

By: Harris

S.B. No. 1965

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of retail installment contracts for commercial vehicles.

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

SECTION 1. Subsection (f), Section 307.051, Finance Code, is amended to read as follows:

(f) Collateral protection insurance does not include insurance coverage that:

(1) is purchased by the creditor for which the debtor is not charged;

(2) is purchased at the inception of a credit transaction in which the debtor is a party or to which the debtor agrees, whether or not costs are included in a payment plan under the credit transaction;

(3) is maintained by the creditor for the protection of collateral that comes into the possession or control of the creditor through foreclosure, repossession, or a similar event;

(4) is credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the debtor, or any other insurance maintained to cover the inability or failure of the debtor to make payment under the credit agreement;

(5) is title insurance; ~~[or]~~

(6) is flood insurance required to be placed by creditors under Section 102, National Flood Insurance Act of 1968

1 (42 U.S.C. Section 4012a); or

2 (7) is insurance on a commercial vehicle securing a
3 retail installment contract under Chapter 348.

4 SECTION 2. Subsection (a), Section 341.502, Finance Code,
5 is amended to read as follows:

6 (a) A contract for a loan under Chapter 342, a retail
7 installment transaction under Chapter 348 other than a contract for
8 a commercial vehicle, or a home equity loan regulated by the Office
9 of Consumer Credit Commissioner must be:

10 (1) written in plain language designed to be easily
11 understood by the average consumer; and

12 (2) printed in an easily readable font and type size.

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

15 (1-a) "Commercial vehicle" means a motor vehicle that
16 is not used primarily for personal, family, or household use. The
17 term includes:

18 (A) a motor vehicle with a gross vehicular weight
19 of 10,001 pounds or more;

20 (B) a motor vehicle that will be owned by a
21 corporation, limited liability company, limited partnership, or
22 other business entity formed, organized, or registered in this
23 state, another state, or another country; and

24 (C) a motor vehicle that will be part of a fleet
25 of five or more vehicles owned by the same person.

26 SECTION 4. Subchapter A, Chapter 348, Finance Code, is
27 amended by adding Section 348.0015 to read as follows:

1 Sec. 348.0015. PRESUMPTION REGARDING NONCOMMERCIAL
2 VEHICLES; EXCEPTION. (a) A motor vehicle that is not described by
3 Section 348.001(1-a)(A), (B), or (C) or a motor vehicle that is of a
4 type typically used for personal, family, or household use, as
5 determined by finance commission rule, is presumed not to be a
6 commercial vehicle.

7 (b) Notwithstanding Subsection (a), if a retail buyer
8 represents in writing that a motor vehicle is not for personal,
9 family, or household use, or that the vehicle is for commercial use,
10 a retail seller or holder to whom the representation is made may
11 rely on that representation unless the retail seller or holder, as
12 applicable, has actual knowledge that the representation is not
13 true.

14 SECTION 5. Subchapter A, Chapter 348, Finance Code, is
15 amended by adding Section 348.0051 to read as follows:

16 Sec. 348.0051. CONTRACTS FOR COMMERCIAL VEHICLES;
17 ADDITIONAL CHARGES PERMITTED. (a) Notwithstanding Sections
18 348.004 and 348.005 and in addition to the amounts allowed under
19 those sections, the following amounts may be included as an
20 itemized charge or in the cash price in a retail installment
21 contract for a commercial vehicle:

22 (1) any fees prescribed by law;

23 (2) any amounts charged by a titling or registration
24 service relating to the sale;

25 (3) any other amount agreed to by the retail buyer and
26 retail seller, including amounts payable to the retail seller or
27 another person for the provision of goods or services relating to:

1 (A) the commercial vehicle;

2 (B) the sale or use of the commercial vehicle; or

3 (C) the retail buyer's business in which the
4 commercial vehicle will be used; and

5 (4) an amount paid to the retail seller or other person
6 as consideration for the agreement of the holder of the retail
7 installment contract to waive:

8 (A) all or part of the difference between the
9 amount owed under a retail installment contract and the amount paid
10 under a physical damage insurance policy maintained by the retail
11 buyer or its assign, in the event the vehicle is a total loss;

12 (B) all or part of the amount owed under the
13 retail installment contract, in the event of the death of the retail
14 buyer; or

15 (C) one or more payments owed under the retail
16 installment contract, in the event of the disability of the retail
17 buyer.

18 (b) If a charge under Subsection (a)(4) is included in the
19 contract, the contract and any agreement to waive an amount
20 described by Subsection (a)(4) must each conspicuously disclose
21 that the waiver is optional.

22 (c) Notwithstanding any other law, the amount described by
23 Subsection (a)(4) is not a charge for insurance, and the sale,
24 provision, or waiving of a balance owed or other action relating to
25 a waiver of all or part of the amount owed under a retail
26 installment contract for a commercial vehicle is not considered
27 insurance or engaging in the business of insurance.

1 SECTION 6. Subsections (c) and (d), Section 348.006,
2 Finance Code, are amended to read as follows:

3 (c) For a documentary fee to be included in the principal
4 balance of a retail installment contract:

5 (1) the retail seller must charge the documentary fee
6 to cash buyers and credit buyers;

7 (2) the documentary fee may not exceed:

8 (A) \$50 for a motor vehicle retail installment
9 contract; or

10 (B) an [a reasonable] amount agreed to in writing
11 by the retail seller and retail buyer for a [~~heavy~~] commercial
12 vehicle retail installment contract; and

13 (3) the buyer's order and the retail installment
14 contract must include:

15 (A) a statement of the amount of the documentary
16 fee; and

17 (B) except for a buyer's order or retail
18 installment contract for a commercial vehicle, in reasonable
19 proximity to the place in each where the amount of the documentary
20 fee is disclosed, the following notice in type that is bold-faced,
21 capitalized, underlined, or otherwise conspicuously set out from
22 surrounding written material:

23 "A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE
24 IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING
25 DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A
26 SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50 FOR A MOTOR VEHICLE
27 CONTRACT [~~OR A REASONABLE AMOUNT AGREED TO BY THE PARTIES FOR A~~

1 ~~HEAVY COMMERCIAL VEHICLE CONTRACT~~]. THIS NOTICE IS REQUIRED BY
2 LAW."

3 (d) Except for a retail installment contract for a
4 commercial vehicle, if [~~If~~] the language primarily used in an oral
5 sales presentation is not the same as the language in which the
6 retail installment contract is written, the retail seller shall
7 furnish to the retail buyer a written statement containing the
8 notice set out in Subsection (c)(3)(B) in the language primarily
9 used in the oral sales presentation.

10 SECTION 7. Section 348.007, Finance Code, is amended by
11 amending Subsection (a) and adding Subsection (a-2) to read as
12 follows:

13 (a) Except as otherwise provided by this section, each
14 [~~Each~~] retail installment transaction is subject to this chapter.

15 (a-2) A retail installment transaction in which a retail
16 buyer purchases a commercial vehicle is only subject to the
17 following provisions of this chapter:

- 18 (1) Subchapter A, unless expressly stated otherwise;
19 (2) Subchapter B, except Sections 348.102 and 348.123;
20 (3) Subchapter C, except Sections 348.204(b),
21 348.206, 348.209, and 348.210;
22 (4) Subchapter D;
23 (5) Subchapter E, except Section 348.407; and
24 (6) Subchapter F, except Sections 348.504(a)(2),
25 348.514, 348.516, and 348.517.

26 SECTION 8. Subsection (c), Section 348.102, Finance Code,
27 is amended to read as follows:

1 (c) A retail installment contract that provides for a
2 variable contract rate must set out the method by which the rate is
3 computed. [~~A contract for a heavy commercial vehicle is not~~
4 ~~required to set out the total amount of the time price~~
5 ~~differential.~~]

6 SECTION 9. Section 348.109, Finance Code, is amended to
7 read as follows:

8 Sec. 348.109. ACCELERATION OF DEBT MATURITY. A retail
9 installment contract may not authorize the holder to accelerate the
10 maturity of all or a part of the amount owed under the contract
11 unless:

12 (1) the retail buyer is in default in the performance
13 of any of the buyer's obligations; [~~or~~]

14 (2) the holder believes in good faith that the
15 prospect of buyer's payment or performance is impaired; or

16 (3) if the retail installment contract is for a
17 commercial vehicle, the retail buyer or an affiliate of the retail
18 buyer is in default in its obligations under another financing
19 agreement or leasing agreement held by the same holder or an
20 affiliate of the holder.

21 SECTION 10. Section 348.208, Finance Code, is amended by
22 adding Subsections (d), (e), and (f) to read as follows:

23 (d) In addition to a charge for insurance coverage under
24 Subsection (a) or (b), a retail installment contract for a
25 commercial vehicle may include a charge for insurance coverage
26 relating to:

27 (1) the commercial vehicle;

1 (2) the use of the commercial vehicle; or

2 (3) the retail installment contract.

3 (e) Insurance coverage under Subsection (d) may be provided
4 only by:

5 (1) an insurer authorized under the Insurance Code to
6 engage in the business of insurance in this state; or

7 (2) if permitted under the Insurance Code, a surplus
8 lines insurer eligible to provide the insurance under Chapter 981,
9 Insurance Code.

10 (f) A retail installment contract for a commercial vehicle
11 must set forth the amount of each charge for insurance coverage
12 under Subsection (d) and the type of the coverage provided for that
13 charge.

14 SECTION 11. Subsection (b), Section 348.213, Finance Code,
15 is amended to read as follows:

16 (b) A policy of insurance described by Subsection (a) must
17 comply with the applicable requirements of Sections 348.201,
18 348.203, and 348.208, and, except if the policy relates to a retail
19 installment contract for a commercial vehicle, Section 348.209.

20 SECTION 12. The changes in law provided by this Act apply
21 only to a retail installment contract entered into on or after the
22 effective date of this Act. A retail installment contract entered
23 into before the effective date of this Act is governed by the law in
24 effect on the date the contract was entered into, and the former law
25 remains in effect for that purpose.

26 SECTION 13. This Act takes effect September 1, 2009.