

BILL ANALYSIS

C.S.H.B. 3417
By: Marchant
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In some motor vehicle capital lease arrangements, the lessee receives ownership of the vehicle and makes lower monthly payments for several years followed by one final large payment. When the final payment is due, the lessee has the option to purchase the vehicle by paying or refinancing the final payment or return the vehicle to the lessor. If the lessee chooses to return the vehicle to the lessor, it is difficult to transfer the title of the vehicle back to the lessor. Until the title transfer is properly completed, the lessee remains obligated on the lease even though the lessee no longer has the vehicle. Meanwhile, the lessor has the vehicle but does not have ownership on the title.

House Bill 3417 prescribes terms under which an owner of a vehicle could use a power of attorney to authorize an agent to execute title documents for the owner when the owner is voluntarily transferring title to the vehicle.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 3417 adds Section 501.076 to the Transportation Code to provide that an owner who has a contractual right to return a vehicle in full or partial satisfaction of the amount owed on the purchase contract could execute a power of attorney naming various categories of persons as agent under a power of attorney with authority to complete the title transfer documents.

The bill includes safeguards to ensure the title work is properly completed. First, the power of attorney specifies the types of persons who can be named as agent. These include persons who already have licenses from the State to perform actions that include completion of title work, and similar persons with the necessary ability to complete the title transfer. Second, the creditor, employees of the creditor and any person who is acting as the creditor's agent in the title transfer, are prohibited from acting as the owner's agent. Third, the power of attorney can be used only when the owner of the vehicle elects to exercise the owner's option under the contract and as provided in the Finance Code to return the vehicle. The creditor is prohibited from using the power of attorney as part of a remedy for default.

Part of the title transfer process is the completion of an odometer disclosure statement. This is required by both Texas and federal law. In the odometer disclosure statement, the owner is required to disclose the odometer reading. If the odometer has "rolled over" (*e.g.*, gone past 100,000 miles and back to 1 mile) or been replaced by an odometer that does not reflect the actual mileage, the owner must disclose this fact as well. The bill provides methods for the agent to complete the odometer disclosure for the customer. The agent can rely upon a written odometer statement by the customer. Alternatively, the agent can make a physical inspection of the odometer and vehicle, or use other reasonable measures to check the odometer and determine if it has rolled over or been replaced. If the agent is still uncertain about the

odometer, the agent or holder of the contract can send a conspicuous notice to the owner requesting the owner to notify the agent within twenty days if the odometer reading was not accurate, and the owner is required to inform the agent if the odometer is not accurate.

The bill is consistent with federal law. Federal law does not allow the transferee or its employee, or a person acting as the transferee's agent, to also act as the agent of the owner, unless a special form of power of attorney is used. The bill leaves that type of power of attorney to federal law, and would only apply to situations in which the federal regulation does not specify the form of power of attorney.

EFFECTIVE DATE

The Act takes effect September 1, 2003.

COMPARISON of ORIGINAL to SUBSTITUTE

The original version of the bill was drafted by an outside attorney. The committee substitute is a Legislative Council draft and makes certain nonsubstantive changes.