

By: Solomons

H.B. No. 2556

Substitute the following for H.B. No. 2556:

By: Parker

C.S.H.B. No. 2556

A BILL TO BE ENTITLED

1 AN ACT  
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 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

15 (c) A conditional delivery agreement is:

16 (1) an enforceable contract; and

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

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

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

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

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

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

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

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

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

27           (2) if the trade-in motor vehicle cannot be returned

1 in the same or substantially the same condition as it was at the  
2 time of execution of the conditional delivery agreement, deliver to  
3 the prospective retail buyer a sum of money equal to the agreed  
4 value of the trade-in motor vehicle as described by Subsection (f)  
5 and shall return any down payment or other consideration described  
6 by Subdivision (1).

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

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

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

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

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

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

21 (m) A person who requests an appeal under Subsection (l) is  
22 required to pay a deposit to secure the payment of the costs of the  
23 hearing in a reasonable amount as determined by the commissioner.  
24 The entire deposit must be refunded to the person if the person  
25 prevails in the hearing. If the person does not prevail, any  
26 portion of the deposit in excess of the costs of the hearing  
27 assessed against the person is refundable.

1       (n) Notice of the commissioner's final order under  
2 Subsection (1), given to the person in accordance with Section  
3 2001, Government Code, must include a statement of the person's  
4 right to judicial review of the order.

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

10       (p) This section does not:

11               (1) apply to a bailment agreement under Section  
12 348.002; or

13               (2) create a private right of action.

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

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

18       Sec. 348.1015. CONTRACT CONDITIONED ON SUBSEQUENT  
19 ASSIGNMENT PROHIBITED. (a) A retail installment contract may not be  
20 conditioned on the subsequent assignment of the contract to a  
21 holder.

22       (b) A provision in violation of this section is void. This  
23 subsection does not affect the validity of other provisions of the  
24 contract that may be given effect without the voided provision, and  
25 to that extent those provisions are severable.

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

27       (d) The commissioner has exclusive jurisdiction to enforce

1 this section.

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

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