chapter. The House bill had no comparable provision. The House receded to the Senate amendment. The House bill provided for lessors to be liable to any person if such lessors violated the lease advertising disclosure requirements. The Senate amendment had no comparable provision. The Senate receded to the House bill with an amendment that clarifies that only a person who suffers actual damage from the lease advertising disclosure violation has a cause of action against the lessor. The House bill provided for individual action civil liability of five times the amount attributable to a monthly payment under the lease, except that liability under the provision was not to be less than \$100 nor greater than \$1,000. The Senate amendment had a comparable provision, except that the method of determining the individual action amount was to be 25 per centum of the total amount of monthly payments under the lease. The House receded to the Senate amendment.

The House bill provided for class action civil liability of such amount as the court might allow, except that as to each member of the class no minimum recovery was to be applicable, and the total recovery in such action was not to be more than the lesser of \$100,000 or 1 per centum of the net worth of the lessor. The Senate amendment had a comparable provision, except that the total recovery in a class action was not to be more than the lesser of \$500,000 or 1 per centum of the net worth of the lessor. The House receded to the Senate amendment.

The House bill provided that actions brought alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement. The Senate amendment had a comparable provision, except the year time limit was to be within one year of the occurrence of the violation. The Senate receded to the House bill. The House bill provided that a lessor would not have civil liability for correction of errors within 15 years after discovery of an error under specified circumstances, if the lessor notifies the person concerned of the error and makes whatever adjustments are necessary to insure that the person was not required to pay any amount in excess of the amount that should correctly have been disclosed. The Senate amendment had a comparable provision, except the lessor need only insure that the person was not required to pay any amount in excess of the amount or percentage rate that was actually disclosed. The House receded to the Senate amendment. The House bill provided that a lessor would not have civil liability if the lessor showed by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error and such error was rectified. The Senate amendment had a comparable provision, except the lessor was not required to rectify the error. The House receded to the Senate amendment. The Senate amendment provided in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires

the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement of compliance with this chapter. This section does not affect the rights of the obligor in any action against the original creditor. Certain exceptions were specified. The House bill had no comparable provision. The House receded to the Senate amendment. Other civil liability provisions in the House bill and the Senate amendment were substantially the same. The House receded to the Senate amendment.

The Senate amendment provided that this chapter preempted State laws with respect to consumer leases to the degree such State law was inconsistent with this chapter. The Federal Reserve Board was authorized to determine whether such inconsistencies existed, except the Board could not find that any State law was inconsistent with any provision of this chapter if the Board determined that such law gave greater protection and benefit to the consumer. The House bill had no comparable provision. The House receded to the Senate amendment.

The House bill provided by conforming amendment that the Federal Reserve Board shall by regulation exempt any State from the provisions of chapter 5 of this title (except section 185(h)), if it determines that under the law of that State, requirements and restrictions are substantially similar to those imposed under chapter 5 and that there is adequate provision for enforcement. The Senate amendment had a similar provision that provided that the Federal Reserve Board shall by regulation exempt from the requirements of this chapter any class of lease transactions within any State if it determines that under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement. The House receded to the Senate amendment.

The Senate amendment provided a conforming amendment that amended the table of chapters of the Truth in Lending Act by adding at the end, "5. Consumer Leases. . . 181". The House bill had no comparable provision. The House receded to the Senate amendment.

#### GENERAL COMMENTS

The Conferees, in adopting a provision which would allow a lessee to bring suit in connection with false advertising were concerned that this authority could be misused. The Conferees believe that the power to bring suit in the event a leasing company engages in false advertising is an important enforcement tool in seeing that the purposes of this Act are achieved. Previous to this time, consumers were not entitled to sue a businessman in connection with false advertising. The Consumer Credit Protection Act also exempts the media for any liability in connection with false advertising. This means the only enforcement of false advertising is up to governmental bodies charged with enforcing that Act.

The Conferees felt with the multitude of advertising taking place in the world of commerce, governmental agencies cannot be expected

to deal with all false or questionable ads. Therefore, allowing persons affected by false advertising to bring suit would add a vital watch dog enforcement provision.

The Conferees are not suggesting this provision be used on a wholesale basis. The provision was placed in the Act not to serve as a sword for consumers but rather as a shield. The Conferees hope that the threat of lawsuits will be strong enough to curtail questionable advertising practices. In the event, however, there are some businessmen who still continue to engage in fraudulent advertising the Conferees felt it necessary to have a tool to provide adequate relief.

While the Conferees discussed extending the advertising provision to the entire Consumer Credit Protection Act, there was a feeling at this time that it would be better to observe results in the Truth-in-Leasing Act before placing the provision on an "across-the-board" basis.

HENRY REUSS,  
FRANK ANNUNZIO,  
LEONOR K. SULLIVAN,  
GLADYS NOON SPELLMAN,  
WILLIAM A. BARRETT,  
CHALMERS P. WYLIE,  
MILLCENT FENWICK,

*Managers on the Part of the House.*

WILLIAM PROXMIRE,  
J. R. BIDEN, Jr.,  
JAKE GARN,

*Managers on the Part of the Senate.*



---

## CONSUMER LEASING ACT OF 1976

---

MARCH 9, 1976.—Ordered to be printed

---

Mr. PROXMIRE, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 8835]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 8835) to amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*That this Act may be cited as the "Consumer Leasing Act of 1976".*

#### FINDINGS AND PURPOSE

*Sec. 2. Section 102 of the Truth in Lending Act (15 U.S.C. 1601) is amended by inserting "(a)" before the first sentence, and adding the following subsection:*

*"(b) The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this title to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosure of lease terms in advertisements."*

## DISCLOSURE OF LEASE TERMS

SEC. 3. The Truth in Lending Act (15 U.S.C. 1601-1665) is amended by adding at the end thereof a new chapter as follows:

## "CHAPTER 5—CONSUMER LEASES

"Sec.

"181. Definitions.

"182. Consumer lease disclosures.

"183. Lessee's liability on expiration or termination of lease.

"184. Consumer lease advertising.

"185. Civil liability.

"186. Relation to State laws.

## "§ 181. Definitions

"For purposes of this chapter—

(a) The term 'consumer lease' means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 103(g). Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

"(2) The term 'lessee' means a natural person who leases or is offered a consumer lease.

"(3) The term 'lessor' means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

"(4) The term 'personal property' means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

"(5) The terms 'security' and 'security interest' mean any interest in property which secures payment or performance of an obligation.

## "§ 182. Consumer lease disclosures.

"Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

"(1) A brief description or identification of the leased property;

"(2) The amount of any payment by the lessee required at the inception of the lease;

"(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

"(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property

and its appraised actual value at the termination of the lease, if the lessee has such liability;

"(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

"(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

"(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

"(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

"(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

"(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

"(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

## "§ 183. Lessee's liability on expiration or termination of lease

"(a) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease, and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor



shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

"(b) Penalties or other charges for delinquency, default or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

"(c) If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

#### § 184. Consumer lease advertising

"(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

"(1) That the transaction advertised is a lease.

"(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

"(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

"(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

"(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

"(b) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

#### § 185. Civil liability

"(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130.

"(b) Any lessor who fails to comply with any requirement imposed under section 184 of this chapter with respect to any person who suf-

fers actual damage from the violation is liable to such person as provided in section 130.

For the purposes of this section, the term 'creditor' as used in sections 115, 130, and 131 shall include a lessor as defined in this chapter.

"(c) Notwithstanding section 130(e), any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement.

#### § 186. Relation to State laws

"(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection and benefit to the consumer.

"(b) The Board shall by regulation exempt from the requirements of this chapter any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement."

#### AMENDMENTS TO SECTION 130

SEC. 4. Section 130 of the Truth in Lending Act is amended as follows:

(1) In subsection (a), after "chapter 4" insert "or 5".

(2) In clause (2)(A) of subsection (a), insert "(i)" after "(a)", and insert after "transaction" a comma and the following: "or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease".

(3) In paragraph (2)(B) of subsection (a), strike out "lesser of \$100,000" and insert in lieu thereof "lesser of \$500,000".

(4) In subsection (b), insert "or chapter 5" after "this chapter" and strike out the word "finance".

(5) In subsection (g), after "this chapter", insert "or chapter 4 or 5 of this title", and insert after "consumer loan" a comma and "consumer lease".

#### CONFORMING AMENDMENT

SEC. 5. The table of chapters of the Truth in Lending Act is amended by adding at the end thereof the following:

"5. Consumer Leases-----181"

## EFFECTIVE DATE

SEC. 6. This Act takes effect one year after the date of its enactment. And the Senate agree to the same.

WILLIAM PROXMIRE,  
J. R. BIDEN, Jr.,  
JAKE GARN,  
*Managers on the Part of the Senate.*

HENRY REUSS,  
FRANK ANNUNZIO,  
LEONOR K. SULLIVAN,  
GLADYS NOON SPELLMAN,  
WILLIAM A. BARRETT,  
CHALMERS P. WYLIE,  
MILLICENT FENWICK,  
*Managers on the Part of the House.*

JOINT EXPLANATORY STATEMENT OF THE  
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 8835) to amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The House bill was called the "Truth in Leasing Act". The Senate amendment was called the "Consumer Leasing Act of 1976". The House receded to the Senate amendment.

The House bill refers to leased "goods" in this legislation while the Senate amendment refers to leased "property". The House receded to the Senate amendment.

The House bill definition of "consumer lease" referred to those leases that are for a specified rent not exceeding \$25,000, while the Senate amendment referred to those leases that are for a total contractual obligation not exceeding \$25,000. The House receded to the Senate amendment. The Senate amendment definition of "consumer lease" specifically excluded leases for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization. The House bill specifically excluded only farm equipment. The House receded to the Senate amendment. The House bill provided a disclaimer as to anything in the chapter constituting a Congressional finding or determination as to the permissibility or impermissibility of the making of a consumer lease, as defined in this legislation by a national bank, bank holding company or bank holding company subsidiary. The Senate amendment had no comparable provision. The House receded to the Senate amendment.

The House bill provided for the manner in which lessors were to make specified disclosures, including clearly and conspicuously, and that the disclosures were to be in the lease contract and a copy given to the lessee when executed. The Senate amendment was comparable,

except that it additionally required that disclosures be accurate and could be either in the lease contract or in a written statement. There was no express requirement for a copy to be given to the lessee. The House receded to the Senate amendment. The House bill provided for a disclosure of a brief description or identification of the leased property including the manufacturer of the goods, registration numbers and other details. The Senate amendment provided for a disclosure of a brief description or identification of the lease property. The House receded to the Senate amendment. The House bill provided for a disclosure of the amount of non-periodic charges. The Senate amendment was comparable, except that it permitted disclosure of the method of determining the non-periodic charges rather than the actual amount. The Senate receded to the House bill. The House bill provided for a disclosure of a description of all warranties or if none, a statement to that effect. The Senate amendment provided for disclosure of identification of express warranties. The House receded to the Senate amendment. The House bill provided for disclosure as to special order lease items. The Senate amendment had no comparable provision. The House receded to the Senate amendment. The Senate amendment provided that the Federal Reserve Board may by regulation permit estimates of certain disclosure of information requirements when the lessor is not in a position to know exact information. The House bill had no comparable provision. The House receded to the Senate amendment. The House bill provided for disclosure of default, delinquency or late payment charges in two similar provisions. The Senate amendment had one comparable provision except it did not refer expressly to late payments. The Senate receded to the House bill. The House bill provided that the lessor disclose that the lessee had residual value liability if such was the case. The Senate amendment had no comparable provision, but did provide for disclosure of a statement of the amount or method of determining the amount of any end of term liabilities. The Conferees agreed to include both the House bill and the Senate amendment provisions. The House bill required disclosure of a brief description of insurance including the costs. The Senate amendment was comparable, except no disclosure of insurance costs was required. The Senate receded to the House bill. The House bill required that if the lessee had an option to purchase the leased property, the lessor must disclose the time when the lessee could exercise the option. The Senate amendment had a similar provision with respect to an option to purchase, except it did not require disclosure of the time when the lessee could exercise the option.

The Senate receded to the House bill. The House bill provided for disclosure of information as to the aggregate cost of the lease. The Senate amendment was comparable, except: (1) the disclosure only had to be made with respect to leases in which the lessee had liability for the anticipated fair market value of the property at the end of the lease; and (2) the provision specified that the disclosure was to refer to the aggregate cost of the lease "on expiration," while the House bill did not specify. The House receded to the Senate amendment on both parts of the provision. The House bill provided for disclosure of the anticipated fair market cash value of the leased property at the expiration of the lease. The Senate amendment had no comparable provision. The House receded to the Senate amendment.

The House bill provided for limitation on the lessee's liability at the expiration or termination of a lease to the effect that such liability could not exceed three times a monthly payment under the lease, unless there had been physical damage to the leased property beyond reasonable wear and use or default. The Senate amendment had a related provision which differed in several respects. The Senate amendment provided that where the lessee's liability on expiration of a lease was based on the estimated residual value of the property, such estimated residual value had to be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent it exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. The presumption had no application to the extent that the excess of estimated over actual residual value was due to physical damage to the property beyond reasonable wear and use, or to excessive use. The House receded to the Senate amendment with an amendment to the effect that where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease, and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use.

The Senate amendment had a provision providing that the lease may set standards for wear and use so long as such standards are not unreasonable. The House bill had no comparable provision. The House receded to the Senate amendment. The House bill provided that if a lease has a residual value provision at the termination of the lease, the lessee may at his expense obtain a professional appraisal of the leased property by an independent third party agreed to by both parties. The appraisal shall be final and binding on the parties. The Senate amendment had no comparable provision. The Senate receded to the House bill. The Senate amendment provided that penalties or other charges for delinquency, default, or early termination may be specified in the lease, but only at an amount that is reasonable in light of certain stated factors. The House bill had no comparable provision. The House receded to the Senate amendment.

The House bill provided for a lease advertising disclosure that the lessee had residual value liability on termination of the lease if such was the case. The Senate amendment had no comparable provision. The Conferees agreed to include the House bill with an amendment that provides that lease advertisements also disclose a statement of the amount or method of determining the amount of any end of term liabilities and whether or not the lessee has the option to purchase the leased property and at what price and time. The House bill provided that lease advertising disclosures had to be clear, conspicuous and in



print equal in size to certain advertised lease information. The Senate had a comparable provision, except there was no equal in size print requirement. The House receded to the Senate amendment.

The Senate amendment provided that for purposes of the civil liability section, the term "creditor" as used in sections 115, 130, and 131 of the Truth in Lending Act shall include a lessor as defined in this chapter. The House bill had no comparable provision. The House receded to the Senate amendment. The House bill provided for lessors to be liable to any person if such lessors violated the lease advertising disclosure requirements. The Senate amendment had no comparable provision. The Senate receded to the House bill with an amendment that clarifies that only a person who suffers actual damage from the lease advertising disclosure violation has a cause of action against the lessor. The House bill provided for individual action civil liability of five times the amount attributable to a monthly payment under the lease, except that liability under the provision was not to be less than \$100 nor greater than \$1,000. The Senate amendment had a comparable provision, except that the method of determining the individual action amount was to be 25 per centum of the total amount of monthly payments under the lease. The House receded to the Senate amendment.

The House bill provided for class action civil liability of such amount as the court might allow, except that as to each member of the class no minimum recovery was to be applicable, and the total recovery in such action was not to be more than the lesser of \$100,000 or 1 per centum of the net worth of the lessor. The Senate amendment had a comparable provision, except that the total recovery in a class action was not to be more than the lesser of \$500,000 or 1 per centum of the net worth of the lessor. The House receded to the Senate amendment.

The House bill provided that actions brought alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement. The Senate amendment had a comparable provision, except the year time limit was to be within one year of the occurrence of the violation. The Senate receded to the House bill. The House bill provided that a lessor would not have civil liability for correction of errors within 15 years after discovery of an error under specified circumstances, if the lessor notifies the person concerned of the error and makes whatever adjustments are necessary to insure that the person was not required to pay any amount in excess of the amount that should correctly have been disclosed. The Senate amendment had a comparable provision, except the lessor need only insure that the person was not required to pay any amount in excess of the amount or percentage rate that was actually disclosed. The House receded to the Senate amendment. The House bill provided that a lessor would not have civil liability if the lessor showed by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error and such error was rectified. The Senate amendment had a comparable provision, except the lessor was not required to rectify the error. The House receded to the Senate amendment. The Senate amendment provided in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires

the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement of compliance with this chapter, this section does not affect the rights of the obligor in any action against the original creditor. Certain exceptions were specified. The House bill had no comparable provision. The House receded to the Senate amendment. Other civil liability provisions in the House bill and the Senate amendment were substantially the same. The House receded to the Senate amendment.

The Senate amendment provided that this chapter preempted State laws with respect to consumer leases to the degree such State law was inconsistent with this chapter. The Federal Reserve Board was authorized to determine whether such inconsistencies existed, except the Board could not find that any State law was inconsistent with any provision of this chapter if the Board determined that such law gave greater protection and benefit to the consumer. The House bill had no comparable provision. The House receded to the Senate amendment.

The House bill provided by conforming amendment that the Federal Reserve Board shall by regulation exempt any State from the provisions of chapter 5 of this title (except section 185(h)), if it determines that under the law of that State, requirements and restrictions are substantially similar to those imposed under chapter 5 and that there is adequate provision for enforcement. The Senate amendment had a similar provision that provided that the Federal Reserve Board shall by regulation exempt from the requirements of this chapter any class of lease transactions within any State if it determines that under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement. The House receded to the Senate amendment.

The Senate amendment provided a conforming amendment that amended the table of chapters of the Truth in Lending Act by adding at the end, "5. Consumer Leases. . . 181". The House bill had no comparable provision. The House receded to the Senate amendment.

#### GENERAL COMMENTS

The Conferees, in adopting a provision which would allow a lessee to bring suit in connection with false advertising were concerned that this authority could be misused. The Conferees believe that the power to bring suit in the event a leasing company engages in false advertising is an important enforcement tool in seeing that the purposes of this Act are achieved. Previous to this time, consumers were not entitled to sue a businessman in connection with false advertising. The Consumer Credit Protection Act also exempts the media for any liability in connection with false advertising. This means the only enforcement of false advertising is up to governmental bodies charged with enforcing that Act.

The Conferees felt with the multitude of advertising taking place in the world of commerce, governmental agencies cannot be expected

to deal with all false or questionable ads. Therefore, allowing persons affected by false advertising to bring suit would add a vital watch dog enforcement provision.

The Conferees are not suggesting this provision be used on a wholesale basis. The provision was placed in the Act not to serve as a sword for consumers but rather as a shield. The Conferees hope that the threat of lawsuits will be strong enough to curtail questionable advertising practices. In the event, however, there are some businessmen who still continue to engage in fraudulent advertising the Conferees felt it necessary to have a tool to provide adequate relief.

While the Conferees discussed extending the advertising provision to the entire Consumer Credit Protection Act, there was a feeling at this time that it would be better to observe results in the Truth-in-Leasing Act before placing the provision on an "across-the-board" basis.

WILLIAM PROXMIRE,

J. R. BIDEN, JR.,

JAKE GARN,

*Managers on the Part of the Senate.*

HENRY REUSS,

FRANK ANNUNZIO,

LEONOR K. SULLIVAN,

GLADYS NOON SPELLMAN,

WILLIAM A. BARRETT,

CHALMERS P. WYLIE,

MILLCENT FENWICK,

*Managers on the Part of the House.*



# Ninety-fourth Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,  
one thousand nine hundred and seventy-six*

### An Act

To amend the Truth in Lending Act to protect consumers against inadequate and misleading leasing information, assure meaningful disclosure of lease terms, and limit ultimate liability in connection with leasing of personal property primarily for personal, family, or household purposes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Leasing Act of 1976".*

#### FINDINGS AND PURPOSE

SEC. 2. Section 102 of the Truth in Lending Act (15 U.S.C. 1601) is amended by inserting "(a)" before the first sentence, and adding the following subsection:

"(b) The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this title to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements."

#### DISCLOSURE OF LEASE TERMS

SEC. 3. The Truth in Lending Act (15 U.S.C. 1601-1665) is amended by adding at the end thereof a new chapter as follows:

#### "Chapter 5—CONSUMER LEASES

"Sec.

"181. Definitions.

"182. Consumer lease disclosures.

"183. Lessee's liability on expiration or termination of lease.

"184. Consumer lease advertising.

"185. Civil liability.

"186. Relation to State laws.

#### "§ 181. Definitions

"For purposes of this chapter—

"(1) The term 'consumer lease' means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 103(g). Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

“(2) The term ‘lessee’ means a natural person who leases or is offered a consumer lease.

“(3) The term ‘lessor’ means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

“(4) The term ‘personal property’ means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

“(5) The terms ‘security’ and ‘security interest’ mean any interest in property which secures payment or performance of an obligation.

**“§ 182. Consumer lease disclosures**

“Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

“(1) A brief description or identification of the leased property;

“(2) The amount of any payment by the lessee required at the inception of the lease;

“(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

“(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

“(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

“(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

“(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

“(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

“(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

“(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

“(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under

this section may be given in the form of estimates where the lessor is not in a position to know exact information.

**“§ 183. Lessee’s liability on expiration or termination of lease**

“(a) Where the lessee’s liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor’s estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee’s reasonable attorney’s fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

“(b) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

“(c) If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

**“§ 184. Consumer lease advertising**

“(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

“(1) That the transaction advertised is a lease.

“(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

“(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

“(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

“(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the

end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

“(b) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

**“§ 185. Civil liability**

“(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130.

“(b) Any lessor who fails to comply with any requirement imposed under section 184 of this chapter with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 130. For the purposes of this section, the term ‘creditor’ as used in sections 115, 130, and 131 shall include a lessor as defined in this chapter.

“(c) Notwithstanding section 130(e), any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement.

**“§ 186. Relation to State laws**

“(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection and benefit to the consumer.

“(b) The Board shall by regulation exempt from the requirements of this chapter any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.”

AMENDMENTS TO SECTION 130

SEC. 4. Section 130 of the Truth in Lending Act is amended as follows:

- (1) In subsection (a), after “chapter 4” insert “or 5”.
- (2) In clause (2)(A) of subsection (a), insert “(i)” after “(A)”, and insert after “transaction” a comma and the following: “or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease”.
- (3) In paragraph (2)(B) of subsection (a), strike out “lesser of \$100,000” and insert in lieu thereof “lesser of \$500,000”.
- (4) In subsection (b), insert “or chapter 5” after “this chapter” and strike out the word “finance”.
- (5) In subsection (g), after “this chapter”, insert “or chapter 4 or 5 of this title”, and insert after “consumer loan” a comma and “consumer lease”.

H. R. 8835—5

CONFORMING AMENDMENT

SEC. 5. The table of chapters of the Truth in Lending Act is amended by adding at the end thereof the following:

"5. Consumer Leases..... 181".

EFFECTIVE DATE

SEC. 6. This Act takes effect one year after the date of its enactment.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

---

THE WHITE HOUSE

REMARKS OF THE PRESIDENT  
UPON SIGNING H.R. 8835  
THE TRUTH IN LEASING BILL  
AND

H.R. 6516, THE EQUAL CREDIT OPPORTUNITY BILL

THE ROSE GARDEN

2:07 P.M. EST

Mrs. Knauer, distinguished Members of the Congress:

This is a very, very important day for all American consumers of every persuasion, of every race, of all ages. It is important because with my signing of the two bills before me the Administration reconfirms its commitment to equal opportunity.

It also underscores our desire to make Government far more responsive to the needs of the American consumer, and I indicate my appreciation to the Members of the House, as well as the Senate, for their cooperation in this regard.

The equal opportunity amendments and the Consumer Leasing Act reflect our joint determination to achieve goals of fairness and equality in a broad range of business transactions, transactions which millions of American consumers engage in every day of every year.

Last November I spoke out deploring discrimination against Americans that might arise from foreign boycott practices. At that time, I also voiced my firm support for the amendments to the Consumer Credit Protection Agency, which would bar such discrimination.

The Consumer Credit Protection Act already on the books prohibits credit discrimination based on sex and marital status. The amounts that I am signing today broaden the act to prohibit credit discrimination on the basis of race, color, religion, national origin and age.

MORE

(OVER)



The other bill that I am signing today, the Consumer Leasing Act of 1976, also broadens consumer protection. It amends the 1968 Truth in Lending Act to extend to lease contracts, the disclosures and protection requirements now imposed on credit transactions.

With the rise of consumer leasing of automobiles and other equipment as an alternative to installment buying, this measure meets a very real need.

I am delighted to sign both bills today, and I congratulate the Members of Congress, both Democrat and Republican, for their working with us on this project. The bills add to a growing list of steps that we have taken in the last year to help give all consumers a far fairer shake, to make our country far more equitable and a more just place for all Americans to live.

I thank the Members of Congress, and Mrs. Knauer, for being here on this beautiful day in the Rose Garden for this occasion.

END (AT 2:12 P.M. EST)