



June 20, 2019

Speaker Carl Heastie
New York Assembly
LOB 932
Albany, NY 12248

Re: NY Assembly Bill 2078B/Senate Bill 4019A concerning motor vehicles leases

Dear Speaker Heastie:

I write on behalf of the American Financial Services Association (AFSA)¹ to register our serious concerns with Assembly Bill 2078B/Senate Bill 4019A, which would remove liability for the early termination of a lease in the event of a lessee's death. Though the proposed legislation intends to provide relief for individuals who may find themselves in very difficult situations following the death of a loved one, AFSA believes it could have serious consequences for New York consumers and raise the cost of credit across the state.

The draft legislation requires that a retail lessee not be liable for charges for the early termination of a motor vehicle lease agreement if the lessee has deceased before the end of the lease term. Motor vehicle lessors are sympathetic to circumstances created by the loss of loved ones and the industry makes significant efforts to deal sensitively with lessees and their families during times of loss. Many lessors have developed specially trained customer service teams to help lessees in these circumstances. However, it is important to keep in mind that vehicle leases are contractual obligations based on an underlying tangible asset that depreciates in value over time and is subject to physical wear and tear, making them significantly different than other consumer contracts, such as for internet or cell phone services. Any legislation that creates a right to waive liability under valid contractual obligations could create unintended consequences for the overall market.

This legislation would require significant changes to well-established and accepted terms of most motor vehicle leases. In its current form, the bills' language is vague and inconsistent across sections and leaves no system in place for the practical implementation of the legislation, which creates significant compliance challenges for lessors in the state seeking to comply with the law. Nearly all motor vehicle leases provide for the assessment of reasonable early termination fees in order to recoup all costs arising from early termination and the unexpected disruption of the lease term, and these costs are clearly disclosed to consumers when they enter into the contract.

Lease agreements are priced based on the lessee or, when they exist, co-lessees holding the vehicle to the end of the lease term. These prices take into account many factors, including the

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance.

cost of normal wear and the expected depreciating value of the vehicle over that time. Early termination of a lease—for any reason—upsets the term-based pricing of the lease, and therefore most lessors take steps to account for risks arising from early termination in the lease contract. If the state prohibits any liability at the time of early termination of the lease, the costs and risks associated with early termination may necessarily be priced into leases, which may result in increased costs for New York consumers seeking to lease a vehicle.

When it first passed the Motor Vehicle Retail Leasing Act (MVRLA), the New York legislature recognized the necessity of such charges in the event of early termination of the lease agreement and authorized lessors to collect certain fees, including unpaid rental payments, a reasonable disposition fee, and official fees and taxes. The existing restrictions on early termination liability in the MVRLA² protect consumers from abuses while still preserving lessors' ability to recoup the numerous costs incurred as a result of the early termination.

The bills' current language is vague and inconsistent, leaving it unclear which, if any, of the currently authorized costs lessors may recover. Each section has a different meaning and different implications for the end result for the lessee and lessor. For instance, Section 1 states a lessee shall not be liable for "charges for the early termination"; Section 2 states a lessee shall not be liable for "an early termination fee"; and Section 3 states there shall be "no early termination liability to the lessee." Section 2 would prohibit an early termination fee, a phrase that is otherwise undefined in the personal property law, but seemingly more specific than the charges referred to in Section 1. The implications of the language in Section 3 are the most severe, as no liability could mean ALL amounts due under the lease—and authorized under the MVRLA—should be waived including unpaid rental payments, unpaid charges arising from the lessee's failure to fulfill his obligations under the lease (e.g. late fees), official fees and taxes, and the costs of retaking, storing, prepping for sale, and selling the vehicle. The state has a vital interest in permitting the enforcement of reasonable, valid obligations of lessees and other obligors to ensure the existence of a robust credit market, and potential ambiguity created under 2078B/S 4019A's current language could undermine that interest.

As drafted, these bills do not provide a system under which a deceased lessee may be freed of liability. There are no deadlines for the return of the leased vehicle to a lessor; no clear mechanisms to ensure that the vehicle in question is returned in a timely fashion; no standards to which the physical condition of the vehicle may be held upon return; and no means through which a lessor may verify the lessee's death, if necessary. By contrast, the federal Servicemember Civil Relief Act and its implementing regulations provide both lessee and lessor with clear processes and standards when a vehicle lease is terminated early due to military deployment. Any legislation significantly affecting early termination liability under a lease agreement must address each of these issues, at the very least.

Further problematic, the bills make no consideration of situations where there is a surviving co-lessee. Co-lessees enjoy benefits provided under lease agreements and assume all responsibilities of that agreement as well. It is not clear whether this language would create instances in which a co-lessee can relieve themselves of responsibilities which they freely assumed.

² See Section 341 of the personal property law.

The legislation would have significant consequences for the leasing market in New York due to the issues outlined above. While we are sympathetic to the legislation's intention of providing relief for individuals who may find themselves in very difficult situations following the death of a loved one, the existing protections in state law protecting consumers from abuse make the bills unnecessary and do not warrant the significant disruption to the state's credit markets. Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki". The signature is written in a cursive style and is positioned above the typed name and address.

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517

CC: Assemblywoman Aileen Gunther
Senator Kevin Thomas