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House Bill 2629 is designed to address nothing more than the *Gaumer v. Rossville Truck and Tractor* case. In that instance, the Kansas Supreme Court held that a retail seller of used equipment could be held strictly liable in tort under section 402A of the Restatement (Second) of Torts. Before *Gaumer* there was no decisive authority applying no-fault, strict liability to sellers of used products in Kansas. In fact, the Federal Courts in Kansas had predicted that the Kansas Supreme Court would reject strict liability being applied to used equipment sellers.

House Bill 2629 uses terms of art from the Restatement as well as defined terms from the Kansas Product Liability Act. The selection of the word "defect" comes straight from Restatement Section 402A. Strict liability comes from selling a product that is defective even if the seller is wholly without fault. On the other hand, there is no "defect" element of other product liability causes of action listed in K.S.A. 60-3302. A seller could be negligent or breach its warranty without a showing that the product was defective as that term is used in Kansas common law through the adoption of Section 402A. By limiting the proposed defense contained in House Bill 2629 to defective product cases, the other causes of action are preserved.

Strict liability in tort is also a completely different concept from selling used products "as is." Selling something "as is" does not exempt a seller from tort liability. The "as is" term relates solely to contract-based liability. Its actual purpose is to disclaim any warranties. K.S.A. 84-2-316(3)(a). Neither *Gaumer* nor House Bill 2629 has any impact on "as is" clauses.

The proposed amendment balances the interplay between common law enactment of strict liability and the statutory limitations contained in K.S.A. 60-3301 et seq. It does not give a seller a license to misbehave: a retail seller would still be liable for negligence. Likewise, a retail seller would still face other fault-based liability if the seller breaches a warranty or misrepresents the condition of equipment. Finally, the bill preserves strict liability claims against the manufacturer of a defective product. For the reasons stated, I urge the passage of House Bill 2629.