EXTENSIONS OF REMARKS

CONSUMER AUTOMOBILE LEASING ACT OF 1996

HON. JOHN J. LaFALCE
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 23, 1996

Mr. LaFALCE. Mr. Speaker, I am today introducing legislation to provide consumers with the information they need to make informed decisions about automobile leases. My bill, the consumer Automobile Leasing Act of 1996 would update and strengthen current Federal requirements for automobile lease disclosure and advertising under chapter 5 of the Truth in Lending Act.

Automobile leasing is a growing phenomenon that is supplanting traditional new car sales and dominating automobile advertising. It is the automobile industry's answer to the growing affordability gap between rising new car prices and stagnating family incomes.

A decade ago consumer leases represented less than 5 percent of all new car transactions. Today, more than 30 percent of all new automobile transactions involve leases. By the year 2000, some auto industry experts predict, leases will constitute over half of all new car transactions and a significant portion of used care transactions.

This rapid growth in automobile leases has generated a concomitant increase in lease advertising. The Center for consumer Affairs at the University of Wisconsin reported last year that its 6-year study of advertising in the Milwaukee market showed that lease advertising had grown from a relatively infrequent occurrence to the most commonly advertised consumer transaction in that market. Automobile leases now figure as prominently as, if not more prominently than, traditional automobile sales transactions in advertising in the Washington, DC market and in my congressional district in western New York. Leasing clearly has become a reasonable alternative to buying a new automobile not just for luxury car buyers, but also for middle-class families, for retirees on fixed incomes and even for college students. And lease advertising now seeks to appeal to all these markets.

Automobile leases can be beneficial for consumers, particularly in providing more manageable monthly automobile payments and lower maintenance costs. Unfortunately, it is often very difficult for consumers to understand the terms of auto leases and to know whether they actually save money with a lease. As the National Center for Study of Responsive Law commented to the Federal Reserve board last year, current lease promotions may deceive consumers into believing that they are getting a better deal with a lease than a credit purchase, when this may not be true.

I. THE NATURE OF THE PROBLEM

Part of the problem comes from the complexity of lease transactions. As a special task force of the State attorneys general reported to the Federal Reserve Board in November, most consumers are not yet familiar with lease transactions. The task force cited the way in which the automobile industry has chosen to structure lease transactions, both the terms used and their application in contracts and advertising, as making leases far more complex than the traditional sales situation. This complexity creates enormous opportunity for misrepresentation and abuse.

Problems also stem from inadequacies in current laws and regulations governing lease disclosure and advertising, particularly at the Federal level. The Consumer Leasing Act was enacted as chapter 5 of the Truth in Lending Act in 1976, long before Congress could have anticipated the current upsurge in automobile leases. Federal regulations governing lease disclosure and advertising have not been revised or updated in any significant way since their issuance by the Federal Reserve Board in 1981. This creates serious problems even on technical grounds. The dollar amount of the leases covered by the act, for example, is inadequate and will permit increasing numbers of auto leases to escape Federal regulation. Civil penalties under the act also are woefully inadequate to deter violations by automobile dealers and leasing companies when viewed in comparison to potential profits.

The inadequacies of current law and regulation present additional problems in practice. These laws and regulations offer no consistent standards governing clear and conspicuous disclosure for either lease contracts or advertising. They permit disclosure far too late, usually at the time a lease is signed, and sometimes even after a vehicle has been ordered and the consumer has paid a deposit or other fee. They offer no clear standards for nontraditional advertising, for example, in commercial mailings, toll-free telephone numbers or on the Internet. They permit lease advertising to mix terms and costs of leases and installment credit sales, which may easily confuse and mislead consumers. And they permit so-called come-on promotions that have little relevance to the terms actually offered to consumers or the vehicle models actually available.

One of the most serious omissions of current regulations is the lack of any requirement to disclose the annual interest rate implicit in lease transactions. The lease interest rate has been described by State Attorneys General, the Consumer Federal of America, the American Association of Retired Persons [AARP] and other organizations as the critical factor in the lease equation. Together with the lease term, the capitalized cost of the automobile and the vehicle residual value, it is one of the four variables that determine the consumer's monthly lease payment. To allow leasing companies to hide one of these key variables, as most now do, the attorneys general commented, is to invite abuse. Not requiring disclosure of a lease interest rate, they noted, is tantamount to the hiding of valuable information from consumers.

In Canada, lease annual interest rates will soon be a required disclosure item in all provinces. A national working group of provincial and Federal officials recently agreed that lessors should be required to disclose a lease rate as an annual percentage rate. Last July, the National Conference of Commissioners on Uniform State Laws released a study urging uniform State consumer leasing laws and recommending required disclosure of lease interest rates to allow comparison shopping by consumers. This same requirement is needed in Federal law. Without disclosure of a lease rate, according to the consumer Federation, consumers have no way of computing the real cost of a lease.

All of these problems in automobile leasing are compounded by lease documents that hide critical disclosures among technical lease terms and that confuse consumers with legal jargon, imprecise terms and byzantine payment and penalty formulas. Key consumer information such as the price of the leased automobile, is not clearly disclosed or is hidden in broader cost amounts. Fees paid as part of the vehicle capitalized cost or the payment required at lease signing may not be identified and itemized. And major costs after the lease is signed, such as vehicle delivery charges and lease-end disposition fees, are obscured or hidden to such a degree that the Federal Trade Commission says many consumers are unaware of their existence.

But it is in the area of lease advertising that, in my view, the problems and abuses of current automobile leasing are most evident. You only have to turn on the television or open the advertising sections of any local and regional newspaper to find advertisements that routinely feature deceptively low monthly lease rates or other attractive aspects of a lease while obscuring or omitting required information about the costs and restrictions of the lease; scroll consumer information quickly across the television screen or in mouse sized type in print advertisements to make it difficult for consumers to see or read; highlight no or zero downpayment amounts without stating the substantial charges and fees a consumer may actually have to pay upon signing the lease; and combine disclosure for numerous vehicle models in confusing tiny print or mix the payment amounts, downpayments, interest rates, and other items for leases with those of credit installment transactions.

The Federal Trade Commission summarized these problems earlier this year in detailed comments to the Federal Reserve Board:

> Many lease advertisements today may fall short of the ''clear and conspicuous'' standard. Currently many television and some print advertisements boldly promote certain attractive lease terms and regulate the required lease disclosure to fine print or a location that is both inconspicuous and barely visible. Some television advertisements use background music or flashing images that further obscure the required disclosures. Television advertisements may also flash the disclosures on the screen for only two or three seconds or scroll so quickly that consumers are unable to read this important information.

These common practices make it extremely difficult for consumers to understand the terms

of advertised leases and virtually impossible for consumers to make knowledgeable comparisons between lease offerings. In their comments last year, the attorneys general expressed concern that automobile lease advertisements have, for several years, generally failed to adequately disclose material information consumers need to make informed decisions. The Federal Trade Commission echoed this sentiment, stating that current misleading advertisements may significantly hinder comparison lease shopping, in direct contradiction of the purposes of the Consumer Leasing Act.

Clearly, current lease advertising provides no standardized format or uniform disclosures to permit consumers to make an intelligent and informed choice between leasing and buying an automobile or even to make comparisons among comparable leases offered by different dealers.

Given the confusion created by lease advertising and the complexity of the leases themselves, it is not surprising that reports of deceptive or abusing leasing practices are increasing. The State attorneys general report a dramatic increase in the number of consumer leasing complaints received by our offices. Local consumer affairs agencies in areas as diverse as San Jose, CA; Montgomery County, MD; and Penellas County, FL, all have reported auto leasing as the area in which consumer complaints have increased most significantly in recent years. Public agencies and consumer organizations all point to the inadequacy of information available to consumers, as well as growing pressures on auto dealers to maximize profits through leasing, as creating an enormous potential for abuse of consumers and as emphasizing the need for increased consumer protection.

II. OVERVIEW OF THE LEGISLATION

The legislation I am introducing today offers a comprehensive approach to the problems of automobile lease disclosure both in lease documents and in advertising. Indeed, the bill is the first legislation, that I am aware of, to propose comprehensive revision of the Consumer Leasing Act since the act was passed 20 years ago.

In general terms, the legislation amends the Consumer Leasing Act to implement many of the changes in lease disclosure and advertising recommended last year by the attorneys general task force. It incorporates technical changes requested by the Federal Reserve Board. It seeks to apply to all forms of lease advertising recent Federal Trade Commission standards for clear and conspicuous disclosure, as well as the FTC's proposed equal prominence standard for lease advertising. And it proposes required disclosure of a lease interest rate and other changes to enhance lease disclosure and advertising advocated by the Consumer Federation and other consumer organizations.

More specifically, my legislation would modify and update the disclosure requirements in current law to provide consumers with more visible, more complete, and more relevant information in lease documents about the terms and costs of auto leases. It would create a special requirement for automobile leases, modeled on proposals recently implemented by the leasing subsidiary of Ford Motor Co., that require the highlighted disclosure of key consumer costs and consumer notices or warnings at the beginning of the lease document. And it requires that consumers receive required disclosure before the lease signing in situations where an automobile must be ordered and the consumer is required to pay a deposit or incurs any other form of financial or legal obligation.

However, it is in the area of lease advertising that my legislation would make the most far-reaching changes. It clarifies the clear and conspicuous disclosure requirement in current law by incorporating the more specific reasonably understandable standards used by the Federal Trade Commission in the 900 number rule and in other industry advertising orders. It extends disclosure requirements to advertisements on the Internet. It requires all lease advertisements to disclose a lease rate computed as an annual percentage rate. It requires that disclosures in foreign language advertisements be made in the language primarily used in the advertisement. And it would permit television advertisers to use the alternative toll-free telephone disclosure option in current law for radio advertisements and clarify disclosure standards for toll-free telephone advertising.

The bill also addresses the more abusive advertising practices that are clearly intended to confuse or deceive consumers. It would prohibit lease advertisers from claiming that no down payment is required when, in fact, significant fees and charges are required to be paid at lease signing. It requires that transactions be clearly identified as a lease at least as prominently as any featured lease term or payment. It would prohibit the mixing of the terms of leases and installment credit transactions in the same advertisement. And it would prevent lessors from advertising lease terms that are offered only to select consumers or advertising lease terms for vehicle models they do not have in sufficient quantities to meet reasonably anticipated consumer demand.

Finally, the bill introduces a new initiative for print advertisements which would move auto lease advertising toward a uniform pricing approach that encourages comparison shopping by consumers. The proposal creates a special lease box requirement for printed lease advertisements that simplifies the disclosures required for lessors, makes disclosures more visible and understandable to consumers and provides greater uniformity in terminology and cost disclosures. It would make disclosed costs more relevant to lease terms offered to consumers by requiring that advertised costs represent average costs of comparable vehicles leased by the advertising dealer with option packages most commonly requested by consumers. And it would require that key factors used to calculate monthly lease payments—the lease terms, vehicle residual value, and excess mileage limits—be standardized to reflect standard industry practices in order to minimize their manipulation to produce artificially low monthly payment amounts in lease advertisements.

The proposal would standardize the information disclosed for comparable automobile models and highlight actual differences in vehicle capitalized costs, up front payments and lease interest rates among advertised lease options. The bill acknowledges that this is only one approach to introducing uniform pricing and disclosure to automobile leasing. It directs the Federal Reserve Board to study additional or alternative approaches for standardizing the terms and cost disclosures of auto leases and to propose appropriate initiatives that would permit more direct comparison of the base costs of competing lease transactions.

Mr. Speaker, in all these provisions I have tried to incorporate proposals that balance the consumers right to know all relevant information about the terms and costs of automobile leases with the need to minimize the burdens of disclosure for automobile dealers and advertisers. I have also sought to incorporate the best ideas of public agencies and consumer organizations that have studied the problems of consumer leasing, as well as the recommendations of the automobile leasing industry. I do not claim that the proposals in my bill are the only solutions to the problems addressed, nor even necessarily the best approaches. But I believe they will help us to begin a necessary dialog on this important issue.

III. CONCLUSION

My purpose in this bill is to encourage broader understanding of the growing importance of automobile leasing, of the increasing problems in leasing practices and lease advertising, and of the various solutions that are being discussed by public officials in this country and in Canada. And my intent is to encourage as comprehensive a debate as possible in Congress on the complex and timely consumer issues raised by automobile leasing.

My legislation also responds to changes in current auto leasing requirements that were incorporated by the majority in last year's bank regulatory relief legislation. A broad manager's amendment put forward during full committee consideration of this legislation struck some of the more positive initiatives proposed in earlier legislation by Mr. BEREUTER. The amendment replaced these initiatives with provisions designed to create a safe harbor for disclosures made by auto lessors and to limit significantly the civil liability of automobile leasing companies for false disclosures relating to numerous key disclosures for consumers, including descriptions of the property to be leased, additional fees and charges, lease-end liabilities and purchase options. These changes were proposed without congressional hearings and were approved without any oral or written presentation or discussion.

The growing importance of automobile leasing requires that changes in lease disclosure and advertising be given broad and careful consideration by Congress and not become just another hidden giveaway to special interests. In adopting the original Consumer Leasing Act 20 years ago, Congress recognized that applying any lesser standard than full and complete disclosure to automobile leasing is an invitation to abuse and deception. The same considerations should govern what we do today.

The legislation I am introducing simply requires that consumers be given full information about lease transactions in a manner which is understandable and which allows them to make intelligent purchasing decisions. The experiences of the State attorneys general, local consumer affairs offices and consumer organizations suggest that current relations and the methods used by lessors to comply with them, to quote the attorneys general statement, often make it impossible for consumers to make such decisions.

I urge the Congress to initiate broad hearings designed to incorporate all points of view

on issues related to automobile leasing, and I urge my colleagues to give careful consideration to the changes and initiatives proposed in this legislation.

JUSTICE STEPHEN BREYER'S ADDRESS FOR THE 1995 DAYS OF REMEMBRANCE CEREMONY

HON. TOM LANTOS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 23, 1996

Mr. LANTOS. Mr. Speaker, on April 16, Members of Congress, members of the diplomatic corps and hundreds of survivors of the Holocaust and their friends gathered here in the Capitol Rotunda for the Days of Remembrance ceremony. The U.S. Holocaust Memorial Council was established by Congress to preserve the memory of the horrors of the Holocaust. I commend the Council and the members of the Days of Remembrance Committee, chaired by my good friend Benjamin Meed, for their vigilant and genuine adherence to their extraordinarily important task.

One of the first acts of the committee was to establish the Days of Remembrance ceremony to mirror similar ceremonies held in Israel and throughout our Nation and the World. This year, the Days of Remembrance ceremony centered on the 50th anniversary of the Nuremberg trials. The ceremony was a reminder of the difficult process of first coping and their healing that all survivors and process of first coping and then healing that all survivors and their families and loved ones had to endure.

At this ceremony I was touched by the especially poignant words of Associate Justice Stephen Breyer. Throughout his life he has committed himself to the guidance of education and the principal of justice. These were the principles that he chose to speak of, so eloquently, during the ceremony.

Therefore, it was befitting that a leader from the highest court of our land address the ceremony commemorating the triumph of justice over barbarity. Justice Breyer stands as a symbol of our country's fervent commitment to the rule of law. His remarks commemorating the 50th anniversary of the Nuremberg Trials will endure as a tribute to those who championed the forces of justice, compassion and equality in an environment where those same qualities were callously disregarded. I ask by colleagues to join me congratulating Justice Breyer on his excellent speech; may its wonderful and inspirational message find its way into the hearts and minds of individuals around the world.

CRIMES AGAINST HUMANITY, NUREMBERG, 1946

(By Stephen Breyer, Associate Supreme Court Justice)

The law of the United States sets aside today, Yom Hashoah, as a Day of Remembrance—of the Holocaust. On Yom Hashoah 1996, we recall that fifty years ago another member of the Court on which I sit, Justice Robert Jackson, joined representatives of other nations, as a prosecutor, at Nuremberg. That city, Jackson said, though chosen for the trial because of its comparatively will-functioned physical facilities, was then ''in terrible shape, there being no telephone communications, the streets full of rubble, with some twenty thousand dead bodies reported to be still in it and the smell of death hovering over it, no public transportation of any kind, no shops, no commerce, no lights, the water system in bad shape.'' The courthouse had been ''damaged.'' Its courtroom was ''not large.'' Over one door was ''an hour glass.'' Over another was ''a large plaque of the Ten Commandments''—a sole survivor. In the dock 21 leaders of Hitler's Thousand Year Reich faced prosecution.

Justice Jackson described the Nuremberg Trial as ''the most important trial that could be imagined.'' He described his own work there as the most important ''experience of my life,'' ''infinitely more important than my work on the Supreme Court, or . . . anything that I did as Attorney General.'' This afternoon, speaking to you as an American Jew, a judge, a Member of the Supreme Court, I should like briefly to explain why I think that he was right.

First, as a lawyer, Robert Jackson understood the importance of collecting evidence. Collecting evidence? one might respond. What need to collect evidence in a city where, only twenty years before, the law itself, in the form of Nuremberg Decrees, had segregated Jews into Ghettos, placed them in forced labor, expelled them from their professions, expropriated their property, and forbid them all cultural life, press, theater, and schools. What need to collect evidence with the death camps that followed themselves opened to a world, which finally might see. ''Evidence,'' one might then have exclaimed. ''Just open your eyes and look around you.''

But the Torah tells us, There grew up a generation that ''knew not Joseph.'' That is the danger. And Jackson was determined to compile a record that would not leave that, or any other future generation with the slightest doubt. ''We must establish incredible events by credible evidence,'' he said. And, he realized that, for this purpose, the prosecution's 33 live witnesses were of secondary importance. Rather, the prosecutors built what Jackson called ''a drab case,'' which did not ''appeal to the press'' or the public, but it was an irrefutable case. It was built of documents of the defendants ''own making,'' the ''authenticity of which'' could not be, and was not ''challenged.'' The prosecutors brought to Nuremberg 100,000 captured German documents; they examined millions of feet of captured moving picture film; they produced 25,000 captured still photographs, ''together with Hitler's personal photographer who took most of them.'' The prosecutors decided not to ask any defendant to testify against another defendant, lest anyone believe that one defendant's hope for leniency led him to exaggerate another's crimes. But they permitted each defendant to call witnesses, to testify in his own behalf, to make an additional statement not under oath, and to present documentary evidence. The very point was to say to these defendants: What have you to say when faced with our case—a case that you, not we, have made, resting on your own words and confessed deeds? What is your response? The answer, after more than 10 months and 17,000 transcript pages, was, in respect to nineteen of the defendants, that there was no answer. There was no response. There was nothing to say. As a result, the evidence is there, in Jackson's words, ''with such authenticity and in such detail that there can be no responsible denial of these crimes in the future and no tradition of martyrdom of the Nazi leaders can arise among informed people.'' Future generations need only open their eyes and read.

Second, as a judge, Robert Jackson understood the value of precedent—what Cardozo called ''the power of the beaten path.'' He hoped to create a precedent that, he said, would make ''explicit and unambiguous'' what previously had been ''implicit'' in the law, ''that to persecute, oppress, or do violence to individuals or minorities on political, racial, or religious grounds . . . is an international crime . . . for the commission [of which] . . . individuals are responsible'' and can be punished. He hoped to forge from the victorious nations' several different legal systems a single workable system that, in this instance, would serve as the voice of human decency. He hoped to create a ''model of forensic fairness'' that even a defeated nation would perceive as fair.

Did he succeed? At the least, three-quarters of the German nation at the time said they found the trial ''fair'' and ''just.'' More importantly, there is cause for optimism about the larger objectives. Consider how concern for the protection of basic human liberties grew dramatically in the United States, in Europe, and then further abroad, in the half century after World War II. Consider the development of what is now a near consensus that legal institutions—written constitutions, bills of rights, fair procedures, an independent judiciary—should play a role, sometimes an important role, in the protection of human liberty. Consider that, today, a half century after Nuremberg (and history does not count fifty years as long), nations feel that they cannot simply ignore the most barbarous acts of other nations; nor, for that matter, as recent events show, can those who commit those acts ignore the ever more real possibility that they will be held accountable and brought to justice under law. We are drawn to follow a path once beaten.

Third, as a human being, Jackson believed that the Nuremberg trials represented a human effort to fulfill a basic human aspiration—''humanity's aspiration to do justice.'' He enunciated this effort in his opening statement to the Tribunal. He began: ''The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate being ignored because it cannot survive their being repeated. That four nations flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power ever has paid to Reason.''

To understand the significance of this statement, it is important to understand what it is not. Nuremberg does not purport to be humanity's answer to the cataclysmic events the opening statement goes on to describe. A visit to the Holocaust Museum (or, for some, to the corridors of memory) makes clear that not even Jackson's fine sentences, eloquent though they are, can compensate for the events that provoked them. But, that is only because, against the background of what did occur, almost any human statement would ring hollow. A museum visit leads many, including myself, to react, not with words, but with silence. We think: There are no words. There is no compensating deed. There can be no vengeance. Nor is any happy ending possible. We emerge deeply depressed about the potential for evil that human beings possess.

It is at this point, perhaps, that Nuremberg can help, for it reminds us that the Holocaust story is not the whole story; it reminds us of those human aspirations that remain a cause for optimism. It reminds us that after barbarism came a call for reasoned justice.

To end the Holocaust story with a fair trial, an emblem of that justice, is to remind the listener of what Aeschylus wrote twenty-five hundred years ago, in his ''Eumenides''—where Justice overcoming the avenging furies, humanity's barbaric selves, promises Athens that her seat, the seat of Justice,