

# SENATE BILL REPORT

## SB 5032

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As Reported by Senate Committee On:  
Law & Justice, February 5, 2015

**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.

**Brief History:**

**Committee Activity:** Law & Justice: 1/26/15, 2/05/15 [DP].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Pearson and Roach.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** The Uniform Commercial Code (UCC) controls commercial transactions between merchants, such as equipment sales and leases. Washington laws follow the UCC. For commercial transactions, the UCC distinguishes leases from secured sales based on the transactions' terms. Bankruptcy and tax laws vary depending on whether a transaction is a lease or a sale subject to a seller's retained security interest.

A common 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. In 2012 the Legislature amended the commercial code provisions distinguishing leases from secured sales. Currently these provisions do not address TRAC leases.

**Summary of Bill:** Case-specific facts determine if a transaction in lease form creates a lease or a security interest. A transaction in lease form does not create a security interest merely because it contains a TRAC provision.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Washington was one of the last states to revise its version of Article 1 of the Uniform Commercial Code to bring it into line with the updates enacted by other states. During this 2012 legislation, an Article 1 provision that Washington enacted in 1994 was not carried forward with the updates. As a result, Washington's UCC Article 1 contains a non-standard clause pertaining to TRAC leases. More than 4000 trucks and 27,000 autos in Washington are under commercial TRAC leases. The bill restores the TRAC lease provision to what it was prior to the 2012 Article 1 updates, brings Washington's law into line with the other 49 states, and cures any potential uncertainty about commercial TRAC leases.

**Persons Testifying:** PRO: Senator Pedersen, prime sponsor; Malcolm Lindquist, WA State Bar Assn. Business Law Section; Olen Hunter, PACCAR Leasing, Truck Renting and Leasing Assn., American Automotive Leasing Assn.; Jessica Fortescue, WA Bankers Assn.