

BILL ANALYSIS

Senate Research Center
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H.B. 2559
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 348 (Motor Vehicle Installment Sales), Finance Code, currently applies to both commercial and consumer motor vehicle retail installment contracts. Over the years, numerous amendments to the statute have resulted in numerous exceptions providing special rules that apply to either commercial or consumer transactions, but not both. As a result, some parts of Chapter 348 apply only to commercial transactions, some apply only to consumer transactions, and some apply to both but include various exceptions for one or the other.

H.B. 2559 facilitates compliance with the law by moving the parts of Chapter 348 that apply to commercial transactions, as defined under existing law, into a new Chapter 353. H.B. 2559 continues current policy and does not change the existing rates, charges, or requirements.

H.B. 2559 parallel the provisions of Chapter 348 and includes those parts of the chapter that currently apply to commercial vehicle transactions and excludes those that, under current law, do not apply to commercial vehicle transactions. H.B. 2559 includes conforming and clarifying changes, including provisions from the rules promulgated under Chapter 348 by the Consumer Credit Commissioner and the Texas Finance Commission and provisions to make clear that various documents may either be in hard copy or electronic or magnetic format. In order to continue current policy, H.B. 2559 also includes conforming changes to include cross-references to Chapter 353 in other statutes that currently cross-reference to Chapter 348.

H.B. 2559 amends current law relating to commercial motor vehicle installment sales.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 17 (Sections 353.002, 353.015, and 353.513, Finance Code) of this bill.

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 1 (Section 14.107, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 14.107(b), Finance Code, as follows:

(b) Requires the Finance Commission of Texas (finance commission) by rule to set the fees for licensing and examination, as applicable, under Chapter 342 (Consumer Loans), 347 (Manufactured Home Credit Transactions), 348 (Motor Vehicle Installment Sales), 351 (Property Tax Lenders), 353, or 371 (Pawnshops) at amounts or rates necessary to recover the costs of administering those chapters. Authorizes the rules to provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. Authorizes the commissioner of consumer credit to provide for collection of a single annual fee from a person licensed under Chapter 342, 347, 348, 351, or 371 to include amounts due for both licensing and examination.

SECTION 2. Amends Sections 303.001(b) and (c), Finance Code, as follows:

(b) Authorizes a contract that is subject to Chapter 342, 345, 347, 348, or 353, including a contract for an open-end account, to, as an alternative to an interest rate or amount of time price differential allowed under that chapter, provide for a simple or precomputed rate or amount of time price differential that does not exceed the applicable ceiling provided by this chapter or by the equivalent yield authorized by Chapter 342, 345, 347, 348, or 353. Makes nonsubstantive changes.

(c) Provides that, except as inconsistent with this chapter, a party to a contract that is subject to Chapter 342, 345, 347, 348, or 353, or the party's assignee, has all rights, duties, and obligations under the applicable chapter, including those relating to refund credits on prepayment or acceleration. Makes a nonsubstantive change.

SECTION 3. Amends Section 303.002, Finance Code, to authorize the parties to a written agreement to agree to an interest rate, or in an agreement described by Chapter 345, 347, 348, or 353, an amount of time price differential producing a rate, that does not exceed the applicable weekly ceiling.

SECTION 4. Amends Section 303.402(a), Finance Code, to provide that a person who contracts for, charges, or receives under a contract subject to Chapter 342, 345, 346, 347, 348, or 353, including a contract for an open-end account, a rate or amount of time price differential that exceeds the maximum applicable rate or amount authorized by the applicable chapter or this chapter is subject to a penalty for that violation determined under Chapter 349 (Penalties and Liabilities).

SECTION 5. Amends Section 307.051(f), Finance Code, as follows:

(f) Provides that 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;

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

(7) is insurance on a commercial vehicle securing a retail installment contract under Chapter 353, rather than Chapter 348.

SECTION 6. Amends Section 341.502(a), Finance Code, to require that a contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, rather than a retail installment transaction under Chapter 348 other than a contract for a commercial vehicle, or a home equity loan regulated by the Office of Consumer Credit Commissioner (office), be written in plain language designed to be easily understood by the average consumer, and printed in an easily readable font and type size.

SECTION 7. Amends Section 348.001(1-a), Finance Code, as added by Chapter 238 (S.B. 1965), Acts of the 81st Legislature, Regular Session, 2009, and Section 348.001(2), Finance Code, to redefine "commercial vehicle" and "heavy commercial vehicle."

SECTION 8. Amends Section 348.0015(a), Finance Code, to provide that a motor vehicle that is not described by Section 353.001(1)(A), (B), or (C), rather than not described by Section 348.001(1-a)(A), (B), or (C), or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

SECTION 9. Amends Section 348.006(c), Finance Code, as follows:

(c) Provides that for a documentary fee to be included in the principal balance of a retail installment contract:

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

(2) the documentary fee may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services; and

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

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

(B) in reasonable proximity to the place in each where the amount of the documentary fee is disclosed, the following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES. THIS NOTICE IS REQUIRED BY LAW."

Deletes existing text prohibiting the documentary fee from exceeding a reasonable amount agreed to by the retail seller and retail buyer for the documentary services for a motor vehicle retail installment contract other than a contract for a commercial vehicle, or for a commercial vehicle retail installment contract, an amount agreed to in writing by the retail seller and retail buyer, and the buyer's order and the retail installment contract to include certain information, except for a buyer's order or retail installment contract for a commercial vehicle.

SECTION 10. Amends Section 348.007, Finance Code, by adding Subsection (d) to provide that a retail installment transaction in which a retail buyer purchases a motor vehicle that is a commercial vehicle is not subject to this chapter and is subject to Chapter 353 if the retail installment contract states that Chapter 353 applies.

SECTION 11. Amends Sections 348.104(b) and (c), Finance Code, as follows:

(b) Provides that the add-on charge is \$7.50 per \$100 per year on the principal balance for a new motor vehicle designated by the manufacturer by a model year that is not earlier than the year in which the sale is made, rather than the add-on charge is \$7.50 per \$100 per year on the principal balance for a new 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.

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

(1) a new motor vehicle not covered by Subsection (b); or

- (2) a used 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.

Deletes existing text providing that an add-on charge is \$10 per \$100 per year for 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.

SECTION 12. Amends Section 348.107(a), Finance Code, as follows:

(a) Authorizes a retail installment contract to provide that if an installment remains unpaid after the 15th day after the maturity of the installment, rather than authorizing a retail installment contract to provide that if an installment remains unpaid after the 10th day after the maturity of the installment for a heavy commercial vehicle or after the 15th day after the maturity of the installment for any other motor vehicle, the holder is authorized to collect:

- (1) a delinquency charge that does not exceed five percent of the amount of the installment; or
- (2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate authorized for the contract.

SECTION 13. Amends Section 348.109, Finance Code, as follows:

Sec. 348.109. ACCELERATION OF DEBT MATURITY. Prohibits a retail installment contract from authorizing the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

- (1) the retail buyer is in default in the performance of any of the buyer's obligations; or
- (2) the holder believes in good faith that the prospect of buyer's payment or performance is impaired.

Deletes existing text prohibiting a retail installment contract from authorizing the holder to accelerate the maturity of all or part of the amount owed under the contract unless, if the retail installment contract is for a commercial vehicle, the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or leasing agreement held by the same holder or an affiliate of the holder.

SECTION 14. Amends Section 348.120(b), Finance Code, as follows:

(b) Provides that on a contract for a motor vehicle, rather than for a motor vehicle other than a heavy commercial vehicle, the minimum amount of the refund credit is computed by:

- (1) subtracting an acquisition cost of \$25 from the original time price differential; and
- (2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).

SECTION 15. Amends Section 348.213(b), Finance Code, to require that a policy of insurance described by Subsection (a) comply with the applicable requirements of Sections 348.201 (Property Insurance), 348.203 (Maximum Amount of Credit Life and Credit Health and Accident Coverage), 348.208 (Charges for Other Insurance and Forms of Protection Included in Retail Installment Contract), and 348.209 (Requirements for Including Insurance Cost in Contract), rather than requiring that a policy of insurance described by Subsection (a) comply with the

applicable requirements of Sections 348.201, 348.208, and, except if the policy relates to a retail installment contract for a commercial vehicle, Section 348.209.

SECTION 16. Amends Section 348.413(b), Finance Code, to authorize a holder to charge for the transfer of equity an amount that does not exceed \$25, rather than \$25 for a motor vehicle that is not a heavy commercial vehicle, or \$50 for a heavy commercial vehicle.

SECTION 17. Amends Subtitle B, Title 4, Finance Code, Chapter 353, as follows:

CHAPTER 353. COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 353.001. DEFINITIONS. Defines, in this chapter, "commercial vehicle," "debt cancellation agreement," "heavy commercial vehicle," "holder," "motor vehicle," "precomputed earnings method," "retail buyer," "retail installment contract," "retail installment transaction," "retail seller," "scheduled installment earnings method," "time price differential," and "true daily earnings method."

Sec. 353.002. PRESUMPTION REGARDING NONCOMMERCIAL VEHICLES; EXCEPTION. (a) Provides that a motor vehicle that is not described by Section 353.001(1)(A), (B), or (C) (defining "commercial vehicle") or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Authorizes a retail seller or holder, notwithstanding Subsection (a), if a retail buyer represents in writing that a motor vehicle is not for personal, family, or household use, or that the vehicle is for commercial use, to rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

Sec. 353.003. BAILMENT OR LEASE AS RETAIL INSTALLMENT TRANSACTION. (a) Provides that a bailment or lease of a commercial vehicle is a retail installment transaction if the bailee or lessee:

(1) contracts to pay as compensation for use of the vehicle an amount that is substantially equal to or exceeds the value of the vehicle; and

(2) on full compliance with the bailment or lease is bound to become the owner or, for no or nominal additional consideration, has the option to become the owner of the vehicle.

(b) Provides that an agreement for the lease of a commercial vehicle does not create a retail installment transaction by merely providing that the rental price is permitted or required to be adjusted under the agreement as determined by the amount realized on the sale or other disposition of the vehicle, as provided by Section 501.112 (Deputy Assessor-Collectors), Transportation Code.

Sec. 353.004. CLASSIFICATION AS RETAIL INSTALLMENT TRANSACTION UNAFFECTED. Provides that a transaction is not excluded as a retail installment transaction because:

(1) the retail seller arranges to transfer the retail buyer's obligation;

(2) the amount of any charge in the transaction is determined by reference to a chart or other information furnished by a financing institution;

(3) a form for all or part of the retail installment contract is furnished by a financing institution; or

- (4) the credit standing of the retail buyer is evaluated by a financing institution.

Sec. 353.005. CASH PRICE. (a) Provides that 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. Provides that an advertised price does not necessarily establish a cash price.

- (b) Provides that the cash price does not include any finance charge.
- (c) Authorizes the cash price, at the retail seller's option, to include:
 - (1) the price of accessories;
 - (2) the price of services related to the sale;
 - (3) the price of service contracts;
 - (4) taxes; and
 - (5) fees for license, title, and registration.

Sec. 353.006. ITEMIZED CHARGE. Provides that an amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

- (1) fees for registration, certificate of title, and license and any additional registration fees charged by a full service deputy under Section 502.114 (Full-Service Deputies), Transportation Code;
- (2) any taxes;
- (3) fees or charges prescribed by law and connected with the sale or inspection of the commercial vehicle;
- (4) charges authorized for insurance, service contracts, and warranties by Subchapter C; and
- (5) advances or payments authorized under Section 353.402(b) or (c) made by the retail seller to or for the benefit of the retail buyer.

Sec. 353.007. ADDITIONAL CHARGES PERMITTED. (a) Authorizes the following amounts, in addition to the amounts allowed under Sections 353.005 and 353.006, to be included as an itemized charge or in the cash price in a retail installment contract for a commercial vehicle:

- (1) any fees prescribed by law;
- (2) any amounts charged by a titling or registration service relating to the sale;
- (3) any other amount agreed to by the retail buyer and retail seller, including amounts payable to the retail seller or another person for the provision of goods or services relating to:
 - (A) the commercial vehicle;
 - (B) the sale or use of the commercial vehicle; or
 - (C) the retail buyer's business in which the commercial vehicle will be used; and

(4) an amount paid to the retail seller or other person as consideration for a debt cancellation agreement.

(b) Requires that the contract and debt cancellation agreement, if a charge for a debt cancellation agreement is included in the contract, each conspicuously disclose that the debt cancellation agreement is optional.

(c) Provides that, notwithstanding any other law, a charge for a debt cancellation agreement is not a charge for insurance, and the sale, provision, or waiving of a balance owed or other action relating to a debt cancellation agreement is not considered insurance or engaging in the business of insurance.

Sec. 353.008. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY FEE. (a) Provides that the principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the commercial vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the sale of the commercial vehicle; and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) Authorizes the computation of the principal balance to include an amount authorized under Section 353.402(b).

(c) Provides that for a documentary fee to be included in the principal balance of a retail installment contract:

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

(2) the documentary fee may not exceed an amount agreed to in writing by the retail seller and retail buyer.

Sec. 353.009. APPLICABILITY OF CHAPTER. (a) Provides that, except as provided by this section, this chapter applies to a retail installment transaction for a commercial vehicle if the retail installment contract states that this chapter applies.

(b) Provides that, if a retail installment contract does not state that this chapter applies, the transaction is governed by Chapter 348, and this chapter does not apply.

(c) Provides that this chapter does not affect or apply to a loan made or the business of making loans under other law of this state and does not affect a rule of law applicable to a retail installment sale that is not a retail installment transaction.

(d) Provides that the provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

Sec. 353.010. APPLICABILITY OF OTHER STATUTES TO RETAIL INSTALLMENT TRANSACTION. (a) Provides that a loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction subject to this chapter.

(b) Provides that, except as provided by this chapter, an applicable statute, including Title 1 (Uniform Commercial Code) and Chapter 322 (Uniform Electronic Transactions Act), Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Sec. 353.011. FEDERAL DISCLOSURE REQUIREMENTS. Provides that if a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of federal law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Sec. 353.012. ADDITIONAL INFORMATION ALLOWED IN CONTRACT. Authorizes information not required by this chapter to be included in a retail installment contract.

Sec. 353.013. ORDER OF ITEMS IN CONTRACT. Provides that items required by this chapter to be in a retail installment contract are not required to be stated in the order set forth in this chapter.

Sec. 353.014. APPLICABILITY OF INSURANCE PREMIUM FINANCING PROVISIONS. Provides that Chapter 651 (Financing of Insurance Premiums), Insurance Code, does not apply to a retail installment transaction.

Sec. 353.015. CONDITIONAL DELIVERY AGREEMENT. (a) Defines, in this section, "conditional delivery agreement."

(b) Authorizes a retail seller and prospective retail buyer to enter into a conditional delivery agreement.

(c) Provides that a conditional delivery agreement is:

(1) an enforceable contract; and

(2) void on the execution of a retail installment contract between the parties to the conditional delivery agreement for the sale of the commercial vehicle that is the subject of the conditional delivery agreement.

(d) Authorizes a conditional delivery agreement to only confer rights consistent with this section and may not confer any legal or equitable rights of ownership, including ownership of the commercial vehicle that is the subject of the conditional delivery agreement.

(e) Prohibits a conditional delivery agreement from exceeding a term of 15 days.

(f) Provides that if a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement:

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

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

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

(g) Requires the retail seller, if the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the commercial vehicle that is the subject of the conditional delivery agreement, to, not later than the seventh day after termination of the conditional delivery agreement:

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

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

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

(i) Requires the retail seller, if a prospective retail buyer returns a commercial vehicle under a conditional delivery agreement at the request of the retail seller, notwithstanding the period prescribed by Subsection (g), to return the trade-in vehicle at the same time that the commercial vehicle under the conditional delivery agreement is returned by the prospective retail buyer.

(j) Requires the prospective retail buyer to return the commercial vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the execution of the conditional delivery agreement.

(k) Provides that an amount paid or required to be paid by the retail seller under Subsection (g) is subject to review by the consumer credit commissioner. Authorizes the consumer credit commissioner, if the consumer credit commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount under Subsection (g), to order the retail seller to pay the amount to the prospective retail buyer. Authorizes the consumer credit commissioner, if the trade-in motor vehicle is not returned by the retail seller in accordance with this section and the retail seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in motor vehicle within the period prescribed by this section, to assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in motor vehicle. Requires the consumer credit commissioner to provide notice to the retail seller and the prospective retail buyer of the consumer credit commissioner's determination under this subsection.

(l) Authorizes the retail seller or prospective retail buyer, not later than the 30th day after the date the parties receive notice of the consumer credit commissioner's determination under Subsection (k), to file with the consumer credit commissioner an appeal of the consumer credit commissioner's determination requesting a time and place for a hearing before a hearing officer designated by the consumer credit commissioner. Provides that a hearing under this subsection is governed by Chapter 2001 (Administrative Procedure), Government Code.

Requires the consumer credit commissioner, after the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, to enter a final order.

(m) Provides that a person who files an appeal under Subsection (l) is required to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the consumer credit commissioner, unless the person cannot afford to pay the deposit and files an affidavit to that effect with the hearings officer in the form and content prescribed by finance commission rule. Requires the entire deposit to be refunded to the person if the person prevails at the hearing. Provides that if the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable.

(n) Requires that notice of the consumer credit commissioner's final order under Subsection (l), given to the person in accordance with Chapter 2001, Government Code, include a statement of the person's right to judicial review of the order.

(o) Authorizes the hearings officer to order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the consumer credit commissioner in connection with obtaining a final order under Subsection (l), including attorney's fees, investigative costs, and witness fees.

(p) Provides that this section does not:

(1) apply to a bailment agreement under Section 353.003; or

(2) create a private right of action.

(q) Provides that, except as otherwise provided by this section, the consumer credit commissioner has exclusive jurisdiction to enforce this section.

Sec. 353.016. COMPUTATION OF TIME PRICE DIFFERENTIAL USING TRUE DAILY EARNINGS METHOD. Provides that under the true daily earnings method, the earned time price differential is computed by multiplying the daily rate of the time price differential by the number of days the actual unpaid principal balance is outstanding. Provides that under this method:

(1) a payment is credited at the time received, with a payment received before the scheduled installment date resulting in a greater reduction in the unpaid principal balance than otherwise scheduled, and a payment received after the scheduled installment date resulting in less of a reduction in the unpaid principal balance than otherwise scheduled;

(2) a partial payment is applied first to time price differential with any remainder applied to the unpaid principal balance; and

(3) accrued but unpaid time price differential is not added to the unpaid principal balance, or compounded.

[Reserves Sections 353.017-353.100 for expansion.]

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

Sec. 353.101. RETAIL INSTALLMENT CONTRACT GENERAL REQUIREMENTS.

(a) Provides that a retail installment contract is required for each retail installment transaction in which the retail buyer is purchasing a commercial vehicle. Authorizes a retail installment contract to be more than one document.

(b) Requires a retail installment contract to be:

- (1) in writing;
- (2) dated;
- (3) signed by the retail buyer and retail seller; and
- (4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).

(c) Requires the printed part of a retail installment contract, other than instructions for completion, to be in at least eight-point type unless a different size of type is required under this subchapter.

(d) Authorizes the following information, if the commercial vehicle is not delivered when the retail installment contract is executed, to be inserted after the contract is executed:

- (1) the identifying numbers or marks of the vehicle or similar information; and
- (2) the due date of the first installment.

Sec. 353.102. CONTRACT CONDITIONED ON SUBSEQUENT ASSIGNMENT PROHIBITED. (a) Prohibits a retail installment contract from being conditioned on the subsequent assignment of the contract to a holder.

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

(c) Provides that this section does not create a private right of action.

(d) Provides that the consumer credit commissioner has exclusive jurisdiction to enforce this section.

Sec. 353.103. TIME PRICE DIFFERENTIAL FOR RETAIL INSTALLMENT CONTRACT.

(a) Authorizes a retail installment contract to provide for:

- (1) any amount of time price differential permitted under Section 353.104, 353.105, or 353.106; or
- (2) any rate of time price differential not exceeding a yield permitted under Section 353.104, 353.105, or 353.106.

(b) Authorizes the time price differential to be computed using the:

- (1) precomputed earnings method;
- (2) scheduled installment earnings method; or
- (3) true daily earnings method.

Sec. 353.104. TIME PRICE DIFFERENTIAL FOR CONTRACT WITH EQUAL MONTHLY SUCCESSIVE PAYMENTS. (a) Authorizes a retail installment contract that is payable in substantially equal successive monthly installments beginning one

month after the date of the contract to provide for a time price differential that does not exceed the add-on charge provided by this section.

(b) Provides that the add-on charge is \$7.50 per \$100 per year on the principal balance for a new commercial 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.

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

(1) a new commercial vehicle not covered by Subsection (b);

(2) a used 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; or

(3) 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.

(d) Provides that the add-on charge is \$12.50 per \$100 per year on the principal balance for a used commercial vehicle not covered by Subsection (c) that is a commercial 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.

(e) Provides that, for a used commercial vehicle not covered by Subsection (c) or (d), the add-on charge is:

(1) \$15 per \$100 per year on the principal balance; or

(2) \$18 per \$100 per year on the principal balance if the principal balance under the retail installment contract does not exceed \$300.

(f) Provides that the time price differential is computed on the original principal balance under the retail installment contract from the date of the contract until the maturity of the final installment, notwithstanding that the balance is payable in installments.

(g) Provides that if the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than \$100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(h) Authorizes 16 or more days of a month, for the purpose of a computation under this section, to be considered a full month.

Sec. 353.105. USE OF OPTIONAL CEILING. Authorizes a retail installment contract, as an alternative to the maximum rate or amount authorized for a time price differential under Section 353.104 or 353.106, to provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303 (Optional Rate Ceilings).

Sec. 353.106. TIME PRICE DIFFERENTIAL FOR OTHER CONTRACTS. Provides that a retail installment contract that is payable other than in substantially equal successive monthly installments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Sec. 353.107. CHARGE FOR DEFAULT IN PAYMENT OF INSTALLMENT. (a) Authorizes a retail installment contract to provide that if an installment remains unpaid after the 10th day after the maturity of the installment for a heavy commercial vehicle or after the 15th day after the maturity of the installment for any other commercial vehicle the holder may collect:

(1) a delinquency charge that does not exceed five percent of the amount of the installment; or

(2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate authorized for the contract.

(b) Authorizes a retail installment contract that provides for the true daily earnings method or the scheduled installment earnings method to provide for the delinquency charge authorized by Subsection (a)(1), the interest authorized by Subsection (a)(2), or both.

(c) Authorizes only one delinquency charge under Subsection (a)(1) to be collected on an installment under this section regardless of the duration of the default.

Sec. 353.108. CHARGES FOR COLLECTING DEBT. Authorizes a retail installment contract to provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;

(2) court costs and disbursements; and

(3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the commercial vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

Sec. 353.109. ACCELERATION OF DEBT MATURITY. Prohibits a retail installment contract from authorizing the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations;

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

(3) the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or leasing agreement held by the same holder or an affiliate of the holder.

Sec. 353.110. DELIVERY OF COPY OF CONTRACT. Requires a retail seller to:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the retail installment contract a copy of the retail installment contract as accepted by the retail seller.

Sec. 353.111. BUYER'S RIGHT TO RESCIND CONTRACT. Provides that, until the retail seller complies with Section 353.110, a retail buyer who has not received delivery of the commercial vehicle is entitled to:

- (1) rescind the contract;
- (2) receive a refund of all payments made under or in contemplation of the contract; and
- (3) receive the return of all goods traded in to the retail seller under or in contemplation of the contract or, if those goods cannot be returned, to receive the value of those goods.

Sec. 353.112. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF CONTRACT COPY. (a) Requires any retail buyer's acknowledgment of delivery of a copy of the retail installment contract to:

- (1) be in at least 10-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and
- (2) appear directly above the buyer's signature.

(b) Provides that any retail buyer's acknowledgment conforming to this section of delivery of a copy of the retail installment contract is, in an action or proceeding by or against a holder of the contract who was without knowledge to the contrary when the holder purchased it, conclusive proof:

- (1) that the copy was delivered to the buyer;
- (2) that the contract did not contain a blank space that was required to have been completed under this chapter when the contract was signed by the buyer; and
- (3) of compliance with Sections 353.011, 353.101, 353.205, 353.403, 353.404, and 353.405.

Sec. 353.113. AMENDMENT OF RETAIL INSTALLMENT CONTRACT. Authorizes the holder, on request by a retail buyer, to agree to one or more amendments to the retail installment contract to:

- (1) extend or defer the scheduled due date of all or a part of one or more installments; or
- (2) renew, restate, or reschedule the unpaid balance under the contract.

Sec. 353.114. CHARGES FOR DEFERRING INSTALLMENT. (a) Authorizes the holder, if a retail installment contract is amended to defer all or a part of one or more installments for not longer than three months, to collect from the retail buyer:

- (1) an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and
- (2) the amount of the additional cost to the holder for premiums for continuing in force any insurance coverages provided for by the contract, and any additional necessary official fees.

(b) Provides that the minimum charge under Subsection (a)(1) is \$1.

Sec. 353.115. CHARGE FOR OTHER AMENDMENT. (a) Authorizes the holder, if the unpaid balance of a retail installment contract is extended, renewed, restated, or rescheduled under this subchapter and Section 353.114 does not apply, to collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the time price differential for a retail installment contract that is applicable after reclassifying the commercial vehicle by its model year at the time of the amendment.

(b) Provides that the principal balance of the amended contract is computed by:

(1) adding:

(A) the unpaid balance as of the date of amendment;

(B) the cost of any insurance incidental to the amendment;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency or collection charge; and

(2) if the time price differential was computed using the precomputed earnings method or the scheduled installment earnings method, subtracting from the total computed under Subdivision (1) an amount equal to the prepayment refund credit required by Section 353.120 or 353.121, as applicable.

(c) Provides that Subsection (b)(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(d) Provides that the provisions of this chapter relating to acquisition costs under the refund schedule under Section 353.120 do not apply in computing the principal balance of the amended contract.

Sec. 353.116. CONFIRMATION OF AMENDMENT. Requires that an amendment to a retail installment contract be confirmed in a writing signed by the retail buyer. Requires the holder to:

(1) deliver a copy of the confirmation to the buyer; or

(2) mail a copy of the confirmation to the buyer at the buyer's most recent address shown on the records of the holder.

Sec. 353.117. CONTRACT AFTER AMENDMENT. Provides that after amendment the retail installment contract is the original contract and each amendment to the original contract.

Sec. 353.118. PREPAYMENT OF CONTRACT. Authorizes a retail buyer to prepay a retail installment contract in full at any time before maturity. Provides that this section prevails over a conflicting provision of the contract.

Sec. 353.119. REFUND CREDIT ON PREPAYMENT. (a) Provides that this section does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) Entitles the buyer, if a retail buyer prepays a retail installment contract in full or if the holder of the contract demands payment of the unpaid balance of the contract in full before the contract's final installment is due and the time price

differential is computed using the precomputed earnings method or the scheduled installment earnings method, to receive a refund credit as provided by Section 353.120 or 353.121, as applicable.

Sec. 353.120. AMOUNT OF REFUND CREDIT FOR MONTHLY INSTALLMENT CONTRACT. (a) Provides that this section:

- (1) applies only to a refund credit on the prepayment of a retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract; and
- (2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method or the scheduled installment earnings method.

(b) Provides that on a contract for a commercial vehicle other than a heavy commercial vehicle the minimum amount of the refund credit is computed by:

- (1) subtracting an acquisition cost of \$25 from the original time price differential; and
- (2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).

(c) Provides that on a contract for a heavy commercial vehicle the minimum amount of the refund credit is computed by:

- (1) multiplying the amount of the original time price differential by the percentage of refund computed under Subsection (d); and
- (2) subtracting an acquisition cost of \$150 from the amount computed under Subdivision (1).

(d) Provides that the percentage of refund is computed by:

- (1) computing the sum of all of the monthly balances under the contract's schedule of payments; and
- (2) dividing the amount computed under Subdivision (1) into the sum of the unpaid monthly balances under the contract's schedule of payments beginning:
 - (A) on the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or
 - (B) if the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the next monthly anniversary date of the contract occurring after the prepayment or demand.

(e) Provides that a refund credit is not required if the amount of the refund credit is less than \$1.

Sec. 353.121. REFUND ON CONTRACTS USING SCHEDULED INSTALLMENT EARNINGS METHOD. (a) Provides that this section:

(1) applies to a retail installment contract that includes precomputed time price differential, and to which Section 353.120 does not apply; and

(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) Provides that, if a retail installment contract is prepaid in full or if the holder demands payment in full of the unpaid balance before final maturity of the contract, the holder earns time price differential for the period beginning on the date of the contract and ending on the date of the earlier of the prepayment or demand, in an amount that does not exceed the amount allowed by this section.

(c) Provides that, if prepayment in full or demand for payment in full occurs during an installment period, the holder may retain, in addition to time price differential that accrued during any elapsed installment periods, an amount computed by:

(1) multiplying the simple annual rate under the contract by the unpaid principal balance of the contract determined according to the schedule of payments to be outstanding on the preceding installment due date;

(2) dividing 365 into the product computed under Subdivision (1); and

(3) multiplying the number of days in the period, beginning on the day after the installment due date and ending on the date of the earlier of the prepayment or demand, by the result obtained under Subdivision (2).

(d) Provides that in addition to the earned time price differential computed under this section, the holder may also earn a \$150 acquisition fee for a heavy commercial vehicle, or a \$25 acquisition fee for other commercial vehicles, if the sum of the earned time price differential and the acquisition fee does not exceed the time price differential disclosed in the contract.

(e) Requires the holder to refund or credit, as applicable, to the retail buyer the amount computed by subtracting the total amount earned or retained under Subsections (b), (c), and (d) from the total amount of time price differential contracted for and precomputed in the contract.

Sec. 353.122. REINSTATEMENT OF CONTRACT AFTER DEMAND FOR PAYMENT. Authorizes the retail buyer and holder of the contract, after a demand for payment in full under a retail installment contract, to:

(1) agree to reinstate the contract; and

(2) amend the contract as provided by Section 353.113.

[Reserves Sections 353.123-353.200 for expansion.]

SUBCHAPTER C. INSURANCE

Sec. 353.201. PROPERTY INSURANCE. (a) Authorizes a holder to require a retail buyer to insure the commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest.

(b) Authorizes the holder to offer to provide insurance on a commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest, regardless of whether the holder requires a retail buyer to insure the commercial vehicle.

(c) Requires the insurance required by the holder, and the premiums or charges for any insurance that is provided by the holder, to bear a reasonable relationship to:

- (1) the amount, term, and conditions of the retail installment contract; and
- (2) the existing hazards or risk of loss, damage, or destruction.

(d) Prohibits any insurance under this section from:

- (1) covering unusual or exceptional risks; or
- (2) providing coverage not ordinarily included in policies issued to the public or for commercial purposes.

(e) Authorizes the holder to include the cost of the insurance as a separate charge in the contract.

Sec. 353.202. CREDIT LIFE AND CREDIT HEALTH AND ACCIDENT INSURANCE. (a) Authorizes a holder to require a retail buyer to provide credit life insurance and credit health and accident insurance.

(b) Authorizes the holder to offer to provide credit life insurance and credit health and accident insurance, regardless of whether the holder requires a retail buyer to provide the insurance under Subsection (a).

(c) Authorizes a retail seller to offer involuntary unemployment insurance to the buyer at the time the contract is negotiated or executed.

(d) Authorizes a holder to include the cost of insurance provided under this section, and a policy or agent fee charged in connection with insurance provided under Subsection (b) or (c), as a separate charge in the contract.

Sec. 353.203. MAXIMUM AMOUNT OF CREDIT LIFE AND CREDIT HEALTH AND ACCIDENT COVERAGE. (a) Prohibits at any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract from exceeding:

- (1) the total amount repayable under the contract; and
- (2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) Prohibits at any time the total amount of the policies of credit health and accident insurance in force on one retail buyer on one retail installment contract from exceeding the total amount payable under the contract, and the amount of each periodic indemnity payment from exceeding the scheduled periodic payment on the indebtedness.

Sec. 353.204. INSURANCE STATEMENT. (a) Requires the holder, if insurance is required in connection with a retail installment contract, to give to the retail buyer a written statement that clearly and conspicuously states that:

- (1) insurance is required in connection with the contract; and
- (2) the buyer as an option may furnish the required insurance through an existing policy of insurance owned or controlled by the buyer, or an insurance policy obtained through an insurance company authorized to do business in this state.

(b) Authorizes a statement under Subsection (a) to be provided with or as part of the retail installment contract or separately.

Sec. 353.205. STATEMENT IF LIABILITY INSURANCE NOT INCLUDED IN CONTRACT. Requires that the retail installment contract or a separate writing, if liability insurance coverage for bodily injury and property damage caused to others is not included in a retail installment contract, to contain, in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included.

Sec. 353.206. BUYER'S FAILURE TO PROVIDE EVIDENCE OF INSURANCE. (a) Authorizes the holder, if a retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract, to:

(1) obtain substitute insurance coverage that is substantially equal to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute insurance to the unpaid balance of the contract.

(b) Provides that substitute insurance coverage under Subsection (a)(1):

(1) is authorized at the holder's option to be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) is required to be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in this state.

(c) Provides that if substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. Requires the holder to deliver to the buyer or send to the buyer's most recent address shown on the records of the holder specific written notice that the holder has obtained substitute insurance.

Sec. 353.207. CHARGES FOR OTHER INSURANCE AND FORMS OF PROTECTION INCLUDED IN RETAIL INSTALLMENT CONTRACT. (a) Authorizes a retail installment contract to include as a separate charge an amount for insurance coverage that is:

(1) for a risk of loss or liability reasonably related to:

(A) the commercial vehicle;

(B) the use of the commercial vehicle; or

(C) goods or services that are related to the commercial vehicle, and may ordinarily be insured with a commercial vehicle;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily available in policies or endorsements offered to the public or for commercial purposes.

(b) Authorizes a retail installment contract to include as a separate charge an amount for:

(1) motor vehicle property damage or bodily injury liability insurance;

- (2) mechanical breakdown insurance;
- (3) participation in a motor vehicle theft protection plan;
- (4) insurance to pay all or part of the amount computed by subtracting the proceeds of the retail buyer's basic collision policy on the commercial vehicle from the amount owed on the vehicle in the event of a total loss or theft of the vehicle;
- (5) a warranty or service contract relating to the commercial vehicle;
- (6) an identity recovery service contract defined by Section 1306.003 (Identity Recovery Service Contract), Occupations Code; or
- (7) a debt cancellation agreement.

(c) Provides that, notwithstanding any other law, service contracts and debt cancellation agreements sold by a retail seller of a commercial vehicle to a retail buyer are not subject to Chapter 101 (Unauthorized Insurance) or 226 (Unauthorized and Independently Procured Insurance Premium Tax), Insurance Code.

(d) Authorizes a retail installment contract, In addition to the charges for insurance coverage permitted under Subsection (a) or (b), to include a charge for insurance coverage relating to:

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

(e) Authorizes insurance coverage under Subsection (d) to be provided only by:

- (1) an insurer authorized under the Insurance Code to engage in the business of insurance in this state; or
- (2) if permitted under the Insurance Code, a surplus lines insurer eligible to provide the insurance under Chapter 981 (Surplus Lines Insurance), Insurance Code.

(f) Requires a retail installment contract to set forth the amount of each charge for insurance coverage under Subsection (d) and the type of the coverage provided for that charge.

Sec. 353.208. HOLDER'S DUTY IF INSURANCE IS ADJUSTED OR TERMINATED.

(a) Requires the holder, if insurance for which a charge is included in or added to a retail installment contract is canceled, adjusted, or terminated, to, at the holder's option:

- (1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or
- (2) credit the refund to the final maturing installments of the retail installment contract.

(b) Requires the holder, if the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract, to refund to the retail buyer the difference between those amounts.

(c) Provides that a cash refund is not required under this section if the amount of the refund is less than \$1.

Sec. 353.209. **GAIN OR ADVANTAGE FROM INSURANCE NOT ADDITIONAL CHARGE.** Provides that any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract except as specifically provided by this chapter.

Sec. 353.210. **ADDING TO RETAIL INSTALLMENT CONTRACT PREMIUMS FOR INSURANCE ACQUIRED AFTER TRANSACTION.** (a) Authorizes a retail buyer and holder to agree to add to the unpaid balance of a retail installment contract premiums for insurance policies obtained after the date of the retail installment transaction for coverages of the types allowed under Sections 353.201, 353.202, and 353.207, including premiums for the renewal of a policy included in the contract.

(b) Requires that a policy of insurance described by Subsection (a) comply with the requirements of Sections 353.201, 353.202, 353.203, and 353.207, as applicable.

Sec. 353.211. **EFFECT OF ADDING PREMIUM TO CONTRACT.** Provides that if a premium is added to the unpaid balance of a retail installment contract under Section 353.206 or 353.210, the rate applicable to the time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance, or the contract may be rescheduled in accordance with Sections 353.114 and 353.115, without reclassifying the commercial vehicle by its year model at the time of the amendment.

Sec. 353.212. **FINANCING ENTITY MAY NOT REQUIRE INSURANCE FROM PARTICULAR SOURCE.** Prohibits the financing entity, if a retail installment contract presented to a financing entity for acceptance includes any insurance coverage, from directly or indirectly requiring, as a condition of its agreement to finance the commercial vehicle, that the retail buyer purchase the insurance coverage from a particular source.

[Reserves Sections 353.213-353.300 for expansion.]

SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

Sec. 353.301. **AUTHORITY TO ACQUIRE.** Authorizes a person to acquire a retail installment contract or an outstanding balance under a contract from another person on the terms, including the price, to which they agree. Provides that, notwithstanding any other law of this state, a person acquiring or assigning a retail installment contract, or any balance under a contract, does not have a duty to disclose to any other person the terms on which a contract or balance under a contract is acquired or assigned, including the consideration for the acquisition or assignment and any discount or difference between the rates, charges, or balance under the contract and the consideration rates, charges, or balance acquired or assigned, as applicable.

Sec. 353.302. **LACK OF NOTICE DOES NOT AFFECT VALIDITY AS TO CERTAIN CREDITORS.** Provides that notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the commercial vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

Sec. 353.303. **PAYMENT BY BUYER.** Provides that unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or an outstanding

balance under the contract, a payment by the buyer to the most recent holder known to the buyer is binding on all subsequent holders.

[Reserves Sections 353.304-353.400 for expansion.]

SUBCHAPTER E. HOLDER'S RIGHTS, DUTIES, AND LIMITATIONS

Sec. 353.401. SELLER'S PROMISE TO PAY OR TENDER OF CASH TO BUYER AS PART OF TRANSACTION. Prohibits a retail seller from promising to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

Sec. 353.402. SELLER'S ACTION FOR INCENTIVE PROGRAM OR TO PAY FOR BUYER'S MOTOR VEHICLE. (a) Authorizes a retail seller to pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the vehicle to the buyer.

(b) Authorizes a retail seller, in connection with a retail installment transaction to:

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

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

(c) Authorizes a retail seller to pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of a commercial vehicle. Defines, in this section, "net cash value."

Sec. 353.403. STATEMENT OF PAYMENTS AND AMOUNT DUE UNDER CONTRACT. (a) Requires the holder of a retail installment contract, on written request of a retail buyer, to give or send to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

(b) Entitles a retail buyer to one statement during a six-month period without charge. Prohibits the charge for each additional requested statement from exceeding \$1.

Sec. 353.404. RECEIPT FOR CASH PAYMENT. Requires a holder of a retail installment contract to give the retail buyer a written receipt for each cash payment.

Sec. 353.405. OUTSTANDING BALANCE INFORMATION; PAYMENT IN FULL. (a) Provides that the holder of a retail installment contract who gives the retail buyer or the buyer's designee outstanding balance information relating to the contract is bound by that information and is required to honor that information for a reasonable time.

(b) Requires the holder, if the retail buyer or the buyer's designee tenders to the holder as payment in full an amount derived from that outstanding balance information, to:

(1) accept the amount as payment in full; and

(2) release the holder's lien against the commercial vehicle within a reasonable time not later than the 10th day after the date on which the amount is tendered.

(c) Requires a retail seller to pay in full the outstanding balance of a vehicle traded in to the retail seller as part of the retail installment transaction 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 commercial 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.

Sec. 353.406. LIABILITY RELATING TO OUTSTANDING BALANCE INFORMATION. Provides that a holder who violates Section 353.405 is liable to the retail buyer or the buyer's designee in an amount computed by adding:

(1) three times the difference between the amount tendered and the amount sought by the holder at the time of tender;

(2) interest;

(3) reasonable attorney's fees; and

(4) costs.

Sec. 353.407. PROHIBITION ON POWER OF ATTORNEY TO CONFESS JUDGMENT OR ASSIGNMENT OF WAGES. Prohibits a retail installment contract from containing:

(1) a power of attorney to confess judgment in this state; or

(2) an assignment of wages.

Sec. 353.408. PROHIBITION ON CERTAIN ACTS OF REPOSSESSION. Prohibits a retail installment contract from:

(1) authorizing the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises in violation of Chapter 9 (Secured Transactions), Business & Commerce Code; or

(B) commit a breach of the peace in the repossession of the commercial vehicle; or

(2) containing, or providing for the execution of, a power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

Sec. 353.409. BUYER'S WAIVER. (a) Prohibits a retail installment contract from:

(1) providing for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in the collection of payments under the contract, or the repossession of the commercial vehicle; or

(2) providing that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale.

(b) Provides that an act or agreement of the retail buyer before or at the time of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

Sec. 353.410. TRANSFER OF EQUITY. (a) Authorizes a retail buyer, with the written consent of the holder, to transfer at any time the buyer's equity in the commercial vehicle subject to the retail installment contract to another person.

(b) Authorizes the holder to charge for the transfer of equity an amount that does not exceed:

(1) \$25 for a commercial vehicle that is not a heavy commercial vehicle; or

(2) \$50 for a heavy commercial vehicle.

[Reserves Sections 353.411-353.500 for expansion.]

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

Sec. 353.501. LICENSE REQUIRED. (a) Prohibits a person from acting as a holder under this chapter unless the person:

(1) is an authorized lender or a credit union; or

(2) holds a license issued under Chapter 348 or this chapter.

(b) Requires a person who is required to hold a license under this chapter to 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) Prohibits a person from using any device, subterfuge, or pretense to evade the application of this section.

Sec. 353.502. APPLICATION REQUIREMENTS. (a) Requires that the application for a license under this chapter:

(1) be under oath;

(2) identify the applicant's principal parties in interest; and

(3) contain other relevant information that the consumer credit commissioner requires.

(b) Requires the applicant, on the filing of a license application, to pay to the consumer credit commissioner:

(1) an investigation fee not to exceed \$200; and

(2) for the license's year of issuance, a license fee in an amount determined as provided by Section 14.107 (Fees).

Sec. 353.503. INVESTIGATION OF APPLICATION. Requires the consumer credit commissioner, on the filing of an application and payment of the required fees, to conduct an investigation to determine whether to issue the license.

Sec. 353.504. APPROVAL OR DENIAL OF APPLICATION. (a) Requires the consumer credit commissioner to approve the application and issue to the applicant a license under this chapter if the consumer credit commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(1) command the confidence of the public; and

(2) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter.

(b) Requires the consumer credit commissioner, if the commissioner does not find the eligibility requirements of Subsection (a), to notify the applicant.

(c) Provides that if an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) Requires the consumer credit commissioner to approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. Authorizes the consumer credit commissioner and the applicant to agree to a later date in writing.

Sec. 353.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION. Requires the consumer credit commissioner, if the commissioner denies the application, to retain the investigation fee and to return to the applicant the license fee submitted with the application.

Sec. 353.506. ANNUAL LICENSE FEE. Requires a license holder, not later than December 1, to pay to the consumer credit commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

Sec. 353.507. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. Provides that, if the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

(1) that day; or

(2) December 31 of the last year for which an annual fee was paid.

Sec. 353.508. LICENSE SUSPENSION OR REVOCATION. Authorizes the consumer credit commissioner, after notice and a hearing, to suspend or revoke a license if the consumer credit commissioner finds that:

(1) the license holder failed to pay the annual license fee, an investigation fee, or another charge imposed by the consumer credit commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Sec. 353.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. Authorizes the consumer credit commissioner to reinstate a suspended license or issue a new license on application to a person whose

license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the consumer credit commissioner's denial of an original application for the license.

Sec. 353.510. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under this chapter by delivering to the consumer credit commissioner:

- (1) the license; and
- (2) a written notice of the license's surrender.

Sec. 353.511. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) Provides that the suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

- (b) Provides that surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 353.512. TRANSFER OR ASSIGNMENT OF LICENSE. Authorizes a license to be transferred or assigned only with the approval of the consumer credit commissioner.

Sec. 353.513. ADOPTION OF RULES. (a) Authorizes the finance commission to adopt rules to enforce this chapter.

- (b) Requires the consumer credit commissioner to recommend proposed rules to the finance commission.

Sec. 353.514. GENERAL INVESTIGATION. Authorizes the consumer credit commissioner or the commissioner's representative, to discover a violation of this chapter or to obtain information required under this chapter, to investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Sec. 353.515. SHARING OF INFORMATION. Authorizes the consumer credit commissioner and the Texas Department of Motor Vehicles, to ensure consistent enforcement of law and minimization of regulatory burdens, to share information, including criminal history information, relating to a person licensed under this chapter. Provides that information otherwise confidential remains confidential after it is shared under this section.

SECTION 18. Amends Section 411.095, Government Code, to entitle the consumer credit commissioner to obtain from the Department of Public Safety of the State of Texas criminal history record information that relates to a person who is an applicant for or holder of a license under Chapter 342, 347, 348, 351, 353, or 371, Finance Code.

SECTION 19. Amends Section 1304.003(b), Occupations Code, as follows:

- (b) Authorizes a service contract to also provide for:
 - (1) incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service;
 - (2) the repair or replacement of a product for damage resulting from a power surge or for accidental damage incurred in handling the product; or
 - (3) identity recovery, as defined by Section 1306.002 (Definitions), if the service contract is financed under Chapter 348 or 353, Finance Code.

SECTION 20. Amends Section 1306.003, Occupations Code, to define, in this chapter, "identity recovery service contract."

SECTION 21. Amends Section 2305.007(b), Occupations Code, as follows:

(b) Authorizes only an officer of the Department of Public Safety, for the purposes of tracing or locating a stolen motor vehicle on the premises of a person engaging in a business or activity regulated under this chapter who is also licensed under Chapter 348 or 353, Finance Code, to at a reasonable time:

- (1) enter the premises of the person's business; and
- (2) inspect or copy any document, record, vehicle, part, or other item regulated under:
 - (A) this chapter; or
 - (B) Chapter 348 or 353, Finance Code.

SECTION 22. Amends Section 2306.003(c), Occupations Code, to authorize a vehicle protection product to also include identity recovery, as defined by Section 1306.002, if the vehicle protection product is financed under Chapter 348 or 353, Finance Code.

SECTION 23. Amends Section 152.002(b), Tax Code, as follows:

- (b) Provides that "total consideration" does not include:
- (1) a cash discount;
 - (2) a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller;
 - (3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;
 - (4) a financing, carrying, or service charge or interest on credit extended on a motor vehicle sold under a conditional sale or other deferred payment contract;
 - (5) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, including any cash payment to the buyer under Section 348.404 or 353.402, Finance Code;
 - (6) a charge for transportation of the motor vehicle after a sale;
 - (7) motor vehicle inventory tax; or
 - (8) an amount made available to the customer under Subchapter G (Vehicle Emissions), Chapter 382 (Clean Air Act), Health and Safety Code.

SECTION 24. Amends Section 501.115(a), Transportation Code, is amended to require the lienholder, when a debt or claim secured by a lien has been satisfied, to, within a reasonable time not to exceed the maximum time allowed by Section 348.408 or 353.405(b), Finance Code, as applicable, execute and deliver to the owner, or the owner's designee, a discharge of the lien on a form prescribed by the Texas Department of Motor Vehicles.

SECTION 25. Amends Section 26.342(7), Water Code, to redefine "lender."

SECTION 26. Repealer: Section 348.007(a-2) (relating to retail installment transaction), as added by Chapter 238 (S.B. 1965), Acts of the 81st legislature, Regular Session, 2009;

Repealer: Section 348.007(a-2) (relating to retail installment transaction), as added by Chapter 676 (H.B. 2438), Acts of the 81st legislature, Regular Session, 2009;

Repealer: Section 348.0051 (Contracts for Commercial Vehicles; Additional Charges Permitted), Finance Code;

Repealer: Section 348.006 (j) (relating to retail installment transaction), Finance Code;

Repealer: Section 348.120 (c) (relating to minimum refund credit), Finance Code; and

Repealers: Sections 348.208 (d) (relating to certain charges for a commercial vehicle in addition to insurance coverage, (e) (relating to authorizing insurance coverage providers), and (f) (relating to installment contract charges), Finance Code.

SECTION 27. Effective date: September 1, 2011.