

By: McCall

H.B. No. 2438

Substitute the following for H.B. No. 2438:

By: Parker

C.S.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 Subsections (d) and (e) 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. Section 349.003 does not apply to
16 this subsection. This subsection does not create a private right of
17 action. The commissioner has exclusive jurisdiction to enforce
18 this subsection.

19 (e) A retail seller may disclose money advanced under
20 Subsection (b) in any manner permitted by 12 C.F.R. Part 226
21 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C.
22 Section 1601 et seq.).

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

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

1 (1) the retail installment contract is signed by the
2 retail buyer and the retail buyer receives delivery of the motor
3 vehicle; and

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

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

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

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

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

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

21 (1) enforce this chapter; or

22 (2) modify the standard form as required by Section
23 348.0091 to:

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

27 (B) address any official commentary or other

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

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

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

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

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

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

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

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

1 SECTION 11. Section 348.517(b), Finance Code, is amended to
2 read as follows:

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

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

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

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

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

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

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