

SB

227

VOLPE, BOSKEY AND LYONS

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September 9, 1993

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

Attention: Bill Kelder, Esquire

Re: TRAC vehicle leasing in Alaska

Dear Senator Kertula:

Our firm represents both the American Automotive Leasing Association (AALA) and the Equipment Leasing Association of America (ELA). I am writing on behalf of both AALA and ELA to ask your help in enacting Alaska state legislation to safeguard our member companies' wide-spread practice of leasing fleets of motor vehicles to commercial business lessees under lease agreements with terminal rental adjustment clauses (TRACs).

What we are seeking is a separate stand-alone bill on TRAC vehicle leasing, adding the following new section 28.10.-375 to the Alaska Statutes, Title 28 ("Motor Vehicles"), Chapter 10 ("Vehicle Registration and Title"), Article 4 ("Filing Documents Evidencing Liens or Encumbrances"):

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.

The origin, purposes and effect of this provision are explained in detail in the enclosures. See New Developments: Article 2A Leases of Goods, 1993 Commercial Law Annual at pp.124-130 (enclosed). This is non-controversial, public interest legislation that, if enacted, will enhance both interstate commerce and commerce within the State of Alaska.

Twenty (20) jurisdictions have now adopted our model TRAC/state law or its functional equivalent: Alabama, District of Columbia, Florida, Illinois, Louisiana, Michigan, Minnesota, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Vermont, Virginia, Washington, and Wisconsin. We sincerely hope Alaska will follow suit.

Our specific request is this: If you agree with us that this is meritorious legislation, would you pre-file a TRAC/-state law bill in 1993 for consideration by the Alaska legislature at the earliest possible time in 1994?

Thank you for considering our views on this important public interest measure.

Yours very truly,



Edwin E. Huddleson, III

Enclosures

cc: (w. enclosures)

Chairman Bill Hudson
Alaska House Labor and Commerce Committee

Mr. James L. Cloud
Vice President
National Bank of Alaska Tel: (907) 265-2816
P.O. Box 100600
Anchorage, Alaska 99503

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301 W. Northern Lights Blvd., Anchorage, AK 99503.

Mr. C.B. Toh
Vice President
Direct: (907) 265-2078
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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.

— LETTERS OF SUPPORT —

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
FAX (907) 465-2029
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: *TLB*
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

- SECTIONAL SUMMARY -

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

SENATOR JAY KERTTULA

S. B. 227 would clarify in law the status of leases when they include a terminal rental adjustment clause. A terminal rental adjustment clause (TRAC) is frequently included in commercial leases of a fleet of cars. It provides for an increase or decrease in the cost of the lease depending on the value of the vehicles 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, the lessee will pay more. The TRAC is in the lease not only to protect the value of the assets but to reduce the cost to the lessee based on the condition of the vehicle.

This new section in the motor vehicle laws would make explicit that a TRAC does not in and of itself affect the nature of a lease. The leases can still be true leases.

This is important especially in bankruptcy cases where the lessor of a true lease is able to recover the vehicles or payment from the lessee without fear of the court tying-up the assets.

If there was a question as to whether the lessee had a proprietary interest in the asset, then the court could prevent the lessor from recovering the vehicles immediately or could sell the vehicles to pay other debts.

Consequently, inclusion in law of this section would make clear the impact of a TRAC on a lease and simplify proceedings as to TRACs in bankruptcy court.

SENATE COMMITTEE REPORT

DATE: 3/14/94

FURTHER:

DATE TURNED INTO OFFICE: 4-5-94

Transportation Committee considered SENATE BILL NO. 227

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

and recommends:

- replace with _____ CS _____ ()
- or adopt previous _____ CS _____ ()
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

- adopts _____ Letter of Intent
- further referral to the _____

- do pass
- do not pass
- no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DEPT PUB SAFETY	2/22/94	X	
SEN. STATE			
AFFAIRS CMTE	2/16/94	X	

Appropriation No Fiscal Note

DO PASS: Tim Kelly

[Signature]

OTHER RECOMMENDATIONS:

[Signature] Do Pass

Chair: Signature and Recommendation

FEB 27 1994

FISCAL NOTE

Revision Date: Department Affected: DOT&PF
 Title: Vehicle Lease Terminal Rental Adjusment BRU: STW Administrative Services
 Sponsor: Kertula Component: State Equipment Fleet
 Requestor: 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
TOTAL OPERATING:	0	0	0	0	0	0

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
TOTAL FUNDING:	0	0	0	0	0	0

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: 266-2461

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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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: SB 227

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to terminal rental BRU: Motor Vehicles
adjustment clauses for motor vehicles and trailers. Component: Administration
 Sponsor: Senator Kerttula
 Requestor: Sen. L&C COMPONENT SERIAL NO. 501

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()						
REVENUE CODE						

FUNDING: (THOUSANDS OF DOLLARS)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECEIPTS						
1006 GF/MP/TIA						
OTHER						
TOTAL	0	0	0	0	0	0

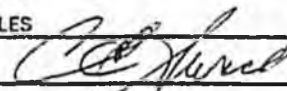
ESTIMATE OF CURRENT YEAR (FY 94) IMPACT: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY.)

FISCAL IMPACT IS NOT ANTICIPATED WITH THIS BILL.

PREPARED BY: JUANITA M. HENSLEY PHONE: 465-2650
 DIVISION: MOTOR VEHICLES DATE: 2/18/94
 APPROVED BY COMMISSIONER:  DATE: 2/22/94
 AGENCY: RICHARD L. BURTON, DEPT. OF PUBLIC SAFETY

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