

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. The heading to Chapter 348, Finance Code, is

1 amended to read as follows:

2 CHAPTER 348. CERTAIN MOTOR VEHICLE INSTALLMENT SALES

3 SECTION 8. Section 348.001(4), Finance Code, is amended to
4 read as follows:

5 (4) "Motor vehicle" means an automobile, motor home,
6 truck, truck tractor, trailer, semitrailer, or bus designed and
7 used primarily to transport persons or property on a highway. [~~The~~
8 ~~term includes a commercial vehicle or heavy commercial vehicle.~~]

9 The term does not include:

10 (A) a boat trailer;

11 (B) a vehicle propelled or drawn exclusively by
12 muscular power;

13 (C) a vehicle that is designed to run only on
14 rails or tracks; or

15 (D) machinery that is not designed primarily for
16 highway transportation but may incidentally transport persons or
17 property on a public highway.

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

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;

24 (2) the documentary fee may not exceed[+]

25 [~~(A) for a motor vehicle retail installment~~
26 ~~contract other than a contract for a commercial vehicle,~~]

27 a reasonable amount agreed to by the retail seller and retail buyer

1 for the documentary services; [~~or~~

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

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

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

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

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

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

21 (d) A retail installment transaction in which a retail buyer
22 purchases a motor vehicle that is a commercial vehicle is not
23 subject to this chapter and is subject to Chapter 353 unless the
24 retail installment contract states that it is subject to this
25 chapter.

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

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

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

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

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

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

15 SECTION 12. Section 348.107(a), Finance Code, is amended to
16 read as follows:

17 (a) A retail installment contract may provide that if an
18 installment remains unpaid after the [~~10th day after the maturity~~
19 ~~of the installment for a heavy commercial vehicle or after the]~~ 15th
20 day after the maturity of the installment [~~for any other motor~~
21 ~~vehicle]~~ the holder may collect:

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

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

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

3 Sec. 348.109. ACCELERATION OF DEBT MATURITY. A retail
4 installment contract may not authorize the holder to accelerate the
5 maturity of all or a part of the amount owed under the contract
6 unless:

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

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

11 [~~(3) if the retail installment contract is for a
12 commercial vehicle, the retail buyer or an affiliate of the retail
13 buyer is in default in its obligations under another financing
14 agreement or leasing agreement held by the same holder or an
15 affiliate of the holder]~~].

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

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

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

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

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

27 (b) A policy of insurance described by Subsection (a) must

1 comply with the applicable requirements of Sections 348.201,
2 348.203, [~~and~~] 348.208, and[~~, except if the policy relates to a~~
3 ~~retail installment contract for a commercial vehicle, Section~~]
4 348.209.

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

7 (b) The holder may charge for the transfer of equity an
8 amount that does not exceed[~~+~~

9 [(1)] \$25 [~~for a motor vehicle that is not a heavy~~
10 ~~commercial vehicle; or~~

11 [(2) ~~\$50 for a heavy commercial vehicle~~].

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

14 CHAPTER 353. COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 353.001. DEFINITIONS. In this chapter:

17 (1) "Commercial vehicle," "heavy commercial vehicle,"
18 and "motor vehicle" have the meanings assigned by Section 348.001.

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

21 (A) all or part of the difference between the
22 amount owed under a retail installment contract and the amount paid
23 under a physical damage insurance policy maintained by the retail
24 buyer or its assign, in the event of a total loss or theft of the
25 motor vehicle;

26 (B) all or part of the amount owed under the
27 retail installment contract, in the event of the death of the retail

1 buyer; or

2 (C) one or more payments owed under the retail
3 installment contract, in the event of the disability of the retail
4 buyer.

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

6 (A) a retail seller; or

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

9 (4) "Precomputed earnings method" means a method for
10 computing the time price differential in which the time price
11 differential is computed at the inception of the contract based on
12 the principal balance for the full contract term, as if the
13 principal balance under the contract will not decline over the term
14 of the contract.

15 (5) "Retail buyer" means a person who purchases or
16 agrees to purchase a commercial vehicle from a retail seller in a
17 retail installment transaction.

18 (6) "Retail installment contract" means one or more
19 instruments entered into in this state that evidence a retail
20 installment transaction. The term includes a security agreement,
21 and a document that evidences a bailment or lease described by
22 Section 353.003.

23 (7) "Retail installment transaction" means a
24 transaction in which a retail buyer purchases a commercial vehicle
25 from a retail seller other than principally for the purpose of
26 resale and agrees with the retail seller to pay part or all of the
27 cash price in one or more deferred installments.

1 (8) "Retail seller" means a person in the business of
2 selling commercial vehicles to retail buyers in retail installment
3 transactions.

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

8 (10) "Time price differential" means the total amount
9 added to the principal balance to determine the balance of the
10 retail buyer's indebtedness under a retail installment contract.

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

15 Sec. 353.002. PRESUMPTION REGARDING NONCOMMERCIAL
16 VEHICLES; EXCEPTION. (a) A motor vehicle that is not described by
17 Section 353.001(1) or a motor vehicle that is of a type typically
18 used for personal, family, or household use, as determined by
19 finance commission rule, is presumed not to be a commercial
20 vehicle.

21 (b) Notwithstanding Subsection (a), if a retail buyer
22 represents in writing that a motor vehicle is not for personal,
23 family, or household use, or that the vehicle is for commercial use,
24 a retail seller or holder may rely on that representation unless the
25 retail seller or holder, as applicable, has actual knowledge that
26 the representation is not true.

27 Sec. 353.003. BAILMENT OR LEASE AS RETAIL INSTALLMENT

1 TRANSACTION. (a) A bailment or lease of a commercial vehicle is a
2 retail installment transaction if the bailee or lessee:

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

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

9 (b) Notwithstanding Subsection (a), a transaction that is
10 subject to Section 501.112, Transportation Code, is not a retail
11 installment transaction.

12 Sec. 353.004. CLASSIFICATION AS RETAIL INSTALLMENT
13 TRANSACTION UNAFFECTED. A transaction is not excluded as a retail
14 installment transaction because:

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

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

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

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

24 Sec. 353.005. CASH PRICE. (a) Subject to Section 353.007,
25 the cash price is the price at which the retail seller offers in the
26 ordinary course of business to sell for cash the goods or services
27 that are subject to the transaction. An advertised price does not

1 necessarily establish a cash price.

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

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

5 (1) the price of accessories;

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

7 (3) the price of service contracts;

8 (4) taxes; and

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

10 Sec. 353.006. ITEMIZED CHARGE. Subject to Section 353.007,
11 an amount in a retail installment contract is an itemized charge if
12 the amount is not included in the cash price and is the amount of:

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

16 (2) any taxes;

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

19 (4) charges authorized for insurance, service
20 contracts, and warranties by Subchapter C.

21 Sec. 353.007. ADDITIONAL CHARGES PERMITTED. (a) In
22 addition to the amounts allowed under Sections 353.005 and 353.006,
23 the following amounts may be included as an itemized charge or in
24 the cash price in a retail installment contract:

25 (1) any fees prescribed by law;

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

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

4 (A) the commercial vehicle;

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

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

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

10 (b) If a charge for a debt cancellation agreement is
11 included in the contract, the contract and debt cancellation
12 agreement must each conspicuously disclose that the debt
13 cancellation agreement is optional.

14 (c) Notwithstanding any other law, a charge for a debt
15 cancellation agreement is not a charge for insurance, and the sale,
16 provision, or waiving of a balance owed or other action relating to
17 a debt cancellation agreement is not considered insurance or
18 engaging in the business of insurance.

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

22 (1) adding:

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

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

26 (C) subject to Subsection (c), a documentary fee
27 for services rendered for or on behalf of the retail buyer in

1 handling and processing documents relating to the sale of the
2 commercial vehicle; and

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

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

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

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

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

14 Sec. 353.009. APPLICABILITY OF CHAPTER. (a) Except as
15 otherwise provided by this section, this chapter only applies to a
16 retail installment transaction in which a retail buyer purchases a
17 commercial vehicle.

18 (b) If the retail installment contract states that the
19 contract is subject to Chapter 348, it is covered by that chapter
20 and this chapter does not apply.

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

25 (d) The provisions of this chapter defining specific rates
26 and amounts of charges and requiring certain credit disclosures to
27 be made control over any contrary law of this state respecting those

1 subjects.

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

6 (b) Except as otherwise provided by this chapter, an
7 applicable statute, including Title 1, Business & Commerce Code, or
8 a principle of common law continues to apply to a retail installment
9 transaction unless it is displaced by this chapter.

10 Sec. 353.011. FEDERAL DISCLOSURE REQUIREMENTS. If a
11 disclosure requirement of this chapter and one of a federal law,
12 including a regulation or an interpretation of federal law, are
13 inconsistent or conflict, federal law controls and the inconsistent
14 or conflicting disclosures required by this chapter need not be
15 given.

16 Sec. 353.012. ADDITIONAL INFORMATION ALLOWED IN CONTRACT.
17 Information not required by this chapter may be included in a retail
18 installment contract.

19 Sec. 353.013. ORDER OF ITEMS IN CONTRACT. Items required by
20 this chapter to be in a retail installment contract are not required
21 to be stated in the order set forth in this chapter.

22 Sec. 353.014. APPLICABILITY OF INSURANCE PREMIUM FINANCING
23 PROVISIONS. Chapter 651, Insurance Code, does not apply to a retail
24 installment transaction.

25 Sec. 353.015. CONDITIONAL DELIVERY AGREEMENT. (a) In this
26 section, "conditional delivery agreement" means a contract between
27 a retail seller and prospective retail buyer under the terms of

1 which the retail seller allows the prospective retail buyer the use
2 and benefit of a commercial vehicle for a specified term.

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

5 (c) A conditional delivery agreement is:

6 (1) an enforceable contract; and

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

11 (d) A conditional delivery agreement may only confer rights
12 consistent with this section and may not confer any legal or
13 equitable rights of ownership, including ownership of the
14 commercial vehicle that is the subject of the conditional delivery
15 agreement.

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

18 (f) If a prospective retail buyer tenders to a retail seller
19 a trade-in motor vehicle in connection with a conditional delivery
20 agreement:

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

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

26 (3) the retail seller must use reasonable care to
27 conserve the trade-in motor vehicle while the vehicle is in the

1 retail seller's possession.

2 (g) If the parties to a conditional delivery agreement do
3 not subsequently enter into a retail installment contract for the
4 sale of the commercial vehicle that is the subject of the
5 conditional delivery agreement, the retail seller shall, not later
6 than the seventh day after termination of the conditional delivery
7 agreement:

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

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

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

1 (i) If a prospective retail buyer returns a commercial
2 vehicle under a conditional delivery agreement at the request of
3 the retail seller, the retail seller, notwithstanding the period
4 prescribed by Subsection (g), must return the trade-in vehicle at
5 the same time that the commercial vehicle under the conditional
6 delivery agreement is returned by the prospective retail buyer.

7 (j) The prospective retail buyer shall return the
8 commercial vehicle received under the conditional delivery
9 agreement in the same or substantially the same condition as it was
10 at the time of the execution of the conditional delivery agreement.

11 (k) An amount paid or required to be paid by the retail
12 seller under Subsection (g) is subject to review by the
13 commissioner. If the commissioner determines that the retail
14 seller in fact owes the prospective retail buyer a certain amount
15 under Subsection (g), the commissioner may order the retail seller
16 to pay the amount to the prospective retail buyer. If the trade-in
17 motor vehicle is not returned by the retail seller in accordance
18 with this section and the retail seller does not pay the prospective
19 retail buyer an amount equal to the agreed value of the trade-in
20 motor vehicle within the period prescribed by this section, the
21 commissioner may assess an administrative penalty against the
22 retail seller in an amount that is reasonable in relation to the
23 value of the trade-in motor vehicle. The commissioner shall
24 provide notice to the retail seller and the prospective retail
25 buyer of the commissioner's determination under this subsection.

26 (l) Not later than the 30th day after the date the parties
27 receive notice of the commissioner's determination under

1 Subsection (k), the retail seller or prospective retail buyer may
2 file with the commissioner an appeal of the commissioner's
3 determination requesting a time and place for a hearing before a
4 hearings officer designated by the commissioner. A hearing under
5 this subsection is governed by Chapter 2001, Government Code.
6 After the hearing, based on the findings of fact, conclusions of
7 law, and recommendations of the hearings officer, the commissioner
8 shall enter a final order.

9 (m) A person who requests an appeal under Subsection (l) is
10 required to pay a deposit to secure the payment of the costs of the
11 hearing in a reasonable amount as determined by the commissioner,
12 unless the person cannot afford to pay the deposit and files an
13 affidavit to that effect with the hearings officer in the form and
14 content prescribed by finance commission rule. The entire deposit
15 must be refunded to the person if the person prevails in the
16 hearing. If the person does not prevail, any portion of the deposit
17 in excess of the costs of the hearing assessed against the person is
18 refundable.

19 (n) Notice of the commissioner's final order under
20 Subsection (l), given to the person in accordance with Chapter
21 2001, Government Code, must include a statement of the person's
22 right to judicial review of the order.

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

1 (p) This section does not:

2 (1) apply to a bailment agreement under Section
3 353.003; or

4 (2) create a private right of action.

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

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

12 (1) payments are credited at the time received, with
13 payments received before the scheduled installment date resulting
14 in a greater reduction in the unpaid principal balance than
15 otherwise scheduled, and payments received after the scheduled
16 installment date resulting in less of a reduction in the unpaid
17 principal balance than otherwise scheduled;

18 (2) partial payments are applied first to time price
19 differential with any remainder applied to the unpaid principal
20 balance; and

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

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

23 (B) compounded.

24 [Sections 353.017-353.100 reserved for expansion]

25 SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

26 Sec. 353.101. RETAIL INSTALLMENT CONTRACT GENERAL
27 REQUIREMENTS. (a) A retail installment contract is required for

1 each retail installment transaction in which the retail buyer is
2 purchasing a commercial vehicle. A retail installment contract may
3 be more than one document.

4 (b) A retail installment contract must be:

5 (1) in writing;

6 (2) dated;

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

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

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

14 (d) If the commercial vehicle is not delivered when the
15 retail installment contract is executed, the following information
16 may be inserted after the contract is executed:

17 (1) the identifying numbers or marks of the vehicle or
18 similar information; and

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

20 (e) Notwithstanding other provisions of this title, a
21 retail installment contract and any notices, disclosures, or other
22 documents and signatures may be in an electronic or magnetic
23 medium.

24 Sec. 353.102. CONTRACT CONDITIONED ON SUBSEQUENT
25 ASSIGNMENT PROHIBITED. (a) A retail installment contract may not
26 be conditioned on the subsequent assignment of the contract to a
27 holder.

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

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

6 (d) The commissioner has exclusive jurisdiction to enforce
7 this section.

8 Sec. 353.103. TIME PRICE DIFFERENTIAL FOR RETAIL
9 INSTALLMENT CONTRACT. (a) A retail installment contract may
10 provide for:

11 (1) any amount of time price differential permitted
12 under Sections 353.104, 353.105, or 353.106; or

13 (2) any rate of time price differential not exceeding
14 a yield permitted under Sections 353.104, 353.105, or 353.106.

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

16 (1) precomputed earnings method;

17 (2) scheduled installment earnings method; or

18 (3) true daily earnings method.

19 Sec. 353.104. TIME PRICE DIFFERENTIAL FOR CONTRACT WITH
20 EQUAL MONTHLY SUCCESSIVE PAYMENTS. (a) A retail installment
21 contract that is payable in substantially equal successive monthly
22 installments beginning one month after the date of the contract may
23 provide for a time price differential that does not exceed the
24 add-on charge provided by this section.

25 (b) The add-on charge is \$7.50 per \$100 per year on the
26 principal balance for a new commercial vehicle, other than a heavy
27 commercial vehicle, designated by the manufacturer by a model year

1 that is not earlier than the year in which the sale is made.

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

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

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

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

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

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

19 (1) \$15 per \$100 per year on the principal balance; or
20 (2) \$18 per \$100 per year on the principal balance if
21 the principal balance under the retail installment contract does
22 not exceed \$300.

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

27 (g) If the retail installment contract is payable for a

1 period that is shorter or longer than a year or is for an amount that
2 is less or greater than \$100, the amount of the maximum time price
3 differential computed under this section is decreased or increased
4 proportionately.

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

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

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

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

22 (a) A retail installment contract may provide that if an
23 installment remains unpaid after the 10th day after the maturity of
24 the installment for a heavy commercial vehicle or after the 15th day
25 after the maturity of the installment for any other commercial
26 vehicle the holder may collect:

27 (1) a delinquency charge that does not exceed five

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

6 (b) A retail installment contract that provides for the true
7 daily earnings method or the scheduled installment earnings method
8 may provide for the delinquency charge authorized by Subsection
9 (a)(1), the interest authorized by Subsection (a)(2), or both.

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

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

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

18 (2) court costs and disbursements; and

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

26 Sec. 353.109. ACCELERATION OF DEBT MATURITY. A retail
27 installment contract may not authorize the holder to accelerate the

1 maturity of all or a part of the amount owed under the contract
2 unless:

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

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

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

11 Sec. 353.110. DELIVERY OF COPY OF CONTRACT. A retail seller
12 shall:

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

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

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

21 (1) rescind the contract;

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

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

27 Sec. 353.112. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF

1 CONTRACT COPY. (a) Any retail buyer's acknowledgment of delivery
2 of a copy of the retail installment contract must:

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

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

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

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

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

16 (3) of compliance with Sections 353.011, 353.101,
17 353.205, 353.403, 353.404, and 353.405.

18 Sec. 353.113. AMENDMENT OF RETAIL INSTALLMENT CONTRACT. On
19 request by a retail buyer, the holder may agree to one or more
20 amendments to the retail installment contract to:

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

23 (2) renew, restate, or reschedule the unpaid balance
24 under the contract.

25 Sec. 353.114. CHARGES FOR DEFERRING INSTALLMENT. (a) If a
26 retail installment contract is amended to defer all or a part of one
27 or more installments for not longer than three months, the holder

1 may collect from the retail buyer:

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

6 (2) the amount of the additional cost to the holder
7 for:

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

10 (B) any additional necessary official fees.

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

12 Sec. 353.115. CHARGE FOR OTHER AMENDMENT. (a) If the
13 unpaid balance of a retail installment contract is extended,
14 renewed, restated, or rescheduled under this subchapter and Section
15 353.114 does not apply, the holder may collect an amount computed on
16 the principal balance of the amended contract for the term of the
17 amended contract at the time price differential for a retail
18 installment contract that is applicable after reclassifying the
19 commercial vehicle by its model year at the time of the amendment.

20 (b) The principal balance of the amended contract is
21 computed by:

22 (1) adding:

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

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

27 (C) the amount of each additional necessary

1 official fee; and

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

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

9 (c) Subsection (b)(2) does not apply to a retail installment
10 contract in which the time price differential is computed using the
11 true daily earnings method or the scheduled installment earnings
12 method.

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

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

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

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

22 Sec. 353.117. CONTRACT AFTER AMENDMENT. After amendment
23 the retail installment contract is the original contract and each
24 amendment to the original contract.

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

1 contract.

2 Sec. 353.119. REFUND CREDIT ON PREPAYMENT. (a) This
3 section does not apply to a retail installment contract in which the
4 time price differential is computed using the true daily earnings
5 method or the scheduled installment earnings method.

6 (b) If a retail buyer prepays a retail installment contract
7 in full or if the holder of the contract demands payment of the
8 unpaid balance of the contract in full before the contract's final
9 installment is due and the time price differential is computed
10 using the precomputed earnings method, the buyer is entitled to
11 receive a refund credit as provided by Section 353.120 or 353.121,
12 as applicable.

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

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

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

22 (b) On a contract for a commercial vehicle other than a
23 heavy commercial vehicle the minimum amount of the refund credit is
24 computed by:

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

27 (2) multiplying the amount computed under Subdivision

1 (1) by the percentage of refund computed under Subsection (d).

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

4 (1) multiplying the amount of the original time price
5 differential by the percentage of refund computed under Subsection
6 (d); and

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

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

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

12 (2) dividing the amount computed under Subdivision (1)
13 into the sum of the unpaid monthly balances under the contract's
14 schedule of payments beginning:

15 (A) on the first day, after the date of the
16 prepayment or demand for payment in full, that is the date of a
17 month that corresponds to the date of the month that the first
18 installment is due under the contract; or

19 (B) if the prepayment or demand for payment in
20 full is made before the first installment date under the contract,
21 one month after the next monthly anniversary date of the contract
22 occurring after the prepayment or demand.

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

25 Sec. 353.121. AMOUNT OF REFUND CREDIT FOR OTHER CONTRACTS.

26 (a) This section 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) The minimum amount of the refund credit on a retail
3 installment contract to which Section 353.120 does not apply shall
4 be computed in a manner proportionate to the method set out by that
5 section for the type of commercial vehicle being sold, having due
6 regard for:

7 (1) the amount of each installment;

8 (2) the irregularity of the installment periods; and

9 (3) the requirements of Sections 353.104(f) and
10 353.106.

11 Sec. 353.122. REINSTATEMENT OF CONTRACT AFTER DEMAND FOR
12 PAYMENT. After a demand for payment in full under a retail
13 installment contract, the retail buyer and holder of the contract
14 may:

15 (1) agree to reinstate the contract; and

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

17 [Sections 353.123-353.200 reserved for expansion]

18 SUBCHAPTER C. INSURANCE

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

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

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

4 (1) the amount, term, and conditions of the retail
5 installment contract; and

6 (2) the existing hazards or risk of loss, damage, or
7 destruction.

8 (d) The required insurance and any insurance provided by the
9 holder may not:

10 (1) cover unusual or exceptional risks; or

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

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

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

18 (b) The holder may offer to provide credit life insurance
19 and credit health and accident insurance, regardless of whether the
20 holder requires a retail buyer to provide the insurance under
21 Subsection (a).

22 (c) A retail seller may offer involuntary unemployment
23 insurance to the buyer at the time the contract is negotiated or
24 executed.

25 (d) A holder may include the cost of insurance provided
26 under this section, and a policy or agent fee charged in connection
27 with insurance provided under Subsection (b) or (c), as a separate

1 charge in the contract.

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

6 (1) the total amount repayable under the contract; and

7 (2) the greater of the scheduled or actual amount of
8 unpaid indebtedness if the indebtedness is repayable in
9 substantially equal installments.

10 (b) At any time the total amount of the policies of credit
11 health and accident insurance in force on one retail buyer on one
12 retail installment contract may not exceed the total amount payable
13 under the contract, and the amount of each periodic indemnity
14 payment may not exceed the scheduled periodic payment on the
15 indebtedness.

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

20 (1) insurance is required in connection with the
21 contract; and

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

24 (A) an existing policy of insurance owned or
25 controlled by the buyer; or

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

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

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

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

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

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

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

23 (1) may at the holder's option be limited to coverage
24 only of the interest of the holder or the interest of the holder and
25 the buyer; and

26 (2) must be written at lawful rates in accordance with
27 the Insurance Code by a company authorized to do business in this

1 state or if permitted under the Insurance Code, a surplus lines
2 insurer eligible to provide the insurance under Chapter 981,
3 Insurance Code.

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

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

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

16 (A) the commercial vehicle;

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

18 (C) goods or services that:

19 (i) are related to the commercial vehicle;

20 and

21 (ii) may ordinarily be insured with a
22 commercial vehicle;

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

25 (3) ordinarily available in policies or endorsements
26 offered to the public or to persons who own or operate commercial
27 vehicles.

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

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

5 (2) mechanical breakdown insurance;

6 (3) participation in a motor vehicle theft protection
7 plan;

8 (4) insurance to pay all or part of the amount computed
9 by subtracting the proceeds of the buyer's basic collision policy
10 on the commercial vehicle from the amount owed on the vehicle in the
11 event of a total loss or theft of the vehicle;

12 (5) a warranty or service contract relating to the
13 commercial vehicle;

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

16 (7) a debt cancellation agreement.

17 (c) Notwithstanding any other law, service contracts and
18 debt cancellation agreements sold or provided by a retail seller of
19 a commercial vehicle to a retail buyer are not subject to Chapter
20 101 or 226, Insurance Code.

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

24 (1) the commercial vehicle;

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

26 (3) the retail installment contract.

27 (e) Insurance coverage under Subsection (d) may be provided

1 only by:

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

4 (2) if permitted under the Insurance Code, a surplus
5 lines insurer eligible to provide the insurance under Chapter 981,
6 Insurance Code.

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

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

14 (1) apply the amount of the refund for unearned
15 insurance premiums received by the holder to replace required
16 insurance coverage; or

17 (2) credit the refund to the final maturing
18 installments of the retail installment contract.

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

23 (c) A cash refund is not required under this section if the
24 amount of the refund is less than \$1.

25 Sec. 353.209. GAIN OR ADVANTAGE FROM INSURANCE NOT
26 ADDITIONAL CHARGE. Any gain or advantage to the holder or the
27 holder's employee, officer, director, agent, general agent,

1 affiliate, or associate from insurance or the provision or sale of
2 insurance under this subchapter is not an additional charge or
3 additional time price differential in connection with a retail
4 installment contract except as specifically provided by this
5 chapter.

6 Sec. 353.210. ADDING TO RETAIL INSTALLMENT CONTRACT
7 PREMIUMS FOR INSURANCE ACQUIRED AFTER TRANSACTION. (a) A retail
8 buyer and holder may agree to add to the unpaid balance of a retail
9 installment contract premiums for insurance policies obtained
10 after the date of the retail installment transaction for coverages
11 of the types allowed under Sections 353.201, 353.203, and 353.207,
12 including premiums for the renewal of a policy included in the
13 contract.

14 (b) A policy of insurance described by Subsection (a) must
15 comply with the requirements of Section 353.201, 353.203, or
16 353.207, as applicable.

17 Sec. 353.211. EFFECT OF ADDING PREMIUM TO CONTRACT. If a
18 premium is added to the unpaid balance of a retail installment
19 contract under Section 353.206 or 353.210, the rate applicable to
20 the time price differential agreed to in the retail installment
21 contract remains in effect and shall be applied to the new unpaid
22 balance, or the contract may be rescheduled in accordance with
23 Sections 353.113-353.117, without reclassifying the commercial
24 vehicle by its year model at the time of the amendment.

25 Sec. 353.212. FINANCING ENTITY MAY NOT REQUIRE INSURANCE
26 FROM PARTICULAR SOURCE. If a retail installment contract presented
27 to a financing entity for acceptance includes any insurance

1 coverage, the financing entity may not directly or indirectly
2 require, as a condition of its agreement to finance the commercial
3 vehicle, that the retail buyer purchase the insurance coverage from
4 a particular source.

5 [Sections 353.213-353.300 reserved for expansion]

6 SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

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

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

1 Sec. 353.303. PAYMENT BY BUYER. Unless a retail buyer has
2 notice of the assignment or negotiation of the buyer's retail
3 installment contract or an outstanding balance under the contract,
4 a payment by the buyer to the most recent holder known to the buyer
5 is binding on all subsequent holders.

6 [Sections 353.304-353.400 reserved for expansion]

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

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

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

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

22 (1) advance money to retire:

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

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

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

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

5 (c) A retail seller may pay in cash to the retail buyer any
6 portion of the net cash value of a motor vehicle owned by the buyer
7 and used as a trade-in in a transaction involving the sale of
8 another motor vehicle. In this subsection, "net cash value" means
9 the cash value of a motor vehicle after payment of all amounts
10 secured by the motor vehicle.

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

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

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

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

27 (b) If the retail buyer or the buyer's designee tenders to

1 the holder as payment in full an amount derived from that
2 outstanding balance information, the holder shall:

- 3 (1) accept the amount as payment in full; and
4 (2) release the holder's lien against the commercial
5 vehicle within a reasonable time not later than the 10th day after
6 the date on which the amount is tendered.

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

11 (1) the retail installment contract is signed by the
12 retail buyer and the retail buyer receives delivery of the
13 commercial vehicle purchased by the retail buyer; and

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

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

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

23 (2) interest;

24 (3) reasonable attorney's fees; and

25 (4) costs.

26 Sec. 353.407. PROHIBITION ON POWER OF ATTORNEY TO CONFESS
27 JUDGMENT OR ASSIGNMENT OF WAGES. A retail installment contract may

1 not contain:

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

4 (2) an assignment of wages.

5 Sec. 353.408. PROHIBITION ON CERTAIN ACTS OF REPOSSESSION.

6 A retail installment contract may not:

7 (1) authorize the holder or a person acting on the
8 holder's behalf to:

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

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

13 (2) contain, or provide for the execution of, a power
14 of attorney by the retail buyer appointing, as the buyer's agent in
15 the repossession of the vehicle, the holder or a person acting on
16 the holder's behalf.

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

19 (1) provide for a waiver of the retail buyer's rights
20 of action against the holder or a person acting on the holder's
21 behalf for an illegal act committed in:

22 (A) the collection of payments under the
23 contract; or

24 (B) the repossession of the commercial vehicle;
25 or

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

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

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

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

10 (1) \$25 for a commercial vehicle that is not a heavy
11 commercial vehicle; or

12 (2) \$50 for a heavy commercial vehicle.

13 [Sections 353.411-353.500 reserved for expansion]

14 SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

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

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

18 (2) holds a license issued under this chapter.

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

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

27 Sec. 353.502. APPLICATION REQUIREMENTS. (a) The

1 application for a license under this chapter must:

2 (1) be under oath;

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

5 (3) contain other relevant information that the
6 commissioner requires.

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

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

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

12 Sec. 353.503. INVESTIGATION OF APPLICATION. On the filing
13 of an application and payment of the required fees, the
14 commissioner shall conduct an investigation to determine whether to
15 issue the license.

16 Sec. 353.504. APPROVAL OR DENIAL OF APPLICATION. (a) The
17 commissioner shall approve the application and issue to the
18 applicant a license under this chapter if the commissioner finds
19 that the financial responsibility, experience, character, and
20 general fitness of the applicant are sufficient to:

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

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

24 (b) If the commissioner does not find the eligibility
25 requirements of Subsection (a), the commissioner shall notify the
26 applicant.

27 (c) If an applicant requests a hearing on the application

1 not later than the 30th day after the date of notification under
2 Subsection (b), the applicant is entitled to a hearing not later
3 than the 60th day after the date of the request.

4 (d) The commissioner shall approve or deny the application
5 not later than the 60th day after the date of the filing of a
6 completed application with payment of the required fees, or if a
7 hearing is held, after the date of the completion of the hearing on
8 the application. The commissioner and the applicant may agree to a
9 later date in writing.

10 Sec. 353.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION.

11 If the commissioner denies the application, the commissioner shall
12 retain the investigation fee and shall return to the applicant the
13 license fee submitted with the application.

14 Sec. 353.506. ANNUAL LICENSE FEE. Not later than December
15 1, a license holder shall pay to the commissioner for each license
16 held an annual fee for the year beginning the next January 1, in an
17 amount determined as provided by Section 14.107.

18 Sec. 353.507. EXPIRATION OF LICENSE ON FAILURE TO PAY
19 ANNUAL FEE. If the annual fee for a license is not paid before the
20 16th day after the date on which the written notice of delinquency
21 of payment has been given to the license holder, the license expires
22 on the later of:

23 (1) that day; or

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

26 Sec. 353.508. LICENSE SUSPENSION OR REVOCATION. After
27 notice and a hearing the commissioner may suspend or revoke a

1 license if the commissioner finds that:

2 (1) the license holder failed to pay the annual
3 license fee, an examination fee, an investigation fee, or another
4 charge imposed by the commissioner;

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

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

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

19 Sec. 353.510. SURRENDER OF LICENSE. A license holder may
20 surrender a license issued under this chapter by delivering to the
21 commissioner:

22 (1) the license; and

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

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

1 into before the suspension, revocation, or surrender.

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

5 Sec. 353.512. TRANSFER OR ASSIGNMENT OF LICENSE. A license
6 may be transferred or assigned only with the approval of the
7 commissioner.

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

10 (b) The commissioner shall recommend proposed rules to the
11 finance commission.

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

20 Sec. 353.515. SHARING OF INFORMATION. To ensure consistent
21 enforcement of law and minimization of regulatory burdens, the
22 commissioner and the Texas Department of Motor Vehicles may share
23 information, including criminal history information, relating to a
24 person licensed under this chapter. Information otherwise
25 confidential remains confidential after it is shared under this
26 section.

27 SECTION 18. Section 411.095, Government Code, is amended to

1 read as follows:

2 Sec. 411.095. ACCESS TO CRIMINAL HISTORY RECORD
3 INFORMATION: CONSUMER CREDIT COMMISSIONER. The consumer credit
4 commissioner is entitled to obtain from the department criminal
5 history record information that relates to a person who is an
6 applicant for or holder of a license under Chapter 342, 347, 348,
7 351, 353, or 371, Finance Code.

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

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

11 (1) incidental payment or indemnity under limited
12 circumstances, including towing, rental, and emergency road
13 service;

14 (2) the repair or replacement of a product for damage
15 resulting from a power surge or for accidental damage incurred in
16 handling the product; or

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

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

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

24 (1) to provide identity recovery;

25 (2) that is entered into for a separately stated
26 consideration and for a specified term; and

27 (3) that is financed through a retail installment

1 contract under Chapter 348 or 353, Finance Code.

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

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

9 (1) enter the premises of the person's business; and

10 (2) inspect or copy any document, record, vehicle,
11 part, or other item regulated under:

12 (A) this chapter; or

13 (B) Chapter 348 or 353, Finance Code.

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

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

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

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

22 (1) a cash discount;

23 (2) a full cash or credit refund to a customer of the
24 sales price of a motor vehicle returned to the seller;

25 (3) the amount charged for labor or service rendered
26 in installing, applying, remodeling, or repairing the motor vehicle
27 sold;

1 (4) a financing, carrying, or service charge or
2 interest on credit extended on a motor vehicle sold under a
3 conditional sale or other deferred payment contract;

4 (5) the value of a motor vehicle taken by a seller as
5 all or a part of the consideration for sale of another motor
6 vehicle, including any cash payment to the buyer under Section
7 348.404 or 353.402, Finance Code;

8 (6) a charge for transportation of the motor vehicle
9 after a sale;

10 (7) motor vehicle inventory tax; or

11 (8) an amount made available to the customer under
12 Subchapter G, Chapter 382, Health and Safety Code.

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

15 (a) When a debt or claim secured by a lien has been
16 satisfied, the lienholder shall, within a reasonable time not to
17 exceed the maximum time allowed by Section 348.408 or 353.405(b),
18 Finance Code, as applicable, execute and deliver to the owner, or
19 the owner's designee, a discharge of the lien on a form prescribed
20 by the department.

21 SECTION 25. Section 26.342(7), Water Code, is amended to
22 read as follows:

23 (7) "Lender" means:

24 (A) a state or national bank;

25 (B) a state or federal savings and loan
26 association or savings bank;

27 (C) a credit union;

1 (D) a state or federal agency that customarily
2 provides financing; or

3 (E) an entity that is registered with the Office
4 of Consumer Credit Commissioner pursuant to Chapter 348 or 353,
5 Finance Code, if the entity is regularly engaged in the business of
6 extending credit and if extending credit represents the majority of
7 the entity's total business activity.

8 SECTION 26. The following provisions of the Finance Code
9 are repealed:

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

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

15 (3) Sections 348.0015, 348.0051, 348.006(j),
16 348.120(c), and 348.208(d), (e), and (f).

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