

AN ACT

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

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

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

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

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

(c) A conditional delivery agreement is:

(1) an enforceable contract; and

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

(d) A conditional delivery agreement may only confer rights consistent with this section and may not confer any legal or 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.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2556 was passed by the House on May 4, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2556 was passed by the Senate on May 25, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor