

By: McCall

H.B. No. 2438

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to requirements regarding motor vehicle retail  
3 installment transactions.

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

5 SECTION 1. Section 348.001(3), Finance Code, is amended to  
6 read as follows:

7 (3) "Holder" means a person who is:

8 (A) a retail seller; or

9 (B) the assignee or transferee of ~~[if]~~ a retail  
10 installment contract ~~[or the outstanding balance under the contract~~  
11 ~~is sold or otherwise transferred, the person to whom it is sold or~~  
12 ~~otherwise transferred]~~.

13 SECTION 2. Section 348.007, Finance Code, is amended by  
14 amending Subsection (a) and adding Subsection (a-2) to read as  
15 follows:

16 (a) Except as otherwise provided by this section, each  
17 ~~[Each]~~ retail installment transaction is subject to this chapter.

18 (a-2) A retail installment transaction in which a retail  
19 buyer purchases a commercial vehicle is only subject to the  
20 following provisions of this chapter:

21 (1) Subchapter A, except Section 348.0091 or unless  
22 expressly stated otherwise;

23 (2) Subchapter B, except Sections 348.102 and 348.123;

24 (3) Subchapter C, except Sections 348.204(b),

1 348.206, 348.209, and 348.210;

2 (4) Subchapter D;

3 (5) Subchapter E, except Sections 348.404(d) and  
4 348.407; and

5 (6) Subchapter F, except Sections 348.504(a)(2),  
6 348.514, 348.516, and 348.517.

7 SECTION 3. Subchapter A, Chapter 348, Finance Code, is  
8 amended by adding Section 348.0091 to read as follows:

9 Sec. 348.0091. DISCLOSURE OF EQUITY IN TRADE-IN MOTOR  
10 VEHICLE. (a) A retail seller may not accept a trade-in motor  
11 vehicle for a motor vehicle sold under a retail installment  
12 contract unless the retail seller provides to the retail buyer,  
13 before the buyer signs the contract, a completed disclosure of  
14 trade-in equity form prescribed by this section.

15 (b) The finance commission shall by rule adopt a standard  
16 form for the disclosure of the equity in a retail buyer's trade-in  
17 motor vehicle.

18 (c) The form adopted by the finance commission under  
19 Subsection (b), at a minimum, must:

20 (1) contain:

21 (A) the name of the retail buyer;

22 (B) the name, address, and telephone number of  
23 the retail seller;

24 (C) the make, model, year, and vehicle  
25 identification number of the trade-in motor vehicle;

26 (D) the date of the retail installment  
27 transaction;

1           (E) the amount offered by the retail seller to  
2 the retail buyer for the trade-in motor vehicle;

3           (F) the amount the retail buyer owes on the  
4 trade-in motor vehicle as of the date of the retail installment  
5 transaction;

6           (G) a statement indicating whether the retail  
7 buyer's equity in the trade-in motor vehicle is positive or  
8 negative;

9           (H) a disclosure containing substantially  
10 similar words to the following: "If the EQUITY amount is NEGATIVE,  
11 the value the retail seller is offering you for your trade-in motor  
12 vehicle is less than what you currently owe on your trade-in. The  
13 amount of negative equity may be further reduced by the amount of  
14 any cash down payment and manufacturer's rebate and may be included  
15 in the amount financed under your retail installment contract as an  
16 itemized charge.";

17           (I) the cash price of the vehicle being purchased  
18 under the retail installment transaction; and

19           (J) the amount financed under the retail  
20 installment contract;

21           (2) include a space for the signature of both the  
22 retail seller and retail buyer and the printed name of the retail  
23 seller; and

24           (3) be signed and dated by the retail seller and retail  
25 buyer.

26           (d) The retail seller is solely responsible for the content  
27 and delivery of the disclosure form required by Subsection (a). An

1 assignee of a retail installment contract may not be held  
2 responsible for a retail seller's failure to comply with the  
3 requirements of this section.

4 (e) This section does not create a private right of action.  
5 The commissioner has exclusive jurisdiction to enforce this  
6 section.

7 SECTION 4. Sections 348.104(b), (c), (d), and (h), Finance  
8 Code, are amended to read as follows:

9 (b) The add-on charge is \$7.50 per \$100 per year on the  
10 principal balance for[+]

11 [~~(1)~~] a new [~~domestic~~] motor vehicle, other than a  
12 heavy commercial vehicle, designated by the manufacturer by a model  
13 year that is not earlier than the year in which the sale is made[~~, or~~

14 [~~(2) a new foreign motor vehicle, other than a heavy~~  
15 ~~commercial vehicle].~~

16 (c) The add-on charge is \$10 per \$100 per year on the  
17 principal balance for:

18 (1) a new [~~domestic~~] motor vehicle not covered by  
19 Subsection (b);

20 (2) a used [~~domestic~~] motor vehicle designated by the  
21 manufacturer by a model year that is not more than two years before  
22 the year in which the sale is made; or

23 [~~(3) [a used foreign motor vehicle that is not more than~~  
24 ~~two years old, or~~

25 [~~(4)~~] a new or used heavy commercial vehicle  
26 designated by the manufacturer by a model year that is not more than  
27 two years before the year in which the sale is made [~~old~~].

1 (d) The add-on charge is \$12.50 per \$100 per year on the  
2 principal balance for a used motor vehicle not covered by  
3 Subsection (c) that is[+]

4 [~~(1)~~] a [~~domestic~~] motor vehicle designated by the  
5 manufacturer by a model year that is not more than four years before  
6 the year in which the sale is made[~~+or~~

7 [~~(2) a foreign motor vehicle that is not more than four~~  
8 ~~years old~~].

9 (h) For the purpose of a computation under this section, 16  
10 [~~15~~] or more days of a month may be considered a full month.

11 SECTION 5. Section 348.404, Finance Code, is amended by  
12 adding Subsection (d) to read as follows:

13 (d) A retail seller may include money advanced under  
14 Subsection (b) in the retail installment contract only if it is  
15 included as an itemized charge and may disclose money advanced  
16 under Subsection (b) in any manner permitted by 12 C.F.R. Part 226  
17 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C.  
18 Section 1601 et seq.). Section 349.003 does not apply to this  
19 subsection. This subsection does not create a private right of  
20 action. The commissioner has exclusive jurisdiction to enforce  
21 this subsection.

22 SECTION 6. Section 348.408, Finance Code, is amended by  
23 adding Subsection (c) to read as follows:

24 (c) A retail seller must pay in full the outstanding balance  
25 of a vehicle traded in not later than the 25th day after the date  
26 that:

27 (1) the retail installment contract is signed by the

1 retail buyer and the retail buyer receives delivery of the motor  
2 vehicle; and

3 (2) the retail seller receives delivery of the motor  
4 vehicle traded in and the necessary and appropriate documents to  
5 transfer title from the buyer.

6 SECTION 7. Section 348.501, Finance Code, is amended by  
7 amending Subsection (b) and adding Subsection (c) to read as  
8 follows:

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

15 (c) A person may not use any device, subterfuge, or pretense  
16 to evade the application of this section.

17 SECTION 8. Section 348.513(a), Finance Code, is amended to  
18 read as follows:

19 (a) The finance commission may adopt rules to:

20 (1) enforce this chapter; or

21 (2) modify the standard form as required by Section  
22 348.0091 to:

23 (A) conform to the provisions of the Truth in  
24 Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued  
25 under authority of that Act;

26 (B) address any official commentary or other  
27 interpretation by a federal agency relating to the Truth in Lending

1 Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under  
2 authority of that Act; or  
3 (C) address a judicial interpretation by a state  
4 or federal court relating to the Truth in Lending Act (15 U.S.C.  
5 Section 1601 et seq.) or a regulation issued under authority of that  
6 Act.

7 SECTION 9. Sections 348.514(c) and (d), Finance Code, are  
8 amended to read as follows:

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

14 (d) All information relating to the examination or  
15 investigation process [~~Information obtained under this section~~] is  
16 confidential, including:

- 17 (1) information obtained from the license holder;  
18 (2) the examination report;  
19 (3) instructions and attachments; and  
20 (4) correspondence between the license holder and the  
21 commissioner or the commissioner's representative relating to an  
22 examination or investigation of the license holder.

23 SECTION 10. The heading to Section 348.517, Finance Code,  
24 is amended to read as follows:

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

27 SECTION 11. Section 348.517(b), Finance Code, is amended to

1 read as follows:

2 (b) A license holder shall keep the record until the later  
3 of:

4 (1) the fourth [~~third~~] anniversary of the date of the  
5 [~~last payment was made on the~~] retail installment transaction; or

6 (2) the second anniversary of the date on which the  
7 final entry is made in the record.

8 SECTION 12. (a) As soon as practicable after the effective  
9 date of this Act, the Finance Commission of Texas shall adopt the  
10 form required by Section 348.0091, Finance Code, as added by this  
11 Act.

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

16 SECTION 13. (a) Except as provided by Subsection (b) of  
17 this section, this Act takes effect September 1, 2009.

18 (b) Section 348.007, Finance Code, as amended by this Act,  
19 takes effect only if House Bill 4361 or Senate Bill 1965, proposed  
20 by the 81st Legislature, Regular Session, 2009, relating to the  
21 regulation of retail installment contracts for commercial  
22 vehicles, is passed and becomes law. If neither bill becomes law,  
23 the change in law made by this Act to Section 348.007, Finance Code,  
24 has no effect.