

By: Truitt

H.B. No. 2559

A BILL TO BE ENTITLED

AN ACT

relating to commercial motor vehicle installment sales.

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

SECTION 1. Section 14.107(b), Finance Code, is amended to read as follows:

(b) The finance commission by rule shall set the fees for licensing and examination, as applicable, under Chapter 342, 347, 348, 351, 353, or 371 at amounts or rates necessary to recover the costs of administering those chapters. The rules may 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. The commissioner may 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. Sections 303.001(b) and (c), Finance Code, are amended to read as follows:

(b) A contract that is subject to Chapter 342, 345, 347, ~~or~~ 348, or 353, including a contract for an open-end account, may, 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, ~~or~~ 348, or 353.

1 (c) Except as inconsistent with this chapter, a party to a
2 contract that is subject to Chapter 342, 345, 347, [~~or~~] 348, or 353,
3 or the party's assignee, has all rights, duties, and obligations
4 under the applicable chapter, including those relating to refund
5 credits on prepayment or acceleration.

6 SECTION 3. Section 303.002, Finance Code, is amended to
7 read as follows:

8 Sec. 303.002. WEEKLY CEILING. The parties to a written
9 agreement may agree to an interest rate, or in an agreement
10 described by Chapter 345, 347, [~~or~~] 348, or 353, an amount of time
11 price differential producing a rate, that does not exceed the
12 applicable weekly ceiling.

13 SECTION 4. Section 303.402(a), Finance Code, is amended to
14 read as follows:

15 (a) A person who contracts for, charges, or receives under a
16 contract subject to Chapter 342, 345, 346, 347, [~~or~~] 348, or 353,
17 including a contract for an open-end account, a rate or amount of
18 time price differential that exceeds the maximum applicable rate or
19 amount authorized by the applicable chapter or this chapter is
20 subject to a penalty for that violation determined under Chapter
21 349.

22 SECTION 5. Section 307.051(f), Finance Code, is amended to
23 read as follows:

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

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

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

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

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

12 (5) is title insurance;

13 (6) is flood insurance required to be placed by
14 creditors under Section 102, National Flood Insurance Act of 1968
15 (42 U.S.C. Section 4012a); or

16 (7) is insurance on a commercial vehicle securing a
17 retail installment contract under Chapter 353 [~~348~~].

18 SECTION 6. Section 341.502(a), Finance Code, is amended to
19 read as follows:

20 (a) A contract for a loan under Chapter 342, a retail
21 installment transaction under Chapter 348 [~~other than a contract~~
22 ~~for a commercial vehicle~~], or a home equity loan regulated by the
23 Office of Consumer Credit Commissioner must be:

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

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

27 SECTION 7. Section 348.001(1-a), Finance Code, as added by

1 Chapter 238 (S.B. 1965), Acts of the 81st Legislature, Regular
2 Session, 2009, and Section 348.001(2), Finance Code, are amended to
3 read as follows:

4 (1-a) "Commercial vehicle" has the meaning assigned by
5 Section 353.001 [~~means a motor vehicle that is not used primarily~~
6 ~~for personal, family, or household use. The term includes:~~

7 [~~(A) a motor vehicle with a gross vehicular~~
8 ~~weight of 10,001 pounds or more;~~

9 [~~(B) a motor vehicle that will be owned by a~~
10 ~~corporation, limited liability company, limited partnership, or~~
11 ~~other business entity formed, organized, or registered in this~~
12 ~~state, another state, or another country; and~~

13 [~~(C) a motor vehicle that will be part of a fleet~~
14 ~~of five or more vehicles owned by the same person].~~

15 (2) "Heavy commercial vehicle" has the meaning
16 assigned by Section 353.001 [~~means:~~

17 [~~(A) a truck or truck tractor that:~~

18 [~~(i) has a gross vehicular weight of 19,000~~
19 ~~pounds or more; and~~

20 [~~(ii) is not used primarily for personal,~~
21 ~~family, or household use; or~~

22 [~~(B) a trailer or semitrailer designed for use in~~
23 ~~combination with a vehicle described by Paragraph (A)].~~

24 SECTION 8. Section 348.0015(a), Finance Code, is amended to
25 read as follows:

26 (a) A motor vehicle that is not described by Section
27 353.001(1)(A) [~~348.001(1-a)(A)~~], (B), or (C) or a motor vehicle

1 that is of a type typically used for personal, family, or household
2 use, as determined by finance commission rule, is presumed not to be
3 a commercial vehicle.

4 SECTION 9. Section 348.006(c), Finance Code, is amended to
5 read as follows:

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

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

10 (2) the documentary fee may not exceed[+
11 ~~[(A) for a motor vehicle retail installment~~
12 ~~contract other than a contract for a commercial vehicle,~~] a
13 reasonable amount agreed to by the retail seller and retail buyer
14 for the documentary services; [~~or~~

15 ~~[(B) for a commercial vehicle retail installment~~
16 ~~contract, an amount agreed to in writing by the retail seller and~~
17 ~~retail buyer,~~] and

18 (3) [~~except for a buyer's order or retail installment~~
19 ~~contract for a commercial vehicle,~~] the buyer's order and the
20 retail installment contract must include:

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

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

27 "A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE

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

5 SECTION 10. Section 348.007, Finance Code, is amended by
6 adding Subsection (d) to read as follows:

7 (d) A retail installment transaction in which a retail buyer
8 purchases a motor vehicle that is a commercial vehicle is not
9 subject to this chapter and is subject to Chapter 353 if the retail
10 installment contract states that Chapter 353 applies.

11 SECTION 11. Sections 348.104(b) and (c), Finance Code, are
12 amended to read as follows:

13 (b) The add-on charge is \$7.50 per \$100 per year on the
14 principal balance for a new motor vehicle [~~, other than a heavy~~
15 ~~commercial vehicle,~~] designated by the manufacturer by a model year
16 that is not earlier than the year in which the sale is made.

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

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

21 (2) a used motor vehicle designated by the
22 manufacturer by a model year that is not more than two years before
23 the year in which the sale is made [~~, or~~

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

27 SECTION 12. Section 348.107(a), Finance Code, is amended to

1 read as follows:

2 (a) A retail installment contract may provide that if an
3 installment remains unpaid after the [~~10th day after the maturity~~
4 ~~of the installment for a heavy commercial vehicle or after the~~] 15th
5 day after the maturity of the installment [~~for any other motor~~
6 ~~vehicle~~] the holder may collect:

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

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

13 SECTION 13. Section 348.109, Finance Code, is amended to
14 read as follows:

15 Sec. 348.109. ACCELERATION OF DEBT MATURITY. A retail
16 installment contract may not authorize the holder to accelerate the
17 maturity of all or a part of the amount owed under the contract
18 unless:

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

21 (2) the holder believes in good faith that the
22 prospect of buyer's payment or performance is impaired[~~, or~~

23 [~~(3) if the retail installment contract is for a~~
24 ~~commercial vehicle, the retail buyer or an affiliate of the retail~~
25 ~~buyer is in default in its obligations under another financing~~
26 ~~agreement or leasing agreement held by the same holder or an~~
27 ~~affiliate of the holder].~~

1 SECTION 14. Section 348.120(b), Finance Code, is amended to
2 read as follows:

3 (b) On a contract for a motor vehicle [~~other than a heavy~~
4 ~~commercial vehicle~~] the minimum amount of the refund credit is
5 computed by:

6 (1) subtracting an acquisition cost of \$25 from the
7 original time price differential; and

8 (2) multiplying the amount computed under Subdivision
9 (1) by the percentage of refund computed under Subsection (d).

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

12 (b) A policy of insurance described by Subsection (a) must
13 comply with the applicable requirements of Sections 348.201,
14 348.203, [~~and~~] 348.208, and[~~, except if the policy relates to a~~
15 ~~retail installment contract for a commercial vehicle, Section~~]
16 348.209.

17 SECTION 16. Section 348.413(b), Finance Code, is amended to
18 read as follows:

19 (b) The holder may charge for the transfer of equity an
20 amount that does not exceed[+]

21 [~~(1)~~] \$25 [~~for a motor vehicle that is not a heavy~~
22 ~~commercial vehicle, or~~

23 [~~(2)~~] \$50 [~~for a heavy commercial vehicle~~].

24 SECTION 17. Subtitle B, Title 4, Finance Code, is amended by
25 adding Chapter 353 to read as follows:

1 CHAPTER 353. COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 353.001. DEFINITIONS. In this chapter:

4 (1) "Commercial vehicle" means a motor vehicle that is
5 not used primarily for personal, family, or household use. The term
6 includes:

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

9 (B) a motor vehicle that will be owned by a
10 corporation, limited liability company, limited partnership, or
11 other business entity formed, organized, or registered in this
12 state, another state, or another country; and

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

15 (2) "Debt cancellation agreement" means an agreement
16 of the holder of the retail installment contract to waive:

17 (A) all or part of the difference between the
18 amount owed under a retail installment contract and the amount paid
19 under a physical damage insurance policy maintained by the retail
20 buyer or its assign, in the event of a total loss or theft of the
21 commercial vehicle;

22 (B) all or part of the amount owed under the
23 retail installment contract, in the event of the death of the retail
24 buyer; or

25 (C) one or more payments owed under the retail
26 installment contract, in the event of the disability of the retail
27 buyer.

1 (3) "Heavy commercial vehicle" means:

2 (A) a commercial vehicle that has a gross
3 vehicular weight of 19,000 pounds or more; or

4 (B) a trailer or semitrailer designed for use in
5 combination with a vehicle described by Paragraph (A).

6 (4) "Holder" means a person who is:

7 (A) a retail seller; or

8 (B) the assignee or transferee of a retail
9 installment contract.

10 (5) "Motor vehicle" has the meaning assigned by
11 Section 348.001.

12 (6) "Precomputed earnings method" means a method of
13 computing the time price differential in which the time price
14 differential is computed at the inception of the contract based on
15 the principal balance for the full contract term, as if the
16 principal balance under the contract will not decline over the term
17 of the contract, and in which the retail buyer agrees to pay the
18 total of payments that includes both the principal balance of the
19 contract and the time price differential.

20 (7) "Retail buyer" means a person who purchases or
21 agrees to purchase a commercial vehicle from a retail seller in a
22 retail installment transaction.

23 (8) "Retail installment contract" means one or more
24 instruments entered into in this state that evidence a retail
25 installment transaction. The term includes a security agreement and
26 a document that evidences a bailment or lease described by Section
27 353.003.

1 (9) "Retail installment transaction" means a
2 transaction in which a retail buyer purchases a commercial vehicle
3 from a retail seller other than principally for the purpose of
4 resale and agrees with the retail seller to pay part or all of the
5 cash price in one or more deferred installments.

6 (10) "Retail seller" means a person in the business of
7 selling commercial vehicles to retail buyers in retail installment
8 transactions.

9 (11) "Scheduled installment earnings method" means a
10 method of computing the time price differential by applying a daily
11 rate to the unpaid principal balance as if each scheduled payment
12 will be paid on the payment's scheduled installment date.

13 (12) "Time price differential" means the total amount
14 added to the principal balance to determine the balance of the
15 retail buyer's indebtedness under a retail installment contract.

16 (13) "True daily earnings method" means a method of
17 computing the time price differential by applying a daily rate to
18 the unpaid principal balance based on the actual payment date as
19 provided by Section 353.016.

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

26 (b) Notwithstanding Subsection (a), if a retail buyer
27 represents in writing that a motor vehicle is not for personal,

1 family, or household use, or that the vehicle is for commercial use,
2 a retail seller or holder may rely on that representation unless the
3 retail seller or holder, as applicable, has actual knowledge that
4 the representation is not true.

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

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

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

14 (b) An agreement for the lease of a commercial vehicle does
15 not create a retail installment transaction by merely providing
16 that the rental price is permitted or required to be adjusted under
17 the agreement as determined by the amount realized on the sale or
18 other disposition of the vehicle, as provided by Section 501.112,
19 Transportation Code.

20 Sec. 353.004. CLASSIFICATION AS RETAIL INSTALLMENT
21 TRANSACTION UNAFFECTED. A transaction is not excluded as a retail
22 installment transaction because:

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

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

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

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

5 Sec. 353.005. CASH PRICE. (a) The cash price is the price
6 at which the retail seller offers in the ordinary course of business
7 to sell for cash the goods or services that are subject to the
8 transaction. An advertised price does not necessarily establish a
9 cash price.

10 (b) The cash price does not include any finance charge.

11 (c) At the retail seller's option, the cash price may
12 include:

13 (1) the price of accessories;

14 (2) the price of services related to the sale;

15 (3) the price of service contracts;

16 (4) taxes; and

17 (5) fees for license, title, and registration.

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

21 (1) fees for registration, certificate of title, and
22 license and any additional registration fees charged by a full
23 service deputy under Section 502.114, Transportation Code;

24 (2) any taxes;

25 (3) fees or charges prescribed by law and connected
26 with the sale or inspection of the commercial vehicle;

27 (4) charges authorized for insurance, service

1 contracts, and warranties by Subchapter C; and

2 (5) advances or payments authorized under Section
3 353.402(b) or (c) made by the retail seller to or for the benefit of
4 the retail buyer.

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

10 (1) any fees prescribed by law;

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

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

16 (A) the commercial vehicle;

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

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

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

22 (b) If a charge for a debt cancellation agreement is
23 included in the contract, the contract and debt cancellation
24 agreement must each conspicuously disclose that the debt
25 cancellation agreement is optional.

26 (c) Notwithstanding any other law, a charge for a debt
27 cancellation agreement is not a charge for insurance, and the sale,

1 provision, or waiving of a balance owed or other action relating to
2 a debt cancellation agreement is not considered insurance or
3 engaging in the business of insurance.

4 Sec. 353.008. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY
5 FEE. (a) The principal balance under a retail installment contract
6 is computed by:

7 (1) adding:

8 (A) the cash price of the commercial vehicle;

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

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

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

18 (b) The computation of the principal balance may include an
19 amount authorized under Section 353.402(b).

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

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

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

26 Sec. 353.009. APPLICABILITY OF CHAPTER. (a) Except as
27 provided by this section, this chapter applies to a retail

1 installment transaction for a commercial vehicle if the retail
2 installment contract states that this chapter applies.

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

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

10 (d) The provisions of this chapter defining specific rates
11 and amounts of charges and requiring certain credit disclosures to
12 be made control over any contrary law of this state respecting those
13 subjects.

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

18 (b) Except as provided by this chapter, an applicable
19 statute, including Title 1 and Chapter 322, Business & Commerce
20 Code, or a principle of common law continues to apply to a retail
21 installment transaction unless it is displaced by this chapter.

22 Sec. 353.011. FEDERAL DISCLOSURE REQUIREMENTS. If a
23 disclosure requirement of this chapter and one of a federal law,
24 including a regulation or an interpretation of federal law, are
25 inconsistent or conflict, federal law controls and the inconsistent
26 or conflicting disclosures required by this chapter need not be
27 given.

1 Sec. 353.012. ADDITIONAL INFORMATION ALLOWED IN CONTRACT.

2 Information not required by this chapter may be included in a retail
3 installment contract.

4 Sec. 353.013. ORDER OF ITEMS IN CONTRACT. Items required by

5 this chapter to be in a retail installment contract are not required
6 to be stated in the order set forth in this chapter.

7 Sec. 353.014. APPLICABILITY OF INSURANCE PREMIUM FINANCING

8 PROVISIONS. Chapter 651, Insurance Code, does not apply to a retail
9 installment transaction.

10 Sec. 353.015. CONDITIONAL DELIVERY AGREEMENT. (a) In this

11 section, "conditional delivery agreement" means a contract between
12 a retail seller and prospective retail buyer under the terms of
13 which the retail seller allows the prospective retail buyer the use
14 and benefit of a commercial vehicle for a specified term.

15 (b) A retail seller and prospective retail buyer may enter
16 into a conditional delivery agreement.

17 (c) A conditional delivery agreement is:

18 (1) an enforceable contract; and

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

23 (d) A conditional delivery agreement may only confer rights
24 consistent with this section and may not confer any legal or
25 equitable rights of ownership, including ownership of the
26 commercial vehicle that is the subject of the conditional delivery
27 agreement.

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

3 (f) If a prospective retail buyer tenders to a retail seller
4 a trade-in motor vehicle in connection with a conditional delivery
5 agreement:

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

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

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

14 (g) If the parties to a conditional delivery agreement do
15 not subsequently enter into a retail installment contract for the
16 sale of the commercial vehicle that is the subject of the
17 conditional delivery agreement, the retail seller shall, not later
18 than the seventh day after termination of the conditional delivery
19 agreement:

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

27 (2) if the trade-in motor vehicle cannot be returned

1 in the same or substantially the same condition as it was at the
2 time of execution of the conditional delivery agreement, deliver to
3 the prospective retail buyer a sum of money equal to the agreed
4 value of the trade-in motor vehicle as described by Subsection (f)
5 and shall return any down payment or other consideration described
6 by Subdivision (1).

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

13 (i) If a prospective retail buyer returns a commercial
14 vehicle under a conditional delivery agreement at the request of
15 the retail seller, the retail seller, notwithstanding the period
16 prescribed by Subsection (g), must return the trade-in vehicle at
17 the same time that the commercial vehicle under the conditional
18 delivery agreement is returned by the prospective retail buyer.

19 (j) The prospective retail buyer shall return the
20 commercial vehicle received under the conditional delivery
21 agreement in the same or substantially the same condition as it was
22 at the time of the execution of the conditional delivery agreement.

23 (k) An amount paid or required to be paid by the retail
24 seller under Subsection (g) is subject to review by the
25 commissioner. If the commissioner determines that the retail
26 seller in fact owes the prospective retail buyer a certain amount
27 under Subsection (g), the commissioner may order the retail seller

1 to pay the amount to the prospective retail buyer. If the trade-in
2 motor vehicle is not returned by the retail seller in accordance
3 with this section and the retail seller does not pay the prospective
4 retail buyer an amount equal to the agreed value of the trade-in
5 motor vehicle within the period prescribed by this section, the
6 commissioner may assess an administrative penalty against the
7 retail seller in an amount that is reasonable in relation to the
8 value of the trade-in motor vehicle. The commissioner shall
9 provide notice to the retail seller and the prospective retail
10 buyer of the commissioner's determination under this subsection.

11 (l) Not later than the 30th day after the date the parties
12 receive notice of the commissioner's determination under
13 Subsection (k), the retail seller or prospective retail buyer may
14 file with the commissioner an appeal of the commissioner's
15 determination requesting a time and place for a hearing before a
16 hearings officer designated by the commissioner. A hearing under
17 this subsection is governed by Chapter 2001, Government Code.
18 After the hearing, based on the findings of fact, conclusions of
19 law, and recommendations of the hearings officer, the commissioner
20 shall enter a final order.

21 (m) A person who files an appeal under Subsection (l) is
22 required to pay a deposit to secure the payment of the costs of the
23 hearing in a reasonable amount as determined by the commissioner,
24 unless the person cannot afford to pay the deposit and files an
25 affidavit to that effect with the hearings officer in the form and
26 content prescribed by finance commission rule. The entire deposit
27 must be refunded to the person if the person prevails at the

1 hearing. If the person does not prevail, any portion of the deposit
2 in excess of the costs of the hearing assessed against the person is
3 refundable.

4 (n) Notice of the commissioner's final order under
5 Subsection (1), given to the person in accordance with Chapter
6 2001, Government Code, must include a statement of the person's
7 right to judicial review of the order.

8 (o) The hearings officer may order the retail seller or the
9 prospective retail buyer, or both, to pay reasonable expenses
10 incurred by the commissioner in connection with obtaining a final
11 order under Subsection (1), including attorney's fees,
12 investigative costs, and witness fees.

13 (p) This section does not:

14 (1) apply to a bailment agreement under Section
15 353.003; or

16 (2) create a private right of action.

17 (q) Except as otherwise provided by this section, the
18 commissioner has exclusive jurisdiction to enforce this section.

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

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

1 date resulting in less of a reduction in the unpaid principal
2 balance than otherwise scheduled;

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

6 (3) accrued but unpaid time price differential is not:

7 (A) added to the unpaid principal balance; or

8 (B) compounded.

9 [Sections 353.017-353.100 reserved for expansion]

10 SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

11 Sec. 353.101. RETAIL INSTALLMENT CONTRACT GENERAL

12 REQUIREMENTS. (a) A retail installment contract is required for
13 each retail installment transaction in which the retail buyer is
14 purchasing a commercial vehicle. A retail installment contract may
15 be more than one document.

16 (b) A retail installment contract must be:

17 (1) in writing;

18 (2) dated;

19 (3) signed by the retail buyer and retail seller; and

20 (4) completed as to all essential provisions before it
21 is signed by the retail buyer except as provided by Subsection (d).

22 (c) The printed part of a retail installment contract, other
23 than instructions for completion, must be in at least eight-point
24 type unless a different size of type is required under this
25 subchapter.

26 (d) If the commercial vehicle is not delivered when the
27 retail installment contract is executed, the following information

1 may be inserted after the contract is executed:

2 (1) the identifying numbers or marks of the vehicle or
3 similar information; and

4 (2) the due date of the first installment.

5 Sec. 353.102. CONTRACT CONDITIONED ON SUBSEQUENT
6 ASSIGNMENT PROHIBITED. (a) A retail installment contract may not
7 be conditioned on the subsequent assignment of the contract to a
8 holder.

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

13 (c) This section does not create a private right of action.

14 (d) The commissioner has exclusive jurisdiction to enforce
15 this section.

16 Sec. 353.103. TIME PRICE DIFFERENTIAL FOR RETAIL
17 INSTALLMENT CONTRACT. (a) A retail installment contract may
18 provide for:

19 (1) any amount of time price differential permitted
20 under Section 353.104, 353.105, or 353.106; or

21 (2) any rate of time price differential not exceeding
22 a yield permitted under Section 353.104, 353.105, or 353.106.

23 (b) The time price differential may be computed using the:

24 (1) precomputed earnings method;

25 (2) scheduled installment earnings method; or

26 (3) true daily earnings method.

27 Sec. 353.104. TIME PRICE DIFFERENTIAL FOR CONTRACT WITH

1 EQUAL MONTHLY SUCCESSIVE PAYMENTS. (a) A retail installment
2 contract that is payable in substantially equal successive monthly
3 installments beginning one month after the date of the contract may
4 provide for a time price differential that does not exceed the
5 add-on charge provided by this section.

6 (b) The add-on charge is \$7.50 per \$100 per year on the
7 principal balance for a new commercial vehicle, other than a heavy
8 commercial vehicle, designated by the manufacturer by a model year
9 that is not earlier than the year in which the sale is made.

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

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

14 (2) a used commercial vehicle designated by the
15 manufacturer by a model year that is not more than two years before
16 the year in which the sale is made; or

17 (3) a new or used heavy commercial vehicle designated
18 by the manufacturer by a model year that is not more than two years
19 before the year in which the sale is made.

20 (d) The add-on charge is \$12.50 per \$100 per year on the
21 principal balance for a used commercial vehicle not covered by
22 Subsection (c) that is a commercial vehicle designated by the
23 manufacturer by a model year that is not more than four years before
24 the year in which the sale is made.

25 (e) For a used commercial vehicle not covered by Subsection
26 (c) or (d), the add-on charge is:

27 (1) \$15 per \$100 per year on the principal balance; or

1 (2) \$18 per \$100 per year on the principal balance if
2 the principal balance under the retail installment contract does
3 not exceed \$300.

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

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

13 (h) For the purpose of a computation under this section, 16
14 or more days of a month may be considered a full month.

15 Sec. 353.105. USE OF OPTIONAL CEILING. As an alternative to
16 the maximum rate or amount authorized for a time price differential
17 under Section 353.104 or 353.106, a retail installment contract may
18 provide for a rate or amount of time price differential that does
19 not exceed the rate or amount authorized by Chapter 303.

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

1 installments beginning one month from the date of the contract.

2 Sec. 353.107. CHARGE FOR DEFAULT IN PAYMENT OF INSTALLMENT.

3 (a) A retail installment contract may provide that if an
4 installment remains unpaid after the 10th day after the maturity of
5 the installment for a heavy commercial vehicle or after the 15th day
6 after the maturity of the installment for any other commercial
7 vehicle the holder may collect:

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

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

14 (b) A retail installment contract that provides for the true
15 daily earnings method or the scheduled installment earnings method
16 may provide for the delinquency charge authorized by Subsection
17 (a)(1), the interest authorized by Subsection (a)(2), or both.

18 (c) Only one delinquency charge under Subsection (a)(1) may
19 be collected on an installment under this section regardless of the
20 duration of the default.

21 Sec. 353.108. CHARGES FOR COLLECTING DEBT. A retail
22 installment contract may provide for the payment of:

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

26 (2) court costs and disbursements; and

27 (3) reasonable out-of-pocket expenses incurred in

1 connection with the repossession or sequestration of the commercial
2 vehicle securing the payment of the contract or foreclosure of a
3 security interest in the vehicle, including the costs of storing,
4 reconditioning, and reselling the vehicle, subject to the standards
5 of good faith and commercial reasonableness set by Title 1,
6 Business & Commerce Code.

7 Sec. 353.109. ACCELERATION OF DEBT MATURITY. A retail
8 installment contract may not authorize the holder to accelerate the
9 maturity of all or a part of the amount owed under the contract
10 unless:

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

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

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

19 Sec. 353.110. DELIVERY OF COPY OF CONTRACT. A retail seller
20 shall:

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

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

26 Sec. 353.111. BUYER'S RIGHT TO RESCIND CONTRACT. Until the
27 retail seller complies with Section 353.110, a retail buyer who has

1 not received delivery of the commercial vehicle is entitled to:

2 (1) rescind the contract;

3 (2) receive a refund of all payments made under or in
4 contemplation of the contract; and

5 (3) receive the return of all goods traded in to the
6 retail seller under or in contemplation of the contract or, if those
7 goods cannot be returned, to receive the value of those goods.

8 Sec. 353.112. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF
9 CONTRACT COPY. (a) Any retail buyer's acknowledgment of delivery
10 of a copy of the retail installment contract must:

11 (1) be in at least 10-point type that is boldfaced,
12 capitalized, or underlined or otherwise conspicuously set out from
13 the surrounding written material; and

14 (2) appear directly above the buyer's signature.

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

20 (1) that the copy was delivered to the buyer;

21 (2) that the contract did not contain a blank space
22 that was required to have been completed under this chapter when the
23 contract was signed by the buyer; and

24 (3) of compliance with Sections 353.011, 353.101,
25 353.205, 353.403, 353.404, and 353.405.

26 Sec. 353.113. AMENDMENT OF RETAIL INSTALLMENT CONTRACT. On
27 request by a retail buyer, the holder may agree to one or more

1 amendments to the retail installment contract to:

2 (1) extend or defer the scheduled due date of all or a
3 part of one or more installments; or

4 (2) renew, restate, or reschedule the unpaid balance
5 under the contract.

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

10 (1) an amount computed on the amount deferred for the
11 period of deferment at a rate that does not exceed the effective
12 return for time price differential permitted for a monthly payment
13 retail installment contract; and

14 (2) the amount of the additional cost to the holder
15 for:

16 (A) premiums for continuing in force any
17 insurance coverages provided for by the contract; and

18 (B) any additional necessary official fees.

19 (b) The minimum charge under Subsection (a)(1) is \$1.

20 Sec. 353.115. CHARGE FOR OTHER AMENDMENT. (a) If the
21 unpaid balance of a retail installment contract is extended,
22 renewed, restated, or rescheduled under this subchapter and Section
23 353.114 does not apply, the holder may collect an amount computed on
24 the principal balance of the amended contract for the term of the
25 amended contract at the time price differential for a retail
26 installment contract that is applicable after reclassifying the
27 commercial vehicle by its model year at the time of the amendment.

1 (b) The principal balance of the amended contract is
2 computed by:

3 (1) adding:

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

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

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

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

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

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

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

23 Sec. 353.116. CONFIRMATION OF AMENDMENT. An amendment to a
24 retail installment contract must be confirmed in a writing signed
25 by the retail buyer. The holder shall:

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

27 (2) mail a copy of the confirmation to the buyer at the

1 buyer's most recent address shown on the records of the holder.

2 Sec. 353.117. CONTRACT AFTER AMENDMENT. After amendment
3 the retail installment contract is the original contract and each
4 amendment to the original contract.

5 Sec. 353.118. PREPAYMENT OF CONTRACT. A retail buyer may
6 prepay a retail installment contract in full at any time before
7 maturity. This section prevails over a conflicting provision of the
8 contract.

9 Sec. 353.119. REFUND CREDIT ON PREPAYMENT. (a) This
10 section does not apply to a retail installment contract in which the
11 time price differential is computed using the true daily earnings
12 method.

13 (b) If a retail buyer prepays a retail installment contract
14 in full or if the holder of the contract demands payment of the
15 unpaid balance of the contract in full before the contract's final
16 installment is due and the time price differential is computed
17 using the precomputed earnings method or the scheduled installment
18 earnings method, the buyer is entitled to receive a refund credit as
19 provided by Section 353.120 or 353.121, as applicable.

20 Sec. 353.120. AMOUNT OF REFUND CREDIT FOR MONTHLY
21 INSTALLMENT CONTRACT. (a) This section:

22 (1) applies only to a refund credit on the prepayment
23 of a retail installment contract that is payable in substantially
24 equal successive monthly installments beginning one month after the
25 date of the contract; and

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

1 earnings method or the scheduled installment earnings method.

2 (b) On a contract for a commercial vehicle other than a
3 heavy commercial vehicle the minimum amount of the refund credit is
4 computed by:

5 (1) subtracting an acquisition cost of \$25 from the
6 original time price differential; and

7 (2) multiplying the amount computed under Subdivision
8 (1) by the percentage of refund computed under Subsection (d).

9 (c) On a contract for a heavy commercial vehicle the minimum
10 amount of the refund credit is computed by:

11 (1) multiplying the amount of the original time price
12 differential by the percentage of refund computed under Subsection
13 (d); and

14 (2) subtracting an acquisition cost of \$150 from the
15 amount computed under Subdivision (1).

16 (d) The percentage of refund is computed by:

17 (1) computing the sum of all of the monthly balances
18 under the contract's schedule of payments; and

19 (2) dividing the amount computed under Subdivision (1)
20 into the sum of the unpaid monthly balances under the contract's
21 schedule of payments beginning:

22 (A) on the first day, after the date of the
23 prepayment or demand for payment in full, that is the date of a
24 month that corresponds to the date of the month that the first
25 installment is due under the contract; or

26 (B) if the prepayment or demand for payment in
27 full is made before the first installment date under the contract,

1 one month after the next monthly anniversary date of the contract
2 occurring after the prepayment or demand.

3 (e) A refund credit is not required if the amount of the
4 refund credit is less than \$1.

5 Sec. 353.121. REFUND ON CONTRACTS USING SCHEDULED
6 INSTALLMENT EARNINGS METHOD. (a) This section:

7 (1) applies to a retail installment contract:

8 (A) that includes precomputed time price
9 differential; and

10 (B) to which Section 353.120 does not apply; and

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

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

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

25 (1) multiplying the simple annual rate under the
26 contract by the unpaid principal balance of the contract determined
27 according to the schedule of payments to be outstanding on the

1 preceding installment due date;

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

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

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

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

19 Sec. 353.122. REINSTATEMENT OF CONTRACT AFTER DEMAND FOR
20 PAYMENT. After a demand for payment in full under a retail
21 installment contract, the retail buyer and holder of the contract
22 may:

23 (1) agree to reinstate the contract; and

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

25 [Sections 353.123-353.200 reserved for expansion]

26 SUBCHAPTER C. INSURANCE

27 Sec. 353.201. PROPERTY INSURANCE. (a) A holder may require

1 a retail buyer to insure the commercial vehicle purchased under a
2 retail installment transaction and accessories and related goods
3 subject to the holder's security interest.

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

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

12 (1) the amount, term, and conditions of the retail
13 installment contract; and

14 (2) the existing hazards or risk of loss, damage, or
15 destruction.

16 (d) Any insurance under this section may not:

17 (1) cover unusual or exceptional risks; or

18 (2) provide coverage not ordinarily included in
19 policies issued to the public or for commercial purposes.

20 (e) The holder may include the cost of the insurance as a
21 separate charge in the contract.

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

25 (b) The holder may offer to provide credit life insurance
26 and credit health and accident insurance, regardless of whether the
27 holder requires a retail buyer to provide the insurance under

1 Subsection (a).

2 (c) A retail seller may offer involuntary unemployment
3 insurance to the buyer at the time the contract is negotiated or
4 executed.

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

9 Sec. 353.203. MAXIMUM AMOUNT OF CREDIT LIFE AND CREDIT
10 HEALTH AND ACCIDENT COVERAGE. (a) At any time the total amount of
11 the policies of credit life insurance in force on one retail buyer
12 on one retail installment contract may not exceed:

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

17 (b) At any time the total amount of the policies of credit
18 health and accident insurance in force on one retail buyer on one
19 retail installment contract may not exceed the total amount payable
20 under the contract, and the amount of each periodic indemnity
21 payment may not exceed the scheduled periodic payment on the
22 indebtedness.

23 Sec. 353.204. INSURANCE STATEMENT. (a) If insurance is
24 required in connection with a retail installment contract, the
25 holder shall give to the retail buyer a written statement that
26 clearly and conspicuously states that:

27 (1) insurance is required in connection with the

1 contract; and

2 (2) the buyer as an option may furnish the required
3 insurance through:

4 (A) an existing policy of insurance owned or
5 controlled by the buyer; or

6 (B) an insurance policy obtained through an
7 insurance company authorized to do business in this state.

8 (b) A statement under Subsection (a) may be provided with or
9 as part of the retail installment contract or separately.

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

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

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

27 (2) add the amount of the premium advanced for the

1 substitute insurance to the unpaid balance of the contract.

2 (b) Substitute insurance coverage under Subsection (a)(1):

3 (1) may at the holder's option be limited to coverage
4 only of the interest of the holder or the interest of the holder and
5 the buyer; and

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

9 (c) If substitute insurance is obtained by the holder under
10 Subsection (a), the amendment adding the premium or rescheduling
11 the contract is not required to be signed by the retail buyer. The
12 holder shall deliver to the buyer or send to the buyer's most recent
13 address shown on the records of the holder specific written notice
14 that the holder has obtained substitute insurance.

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

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

21 (A) the commercial vehicle;

22 (B) the use of the commercial vehicle; or

23 (C) goods or services that:

24 (i) are related to the commercial vehicle;

25 and

26 (ii) may ordinarily be insured with a

27 commercial vehicle;

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

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

5 (b) A retail installment contract may include as a separate
6 charge an amount for:

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

9 (2) mechanical breakdown insurance;

10 (3) participation in a motor vehicle theft protection
11 plan;

12 (4) insurance to pay all or part of the amount computed
13 by subtracting the proceeds of the retail buyer's basic collision
14 policy on the commercial vehicle from the amount owed on the vehicle
15 in the event of a total loss or theft of the vehicle;

16 (5) a warranty or service contract relating to the
17 commercial vehicle;

18 (6) an identity recovery service contract defined by
19 Section 1306.003, Occupations Code; or

20 (7) a debt cancellation agreement.

21 (c) Notwithstanding any other law, service contracts and
22 debt cancellation agreements sold by a retail seller of a
23 commercial vehicle to a retail buyer are not subject to Chapter 101
24 or 226, Insurance Code.

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

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

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

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

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

14 Sec. 353.208. HOLDER'S DUTY IF INSURANCE IS ADJUSTED OR
15 TERMINATED. (a) If insurance for which a charge is included in or
16 added to a retail installment contract is canceled, adjusted, or
17 terminated, the holder shall, at the holder's option:

18 (1) apply the amount of the refund for unearned
19 insurance premiums received by the holder to replace required
20 insurance coverage; or

21 (2) credit the refund to the final maturing
22 installments of the retail installment contract.

23 (b) If the amount to be applied or credited under Subsection
24 (a) is more than the amount unpaid on the retail installment
25 contract, the holder shall refund to the retail buyer the
26 difference between those amounts.

27 (c) A cash refund is not required under this section if the

1 amount of the refund is less than \$1.

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

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

18 (b) A policy of insurance described by Subsection (a) must
19 comply with the requirements of Sections 353.201, 353.202, 353.203,
20 and 353.207, as applicable.

21 Sec. 353.211. EFFECT OF ADDING PREMIUM TO CONTRACT. If a
22 premium is added to the unpaid balance of a retail installment
23 contract under Section 353.206 or 353.210, the rate applicable to
24 the time price differential agreed to in the retail installment
25 contract remains in effect and shall be applied to the new unpaid
26 balance, or the contract may be rescheduled in accordance with
27 Sections 353.114 and 353.115, without reclassifying the commercial

1 vehicle by its year model at the time of the amendment.

2 Sec. 353.212. FINANCING ENTITY MAY NOT REQUIRE INSURANCE
3 FROM PARTICULAR SOURCE. If a retail installment contract presented
4 to a financing entity for acceptance includes any insurance
5 coverage, the financing entity may not directly or indirectly
6 require, as a condition of its agreement to finance the commercial
7 vehicle, that the retail buyer purchase the insurance coverage from
8 a particular source.

9 [Sections 353.213-353.300 reserved for expansion]

10 SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

11 Sec. 353.301. AUTHORITY TO ACQUIRE. A person may acquire a
12 retail installment contract or an outstanding balance under a
13 contract from another person on the terms, including the price, to
14 which they agree. Notwithstanding any other law of this state, a
15 person acquiring or assigning a retail installment contract, or any
16 balance under a contract, does not have a duty to disclose to any
17 other person the terms on which a contract or balance under a
18 contract is acquired or assigned, including the consideration for
19 the acquisition or assignment and any discount or difference
20 between the rates, charges, or balance under the contract and the
21 consideration rates, charges, or balance acquired or assigned, as
22 applicable.

23 Sec. 353.302. LACK OF NOTICE DOES NOT AFFECT VALIDITY AS TO
24 CERTAIN CREDITORS. Notice to a retail buyer of an assignment or
25 negotiation of a retail installment contract or an outstanding
26 balance under the contract or a requirement that the retail seller
27 be deprived of dominion over payments on a retail installment

1 contract or over the commercial vehicle if returned to or
2 repossessed by the retail seller is not necessary for a written
3 assignment or negotiation of the contract or balance to be valid as
4 against a creditor, subsequent purchaser, pledgee, mortgagee, or
5 lien claimant of the retail seller.

6 Sec. 353.303. PAYMENT BY BUYER. Unless a retail buyer has
7 notice of the assignment or negotiation of the buyer's retail
8 installment contract or an outstanding balance under the contract,
9 a payment by the buyer to the most recent holder known to the buyer
10 is binding on all subsequent holders.

11 [Sections 353.304-353.400 reserved for expansion]

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

13 Sec. 353.401. SELLER'S PROMISE TO PAY OR TENDER OF CASH TO
14 BUYER AS PART OF TRANSACTION. A retail seller may not promise to
15 pay, pay, or otherwise tender cash to a retail buyer as a part of a
16 transaction under this chapter unless specifically authorized by
17 this chapter.

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

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

27 (1) advance money to retire:

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

4 (B) the retail buyer's outstanding obligation
5 under a motor vehicle lease contract, a credit transaction for the
6 purchase of a motor vehicle, or another retail installment
7 transaction; and

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

10 (c) A retail seller may pay in cash to the retail buyer any
11 portion of the net cash value of a motor vehicle owned by the buyer
12 and used as a trade-in in a transaction involving the sale of a
13 commercial vehicle. In this subsection, "net cash value" means the
14 cash value of a motor vehicle after payment of all amounts secured
15 by the motor vehicle.

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

21 (b) A retail buyer is entitled to one statement during a
22 six-month period without charge. The charge for each additional
23 requested statement may not exceed \$1.

24 Sec. 353.404. RECEIPT FOR CASH PAYMENT. A holder of a
25 retail installment contract shall give the retail buyer a written
26 receipt for each cash payment.

27 Sec. 353.405. OUTSTANDING BALANCE INFORMATION; PAYMENT IN

1 FULL. (a) The holder of a retail installment contract who gives
2 the retail buyer or the buyer's designee outstanding balance
3 information relating to the contract is bound by that information
4 and shall honor that information for a reasonable time.

5 (b) If the retail buyer or the buyer's designee tenders to
6 the holder as payment in full an amount derived from that
7 outstanding balance information, the holder shall:

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

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

12 (c) A retail seller must pay in full the outstanding balance
13 of a vehicle traded in to the retail seller as part of the retail
14 installment transaction not later than the 25th day after the date
15 that:

16 (1) the retail installment contract is signed by the
17 retail buyer and the retail buyer receives delivery of the
18 commercial vehicle; and

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

22 Sec. 353.406. LIABILITY RELATING TO OUTSTANDING BALANCE
23 INFORMATION. A holder who violates Section 353.405 is liable to the
24 retail buyer or the buyer's designee in an amount computed by
25 adding:

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

- 1 (2) interest;
- 2 (3) reasonable attorney's fees; and
- 3 (4) costs.

4 Sec. 353.407. PROHIBITION ON POWER OF ATTORNEY TO CONFESS
5 JUDGMENT OR ASSIGNMENT OF WAGES. A retail installment contract may
6 not contain:

- 7 (1) a power of attorney to confess judgment in this
8 state; or
- 9 (2) an assignment of wages.

10 Sec. 353.408. PROHIBITION ON CERTAIN ACTS OF REPOSSESSION.
11 A retail installment contract may not:

- 12 (1) authorize the holder or a person acting on the
13 holder's behalf to:
 - 14 (A) enter the retail buyer's premises in
15 violation of Chapter 9, Business & Commerce Code; or
 - 16 (B) commit a breach of the peace in the
17 repossession of the commercial vehicle; or
- 18 (2) contain, or provide for the execution of, a power
19 of attorney by the retail buyer appointing, as the buyer's agent in
20 the repossession of the vehicle, the holder or a person acting on
21 the holder's behalf.

22 Sec. 353.409. BUYER'S WAIVER. (a) A retail installment
23 contract may not:

- 24 (1) provide for a waiver of the retail buyer's rights
25 of action against the holder or a person acting on the holder's
26 behalf for an illegal act committed in:
 - 27 (A) the collection of payments under the

1 contract; or

2 (B) the repossession of the commercial vehicle;

3 or

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

6 (b) An act or agreement of the retail buyer before or at the
7 time of the making of a retail installment contract or a purchase
8 under the contract does not waive any provision of this chapter.

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

13 (b) The holder may charge for the transfer of equity an
14 amount that does not exceed:

15 (1) \$25 for a commercial vehicle that is not a heavy
16 commercial vehicle; or

17 (2) \$50 for a heavy commercial vehicle.

18 [Sections 353.411-353.500 reserved for expansion]

19 SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

20 Sec. 353.501. LICENSE REQUIRED. (a) A person may not act
21 as a holder under this chapter unless the person:

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

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

25 (b) A person who is required to hold a license under this
26 chapter must ensure that each office at which retail installment
27 transactions are made, serviced, held, or collected under this

1 chapter is licensed or otherwise authorized to make, service, hold,
2 or collect retail installment transactions in accordance with this
3 chapter and rules implementing this chapter.

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

6 Sec. 353.502. APPLICATION REQUIREMENTS. (a) The
7 application for a license under this chapter must:

8 (1) be under oath;

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

11 (3) contain other relevant information that the
12 commissioner requires.

13 (b) On the filing of a license application, the applicant
14 shall pay to the commissioner:

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

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

18 Sec. 353.503. INVESTIGATION OF APPLICATION. On the filing
19 of an application and payment of the required fees, the
20 commissioner shall conduct an investigation to determine whether to
21 issue the license.

22 Sec. 353.504. APPROVAL OR DENIAL OF APPLICATION. (a) The
23 commissioner shall approve the application and issue to the
24 applicant a license under this chapter if the commissioner finds
25 that the financial responsibility, experience, character, and
26 general fitness of the applicant are sufficient to:

27 (1) command the confidence of the public; and

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

3 (b) If the commissioner does not find the eligibility
4 requirements of Subsection (a), the commissioner shall notify the
5 applicant.

6 (c) If an applicant requests a hearing on the application
7 not later than the 30th day after the date of notification under
8 Subsection (b), the applicant is entitled to a hearing not later
9 than the 60th day after the date of the request.

10 (d) The commissioner shall approve or deny the application
11 not later than the 60th day after the date of the filing of a
12 completed application with payment of the required fees, or if a
13 hearing is held, after the date of the completion of the hearing on
14 the application. The commissioner and the applicant may agree to a
15 later date in writing.

16 Sec. 353.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
17 If the commissioner denies the application, the commissioner shall
18 retain the investigation fee and shall return to the applicant the
19 license fee submitted with the application.

20 Sec. 353.506. ANNUAL LICENSE FEE. Not later than December
21 1, a license holder shall pay to the commissioner for each license
22 held an annual fee for the year beginning the next January 1, in an
23 amount determined as provided by Section 14.107.

24 Sec. 353.507. EXPIRATION OF LICENSE ON FAILURE TO PAY
25 ANNUAL FEE. If the annual fee for a license is not paid before the
26 16th day after the date on which the written notice of delinquency
27 of payment has been given to the license holder, the license expires

1 on the later of:

2 (1) that day; or

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

5 Sec. 353.508. LICENSE SUSPENSION OR REVOCATION. After
6 notice and a hearing the commissioner may suspend or revoke a
7 license if the commissioner finds that:

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

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

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

18 Sec. 353.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
19 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a
20 suspended license or issue a new license on application to a person
21 whose license has been revoked if at the time of the reinstatement
22 or issuance no fact or condition exists that clearly would have
23 justified the commissioner's denial of an original application for
24 the license.

25 Sec. 353.510. SURRENDER OF LICENSE. A license holder may
26 surrender a license issued under this chapter by delivering to the
27 commissioner:

1 (1) the license; and

2 (2) a written notice of the license's surrender.

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

8 (b) Surrender of a license does not affect the license
9 holder's civil or criminal liability for an act committed before
10 surrender.

11 Sec. 353.512. TRANSFER OR ASSIGNMENT OF LICENSE. A license
12 may be transferred or assigned only with the approval of the
13 commissioner.

14 Sec. 353.513. ADOPTION OF RULES. (a) The finance
15 commission may adopt rules to enforce this chapter.

16 (b) The commissioner shall recommend proposed rules to the
17 finance commission.

18 Sec. 353.514. GENERAL INVESTIGATION. To discover a
19 violation of this chapter or to obtain information required under
20 this chapter, the commissioner or the commissioner's
21 representative may investigate the records, including books,
22 accounts, papers, and correspondence, of a person, including a
23 license holder, who the commissioner has reasonable cause to
24 believe is violating this chapter, regardless of whether the person
25 claims to not be subject to this chapter.

26 Sec. 353.515. SHARING OF INFORMATION. To ensure consistent
27 enforcement of law and minimization of regulatory burdens, the

1 commissioner and the Texas Department of Motor Vehicles may share
2 information, including criminal history information, relating to a
3 person licensed under this chapter. Information otherwise
4 confidential remains confidential after it is shared under this
5 section.

6 SECTION 18. Section 411.095, Government Code, is amended to
7 read as follows:

8 Sec. 411.095. ACCESS TO CRIMINAL HISTORY RECORD
9 INFORMATION: CONSUMER CREDIT COMMISSIONER. The consumer credit
10 commissioner is entitled to obtain from the department criminal
11 history record information that relates to a person who is an
12 applicant for or holder of a license under Chapter 342, 347, 348,
13 351, 353, or 371, Finance Code.

14 SECTION 19. Section 1304.003(b), Occupations Code, is
15 amended to read as follows:

16 (b) A service contract may also provide for:

17 (1) incidental payment or indemnity under limited
18 circumstances, including towing, rental, and emergency road
19 service;

20 (2) the repair or replacement of a product for damage
21 resulting from a power surge or for accidental damage incurred in
22 handling the product; or

23 (3) identity recovery, as defined by Section 1306.002,
24 if the service contract is financed under Chapter 348 or 353,
25 Finance Code.

26 SECTION 20. Section 1306.003, Occupations Code, is amended
27 to read as follows:

1 Sec. 1306.003. IDENTITY RECOVERY SERVICE CONTRACT. In this
2 chapter, "identity recovery service contract" means an agreement:

- 3 (1) to provide identity recovery;
4 (2) that is entered into for a separately stated
5 consideration and for a specified term; and
6 (3) that is financed through a retail installment
7 contract under Chapter 348 or 353, Finance Code.

8 SECTION 21. Section 2305.007(b), Occupations Code, is
9 amended to read as follows:

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

- 15 (1) enter the premises of the person's business; and
16 (2) inspect or copy any document, record, vehicle,
17 part, or other item regulated under:

- 18 (A) this chapter; or
19 (B) Chapter 348 or 353, Finance Code.

20 SECTION 22. Section 2306.003(c), Occupations Code, is
21 amended to read as follows:

22 (c) A vehicle protection product may also include identity
23 recovery, as defined by Section 1306.002, if the vehicle protection
24 product is financed under Chapter 348 or 353, Finance Code.

25 SECTION 23. Section 152.002(b), Tax Code, is amended to
26 read as follows:

27 (b) "Total consideration" does not include:

- 1 (1) a cash discount;
- 2 (2) a full cash or credit refund to a customer of the
3 sales price of a motor vehicle returned to the seller;
- 4 (3) the amount charged for labor or service rendered
5 in installing, applying, remodeling, or repairing the motor vehicle
6 sold;
- 7 (4) a financing, carrying, or service charge or
8 interest on credit extended on a motor vehicle sold under a
9 conditional sale or other deferred payment contract;
- 10 (5) the value of a motor vehicle taken by a seller as
11 all or a part of the consideration for sale of another motor
12 vehicle, including any cash payment to the buyer under Section
13 348.404 or 353.402, Finance Code;
- 14 (6) a charge for transportation of the motor vehicle
15 after a sale;
- 16 (7) motor vehicle inventory tax; or
- 17 (8) an amount made available to the customer under
18 Subchapter G, Chapter 382, Health and Safety Code.

19 SECTION 24. Section 501.115(a), Transportation Code, is
20 amended to read as follows:

21 (a) When a debt or claim secured by a lien has been
22 satisfied, the lienholder shall, within a reasonable time not to
23 exceed the maximum time allowed by Section 348.408 or 353.405(b),
24 Finance Code, as applicable, execute and deliver to the owner, or
25 the owner's designee, a discharge of the lien on a form prescribed
26 by the department.

27 SECTION 25. Section 26.342(7), Water Code, is amended to

1 read as follows:

2 (7) "Lender" means:

3 (A) a state or national bank;

4 (B) a state or federal savings and loan
5 association or savings bank;

6 (C) a credit union;

7 (D) a state or federal agency that customarily
8 provides financing; or

9 (E) an entity that is registered with the Office
10 of Consumer Credit Commissioner pursuant to Chapter 348 or 353,
11 Finance Code, if the entity is regularly engaged in the business of
12 extending credit and if extending credit represents the majority of
13 the entity's total business activity.

14 SECTION 26. The following provisions of the Finance Code
15 are repealed:

16 (1) Section 348.007(a-2), as added by Chapter 238
17 (S.B. 1965), Acts of the 81st Legislature, Regular Session, 2009;

18 (2) Section 348.007(a-2), as added by Chapter 676
19 (H.B. 2438), Acts of the 81st Legislature, Regular Session, 2009;
20 and

21 (3) Sections 348.0051, 348.006(j), 348.120(c), and
22 348.208(d), (e), and (f).

23 SECTION 27. This Act takes effect September 1, 2011.