

By: Solomons

H.B. No. 2556

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the rights and duties of the parties to a motor vehicle
3 retail installment contract or a conditional delivery agreement
4 involving the sale or conditional delivery of a motor vehicle;
5 providing an administrative penalty.

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

7 SECTION 1. Subchapter A, Chapter 348, Finance Code, is
8 amended by adding Section 348.013 to read as follows:

9 Sec. 348.013. CONDITIONAL DELIVERY AGREEMENT. (a) In this
10 section, "conditional delivery agreement" means a contract between
11 a retail seller and prospective retail buyer under the terms of
12 which the retail seller allows the prospective retail buyer the use
13 and benefit of a motor vehicle for a specified term.

14 (b) Subject to this section, a retail seller and prospective
15 retail buyer may enter into a conditional delivery agreement.

16 (c) A conditional delivery agreement is:

17 (1) an enforceable contract; and

18 (2) void on the execution of a retail installment
19 contract between the parties of the conditional delivery agreement
20 for the sale of the motor vehicle that is the subject of the
21 conditional delivery agreement.

22 (d) A conditional delivery agreement may only confer rights
23 consistent with this section and may not confer any legal or
24 equitable rights of ownership, including ownership of the motor

1 vehicle that is the subject of the conditional delivery agreement.

2 (e) A conditional delivery agreement may not exceed a term
3 of 15 days.

4 (f) If a prospective retail buyer tenders to a retail seller
5 a trade-in motor vehicle in connection with a conditional delivery
6 agreement:

7 (1) the parties must agree on the value of the trade-in
8 motor vehicle;

9 (2) the conditional delivery agreement must contain
10 the agreed value of the trade-in motor vehicle described by
11 Subdivision (1); and

12 (3) the retail seller must use reasonable care to
13 conserve the trade-in motor vehicle while the vehicle is in the
14 retail seller's possession.

15 (g) If the parties to a conditional delivery agreement do
16 not subsequently enter into a retail installment contract for the
17 sale of the motor vehicle that is the subject of the conditional
18 delivery agreement, the retail seller shall, not later than the
19 seventh day after termination of the conditional delivery
20 agreement:

21 (1) deliver to the prospective retail buyer any
22 trade-in motor vehicle that the prospective retail buyer tendered
23 in connection with the conditional delivery agreement in the same
24 or substantially the same condition as it was at the time of
25 execution of the agreement and shall return any down payment or
26 other consideration received from the prospective retail buyer in
27 connection with the agreement; or

1 (2) if the trade-in motor vehicle cannot be returned
2 in the same or substantially the same condition as it was at the
3 time of execution of the conditional delivery agreement, deliver to
4 the prospective retail buyer a sum of money equal to the agreed
5 value of the trade-in motor vehicle as described by Subsection (f)
6 and shall return any down payment or other consideration described
7 by Subdivision (1).

8 (h) Any money that a retail seller is obligated to provide a
9 prospective retail buyer under Subsection (g) must be tendered at
10 the same time that the trade-in motor vehicle is delivered for
11 return to the prospective retail buyer or when the trade-in motor
12 vehicle would have been delivered if the vehicle was damaged or
13 could not be returned.

14 (i) If a prospective retail buyer returns a motor vehicle
15 under a conditional delivery agreement at the request of the retail
16 seller, the retail seller, notwithstanding the period prescribed by
17 Subsection (g), must return the trade-in vehicle at the same time
18 that the motor vehicle under the conditional delivery agreement is
19 returned by the prospective retail buyer.

20 (j) The prospective retail buyer shall return the motor
21 vehicle received under the conditional delivery agreement in the
22 same or substantially the same condition as it was at the time of
23 the execution of the conditional delivery agreement.

24 (k) An amount paid or required to be paid by the retail
25 seller under Subsection (g) is subject to review by the
26 commissioner. If the commissioner determines that the retail
27 seller in fact owes the prospective retail buyer a certain amount

1 under Subsection (g), the commissioner may order the retail seller
2 to pay the amount to the prospective retail buyer. If the trade-in
3 motor vehicle is not returned by the retail seller in accordance
4 with this section and the retail seller does not pay the prospective
5 retail buyer an amount equal to the agreed value of the trade-in
6 motor vehicle within the period prescribed by this section, the
7 commissioner may assess an administrative penalty against the
8 retail seller in an amount that is reasonable in relation to the
9 value of the trade-in motor vehicle. The commissioner shall
10 provide notice to the retail seller and the prospective retail
11 buyer of the commissioner's determination under this subsection.

12 (l) Not later than the 30th day after the date the parties
13 receive notice of the commissioner's determination under
14 Subsection (k), the retail seller or prospective retail buyer may
15 file with the commissioner an appeal of the commissioner's
16 determination requesting a time and place for a hearing before a
17 hearings officer designated by the commissioner. A hearing under
18 this subsection is governed by Chapter 2001, Government Code.
19 After the hearing, based on the findings of fact, conclusions of
20 law, and recommendations of the hearings officer, the commissioner
21 shall enter a final order.

22 (m) A person who requests an appeal under Subsection (l) is
23 required to pay a deposit to secure the payment of the costs of the
24 hearing in a reasonable amount as determined by the commissioner,
25 unless the person cannot afford to pay the deposit and files an
26 affidavit to that effect with the hearings officer in the form and
27 content prescribed by finance commission rule. The entire deposit

1 must be refunded to the person if the person prevails in the
2 hearing. If the person does not prevail, any portion of the deposit
3 in excess of the costs of the hearing assessed against the person is
4 refundable.

5 (n) Notice of the commissioner's final order under
6 Subsection (1), given to the person in accordance with Section
7 2001, Government Code, must include a statement of the person's
8 right to judicial review of the order.

9 (o) The hearings officer may order the retail seller or the
10 prospective retail buyer, or both, to pay reasonable expenses
11 incurred by the commissioner in connection with obtaining a final
12 order under Subsection (1), including attorney's fees,
13 investigative costs, and witness fees.

14 (p) This section does not:

15 (1) apply to a bailment agreement under Section
16 348.002; or

17 (2) create a private right of action.

18 (q) Except as otherwise provided by this section, the
19 commissioner has exclusive jurisdiction to enforce this section.

20 SECTION 2. Subchapter B, Chapter 348, Finance Code, is
21 amended by adding Section 348.1015 to read as follows:

22 Sec. 348.1015. CONTRACT CONDITIONED ON SUBSEQUENT
23 ASSIGNMENT PROHIBITED. (a) A retail installment contract may not be
24 conditioned on the subsequent assignment of the contract to a
25 holder.

26 (b) A provision in violation of this section is void. This
27 subsection does not affect the validity of other provisions of the

1 contract that may be given effect without the voided provision, and
2 to that extent those provisions are severable.

3 (c) This section does not create a private right of action.

4 (d) The commissioner has exclusive jurisdiction to enforce
5 this section.

6 SECTION 3. The changes in law made by this Act apply only to
7 a contract entered into on or after the effective date of this Act.
8 A contract entered into before the effective date of this Act is
9 governed by the law in effect when the contract was entered into,
10 and the former law is continued in effect for that purpose.

11 SECTION 4. This Act takes effect September 1, 2009.