

1-1 By: Solomons (Senate Sponsor - Carona) H.B. No. 2556
1-2 (In the Senate - Received from the House May 5, 2009;
1-3 May 6, 2009, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 18, 2009, reported
1-5 favorably by the following vote: Yeas 7, Nays 0; May 18, 2009, sent
1-6 to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the rights and duties of the parties to a motor vehicle
1-10 retail installment contract or a conditional delivery agreement
1-11 involving the sale or conditional delivery of a motor vehicle;
1-12 providing an administrative penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter A, Chapter 348, Finance Code, is
1-15 amended by adding Section 348.013 to read as follows:

1-16 Sec. 348.013. CONDITIONAL DELIVERY AGREEMENT. (a) In this
1-17 section, "conditional delivery agreement" means a contract between
1-18 a retail seller and prospective retail buyer under the terms of
1-19 which the retail seller allows the prospective retail buyer the use
1-20 and benefit of a motor vehicle for a specified term.

1-21 (b) Subject to this section, a retail seller and prospective
1-22 retail buyer may enter into a conditional delivery agreement.

1-23 (c) A conditional delivery agreement is:

1-24 (1) an enforceable contract; and

1-25 (2) void on the execution of a retail installment
1-26 contract between the parties of the conditional delivery agreement
1-27 for the sale of the motor vehicle that is the subject of the
1-28 conditional delivery agreement.

1-29 (d) A conditional delivery agreement may only confer rights
1-30 consistent with this section and may not confer any legal or
1-31 equitable rights of ownership, including ownership of the motor
1-32 vehicle that is the subject of the conditional delivery agreement.

1-33 (e) A conditional delivery agreement may not exceed a term
1-34 of 15 days.

1-35 (f) If a prospective retail buyer tenders to a retail seller
1-36 a trade-in motor vehicle in connection with a conditional delivery
1-37 agreement:

1-38 (1) the parties must agree on the value of the trade-in
1-39 motor vehicle;

1-40 (2) the conditional delivery agreement must contain
1-41 the agreed value of the trade-in motor vehicle described by
1-42 Subdivision (1); and

1-43 (3) the retail seller must use reasonable care to
1-44 conserve the trade-in motor vehicle while the vehicle is in the
1-45 retail seller's possession.

1-46 (g) If the parties to a conditional delivery agreement do
1-47 not subsequently enter into a retail installment contract for the
1-48 sale of the motor vehicle that is the subject of the conditional
1-49 delivery agreement, the retail seller shall, not later than the
1-50 seventh day after termination of the conditional delivery
1-51 agreement:

1-52 (1) deliver to the prospective retail buyer any
1-53 trade-in motor vehicle that the prospective retail buyer tendered
1-54 in connection with the conditional delivery agreement in the same
1-55 or substantially the same condition as it was at the time of
1-56 execution of the agreement and shall return any down payment or
1-57 other consideration received from the prospective retail buyer in
1-58 connection with the agreement; or

1-59 (2) if the trade-in motor vehicle cannot be returned
1-60 in the same or substantially the same condition as it was at the
1-61 time of execution of the conditional delivery agreement, deliver to
1-62 the prospective retail buyer a sum of money equal to the agreed
1-63 value of the trade-in motor vehicle as described by Subsection (f)
1-64 and shall return any down payment or other consideration described

2-1 by Subdivision (1).

2-2 (h) Any money that a retail seller is obligated to provide a
 2-3 prospective retail buyer under Subsection (g) must be tendered at
 2-4 the same time that the trade-in motor vehicle is delivered for
 2-5 return to the prospective retail buyer or when the trade-in motor
 2-6 vehicle would have been delivered if the vehicle was damaged or
 2-7 could not be returned.

2-8 (i) If a prospective retail buyer returns a motor vehicle
 2-9 under a conditional delivery agreement at the request of the retail
 2-10 seller, the retail seller, notwithstanding the period prescribed by
 2-11 Subsection (g), must return the trade-in vehicle at the same time
 2-12 that the motor vehicle under the conditional delivery agreement is
 2-13 returned by the prospective retail buyer.

2-14 (j) The prospective retail buyer shall return the motor
 2-15 vehicle received under the conditional delivery agreement in the
 2-16 same or substantially the same condition as it was at the time of
 2-17 the execution of the conditional delivery agreement.

2-18 (k) An amount paid or required to be paid by the retail
 2-19 seller under Subsection (g) is subject to review by the
 2-20 commissioner. If the commissioner determines that the retail
 2-21 seller in fact owes the prospective retail buyer a certain amount
 2-22 under Subsection (g), the commissioner may order the retail seller
 2-23 to pay the amount to the prospective retail buyer. If the trade-in
 2-24 motor vehicle is not returned by the retail seller in accordance
 2-25 with this section and the retail seller does not pay the prospective
 2-26 retail buyer an amount equal to the agreed value of the trade-in
 2-27 motor vehicle within the period prescribed by this section, the
 2-28 commissioner may assess an administrative penalty against the
 2-29 retail seller in an amount that is reasonable in relation to the
 2-30 value of the trade-in motor vehicle. The commissioner shall
 2-31 provide notice to the retail seller and the prospective retail
 2-32 buyer of the commissioner's determination under this subsection.

2-33 (l) Not later than the 30th day after the date the parties
 2-34 receive notice of the commissioner's determination under
 2-35 Subsection (k), the retail seller or prospective retail buyer may
 2-36 file with the commissioner an appeal of the commissioner's
 2-37 determination requesting a time and place for a hearing before a
 2-38 hearings officer designated by the commissioner. A hearing under
 2-39 this subsection is governed by Chapter 2001, Government Code.
 2-40 After the hearing, based on the findings of fact, conclusions of
 2-41 law, and recommendations of the hearings officer, the commissioner
 2-42 shall enter a final order.

2-43 (m) A person who requests an appeal under Subsection (l) is
 2-44 required to pay a deposit to secure the payment of the costs of the
 2-45 hearing in a reasonable amount as determined by the commissioner,
 2-46 unless the person cannot afford to pay the deposit and files an
 2-47 affidavit to that effect with the hearings officer in the form and
 2-48 content prescribed by finance commission rule. The entire deposit
 2-49 must be refunded to the person if the person prevails in the
 2-50 hearing. If the person does not prevail, any portion of the deposit
 2-51 in excess of the costs of the hearing assessed against the person is
 2-52 refundable.

2-53 (n) Notice of the commissioner's final order under
 2-54 Subsection (l), given to the person in accordance with Section
 2-55 2001, Government Code, must include a statement of the person's
 2-56 right to judicial review of the order.

2-57 (o) The hearings officer may order the retail seller or the
 2-58 prospective retail buyer, or both, to pay reasonable expenses
 2-59 incurred by the commissioner in connection with obtaining a final
 2-60 order under Subsection (l), including attorney's fees,
 2-61 investigative costs, and witness fees.

2-62 (p) This section does not:

2-63 (1) apply to a bailment agreement under Section
 2-64 348.002; or

2-65 (2) create a private right of action.

2-66 (q) Except as otherwise provided by this section, the
 2-67 commissioner has exclusive jurisdiction to enforce this section.

2-68 SECTION 2. Subchapter B, Chapter 348, Finance Code, is
 2-69 amended by adding Section 348.1015 to read as follows:

3-1 Sec. 348.1015. CONTRACT CONDITIONED ON SUBSEQUENT
3-2 ASSIGNMENT PROHIBITED. (a) A retail installment contract may not be
3-3 conditioned on the subsequent assignment of the contract to a
3-4 holder.

3-5 (b) A provision in violation of this section is void. This
3-6 subsection does not affect the validity of other provisions of the
3-7 contract that may be given effect without the voided provision, and
3-8 to that extent those provisions are severable.

3-9 (c) This section does not create a private right of action.

3-10 (d) The commissioner has exclusive jurisdiction to enforce
3-11 this section.

3-12 SECTION 3. The changes in law made by this Act apply only to
3-13 a contract entered into on or after the effective date of this Act.
3-14 A contract entered into before the effective date of this Act is
3-15 governed by the law in effect when the contract was entered into,
3-16 and the former law is continued in effect for that purpose.

3-17 SECTION 4. This Act takes effect September 1, 2009.

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