



American Automotive
Leasing Association

August 24, 2015

MEMORANDUM FOR THE AMERICAN AUTOMOTIVE LEASING ASSOCIATION

Re: TRAC/State Legislation

Over the past twenty years, AALA, ELFA and TRALA have obtained enactment of a model TRAC/state statute in all fifty (50) States and the District of Columbia. The model statute makes it clear that TRAC vehicle leases are true leases (not “sales” or “security interests”) for state law purposes. This simplifies and clarifies the law, accords with the weight and trend of court decisions, and establishes that TRAC vehicle leases should be treated just like all other equipment leases are treated in the law.

TRAC/state laws have been cited by the courts as supporting the “true lease” status of TRAC vehicle leases in bankruptcy cases where the lessee is in Chapter 11 bankruptcy.¹ *See, e.g., In re Owen*, 221 B.R. 56, 63-64 (Bk.N.D.N.Y. 1998).² These state statutes are also helpful to TRAC vehicle lessors in other contexts as well, including cases involving remedies issues (*i.e.*, must the lessor give advance notice to the lessee of a foreclosure sale, before the lessor can recover a deficiency judgment?), tax questions (*e.g.*, the Streamlined State Sales Tax Project), and any other setting where the question could arise whether TRAC vehicle leases should be treated as “sales” or “true leases.” All the TRAC/state statutes are listed below:

1. **Alabama.** Code of Alabama §32-8-60.1 (effective July 29, 1991).
2. **Alaska.** Alaska Statutes §28.10.375 (applicable to transactions involving motor vehicles entered into on or after August 23, 1994).
3. **Arizona.** Arizona Revised Statutes §44-287 D (effective June 16, 1992).

¹ True lessors of vehicles fare better than holders of “perfected security interests” who, in turn, are better off than holders of “unperfected security interests,” when the lessee/debtor is in Chapter 11 bankruptcy reorganization. *See Leasing Is Distinctive!*, 35 UCC L.J. 15, 17 & n.8 (2003) (collecting authorities). There is no federal statutory definition of a lease, and federal bankruptcy law looks to state commercial law to define the difference between a true lease and a security interest. *See, e.g., In re Pillowtex*, 349 F.3d 711, 716 (3d Cir. 2003); *Leases*, 65 Business Lawyer 1229, 1231 n.14 (2010); *Leases*, 58 Business Lawyer 1567, 1569 n.11 (2003) (citing cases).

² *Accord: In re HP Logistics*, 460 B.R. 291 (Bk.N.D.Ala. 2011)(same); *In re HP Distribution*, 436 B.R. 679 (Bk.D.Kan. 2010) (same); *In re Double G Trucking of the Arklatex*, 432 B.R. 789 (Bk.W.D.Ark. 2010) (same); *In re Beckham*, 275 B.R. 598, 606 (D.Kan.), affirmed, 52 Fed.Appx 119 (10th Cir. 2002) (same); *In re Charles*, 278 BR 216, 224 (Bk.D.Kan. 2002) (same); *In re Damron*, 275 B.R. 266, 270 (Bk.E.D.Tenn. 2002) (same); *In re Architectural Millwork of Virginia*, 226 B.R. 551, 556 (Bk.W.D.Va. 1998) (same); *In re MEPCO, Inc.*, 276 BR 94, 103 (Bk.W.D.Va. 2001) (same). *See also In re Otasco*, 196 B.R. 554 (N.D.Okl. 1991), overruling 111 B.R. 976 (Bk.N.D.Okl. 1990); *Gilbraltar Financial Corp. v. Prestige Equipment Co.*, 925 NE 2d 751, 757 (Ind.App. 2010); *In re Rebel Rents*, 291 B.R. 520 (Bk.C.D.Cal. 2003).

4. **Arkansas**. Arkansas Code of 1987 §4-2A-110 (nonuniform amendment adding UCC 2A-110) (effective March 3, 1997).
5. **California**. California Commercial Code §1203(c)(7) (nonuniform amendment adding new subsection to California Commercial Code version of UCC 1-203) (covers commercial motor vehicles and states that “nothing in this paragraph affects the application or administration of the Sale and Use Tax Law”) (effective January 1, 1996).
6. **Colorado**. Colorado Revised Statutes §42-6-120(3) (effective April 16, 1997).
7. **Connecticut**. Connecticut General Statutes §14-167a (Public Act 96-162) (effective October 1, 1996).
8. **Delaware**. 21 Delaware Code §2342 (effective July 3, 1996).
9. **District of Columbia**. District of Columbia Statutes §50-1217 (2001 ed) (effective March 17, 1993).
10. **Florida**. Florida Statutes §319.271 (effective January 1, 1991).
11. **Georgia**. Georgia Code §40-3-60 (effective July 1, 1995).
12. **Hawaii**. Hawaii Revised Statutes §286-52.4 (effective April 16, 2003).
13. **Idaho**. Idaho Code §49-512A (effective July 1, 2004).
14. **Illinois**. Illinois Vehicle Code §3-201.1, 625 ILCS 5/3-201.1 (effective January 1, 1992).
15. **Indiana**. Indiana Code §9-17-5-4 (effective July 1, 1995).
16. **Iowa**. Iowa Code §321.51 (effective July 1, 1995).
17. **Kansas**. Kansas Code §84-2a-110 (nonuniform amendment adding UCC §2A-110) (effective April 9, 1998).
18. **Kentucky**. Kentucky Revised Code §186A.191 (effective July 12, 2012).
19. **Louisiana**. Louisiana Revised Statutes §9:3317(A)(4), §9:3316 (A)(4), (effective July 13, 1985).
20. **Maine**. Maine Revised Statutes Annotated Title 10, chapter 209-A, §1305 (effective May 31, 1997).
21. **Maryland**. Maryland Code, Transportation, §13-211 (effective January 1, 1995).
22. **Massachusetts**. Massachusetts General Laws chapter 90D §21A (effective March 25, 1996).

23. **Michigan**. Michigan Compiled Laws §440.2810 (nonuniform amendment adding UCC 2A-110) (effective September 30, 1992).
24. **Minnesota**. Minn. Statutes §168A.17.1a (effective May 18, 1989).
25. **Mississippi**. Mississippi Code §63-21-42 (effective July 1, 1994).
26. **Missouri**. Missouri Statutes §301.452 (effective September 19, 1991).
27. **Montana**. Montana Code §61-3-110 (effective October 1, 2003).
28. **Nebraska**. Nebraska Revised Statutes §60-164(5) (effective March 2, 2004).
29. **Nevada**. Nevada Revised Statutes §482.4215 (effective May 28, 2003).
30. **New Hampshire**. New Hampshire Revised Statutes §261:23-a (effective January 1, 1995).
31. **New Jersey**. New Jersey Statutes Ann. §39:10-5.1 (effective June 29, 1992).
32. **New Mexico**. New Mexico Statutes Annotated, §66-3-101.1 (effective March 28, 2013)
33. **New York**. McKinney's Vehicle and Traffic Law §397-b (effective August 7, 1992).
34. **North Carolina**. North Carolina General Statutes §25-2A-103(j) (nonuniform amendment to UCC 2A-103(j)) (effective July 15, 1994), clarified by North Carolina General Statutes §20-78.1 (effective June 23, 2011).
35. **North Dakota**. North Dakota Century Code §39-05-17.3 (effective July 1, 1993)
36. **Ohio**. Ohio Revised Code §4505.13(D) (effective November 6, 1992).
37. **Oklahoma**. Oklahoma Statutes Ann §47-1110 F (effective January 1, 1992).
38. **Oregon**. Oregon Revised Statutes (Vehicle Title and Registration) §803.098 (effective August 16, 1993).
39. **Pennsylvania**. Pennsylvania Consolidated Statutes Ann. 75 Pa.C.S. §1139 (effective September 4, 1995) (covers commercial motor vehicles).
40. **Rhode Island**. Rhode Island General Laws §31-3.1-27 (effective July 1, 1991).
41. **South Carolina**. South Carolina Code §56-19-720 (effective June 11, 1998).
42. **South Dakota**. South Dakota Codified Laws §32-3-38.2 (effective March 19, 2003) (covers commercial motor vehicles).
43. **Tennessee**. Tennessee Code §47-2A-110 (nonuniform amendment adding UCC 2A-110) (effective July 1, 1994).

44. **Texas.** Texas Transportation Code Title 7 §501.112 (effective September 1, 1991).
45. **Utah.** Utah Code Ann. 1953 §41-1a-609 (states “the provisions of this section do not affect ... the calculation of sales and use tax”) (effective May 5, 2003).
46. **Vermont.** 23 Vermont Statutes Ann. §2048 (effective July 1, 1993).
47. **Virginia.** Virginia Code Ann. §46.2- 640.1 (effective January 1, 1992).
48. **Washington.** Originally enacted in 1994 in Washington Revised Code §62A.1-201(37)(f) (2005) (nonuniform amendment to UCC 1-201(37)) (effective July 1, 1994), Washington State’s TRAC/state law was inadvertently omitted from that State’s statute books during statutory renumbering and updating of the UCC in 2012. Through the combined efforts of the Washington State Bar, AALA, ELFA, TRALA, the Washington Trucking Association, and the Washington State Bankers Association, TRAC/state legislation was re-enacted in the State of Washington, in West’s Revised Code of Washington §62A.1-203(c)(7), effective prospectively starting from July 24, 2015 (nonuniform amendment to UCC §1-203).
49. **West Virginia.** West Virginia Code §17A-4A-16 (effective June 7, 1996).
50. **Wisconsin.** Wisconsin Statutes Ann. §342.03 (effective July 1, 1992).
51. **Wyoming.** Wyoming Statutes 1977 §31-2-802 (effective July 1, 2003).

TRAC/state laws are now the common, uniform state law of the United States. In seven States (Ark, CA, Kan, Mich, NC, Tenn, WA), TRAC laws are in the UCC.³

Before enacting the TRAC/state laws, state legislatures were fully apprised of the earlier split case law and the sound policy reasons for enacting the model TRAC/state law. *See, e.g., New Developments: Article 2A Leases of Goods*, 1993 Commercial Law Annual 115, 124-130 (spelling out the rationale for the TRAC/state laws). Consequently, the statutory text, placement, purposes, intent and consequences of the TRAC/state law all appear in the legislative history of the TRAC/state laws. *See, e.g., Leases*, 64 Business Lawyer 1187, 1189-1190 & nn.24, 25 (2009) (noting the legislative history of North Carolina’s TRAC/state law, overlooked by the court in *Brankle Brokerage*, 394 B.R. 906 (Bk.N.D.Ind. 2008), where the court erroneously held that a TRAC lease was a sale under North Carolina law) (*Brankle Brokerage* was specifically overruled by clarifying North Carolina legislation in 2011). The Commissioners on Uniform State Laws supported the enactment of the TRAC/state laws.

The statutory text and legislative history of all the TRAC/state laws is available from AALA General Counsel Ed Huddleson, 1250 Connecticut Avenue, N.W., Suite #200, Washington, D.C. 20036 (202-543-2233; huddlesone@aol.com; www.edwinhuddleson.com).

³ The original North Carolina TRAC/state law, enacted in the state’s UCC in 1994, was clarified in North Carolina’s certificate of title laws in 2011, as noted above in the text.

The overwhelming majority of courts now consistently recognize the true lease character of split-TRAC vehicle leases in widespread use throughout the Nation.⁴

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⁴ Typical TRAC vehicle leases, written to comply with accounting standards (SFAS 13) and federal tax Code §7701(h), are “split-TRAC” leases that (among other things) give the owner a minimum “at risk” stake in the vehicles (e.g., twenty percent of original cost) that is not subject to the TRAC clause, and that contain a maximum lease term which ensures that the lease does not use up the economic life of the vehicle. *Compare Leases*, 67 Business Lawyer 1245, 1248-1249 (2012) (recognizing true lease character of TRAC vehicle leases) with Strauss, *General Governing Law: UCC Articles 1, 2A, and 9* (Rel. #9 September 2014), in 1 Equipment Leasing-Leveraged Leasing §2:1.4[C] (Ian Schrank & Arnold G. Gough eds, 5th ed. 2014) (misguided attack on the true lease character of TRAC vehicle leases, unencumbered by any knowledge of TRAC vehicle leasing or common split-TRAC leases; or the history, purposes and rationale of the TRAC/state laws; or the support of the Commissioners on Uniform State Laws for the model TRAC/state law; or the basic public policy purposes of commercial law (see, e.g., UCC 1-103; *New Developments: Article 2A Leases of Goods*, 1993 Commercial Law Annual 115, 124-130 (convassing earlier split case law and spelling out the rationale for the model TRAC/state law)).