

## DRIVER-OWNER LIABILITY SHIFTING

Due in part to tight state and municipal budgets, and in part to technological advancements, states and municipalities across the country are increasingly using automated devices, rather than using an in-person stop, to enforce traffic laws. Though this is in one sense an old issue in the context of parking tickets, it has increased tremendously with the ability to utilize electronic devices to enforce traffic violations without an in-person stop. These include, for example, red-light cameras, remote speeding enforcement, toll way infractions, HOV lane violations, etc. Due to the success of these devices at the local level, revenue-starved states are projecting millions of dollars in ticket remittances and are therefore eager to implement laws authorizing the wider use of these devices.

Legislation presuming the owner of a vehicle is responsible for traffic violations is tremendously problematic for companies that lease vehicles, because the leasing company is the registered owner of the vehicle, though obviously not the driver.

Though laws of this kind typically allow the “owner” to contest the presumption that they were driving the vehicle through an affidavit or some other means of proof, a common theme among this type of law is sending the citation to the “registered owner” of the vehicle and providing, at most, 60 days for the owner to contest the citation. In most cases, this is unfortunately not enough time for the vehicle leasing company to send the notice to the right department, identify the driver of the vehicle and/or contest the citation. Further, the ticket typically just has a license plate number and not the vehicle identification number (VIN), which vehicle leasing companies typically use to track lessees because it does not change over time and the plate is not available at the time of lease in many states. Surprisingly, these tickets are often sent after (sometimes even long after) the true presumed driver is no longer the customer of the company.

In 2005, Congress added Section 30106, also known as the Graves Amendment to a massive highway bill, H.R. 3, which when enacted preempted such state vicarious liability laws. The Graves Amendment provides that: *“An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if (1) the owner (or affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles, and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).”* Thus, state legislation that tries to impose liability for violations incurred by lessees on vehicle leasing companies is in direct conflict with the Graves Amendment.

## **AFSA'S POSITION**

Legislation presuming the owner of a vehicle is responsible for traffic violations may inadvertently affect vehicle finance companies that own vehicles for the purpose of leasing them to consumers. The American Financial Services Association advocates for an exception for vehicle finance companies in any law or policy that holds the owner of a vehicle responsible for remote traffic enforcement. Holding the leasing company responsible in any way presents an unreasonable and inefficient compliance burden for AFSA member companies. In fact, requiring a leasing company to contest traffic violations can place leasing at a competitive disadvantage and deny consumers the benefits of leasing by raising the price of leasing relative to buying due to the increased costs associated with contesting these citations.

Vehicle finance companies have no control over the operation of their leased motor vehicles, and to hold them liable for actions for which such companies bear no fault or responsibility is fundamentally unfair.

Further, transferring liability for traffic violations or charges from the operator of the vehicle to a vehicle finance company undermines any deterrent effect that such liability might otherwise have on the operator—without such liability, the operator may have no incentive to refrain from traffic violations or to pay charges incurred. AFSA believes liability should rest on the person who is in the best position to modify his or her behavior and who is actually responsible for the violation.

AFSA members do not object to a requirement that a lessor provide the name and address of the lessee in those jurisdictions where the lessee is not listed on the vehicle's registration, as long as there is enough information given to the lessor for them to identify the lessee, such as the VIN and date of infraction, adequate time provided from the date the company receives the notice and doing so would not violate any other laws, such as privacy requirements. This should be possible without the need to submit affidavits, appear in court, or otherwise affirmatively rebut a presumption of responsibility for the traffic violation or charge.

A burdensome exemption process can also create downstream impacts on innocent dealers and new lessees if one of the penalties for nonpayment is suspension of vehicle registration privileges. While this makes sense when the registered owner is the actual driver of the vehicle, it is unfair and burdensome to dealers and lessors, who may not be able to register new leased vehicles because of unpaid tickets incurred by lessees. One unpaid ticket can result in the state banning the entire company as a whole from registering any vehicle.

Companies that finance a vehicle lease should be subject to the same liability standard as companies that finance a vehicle sale. If a company finances the sale, rather than the lease of a vehicle, the company is not liable for any traffic violations or charges related to the operation of the vehicle because it does not control the operation of the vehicle. Likewise, a company that finances a vehicle lease has no control over the operation of the vehicle and therefore, should not be liable for traffic violations and charges related to its operation. Vehicle finance companies have no control over the operation of their leased motor vehicles. To hold vehicle finance companies responsible in any way for actions for which such companies bear no fault or responsibility is fundamentally unfair.