

AN ACT

relating to requirements regarding motor vehicle retail installment transactions.

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

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

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

(A) a retail seller; or

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

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

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

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

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

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

(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. Section 348.004(a), Finance Code, is amended to
8 read as follows:

9 (a) The cash price is the price at which the retail seller
10 offers in the ordinary course of business to sell for cash the goods
11 or services that are subject to the transaction. An advertised
12 price does not necessarily establish a cash price.

13 SECTION 5. Sections 348.104(b), (c), (d), and (h), Finance
14 Code, are amended to read as follows:

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

17 [~~1~~] a new [~~domestic~~] motor vehicle, other than a
18 heavy commercial vehicle, designated by the manufacturer by a model
19 year that is not earlier than the year in which the sale is made[~~, or~~

20 [~~2~~] a new foreign motor vehicle, other than a heavy
21 commercial vehicle].

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

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

26 (2) a used [~~domestic~~] motor vehicle designated by the
27 manufacturer by a model year that is not more than two years before

1 the year in which the sale is made; or

2 (3) [~~a used foreign motor vehicle that is not more than~~
3 ~~two years old; or~~

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

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

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

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

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

17 SECTION 6. Section 348.404, Finance Code, is amended by
18 amending Subsection (b) and adding Subsection (d) to read as
19 follows:

20 (b) A retail seller, in connection with a retail installment
21 transaction, may:

22 (1) advance money to retire:

23 (A) an amount owed against a motor vehicle used
24 as a trade-in or a motor vehicle owned by the buyer that has been
25 declared a total loss by the buyer's insurer; or

26 (B) the retail buyer's outstanding obligation
27 under a motor vehicle lease contract, a credit transaction for the

1 purchase of a motor vehicle, or another retail installment
2 transaction; and

3 (2) finance repayment of that money in a retail
4 installment contract.

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

14 SECTION 7. Section 348.408, Finance Code, is amended by
15 adding Subsection (c) to read as follows:

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

19 (1) the retail installment contract is signed by the
20 retail buyer and the retail buyer receives delivery of the motor
21 vehicle; and

22 (2) the retail seller receives delivery of the motor
23 vehicle traded in and the necessary and appropriate documents to
24 transfer title from the buyer.

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

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

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

9 SECTION 9. Section 348.513(a), Finance Code, is amended to
10 read as follows:

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

12 (1) enforce this chapter; or

13 (2) modify the standard form as required by Section
14 348.0091 to:

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

18 (B) address any official commentary or other
19 interpretation by a federal agency relating to the Truth in Lending
20 Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under
21 authority of that Act; or

22 (C) address a judicial interpretation by a state
23 or federal court relating to the Truth in Lending Act (15 U.S.C.
24 Section 1601 et seq.) or a regulation issued under authority of that
25 Act.

26 SECTION 10. Sections 348.514(c) and (d), Finance Code, are
27 amended to read as follows:

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

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

- 9 (1) information obtained from the license holder;
10 (2) the examination report;
11 (3) instructions and attachments; and
12 (4) correspondence between the license holder and the
13 commissioner or the commissioner's representative relating to an
14 examination or investigation of the license holder.

15 SECTION 11. The heading to Section 348.517, Finance Code,
16 is amended to read as follows:

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

19 SECTION 12. Section 348.517(b), Finance Code, is amended to
20 read as follows:

21 (b) A license holder shall keep the record until the later
22 of:

- 23 (1) the fourth [~~third~~] anniversary of the date of the
24 [~~last payment was made on the~~] retail installment transaction; or
25 (2) the second anniversary of the date on which the
26 final entry is made in the record.

27 SECTION 13. (a) As soon as practicable after the effective

1 date of this Act, the Finance Commission of Texas shall adopt the
2 form required by Section 348.0091, Finance Code, as added by this
3 Act.

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

8 SECTION 14. (a) Except as provided by Subsection (b) of
9 this section, this Act takes effect September 1, 2009.

10 (b) Section 348.007, Finance Code, as amended by this Act,
11 takes effect only if House Bill 4361 or Senate Bill 1965, proposed
12 by the 81st Legislature, Regular Session, 2009, relating to the
13 regulation of retail installment contracts for commercial
14 vehicles, is passed and becomes law. If neither bill becomes law,
15 the change in law made by this Act to Section 348.007, Finance Code,
16 has no effect.

President of the Senate

Speaker of the House

I certify that H.B. No. 2438 was passed by the House on May 11, 2009, by the following vote: Yeas 144, Nays 0, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2438 on May 29, 2009, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2438 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor