FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF
THE CHAIRMAN

March 10, 1986

The Honorable Jake Garn, Chairman
Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Federal Trade Commission is pleased to respond to your request for comment on S. 1908, the "Consumer Lease and Lease-Purchase Agreement Act" ("bill"). Our comments address both the goal of Consumer Leasing Act ("Act") simplification and the specific provisions in the bill that we believe will significantly affect compliance.

1. Consumer Leasing Act Simplification

The Commission supports simplification of the Consumer Leasin Act disclosures. We support the bill's focus on those items of information that are most important to consumers when comparison shopping, such as total lease costs, payment terms, and the amounts due at the beginning and end of the lease term. Moreover, we believe that the Act's purpose of assuring meaningful disclosure of lease terms can be served more effectively by reducing the number of required disclosures. The current Act requires the disclosure of as many as 21 items of information for consumer leases. Many of these in turn require the disclosure of additional components. The bill would reduce the number of required lease disclosures to 13 for open-end leases and to 12 for closed-end leases. It would eliminate many of the detailed disclosures that are customarily spelled out in the lease contract (e.g., default provisions and maintenance responsibilities) and, thus, are likely to be provided whether or not the Act mandates their disclosure. Hence, we support the bill's reduction in the number of required lease disclosures.

We also concur with the proposal to reduce from three to two the number of terms that trigger additional disclosure in a consumer lease advertisement. Lessors have complained that the current advertising scheme makes advertising too costly and burdensome. The bill would streamline the required advertising disclosures so that they are easier to display and understand. Reducing the number of required disclosures and requiring disclosure of the most useful information encourage lease advertising and, thus, provide useful information for consumers.

While the Commission agrees in principle with the objective of simplifying Consumer Leasing Act disclosures, we note the absence of empirical data to support the choice of specific disclosures that the bill would require for consumer leases and consumer lease advertising. Furthermore, we know of no study of the compliance costs that the bill might impose on lessors. However, the 1982 survey of Truth in Lending compliance costs for mortgage lenders conducted for the Commission revealed that legislative and regulatory simplifications that reduce the burden of compliance can involve transition costs to industry members in the form of legal fees, employee training, and revised forms.

2. Lease-Purchase Agreements

The bill would bring an additional class of transactions, "lease-purchase agreements," under the Act's coverage. These are defined to be rental agreements for an initial period of four months or less that are automatically renewable with each payment and permit the consumer to become the owner of the property.

The Commission does not have specific data on the frequency of lease-purchase agreements or abuses by lessors. However, we are aware that these transactions are becoming increasingly popular and that a growing number of state and local jurisdictions have taken action to bring them under the coverage of their laws. This has resulted in some jurisdictions treating lease-purchase transactions as if they were consumer leases, while others consider them to be credit sales subject to the Truth in Lending Act. Industry members have complained to us about the disparate treatment these transactions have received. If the legislation provides for greater preemption of state and local laws, the uniformity in disclosures under the federal law would benefit both lessors and consumers, as it would result in lower compliance costs for lessors and consequent savings to consumers. The disclosures required by the proposed legislation would also facilitate comparison of lease-purchase transactions with leases and credit sales, thus affording consumers additional savings.

The Commission notes that the proposed definition of "lease-purchase agreement" covers all rental agreements involving a purchase option. This includes both those agreements that permit ownership to transfer for little or no consideration after a specified number of payments have been made and those that have only a "buy out" feature (an option to purchase the goods outright at some time during the rental for a designated price). We support covering all such agreements to avoid the possibility of lessors modifying their rental agreements to evade the Act's coverage.

3. Federal Preemption

Section 131(a) of the bill provides for federal preemption of "inconsistent" state law. Under this provision, an inconsistency would arise only if it were impossible to comply with state law without violating the federal law. This standard is even narrower than the current Act, which authorizes preemption of inconsistent state law unless the state law provides "greater protection and benefit to the consumer."

The Commission cannot support the proposed preemption standard because we believe federal law should provide for broader preemption of state laws, with respect to consumer lease and lease-purchase disclosure requirements, than either the bill or current law provides. The kind of preemption scheme contained in the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 15 U.S.C. § 2301 (1982), is, in our opinion, better suited to lease and lease-purchase agreement disclosure requirements. The Magnuson-Moss scheme expressly preserves state-created rights and remedies not provided by federal laws, but requires adherence to federal labeling or disclosure requirements. This results in uniformity in disclosures to consumers, a condition that permits consumers to better compare the value of a product's warranty.

Similarly, uniformity in lease disclosure requirements would help consumers compare the costs and terms of leases and lease-purchase agreements offered by different lessors. In addition, uniformity would avoid confusion among lessors as to what must be disclosed. Finally, lessors would be spared the possibly burdensome cost of printing different disclosure forms or contracts for each state in which they do business. Therefore, we recommend that the federal disclosure requirements preempt state disclosure requirements, and that the Federal Reserve Board be responsible for determining whether state-required disclosures cover the same content or subject matter as federal requirements and thus are preempted.

4. Consumer's Liability at the End of the Lease Term

The bill conforms to current law in limiting the potential balloon payment at the end of an "open-end lease"; that is, a lease in which the consumer's liability at the end of the lease term is based on the lessor's predetermined estimate of the residual value of the property. The bill creates 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 amount of the average monthly payment. The lessor may recover this excess amount only by bringing a successful court action proving that the estimate was reasonable.

The current Act requires the lessor to pay the lessee's attorney's fees even if the lessor prevails. However, the bill would require the lessor to pay the lessee's attorney's fees and court costs only if the lessor failed to rebut the presumption that the "excess liability" was unreasonable.[1] The Commission supports this change because it apportions litigation costs more equitably between the lessor and the lessee. Moreover, it recognizes the unfairness of penalizing the lessor in those cases where excess liability occurs because of factors beyond the lessor's control; for example, where market conditions, such as the price of gasoline, cause a decline in a car's value.

5. Civil Liability/Liability of Assignees

The bill's civil liability provisions are generally the same as current law and reflect many of the changes made in the Truth in Lending Simplification and Reform Act of 1980. Among these are the limitation of damage awards in class actions and the provisions relating to multiple consumers.[2] The legislation also changes the statute of limitations for all actions to one year from the occurrence of the violation, whereas current law permits all actions to be brought within one year after the end of the lease. However, the bill does preserve the consumer's right to bring an action with respect to end-of-term liability within one year of the end of the lease term, because this liability will not be determined until the lease has expired.

The Commission endorses these provisions because they would reconcile potential civil liability under the Consumer Leasing Act with the amended Truth in Lending Act, thus furthering the goal of statutory simplification. The proposed changes would accomplish this task without sacrificing the consumer's private right of

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[1] Neither the rebuttable presumption nor the provision for attorney's fees applies under the bill or current law to the extent the "excess liability" is due to unreasonable or excessive wear or use.

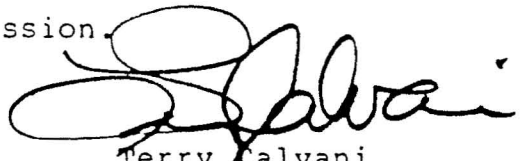
[2] However, the bill does not limit statutory penalties to certain required disclosures only, as is the case with the credit provisions of the amended Truth in Lending Act. Unlike Truth in Lending, which has experienced a great deal of litigation involving "technical" violations of the Act's credit requirements, there has been no similar experience under the Consumer Leasing Act. Hence, limiting the leasing disclosures that are subject to statutory penalty does not appear warranted.

enforcement. It is difficult, however, to ascertain the precise civil liability standards that should apply to consumer leasing. There have been no class actions and virtually no litigation under the Act since it became effective in March, 1977,[3] despite reports of dramatic growth in the consumer leasing industry.[4] Hence, there is no record on which to judge the value of the proposed standards. Nevertheless, to the extent that the risk of substantial liability prior to Truth in Lending Simplification may have resulted in overdeterrence, the proposed liability provisions may correct the problem.

The bill provides that civil actions under the Act may be brought against assignees only for violations that are "apparent on the face of the disclosure statement". This is consistent with the current Act. The Commission supports this approach because it relieves assignees of responsibility for violations of which they have no reason to be aware while preserving the consumer's rights against the original lessor. Additionally, by clarifying who is a "lessor" for purposes of enforcement, the bill will eliminate potential overcompliance.

The Commission appreciates this opportunity to comment on the Consumer Lease and Lease-Purchase Agreement Act.

By direction of the Commission.



Terry Calvani
Acting Chairman

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[3] To our knowledge, only one reported private action has been brought against a lessor for true Consumer Leasing Act violations: Thomka v. A. Z. Chevrolet, 619 F.2d 246 (3rd Cir. 1980).

[4] See, for example, Automotive News (June 3, 1985), at E-16.