

Approved: 2-10-98
Date

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:40 p.m. on February 3, 1998 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Reed Holwegner, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
J. Patterson, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

HB 2687 - Terminal rent adjustment clauses.

Hearing was opened. Bruce Kinzie briefed the committee on the bill. It's a TRAC leasing clause so it will be treated as a lease and not a sale. (Attachment 1)

Representative Shore made a motion to pass favorably and put on the consent calendar, Representative Dillon seconded and the motion carried.

Representative McClure updated the committee on **HCR 5036**. On Friday, January 30, 1998 the regulation was changed. Motor graders will not need a CDL.

HB 2618 - Certificates of title, fees.

Representative Dillon made a motion to pass favorably, Representative Mckinney seconded and the motion was passed. (Attachment 2)

HB 2621 - Designating a part of U.S. Highway 77 as the Walnut Valley Greenway

A motion was made to pass the amendment to **HB 2621**, Representative Correll seconded and the motion was carried.

Representative McKinney made motion to pass as amended and Representative Ray seconded. The motion was passed.

Chair asked for approval of the minutes.

A motion was made to approve the minutes, Representative Ray seconded, and the motion was passed.

The meeting was adjourned at 1:55 p.m.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2/3/98

NAME	REPRESENTING
Carolynn Burns	FARM BUREAU
Phyllis Roberts	" "
Dale Roberts	" "
Betty Roberts	KDOR
Royce Hume	Farm Bureau
Lang Deardon	Farm Bureau
Van S. Buckner	Farm Bureau
Craig Ramsey	Farm Bureau
Lanni Robeyers	Farm Bureau
Roger Bartel	Farm Bureau
William Krupa	KFB
Mike Kelley	Kansas Motor Carriers Assn
Les Bahr	Ks. Governmental Consulting
Cory Reed	Intern (Hayzlett)
Bob Gird	Intern (Schwartz)
David	FARM EA
Mae Archer	Geary Co. Farm Bureau
Edna M. Pauer	Geary County Farm Bureau
Deland Shore	Intern (Snow)

Mike Meacham

Ks Automotive Recyclers Assn

KANSAS STATE LEGISLATURE

HOUSE TRANSPORTATION COMMITTEE

STATEMENT IN SUPPORT OF HOUSE BILL 2687
(TRAC VEHICLE LEASING)

Presented on Behalf of Kansas Companies
Supporting House Bill 2687

NationsBank
First National Bank of Hutchinson, Kansas
Transamerica Business
Baystone Financial Group

and on behalf of

American Automotive Leasing Association
Equipment Leasing Association

February 3, 1998

House Transportation
2-3-98
Attachment 1

HOUSE BILL No. 2687

By Committee on Transportation

1-22

9 AN ACT concerning vehicles; relating to terminal rent adjustment
10 clauses.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Notwithstanding any other provision of law, an agree-
14 ment involving the leasing of a motor vehicle or trailer does not create a
15 sale or security interest solely because the agreement provides for an
16 increase or decrease adjustment in the rental price of the motor vehicle
17 or trailer based upon the amount realized upon sale or other disposition
18 of the motor vehicle or trailer following the termination of the lease.

19 (b) This section shall be part of and supplemental to the uniform
20 commercial code-leases.

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.

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. Over 124,000 fleet vehicles are in operation in Kansas, most of which are leased and/or managed by AALA members.

o **TRAC legislation.** Our proposal would add the following new provision to Kansas law:

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 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

This TRAC legislation is designed to end wasteful litigation by recognizing the "true lease" status of TRAC vehicle leases. It is in the public interest to assure the parties to a TRAC lease that they can plan (and price) their TRAC leases knowing that the courts will recognize the "true lease" status of these widely-utilized lease transactions. Kansas' TRAC/state law makes irrelevant, not only the mere presence of a TRAC clause, but also the substantive impact of the TRAC clause. Equally irrelevant is whether the TRAC lessor retains the right to do as he pleases with the vehicle upon the expiration or termination of the TRAC vehicle lease. Rather, this TRAC/state law recognizes (like all the other TRAC/state laws in the United States) that a key feature supporting the true lease status of TRAC vehicle leases is that the TRAC lessor remains ultimately liable (contingent liability) for taxes and all the other attributes of ownership. Cf. Frank Lyon v. United States, 435 U.S. 561 (1978). When a TRAC lessor sells the vehicles at the end of the lease, for example, the lessor is subject to criminal and civil penalties (up to one year in prison and up to \$50,000 in fines) for any violation of federal odometer laws (see 15 U.S.C. 1981 et seq.). TRAC lessors would not retain this potential legal liability if a TRAC lease were simply a sale of the vehicles to the lessee. TRAC vehicle leases are true leases, as Kansas' TRAC/state law makes clear.

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.

To make sure that the impact of this legislation is felt immediately, we respectfully ask that Section 1(b) of House Bill 2687 be amended to read as follows:

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); Addison v. Burnett, 41 Cal.App.4th 1288, 49 Cal.Rptr.2d 132 (6th Dist. 1996) (same); contrast In re Tillery, 571 F.2d 1361 (5th Cir. 1978) (TRAC leases held disguised security agreements, not true leases, in bankruptcy case).

(b) This section shall be part of and supplemental to the uniform commercial code. This act clarifies existing law and shall be given effect in all court cases brought on or after the effective date of the act. [New language in italics]

Once again, the objective of the bill is to end wasteful litigation by clearly recognizing the true lease status of TRAC vehicle leases.

Thirty-eight (38) 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. In 1997 Arkansas, Colorado and Maine enacted TRAC/state laws.

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 NationsBank (with locations throughout the State of Kansas), 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.

KANSAS HIGHWAY PATROL

Service—Courtesy—Protection



Bill Graves
Governor

Col. Lonnie R. McCollum
Superintendent


January 30, 1998

Representative Gary K. Hayzlett
Chairman, House Transportation Committee
State Capitol, Room 115-S
Topeka, KS 66612

Dear Representative Hayzlett:

The Kansas Highway Patrol supports HB 2618 in its introduced version. As you know, the Highway Patrol would prefer that the sunset be removed. In light of the two positive audits of the program by the Legislative Division of Post Audit, the removal of the sunset would be appropriate. While HB 2618 does not remove the sunset, it does recognize the positive information received by the Legislature through the audits. The Highway Patrol will continue to ensure the effectiveness of its program for the citizens of this state and would appreciate your support for HB 2618.

Sincerely,


LONNIE R. McCOLLUM
Superintendent

LRM:pc

House Transportation
2-3-98

Attachment 2

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