

BILL ANALYSIS

Senate Research Center

H.B. 2438
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For most Texas consumers, purchasing a car is a significant event and investment of resources. Ensuring that the financing of a motor vehicle is transparent and adequately disclosed to a consumer is fundamentally good public policy.

As a result of consumer complaints and legislation considered during the 80th Legislature, Regular Session, 2007, the House Committee on Financial Institutions was charged with studying the practices involved in the sale and financing of a motor vehicle, including the financing of negative equity and the retirement of existing debt on a trade-in vehicle. Dealers often finance the negative equity in a consumer's trade-in vehicle into the ultimate lien on a new vehicle. Experience has shown that failure to itemize negative equity has led to varying degrees of misunderstanding by Texas consumers. Some consumers did not understand what had occurred, and other consumers were under the impression that they were not obligated to pay the negative equity that was included in the purchase contract for their new vehicle.

A second key issue in the financing of a motor vehicle relates to the retirement of existing debt on the trade-in vehicle. Under current state law, there is no explicit requirement for a retail seller to pay off the outstanding balance on a trade-in vehicle, and some dealers do not timely pay the outstanding liens on vehicles received in a trade deal. The previous owner may unknowingly default on a loan or miss payments by no fault of the owner. Damage to credit reports of innocent consumers is only one of the problems associated with this practice.

H.B. 2438 amends current law relating to requirements regarding motor vehicle retail installment transactions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 348.0091, Finance Code) and SECTION 8 (Section 348.513, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 348.001(3), Finance Code, to redefine "holder."

SECTION 2. Amends Section 348.007, Finance Code, by amending Subsection (a) and adding Subsection (a-2), as follows:

(a) Provides that each retail installment transaction, except as otherwise provided by this section, is subject to this chapter.

(a-2) Provides that a retail installment transaction in which a retail buyer purchases a commercial vehicle is only subject to certain provisions of this chapter, including Subchapter A (General Provisions), except Section 348.0091 or unless expressly stated otherwise; Subchapter B (Retail Installment Contract), except Sections 348.102 (Contents of Contract) and 348.123 (Refinancing of Large Installment); Subchapter C (Insurance), except Sections 348.204(b) (relating to requiring the holder to deliver or mail to the retail buyer a written statement that include a certain fact), 348.206 (Insurance May be Furnished by Buyer), 348.209 (Requirements for Including Insurance Cost in Contract), and 348.210 (Delivery of Insurance Documents to Buyer); Subchapter D (Acquisition of Contract or Balance); Subchapter E (Holder's Rights, Duties, and Limitations), except

Sections 348.404(d) and 348.407 (Retention or Disposition of Nonattached Personal Property); and Subchapter F (Licensing; Administration of Chapter), except Sections 348.504(a)(2) (relating to the forms and contracts to be used by the applicant are appropriate and adequate to protect the interests of retail buyers), 348.514 (Examination; Access to Records), 348.516 (Payment of Examination Costs and Administration Expenses), and 348.517 (License Holder's Records).

SECTION 3. Amends Subchapter A, Chapter 348, Finance Code, by adding Section 348.0091, as follows:

Sec. 348.0091. DISCLOSURE OF EQUITY IN TRADE-IN MOTOR VEHICLE. (a) Prohibits a retail seller from accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment contract unless the retail seller provides to the retail buyer, before the buyer signs the contract, a completed disclosure of trade-in equity form prescribed by this section.

(b) Requires the finance commission by rule to adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

(c) Sets forth the minimum required content of the form adopted by the finance commission under Subsection (b).

(d) Provides that the retail seller is solely responsible for the content and delivery of the disclosure form required by Subsection (a). Prohibits an assignee of a retail installment contract from being held responsible for a retail seller's failure to comply with the requirements of this section.

(e) Provides that this section does not create a private right of action. Provides that the commissioner has exclusive jurisdiction to enforce this section.

SECTION 4. Amends Sections 348.104(b)-(d) and (h), Finance Code, as follows:

(b) Provides that the add-on charge is \$7.50 per \$100 per year on the principal balance for a new motor vehicle, rather than a new domestic motor vehicle, other than a heavy commercial vehicle, designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made, rather than not more than two years old. Deletes existing text providing that the add-on charge is \$7.50 per \$100 per year on the principal balance for a new foreign motor vehicle, other than a heavy commercial vehicle. Makes nonsubstantive changes.

(c) Provides that the add-on charge is \$10 per \$100 per year on the principal balance for a new motor vehicle, rather than a new domestic motor vehicle, not covered by Subsection (b); a used motor vehicle, rather than a used domestic motor vehicle, designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made; or a new or used heavy commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made, rather than not more than two years old. Deletes existing text providing the add-on charge is \$10 per \$100 per year on the principal balance for a used foreign motor vehicle that is not more than two years old. Makes nonsubstantive changes.

(d) Provides that the add-on charge is \$12.50 per \$100 per year on the principal balance for a used motor vehicle not covered by Subsection (c) that is a motor vehicle, rather than a domestic motor vehicle, designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made. Deletes existing text providing that the add-on charge is \$12.50 per \$100 per year on the principal balance for a used motor vehicle not covered by Subsection (c) that is a foreign motor vehicle that is not more than four years old. Makes nonsubstantive changes.

(h) Authorizes 16 or more days, rather than 15 or more days, for the purposes of a computation under this section, to be considered a full month.

SECTION 5. Amends Section 348.404, Finance Code, by adding Subsection (d), to authorize a retail seller to include money advanced under Subsection (b) (relating to authorizing a retail seller to advance money to retire a certain amount owed and finance repayment of that money) in the retail installment contract only if it is included as an itemized charge and disclose money advanced under Subsection (b) in any matter permitted by 12 C.F.R. Part 226 (regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.). Provides that Section 349.003 (Liability for Failure to Perform or for Performance of Prohibited Act) does not apply to this subsection. Provides that this section does not create a private right of action. Provides that the consumer credit commissioner (commissioner) has exclusive jurisdiction to enforce this subsection.

SECTION 6. Amends Section 348.408, Finance Code, by adding Subsection (c), to require a retailer to pay in full the outstanding balance of a vehicle traded in not later than the 25th day after the date that the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle and the retailer seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

SECTION 7. Amends Section 348.501, Finance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires a person who is required to hold a license under this chapter to ensure that each office at which retail installment transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) Creates this subsection from existing text.

SECTION 8. Amends Section 348.513(a), Finance Code, to authorize the finance commission to adopt rules to enforce this chapter or modify the standard form as required by Section 348.0091 to conform to the provisions of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act, address any official commentary or other interpretation by a federal agency relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act, or address a judicial interpretation by a state of federal court relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act.

SECTION 9. Amends Sections 348.514(c) and (d), Finance Code, as follows:

(c) Authorizes the commissioner or the commissioner's representative, during an examination or investigation, to administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Provides that all information relating to the examination or investigation process is confidential, including information obtained from the license holder, the examination report, instructions and attachments, and correspondence between the license holder and the commissioner or the commissioner's representative relating to an examination or investigation of the license holder. Deletes existing text providing that information obtained under this section is confidential.

SECTION 10. Amends the heading to Section 348.517, Finance Code, to read as follows:

Sec. 348.517. LICENSE HOLDER'S RECORDS; DOCUMENT RETENTION REQUIREMENTS.

SECTION 11. Amends Section 348.517(b), Finance Code, to require a license holder to keep the record until the later of the fourth anniversary of the date of the retail installment transaction, rather than the third anniversary of the date the past payment was made on the retail installment transaction, or the second anniversary of the date on which the final entry is made in the record.

SECTION 12. (a) Requires the Finance Commission of Texas, as soon as practicable after the effective date of this Act, to adopt the form required by Section 348.0091, Finance Code, as added by this Act.

(b) Provides that a retail seller, notwithstanding Section 348.0091, Finance Code, as added by this Act, is not required to comply with that section until the Finance Commission of Texas prescribes the form required by that section.

SECTION 13. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Provides that Section 348.007, Finance Code, as amended by this Act, takes effect only if H.B. 4361 or S.B. 1965, proposed by the 81st Legislature, Regular Session, 2009, relating to the regulation of retail installment contracts for commercial vehicles, is passed and becomes law. Provides that, if neither bill becomes law, the change in law made by this Act to Section 348.007, Finance Code, has no effect.