

Approved: 3-10-97
Date

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:30 p.m. on March 6, 1997 in Room 526-S of the Capitol.

All members were present except:

Representative Sharon Schwartz, excused

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Jackie Buchanan, Committee Secretary

Conferees appearing before the committee:

SueAnn V. Schultz, Senior Vice President, General Counsel, Bank IV; Baystone Financial Group of Manhattan, KS; First National Bank of Hutchinson, KS; Transamerica Business of Overland Park, KS; Equipment Leasing Association; American Automotive Leasing Association
Tom Palace, Executive Director, Kansas Oil Marketers Association; Convenience Store Association of Kansas
Terri Roberts JD, RN, Executive Director, Kansas State Nurses Association; Tobacco Free Kansas Coalition

Others attending: See attached list

SB 118 - Terminal rent adjustment; clauses

Chair opened the hearing on **SB 118**. SueAnn V. Schultz, Senior Vice President, General Counsel, Bank IV, presented testimony in support of **SB 118**. She advised the bill clarifies the law regarding TRAC (Terminal Rental Adjustment Clause) vehicle leasing. The bill will lower costs of doing TRAC leasing and will clarify that TRAC leases are "true leases" in court cases where the lessee is in bankruptcy. (Attachment 1)

Hearing was closed on **SB 118**.

SB 169 - Distinguishable driver's licenses and identification cards for under 18 years

Chair opened the hearing on **SB 169**. Tom Palace, Executive Director, Kansas Oil Marketers Association, presented testimony in support of **SB 169**. The bill will provide another tool to assist retail store owners and clerks to quickly look at a license to fight the problem of illegal tobacco sales to minors. (Attachment 2)

Terri Roberts JD, RN, Executive Director, Kansas State Nurses Association, presented testimony that the Tobacco Free Kansas Coalition is very supportive of **SB 169** which will provide readily distinguishable identification cards that indicate the date which the card holder will be 18 years of age. (Attachment 3)

Betty McBride, Director, Kansas Division of Vehicles, Department of Revenue, advised that the color of the strip indicating under the age of 18 would be different than the strip indicating under the age of 21. After age 18, the individual can return license and obtain license indicating under age of 21. She also advised **SB 169** has a fiscal note of \$6,500.

Committee requested staff to supply a copy of the FDA Guidelines for fines, etc., for carding and/or selling to a minor.

Hearing was closed on **SB 169**.

The Chair announced Tuesday, March 11, is the Railroad Tour leaving the Capitol at 1:30 p.m. and no meeting is scheduled on that date.

Meeting was adjourned at 2:10.

CONTINUATION SHEET

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE, Room 526 -S Statehouse, at 1:30 p.m. on March 6, 1997.

The next meeting is scheduled for March 10, 1997.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: March 6, 1997

NAME	REPRESENTING
Chris Wilson	KS Governmental Consulting
Jayne Ability	SCA - Sunrise Christian Academy
Michael Goodson	
Ben Wood	
Henry Robles	"
Ben Siemer	"
JOHN SIEMER	"
Jennifer Lasswell	Sunrise Christian Academy
Amy Libby	Sunrise Christian Academy
Amanda Bain	Sunrise Christian Academy
Brandon Walters	Sunrise Christian Academy
Kara Day	Sunrise Christian Academy
Kristen Gannett	Sunrise Christian Academy
Shelly Pollard	Sunrise Christian Academy
Mary E. Turkington	Kansas Motor Carriers Assn.
Brian Kramawiter	American Cancer Society
Carol Gumer	American Cancer Society
Luke Wohlmueter	Sunrise Christian Academy
Luke Brown	Sunrise Christian Academy

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: March 6 1997

NAME	REPRESENTING
Andy Robles	Sunrise Christian Academy
Jeff Robles	Sunrise Christian Academy
TERRY HOUDEEN	KEARNY LAW OFFICE
Tom Palace	KOMA
Paul P...	SUNRISE CHRISTIAN ACADEMY
Ryan Zeller	Sunrise Christian Academy
Jordan Allright	Sunrise Christian Academy

HOUSE COMMITTEE ON TRANSPORTATION

Testimony of SueAnn V. Schultz,
Senior Vice President, General Counsel, BANK IV

Senate Bill 118

3-6-97

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address you today. I am SueAnn Schultz, Senior Vice President and General Counsel for BANK IV (in Wichita, Topeka and 34 other communities throughout Kansas). I also appear before you on behalf of Baystone Financial Group of Manhattan, Kansas, First National Bank of Hutchinson, Kansas, and Transamerica Business of Overland Park, Kansas. In addition, I am speaking on behalf of two national trade associations, the Equipment Leasing Association and the American Automotive Leasing Association. We all support this legislation.

Attached is our written explanation of Senate Bill 118 and of TRAC (Terminal Rental Adjustment Clause) vehicle leasing. I have a few comments in addition to our written testimony.

Senate Bill 118 clarifies the law regarding TRAC vehicle leasing, which is the way our company and those companies I am representing, have leased vehicles for years. TRAC vehicle leasing is the way that most commercial fleets of vehicles are leased throughout the United States. There are over 5 million vehicles on the roads operating under TRAC leases. We want to operate in Kansas without being at a competitive disadvantage to companies in other states that have already enacted this legislation, and 35 other states have already adopted this legislation.

What this bill will do is lower our costs of doing TRAC leasing. There has been some uncertainty in the law about whether TRAC vehicle leases should be treated as "true leases" in court cases where the lessee is in bankruptcy. Our position is that TRAC leases are, and should continue to be, recognized as true leases, and most courts agree with our position. But the uncertainty in the law has caused needless litigation and expense for TRAC vehicle lessors such as those I represent. Senate Bill 118 will help eliminate that uncertainty by clarifying that TRAC leases are "true leases". It will lower our costs of doing TRAC vehicle leasing, it will allow us to lower lease rental rates, and it will help commerce in the state of Kansas.

We support this legislation and ask that you adopt Senate Bill 118. Thank you for your attention. I am willing to answer any questions you may have.

S:\legal\sas\sb118hse.test
[3-6-97.11:30am]

*House Transportation
Attachment 1
3-6-97*

TRAC VEHICLE LEASING IN KANSAS

o **TRAC vehicle leasing.** TRAC vehicle leasing is a well-established, decades-old business that involves the leasing of commercial fleets of motor vehicles (cars and trucks) by one business to another. While specific transactions vary, in general a Terminal Rental Adjustment Clause (TRAC) 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 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 is limited by federal tax law (see 26 U.S.C. 7701(h)) to a commercial business context; TRAC vehicle leasing does not involve leasing to consumers.

TRAC motor 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. The Equipment Leasing Association (ELA) and the American Automotive Leasing Association (AALA) estimate that there are over 5 million leased vehicles now on the roads operating under TRAC leases.

o **TRAC legislation.** The objective of TRAC/state legislation is simply to ensure that TRAC leases are treated the same as all other leases for state law purposes and bankruptcy law purposes.

What the TRAC/state legislation says is that the mere presence of a TRAC clause in a vehicle lease will not destroy the "true lease" character of the TRAC lease. This clarifies the law and accords with tax law, accounting principles, and the trend in the court cases. See, e.g., 26 U.S.C. 7701(h) (federal tax law); Financial Accounting Standards Board Statement No.13 (accounting principles); Sharer v. Creative Leasing, 612 So.2d 1191 (Ala. 1993) (courts holds TRAC vehicle leases to be true leases, in lessor's suit for deficiency judgment).¹

The impact of the proposed TRAC/state law is particularly important when the lessee is in bankruptcy. If a TRAC lease is

¹ And see In re Otasco, Case No.90-C-300-E (N.D.Okl. 1991), overruling 111 Bk.Rptr. 976 (Bk.N.D.Okl. 1990) (TRAC leases held true leases in bankruptcy case); Basic Leasing v. Paccar, 1991 WL 117412 (D.N.J. 1991) (same); LMV Leasing, Inc. v. Conlin, 805 P.2d 189 (Utah App. 1991) (TRAC leases held true leases in lessor's suit for deficiency judgment); contrast In re Tillery, 571 F.2d 1361 (5th Cir. 1978) (TRAC leases held disguised security agreements, not true leases, in bankruptcy case).

suit for deficiency judgment).¹

The impact of the proposed TRAC/state law is particularly important when the lessee is in bankruptcy. If a TRAC lease is viewed as a "true lease," then the Trustee in Bankruptcy must pay the lessor full rental payments for using the vehicles, and the lessor may recover the leased vehicles from the Trustee in Bankruptcy and re-lease them. On the other hand, if the TRAC lease is viewed as a disguised security interest, then the Trustee in Bankruptcy may keep the vehicles, and pay the lessor only an amount representing the depreciation on the leased vehicles (about 50% to 80% of full rentals). The difference to the lessor is significant.

Thirty-five (35) other States and the District of Columbia have already enacted TRAC/state legislation. Major industrial States enacting TRAC legislation include (among others) California, Florida, Illinois, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, Virginia, Wisconsin. The States that adopted TRAC/state legislation in 1996 are Connecticut, Delaware, Massachusetts and West Virginia.

TRAC/state legislation in Kansas would clarify the law, make it uniform and predictable throughout the United States, lower transaction costs, and facilitate commerce in Kansas.

This legislation is supported in Kansas by Bank Four (Wichita), Baystone Financial Group (Manhattan), First National Bank of Hutchinson (Hutchinson), and Transamerica Business (Overland Park) and two national trade associations representing vehicle and equipment leasing (the Equipment Leasing Association and the American Automotive Leasing Association). We know of no opposition.

We respectfully urge the Kansas Legislature to enact TRAC/state legislation in the public interest.

¹ And see In re Otasco, Case No.90-C-300-E (N.D.Okl. 1991), overruling 111 Bk.Rptr. 976 (Bk.N.D.Okl. 1990) (TRAC leases held true leases in bankruptcy case); Basic Leasing v. Paccar, 1991 WL 117412 (D.N.J. 1991) (same); LMV Leasing, Inc. v. Conlin, 805 P.2d 189 (Utah App. 1991) (TRAC leases held true leases in lessor's suit for deficiency judgment); contrast In re Tillery, 571 F.2d 1361 (5th Cir. 1978) (TRAC leases held disguised security agreements, not true leases, in bankruptcy case).



KANSAS OIL MARKETERS ASSOCIATION

Convenience Store Association of Kansas

Testimony on Senate Bill 169
Submitted by the Kansas Oil Marketers Association/
Convenience Store Association of Kansas
To The House Transportation Committee

Chairperson Hayzlett, and members of the The House Transportation Committee: My name is Tom Palace. I am Executive Director of the Kansas Oil Marketers Association, a statewide trade association representing over 350 independent Kansas petroleum companies which distribute petroleum products at the wholesale and/or retail level. KOMA is also the flagship organization for the Convenience Store Association of Kansas, and as such, represents the interests of the owners and operators of convenience stores across the state.

We appreciate the opportunity to appear before you today in support of S.B. 169.

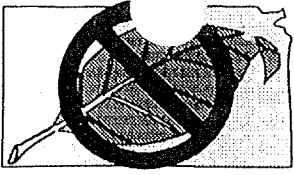
In an effort to aid in the process of checking ID's, and determining whether or not someone is old enough to purchase a product for which a customer, by law, has to be 18 years of age, KOMA/CSAK appears before you today, testifying in favor of SB 169. We feel that although SB 169 is not a solution in its entirety, it will provide the Convenience Store industry in Kansas another tool to help fight the problem of illegal tobacco sales to minors.

This bill provides for an additional line on drivers' licenses that will indicate when an individual will turn 18. Adding a separate line that says "not 18 until ____ (birthdate)" on the license, will help retail clerks in their efforts to determine when an individual turns 18 years of age.

As I mentioned, this is not the ultimate solution in the prevention of underage sales. This bill provides another tool to assist retail store owners and clerks to quickly look at a license and determine whether or not an individual is of age to buy a certain product.

We appreciate the opportunity to appear before you today, and urge your support of S.B. 169. I would be happy to answer any questions you may have.

*House Transportation
Attachment 2
3-6-97*



Tobacco Free Kansas Coalition

4300 S.W. Drury Lane Topeka, Kansas 66604 Phone: (913) 272-8396 Fax: (913) 272-9297

FOR MORE INFORMATION CONTACT:
Terri Roberts JD, RN, Executive
Director

Kansas State Nurses Association
700 SW Jackson, Suite 601
Topeka, KS 66603-3731
(913) 233-8638

March 6, 1997

SB 169 DRIVERS LICENSE AND NONDRIVER IDENTIFICATION CARDS

Chairperson Hayzlett, and members of the House Transportation Committee, the Tobacco Free Kansas Coalition is very supportive of the changes proposed in S.B. 169 which will provide readily distinguishable identification cards that indicate the date in which the card holder will be 18 years of age. The Retailers should be commended for bringing this recommendation forward for your consideration.

This is a cost-effective mechanism that will assist retailers and their clerks statewide in identifying youth who may attempt to illegally purchase tobacco products. We are particularly pleased that this bill has an effective date of July 1, 1997.

In the most recent data released from SRS/Kansas Department of Revenue Division of Taxation, in a representative sample of over-the-counter tobacco outlets, 63% of the clerks sold to minors. **Overall, one out of every ten clerks (10%) sold tobacco products to underage youth even after asking for their ID.**

Clearly, the RED BAR "NOT 18 UNTIL _____" underneath the photo will assist clerks in determining age. We hope that you will consider supporting S.B. 169.

THANK YOU

*House Transportation
Attachment 3
3-6-97*

Tobacco Free Kansas Coalition Officers

Chair:

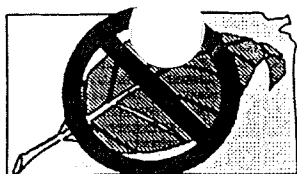
*Gary Doolittle, M.D.
Assistant Professor of Oncology
University of Kansas Medical Center*

Vice-Chair:

*Judy Keller, B.A., M.B.A.
Executive Director
American Lung Association of Kansas*

Secretary/Treasurer:

*Maxine Burch, M.S., R.D., L.D.
Chronic Disease Risk Reduction
Health Promotion Coordinator
Harvey County Health Dept.*



Tobacco Free Kansas Coalition, Inc.

4300 S.W. Drury Lane Topeka, Kansas 66604 Phone: (913) 272-8396 Fax: (913) 272-9297

EXECUTIVE SUMMARY

In response to the SYNAR Amendment, a representative sample of over-the-counter tobacco outlets in Kansas were inspected during the summer of 1996. Working with underage youth volunteers, the Kansas Department of Revenue, Division of Taxation conducted 449 unannounced random compliance checks in order to determine the rate of tobacco sales to minors in Kansas.

Based on the findings of this project, it was determined that the Kansas rate of over-the counter tobacco sales to minors in 1996 was 63%.*

Of those outlets inspected, the following findings were also noted.**

- Grocery store clerks were the most likely to sell to minors (66.2%), followed by gas station clerks (62%), and convenience store clerks (59.7%).
- Convenience store clerks were the most likely to ask for an ID (59%), followed by grocery store clerks (13.8%), and gas station clerks (10%).
- Overall, one out of every ten clerks (10%) sold tobacco products to underage youth even after asking for their ID.
- Overall, male clerks asked for an ID (41.7%) slightly less often than female clerks (50.9%) but sold tobacco products to minors (90.8%) slightly more often than female clerks (86.2%).
- Overall, underage youth were the most successful in purchasing tobacco products from 3 p.m. to 6:00 p.m. (78.6%), followed by 6:00 p.m. to 9:00 p.m. (66.7%), 12:00 p.m. to 3:00 p.m. (39.6%), and 9:00 a.m. to 12:00 p.m. (27.8%).
- A relationship has been noted between the ease of tobacco purchases by youth and the age of youth when they first smoke cigarettes. Counties in Kansas that experienced the highest rate of successful tobacco purchases by underage youth also reported the youngest age of first tobacco use.***

* Statistically reliable and valid at the 95% confidence interval with a sample proportion error rate of + or - 4%.

** These findings were calculated from 366 reports provided by inspection officers. These 366 inspection reports do not reflect a representative sample of all outlets and therefore findings cannot be generalized across all outlets.

*** Age of first tobacco use based on self-report data collected through the Kansas Communities That Care Youth Survey (Fall of 1995)

Source: Alcohol and Drug Abuse Services, Kansas Department of Social and Rehabilitation Services, January 1997.

Tobacco Free Kansas Coalition Officers

3-2

President:

Gary Doolittle, M.D.
Assistant Professor of Oncology
University of Kansas Medical Center

President - Elect:

Judy Keller, B.A., M.B.A.
Executive Director
American Lung Association of Kansas

Secretary/Treasurer:

Maxine Burch, M.S., R.D., L.D.
Chronic Disease Risk Reduction
Health Promotion Coordinator
Harvey County Health Dept.