
Judiciary Committee

SB 5032

Title: An act relating to specifying when a transaction in the form of a lease does not create a security interest for purposes of the uniform commercial code.

Brief Description: Specifying when a transaction in the form of a lease does not create a security interest for purposes of the uniform commercial code.

Sponsors: Senators Pedersen and O'Ban.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides that a security interest is not created merely because a transaction in the form of a lease contains a terminal rental adjustment provision.

Hearing Date: 3/12/15

Staff: Brent Campbell (786-7152).

Background:

The Uniform Commercial Code (UCC) controls commercial transactions between merchants, such as equipment sales and leases. Washington laws follow the UCC.

A lease is a contractual arrangement whereby a lessee pays a lessor for the use of real or personal property. A security interest is a property interest over assets to secure the performance of a debt. In some circumstances, a transaction may be in the form of a lease, but in fact create a security interest. Under the UCC, whether a transaction in the form of a lease creates a lease or is in fact a sale security interest is determined by the facts of each case. Determining whether a transaction is a lease or a sale subject to a security interest has implications for both bankruptcy and tax law.

A transaction in the form of a lease creates a security interest if: (1) the consideration that the lessee is to pay the lessor for the right to use the goods is an obligation for the term of the lease

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and is not subject to termination by the lessee; and (2) the transaction is subject to one of the following:

- the original term of the lease is equal to or greater than the remaining economic life of the goods;
- the lessee is bound to renew the lease for the remaining economic life of the goods;
- the lessee has an option to renew the lease for the remaining economic life of the goods for no, or for nominal, additional consideration; or
- the lessee has an option to become the owner of the goods for no, or for nominal, additional consideration.

One type of commercial lease term allows rental payments to change based on the sale amount when the leasing company sells the equipment. These leases are commonly called terminal rental adjustment or TRAC leases.

Summary of Bill:

A transaction in lease form does not create a security interest merely because it contains a TRAC provision.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.