

BILL ANALYSIS

C.S.H.B. 4361
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, motor vehicle installment contracts are not appropriate for contractual relationships with commercial buyers purchasing vehicles for commercial use.

C.S.H.B. 4361 exempts retail installment contracts for commercial vehicles from general provisions of state law relating to motor vehicle installment sales considered inappropriate for such contracts. The bill creates a presumption under certain circumstances that a vehicle is not a commercial vehicle and authorizes certain charges to be included in contracts for the purchase of commercial vehicles under certain circumstances. The bill does not change financing rates and has no effect on consumer transactions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 4361 amends the Finance Code to exclude insurance on a commercial vehicle securing a retail installment contract from the types of insurance coverage that are considered collateral protection insurance. The bill specifies that a contract for a commercial vehicle is not subject to the requirements regarding the form prescribed for a contract for a retail installment transaction.

C.S.H.B. 4361 defines a "commercial vehicle" as a motor vehicle that is not used primarily for personal, family, or household use and includes the following: a motor vehicle with a gross vehicular weight of 10,001 pounds or more; a motor vehicle that will be owned by a corporation, limited liability company, limited partnership, or other business entity formed, organized, or registered in Texas, another state, or another country; and a motor vehicle that will be part of a fleet of five or more vehicles owned by the same person.

C.S.H.B. 4361 creates a presumption providing that a motor vehicle not included in the definition of "commercial vehicle" or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is determined not to be a commercial vehicle. The bill establishes that if a retail buyer represents in writing that a motor vehicle is not for personal, family, or household use, or that the vehicle is for commercial use, a retail seller or holder to whom the representation is made may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

C.S.H.B. 4361 authorizes the following amounts to be included as an itemized charge or in the cash price in a retail installment contract for a commercial vehicle, in addition to amounts allowed under other provisions of law:

- any fees prescribed by law;

- any amounts charged by a titling or registration service relating to the sale;
- any other amount agreed to by the retail buyer and retail seller, including amounts payable to the retail seller or another person for the provision of goods or services relating to the commercial vehicle, the sale or use of the commercial vehicle, or the retail buyer's business in which the commercial vehicle will be used; and
- an amount paid to the retail seller or other person as consideration for the agreement of the holder of the retail installment contract to waive all or part of the difference between the amount owed under a retail installment contract and the amount paid under a physical damage insurance policy maintained by the retail buyer or its assign, in the event the vehicle is a total loss; all or part of the amount owed under the retail installment contract, in the event of the death of the retail buyer; or one or more payments owed under the retail installment contract, in the event of the disability of the retail buyer.

C.S.H.B. 4361 requires a contract and an agreement, if such an amount paid to the retail seller or other person for a waiver agreement is included in the contract, to each disclose conspicuously that the waiver is optional, and establishes that such an amount included in the contract is not a charge for insurance and that the sale, provision, or the waiving of a balance owed or other action relating to a waiver of all or part of the amount owed under a retail installment contract for a commercial vehicle is not considered insurance or engaging in the business of insurance.

C.S.H.B. 4361 changes the requirement regarding a documentary fee included in the principal balance of a commercial vehicle retail installment contract by prohibiting the fee from exceeding an amount agreed to in writing by the retail seller and retail buyer for a commercial vehicle installment retail contract, rather than a reasonable amount agreed to by those individuals for a heavy commercial vehicle installment retail contract. The bill amends the notice that is required to be included in a retail installment contract for a documentary fee's inclusion in the principal balance of the contract to conform to the changes regarding the documentary fee amount and exempts a buyer's order or retail installment contract for a commercial vehicle from the notice requirement.

C.S.H.B. 4361 establishes that a retail installment transaction in which a retail buyer purchases a commercial vehicle is only subject to the following provisions of state law relating to motor vehicle installment sales:

- the general provisions relating to motor vehicle installment sales, unless expressly stated otherwise;
- retail installment contract provisions, except those provisions relating to the contents of a contract and the refinancing of large installments;
- provisions relating to insurance in connection with a retail installment contract, except those requiring a holder to deliver or mail to the retail buyer a written statement that includes the fact that the retail installment contract includes a premium or rate or charge for the insurance that is not fixed or approved by the commissioner of insurance, those relating to insurance authorized to be furnished by a buyer, those relating to the requirements for the inclusion of insurance cost in a contract, and those relating to the delivery of the insurance document to a buyer;
- provisions relating to the acquisition of a contract or balance under a contract;
- provisions relating to a holder's rights, duties, and limitations, except those provisions providing for the retention or disposition of nonattached personal property;
- provisions relating to licensing requirements for individuals engaged in motor vehicle installment sales, except those relating to the appropriateness and adequacy of forms and contracts used by the applicant for protection of the interests of retail buyers, those relating to examination and access to a license holder's records, those relating to general investigations for suspected violations of motor vehicle retail installment sales, those

relating to the payment of examination costs and administration expenses, and those relating to the maintenance of a license holder's records.

C.S.H.B. 4361 removes the exemption from setting out the total amount of the time price differential relating to a variable contract rate for a retail installment contract for a commercial vehicle. The bill prohibits a retail installment contract for a commercial vehicle from authorizing the holder to accelerate the maturity of all or a part of the amount owed under the contract unless the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or leasing agreement held by the same holder or an affiliate of the holder.

C.S.H.B. 4361 authorizes a retail installment contract for a commercial vehicle, in addition to other charges for insurance coverage authorized by law, to include a charge for insurance coverage relating to the commercial vehicle, use of the commercial vehicle, or the retail installment contract. The bill requires such insurance coverage to be provided only by an insurer authorized under law to engage in the business of insurance in Texas or, if permitted under law, a surplus lines insurer eligible to provide the insurance. The bill requires a retail installment contract for a commercial vehicle to set forth the amount of each charge for such insurance coverage and the type of the coverage provided for that charge.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4361 differs from the original by expanding the definition of "commercial vehicle" to enumerate specific types of vehicles that are included in the term.

C.S.H.B. 4361 adds both a presumption and an exception to such a presumption, neither of which were in the original, that a motor vehicle not included in the definition of "commercial vehicle" and not typically used for personal, family, or household use, as determined by finance commission rule, is not a commercial vehicle.

C.S.H.B. 4361 differs from the original, in the provision permitting additional charges, by permitting the inclusion of any amounts charged by a titling or registration service, rather than only a titling service as in the original, relating to the sale. The substitute differs from the original by permitting the inclusion of an amount paid under an agreement to waive all or part of the difference between the amount owed under a retail installment contract and the amount paid under a physical damage insurance policy in the event of a vehicle's total loss or to waive all or part of the amount owed under the retail installment contract in the event of the retail buyer's death, whereas the original did not include an agreement to waive part of those differences. The substitute differs from the original by requiring a contract and an agreement, if an amount paid to the retail seller or other person for a waiver agreement is included in the contract, to each conspicuously disclose that the waiver is optional, rather than requiring only the contract to disclose that the waiver is optional, as in the original.

C.S.H.B. 4361 adds a provision not in the original subjecting a retail installment transaction for the purchase of a commercial vehicle to provisions relating to the licensing of individuals engaged in motor vehicle installment sales, with certain exceptions.

C.S.H.B. 4361 differs from the original by specifying that a contract is authorized to include a charge relating to the retail installment contract, rather than a charge otherwise agreed to by the retail buyer and the retail seller in the contract, as in the original.