EQUIPMENT LEASING AND FINANCE ASSOCIATION

Testimony
Connecticut Senate Bill 1225 and House Bill 7249
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I appreciate this opportunity to present testimony on behalf of the Equipment Leasing & Finance Association (ELFA), the trade association representing financial services companies and manufacturers engaged in financing the utilization and investment of/in capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its over 750 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks, as well as service providers. For more information, please visit www.elfaonline.org

Producer Responsibility is the Preferred Approach

Senate Bill 1225 is based on a California consumer model for wastes from households and is not designed for the business-to-business equipment lease financing transactions in which ELFA members engage. The producer responsibility approach of House Bill 7249 recognizes some realities of commercial equipment leasing long known for environmentally safe recycling but this proposal would benefit from consultation with manufacturers that offer recycling program funding and/or structure alternatives to the model bill on which it is drafted. The ELFA policy position on electronic recycling:

- endorses producer responsibility as the preferred method
- asserts ELFA policy covers only leasing related provisions of legislation
- does not differentiate between commercial equipment categories
- ELFA policy regarding Advanced Recycling Fee legislation based on the California program calls for uniformity of equipment between states, scope of equipment certain and identifiable to lessors, clarity of collection responsibilities and a provision allowing vendors to bill lessors for the recycling fee

ELFA Testimony Confined to Leasing Issues

Producer responsibility has been enacted in varying manner with states selecting differing formulas for computing the funding and implementing dissimilar program structures. ELFA does not advocate one formula or structure over another as these are questions beyond the advocacy of leasing issues assigned the association by industry members.

To resolve disparities between states, Connecticut participated in a regional committee that voted not to duplicate the California Electronic Waste Recycling Act upon which SB 1225 is patterned. That committee decided uniformity between Northeast states would best be achieved through manufacturer/producer responsibility. ELFA collaborated in discussions relating to leasing provisions of that document found in House Bill 7249 but we recognize non-leasing sections would benefit from a fresh look beyond the model bill.

We support producer responsibility as the preferred approach because the commercial marketplace of equipment lessors was never taken into consideration by drafters of the California program upon which SB 1225 is modeled. At the first meeting in Sacramento with state officials following enactment the Equipment Leasing & Finance Association was asked to provide a listing of our member retail stores, none of which exist. It can be a daunting challenge explaining the dynamics of our business-to-business sector and listing some basic facts will clarify our policy positions.

1) Commercial leased equipment flows from multiple points of origin through interstate commerce.
2) Lessors do not maintain a stock of inventory. Commercial leased equipment is shipped directly from supplier's (albeit manufacturer, vendor or distributor) inventory directly to lessees. Lessor ownership of the equipment is contingent with physical receipt and acceptance by a lessee.
3) Lessors do not have physical possession of equipment until end of the lease nor its descriptive manuals.
4) Equipment supplier invoices provide only general descriptions and often lack details necessary to determine if and how an E-Waste fee may apply.
5) Consumer models present equipment lessors with a risk of multiple fees on equipment that is released or resold in refurbished or existing condition.
6) Most leases provide for 'quiet possession by lessee' and lessors can not access equipment for inspection or gain descriptive details.

Voluntary election between equipment supplier and lessor

Equipment lessors are not retailers. Leasing also poses issues different from Internet and catalogue sales that can escape the recycling fee. Lessors do not have physical possession of equipment prior to lease. To comply with fee payment required by SB 1225 lessors will at times need to rely on equipment descriptions and information contained in vendor invoices that do not follow explanatory information issued by government to guide compliance with the law. As we've learned in the California program, it is challenging at best and impossible on occasion for equipment lessors to reach an informed decision on what equipment may or may not be covered. Without specific language addressing the commercial equipment leasing marketplace, Senate Bill 1225 will hinder good faith efforts by equipment lessors to be in compliance with the fee.

Recognition of the vendor relationship within a commercial leasing context will assist in making upfront consumer fees more acceptable in leasing transactions. The leasing vendor provision offered in this testimony recognizes the working relationship between a financing source and a vendor leasing firm that promotes leasing to their customers. Such a leasing provision is needed to make Senate Bill 1225 more user friendly in the business-to-business environment. This leasing provision is limited to purchase transactions for the purpose of lease. Since many suppliers of equipment to lessors also sell at retail, our industry distinguishes these sellers as vendors. Our limitation to purchases for the purpose of leasing is advised to forestall potential objection that this provision might apply in traditional retail environments. Our intention is to remedy problems faced by equipment lessors and to limit application of the provision to purchases of leased equipment so as not to create unintentional consequences to other industries.

ELFA wishes to work with bill drafters in a flexible manner to craft a vendor provision that meets these goals. Adoption of this suggested amendment to SB 1225 does not remove our preference for a producer responsibility approach. Following is one example of text that may be considered to recognize vendor programs in which a leasing company finances equipment:

"A lessor who purchases an electronic device (subject to this Act) in a wholesale transaction for the purpose of leasing to others, may contract to pay the advanced electronic waste recycling fee to the equipment vendor at time of purchase, provided such vendor is registered with the State for purposes of complying with this Act. The vendor shall separately state the advanced electronic waste recycling fee on the invoice given to the lessor at the time of sale and the lessor shall provide a statement in the lease agreement or on an invoice to document compliance with the fee. Nothing in this election shall alter the lessors' right to collect the fee from the consumer."

The scope of equipment should be certain and identifiable to the lessor

Senate Bill 1225 follows in the footsteps of California legislation that erected hurdles pitting equipment lessors against state bureaucracy at times unable to determine what equipment is covered by the fee with lessors potentially subject to penalties through no fault of their own. These issues should be resolved prior to enactment of a law requiring recycling fee collection by equipment lessors rather than positioning our industry to grapple with bureaucratic indecision such as we faced in the California program upon which Senate Bill 1225 is based. Allow me to illustrate.

Some issues were encountered quickly while others grew over time. As an example, at the outset our industry was faced with a dilemma created when the legislature adopted a sliding scale of fees on consumers based upon the variable screen size of a product. The viewable screen size when enclosed within the equipment chassis might require an $8 fee while the same screen removed from the chassis or purchased separately as a replacement part would be $10. Same screen but two different fees.

A longer term issue is the exemption language copied from the California statute that would carve out "a large piece of commercial or industrial equipment, including, but not limited to, commercial medical equipment…" How big is a "large piece" of equipment? Does the exemption encompass a piece of equipment contained within the chassis, on a robotic arm or attached by cable from a separate work station? Such questions have eaten up many hours of debate with the California bureaucracy and will do the same in Connecticut. Equipment lessors have been asked to provide pictures of equipment to assist government in making determinations in California.

Summary

ELFA can not support Senate Bill 1225 for it ensures much wrangling as Connecticut struggles to apply a program designed for consumer household products to the commercial sector. It lacks explicit directives regarding covered equipment, promises ambiguous application of exemptions and does not contain a provision to facilitate compliance by commercial equipment lessors. House Bill 7249 encompasses producer responsibility favored by ELFA but as presently drafted does not consider differing approaches to issues ranging from funding mechanisms to program structure that were not contained in the model on which it is based. We believe sponsors should convene discussions with other stakeholders to examine these issues.

Thank you for your attention and I would welcome any questions.