

SUBJECT: Conditional delivery contracts for motor vehicle sales

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 8 ayes — Truitt, Anchia, Anderson, Flynn, Hernandez, Hopson, Parker, Veasey
0 nays
1 absent — Woolley

WITNESSES: For — Victor Vandergriff, Vandergriff Auto Group and Texas Automobile Dealers Association
Against — None
On — Leslie Pettiejohn, Office of Consumer Credit Commissioner

BACKGROUND: A consumer may take possession of a vehicle upon signing a conditional sales agreement that the final purchase of the vehicle would be contingent on the dealer selling the contract to a financier in the secondary market.
Finance Code, ch. 348 outlines provisions for motor vehicle installment sales under the authority of the Office of the Consumer Credit Commissioner.

DIGEST: CSHB 2556 would amend Finance Code, ch. 348 by outlining provisions for a conditional delivery agreement and its terms, the Office of the Consumer Credit Commissioner's enforcement authority in this area, and the appeals process for prospective retail buyers and retail sellers.
Conditional delivery agreement and related terms. The bill would allow a seller and buyer to enter into a conditional delivery agreement, which is a contract between the two parties under which the seller allows the prospective buyer to use a motor vehicle for a specified term of 15 days. The agreement would be an enforceable contract and would be void on the execution of a retail installment contract.

A conditional delivery agreement could only confer rights outlined in these new provisions and could not confer any legal or equitable rights of ownership, including ownership of the motor vehicle that is the subject of the conditional delivery agreement, and could not exceed a term of 15 days.

If a prospective buyer had a trade-in, the parties would have to agree on the value and include it in the agreement, and the seller would have to use reasonable care to conserve the trade-in while in the seller's possession.

If a retail installment contract was not entered into, the seller would, no later than seven days after the termination of the agreement:

- deliver the trade-in vehicle in the same or substantially the same condition as it was when the agreement was made and would return any down payment or other consideration received from the buyer in connection with the agreement; or,
- if the trade-in could not be returned in the same or substantially the same condition, pay the agreed upon trade-in value and return any down payment or other consideration.

Any money that a seller was obligated to provide a prospective buyer would be tendered at the same time that the trade-in vehicle was delivered or would have been delivered if the vehicle was damaged or could not be returned.

If a prospective buyer returned a motor vehicle at the request of the seller, regardless of the seven-day period for action, the seller would return the trade-in vehicle at the same time that the buyer returned the vehicle.

The buyer would have to return the vehicle in the same, or substantially the same condition, as it was when the agreement was made.

Enforcement authority and appeal process. An amount paid or required to be paid by the retail seller would be subject to review by the consumer credit commissioner. If the commissioner determined that the seller owed the buyer a certain amount, the commissioner could order the seller to pay the amount to the buyer. If the trade-in vehicle was not returned by the seller and the seller did not pay the buyer the agreed amount of the trade-in vehicle within the established time period, the commissioner could assess an administrative penalty against the seller in a reasonable amount

relative to the value of the trade-in vehicle. The commissioner would provide notice to the seller and buyer of the determination and would have exclusive jurisdiction to enforce conditional delivery agreements.

No later than 30 days after the date the parties receive notice of the commissioner's determination, the seller or buyer could file an appeal and request a hearing that would be governed by existing administrative procedure provisions. Following the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearing officer, the commissioner would enter a final order. Notice of the final order would include a statement of the person's right to judicial review of it.

A person requesting an appeal would be required to pay a deposit for hearing costs in a reasonable amount determined by the commissioner. The entire deposit would be refunded if the person prevailed in the hearing. If the person did not prevail, the portion of the deposit in excess of the hearing cost would be refundable. The hearing officer could order the seller, buyer, or both to pay reasonable expenses incurred by the Office of the Consumer Credit Commissioner relating to obtaining a final order, including attorney's fees, investigative costs, and witness fees.

Prohibition on conditioned retail installment contract. A retail installment contract would not be conditioned on the subsequent assignment of the contract to a holder. A provision violating this would be void.

The bill would take effect September 1, 2009, and would only apply to a conditional delivery agreement entered into on or after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 2556 would provide protections to both consumers and vehicle detailers when entering a conditional delivery agreement by defining clearly the terms of the contract and the related responsibilities of both parties. This was a recommendation from an interim report to the 81st Legislature by the House Financial Institutions Committee.

A conditional delivery agreement occurs when a motor vehicle dealer conditions the financing of a motor vehicle upon the dealer's ability to sell the contract to another company. Consumers often do not understand the consequences of these agreements, which are tilted in favor of a dealer. Under an agreement, a dealer can declare whether the new motor vehicle

is to be returned and can assess costs for use of the vehicle. Additionally, the sale of the retail installment contract can sometimes take up to two months to occur, if at all. If the dealer is unable to sell the contract, the consumer generally is faced with two options under the agreement — renegotiate the terms of the contract, which may require a larger down-payment or a higher finance charge, or have the vehicle repossessed. CSHB 2556 would provide clear terms for a conditional vehicle agreement for both parties and would provide a reasonable time period for either the completion of an agreement within 15 days or the return of the trade-in vehicle and related payment.

The bill also would protect auto dealers from consumers who are not entirely forthcoming regarding their financial history and allow them to unwind the agreement in an equitable manner.

While abuses of motor vehicles sold via conditional delivery contracts may not be widespread, no abuse should be tolerated. Texas should take the prudent and reasonable steps outlined in CSHB 2556, which would limit greatly abuses to both consumers and dealers.

OPPONENTS
SAY:

CSHB 2556, while well intentioned, would place an additional burden on auto dealers, and indirectly on consumers, by adding additional paperwork to an already complicated transaction. As the Office of the Consumer Credit Commissioner has cited only 175 complaints in this area over three years, this issue is not substantive enough to warrant additional regulation.

NOTES:

During the 2007 regular session a similar bill, HB 2534 by Solomons, passed the House, but died in the Senate Transportation and Homeland Security Committee.