

## **BILL ANALYSIS**

C.S.H.B. 1233  
By: Flynn  
Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law establishes that \$50 is the maximum amount a dealer can charge as a documentary fee for preparing and processing certain documents associated with the sale of a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. Interested parties report that, in the years following the establishment of this fee, the federal government has mandated that dealers undertake certain procedures developing, among other things, technical, administrative, and physical safeguards to protect customer information. There are concerns that dealers have absorbed the additional costs of these federal mandates. C.S.H.B. 1233 seeks to relieve the burden placed on those dealers by removing the \$50 cap on the documentary fee and instead limiting the fee to a reasonable amount for the handling and processing of documents related to a sale.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 1233 amends the Finance Code to authorize a retail seller to charge a documentary fee for services rendered to, for, or on behalf of a retail buyer in handling and processing the sale of a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle and removes provisions relating to a retail seller's authorization to charge a documentary fee for preparing documents relating to such a sale and for rendering services in closing a retail installment transaction involving such vehicles. The bill limits the documentary fee to a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, rather than to \$50, and prohibits that amount from exceeding a maximum amount set by the Finance Commission of Texas. The bill makes disclosure of the fee on a buyer's order an option for meeting the fee disclosure requirement. The bill authorizes the finance commission to adopt rules necessary to implement and enforce the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1233 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

83R 18469

13.85.864

Substitute Document Number: 83R 13084

SECTION 1. Section 345.251, Finance Code, is amended to read as follows:

Sec. 345.251. DOCUMENTARY FEE FOR CERTAIN VEHICLES.

(a) A retail seller may charge a documentary fee for services rendered to, for, or on behalf of a retail buyer in ~~[preparing,] handling[,]~~ and processing documents relating to the sale of ~~[, and closing a retail installment transaction involving,]~~ a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.

(b) If a documentary fee is charged under this section the fee:

(1) must be charged to cash buyers and credit buyers;

(2) may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services ~~[\$50]~~; and

(3) must be disclosed on the buyer's order or retail installment contract as a separate itemized charge.

(c) A preliminary work sheet on which a sale price is computed and that is shown to the retail buyer, an order from the buyer, or a retail installment contract must include in reasonable proximity to the place on the document where the documentary fee is disclosed:

(1) the amount of the fee; and

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

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS ~~[AND PERFORMING SERVICES]~~ RELATING TO THE ~~[CLOSING OF A]~~ SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES ~~[\$50]~~. THIS NOTICE IS REQUIRED BY LAW."

(d) A retail seller shall post the documentary fee notice prescribed by

SECTION 1. Section 345.251, Finance Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a) A retail seller may charge a documentary fee for services rendered to, for, or on behalf of a retail buyer in ~~[preparing,] handling[,]~~ and processing documents relating to the sale of ~~[, and closing a retail installment transaction involving,]~~ a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.

(b) If a documentary fee is charged under this section the fee:

(1) must be charged to cash buyers and credit buyers;

(2) may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services ~~and may not exceed a maximum amount set by the~~ finance commission ~~[\$50]~~; and

(3) must be disclosed on the buyer's order or retail installment contract as a separate itemized charge.

(c) A preliminary work sheet on which a sale price is computed and that is shown to the retail buyer, an order from the buyer, or a retail installment contract must include in reasonable proximity to the place on the document where the documentary fee is disclosed:

(1) the amount of the fee; and

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

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS ~~[AND PERFORMING SERVICES]~~ RELATING TO THE ~~[CLOSING OF A]~~ SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES ~~[\$50]~~. THIS NOTICE IS REQUIRED BY LAW."

~~No equivalent provision.~~

Subsection (c) so that the notice is clearly visible in each place where a sale of a vehicle or other good described by Subsection (a) is finalized. If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c) in the language primarily used in the oral sales presentation.

(e) Before increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge. The commissioner may review the amount of a documentary fee for reasonableness. In determining whether a fee charged by a retail seller is reasonable, the commissioner may consider the resources required by the retail seller to perform the retail seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. If the commissioner determines that a documentary fee charged is not reasonable, the commissioner may require that the documentary fee charged be reduced or suspended.

No equivalent provision.

(f) A documentary fee charged in accordance with this section before September 1, 2013, is considered reasonable for purposes of this section.

No equivalent provision.

(g) This section does not:  
(1) create a private right of action; or  
(2) require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee.

No equivalent provision.

(h) The finance commission may adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce this section. A rule adopted under this subsection may not require a retail seller to submit to the commissioner for prior approval the amount of a documentary fee that the retail seller intends to charge under

No equivalent provision.

this section.

(i) The commissioner has exclusive jurisdiction to enforce this section.

**No equivalent provision.**

SECTION 2. This Act takes effect September 1, 2013.

**No equivalent provision.**

(e) The finance commission may adopt rules necessary to implement and enforce this section.

SECTION 2. Same as introduced version.