

1-1 By: McCall (Senate Sponsor - Carona) H.B. No. 2438  
1-2 (In the Senate - Received from the House May 12, 2009;  
1-3 May 13, 2009, read first time and referred to Committee on Business  
1-4 and Commerce; May 23, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2438 By: Lucio

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to requirements regarding motor vehicle retail  
1-11 installment transactions.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 348.001(3), Finance Code, is amended to  
1-14 read as follows:

1-15 (3) "Holder" means a person who is:

1-16 (A) a retail seller; or

1-17 (B) the assignee or transferee of [if] a retail  
1-18 installment contract [or the outstanding balance under the contract  
1-19 is sold or otherwise transferred, the person to whom it is sold or  
1-20 otherwise transferred].

1-21 SECTION 2. Section 348.007, Finance Code, is amended by  
1-22 amending Subsection (a) and adding Subsection (a-2) to read as  
1-23 follows:

1-24 (a) Except as otherwise provided by this section, each  
1-25 [Each] retail installment transaction is subject to this chapter.

1-26 (a-2) A retail installment transaction in which a retail  
1-27 buyer purchases a commercial vehicle is only subject to the  
1-28 following provisions of this chapter:

1-29 (1) Subchapter A, except Section 348.0091 or unless  
1-30 expressly stated otherwise;

1-31 (2) Subchapter B, except Sections 348.102 and 348.123;

1-32 (3) Subchapter C, except Sections 348.204(b),  
1-33 348.206, 348.209, and 348.210;

1-34 (4) Subchapter D;

1-35 (5) Subchapter E, except Sections 348.404(d) and  
1-36 348.407; and

1-37 (6) Subchapter F, except Sections 348.504(a)(2),  
1-38 348.514, 348.516, and 348.517.

1-39 SECTION 3. Subchapter A, Chapter 348, Finance Code, is  
1-40 amended by adding Section 348.0091 to read as follows:

1-41 Sec. 348.0091. DISCLOSURE OF EQUITY IN TRADE-IN MOTOR

1-42 VEHICLE. (a) A retail seller may not accept a trade-in motor  
1-43 vehicle for a motor vehicle sold under a retail installment  
1-44 contract unless the retail seller provides to the retail buyer,  
1-45 before the buyer signs the contract, a completed disclosure of  
1-46 trade-in equity form prescribed by this section.

1-47 (b) The finance commission shall by rule adopt a standard  
1-48 form for the disclosure of the equity in a retail buyer's trade-in  
1-49 motor vehicle.

1-50 (c) The form adopted by the finance commission under  
1-51 Subsection (b), at a minimum, must:

1-52 (1) contain:

1-53 (A) the name of the retail buyer;

1-54 (B) the name, address, and telephone number of  
1-55 the retail seller;

1-56 (C) the make, model, year, and vehicle  
1-57 identification number of the trade-in motor vehicle;

1-58 (D) the date of the retail installment  
1-59 transaction;

1-60 (E) the amount offered by the retail seller to  
1-61 the retail buyer for the trade-in motor vehicle;

1-62 (F) the amount the retail buyer owes on the  
1-63 trade-in motor vehicle as of the date of the retail installment

2-1 transaction;  
2-2 (G) a statement indicating whether the retail  
2-3 buyer's equity in the trade-in motor vehicle is positive or  
2-4 negative;  
2-5 (H) a disclosure containing substantially  
2-6 similar words to the following: "If the EQUITY amount is NEGATIVE,  
2-7 the value the retail seller is offering you for your trade-in motor  
2-8 vehicle is less than what you currently owe on your trade-in. The  
2-9 amount of negative equity may be further reduced by the amount of  
2-10 any cash down payment and manufacturer's rebate and may be included  
2-11 in the amount financed under your retail installment contract as an  
2-12 itemized charge.";  
2-13 (I) the cash price of the vehicle being purchased  
2-14 under the retail installment transaction; and  
2-15 (J) the amount financed under the retail  
2-16 installment contract;  
2-17 (2) include a space for the signature of both the  
2-18 retail seller and retail buyer and the printed name of the retail  
2-19 seller; and  
2-20 (3) be signed and dated by the retail seller and retail  
2-21 buyer.  
2-22 (d) The retail seller is solely responsible for the content  
2-23 and delivery of the disclosure form required by Subsection (a). An  
2-24 assignee of a retail installment contract may not be held  
2-25 responsible for a retail seller's failure to comply with the  
2-26 requirements of this section.  
2-27 (e) This section does not create a private right of action.  
2-28 The commissioner has exclusive jurisdiction to enforce this  
2-29 section.  
2-30 SECTION 4. Section 348.004(a), Finance Code, is amended to  
2-31 read as follows:  
2-32 (a) The cash price is the price at which the retail seller  
2-33 offers in the ordinary course of business to sell for cash the goods  
2-34 or services that are subject to the transaction. An advertised  
2-35 price does not necessarily establish a cash price.  
2-36 SECTION 5. Sections 348.104(b), (c), (d), and (h), Finance  
2-37 Code, are amended to read as follows:  
2-38 (b) The add-on charge is \$7.50 per \$100 per year on the  
2-39 principal balance for[+  
2-40 [~~(1)~~] a new [~~domestic~~] motor vehicle, other than a  
2-41 heavy commercial vehicle, designated by the manufacturer by a model  
2-42 year that is not earlier than the year in which the sale is made[~~, or~~  
2-43 [~~(2)~~] a new foreign motor vehicle, other than a heavy  
2-44 ~~commercial vehicle~~].  
2-45 (c) The add-on charge is \$10 per \$100 per year on the  
2-46 principal balance for:  
2-47 (1) a new [~~domestic~~] motor vehicle not covered by  
2-48 Subsection (b);  
2-49 (2) a used [~~domestic~~] motor vehicle designated by the  
2-50 manufacturer by a model year that is not more than two years before  
2-51 the year in which the sale is made; or  
2-52 (3) [~~a used foreign motor vehicle that is not more than~~  
2-53 ~~two years old, or~~  
2-54 [~~(4)~~] a new or used heavy commercial vehicle  
2-55 designated by the manufacturer by a model year that is not more than  
2-56 two years before the year in which the sale is made [old].  
2-57 (d) The add-on charge is \$12.50 per \$100 per year on the  
2-58 principal balance for a used motor vehicle not covered by  
2-59 Subsection (c) that is[+  
2-60 [~~(1)~~] a [~~domestic~~] motor vehicle designated by the  
2-61 manufacturer by a model year that is not more than four years before  
2-62 the year in which the sale is made[~~, or~~  
2-63 [~~(2)~~] a foreign motor vehicle that is not more than four  
2-64 ~~years old~~].  
2-65 (h) For the purpose of a computation under this section, 16  
2-66 [15] or more days of a month may be considered a full month.  
2-67 SECTION 6. Section 348.404, Finance Code, is amended by  
2-68 amending Subsection (b) and adding Subsection (d) to read as  
2-69 follows:

3-1 (b) A retail seller, in connection with a retail installment  
3-2 transaction, may:

3-3 (1) advance money to retire:

3-4 (A) an amount owed against a motor vehicle used  
3-5 as a trade-in or a motor vehicle owned by the buyer that has been  
3-6 declared a total loss by the buyer's insurer; or

3-7 (B) the retail buyer's outstanding obligation  
3-8 under a motor vehicle lease contract, a credit transaction for the  
3-9 purchase of a motor vehicle, or another retail installment  
3-10 transaction; and

3-11 (2) finance repayment of that money in a retail  
3-12 installment contract.

3-13 (d) A retail seller may include money advanced under  
3-14 Subsection (b) in the retail installment contract only if it is  
3-15 included as an itemized charge and may disclose money advanced  
3-16 under Subsection (b) in any manner permitted by 12 C.F.R. Part 226  
3-17 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C.  
3-18 Section 1601 et seq.). Section 349.003 does not apply to this  
3-19 subsection. This subsection does not create a private right of  
3-20 action. The commissioner has exclusive jurisdiction to enforce  
3-21 this subsection.

3-22 SECTION 7. Section 348.408, Finance Code, is amended by  
3-23 adding Subsection (c) to read as follows:

3-24 (c) A retail seller must pay in full the outstanding balance  
3-25 of a vehicle traded in not later than the 25th day after the date  
3-26 that:

3-27 (1) the retail installment contract is signed by the  
3-28 retail buyer and the retail buyer receives delivery of the motor  
3-29 vehicle; and

3-30 (2) the retail seller receives delivery of the motor  
3-31 vehicle traded in and the necessary and appropriate documents to  
3-32 transfer title from the buyer.

3-33 SECTION 8. Section 348.501, Finance Code, is amended by  
3-34 amending Subsection (b) and adding Subsection (c) to read as  
3-35 follows:

3-36 (b) A person who is required to hold a license under this  
3-37 chapter must ensure that each office at which retail installment  
3-38 transactions are made, serviced, held, or collected under this  
3-39 chapter is licensed or otherwise authorized to make, service, hold,  
3-40 or collect retail installment transactions in accordance with this  
3-41 chapter and rules implementing this chapter.

3-42 (c) A person may not use any device, subterfuge, or pretense  
3-43 to evade the application of this section.

3-44 SECTION 9. Section 348.513(a), Finance Code, is amended to  
3-45 read as follows:

3-46 (a) The finance commission may adopt rules to:

3-47 (1) enforce this chapter; or  
3-48 (2) modify the standard form as required by Section  
3-49 348.0091 to:

3-50 (A) conform to the provisions of the Truth in  
3-51 Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued  
3-52 under authority of that Act;

3-53 (B) address any official commentary or other  
3-54 interpretation by a federal agency relating to the Truth in Lending  
3-55 Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under  
3-56 authority of that Act; or

3-57 (C) address a judicial interpretation by a state  
3-58 or federal court relating to the Truth in Lending Act (15 U.S.C.  
3-59 Section 1601 et seq.) or a regulation issued under authority of that  
3-60 Act.

3-61 SECTION 10. Sections 348.514(c) and (d), Finance Code, are  
3-62 amended to read as follows:

3-63 (c) During an examination or investigation the commissioner  
3-64 or the commissioner's representative may administer oaths and  
3-65 examine any person under oath on any subject pertinent to a matter  
3-66 that the commissioner is authorized or required to consider,  
3-67 investigate, or secure information about under this chapter.

3-68 (d) All information relating to the examination or  
3-69 investigation process [Information obtained under this section] is

4-1 confidential, including:

- 4-2 (1) information obtained from the license holder;
- 4-3 (2) the examination report;
- 4-4 (3) instructions and attachments; and
- 4-5 (4) correspondence between the license holder and the
- 4-6 commissioner or the commissioner's representative relating to an
- 4-7 examination or investigation of the license holder.

4-8 SECTION 11. The heading to Section 348.517, Finance Code,  
4-9 is amended to read as follows:

4-10 Sec. 348.517. LICENSE HOLDER'S RECORDS; DOCUMENT RETENTION  
4-11 REQUIREMENTS.

4-12 SECTION 12. Section 348.517(b), Finance Code, is amended to  
4-13 read as follows:

4-14 (b) A license holder shall keep the record until the later  
4-15 of:

4-16 (1) the fourth [~~third~~] anniversary of the date of the  
4-17 [~~last payment was made on the~~] retail installment transaction; or

4-18 (2) the second anniversary of the date on which the  
4-19 final entry is made in the record.

4-20 SECTION 13. (a) As soon as practicable after the effective  
4-21 date of this Act, the Finance Commission of Texas shall adopt the  
4-22 form required by Section 348.0091, Finance Code, as added by this  
4-23 Act.

4-24 (b) Notwithstanding Section 348.0091, Finance Code, as  
4-25 added by this Act, a retail seller is not required to comply with  
4-26 that section until the Finance Commission of Texas prescribes the  
4-27 form required by that section.

4-28 SECTION 14. (a) Except as provided by Subsection (b) of  
4-29 this section, this Act takes effect September 1, 2009.

4-30 (b) Section 348.007, Finance Code, as amended by this Act,  
4-31 takes effect only if House Bill 4361 or Senate Bill 1965, proposed  
4-32 by the 81st Legislature, Regular Session, 2009, relating to the  
4-33 regulation of retail installment contracts for commercial  
4-34 vehicles, is passed and becomes law. If neither bill becomes law,  
4-35 the change in law made by this Act to Section 348.007, Finance Code,  
4-36 has no effect.

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