

BILL ANALYSIS

Senate Research Center

H.B. 2556
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, auto dealers can make the financing of a motor vehicle to a consumer conditional on selling the contract to a holder in the secondary market. If the dealer is unable to sell the contract, which can range from one day to two months, then the dealer can repossess the motor vehicle from the consumer unless the consumer makes a larger down payment or refinances the contract.

H.B. 2556 relates to the rights and duties of the parties to a motor vehicle retail installment contract or a conditional delivery agreement involving the sale or conditional delivery of a motor vehicle and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 348.013, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 348, Finance Code, by adding Section 348.013, as follows:

Sec. 348.013. **CONDITIONAL DELIVERY AGREEMENT.** (a) Defines "conditional delivery agreement."

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

(c) Provides that a conditional delivery agreement is an enforceable contract and void on the execution of a retail installment contract between the parties of the conditional delivery agreement for the sale of the motor vehicle that is the subject of the conditional delivery agreement.

(d) Authorizes a conditional delivery agreement to only confer rights consistent with this section and prohibits conferring any legal or equitable rights of ownership, including ownership of the motor vehicle that is the subject of the conditional delivery agreement.

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

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

(1) the parties are required to agree on the value of the trade-in motor vehicle;

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) Provides that this section does not apply to a bailment agreement under Section 348.002 (Bailment or Lease as Retail Installment Transaction) or create a private right of action.

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

SECTION 2. Amends Subchapter B, Chapter 348, Finance Code, by adding Section 348.1015, as follows:

Sec. 348.1015. **CONTRACT CONDITIONED ON SUBSEQUENT ASSIGNMENT PROHIBITED.** (a) Prohibits a retail installment contract from being conditioned on the subsequent assignment of the contract to a holder.

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

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

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

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.