ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8184 HOUSE STATE AFFAIRS

449

SB

227

(7) [redacted] HOUSE COMMITTEE REP[redacted]

Date Referred: April 27, 1994 FURTHER REFERRALS:

Date of Committee Action: 5-9-94

The STATE AFFAIRS Committee considered: SB 227

SENATE BILL NO. 227 MOTOR VEHICLE RENTAL TERMS

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

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[✓] zero fiscal note _____ [✓] zero fiscal note(s) Pub Safety, SSTA

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X				
	X				
	✓				
	✓				
	✓				
	X				

CHAIRMAN'S SIGNATURE

Alaska State Legislature
SENATE

Official Business

State Capitol
Juneau, AK 99801-1182

MAY 2 1 1994

April 29, 1994

MEMORANDUM

To: Representative Al Vezey, Chair
House State Affairs Committee

From: Senator Jay Kerttula

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

Please schedule the above bill at your convenience. Attached you will find a sectional analysis and a sponsor statement. I have also included selected back-up for your information.

Thank you in advance for your assistance in this matter.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL No.: SB 227

FEB 2 7 1994

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
TOTAL OPERATING:	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

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 NOTES

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 adjustment clauses for motor vehicles and trailers.

BRU: Motor Vehicles

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						
MISCELLA. OUS						
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/MHTIA						
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: [signature] DATE: 2/22/94

AGENCY: RICHARD L. BURTON, DEPT. OF PUBLIC SAFETY

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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.

SPONSOR STATEMENT

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: 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

SECT. SUMMARY

National Bank of Alaska

Mr. C.B. Toh
Vice President
Direct: (907) 265-2078
Fax: (907) 265-2141

Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 276-1132
301 W.Northern Lights Blvd., Anchorage, AK 99503.

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.

NBA LETTER

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

Sincerely,
NATIONAL BANK OF ALASKA

S.B. Toh
Vice President

VOLPE, BOSKEY AND LYONS
WORLD CENTER BUILDING
918 16TH STREET N W
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EDWIN E HUDDLESON, III

EVA F SHERMAN
MORRIS KLEIN

(202) 737-6580
FAX (202) 737-6000

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 DFocuments 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.

VOLPE, BOSKEY and LYONS LTR.

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

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

Arthur H. Peterson, Esquire
One Sealaska Plaza (Suite #202)
Juneau, Alaska 99801

New Developments: Article 2A Leases of Goods

By Edwin E. Huddleson, III

Reprinted from

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1993

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COMMERCIAL LAW ANNUAL

Part II. Leases—Article 2A

NEW DEVELOPMENTS: ARTICLE 2A LEASES OF GOODS

By Edwin E. Huddleson, III[*]

I. INTRODUCTION
II. TRUE LEASE OF GOODS DISTINGUISHED FROM "SALES" AND "SECURITY INTERESTS"
  A. IN GENERAL
  B. FINANCE LEASES
  C. TRAC VEHICLE LEASES page 124
  D. IMPLICATIONS FOR THE FUTURE
III. REMEDIES
IV. WARRANTIES AND DISCLAIMERS
V. TRANSFER OF LEASE INTERESTS: SECTION 2A-303
VI. LIEN PRIORITIES: SECTION 2A-307
VII. CONCLUSION

I. INTRODUCTION

Thirty-one states have now enacted Uniform Commercial Code (UCC) Article 2A—Leases.[1] With the 1990 uniform

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 B.S. 1967, Stanford University; J.D. 1970, University of Chicago; member of the California and District of Columbia bars; engaged in private practice in Washington, D.C.

The author would like to thank Brock J. Austin, Professor Neil B. Cohen, and Roy S. Powell, Jr., for their helpful comments on an earlier draft of this article.

[1]The original 1987 uniform version of the statute was enacted in Florida, Oregon, South Dakota, and Utah. With some minor variations from state to state, new improved UCC Article 2A (with its 1990 uniform amendments) has been enacted in Alabama, Arizona, California, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine,

amendments to the statute now in place, its eventual enactment in all the states seems assured. This short article briefly surveys the 1990 amendments, the major court decisions interpreting Article 2A, and some other recent developments about terminal rental adjustment clause (TRAC) vehicle leases and the long-term impact of UCC Article 2A that have attracted attention as state legislatures, courts, and the practicing bar come to grips with the new statute.

The major issues addressed by the 1990 amendments to Article 2A are:

(1) secured lenders' concerns about Sections 2A-303 (assignments) and 2A-307 (priorities: rights of lessor's secured creditors vis à vis the lessee);
(2) statutory remedies; and
(3) statutory "finance leases" under 2A-103(1)(g).

But the single most important "new development" may be an increased appreciation within the practicing bar of what the Article 2A statute really says. Over the years since Article 2A's initial promulgation in 1985, the bar has raised a variety of concerns about the statute. Some concerns were unfounded.[2] Other concerns were more substantial. Yet these concerns now

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Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Virginia, Wisconsin, and Wyoming. UCC Article 2A is pending in several other states as of this writing in mid 1992.

Texas and Louisiana enacted newly amended UCC § 1-201(37), sharpening the distinction between a lease and a security interest, effective September 1, 1989 (Texas) and January 1, 1990 (Louisiana).

[2]Early critics complained, for example, that UCC Article 2A failed to define "unconscionability"—the major limit on freedom of contract in Article 2A. But Article 2A's incorporation by reference principle (see Comment to UCC § 2A-101) means that the concept of "unconscionability" in UCC § 2A-108 is given specific meaning by the comparable provision in the old sales article (UCC § 2-302), its official comments, and case law developed under UCC § 2-302. Ordinarily, both "substantive" and "procedural" unconscionability are required before a court will strike down a lease provision as unconscionable. See, e.g., John Deere Leasing v. Blubaugh, 636 F Supp 1569, 1574-1575 (D Kan 1986). The courts rarely find "unconscionability" in commercial (as opposed to consumer) lease transactions. See, e.g., Pacific American Leasing Corp. v. SPE Building Systems, Inc., 152 Ariz 96 730 P2d 273, 279 (Ariz App 1986). Cf. UCC Series (Huddleson) Special Release 2

seem to have been laid to rest, particularly by the clarifications in the 1990 uniform amendments. At least, Article 2A now seems to be accepted as a workable and desirable part of the UCC that, like the other parts of the UCC, should be speedily enacted throughout the country.

II. TRUE LEASES OF GOODS DISTINGUISHED FROM 'SALES' AND 'SECURITY INTERESTS'

A. IN GENERAL

Why do we care whether a transaction is characterized as a true lease or a secured sale? True leases long have been distinguished from sales for many purposes, including the commercial law of remedies,[3] whether UCC filings are required and third-party rights, whether a transaction is covered by state usury laws,[4] and a lessor's rights under § 365 of the Bankruptcy Code when the lessee goes into bankruptcy.[5] The scope of Article 2A

(1991) § 2A:01 (canvassing cases and authorities defining 'unconscionability' in the context of lease transactions).

[3]Where a purported 'lease' is found to be a disguised security interest, the 'lessor' (secured party) may be barred from obtaining a deficiency judgment against a defaulting 'lessee' (debtor) if it failed to give notice to the debtor as required by UCC § 9-504(3). See, e.g., Fleming v. Carroll Pub. Co., 581 A2d 1219 (DC App 1990) (decided under old version of UCC § 1-201(37)). Cf. Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 641-657 (1988).

[4]True leases, as opposed to disguised loans or 'forebearances' of money, may be exempt from state usury laws. See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 623 & n 20 (1988) (collecting cases); Kinard v. Colonial Leasing Co., 800 SW2d 187 (Tex 1990) (court recharacterized 'lease' transaction with nominal purchase option as a loan and secured sale, and imposed penalties for usury on the 'lessor').

[5]True lessors of equipment are better off than holders of 'perfected security interests' who, in turn, are better off then holders of 'unperfected security interests,' when the lessee is in bankruptcy. See generally In re Pacific Exp., Inc., 780 F2d 1482 (CA9 1986) (opinion spelling out the difference between a true lease and a security interest, where lessee/borrower is in bankruptcy). Thus, true lessors generally are entitled to receive full current rental payments or (on appropriate motion) to repossess their equipment, under 11 USC § 365, if the 'lease' transaction is viewed as a true lease. See, e.g., In re Curry Printers, Inc., 135 BR 564 (BC ND Ind 1991); In re Fred Sanders Co., 9 BCD 677, 22 BR 902, 7 CBC2d 421 (BC ED Mich 1982) ('objective approach' taken by the majority of courts: when lessee is in bankruptcy reorganization,

is limited to apply to "any transaction, regardless of form, that creates a lease" of goods.[6]

The impact of amended Section 1-201(37) has generally improved the quality of court decisions that characterize a transaction as a lease, or sale, or security interest.[7] What the amended statute makes clear is the importance of the lessor's meaningful economic interest in the residual, or what one commentator calls the lessor's "reversionary interest,"[8] as the central touchstone in the definition of a true lease.

---

lessor's administrative rent claim is measured by the "reasonable rental value" of the equipment—presumptively the rent specified in the lease agreement—regardless of the amount of lessee's actual use of the equipment). Compare In re Lease-A-Fleet, Inc., No. 91-129965 (BC ED Pa May 7, 1992) and In re Grant Broadcasting, 71 BR 891, 16 CBC 2d 1116 (BC ED Pa 1987) ("subjective approach": when lessee is in bankruptcy reorganization, lessor's administrative rent claim is measured based on the lessee's actual use of the leased property, and not on the rental rate specified in the lease agreement). By contrast, if a "lease" is viewed as a "perfected security interest" and not a true lease, then the "lessor" in this situation will have the right to receive payments representing only the depreciation on the leased equipment (about 50% to 80% of full rentals, in the recent experience of some equipment lessors). And if the "lease" is viewed as an "unperfected security interest," the trustee in bankruptcy may be able to keep the equipment, without making current payments of any kind, and sell it. See In re Tulsa Port Warehouse Co., Inc., 690 F2d 809 (CA10 1982).

There is no federal statutory definition of a lease, and federal bankruptcy law generally has looked to state commercial law to define the difference between a true lease and a security interest. See discussion of In re Pan Am Corp., 21 BCD 757, 124 BR 960 (BC SD NY 1991).

[6] UCC § 2A-102.

[7] "A lease involves payment for the temporary possession, use and enjoyment of goods, with the expectation that the goods will be returned to the owner with some expected residual interest of value remaining at the end of the lease term. In contrast, a sale involves an unconditional transfer of absolute title to goods, while a security interest is only an inchoate interest contingent on default and limited to the remaining secured debt." 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 2, at 5, n 1 (3rd ed 1991).

[8] See id. at 7-10.

The United States District Court, in In re Cole,[9] held that "closed end" vehicle leases were true leases, not disguised security agreements, principally on the ground that the lessor retained a meaningful economic interest in the residual. The opinion cited, among other things, lease provisions protecting the lessor's residual by limiting the number of miles the vehicles could be driven and imposing extra charges for excess "wear and tear." The court treated revised Section 1-201(37) as clarifying and declarative of earlier law on whether a transaction should be viewed as a lease, or sale, or security interest.

True leases were also found to exist in In re Thummel,[10] where the bankruptcy court used similar reasoning in a case involving a similar vehicle lease. The lessees in both Cole and Thummel had the right to unilaterally terminate the lease agreement. As one commentator has remarked: "If the 'lease' is terminable at the will of the lessee, and if upon return of the asset, there is no further obligation, the transaction cannot be a secured sale."[11] Where the lessee has an unfettered right to "walk away" and return the goods to the lessor, without penalty, the lessor necessarily has a meaningful economic interest or "entrepreneurial stake" in the residual.[12]

Where the "lessor" lacks a meaningful economic interest in the residual, the transaction will not qualify as a true lease under amended Section 1-201(37). This is implicit, not explicit, in amended Section 1-201(37). This principle was implicitly invoked by the Bankruptcy Court in In re Answer—Elegant Large Size Discounter, Inc.[13] to recharacterize a purported

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[9] In re Cole, 114 BR 278 (ND Okla 1990), affg 100 BR 561 (BC ND Okla 1989), and revg In re Thompson, 101 BR 658 (BC ND Okla 1989).

[10] In re Thummel, 109 BR 447 (BC ND Okla 1989).

[11] 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 2, at 18 (3d ed 1991), citing In re Marhoefer Packing Co., 674 F2d 1139 (CA7 1982). But cf. In re Burton, 128 BR 807, 814-815 (BC ND Ala 1989), affd 128 BR 820 (ND Ala 1989) (decided under old version of UCC § 1-201(37), court rejects the "walk away" test for true lease status as "not very realistic" in the case of an unsophisticated consumer lessee/buyer).

[12] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 631 n 39 (1988) (analyzing Marhoefer lessee's "right to walk away" in terms of its impact on the lessor's meaningful residual interest).

[13] In re Answer—Elegant Large Size Discounter, Inc., 115 BR 465 (BC SD NY 1990).

"lease" of custom-designed computer equipment as a security interest. The opinion referred to newly amended Section 1-201(37) and correctly observed that it is important whether "due to obsolescence or special use, the property is useless to others at the end of the agreement term."[14]

Even after amended Section 1-201(37), some courts continue to have difficulty with typical "net lease" provisions under which the lessee is responsible for all taxes, maintenance, and loss or damage. The opinion in In re Answer was muddied by the court's reliance on the presence of "net lease" provisions to buttress its conclusion that the transaction was a disguised security interest rather than a true lease. Under amended Section 1-201(37), such extraneous factors do not disqualify a transaction from true lease status. One commentator has correctly observed that these extraneous factors are not only "not enough," but generally are irrelevant in determining whether a document is a lease or a security agreement.[15]

The import of a "full payout" feature in a lease was addressed by a Pennsylvania bankruptcy court in In re Aspen Impressions, Inc.[16] The court held that the "full payout" lease there was a true lease. It considered amended Section 1-201(37) as relevant to the lease/sale/security interest issue even though the amendments were not yet adopted in the jurisdiction whose law was controlling. And amended Section 1-201(37) explicitly states that the mere presence of a "full payout" feature does not destroy the true lease character of a transaction or transform a lease agreement into a secured sale.

There are a variety of reasons why a perfectly rational lessee may agree to a "full payout" lease: The lessee may be less credit worthy than appears, so that the present value of the

---

[14] 115 BR at 469. Similarly, in a case relying on the old version of UCC § 1-201(37), the court in In re Hispanic American Tel. Co. Inc., 113 BR 453 (BC ND Ill 1990), held that a lease of television production equipment was a disguised security agreement, not a true lease, where the lease term completely exhausted the useful life of the goods. Where the "lease" term exhausts the useful life of the goods, newly amended UCC § 1-201(37) clearly states that the transaction is not a true lease.

[15] 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 2, at 16 (3rd ed 1991).

[16] In re Aspen Impressions, Inc., 94 BR 861 (BC ED Pa 1989).

equipment that had been leased to Pan Am. Pan Am claimed that the aircraft equipment leases in question could not be true leases because they contained pooling interchange provisions that permitted Pan Am to return similar aircraft equipment, instead of the equipment originally leased, to the lessors upon expiration of the leases (or upon default).

The courts rejected this claim. The United States District Court for the Southern District of New York explained that the pooling/interchange agreements were functionally the same as options to purchase aircraft engines and parts at fair market value.[22] "Under the Uniform Commercial Code," the court found, such options did not destroy the true lease status of a transaction. Thus, Pan Am's "right to substitute equipment and pay or receive compensating value does not in itself make the challenged transactions disguised loans rather than true leases."[23] The Bankruptcy Court had earlier reached the same conclusion, based in part on the definition of a lease in Section 2A-103(j) and newly amended Section 1-201(37).[24]

The court, in In re Answer, correctly held that true lease status is not established by the mere presence of an option allowing the lessee to purchase the goods at fair market value at

---

[22] In re Pan Am Corp., 130 BR 409, 413-414 (DC SD NY 1991), affg 124 BR 960, 972-973 (BC SD NY 1991).

In an earlier round of the litigation, the courts rejected Pan Am's claim that the special protections for lessors in 11 USC § 1110 did not apply to "nonacquisition" sales/leasebacks that simply refinanced Pan Am's existing fleet of aircraft without adding new planes. See In re Pan Am Corp., 21 BCD 757, 124 BR 960 (BC SD NY 1991), affd 125 BR 372 (SD NY 1991), affd 929 F2d 109 (CA2 1991), cert den 111 S Ct 2248 (1991).

[23] 130 BR at 413-414.

[24] See 124 BR at 972-973.

The opinion of the Bankruptcy Court stated that the "various tests and factors" used to determine whether a transaction was a lease or a security interest "are collectively similar, if not identical," to the factors in newly amended UCC § 1-201(37). In re Pan Am Corp., 21 BCD 757, 124 BR 960, 973 (SD NY 1991). Declining to resolve the "fact-intensive" question whether certain leases were true leases, the Court left the lessors free to repossess their aircraft equipment from Pan Am pursuant to 11 USC § 1110. "However, such parties act at their peril if their alleged leases are not true leases," with damages and contempt sanctions available against any lessor who repossessed his equipment under an agreement that later was determined *not* to be a true lease. 124 BR at 973.

rental payments is in fact less than the value of the asset leased.[17] Or structuring the transaction as a lease rather than a sale may create tax or other advantages that lower the costs of the transaction to the lessee.[18] Or the market value of the leased goods may in fact be expected to depreciate only slightly (or even increase) over the term of the lease.[19] But beyond all this is the fundamental consideration that in a true lease the lessor owns the residual, and the lessee knows that from the outset. Where the contract in fact gives the lessor a meaningful residual, and in the absence of some recognized ground for reformation of the lease contract, there is no sound basis in law or equity for a lessee to make an after-the-fact claim that it *owns* the goods simply by virtue of making a "full payout" of rentals equal to the original cost of the leased goods. Paying a high price should not entitle a lessee to ownership, if what the lessee bargained for was not ownership (either explicit or implicit),[20] but simply the right to use the goods for less than their full useful economic life.

Over the years, courts and commentators have suggested that a "full payout" feature is a sine qua non for a transaction to be a sale.[21] But the reverse is not true. Amended Section 1-201(37) correctly states that the true lease status of a transaction is not destroyed by a "full payout" feature.

Options to purchase or exchange collateral, and their effect on the true lease status of a transaction, were discussed in the recent Pan Am bankruptcy litigation. There Pan Am argued that certain lessors were barred from invoking the special protections of § 1110 of the Bankruptcy Code to repossess aircraft

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[17] See 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 2, at 13-14 (3rd ed 1991).

[18] See id.

[19] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 627 n 30 (1988).

[20] If the "lessee" obtained the right to use the goods for their full economic life, or the right to acquire ownership of the goods for "nominal" consideration, then implicitly the "lessee" obtained ownership or its functional equivalent.

[21] See, e.g., In re Thummel, 109 BR 447, 449 (BC ND Okla 1989); Crumley v. Berry, 298 Ark 112, 766 SW2d 7, 9 (1989); DeKoven, Leases of Equipment: Puritan Leasing Co. v. August, a Dangerous Decision, 12 USFL Rev 259, 259 (1978).

the end of the lease term. Other features of the transaction there, where the original lease term seemed to exhaust the useful life of the goods, indicated that it was not a true lease.

B. FINANCE LEASES

The Commissioners' 1990 uniform amendments make it easier to qualify a lease as a statutory finance lease.[25] The statute generally immunizes a qualifying finance lessor from implied warranties of fitness and merchantability, imposes an automatic "hell or high water" obligation on a commercial lessee to pay rents, and accords the statutory finance lessee the benefit of the suppliers' promises and warranties covering the goods.[26] Three criteria must be met to qualify a transaction as a statutory finance lease under Section 2A-103(1)(g):

(1) The lessor must not select, manufacture or supply the goods;
(2) The lessor must acquire the goods in connection with the lease (not "out of inventory"); and
(3) The lessee must be given information at the outset about warranties covering the leased goods and whom to look to for warranties.

Originally, Section 2A-103(1)(g) allowed the third criteria to be satisfied either by furnishing a copy of the supply contract to the lessee or by making the lessee's approval of the supply

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[25] Two separate, independent kinds of "finance leases" exist in the wake of Article 2A: old fashioned contractual finance leases (containing contractual "hell or high water" clauses, waivers of warranty, and the like) and statutory finance leases under UCC § 2A-103(1)(g). See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 660-668 (1988).

[26] See UCC §§ 2A-211(2), 2A-212(1), 2A-213, 2A-407, 2A-209(1). "Hell or high water" obligations to pay rent are imposed, under UCC § 2A-407, only in nonconsumer leases and only upon the lessee's "acceptance" of the goods. The statutory finance lessor owes no implied warranties other than the warranty of title. See UCC §§ 2A-212, 2A-213. But a statutory finance lessor may still be liable for express warranties (UCC § 2A-210) or negligent repairs (see UCC § 2A-103(1)(g), Comment). In a statutory finance lease, risk of loss passes to the lessee. UCC § 2A-219. Under UCC § 2A-209(2)(a), the statutory finance lessor retains rights against the supplier under the supply contract. See generally UCC Series (Huddleson) Special Release 2 (1991) §§ 2A:15-2A:17 for a complete discussion of finance leases under Article 2A.

contract a "condition to the effectiveness of the lease contract." Two other options are added by the 1990 amendments: furnishing the lessee with a complete statement of the warranties covering the goods (as well as any limitations or disclaimers) made by the supplier, the manufacturer, or anyone else or, in a nonconsumer lease, telling the lessee in writing who the supplier is, that the lessee may invoke the lessor's rights against the supplier, and that the lessee can obtain a complete statement of the promises and warranties covering the goods from the supplier.

The comments to Section 2A-103(1)(g) were amended in 1990 to state that a statutory finance lessor is not required to disclose the price (or any amended price) of the goods to the lessee in order to qualify for statutory finance lease status. This seems reasonable. The objective of the statute is to ensure that the lessee knows about any warranties covering the goods, not to provide the lessee with improved knowledge to enable him or her to "bargain down" the lessor's proposed schedule of rents. The statutory finance lessee can look to competition among lessors and sellers in the marketplace to obtain a reasonable price.

Other 1990 amendments make it clear that, if the statutory finance lessor and supplier modify the supply contract effectively against the lessee, then the lessor must take over and assume the supplier's promises that were modified.[27]

C. TRAC VEHICLE LEASES

Terminal rental adjustment clause (TRAC) motor vehicle leases are an anomaly. While specific transactions vary,[28] in general a TRAC clause permits (or requires) an upward or downward adjustment of rent to make up for any difference between the projected value of a vehicle and the actual value

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[27] See UCC § 2A-209(3).

[28] See, e.g., Kedziora v. Citicorp Nat. Services, Inc., 780 F Supp 516 (ND Ill 1991) (court upholds validity of "early termination"/TRAC clause in a Citicorp auto lease, as reasonable under the Consumer Leasing Act, 15 USC §§ 1667-1667e, where the clause applied only if the lessee terminated or defaulted before end of the full lease term. The opinion states that the clause "is a reasonable means of compensating Citicorp for the defeat of its basic expectation that the lessee will fulfill the entire lease.").

upon lease termination. The objective of TRAC vehicle leases is to provide a financial incentive for the lessee/user, who is the party to the transaction best able to control the maintenance of the vehicle, to keep the vehicle in good repair.

TRAC vehicle leasing became increasingly popular after the end of World War II so that, today, most fleets of leased vehicles in America are covered by the TRAC form of lease. There are hundreds of thousands (if not millions) of leased vehicles now on the roads operating under TRAC leases. TRAC vehicle *lessees* want this form of lease because of its potential for cost savings. They create the continuing demand for TRAC motor vehicle leasing in the marketplace.

The importance of the state commercial law validity of TRAC motor vehicle leases (their status as true "leases" and not "sales" or "security interests") is apparent to the lessor in cases where the lessee goes into bankruptcy, in usury law cases, and in other situations as well.[29] Tax law accords true lease status to commercial (nonconsumer) TRAC vehicle leases.[30] Accounting

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[29] See notes 3–5, supra; UCC Series (Huddleson) Special Release 2 (1991) § 2A.07, at 35.

[30] Tax law confines TRAC vehicle leasing to a commercial context involving business lessees. See 26 USC § 7701(h). Were a TRAC lease to be made to a consumer lessee, it would not qualify as a true lease for tax purposes and the TRAC lessor could not legitimately claim the tax benefits of ownership. This would suggest that, as a practical matter, no TRAC leases would be written with consumer lessees today. Yet, apparently, "early termination"/TRAC clauses are sometimes inserted in vehicle leases to consumers. See Kedziora v. Citicorp Nat. Services, Inc., 780 F Supp 516 (ND Ill 1991). This sort of TRAC clause, limited to the calculation of damages for breach, may not affect the lessor's meaningful residual interest in the ordinary case where there is no breach of the lease agreement.

There are federal consumer protection laws that protect consumer lessees in TRAC vehicle leases. See 780 F Supp at 519 (Consumer Leasing Act, 15 USC § 1667b(b) requires early termination charges to be "reasonable in light of the anticipated or actual harm"); 15 USC § 1667b (where TRAC payment by lessee "on expiration of a consumer lease" exceeds three times the average monthly rental, and there was no physical damage to the property beyond reasonable wear and tear, a "rebuttable presumption" exists that the amount is unreasonable); Regulation M in 12 CFR § 213.4(g)(15) (same). Cf. Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 668 & n 178 (1988). The overwhelming use of TRACs, in any event, is in vehicle leases between commercial business entities, outside the consumer context.

principles are in accord.[31] But whether commercial TRAC vehicle leases are true leases under state commercial law is a question that has divided the courts.[32] UCC Article 2A—Leases is deliberately silent (or neutral) on the thorny question of whether TRAC vehicle leases are true leases.[33] At present, the courts are continuing to grapple with the TRAC vehicle lease issue on a case-by-case basis.

Three new bankruptcy decisions in 1991 continue the split in case authority over whether TRAC vehicle leases are true leases or disguised security interests.

The United States District Court in Oklahoma held in In re Otasco[34] that TRAC vehicle leases were true leases, not disguised security interests, in a case involving the lessee's bankruptcy. Typical TRAC leases were involved, with an initial lease term of 12 months ("much less than the fifty month economic life the parties expected"), and a series of options to renew. The lessee was under no obligation to exercise any of the renewal options. And the lessee was expressly prohibited from purchasing the leased vehicles. Title was retained by the lessor, who "guaranteed" (i.e., took the risk for) a significant part (20 percent to 30 percent) of the fair market value of the vehicles, measured at the outset of the lease or at the outset of any option renewal. This guaranteed amount was not subject to alteration by the TRAC clause. The court found that the TRAC clause was "not designed to create an equity interest in the lessee, but rather to protect the lessor from untoward abuse of its vehicle

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[31] To qualify as "operating leases" under accounting standards, the TRAC vehicle lessor often maintains a minimum "at risk" investment (not subject to variation by the TRAC clause) throughout the term of the lease. See Huddleson, 39 Ala L Rev, at 639–640.

[32] The older case law on whether TRAC vehicle leases are true leases or disguised security interests is discussed in Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 638–641 (1988). Compare In re Tulsa Port Warehouse Co., 690 F2d 809 (CA10 1982) (open-end vehicle leases held to be leases "intended as security," not true leases, in bankruptcy) with Security Life Ins. Co. v. Executive Car Leasing Co., 433 SW2d 915 (Tex Civ App 1968) (open-end vehicle lease held a true lease and not subject to state usury laws).

[33] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 638–641 (1988).

[34] In re Otasco, Case No. 90-C-100-E (ND Okla 1991), overruling 111 BR 976, 11 UCC Rep Serv 2d 1262 (BC ND Okla 1990).

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[34] In re Otasco, Case No. 90-C-300-E (ND Okla 1991), overruling 111 BR 976, 11 UCC Rep Serv 2d 1262 (BC ND Okla 1990).

during the lease term, and any resultant loss in *its* equity, upon reversion of a vehicle. Such a provision seems economically prudent in leasing property easily damaged, destroyed, overused, or abused, such as a motor vehicle." The court distinguished earlier cases like In re Tulsa Port Warehouse Co.,[36] partly on the ground that they were decided before the new amendments to Section 1-201(37).[36] Weighing all these circumstances, the court found the TRAC vehicle lease was a true lease.

TRAC vehicle leases were also held to be true leases in Basic Leasing, Inc. v. Paccar, Inc.[37] There the United States District Court for New Jersey ruled in a case involving the lessee's bankruptcy that neither the TRAC provision, nor an option for the lessee to purchase the leased trucks, nor a lease term for less than the economic life of the vehicles was inconsistent with true lease status. Relying on amended Section 1-201(37), the court also ruled that true lease status was not destroyed by typical "net lease" provisions:

> "It makes sense that a lessee would provide insurance on the property while in possession of it under a lease; it seems perfectly reasonable for a lessee to agree to undertake some of the risks of loss or damage while the lessee enjoys possession and use of the property. The same holds true for taxes and maintenance."

The court ruled that as a matter of law, the TRAC truck vehicle leases at issue were true leases, not sales with disguised security interests, under the criteria of old Section 1-201(37), the common law, or amended Section 1-201(37).

The same TRAC vehicle lessor fared less well in In re Zerkle Trucking Co.,[38] where the Bankruptcy Court denied its motion to compel the lessee/debtor to assume or reject some unexpired TRAC truck leases. This Court reasoned that TRAC

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[35] In re Tulsa Port Warehouse Co., 690 F2d 809 (CA10 1982).

[36] The court, in In re Tulsa Port Warehouse, 690 F2d 809, 811-812 (CA10 1982), relied on the presence of "net lease" provisions to support its conclusion that the "open-end" leases there were disguised security interests and not true leases. Amended UCC § 1-201(37) rejects this reasoning and makes it clear that the presence of "net lease" provisions does *not* destroy the true lease status of a transaction.

[37] Basic Leasing, Inc. v. Paccar, Inc., 1991 WL 117412 (D NJ 1991).

[38] In re Zerkle Trucking Co., 1991 WL 203785 (BC SD W Va 1991).

provisions have the same "practical effect" as a nominal purchase option:

> "While the plain language of the leases requires the equipment to be returned to [the TRAC lessor] at the end of the term, a sale occurring to a third party at the end of a term is in the nature of a sale by [the lessee], since [the lessee] is required to guarantee to [the TRAC lessor] the purchase price of the equipment. [The lessee] reaps the benefit or suffers the loss if the property sells for more or less than the pre-established residual value which [the lessee] has guaranteed."

The Court rejected the argument that a TRAC clause simply protects the lessor against excessive wear and tear, noting that the lessee "also risks the loss or reaps the benefit if technological improvements, competition from alternate forms of transportation, strikes in the trucking industry, economic recession, increased demand or a multitude of other market factors cause the equipment to sell for more or less than the estimated residual value at the end of the lease term." The impact was the same as if the lessee had acquired equity in the vehicles. Reciting amended Section 1-201(37) and its implicit emphasis on "whether the lessor retains a meaningful residual interest," the Court held that the TRAC truck leases at issue were security agreements instead of true leases.

None of these cases set out a fully comprehensive analysis of TRAC vehicle leases and whether they should be accorded true lease status.[39]

As of mid-1992, 15 states have enacted statutes stating that the mere presence of a TRAC clause in a motor vehicle lease will not destroy the true lease character of the transaction.[40] Typical

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[39] Compare Graf, The Trouble With TRACs: Dealing With OTASCO, 9 Journal of Equipment Lease Financing 18 (1991); Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 639-640 (1988).

See also 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 6, at 54 (3rd ed 1991) ("Would a lease contract be unconscionable that simply obliged the lessee to purchase the property at its expected residual value at the end of the lease? The answer seems clearly no and we do not understand why a liquidated damage clause that would have the same effect should be different.").

[40] See Minn Vehicle Code § 168A.17 (effective May 18, 1989); Fla Motor Vehicle Code § 319.271 (effective Jan. 1, 1991); Va Vehicle Code § 46.2-640a

of these statutes is Illinois Vehicle Code § 3-201.1 (effective Jan. 1, 1992) on TRAC vehicle leasing:

> "*Terminal rent adjustment clause leases.* In the case of motor vehicles or trailers, 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."

Vehicle lessors are seeking similar legislation in the majority of the states. The Commissioners do not oppose this result.

Enactment of special TRAC/state legislation seems appropriate as a practical solution to a practical commercial law problem. Outside the specific context of motor vehicle leasing, equipment lessors oppose according true lease status to TRAC leases, which undercut the importance of the lessor's residual interest. There are important policy reasons why, as a general proposition, the common law should preserve the importance of the lessor's meaningful residual interest as the touchstone of the definition of a true lease.[41]

Yet, TRAC leasing developed spontaneously, years ago, in the specialized field of vehicle leasing, where residual values are relatively predictable and certain. TRAC leasing lowers lease rental rates. Today, TRAC leasing is the predominant form of vehicle leasing to commercial business lessees in America. There seems to be no good reason to disrupt this well-established way of doing business in the field of vehicle leasing..

Were state commercial law to conclude that TRAC vehicle leases are not true leases, it would simply raise the transaction costs of such leases—increasing the TRAC lessor's risks and

(effective Jan. 1, 1992); ND Century Code, ch 39-05 (effective July 1, 1993); 47 Okla Stat § 1110 F (effective Jan. 1, 1992); Tex Rev Civ Stat Ann art 6687-1 (c) (effective Sept. 1, 1991); Mo Vehicle Code ch 301 (effective Jan. 1, 1992); Ala Vehicle Code 32-8-60.1 (effective July 29, 1991); RI Vehicle Code § 31-3.1-27 (effective July 1, 1991); Ill Vehicle Code § 3-201.1 (effective Jan. 1, 1992); NJ Vehicle Code § 39:10-5 (effective June 28, 1992); Wis Stat § 342.03 (effective July 1, 1992); NY Veh and Traf Law § 317-b, Chs 787, 788 (effective Aug. 7, 1992); MCL § 440.2810 (effective Sept. 30, 1992); Ohio Rev Code Ann § 4505.13(c) (effective Nov. 6, 1992).

[41] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 632 (1988).

costs when the lessee is in bankruptcy and in other situations as well,[42] and increasing lessees' rental rates. But given the federal tax laws and the continuing lessee demand for such leases, it would not make TRAC vehicle leasing disappear. Interstate commerce would be impeded. But no one would benefit.

The original, central purpose of the UCC is to facilitate interstate commerce in the public interest. The special TRAC/state legislation seems consistent with this purpose. There seems to be no warrant for imposing any state law or bankruptcy law "penalty" on TRAC vehicle lessors for simply using TRAC leases that federal tax law specifically recognizes and encourages. This is only common sense and simple justice, say the proponents of special TRAC/state legislation.

D. IMPLICATIONS FOR THE FUTURE

The implications of amended Section 1-201(37) for bankruptcy cases have now been generally recognized by the practicing bar. This is particularly true after the widely followed Pan Am bankruptcy litigation, where the parties considered and ultimately rejected other standards (e.g., accounting principles, FAA regulations) for defining a true lease in the context of bankruptcy cases. Initially it was odd that state law should control the application of federal bankruptcy law. But the Uniform Commercial Code is true common law. And it is only sensible to look to the common-law definition of a true lease, in amended Section 1-201(37), in any context where the definition of a true lease is at issue.

Tax law may also be affected by amended Section 1-201(37). The impact may be felt initially in tax law assessments of transactions involving fixed price purchase options.[43]

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[42] See notes 3-5, supra.

[43] Cf. Macon & Umbrecht, Tax Aspects of Equipment Leasing, ch 3, at 377-378 in 1 Equipment Leasing-Leveraged Leasing (3rd ed 1988) (PLI, Fritch, Reisman & Shrank eds.) ("In recent years, for a variety of reasons, the leveraged leasing industry has become more willing to follow the lead of prior case law (and uninterrupted practice in many nonleveraged leases) and employ fixed price purchase options in cases where their presence appears clearly compatible (or not incompatible) with true lease analysis and authority. Specifically, many recent leveraged lease transactions have featured lessee purchase options exercisable at a fixed (or capped) price equal to or in excess

Amended Section 1-201(37) and its history suggest that reasonable fixed price purchase options often may be consistent with true lease status, even if the fixed price is around 10 percent of the original fair market value of the goods.[44] To be sure, tax law has different policies and a different set of precedents than state commercial law. Once again, however, the common-law/state law definition of a true lease should carry weight in any setting in which the definition of a true lease is at issue.

III. REMEDIES

True lease remedies are different from, and often more favorable to the lessor than, the remedies applicable to sales. It is the lessor's residual interest in the goods that explains the essential differences. In a lease, the lessor owns the goods, while the lessee has only an interest in using the goods for a limited time. Oversimplified, the impact on measure of damages is that in general a lessor's damages for the lessee's breach are equal to lost rentals plus any damage to the residual, while a lessee's damages for the lessor's breach are equal to the extra rental expense of renting substitute goods.[45] These are very different from sales measures of damages, where the buyer has an equity in the goods.

The Commissioners' 1990 uniform amendments fine-tune the statutory remedies provisions of Article 2A.[46] In most cases,

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of the property's estimated fair market value at the time the option is exercisable.").

[44] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 626–638 (1988) (especially id. at 629).

[45] This is oversimplified, of course, since other damages may often exist. For example, a lessee may seek damages if the lessor breaches duties in addition to supplying the goods, such as repairing and maintaining the goods. See UCC § 2A-103(1)(g), Comment. Often the lessor's greatest concern upon breach by the lessee is recovering possession of the goods. And a lessor often incurs incidental damages in the form of costs incurred to sell or relet the goods after repossession.

[46] Two types of provisions on damages remedies appear in Article 2A: (1) those that apply to contractually specified damages (see UCC § 2A-504); and (2) the statutory remedies provisions that apply where the lease contract is silent (or invalid) on damages. The only time UCC Article 2A will control measure of damages is when the lease agreement is silent (or held invalid) on damages. One looks first to the lease agreement on damages.

this involves correction of technical flaws, clarification, and greater explication of how Article 2A works. Yet in some cases, most notably concerning a lessor's obligation to mitigate damages under Section 2A-529, the 1990 amendments adopt a different policy view about the appropriate remedy.

One set of 1990 amendments distinguishes between substantial and insubstantial defaults. Where a substantial default exists, the injured party is entitled to the full panoply of Article 2A remedies (cancellation of the lease, repossession of the goods, and damages) plus any remedies specified in the lease contract itself.[47] The statute specifies that several specifically listed defaults are substantial, such as the lessee's failure to pay rent[48] or the lessor's failure to deliver the goods.[49] Other substantial defaults are those that are specified as such in the lease contract,[50] and those that "substantially impair the value" of the lease contract to the other party.[51] Where a default is *not* a substantial default, the injured party is generally remitted to a damages remedy.[52]

Under these principles, if a lessee fails to pay rent or commits some other substantial default, the lessor could cancel the lease, repossess the goods, and recover damages. But not all defaults are substantial. If the lessee failed to obtain insurance, for example, the lease contract itself would have to specify both that this was an event of default and that certain remedies were available for this default. Otherwise, under Article 2A, the lessor would be remitted to a damages remedy.

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[47] See UCC §§ 2A-523 (lessor's remedies); 2A-508, 2A-517, 2A-519 (lessee's remedies).

[48] UCC § 2A-523.

[49] UCC § 2A-508(1).

Other substantial lessee defaults, under UCC § 2A-523, include the lessee's wrongful rejection of the goods, wrongful revocation of acceptance, or wrongful repudiation of the lease contract. Other substantial defaults by the lessor, under UCC § 2A-508, include the lessor's repudiation of the lease contract.

[50] See UCC §§ 2A-508(3), 2A-523(1)(f), 2A-523(3). The statutory texts of UCC §§ 2A-527, 2A-528, and 2A-529 were amended to emphasize that the parties can agree, in the lease agreement, that contractually specified defaults will trigger Article 2A's statutory remedies.

[51] See UCC §§ 2A-517(2), 2A-523(3).

[52] See UCC §§ 2A-508(3), 2A-519(3), 2A-523(3)(b), 2A-523(2).

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[52] See UCC §§ 2A-508(3), 2A-519(3), 2A-523(3)(b), 2A-523(2).

ARTICLE 2A DEVELOPMENTS

Technical changes were made in 1990 to Article 2A's statutory damage formulas to better compensate injured parties for *loss of use of the leased goods.* When a lessor takes back the goods after the lessee's default, and releases them in a "substantially similar" lease, the lessor is now entitled by statute to damages including compensation for lost use of the goods before the commencement of the new lease agreement.[53] Otherwise, when a lessee defaults, the lessor is entitled by statute to damages including compensation for lost use of the goods up to: (1) the date of default if the lessee never took possession of the goods, or (2) the date the lessor repossesses (or an earlier date on which the lessee makes a tender of the goods to the lessor).[54]

The implicit statutory principle is that damage accrues to the lessor until it is able to take possession of the goods and sell or relet them. One commentator has pointed out that the statute recognizes damage only until the lessor repossesses the goods, and that a lessor probably will want to insist on contractual damage formulas that recognize that continuing damage accrues until the lessor has had a reasonable opportunity to remarket the equipment.[55]

Originally Section 2A-529 allowed a lessor to recover full accelerated rentals (reduced to present value) from a lessee who breached after accepting the goods. This reflected the "specific performance" theory of the comparable rule for sales under Article 2. The Commissioners' 1990 amendments, however, rethought the rule and came to a different policy view about the lessor's duty to mitigate damages in this situation:

> "In a lease, the lessor always has a residual interest in the goods which the lessor usually realizes upon at the end of a lease term by either sale or a new lease. Therefore, it is not a substantial imposition on the lessor to require it to take back and dispose of the goods if the lessee chooses to tender them back before the end of the lease term: the lessor will merely do earlier what it would have done anyway, sell or relet the goods."[56]

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[53] UCC § 2A-527.

[54] UCC § 2A-528.

[55] See Strauss & Flick, Leases, 46 Bus Law 1509, 1511 (1991).

[56] UCC § 2A-529 new Comment 1.

Newly amended Section 2A-529 therefore limits a lessor's statutory right to recover full unpaid accelerated rentals for the lessee's default (discounted to present value as of the time of entry of judgment), to cases where (1) the goods were "accepted by the lessee *and not repossessed by or tendered to the lessor*" (new amending language in italics), or (2) conforming goods were lost or damaged within a commercially reasonable time after risk of loss passed to the lessee, or (3) the goods were identified to the lease contract, and the lessor is "unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing."[57]

New Section 2A-532 is added by the 1990 amendments to explicitly protect the lessor's residual: "In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee." Now Article 2A itself (as well as "other law" incorporated by reference in Sections 2A-103(4) and 1-103) gives the lessor the right to recover for any damage to its residual.

IV. WARRANTIES AND DISCLAIMERS

The impact of Article 2A on lease warranties issues was apparent in Cucchi v. Rollins Protective Services Co.[58] There the court held that the warranties of fitness and merchantibility in the old sales Article[59] applied by analogy to the lessor of a defective burglar alarm system. It is not clear that a lease of goods was involved in Cucchi.[60] But the court's reasoning relied

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[57] UCC § 2A-529(1).

A separate new amendment to UCC § 2A-529(3) makes it clear that a lessor's damage recovery should be reduced by an appropriate credit if the lessor obtains a judgment for accelerated rents under UCC § 2A-529 and then disposes of the goods.

[58] Cucchi v. Rollins Protective Services Co., 524 Pa 514, 574 A2d 565 (1990).

[59] UCC §§ 2-313, 2-314.

[60] The majority in Cucchi viewed the transaction as a true lease of goods, despite a concurring opinion characterizing the "lease" as a service contract that incidentally included equipment.

heavily on Article 2A—Leases (which has not yet been enacted in Pennsylvania) to support its conclusion that sales act warranties apply to leases. Other courts have often applied the implied warranties of fitness and merchantibility to merchant lessors under true leases as well as to merchant sellers.[61] Article 2A codifies this result, while making a special exception for statutory "finance leases."

Typical commercial leases contain provisions waiving warranties that would otherwise protect the lessee. One can put such lease clauses on a spectrum, ranging from (1) clauses that waive individual specified warranties, to (2) "hell or high water" clauses that obligate the lessee to pay rent despite any defects in the goods, to (3) "waiver of defense" clauses whereby the lessee agrees not to assert claims or defenses against the lessor's assignee. Article 2A clarifies the legal status of such clauses.[62]

The United States District Court for Minnesota relied in part on Article 2A to uphold the validity of a "hell or high water" clause in a commercial lease in American Computer Trust Leasing v. Jack Farrell Implement Co.[63] The court noted that Article 2A provides statutory finance lessors with the functional equivalent of "hell or high water" clause guarantees from a commercial lessee. The validity of contractual "hell or high water" lease clauses, at least in a nonconsumer setting, is clearly recognized by the finance lease provisions in Article 2A.[64] Though a lessee may have some rights against a lessor under a

---

[61] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 657–658 (1988). UCC § 2-313, Comment 2 in the sales act specifically states that warranties may arise "in the case of bailments for hire" and that "the matter is left to the case law with the intention that the policies of this Act may offer useful guidance in dealing with further cases as they arise."

[62] See generally Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 657–660 (1988).

[63] See American Computer Trust Leasing v. Jack Farrell Implement Co., 763 F Supp 1473, 1484 & n 11 (D Minn 1991).

[64] New UCC § 2A–407(3) was added in 1990 with the apparent intent of making it even clearer that Article 2A does not affect (or undercut) the validity of a "hell or high water" clause in a lease that is not a *statutory* finance lease under UCC § 2A–103(1)(g).

statutory[65] or contractual "hell or high water" clause,[66] any such rights are severely restricted.[67]

Article 2A is ambivalent about the validity of "hell or high water" clauses in *consumer* leases. Technically, the statute is silent, leaving existing law as it is.[68] On the one hand, Comment 2 to Section 2A-407 clearly suggests that such clauses are of doubtful validity in a consumer lease:

> "That a consumer be obligated to pay notwithstanding defective goods or the like is a principle that is not tenable under the case law (*Unico v. Owen*, 50 N.J. 101, 232 A.2d 405 (1967)), state law (Unif. Consumer Credit Code §§ 3.403-3.405, 7A U.L.A. 126-131 (1974)), or federal statute (15 U.S.C.A. § 1666i (1982))."[69]

On the other hand, Article 2A appears to *exempt* all statutory "finance leases" (including consumer finance leases) from Article 2A's implied warranties of fitness and merchantibility.[70] Moreover, Article 2A appears to validate waivers of individually specified warranties in both commercial and consumer lease settings.[71] The impact of a series of such waivers may be functionally the same as a "hell or high water" clause.[72]

With this statutory background, and the implicit approval that Article 2A gives to many waivers of warranties that would otherwise favor a consumer lessee, it seems hard to claim that "hell or high water" clauses generally are unconscionable in a

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[65] UCC § 2A-407.

[66] Where the lessor and the supplier are "too closely connected," the finance lessee may have rights against both. See 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods pt 2, at 220 (3rd ed 1991).

[67] See id. pt 1, at 24-27, 65-66.

[68] The scope of UCC § 2A-407 is generally limited to a nonconsumer setting: Only *commercial* finance leases (not consumer leases) qualify for the statutory imposition of automatic "hell or high water" obligations on the lessee in a statutory finance lease under UCC § 2A-407. New UCC § 2A-407 (3), added in 1990, states that "other law" outside Article 2A may affect the validity of "hell or high water" clauses in a lease agreement.

[69] UCC § 2A-407, Comment 2.

[70] See UCC §§ 2A-212 (implied warranty of merchantability), 2A-313 (implied warranty of fitness for particular purpose).

See also UCC § 2A-211(2) (warranties against infringement).

[71] See UCC § 2A-214.

[72] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 666 (1988).

consumer lease setting.[73] The safeguards of "other law" (outside Article 2A) apparently would have to be spelled out rather specifically, in other statutes or case law, to protect a consumer lessee in a statutory finance lease.

V. TRANSFER OF LEASE INTERESTS: SECTION 2A–303

The Commissioners' 1990 amendments focused principally on the transferability of lease interests. Originally Section 2A-303 recognized the validity of antiassignment clauses and allowed challenges to the transfer of lease interests where the transfer "materially" changed the other (nontransferring) party's duties or increased its risks or burdens. This raised concerns within the lease financing community: Would funding for lease transactions be chilled because of fear that hidden antiassignment clauses might restrict the lessor's right to create a security interest or transfer its lessor interests? Would lessees interfere with the free transferability of lessor interests by frequently claiming "material change?"

UCC Section 2A-303 was amended to come to grips with these concerns and reflect common commercial leasing practices more closely. In general, the 1990 amendments ensure that the lessor's interests are freely transferable, while restricting the transferability of the lessee's interests. Ordinarily, free transferability of lease interests is allowed, without regard to antiassignment clauses in the lease contract. Transfers of lease interests can be stopped, in effect, only where they are made a breach of contract in the lease or where they result in demonstrable injury proved in court by the other party objecting to the transfer.[74]

Two aspects of amended Section 2A-303 specifically protect common leasing practices: (1) Section 2A-303(3) safeguards

---

[73] One commentator has said that "the benefits conferred by the statutory exclusion of consumers from the hell or high water provision in section 2A–407 are of uncertain value. They might be overridden by lease terms, and even when not, it is unclear how they will apply if there is an effective disclaimer of warranties in the lease itself." 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 7, at 65–66 (3rd ed 1991).

[74] See UCC § 2A-303 (1990 text).

the *lessor's* right to create a security interest;[75] and (2) Section 2A-303(3) also makes enforceable a contract clause barring (or making it a breach) for the *lessee* to transfer its lessee interest.

Transfer of a leasehold interest in violation of a contract ban outlawing such transfer is actionable. But the remedy depends on whether the lease contract merely bars the transfer (on the one hand) or makes the transfer an event of default (on the other hand). This is an important drafting point. If the transfer is made an event of default, the nontransferring party will usually be able to terminate the lease and stop the transfer, since it gets the contractually specified remedies plus the full panoply of Article 2A remedies under amended Section 2A-303(5)(a) (1990 text). On the other hand, if the transfer is only barred, but *not* made an event of default, the transferor is only liable for any actual damages caused by the transfer. The burden is on the nontransferring party claiming injury to prove actual damages and to persuade a court to grant any other requested relief such as an injunction.[76]

Another 1990 amendment in Section 2A-303(8) limits—to consumer leases only—the requirement that any contractual ban on the transfer of lease interests be "specific, by a writing, and conspicuous."

---

[75] Transferability of the lessor's interests is generally ensured, except in rare instances (such as transfer of title ownership of commercial aircraft operated in the United States) where a transfer might genuinely imperil important interests of the lessee. See UCC § 2A-303, new Comment 8. The statutory language is not a model of clarity. A grant of a security interest in a lease interest cannot be enforceably barred or made an event of default unless there is actual delegation of some material performance. UCC § 2A-303(3) (1990 text). Transfer of the right to payment for full performance can never be enforceably barred or made an event of default. UCC § 2A-303(4) (1990 text).

[76] Theoretically, a transfer that materially changes the risk or duty of the other party, and that is not consented to, also subjects the transferor to liability for any damages, as well as possible injunctive relief. UCC § 2A-303(5)(b) (1990 text). But new Comment 9 says relief under UCC § 2A-303(5)(b) should be afforded only in extreme circumstances, since the injured party had the opportunity (but failed) to put something in the lease contract barring the transfer and making it a breach/event of default. See UCC § 2A-303(5)(b) (1990 text).

VI. LIEN PRIORITIES: SECTION 2A–307

The statutory sections in Part 3 of Article 2A determine priority disputes—not only the rights of the lessee, vis à vis those who claim through and prior to the lessor, but also the rights of the lessor, vis à vis those who claim through the lessee.[77] The only part of these priority rules that generated controversy were the rules in Section 2A–307 for determining who should prevail in disputes between lessees and the lessor's secured creditors.

The Commissioners' 1990 amendments deleted a confusing "hypothetical secured creditor" test for determining when a secured creditor might prevail over a lessee.[78] The result is this: The ordinary general rule in Section 2A–307 is that creditors of the lessor take subject to the lease contract. But there are several important exceptions. One is that a creditor of the lessor wins if he or she furnished services or materials and prevails under Section 2A–306. Moreover, the secured creditor of the lessor also may prevail over the lessee if (1) the lien attached to the goods or the security interest was perfected before the lease contract became enforceable;[79] or (2) the lessee knew of the security interest when the lease began, or did not give value;[80] or (3) the lessee otherwise agreed.[81] These rules are further modified by the caveat that "lessees in the ordinary course of business"[82] where goods are subject to a security interest defeat

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[77] A very helpful overview of the priority rules in UCC §§ 2A–301 through 2A–311 appears in 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 8 (3rd ed 1991). See also Boss, Uniform Commercial Code: Article 2A—Leases: Structuring Priorities of Competing Claimants to Leased Property, 73 Minn L Rev 208, 233, n 126 (1988).

[78] The old "hypothetical secured party" test gave some secured creditors priority over the lessee if the creditor would have had priority over a hypothetical competing lien that was perfected when the lease took effect. UCC § 2A–307(2)(b) (1987 text).

[79] UCC § 2A–307(2)(a), (c).

[80] UCC § 2A–307(2)(b).

[81] UCC § 2A–311.

[82] UCC § 2A–103(1)(o) defines "lessee in ordinary course of business" as a person who leases in good faith and without notice that the lease to him violates the ownership rights, security interest, or leasehold interest of a third party in the goods.

the secured creditor of the lessor to the extent of the leasehold interest.[83]

VII. CONCLUSION

The Commissioners' 1990 amendments resolve many of the earlier glitches and unresolved questions in Article 2A. With these improvements, and the practicing bar's increased familiarity with Article 2A, the remaining states should speedily enact the new leasing statute.

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[83] UCC § 2A-307(3).

SB

228

(7) [redacted] IOUSE COMMITTEE REP[redacted]

Date Referred: April 15, 1994 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 5-6-94

The STATE AFFAIRS Committee considered: SB 228

SENATE BILL NO. 228 NO BAIL FOR FELONS W/PREVIOUS CONVICTIONS

"An Act relating to bail after conviction for various felonies if the defendant has certain previous felony convictions."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____
Corrections, LAW, Public Safety

[ ] zero fiscal note _____ [✓] zero fiscal note(s) Admin(2)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X				
	X				
	✓				
	X				
	✓				
	X				
	X				

CHAIRMAN'S SIGNATURE

FISCAL NOTE No. 5

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 247

Fiscal Note Date: January 20, 1994

Department Affected: Department of Law

Title: Bail after conviction if defendant has certain previous felony convictions

BRU: Prosecution

Component: All

Sponsor: Senator Sale

Requestor: Senate Judiciary

COMPONENT SERIAL NO.: 2095 through 2096

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: January 20, 1994

Richard L. Pegues for

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: January 20, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 108

ANALYSIS CONTINUATION:

This bill would prohibit bail after conviction and before sentencing or pending appeal if the person has been convicted of an offense that is an unclassified or a class A felony; or a class B or class C felony if the person has been previously convicted of an offense that is an unclassified felony, a class A felony, or stalking in the first degree, sexual assault in the second or third degrees, and sexual abuse of a minor in the second or third degrees. In most cases, courts usually deny bail under these circumstances. However, the bill removes the courts' existing authority to grant bail in these circumstances. In any event, these are sentencing provisions that occur after conviction and, consequently, there will not be a fiscal impact for the Department of Law.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: [illegible]

(S) Publish Date: [illegible]

Revision Date:		Dept. Affected:	Public Safety
Title:	[illegible]	BRU:	Alaska State Troopers
		Component:	Detachments
Sponsor:	Senator Salo		
Requestor:	S. JUD	COMPONENT SERIAL NO.	799

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	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-

NDING: (Thousands of Dollars)

002 Federal Receipts						
003 GF Match						
004 GF						
005 GF/Program Receipts						
006 GF/MHTIA						
ther						
OTAL	-0-	-0-	-0-	-0-	-0-	-0-

imate of current year (FY 94) impact: $

ITIONS:

LL-TIME	0	0	0	0	0	0
ART-TIME	0	0	0	0	0	0
EMPORARY	0	0	0	0	0	0

NALYSIS: (Attach a separate page if necessary.)

fiscal impact upon the Alaska State Troopers is anticipated.

oared By: Francis C. Allan Phone: 269-5591

ision: Alaska State Troopers Date: 1/12/94

roved by Commissioner: Date: 1/24/94

ency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
[illegible]94 LEGISLATIVE SESSION

No. 2
Bill Version: SB 228
(S) Publish Date: [illegible]

evision Date:
tle: "An Act relating to bail
fter conviction for various
ponsor: Senator Salo
equestor: Senate Judiciary

Department Affected: Administration
RDU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

PENDITURES/REVENUES (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
UPPLIES						
QUIPMENT						
AND & STRUCTURES						
RANTS, CLAIMS						
ISCELLANEOUS						
OTAL OPERATING	0	0	0	0	0	0
APITAL EXPENDITURES	0	0	0	0	0	0
HANGE IN REVENUES ( )	0	0	0	0	0	0

UNDING SOURCE (Thousands of Dollars)

002 Federal Receipts						
003 GF Match						
004 GF						
005 GF/Program Receipts						
006 GF/MHTIA						
THER						
OTAL	0	0	0	0	0	0

stimate of any current year (FY 94) cost: $ 0

OSITIONS:

ULL-TIME	0	0	0	0	0	0
ART-TIME	0	0	0	0	0	0
EMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee
Phone: 274-1684
ision: Office of Public Advocacy
Date:
Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 1/24/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

No. 2
Bill Version: SB 224
(S) Publish Date: 1-5-94

Revision Date:
Title: "An Act relating to bail after conviction ..."
Sponsor: Senator Salo
Requester: Senate Judiciary

Dept. Affected: Administration
RDU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1681

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
004 GF	0.0	0.0	0.0	0.0	0.0	0.0
005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Director
Phone: 264-4400
Division: Public Defender Agency
Date:

Approved by Commissioner: Nancy Sear Usera
Date: 1/24/94
Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 226
FN Publish Date: 4-5-94

Revision Date:
Title: No Date Restrictions with previous convictions
Dept. Affected: Corrections
RSU: Statewide Operations
Component: Institutions
Sponsor: Sen. Taylor
Requester: Senate Judiciary
COMPONENT SERIAL NO. 3094-1084

Expenditures/Revenues — Thousands of Dollars

OPERATING EXPENDITURES	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 ( )	0	0	0	0	0	0

FUND SOURCE — (Thousands of Dollars)

002 Federal Receipts						
003 GF Match						
004 GF						
005 GF/Program Receipts						
006 GF/MHTAA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant — Phone: 465-4643/786-2147
Division: Office of the Commissioner — Date: 3/11/94
Approved by Commissioner: J. Frank Prewitt, Jr. (for) — Date: 3/11/94
Agency: Department of Corrections

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The bill would preclude an offender who has been convicted of a class B or C felony from being released on bail before sentencing or pending appeal if the offender had previously been convicted of an unclassified or class A felony, or certain sex offenses or stalking.

Assumptions

1. It is assumed that offenders convicted of class B or C felonies with the types of prior records applicable in the bill would be sentenced to some period of incarceration. Most will fall under presumptive sentencing statutes. The department reviewed 100 such cases, and found that 100% of the cases resulted in sentences of incarceration.

2. Since time served in custody prior to sentencing counts as time served on the sentence, the total time served will remain the same whether it is interrupted or delayed by posting bail or not.

3. The only impact on the department would be in cases in which the felon would receive bail under current law, then win an appeal which would result in no period of incarceration; under the bill the felon would have spent the appeal period incarcerated. According to the Clerk of the Court of Appeals, approximately 451 cases were appealed in 1992 (366 felonies and 85 misdemeanors.) Approximately 15% of the appeals resulted in reversals. This would be about 55 reversals per year for felony cases. Most reversals result in reduction in sentence length rather than overturning a conviction. Because the number of cases in which an appeal would result in no period of incarceration is assumed to be extremely small, and because there is no assurance that those cases would be released on bail pending appeal under current law, no measurable fiscal impact is expected.

4. If the department is able to gather more detailed data on the outcome of appeals referenced above, and the data indicates a significant number of appeals resulting in no period of incarceration, the fiscal note will be revised.

Senator Judith E. Salo

Alaska State Legislature

SPONSOR STATEMENT

SENATE BILL 228

In October of 1993 a man allegedly raped and assaulted two women in Anchorage. One of the sad facts in this case was that the perpetrator had been convicted and sentenced for a felony drug offense and yet he was still free. He had a long criminal record that included convictions for three rapes and two vehicle thefts in California. In Alaska he had been convicted for gambling, carrying a concealed weapon, fourth degree assault, trespassing, and possession of cocaine. His criminal record indicates a violent past and a threat of being a danger to the community. In spite of these facts, the defendant was released on ($5,000.00) bail pending appeal. The lives of two women and their families are forever changed because of these circumstances.

S.B. 228 is a simple bill. It adds to the list of crimes and circumstances for which bail is not allowed under AS 12.30.040(b). It will prevent a persons release on bail either before sentencing or pending appeal where the person has been previously convicted of sexual assault in the second and third degrees, sexual abuse of a minor in the second and third degrees and stalking in the first degree.

I ask for the committee's support and prompt attention so that we might protect the lives of other potential victims of violent crime.

South Anchorage • Indian • Bird Creek • Girdwood • Hope • Kenai • Nikiski • Kalifornsky Beach

State Capitol • Juneau, AK 99801 • (907) 465-4940 • (907) 465-3766 FAX

SPONSOR STATEMENT

SENATE BILL NO. 228

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS SALO, Little, Zharoff

Introduced: 1/10/94
Referred: JUD. FIN

A BILL

FOR AN ACT ENTITLED

"An Act relating to bail after conviction for various felonies if the defendant has certain previous felony convictions."

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

* Section 1. INTENT. It is the intent of the legislature by this Act to restrict the availability of bail after conviction for certain felons. The legislature notes the decision of the Alaska Court of Appeals in Stiegele v. State, 685 P.2d 1255, 1258 - 1261 (Alaska App. 1984) and further notes that for reasons stated in Stiegele this Act does not conflict with or amend a court rule.

* Sec. 2. AS 12.30.040(b) is amended to read:

(b) Notwithstanding the provisions of (a) of this section, a [IF A PERSON HAS BEEN CONVICTED OF AN OFFENSE WHICH IS AN UNCLASSIFIED FELONY OR A CLASS A FELONY, THE] person may not be released on bail either before sentencing or pending appeal if the person has been convicted of an offense that is

New Text Underlined [DELETED TEXT BRACKETED]

ANALYSIS

(1) an unclassified felony or a class A felony; or

(2) a class B or class C felony if the person has been previously convicted of an offense in this state that is an unclassified felony, a class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 - 11.41.438 or of an offense in another jurisdiction with elements substantially similar to an offense of this state described in this paragraph.

Stalking in 1st degree
(Class "C" felony)

Sexual Assault 2nd & 3rd degree
(Class "B" & "C" felony)

Sexual Abuse of a Minor
2nd & 3rd degree
(Class "B" & "C" felony)

List of Unclassified Felonies:
Murder in 1st degree & 2nd degree
Attempted Murder in 1st degree
Sexual Assault in 1st degree
Sexual Abuse of a Minor 1st degree
Kidnapping

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM March 14, 1994

SUBJECT: Sectional Summary of HB 460. (Work Order No. 8-LS1701\A)

TO: Representative Mike Navarre
Attn: Tom

FROM: Jerry Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides that the intent of the legislature in this bill is to change a matter of substance, not a court rule of procedure, and therefore a two-thirds vote of each legislative body is not needed.

Section 2 of the bill amends AS 12.30.040(b) to add to the situations where a person is not eligible to be admitted to bail before sentencing or pending appeal. Under current law a person is not eligible for bail before sentencing or pending appeal when the person has been convicted of an unclassified or class A felony. This bill adds to that prohibition convictions for class B or C felonies if the person has previously been convicted in this state of an unclassified or class A felony or a violation of AS 11.41.-260,[1/] 11.41.420 - 11.41.425,[2/] or 11.41.436 - 11.41.438,[3/] or a similar offense of another jurisdiction.

GPL:pl:mi
94-197.plm

1/ Stalking in the first degree.

2/ Sexual assault in the second or third degree.

3/ Sexual abuse of a minor in the second or third degree.

Sect. Summary

Man sought in assaults on 2 women

Police launching a search for knife-wielding suspect

S.J. KOMARNITSKY
Daily News reporter

Anchorage police are searching for a 36-year-old man they say assaulted one woman and raped another at knifepoint early Wednesday morning.

Police have charged Leonard John Hoffman with one count of third-degree assault and four counts of first-degree sexual assault and have issued a warrant for his arrest.

According to court documents, Hoffman allegedly assaulted the first woman shortly after midnight at her Anchorage home. The woman told police she knew Hoffman and let him in. But, she told police, he grabbed her face, pushed her onto a couch and then threatened her with a knife.

He then broke off the attack and drove her vehicle to a second woman's residence in a mobile home park off Boniface Parkway, Capt. Shirley Warner said.

According to court documents, the second woman told police Hoffman is her sister's boyfriend. She let him in after he told her he had been beaten up. The woman said Hoffman had scratches on his arm and she tried to bandage it. She told police he then smoked what appeared to be marijuana.

Meanwhile, he made several trips between the residence and the vehicle. As he went to leave one time, he suddenly grabbed her, pulled out a knife and dragged her into the bedroom, she said. He then raped her, she said.

Special to the News

Police describe Leonard John Hoffman as 6-foot, 230 pounds, with brown hair and brown eyes.

The woman told officers she ran out of the mobile home about 1:30 a.m when Hoffman went to get some food in a microwave. She called police from a neighbor's residence. Police staked out the mobile home for about four hours, at-

Please see Page E-5, WARRANT

ARTICLES

WARRANT: Man sought in attacks

Continued from Page E-1

tempting to make contact. But Hoffman had apparently snuck out after the woman left, Warner said.

Hoffman is considered extremely dangerous and possibly armed, Warner said.

Hoffman has a long criminal record including convictions in California for three rapes and two vehicle thefts.

In Alaska, Hoffman has been convicted for gambling, carrying a concealed weapon, fourth-degree assault, trespassing and possession of cocaine, according to court records.

Last December, he was also charged with four counts of sexual assault for allegedly tying up and raping a woman to whom he offered a ride. Those charges were later dropped for lack of evidence.

In June, he was sentenced to three years in jail for drug possession. He was released on bail after he appealed the conviction.

Sgt. Walt Monegan said police are familiar with Hoffman. And although they didn't step up patrols Wednesday night, all officers had been briefed on him and a picture was being circulated.

"Right now, we are keeping our eyes out ... and following up on any possible sightings," Monegan said.

He said officers also were watching Hoffman's usual haunts. That included his last reported residence on West 26th Street.

Police describe Hoffman as 6 foot, 230 pounds, with brown hair and brown eyes. He often uses the aliases Leonard J. Samano and Leo Hoffman or combinations of the two. He is considered dangerous and anyone spotting him should call the Anchorage Police Department at 786-8900.

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

DATE: SUNDAY October [illegible], [illegible]
PAGE: B1 EDITION: FINAL
SECTION: Metro LENGTH: Short
SOURCE: By [illegible] ROMANOTTOKUDaily News reporter

SUSPECT IN RAPES ARRESTED

Acting on a tip, police arrested Leonard"Eddie"Eddman around noon Saturday morning at a Wasilla apartment where they were staying.

Police had been looking for Eddman since Wednesday when he allegedly assaulted one Anchorage woman and raped another at knifepoint. Police had asked for the public's help in finding the 36-year-old Eddman, who they said was dangerous and possibly armed.

Trooper spokesman Steve Wilhelmi said a Crime Stoppers tip led police to the apartment building on the Seward-Meridian Parkway where Eddman was staying.

When confronted, Eddman initially gave troopers a fake name, Wilhelmi said. But then he admitted who he was and gave up without a struggle.

Another man staying at the apartment also was arrested on an unrelated charge, Wilhelmi said. The man, whom Wilhelmi would not identify, also had a

warrant for

his arrest, he said. Wilhelmi did not know the relationship between the man or how Eddman traveled from Anchorage to Wasilla.

Eddman is charged with four counts of first-degree sexual assault and one count of third-degree assault. He has a long criminal record, including convictions in California for three rapes and two vehicle thefts. In Alaska, he has been convicted of gambling, fourth-degree assault, carrying a concealed weapon, trespassing and possession of cocaine, according to court records.

In June, he was sentenced to three years in jail for drug possession. He was out on bail appealing that conviction when the latest attacks occurred.

In a court appearance Saturday, his bail was set at $75,000 with a court-approved third-party custodian.

'Leonard'Eddman,'birthdate unknown, was found guilty by a jury of fourth-degree misconduct involving a controlled substance, and the following charges were dismissed: two counts of third-degree assault, and one count each of second-degree sexual assault, first-degree sexual assault and kidnapping. Sentenced to three years in prison, with recommendation for substance abuse treatment and counseling. Judge Souter.

FIREBOMBS: Inmate accused of scare tactics

Continued from Page B-1

Hoffman began trying to intimidate the women soon after he landed in jail, according to the 13-page charging document filed this week.

Montiel's wife, Dawn, told police Hoffman called him "jail repeatedly," and told her to tell the women not to testify.

"Go up to her and frighten her," Hoffman said, according to Dawn Montiel's statement to police. She also claimed he threatened her, saying, "If you don't do this I'm going to get people to take care of you. I'm out and touch you."

A man named Shannon Kennington told police he was at the Montiels' house one day in November when Hoffman called from jail. Hoffman, he said, promised to give him a gram of heroin if he would shoot at a Spenard trailer to frighten a woman out of testifying.

Kennington said he agreed to the terms. Early one morning he and Gilbert Montiel fired six shots at the trailer Hoffman described, Kennington said.

Hoffman, however, only provided a fraction of the heroin he promised because police didn't believe they had done the job, Kennington said. Over the phone from jail, Hoffman let Kennington know he was angry that the shooting hadn't been reported in the news.

Hoffman said he wanted to make the newspaper, to let it be known to "these people" that something was going to happen," the charges say. "... Hoffman kept making phone calls to Montiel's residence to try to get Montiel and Kennington to go and 'do some more to these ladies' trailers.'"

Daily News file photo

Leonard Hoffman pleaded innocent to arson, witness tampering and interference with an official proceeding.

On Dec. 11, a Molotov cocktail was thrown at the Spenard trailer. It landed in the driveway and caused no damage. Two days later, the woman Hoffman is accused of assaulting reported finding another Molotov cocktail — a gasoline-filled bottle with a white rag stuffed in the neck — in front of her trailer. The rag was partially burned, but the bomb did not explode.

On Jan. 6, the woman Hoffman is accused of raping was sleeping in her Muldoon trailer when a lit Molotov cocktail was thrown into her living room window. She put out the fire with an extinguisher before it spread.

Kennington told police he heard Montiel and Lopez brag about the bombing afterward.

Richard Shoeffel, assistant superintendent of Cook Inlet Pre-Trial Facility, said the jail couldn't listen in on Hoffman's phone conversations because it doesn't have phone monitoring equipment. If someone complains about getting threatening or harassing calls from an inmate, jail officers will tell the prisoner not to call that number again. In extreme cases, they will have officers dial phone numbers for the prisoner. Shoeffel said. Police never asked him to restrict Hoffman's calls, he said.

The Department of Corrections is already being sued for allegedly allowing inmates in Cook Inlet Pre-Trial and Spring Creek Correctional Facility to plan and execute the fatal 1991 Skilling mailbombing from behind bars. The lawsuit, filed by the wife of bombing victim David Kern, alleges the department failed to isolate inmates Doug Gustafson and R.D. Cheely from each other and from people outside the prison who carried out the bombing at the inmates' direction.

Arrest warrants were issued for Montiel and Lopez, but only Lopez was in jail Wednesday evening, authorities said.

Hoffman's trial on the October rape and assault charges was to begin today. His lawyer, Carmen Gutierrez, asked for more time to prepare in light of the new charges. The trial is now set to begin May 11.

Prosecutor Audrey Renschen said she plans to introduce evidence of Hoffman's scheme to intimidate the witnesses at the assault trial.

No trial date has been set for the charges filed this week.

Hoffman was convicted of raping two women in California and has served hard time in San Quentin, District Attorney Ed McNally said.

LEGISLATIVE ACTION

...cted by lawmakers Wednesday

...se passed and sent to Senate:

...412, which would update state laws for licensing of child-care ...es, child-placement agencies, maternity homes, adult residennal ...es and foster homes. Vote: 33-0.

...426, which would establish the Chickaloon Flats Critical Habitat Area ...g Chickaloon Bay on Kenai Peninsula, a prime bird nesting area. Vote: ...

...se passed and returned to Senate for concurrence with changes:

...151, which would allow the state to pay much of a company's costs ...il exploration on unleased land in return for the resulting geological ...mation. Vote: 37-2.

...251, which would make fishermen with limited-entry permits eligible

• SB252, which would make possession of child pornography a misdemeanor. Vote: 38-0.

Senate passed and sent to House:

• SB311, which would allow factory trawlers to receive a tax credit toward the state's new fishery landing tax if they donate to nonprofit groups involved in developing fisheries jobs in coastal villages. Vote: 11-9.

Senate passed and returned to House for concurrence with changes:

• HB294, which would extend the life of the Pharmacy Board through June 1999. Vote: 19-1.

Senate rejected:

• HB49, which would allow absentee ballots to be cast by fax. Vote: 12-8.

• SB195, which would make changes to the state's physical therapy licensing laws. Vote: 10-10.

• HB323, which would allow state officials to ...

OCT 19 '93 11:52 P.1

Exempt from VRA Certif.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

(X) STATE OF ALASKA
( ) MUNICIPALITY OF ANCHORAGE

Plaintiff,

vs.

Leonard J. Hoffman
dob:4/29/57
SS#574-30-4503 Defendant.

CASE NO. 3AN-S93-7782 CR

ARREST WARRANT

To Any Peace Officer Or Other Authorized Person:

You are commanded to arrest the defendant and bring the defendant before the nearest available judicial officer without unnecessary delay to answer to a complaint ~~information/indictment~~ charging the defendant with violation of

A.S. 11.41.220(a)(1) and four counts 11.41.410(a)(1)
(statute or ordinance)

Assault 3° and four counts Sexual assault 1°
(offense)

Bail is set at $ 75,000—. [X] The defendant may not be released until the court approves a third party custodian and/or conditions of release.

Judge/Deputy Clerk as ordered on the record by Judge Wielkopolski

Date 10/13/93

Sex: M Race: W Ht: 6' Wt: 230# Hair: BRO Eyes: BRO
DOB: 4-29-57 OL/ID AK 1005887 9 SSN 574-30-4503
Last Known Address: 1414 West 26th. phone:
Place of Employment: phone:

RETURN

I received the above warrant on _____ 19___, and executed it by arresting the defendant and serving the defendant with a copy of this warrant in _____, Alaska, on _____, 19____.

Return Date | Signature of Peace Officer | Type or Print Name

CR-115 ANCH (2/92)(st.5)
ARREST WARRANT

Crim. R. 4 & 9

ARREST WARRANT

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

Leonard J. Hoffman

DOB: 4/29/57
AK ID/OL: 5058879
SSN: 574-30-4503
ATN:

Defendant.

Court No. 3AN-S93-7771 Cr.

COMPLAINT

COUNT ONE
ASSAULT IN THE THIRD DEGREE
AS 11.41.220(A)(1)

COUNT TWO
SEXUAL ASSAULT IN THE FIRST DEGREE
AS 11.41.410(A)(1)

COUNT THREE
SEXUAL ASSAULT IN THE FIRST DEGREE
AS 11.41.410(A)(1)

COUNT FOUR
SEXUAL ASSAULT IN THE FIRST DEGREE
AS 11.41.410(A)(1)

COUNT FIVE
SEXUAL ASSAULT IN THE FIRST DEGREE
AS 11.41.410(A)(1)

THE COMPLAINANT CHARGES IN COUNT ONE:

that on or about October 13,1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did recklessly place another, M.B., in fear of imminent serious physical injury by means of a dangerous instrument.

All of which is a class C felony offense, being contrary to and in violation of AS 11.41.220(a)(1), and against the peace and dignity of the State of Alaska.

SOA vs. Leonard J. Hoffman

THE COMPLAINANT CHARGES IN COUNT TWO:

that on or about October 13,1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her anus with his finger.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT THREE:

that on or about October 13,1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her vagina with his finger.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT FOUR:

that on or about October 13,1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her vagina with his penis.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT FIVE:

that on or about October 13,1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her mouth with his penis.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

I, Robert M. Gray, state under oath that this complaint is based

on information and belief derived from my investigation in this matter.

M.B. reports that just after midnight, in the early morning hours of October 13,1993, she was at her home in Anchorage, when the defendant, who she knows as an acquaintance, came to see her. While at her home, the defendant suddenly grabbed her face with his hand, splitting her lip, and pushed her face into the couch. He then ripped her panties off, stuffed them in her mouth, and held up a knife as if he were going to stab her. He told her he had killed two back men already tonight with a baseball bat. M.B. said he suddenly stopped and began to frantically try to make telephone calls. She suggested to him that he could take her car, and he left. M.B. said she struggled with him during the above encounter, and scratched his face and bit his finger.

K.V. reports that around 12:30 a.m. on October 13,1993, she was at her home in Anchorage, when the defendant, whom she knows as a boyfriend of her sister, came to her home. She said he wanted in, that some black guys had beaten him up. She observed injuries on him and invited him in and tried to bandage up his arm, using an Ace bandage.

K.V. said he smoked what appeared to be marijuana, after he offered her some, and she declined. She said he went back and forth to his car several times. She said one time as he was leaving, he grabbed her, pulling her shirt off, and pulled out a knife, which he used to cut off her bra. He the dragged her into the bedroom. He tied her hands above her head, using the Ace bandage she had given him earlier. He told her, "I have nothing to lose. I'm going to kill you." He told her he had an Uzi in the car. He then forced his finger into her anus. He continued to assault her by forcing his finger into her vagina. He forced his penis into her vagina. He grabbed her hair and forced her mouth onto his penis. During these assaults, he was rubbing the knife around her breasts.

Afterward, K.V. tried to pretend everything was okay, because she was still afraid that the defendant would carry through on his threat to kill her. She offered to make him some food, and managed to escape to call the police when he went to the microwave to get his food. She said he followed her, cursing, but she managed to get away.

BAIL INFORMATION

The defendant is known to me as a convicted sexual assault felon in California. I am also aware that he is currently out on bail pending appeal on a drug conviction.

DATED this 13 day of October, 1993, at Anchorage, Alaska.

Det Robert M Dale #052
Inv.
Anchorage Police Department

SUBSCRIBED AND SWORN to before me this 13 day of October, 1993, at Anchorage, Alaska.

Judge/Magistrate

January 10, 1994 SENATE JOURNAL p. 2453
SB 228
(Prefile released January 3, 1994)
SENATE BILL NO. 228 by SENATORS SALO, Little, Zharoff, entitled:

"An Act relating to bail after conviction for various felonies if the defendant has certain previous felony convictions."

was read the first time and referred to the Judiciary and Finance Committees.

April 5, 1994 SENATE JOURNAL p. 3444
SB 228
The Judiciary Committee considered SENATE BILL NO. 228 "An Act relating to bail after conviction for various felonies if the defendant has certain previous felony convictions." Signing do pass: Senator Taylor, Chair, Senators Little, Doniey, Jacko, Halford.

Zero fiscal notes published today from Department of Law, Department of Public Safety, Department of Administration (2), Department of Corrections.

April 5, 1994 SENATE JOURNAL p. 3445
SB 228
SENATE BILL NO. 228 was referred to the Finance Committee.

April 13, 1994 SENATE JOURNAL p. 3623
SB 228
The Finance Committee considered SENATE BILL NO. 228 "An Act relating to bail after conviction for various felonies if the defendant has certain previous felony convictions." Signing do pass: Senator Pearce, Cochair, Senators Rieger, Jacko, Kelly, Sharp.

Previous zero fiscal notes.

SENATE BILL NO. 228 was referred to the Rules Committee.

SENATE JOURNAL

SB 242

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 4, 1994 FURTHER REFERRALS:

Date of Committee Action: 3-15-94

The STATE AFFAIRS Committee considered: SB 242

SENATE BILL NO. 242 HOURS FOR STATE OFFICES

"An Act relating to office hours of state agencies."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[✓] zero fiscal note Revenue [✓] zero fiscal note(s) All STATE AGENCIES

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X			✓	
	X				
	X				

CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Bill Version: SB 242

(S) Publish Date: 2-23-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BII

Revision Date:

Dept. Affected: All State Agencies

Title: "An Act relating to office hours of State agencies."

BRU:

Component:

Sponsor: Taylor

Requestor: (S) Sta

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Assumes that State agencies will continue to periodically assess the preferences and needs of clients with respect to accessing State offices.

Prepared by: Kevin Ritchie, Director

Phone: 465-4430

Division: Personnel/OEEO

Date:

Approved by Commissioner: Nancy Bear Usera

Date: 2/16/94

Agency: Administration

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(Rev: 10/93) rl 2/16/94

Fiscal Note

Alaska State Legislature

Senate Majority Leader
Chair, Judiciary Committee
Vice Chair, Community & Regional Affairs

Member, State Affairs Committee
Committee on Committees
Western States Legislative Forestry Task Force
Legislative Council

Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

SPONSOR STATEMENT
FOR
SENATE BILL 242

I introduced this legislation as a result of my observation that flexible state office hours would give state agencies the ability to accomodate and better serve the public. This would allow state offices some leeway in determining what might suit the public in a certain community.

The bill requires each state agency office to review the preferences and needs of its clientele and recommend to the administration which hours would be best for each community.

The idea behind this legislation is to allow state offices the flexibility to serve the public without adding to the state operating budget.

The language in the bill states that the policy should be implemented "to the extent possible" and calls for each office to review its hours of operation "periodically".

SPONSOR STATEMENT

SB 303

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 31, 1994 FURTHER REFERRALS: Finance

Date of Committee Action: 4-20-94

The STATE AFFAIRS Committee considered: SB 303

SENATE BILL NO. 303 UNIFORM VOTER REGISTRATION SYSTEM

"An Act relating to voter eligibility, voter registration, and voter registration agencies; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[✓] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[✓] fiscal note(s) Pub Snowth, Dept, HESS(3)
[✓] zero fiscal note(s) Ed, CLRA

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X			✓	
	X			✓	
	X			✓	

CHAIRMAN'S SIGNATURE

SENATE BILL 303

"An Act relating to voter eligibility, voter registration, and voter registration agencies; and providing for an effective date."

* **DESIGNATES VOTER REGISTRATION AGENCIES:**

Division of Motor Vehicles

Those divisions within Health and Social Services that administer WIC, AFDC, MEDICAID, AND FOOD STAMP PROGRAMS *(minimum agencies defined in Conference Committee Report)*

Those state funded agencies which primarily provide services to people with disabilities

All armed services recruitment offices in Alaska

Division of Municipal and Regional Assistance, Department of Community and Regional Affairs *(This is the only agency not specifically required by the NVRA. It was added to show "good faith" in opening the voter registration process to Alaska Natives whose language differences can not be addressed by adding written instructions to the voter registration forms. CRA staff visit the Bush and can provide bilingual assistance.)*

The Director may designate other state and local agencies as voter registration agencies in agreement with those agencies

* **MAKES TECHNICAL CHANGES TO ELECTION LAWS TO BRING THE STATE INTO COMPLIANCE WITH THE FEDERAL ACT**

Removes witnessing requirement on voter registration forms

A voter can no longer be purged from the rolls for simply not voting; voters must be sent a noticed and have the opportunity to respond

Voters will remain on Master List longer; precinct lists will not be effected

"By Mail" registrations must be postmarked (not received) 30 days prior to the next election

Federal felons convicted of a crime consisting of moral turpitude may not vote in state, federal or municipal election through date of unconditional discharge *(current state law does not address felons convicted in federal court; they could essentially vote absentee ballots without this provision)*

Director of Elections designated as the state officer responsible for state coordination and reporting requirements under federal act

STATEMENT

SENATE BILL NO. 303

"An Act relating to voter eligibility, voter registration, and voter registration agencies; and providing for an effective date."

Section 2. AS 15.05.020 (10) is amended to read:

Rules for determining residence of voter. Removes the requirement to "execute an affidavit on a form provided" and replaces it with notifying the director in writing of a change of voting residence.

Section 5 (d) of the National Voter Registration Act of 1993 (NVRA) requires states to allow a change of address form for a driver's license to serve as a change of address form for voter registration. Under AS 28.05.071 an affidavit or notarization are not needed when a driver's licensee provides written notification of a change of address to the Department of Public Safety. Also complies with Section 9 (b)(3) of the NVRA which prohibits "any requirement for notarization or other formal authentication" of mail registration forms.

Section 3. AS 15.05.030 (a) is amended to read:

Loss and restoration of voting rights. People convicted of felonies involving moral turpitude under state or federal law may not vote in state, federal, or municipal elections.

Currently statute provides for cancellation of voter registration of persons convicted of such felonies under state law. In Section 8 (g), the NVRA requires the United States attorney to give the state notice when a person is convicted of a felony involving moral turpitude in a United States district court. Names can be removed as provided by State law, by reason of criminal conviction...(Section 8 (a)(3)(B)).

Section 4. AS 15.07.050 is amended to read:

Registration in person or by mail. Adds "or through a voter registration agency"

Permits registration in person through voter registration agencies as well as before a registration official or by mail to comply with Section 7 of the NVRA.

SECT. SUMMARY

Section 5. AS 15.07 is amended by adding a new section to read:

Voter Registration Agencies. Designates the following state agencies as voter registration agencies:

Division of Motor Vehicles

Divisions of H&SS that provide public assistance through the food stamp program, Medicaid program, Special Supplemental Food Program for Women, Infants, and Children (WIC), and Aid to Families With Dependent Children (AFDC) program

Community and Regional Affairs/Division of Municipal and Regional Assistance

All recruitment offices of the armed forces of the United States located in Alaska

State-funded agencies that primarily provide services to persons with disabilities

Other agencies that may include: other state and local agencies, federal and nongovernmental offices w/ agreement from offices

Voter Registration Agencies will include voter registration materials with agency applications and forms, assist applicants in completing voter registration forms, and transmit voter registration forms to the director of elections in accordance with regulations adopted by the director.

Section 5 of the NVRA requires simultaneous application for voter registration and application for motor vehicle driver's licenses and defines the relationship and responsibilities of the Division of Motor Vehicles as a voter registration agency.

Section 7 of the NVRA designates voter registration agencies and defines the parameters and roles of those agencies named. The Conference Committee in its report on the NVRA delineated the minimum agencies to be included as "public assistance agencies" as "...those state agencies in each State that administer or provide services under": the food stamp program, the medicaid program, Women, Infants, and Children program. and the Aid to Families with Dependent Children program."

State funded agencies that primarily provide services to persons with disabilities are specifically designated under Section 7 (a)(2)(B) of the NVRA.

All recruitment offices of the armed forces of the United States located in Alaska are also designated as voter registration agencies to comply with Section 7 (c)(2) of the NVRA.

The Division of Municipal and Regional Assistance in the Department of Community and Regional Affairs is designated as a voter registration agency in this bill because employees of that division visit each of Alaska's rural communities at least once during each election cycle and provide bilingual information in the villages when needed. Specifically recognizing this division as a voter registration agency assures availability of registration opportunities to Alaska's Native and rural residents.

Section 6. AS 15.07.064 (e) is amended to read:

Address information required for voter registration. Removes reference to consideration by the director of elections of witnessing of an application for voter registration by mail in determining the validity of applications from certain residents of single-precinct municipalities or established villages.

NVRA Section 9 (b)(3), prohibits "any requirement for notarization or other formal authentication" of mail voter registration forms.

Section 7. AS 15.07.070 is amended to read:

Procedure for registration. (a) The director is given specific authority to adopt regulations to implement requirements of federal law, including 42 U.S.C. 1933gg (National Voter Registration Act of 1993).

Regulations to bring the State into compliance with the NVRA are a necessary compliment to this legislation.

(b) In registering by mail, adds voter registration agencies to those who shall furnish forms at no cost to the voter. Removes [upon request] regarding forms prepared by the director for voter registration, so that a voter does not have to request a form to be given the opportunity to register. Removes language regarding required notarization and all witnessing requirements. When the Division notifies the applicant that their registration was denied, the requirement that the Division notify [by certified or registered letter] has been removed.

Section 7 of the NVRA requires that a voter registration agency must distribute mail voter registration application forms and that the individual will be asked by the voter registration agency whether or not they would like to register, rather than the individual requesting the

application. Section 9 (b)(3) prohibits "any requirement for notarization or other formal authentication" of mail voter registration forms. As a cost saving measure, applicant notification of registration denial will be mailed first class rather than certified or registered mail

(c) Completed registration forms must now be postmarked, not [received by the director or election supervisor] at least 30 days prior to the next election. Added if a registration form is received less than 30 days before an election has an illegible and undated postmark, but was signed and dated by the applicant at least 30 days before an election and was received at least 25 days before an election, their name shall be placed on the official registration list. A person who submits a completed registration form by mail that does not meet the applicable requirements of this subsection may not be placed on the official registration list for that [the next] election.

Complies with Section 8 (a)(1)(B) of the NVRA. The Division of Elections receives many by-mail registration that have illegible, undated, or no postmarks. To maximize the registrations that will be accepted and placed on the official registration list, the provision for receipt of an application by the director at least 25 days before the election, and executed at least 30 days prior was added.

(d) Qualified voters may register in person before a registration official or through a voter registration agency...

Adds voter registration agencies to comply with Section 7 of the NVRA.

(f) Incomplete or inaccurate registration forms may not be accepted. Registration reexecuted and resubmitted forms may be completed in person or by mail and must meet the requirements of (c) or (d). Removes language regarding the date of registration when reexecuting a registration application.

New language conforms to changes made in paragraphs (c) and (d) and complies with Section 8 (a)(1)(B) of the NVRA.

(g) Adds voter registration agencies designated under AS 15.07.055 and removes [Department of Public Safety].

The Division of Elections will be supplying by-mail voter registration forms to all other voter registration agencies for distribution to the public to comply with Section 7 (a)(4)(A)(i) which requires distribution of by mail voter registration forms. All costs associated with the printing of the forms will be the sole responsibility of the Division.

Section 8. AS 15.07.090 (b) is amended to read:

Voting after change of name; registration; amendment or transfer of registration. If registration is cancelled [for failure to vote in prior elections], the voter shall reregister and the registration is effective for the next election that occurs at least [may not be made later than] 30 days after reregistration [preceding an election].

Section 8 (b)(2) of the NVRA prohibits a state from purging/cancelling a person's name from the registration list based solely on the person's failure to vote. A voter must have the opportunity to respond to several notices before the voter's name is removed from the rolls.

Section 9. AS 15.07.125 is amended to read:

Official registration list. The director shall prepare an official registration list for each election consisting of all names of voters whose registration are not inactive and all voters whose names are required to be placed on the list by AS 15.07.070 (c) and (d).

Removes the language [appearing on the master register 30 days before an election], which allows Elections to continue adding names from those applications defined under AS 15.07.070 (c) to the official registration list for as long as possible and not bind the Division to a "cut-off date" of 30 days prior to an election. This will make the lists the most comprehensive and representative of voters in each precinct.

Section 10. AS 15.07.130 is amended to read:

Voter Registration List Maintenance. [Elimination of Excess Names]. (a) At the close of each calendar year the area election supervisor shall examine the register maintained by the supervisor under AS 15.07.120.

The additional language clarifies that the supervisors examine only the lists from their region.

(b) When a registered voter [has not reregistered or] has not indicated in writing a desire to remain registered as provided in this subsection within the preceding two calendar years and [or] has not voted in a local regional school board, primary, special or general election at least once in two consecutive calendar years, the voter shall be advised by a notice sent by forwardable mail [sent] to the voter's last known address that registration will be [cancelled] inactivated unless the voter responds to the notice at least 30 [indicates within 90] days before the date of the next primary election on a form [forms] furnished by the director [a desire to remain registered]. The director shall maintain on the master register the name of a voter whose registration is

inactivated. The director shall cancel a voter's inactive registration after the second general election that occurs after the registration becomes inactive if the voter does not vote a questioned ballot or an absentee ballot that is counted under AS 15.15.198(b) at or before that election.

Adds calendar years to ensure consistency throughout. The deadline for a voter's response to the notice is 30 days before the next primary election. If the voter fails to respond to the notice, the voter's registration is only "inactivated," and the voter's name will be maintained on the master register which allows the voter to vote a questioned ballot or request an absentee ballot. As a result, the voter will not be disenfranchised.

(c) Substitutes bureau for [office] of vital statistics.

Retains the existing provision that the registration of deceased voters is to be cancelled. Complies with Section 8(a)(4)(A) of the NVRA.

(d) The notice described in (b) must include a postage prepaid and pre-addressed return card so the voter may state their current address. It must also indicate

(1) that the voter should return the card to the Division not later than 30 days before the next primary election if the voter did not change residence;

(2) that the voter may vote only a questioned or absentee ballot if the voter fails to return the card 30 days before the next primary election;

(3) that the voter's registration will be cancelled if the voter does not vote in an election held during the period beginning on the date of the notice and ending on the day after the date of the second general election that occurs after the date of notice; and

(4) how the voter can remain eligible to vote if the voter has moved.

Defines the content of the notice sent to voters as required by Section 8 (d)(2) of the NVRA.

Section 11. AS 15.10.105 (a) is amended to read:

Administration of elections. (a) Adds the director is responsible for the coordination of state responsibilities under 42 U.S.C. 1933 (National Voter Registration Act of 1993.

Section 10 of the NVRA requires states to designate a State officer or employee as the chief State election official to be responsible for coordination of state responsibilities under NVRA.

Section 12. AS 15.15.198 (b) is amended to read:

Voters not on official registration list. (b) A person whose registration is inactive [has been cancelled] and who votes a questioned or absentee ballot shall have either ballot counted if....

Removes the reference to "cancelled" and replaces it with "is inactive" to comply with the NVRA. The questioned ballot procedure and the information required for an absentee ballot provides for the "affirmation or confirmation" of the voter's address required before a voter whose name is not on the official registration list can be permitted to vote under Section 8 (d)(2)(A) of the NVRA .

Section 13. AS 15.60.010 is amended by adding a new paragraph to read:

Definitions. (36) defines a voter registration agency as an agency designated in or under AS 15.07.055.

Section 14. AS 28.05.045 is amended to read:

Voter Registration. Adds the division of motor vehicles shall serve as a voter registration agency to the extent required by state and federal law, including the NVRA and there will be simultaneous application for voter registration and driver's licenses, identifications, and registrations.

Some changes were required to comply with Section 5 of the NVRA which requires simultaneous application for voter registration and application for motor vehicle driver's licenses. The division of motor vehicles and the division of elections are working together to meet specific requirements regarding updating previous voter registration, limitation of use of information, forms and procedures, change of address, and transmittal deadlines.

Section 15. AS 44.29.020 is amended by adding a new subsection to read:

Duties of department. (b) The Department of Health and Social Services shall comply with AS 15.07.055 to serve as a voter registration agency to the extent required by state and federal law, including the NVRA.

To comply with Section 7 of the NVRA, those divisions of the Department of Health and Social Services that administer or provide services under the food stamp, Medicaid, the Women Infants and Children (WIC), and Aid to Families with Dependent Children (AFDC) programs will be

designated as voter registration agencies. The Conference Report specifically named those programs as public assistance agencies. Working with the division of elections, the divisions administering these programs will meet specific requirements regarding distribution of mail voter registration forms, assistance to applicants in completing voter registration forms, transmittal of forms to Elections, procedures, confidentiality and record-keeping.

Section 16. AS 44.47.050 is amended by adding a new subsection to read:

General powers and duties. (c) The department shall comply with AS 15.07.055 to serve as a voter registration agency to the extent required by state and federal law, including the NVRA.

The division of municipal and regional assistance in the Department of Community and Regional Affairs has been designated as a voter registration agency to provide outreach to rural communities and to work with those applicants who may need assistance and bilingual information.

Section 17. The director of the division of elections may proceed to adopt regulations to implement the changes made by this Act, but the regulations can not take effect before the effective date of sections 1 - 16 of this Act.

Section 18. Section 17 of this Act takes effect immediately under AS 01.10.070 (c).

Public Law 103-31
103d Congress

An Act

To establish national voter registration procedures for Federal elections, and for other purposes.

May 20, 1993
[H.R. 2]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National Voter Registration Act of 1993.
Inter-governmental relations.
42 USC 1973gg note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Voter Registration Act of 1993".

42 USC 1973gg.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

42 USC 1973gg-1.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "election" has the meaning stated in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1));

(2) the term "Federal office" has the meaning stated in section 301(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(3));

(3) the term "motor vehicle driver's license" includes any personal identification document issued by a State motor vehicle authority;