

BILL ANALYSIS

S.B. 1965
By: Harris
Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, some of the provisions in the Finance Code applicable to motor vehicle installment contracts are not appropriate for contracts with commercial buyers purchasing vehicles for commercial use. Also, the consumer-oriented area of provisions relating to motor vehicle installment sales prevent commercial buyers from contracting for services involving commercial uses that would not be relevant to a consumer purchase.

S.B. 1965 excepts retail installment contracts for commercial vehicles from certain provisions of the Finance Code relating to motor vehicle installment contracts.

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

S.B. 1965 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.

S.B. 1965 defines a "commercial vehicle" to mean a motor vehicle that is not used primarily for personal, family, or household use, including 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.

S.B. 1965 creates a presumption that a motor vehicle is not a commercial vehicle if the vehicle is not described by the definition of "commercial vehicle" or is of a type typically used for personal, family, or household use, as determined by finance commission rule. The bill establishes that a retail seller or holder to whom 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, may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

S.B. 1965 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.

S.B. 1965 requires a contract and any agreement to waive the amount paid to the retail seller or as consideration for the waiver of certain amounts owed in the event of total loss of the vehicle or the death or disability of the retail buyer to each conspicuously disclose that the waiver is optional if such a charge is included in the contract. The bill clarifies that such a payment 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.

S.B. 1965 changes the conditions that must be satisfied for a documentary fee to be 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 prohibiting the fee from exceeding 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. The bill provides the same exemption for cases in which the language used in an oral sales presentation differs from the language in which the contract is written.

S.B. 1965 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.

S.B. 1965 removes the exemption for a heavy commercial vehicle from the requirement that a contract providing for a variable contract rate set out the method by which the rate is computed. 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.

S.B. 1965 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 authorizes 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.