

**SB**

**227**

# National Bank of Alaska



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Mr. C.B. Toh  
Vice President  
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October 21, 1993

Alaska State Senator Jay Kerttula  
P.O. Box 1009  
Palmer, AK 99645

Attention: Bill Kelder, Esquire

Re: TRAC Vehicle Leasing in Alaska

Dear Senator Kerttula:

I am writing you on behalf of National Bank of Alaska. Earlier this year, the Alaska Legislature enacted a set of amendments to UCC 1-201(37), sharpening the state law distinction between a "lease" and a "security interest" in transactions involving equipment and motor vehicles. While this new law is helpful in many situations, it is silent about our long-standing business practice of leasing fleets of motor vehicles to commercial business lessees under agreements with terminal rental adjustment clauses (TRACs). We seek your help in enacting legislation that would clarify the status of TRAC motor vehicle leases as true leases under Alaska state law.

Two national trade associations -- the American Automotive Leasing Association (AALA) and the Equipment Leasing Association (ELA) -- wrote you earlier about the need for TRAC/state legislation in Alaska. We agree with AALA and ELA.

What AALA, ELA and National Bank of Alaska are seeking is the enactment of legislation adding the following new section 28.10.375 to the Alaska Statutes:

Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES: VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS.

In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

This is non-controversial, public interest legislation that will help put TRAC vehicle leases on a level playing field with other kinds of leases for state law and bankruptcy law purposes. If enacted in Alaska, this legislation will treat TRAC vehicle leases like all other leases, with the result that TRAC vehicle lessors' risks and costs will be lowered, lessees' rental rates will be reduced, and both interstate commerce and commerce within the state of Alaska will be facilitated.

Senator Jay Kerttula  
October 21, 1993  
Page 2

Thank you very much for your consideration. I look forward to your earliest favorable response.

Sincerely,  
NATIONAL BANK OF ALASKA



C. B. Toh  
Vice President

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
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Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

January 20, 1994

**SUBJECT:** Sectional Summary of SB 227 (Work Order No. 8-LS1332\A)

**TO:** Senator Jalmar Kerttula  
Attn: Carol

**FROM:**  Theresa L. Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Prevents certain motor vehicle and trailer transactions from being considered sales or security interests just because they provide that the rental price is permitted or required to be adjusted by reference to the amount realized from the sale or other disposition of the motor vehicle or trailer.

**Section 2.** States that sec. 1 doesn't apply to transactions that are entered into before the effective date of the Act.

TLB:gc  
94-043.glc



Official Business

# Alaska State Legislature

## Senate

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 21, 1993

### MEMORANDUM

To: Senator Loren Leman, Chair *Loren*  
Senate State Affairs Committee

From: Senator Jay Kerttula *Jay*

Re: S.B. 227 Relating to Motor Vehicle Rental Terms

Please schedule the above bill at your earliest convenience. Attached you will find a sectional analysis, sponsor statement, and a fiscal note from the Department of Public Safety has been requested. I have also included a letter from the National Bank of Alaska for your information.

Thank you in advance for your assistance in this matter.

SPONSOR STATEMENT S.B. 227  
TERMINAL RENTAL ADJUSTMENT CLAUSES  
FOR MOTOR VEHICLES AND TRAILERS

SENATOR JAY KERTTULA

S. B. 207 WOULD CLARIFY IN LAW THE STATUS OF LEASES WHEN THEY INCLUDE A TERMINAL RENTAL ADJUSTMENT CLAUSE. A TERMINAL RENTAL ADJUSTMENT CLAUSE (TRAC) IS A SORT OF INSURANCE POLICY FOR THE LESSOR. IT PROVIDES FOR AN INCREASE IN THE LEASE PAYMENTS DEPENDING ON THE VALUE OF THE VEHICLE AT THE END OF THE LEASE. IF THE VEHICLE HAS BEEN WELL MAINTAINED THEN THE COST TO THE LESSEE WILL BE LESS. IF THE VEHICLE HAS HAD MORE THAN REASONABLE WEAR AND TEAR, THEN THE COST TO THE LESSEE WILL BE GREATER THAN THAT NEGOTIATED AT THE BEGINNING OF THE LEASE. THIS TRAC IS WRITTEN INTO A LEASE IN ORDER TO PROTECT THE VALUE OF THE ASSET OF THE LESSOR AT TERMINATION OF THE LEASE.

THIS SECTION WOULD MAKE EXPLICIT IN LAW THAT A TRAC DOES NOT IN AND OF ITSELF AFFECT THE NATURE OF A LEASE IN MOTOR VEHICLES OR TRAILERS--THESE LEASES CAN STILL BE "TRUE"

LEASES. (A TRUE LEASE IS ONE IN WHICH THE LESSOR HAS TITLE AND RETAINS OWNERSHIP IN THE ASSET DURING AND AFTER THE LEASE.)

THIS IS IMPORTANT ESPECIALLY IN BANKRUPTCY CASES WHERE THE LESSOR OF A TRUE LEASE IS ABLE TO RECOVER THE VEHICLES FROM THE LESSEE WITHOUT FEAR OF THE COURT TYING THE ASSETS UP. IF IT WAS UNCLEAR THAT THE LEASE WAS A TRUE LEASE, FOR EXAMPLE IF THERE WAS SOME QUESTION AS TO WHETHER THE LESSEE HAD A PROPRIETARY INTEREST IN THE ASSET, THEN THE BANKRUPTCY COURT COULD PREVENT THE LESSOR FROM RECOVERING THE VEHICLES IMMEDIATELY AND COULD, WORSE CASE, SELL THE VEHICLES AND PAY ANY NUMBER OF THE LESSEE'S DEBTS.

THIS MAKES IT VERY IMPORTANT FOR THE LAW TO BE CLEAR ON WHETHER OR NOT A TRAC AFFECTS THE NATURE OF A LEASE. THIS SECTION WILL CLARIFY IN LAW THAT TRACS CAN BE IN TRUE LEASES WITHOUT CHANGING THE NATURE OF THAT LEASE.

**FISCAL NOTE**

Revision Date:  
Title: Vehicle Lease Terminal Rental Adjustment

Department Affected: DOT&PF  
BRU: STW Administrative Services

Sponsor: Kerttula  
Requestor:

Component: State Equipment Fleet  
Component Serial Number: #539

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ \_\_\_\_\_

**ANALYSIS: (Attach a separate page if necessary)**

No financial impact to the state's equipment fleet is anticipated as a result of this legislation.

Prepared by: Ken Langel, Manager

Phone: 205-2461

Division: State Equipment Fleet

Date: February 16, 1993

Approved by Commissioner:   
B.A. Campbell

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 17, 1994

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**SENATE BILL NO. 227**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY SENATOR KERTTULA**

**Introduced:**

**Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to terminal rental adjustment clauses for motor vehicles and  
2 trailers."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 28.10 is amended by adding a new section to read:

5           Section 28.10.375. **EFFECT OF TERMINAL RENTAL ADJUSTMENT**  
6 **CLAUSES.** Notwithstanding other provisions of law, a transaction involving a motor  
7 vehicle or trailer does not create a sale or security interest merely because the  
8 transaction provides that the rental price is permitted or required to be adjusted under  
9 the agreement either upward or downward by reference to the amount realized upon  
10 the sale or other disposition of the motor vehicle or trailer.

11 \* **Sec. 2.** ~~The~~ Act does not apply to a transaction involving a motor vehicle or trailer  
12 unless the transaction is entered into on or after the effective date of this Act.