

By: Hopson

H.B. No. 3052

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement of a buyer's obligation under a retail
3 installment transaction; providing a criminal penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 345.060(a), Finance Code, is amended to
6 read as follows:

7 (a) A retail installment contract may provide that if an
8 installment remains unpaid after [~~the 10th day after~~] the date of
9 maturity of the installment the retail seller may collect:

10 (1) a delinquency charge that is not more than five
11 percent of an installment or \$5, whichever is less; or

12 (2) interest on the amount of the installment accruing
13 after the maturity of the installment at a rate that does not exceed
14 the maximum rate authorized for the contract.

15 SECTION 2. Section 345.061, Finance Code, is amended to
16 read as follows:

17 Sec. 345.061. CHARGES FOR COLLECTING DEBT. A retail
18 installment contract may provide for the payment of:

19 (1) an attorney's reasonable fees if the contract is
20 referred for collection to an attorney who is not a salaried
21 employee of the holder; [~~and~~]

22 (2) court costs and disbursements; and

23 (3) a fee if the property sold under the contract is
24 repossessed.

1 SECTION 3. Section 345.105, Finance Code, is amended to
2 read as follows:

3 Sec. 345.105. CHARGES FOR COLLECTION OF PAYMENT OF
4 AGREEMENT. A retail charge agreement may provide for the payment
5 of:

6 (1) an attorney's reasonable fee if the agreement is
7 referred for collection to an attorney who is not a salaried
8 employee of the holder; ~~and~~

9 (2) court costs and disbursements; and

10 (3) a fee if the property sold under the agreement is
11 repossessed.

12 SECTION 4. Sections 345.157(a) and (e), Finance Code, are
13 amended to read as follows:

14 (a) A retail charge agreement that implements the market
15 competitive rate ceiling may provide for the payment of:

16 (1) a delinquency charge on each installment that is
17 in default [~~for a period that is longer than 21 days~~];

18 (2) an attorney's reasonable fee if the agreement is
19 referred for collection to an attorney who is not a salaried
20 employee of the holder; ~~and~~

21 (3) court costs and disbursements; and

22 (4) a fee if the property sold under the agreement is
23 repossessed.

24 (e) A customer's monthly statement must contain the
25 following notice printed or typed in at least 10-point type that is
26 boldfaced, capitalized, underlined, or otherwise conspicuously set
27 out from the surrounding written material: "A DELINQUENCY CHARGE

1 OF \$15 MAY BE ASSESSED FOR A PAYMENT THAT IS IN DEFAULT FOR A PERIOD
2 OF ONE OR MORE DAYS [~~THAT IS LONGER THAN 21 DAYS~~]."

3 SECTION 5. Subchapter H, Chapter 345, Finance Code, is
4 amended by adding Section 345.358 to read as follows:

5 Sec. 345.358. OFFENSE OF AVOIDING PAYMENT FOR GOODS. (a) A
6 person commits an offense if, with intent to avoid payment for goods
7 sold under a retail installment contract or a retail charge
8 agreement, the person intentionally or knowingly:

9 (1) secures the goods by deception, threat, or false
10 token; or

11 (2) secures the goods by agreeing to provide payment
12 as provided by the retail installment contract or the retail charge
13 agreement and, after the goods are delivered, fails to make payment
14 after receiving notice demanding payment.

15 (b) For purposes of this section, a person's intent to avoid
16 payment is presumed if the person fails to make payment or return
17 the property sold under a retail installment contract or retail
18 charge agreement before the sixth day after receiving notice
19 demanding payment.

20 (c) For purposes of Subsections (a)(2) and (b), notice must
21 be in writing, sent by registered or certified mail with return
22 receipt requested or by telegram with report of delivery requested,
23 and addressed to the actor at the address shown on the retail
24 installment contract or the retail charge agreement.

25 (d) If written notice is given in accordance with Subsection
26 (c), it is presumed that the notice was received not later than the
27 fifth day after the notice was sent.

1 (e) An offense under this section is:

2 (1) a Class C misdemeanor if the value of the property
3 for which payment is avoided is less than \$20;

4 (2) a Class B misdemeanor if the value of the property
5 for which payment is avoided is \$20 or more but less than \$500;

6 (3) a Class A misdemeanor if the value of the property
7 for which payment is avoided is \$500 or more but less than \$1,500;

8 (4) a state jail felony if the value of the property
9 for which payment is avoided is \$1,500 or more but less than
10 \$20,000; or

11 (5) a felony of the third degree if the value of the
12 property for which payment is avoided is \$20,000 or more.

13 SECTION 6. The changes in law made by this Act to Sections
14 345.060, 345.061, 345.105, and 345.157, Finance Code, apply only to
15 a retail installment contract or retail charge agreement entered
16 into on or after September 1, 2005. A contract or agreement entered
17 into before September 1, 2005, is governed by the law as it existed
18 on the date the contract or agreement was entered into, and the
19 former law is continued in effect for that purpose.

20 SECTION 7. This Act takes effect September 1, 2005.