

1 **MOTOR VEHICLE LEASE AGREEMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mark B. Madsen**

5 House Sponsor: Patrick Painter

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Motor Vehicle Business Regulation Act by amending provisions
10 related to dealer disclosures.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that a dealer may not issue a temporary permit or release possession of a
14 motor vehicle unless the dealer makes certain disclosures in a contract to enter into
15 a lease agreement;

16 ▶ provides that if a dealer does not properly execute the required disclosures or if the
17 dealer is unable to secure financing arrangements as set forth in the disclosures, a
18 prospective lessee shall return the motor vehicle and receive a refund of all money
19 and consideration given;

20 ▶ provides that if a dealer has sold or otherwise disposed of a motor vehicle or other
21 property traded in, the dealer shall return the amount of money equivalent to the
22 trade-in allowance disclosed in a contract to enter into a lease agreement;

23 ▶ provides that if a dealer sends a notice to a prospective lessee that the dealer has not
24 been able to secure financing arrangements within the terms disclosed, the contract
25 is rescinded and the prospective lessee:

- 26 • shall return the vehicle within 48 hours of receiving the notice; and
- 27 • is liable for all physical damage and mileage for the cost of operating the motor



- 28 vehicle;
- 29 ▶ provides procedures for a dealer to mail a written notice;
- 30 ▶ provides that if a dealer fails to give written notice, the prospective lessee shall
- 31 return the vehicle within 48 hours of the date the prospective lessee learns that the
- 32 dealer has not been able to secure financing arrangements as set forth in the
- 33 disclosure;
- 34 ▶ provides that a prospective lessee or a dealer may bring an action to enforce
- 35 contractual and statutory rights;
- 36 ▶ provides that the prevailing party in an action shall receive attorneys' fees; and
- 37 ▶ provides that a motor vehicle that is returned pursuant to a contract rescission is not
- 38 considered leased for purposes of sales and use tax.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 ENACTS:

45 **41-3-401.5**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **41-3-401.5** is enacted to read:

49 **Part 4. Disclosure Requirements**

50 **41-3-401.5. Disclosure of financing arrangements relating to the lease of a motor**
51 **vehicle.**

52 (1) (a) A dealer may not issue a temporary permit or release possession of a motor
53 vehicle wherein the dealer has contracted to enter into a lease agreement to someone other than
54 another dealer unless the contract to enter into a lease agreement contains the disclosure listed
55 in Subsection (2).

56 (b) The disclosure shall be set forth clearly and conspicuously on the first or front page
57 of the contract to enter into a lease agreement, executed by the prospective lessee and the
58 dealer.

59 (2) The form to be used when the dealer contracts to enter into a lease agreement for
60 the potential lease of a motor vehicle shall read as follows:

61 "(1) THE PROSPECTIVE LESSEE OF THE MOTOR VEHICLE DESCRIBED IN
62 THIS CONTRACT TO ENTER INTO A LEASE AGREEMENT HAS EXECUTED THE
63 CONTRACT IN RELIANCE UPON THE DEALER'S REPRESENTATION THAT THE
64 DEALER CAN SECURE FROM A FINANCIAL INSTITUTION FINANCING
65 ARRANGEMENTS FOR THE LEASE OF THE MOTOR VEHICLE. THE PRIMARY
66 TERMS OF THE FINANCING ARRANGEMENT ARE TO BE AS FOLLOWS:

67 TERM BETWEEN MONTHS AND MONTHS. MONTHLY
68 PAYMENTS BETWEEN \$ PER MONTH AND \$ PER MONTH BASED ON
69 A DOWN PAYMENT OR TRADE-IN ALLOWANCE OF \$.

70 (2) (a) IF THE DEALER IS NOT ABLE TO SECURE FINANCING
71 ARRANGEMENTS WITHIN THE TERMS DISCLOSED, THEN THE DEALER MUST
72 WITHIN SEVEN CALENDAR DAYS OF THE DATE OF THE CONTRACT TO ENTER
73 INTO A LEASE AGREEMENT MAIL NOTICE TO THE PROSPECTIVE LESSEE THAT
74 THE DEALER HAS NOT BEEN ABLE TO SECURE FINANCING ARRANGEMENTS IN
75 ACCORDANCE WITH THE DISCLOSED TERMS AND THE CONTRACT TO ENTER
76 INTO A LEASE AGREEMENT IS THEREFORE RESCINDED.

77 (b) IF THE DEALER IS NOT ABLE TO SECURE FINANCING ARRANGEMENTS
78 WITHIN THE TERMS DISCLOSED, SUCH FAILURE DOES NOT UNDER ANY
79 CIRCUMSTANCES REQUIRE THE DEALER TO PROVIDE THE FINANCING
80 NECESSARY FOR THE PROSPECTIVE LESSEE TO LEASE THE VEHICLE.

81 (c) IF THE CONTRACT TO ENTER INTO A LEASE AGREEMENT IS
82 RESCINDED, THE PROSPECTIVE LESSEE HAS 48 HOURS FROM RECEIPT OF THE
83 NOTICE TO:

84 (i) RETURN TO THE DEALER THE MOTOR VEHICLE THE PROSPECTIVE
85 LESSEE AGREED TO LEASE;

86 (ii) PAY THE DEALER AN AMOUNT EQUAL TO THE CURRENT STANDARD
87 MILEAGE RATE FOR THE COST OF OPERATING A MOTOR VEHICLE ESTABLISHED
88 BY THE FEDERAL INTERNAL REVENUE SERVICE FOR EACH MILE THE MOTOR
89 VEHICLE HAS BEEN DRIVEN WHILE IN THE PROSPECTIVE LESSEE'S POSSESSION;

90 AND

91 (iii) COMPENSATE THE DEALER FOR ANY PHYSICAL DAMAGE TO THE
92 MOTOR VEHICLE WHILE THE VEHICLE WAS IN THE PROSPECTIVE LESSEE'S
93 POSSESSION.

94 (3) IN RETURN, UPON RECEIPT OF THE ITEMS SET FORTH IN (2)(c)(i), (ii),
95 and (iii) THE DEALER SHALL RETURN TO THE PROSPECTIVE LESSEE ALL
96 PAYMENTS OR OTHER CONSIDERATION PAID BY THE PROSPECTIVE LESSEE,
97 INCLUDING ANY DOWN PAYMENT AND ANY MOTOR VEHICLE TRADED IN.

98 (4) IF THE TRADE-IN HAS BEEN SOLD OR OTHERWISE DISPOSED OF
99 BEFORE THE CONTRACT TO ENTER INTO A LEASE AGREEMENT IS RESCINDED,
100 THEN THE DEALER SHALL RETURN TO THE PROSPECTIVE LESSEE A SUM
101 EQUIVALENT TO THE ALLOWANCE TOWARD THE LEASE PRICE GIVEN BY THE
102 DEALER FOR THE TRADE-IN, AS NOTED IN THE CONTRACT TO ENTER INTO A
103 LEASE AGREEMENT.

104 _____
105 (Signature of the Prospective Lessee)

106 _____
107 (Signature of the Dealer)"

108 (3) (a) (i) In addition to the penalties in this chapter, if the disclosure in Subsection (2)
109 is not properly executed or if the dealer is unable to secure financing arrangements for the
110 lessee as provided in Subsection (2) within seven calendar days immediately following the date
111 disclosed on the contract to enter into a lease agreement, then in either case the prospective
112 lessee may return the motor vehicle to the dealer and receive a complete refund of all money
113 and other consideration given to the dealer for the contract to enter into a lease agreement,
114 including any motor vehicle or property used as a trade-in.

115 (ii) If the motor vehicle or property used as a trade-in has been sold or otherwise
116 disposed of, the dealer shall return to the prospective lessee the amount of money equivalent to
117 the allowance towards the lease price given by the dealer for the motor vehicle or property
118 traded in, as noted in the contract to enter into a lease agreement.

119 (b) If the dealer provides the notice as set forth in Subsection (2)(a) of the disclosure
120 statement, the contract to enter into a lease agreement is rescinded.

121 (c) If a contract to enter into a lease agreement is rescinded under Subsection (3)(b):
122 (i) the prospective lessee shall return the leased vehicle within 48 hours of receiving a
123 notice that the dealer is unable to secure financing arrangements for the lease; and
124 (ii) the prospective lessee is liable to the dealer:
125 (A) for all physical damage to the motor vehicle while in the possession of the
126 prospective lessee; and
127 (B) in an amount equal to the current standard mileage rate for the cost of operating a
128 motor vehicle established by the federal Internal Revenue Service for each mile the motor
129 vehicle was driven between the date the prospective lessee first acquired possession and the
130 date when the prospective lessee returned the motor vehicle to the dealer.
131 (4) (a) A dealer who has complied with Subsection (2), but who has not been able to
132 secure financing arrangements as set forth in the disclosure, shall within seven days of the date
133 of the contract to enter into a lease agreement mail written notice to the prospective lessee:
134 (i) disclosing that the dealer has not been able to secure financing arrangements as set
135 forth in the disclosure; and
136 (ii) instructing the prospective lessee of the prospective lessee's responsibility to return
137 the vehicle within 48 hours of receiving the notice, as provided for in Subsection (2).
138 (b) (i) The dealer shall mail notification to the prospective lessee within seven calendar
139 days following the date that the contract to enter into a lease agreement was executed.
140 (ii) A notice complies with Subsection (4)(b)(i) if it is postmarked before the end of the
141 seventh day following the date that the contract to enter into a lease agreement was executed
142 and addressed to the prospective lessee at the address contained in the contract to enter into a
143 lease agreement.
144 (iii) If the prospective lessee's address is not contained on the contract to enter into a
145 lease agreement, then proof of compliance with the notification provision of this Subsection
146 (4)(b) shall be borne by the dealer.
147 (iv) If a dealer gives notice in the manner prescribed, the prospective lessee has 48
148 hours from receipt of the notice to return the vehicle to the dealer.
149 (c) If a dealer executes the disclosure required by Subsection (2), but is not able to
150 secure financing arrangements as set forth in the disclosure, and the dealer fails to give written
151 notice to the prospective lessee within seven days, as provided for in Subsections (4)(a) and

152 (b), then the prospective lessee shall return the vehicle within 48 hours of the date the
153 prospective lessee first learns that the dealer has not been able to secure financing arrangements
154 as set forth in the disclosure.

155 (5) (a) Either the prospective lessee or a dealer may bring an action to enforce
156 contractual or statutory rights under this section.

157 (b) The prevailing party in an action under Subsection (5)(a) is entitled to reasonable
158 attorneys' fees as part of the costs of the action.

159 (6) A motor vehicle returned by the prospective lessee to the dealer in accordance with
160 the rescission provisions of this section is not considered leased for purposes of sales and use
161 tax under Title 59, Chapter 12, Sales and Use Tax Act.

Legislative Review Note
as of 1-24-06 3:27 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel