

1-1 By: Harris S.B. No. 1965
1-2 (In the Senate - Filed March 12, 2009; March 24, 2009, read
1-3 first time and referred to Committee on Economic Development;
1-4 April 8, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 8, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1965 By: Harris

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of retail installment contracts for
1-11 commercial vehicles.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (f), Section 307.051, Finance Code,
1-14 is amended to read as follows:

1-15 (f) Collateral protection insurance does not include
1-16 insurance coverage that:

1-17 (1) is purchased by the creditor for which the debtor
1-18 is not charged;

1-19 (2) is purchased at the inception of a credit
1-20 transaction in which the debtor is a party or to which the debtor
1-21 agrees, whether or not costs are included in a payment plan under
1-22 the credit transaction;

1-23 (3) is maintained by the creditor for the protection
1-24 of collateral that comes into the possession or control of the
1-25 creditor through foreclosure, repossession, or a similar event;

1-26 (4) is credit insurance, mortgage protection
1-27 insurance, insurance issued to cover the life or health of the
1-28 debtor, or any other insurance maintained to cover the inability or
1-29 failure of the debtor to make payment under the credit agreement;

1-30 (5) is title insurance; ~~or~~

1-31 (6) is flood insurance required to be placed by
1-32 creditors under Section 102, National Flood Insurance Act of 1968
1-33 (42 U.S.C. Section 4012a); or

1-34 (7) is insurance on a commercial vehicle securing a
1-35 retail installment contract under Chapter 348.

1-36 SECTION 2. Subsection (a), Section 341.502, Finance Code,
1-37 is amended to read as follows:

1-38 (a) A contract for a loan under Chapter 342, a retail
1-39 installment transaction under Chapter 348 other than a contract for
1-40 a commercial vehicle, or a home equity loan regulated by the Office
1-41 of Consumer Credit Commissioner must be:

1-42 (1) written in plain language designed to be easily
1-43 understood by the average consumer; and

1-44 (2) printed in an easily readable font and type size.

1-45 SECTION 3. Section 348.001, Finance Code, is amended by
1-46 adding Subdivision (1-a) to read as follows:

1-47 (1-a) "Commercial vehicle" means a motor vehicle that
1-48 is not used primarily for personal, family, or household use. The
1-49 term includes:

1-50 (A) a motor vehicle with a gross vehicular weight
1-51 of 10,001 pounds or more;

1-52 (B) a motor vehicle that will be owned by a
1-53 corporation, limited liability company, limited partnership, or
1-54 other business entity formed, organized, or registered in this
1-55 state, another state, or another country; and

1-56 (C) a motor vehicle that will be part of a fleet
1-57 of five or more vehicles owned by the same person.

1-58 SECTION 4. Subchapter A, Chapter 348, Finance Code, is
1-59 amended by adding Section 348.0015 to read as follows:

1-60 Sec. 348.0015. PRESUMPTION REGARDING NONCOMMERCIAL
1-61 VEHICLES; EXCEPTION. (a) A motor vehicle that is not described by
1-62 Section 348.001(1-a)(A), (B), or (C) or a motor vehicle that is of a
1-63 type typically used for personal, family, or household use, as

2-1 determined by finance commission rule, is presumed not to be a
 2-2 commercial vehicle.

2-3 (b) Notwithstanding Subsection (a), if a retail buyer
 2-4 represents in writing that a motor vehicle is not for personal,
 2-5 family, or household use, or that the vehicle is for commercial use,
 2-6 a retail seller or holder to whom the representation is made may
 2-7 rely on that representation unless the retail seller or holder, as
 2-8 applicable, has actual knowledge that the representation is not
 2-9 true.

2-10 SECTION 5. Subchapter A, Chapter 348, Finance Code, is
 2-11 amended by adding Section 348.0051 to read as follows:

2-12 Sec. 348.0051. CONTRACTS FOR COMMERCIAL VEHICLES;
 2-13 ADDITIONAL CHARGES PERMITTED. (a) Notwithstanding Sections
 2-14 348.004 and 348.005 and in addition to the amounts allowed under
 2-15 those sections, the following amounts may be included as an
 2-16 itemized charge or in the cash price in a retail installment
 2-17 contract for a commercial vehicle:

2-18 (1) any fees prescribed by law;

2-19 (2) any amounts charged by a titling or registration
 2-20 service relating to the sale;

2-21 (3) any other amount agreed to by the retail buyer and
 2-22 retail seller, including amounts payable to the retail seller or
 2-23 another person for the provision of goods or services relating to:

2-24 (A) the commercial vehicle;

2-25 (B) the sale or use of the commercial vehicle; or

2-26 (C) the retail buyer's business in which the
 2-27 commercial vehicle will be used; and

2-28 (4) an amount paid to the retail seller or other person
 2-29 as consideration for the agreement of the holder of the retail
 2-30 installment contract to waive:

2-31 (A) all or part of the difference between the
 2-32 amount owed under a retail installment contract and the amount paid
 2-33 under a physical damage insurance policy maintained by the retail
 2-34 buyer or its assign, in the event the vehicle is a total loss;

2-35 (B) all or part of the amount owed under the
 2-36 retail installment contract, in the event of the death of the retail
 2-37 buyer; or

2-38 (C) one or more payments owed under the retail
 2-39 installment contract, in the event of the disability of the retail
 2-40 buyer.

2-41 (b) If a charge under Subsection (a)(4) is included in the
 2-42 contract, the contract and any agreement to waive an amount
 2-43 described by Subsection (a)(4) must each conspicuously disclose
 2-44 that the waiver is optional.

2-45 (c) Notwithstanding any other law, the amount described by
 2-46 Subsection (a)(4) is not a charge for insurance, and the sale,
 2-47 provision, or waiving of a balance owed or other action relating to
 2-48 a waiver of all or part of the amount owed under a retail
 2-49 installment contract for a commercial vehicle is not considered
 2-50 insurance or engaging in the business of insurance.

2-51 SECTION 6. Subsections (c) and (d), Section 348.006,
 2-52 Finance Code, are amended to read as follows:

2-53 (c) For a documentary fee to be included in the principal
 2-54 balance of a retail installment contract:

2-55 (1) the retail seller must charge the documentary fee
 2-56 to cash buyers and credit buyers;

2-57 (2) the documentary fee may not exceed:

2-58 (A) \$50 for a motor vehicle retail installment
 2-59 contract; or

2-60 (B) an [a reasonable] amount agreed to in writing
 2-61 by the retail seller and retail buyer for a [heavy] commercial
 2-62 vehicle retail installment contract; and

2-63 (3) the buyer's order and the retail installment
 2-64 contract must include:

2-65 (A) a statement of the amount of the documentary
 2-66 fee; and

2-67 (B) except for a buyer's order or retail
 2-68 installment contract for a commercial vehicle, in reasonable
 2-69 proximity to the place in each where the amount of the documentary

3-1 fee is disclosed, the following notice in type that is bold-faced,
3-2 capitalized, underlined, or otherwise conspicuously set out from
3-3 surrounding written material:

3-4 "A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE
3-5 IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING
3-6 DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A
3-7 SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50 FOR A MOTOR VEHICLE
3-8 CONTRACT [~~OR A REASONABLE AMOUNT AGREED TO BY THE PARTIES FOR A~~
3-9 ~~HEAVY COMMERCIAL VEHICLE CONTRACT~~]. THIS NOTICE IS REQUIRED BY
3-10 LAW."

3-11 (d) Except for a retail installment contract for a
3-12 commercial vehicle, if [~~if~~] the language primarily used in an oral
3-13 sales presentation is not the same as the language in which the
3-14 retail installment contract is written, the retail seller shall
3-15 furnish to the retail buyer a written statement containing the
3-16 notice set out in Subsection (c)(3)(B) in the language primarily
3-17 used in the oral sales presentation.

3-18 SECTION 7. Section 348.007, Finance Code, is amended by
3-19 amending Subsection (a) and adding Subsection (a-2) to read as
3-20 follows:

3-21 (a) Except as otherwise provided by this section, each
3-22 [~~Each~~] retail installment transaction is subject to this chapter.

3-23 (a-2) A retail installment transaction in which a retail
3-24 buyer purchases a commercial vehicle is only subject to the
3-25 following provisions of this chapter:

- 3-26 (1) Subchapter A, unless expressly stated otherwise;
- 3-27 (2) Subchapter B, except Sections 348.102 and 348.123;
- 3-28 (3) Subchapter C, except Sections 348.204(b),
3-29 348.206, 348.209, and 348.210;
- 3-30 (4) Subchapter D;
- 3-31 (5) Subchapter E, except Section 348.407; and
- 3-32 (6) Subchapter F, except Sections 348.504(a)(2),
3-33 348.514, 348.516, and 348.517.

3-34 SECTION 8. Subsection (c), Section 348.102, Finance Code,
3-35 is amended to read as follows:

3-36 (c) A retail installment contract that provides for a
3-37 variable contract rate must set out the method by which the rate is
3-38 computed. [~~A contract for a heavy commercial vehicle is not~~
3-39 ~~required to set out the total amount of the time price~~
3-40 ~~differential.~~]

3-41 SECTION 9. Section 348.109, Finance Code, is amended to
3-42 read as follows:

3-43 Sec. 348.109. ACCELERATION OF DEBT MATURITY. A retail
3-44 installment contract may not authorize the holder to accelerate the
3-45 maturity of all or a part of the amount owed under the contract
3-46 unless:

- 3-47 (1) the retail buyer is in default in the performance
3-48 of any of the buyer's obligations; [~~or~~]
- 3-49 (2) the holder believes in good faith that the
3-50 prospect of buyer's payment or performance is impaired; or
- 3-51 (3) if the retail installment contract is for a
3-52 commercial vehicle, the retail buyer or an affiliate of the retail
3-53 buyer is in default in its obligations under another financing
3-54 agreement or leasing agreement held by the same holder or an
3-55 affiliate of the holder.

3-56 SECTION 10. Section 348.208, Finance Code, is amended by
3-57 adding Subsections (d), (e), and (f) to read as follows:

3-58 (d) In addition to a charge for insurance coverage under
3-59 Subsection (a) or (b), a retail installment contract for a
3-60 commercial vehicle may include a charge for insurance coverage
3-61 relating to:

- 3-62 (1) the commercial vehicle;
- 3-63 (2) the use of the commercial vehicle; or
- 3-64 (3) the retail installment contract.

3-65 (e) Insurance coverage under Subsection (d) may be provided
3-66 only by:

- 3-67 (1) an insurer authorized under the Insurance Code to
3-68 engage in the business of insurance in this state; or
- 3-69 (2) if permitted under the Insurance Code, a surplus

4-1 lines insurer eligible to provide the insurance under Chapter 981,
4-2 Insurance Code.

4-3 (f) A retail installment contract for a commercial vehicle
4-4 must set forth the amount of each charge for insurance coverage
4-5 under Subsection (d) and the type of the coverage provided for that
4-6 charge.

4-7 SECTION 11. Subsection (b), Section 348.213, Finance Code,
4-8 is amended to read as follows:

4-9 (b) A policy of insurance described by Subsection (a) must
4-10 comply with the applicable requirements of Sections 348.201,
4-11 348.203, and 348.208, and, except if the policy relates to a retail
4-12 installment contract for a commercial vehicle, Section 348.209.

4-13 SECTION 12. The changes in law provided by this Act apply
4-14 only to a retail installment contract entered into on or after the
4-15 effective date of this Act. A retail installment contract entered
4-16 into before the effective date of this Act is governed by the law in
4-17 effect on the date the contract was entered into, and the former law
4-18 remains in effect for that purpose.

4-19 SECTION 13. This Act takes effect September 1, 2009.

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