

BILL ANALYSIS

C.S.H.B. 2556
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, auto dealers can make the financing of a motor vehicle to a consumer conditional on selling the contract to a holder in the secondary market. If the dealer is unable to sell the contract, which can range from one day to two months, then the dealer can repossess the motor vehicle from the consumer unless the consumer makes a larger down payment or refinances the contract.

C.S.H.B. 2556 amends the Finance Code to establish limitations on these types of conditional delivery agreements.

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

C.S.H.B. 2556 amends the Finance Code to authorize a retail seller and prospective retail buyer to enter into a conditional delivery agreement that is an enforceable contract and is void on the execution of a retail installment contract between the parties of the agreement for the sale of the motor vehicle that is the subject of the agreement. The bill defines a "conditional delivery agreement" to mean a contract between a retail seller and prospective retail buyer under the terms of which the retail seller allows the prospective retail buyer the use and benefit of a motor vehicle for a specified term.

C.S.H.B. 2556 authorizes a conditional delivery agreement to confer only rights consistent with these provisions and not any legal or equitable rights of ownership, including ownership of the motor vehicle that is the subject of the agreement and prohibits such an agreement from exceeding a term of 15 days.

C.S.H.B. 2556 requires a prospective retail buyer and a retail seller, if the buyer tenders to a seller a trade-in motor vehicle in connection with a conditional delivery agreement, to agree on the value of the trade-in motor vehicle. The bill requires the conditional delivery agreement to contain the agreed value of the trade-in and requires the retail seller to use reasonable care to conserve the trade-in while it is in the retail seller's possession. The bill requires the retail seller, if the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the motor vehicle that is the subject of the agreement, to deliver to the prospective retail buyer, not later than the seventh day after termination of the agreement:

- any trade-in motor vehicle that the buyer tendered in connection with the agreement in the same or substantially the same condition as it was at the time of execution of the agreement and to return any down payment or other consideration received from the prospective retail buyer in connection with the agreement; or

- if the trade-in motor vehicle cannot be returned in the same or substantially the same condition as it was at the time of execution of agreement, to deliver to the buyer a sum of money equal to the agreed value of the trade-in motor vehicle and to return any down payment or other consideration.

C.S.H.B. 2556 requires any money that a retail seller is obligated to provide a prospective retail buyer to be tendered at the same time that the trade-in is delivered for return to the buyer or when the trade-in would have been delivered if the vehicle was damaged or could not be returned. The bill requires the retail seller, if a prospective retail buyer returns a motor vehicle under a conditional delivery agreement at the request of the retail seller, to return the trade-in at the same time that the motor vehicle under the conditional delivery agreement is returned by the buyer. The bill requires the prospective retail buyer to return the motor vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the agreement's execution.

C.S.H.B. 2556 establishes that an amount paid or required to be paid by the retail seller is subject to review by the consumer credit commissioner and authorizes the commissioner, if the commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount, to order the seller to pay the amount to the buyer. The bill authorizes the commissioner, if the trade-in motor vehicle is not returned by the retail seller in accordance with these provisions and the retail seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in within the period prescribed, to assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in. The bill requires the commissioner to provide notice to the retail seller and the prospective retail buyer of the commissioner's determination and authorizes the seller and the buyer, not later than the 30th day after the date the parties receive notice of the commissioner's determination, to file with the commissioner an appeal of the determination requesting a time and place for a hearing before a commissioner-designated hearings officer. The bill establishes that such hearing is governed by the Administrative Procedure Act and requires the commissioner, after the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, to enter a final order.

C.S.H.B. 2556 requires a person who requests an appeal of the commissioner's determination to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the commissioner. The bill requires the entire deposit to be refunded to the person if the person prevails in the hearing and establishes that, if the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable. The bill requires notice of the commissioner's final order, given to the person in accordance with the Administrative Procedure Act, to include a statement of the person's right to judicial review of the order and authorizes the hearings officer to order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the commissioner in connection with obtaining a final order, including attorney's fees, investigative costs, and witness fees. The bill establishes that these provisions do not apply to a bailment agreement under state law and do not create a private right of action.

C.S.H.B. 2556 prohibits a retail installment contract from being conditioned on the subsequent assignment of the contract to a holder and establishes that a provision in violation of this prohibition is void. The bill establishes that this voiding does not affect the validity of other provisions of the contract that may be given effect without the voided provision and to that extent those provisions are severable. The bill establishes that these provisions do not create a private right of action and grants the commissioner exclusive jurisdiction to enforce these provisions, except as otherwise provided.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2556 differs from the original by defining "conditional delivery agreement" as a contract between a retail seller and prospective retail buyer under the terms of which the seller allows the buyer the use and benefit of a motor vehicle for a specified term, whereas the original makes its provisions applicable to a contract between a retail seller and prospective retail buyer under the terms of which the seller allows the prospective buyer the use and benefit of a motor vehicle for a specified term.

C.S.H.B. 2556 adds provisions not in the original authorizing a retail seller and prospective retail buyer to enter into a conditional delivery agreement that is an enforceable contract and is void on the execution of a retail installment contract between the parties of the agreement for the sale of the motor vehicle that is the subject of the agreement and authorizing a conditional delivery agreement to confer only rights consistent with provisions relating to a conditional delivery agreement. The substitute differs from the original by prohibiting a conditional delivery agreement from conferring any legal or equitable rights of ownership, whereas the original makes its provisions applicable only to a contract between a retail seller and a prospective retail buyer under the terms of which no legal or equitable rights of ownership to property are conferred.

C.S.H.B. 2556 removes a provision in the original requiring a retail seller to refund or return any consideration, including any payments and trade-in motor vehicle, made by the prospective retail buyer under a motor vehicle retail installment contract to which the provisions of the original apply if, not later than the seventh day after the termination date of that contract, the seller and the buyer do not subsequently enter into a retail installment contract.

C.S.H.B. 2556 adds provisions not in the original setting forth requirements and conditions if a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement, including a requirement that the parties agree on the trade-in vehicle's value, which must be included in the agreement; requirements imposed on the retail seller, if the parties to the agreement do not subsequently enter into a retail installment contract for the sale of the vehicle that is the subject of the agreement, with respect to the condition of the trade-in vehicle on its return to the prospective buyer; the retail seller's obligation to provide the prospective buyer any down payment or other consideration at the time of the trade-in vehicle's return money; the prospective buyer's obligation to return the motor vehicle received under the agreement in the same or substantially the same condition as it was at the time of the agreement's execution; the consumer credit commissioner's review of the amounts in question and authority to assess administrative penalties against a retail seller; and the seller's right of appeal.

C.S.H.B. 2556 adds a provision not in the original establishing that the voiding of a provision that violates a prohibition against a retail installment contract being conditioned on the subsequent assignment of the contract to a holder does not affect the validity of other provisions of the contract that may be given effect without the voided provision, and to that extent making those provisions severable.