

House Bill 2438
Senate Amendments
Section-by-Section Analysis

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SECTION 1. Section 348.001(3), Finance Code, is amended to read as follows:

(3) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of [if] a retail installment contract [or the outstanding balance under the contract is sold or otherwise transferred, the person to whom it is sold or otherwise transferred].

Same as House version.

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

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

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

(1) Subchapter A, except Section 348.0091 or unless expressly stated otherwise;

(2) Subchapter B, except Sections 348.102 and 348.123;

(3) Subchapter C, except Sections 348.204(b), 348.206, 348.209, and 348.210;

(4) Subchapter D;

(5) Subchapter E, except Sections 348.404(d) and 348.407; and

(6) Subchapter F, except Sections 348.504(a)(2), 348.514, 348.516, and 348.517.

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SECTION 3. Subchapter A, Chapter 348, Finance Code, is amended by adding Section 348.0091 to read as follows:

Sec. 348.0091. DISCLOSURE OF EQUITY IN TRADE-IN MOTOR VEHICLE. (a) A retail seller may not accept a trade-in motor vehicle for a motor vehicle sold under a retail installment contract unless the retail seller provides to the retail buyer, before the buyer signs the contract, a completed disclosure of trade-in equity form prescribed by this section.

(b) The finance commission shall by rule adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

(c) The form adopted by the finance commission under Subsection (b), at a minimum, must:

(1) contain:

(A) the name of the retail buyer;

(B) the name, address, and telephone number of the retail seller;

(C) the make, model, year, and vehicle identification number of the trade-in motor vehicle;

(D) the date of the retail installment transaction;

(E) the amount offered by the retail seller to the retail buyer for the trade-in motor vehicle;

(F) the amount the retail buyer owes on the trade-in motor vehicle as of the date of the retail installment transaction;

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(G) a statement indicating whether the retail buyer's equity in the trade-in motor vehicle is positive or negative;

(H) a disclosure containing substantially similar words to the following: "If the EQUITY amount is NEGATIVE, the value the retail seller is offering you for your trade-in motor vehicle is less than what you currently owe on your trade-in. The amount of negative equity may be further reduced by the amount of any cash down payment and manufacturer's rebate and may be included in the amount financed under your retail installment contract as an itemized charge.";

(I) the cash price of the vehicle being purchased under the retail installment transaction; and

(J) the amount financed under the retail installment contract;

(2) include a space for the signature of both the retail seller and retail buyer and the printed name of the retail seller; and

(3) be signed and dated by the retail seller and retail buyer.

(d) The retail seller is solely responsible for the content and delivery of the disclosure form required by Subsection (a). An assignee of a retail installment contract may not be held responsible for a retail seller's failure to comply with the requirements of this section.

(e) This section does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this section.

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No equivalent provision.

SECTION 4. Sections 348.104(b), (c), (d), and (h), Finance Code, are amended to read as follows:

(b) The add-on charge is \$7.50 per \$100 per year on the principal balance for:

~~[(1)] a new [domestic] motor vehicle, other than a heavy commercial vehicle, designated by the manufacturer by a model year that is not earlier than the year in which the sale is made;~~

~~[(2)] a new foreign motor vehicle, other than a heavy commercial vehicle].~~

(c) The add-on charge is \$10 per \$100 per year on the principal balance for:

(1) a new [domestic] motor vehicle not covered by Subsection (b);

(2) a used [domestic] motor vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made; or

~~(3) [a used foreign motor vehicle that is not more than~~

SECTION 4. Section 348.004(a), Finance Code, is amended to read as follows:

(a) The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction. An advertised price does not necessarily establish a cash price.

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~~two years old; or~~

~~[(4)] a new or used heavy commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made ~~[old]~~.~~

(d) The add-on charge is \$12.50 per \$100 per year on the principal balance for a used motor vehicle not covered by Subsection (c) that is[~~:~~

~~[(1)] a [domestic] motor vehicle designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made[~~;~~ or~~

~~[(2)] a foreign motor vehicle that is not more than four years old].~~

(h) For the purpose of a computation under this section, 16 ~~[15]~~ or more days of a month may be considered a full month.

SECTION 5. Section 348.404, Finance Code, is amended by adding Subsection (d) to read as follows:

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SECTION 6. Section 348.404, Finance Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) A retail seller, in connection with a retail installment transaction, may:

(1) advance money to retire:

(A) an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared a total loss by the buyer's insurer; or

(B) the retail buyer's outstanding obligation under a motor vehicle lease contract, a credit transaction for the

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(d) A retail seller may include money advanced under Subsection (b) in the retail installment contract only if it is included as an itemized charge and may disclose money advanced under Subsection (b) in any manner permitted by 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.). Section 349.003 does not apply to this subsection. This subsection does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this subsection.

SECTION 6. Section 348.408, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) A retail seller must pay in full the outstanding balance of a vehicle traded in not later than the 25th day after the date that:

(1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle; and

(2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

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purchase of a motor vehicle, or another retail installment transaction; and

(2) finance repayment of that money in a retail installment contract.

(d) A retail seller may include money advanced under Subsection (b) in the retail installment contract only if it is included as an itemized charge and may disclose money advanced under Subsection (b) in any manner permitted by 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.). Section 349.003 does not apply to this subsection. This subsection does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this subsection.

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SECTION 7. Section 348.501, Finance Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A person who is required to hold a license under this chapter must ensure that each office at which retail installment transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) A person may not use any device, subterfuge, or pretense to evade the application of this section.

SECTION 8. Section 348.513(a), Finance Code, is amended to read as follows:

(a) The finance commission may adopt rules to:

(1) enforce this chapter; or

(2) modify the standard form as required by Section 348.0091 to:

(A) conform to the provisions of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act;

(B) address any official commentary or other interpretation by a federal agency relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act; or

(C) address a judicial interpretation by a state or federal court relating to the Truth in Lending Act (15 U.S.C.

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SECTION 8. Same as House version.

SECTION 9. Same as House version.

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Section 1601 et seq.) or a regulation issued under authority of that Act.

SECTION 9. Sections 348.514(c) and (d), Finance Code, are amended to read as follows:

(c) During an examination or investigation the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) All information relating to the examination or investigation process [~~Information obtained under this section~~] is confidential, including:

- (1) information obtained from the license holder;
- (2) the examination report;
- (3) instructions and attachments; and
- (4) correspondence between the license holder and the commissioner or the commissioner's representative relating to an examination or investigation of the license holder.

SECTION 10. The heading to Section 348.517, Finance Code, is amended to read as follows:
Sec. 348.517. LICENSE HOLDER'S RECORDS;
DOCUMENT RETENTION REQUIREMENTS.

SECTION 10. Same as House version.

SECTION 11. Same as House version.

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SECTION 11. Section 348.517(b), Finance Code, is amended to read as follows:

(b) A license holder shall keep the record until the later of:

(1) the fourth ~~third~~ anniversary of the date of the ~~last payment was made on the~~ retail installment transaction;

or

(2) the second anniversary of the date on which the final entry is made in the record.

SECTION 12. (a) As soon as practicable after the effective date of this Act, the Finance Commission of Texas shall adopt the form required by Section 348.0091, Finance Code, as added by this Act.

(b) Notwithstanding Section 348.0091, Finance Code, as added by this Act, a retail seller is not required to comply with that section until the Finance Commission of Texas prescribes the form required by that section.

SECTION 13. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Section 348.007, Finance Code, as amended by this Act, takes effect only if House Bill 4361 or Senate Bill 1965, proposed by the 81st Legislature, Regular Session, 2009, relating to the regulation of retail installment contracts for commercial vehicles, is passed and becomes law. If neither bill becomes law, the change in

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SECTION 12. Same as House version.

SECTION 13. Same as House version.

SECTION 14. Same as House version.

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law made by this Act to Section 348.007, Finance Code,
has no effect.

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