

SUBJECT: Retail installment contract revisions

COMMITTEE: Financial Institutions — favorable, with amendment

VOTE: 7 ayes — Marchant, Carona, Elkins, Giddings, Grusendorf, Hudson,
Patterson

0 nays

2 absent — Gutierrez, Romo

WITNESSES: For — Robert Duke, Texas Financial Services Association

Against — None

On — Leslie L. Pettijohn, Office of Consumer Credit Commissioner

DIGEST: HB 1616, as amended, would revise parts of the consumer credit law to allow medical and dental services to be financed through a retail installment contract at a rate authorized by VACS art. 5069-1.04 (18 percent or less).

The bill also would include trailers designed to pull or be pulled by motorcycles and motor-assisted bicycles in the definition of goods covered by VACS art. 5069-6.01(a). It would also clarify the definition of retail installment transaction in VACS art. 5069-7.01(d) to cover any transaction in which a motor vehicle purchaser agrees to pay part or all of the cash price in one or more deferred installments. It would specify that these transactions are subject to the provisions of VACS art. 5069-7.

HB 1616 would conform two sections of the law that describe documentary fee notice. VACS arts. 5069-6 and 5069-7 would require that the notice would not only have to be in bold type, but in type that is "boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous."

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 1616 would give medical patients another option for paying increasingly high medical expenses. Most other states now allow medical expenses to be financed through a retail installment contract, but not Texas. Patients may now obtain a bank loan or charge the medical expense to a credit card, but not everyone can qualify for a credit card or a loan. Lack of credit should not prevent someone from getting the proper medical or dental care. In addition, the present maximum interest rate on a retail installment contract is 18 percent and statutorily mandated consumer protections are built into a retail installment contract, whereas with credit card payment the interest rate can be much higher with fewer consumer protections. Doctors or dentists also could sell the retail installment contract to a financing company that would take over the collection process.

Many doctors and dentists are unaware that they cannot enter into retail installment contracts that allow the patient to pay out the cost of the service over time. A provider entering into a retail installment contract to help out a patient is frustrated to discover that the contract is unenforceable.

Motorcycles are included as goods under VACS art. 5069-6, but the trailers that pull or are pulled by them are motor vehicles, which are defined elsewhere. As a result, purchasers currently must enter into two separate retail installment contracts. Including motorcycle trailers in the definition of goods in VACS art. 5069-6, along with motorcycles, would allow purchasers to enter into one retail installment contract for the motorcycle and its trailer.

By changing the definition of retail installment transaction, HB 1616 would curb the problem of car dealerships attempting to escape the requirements of VACS art. 5069-7. Some dealerships claim that if they do not impose a finance charge or other charges on car purchase payments made over time, the transaction does not fall within the definition of retail installment transaction. Case law interpretations of current law should have made it clear that dealerships that allow payment over time are included within the definition of retail installment transaction and are subject to VACS art. 5069-7 requirements. HB 1616 would clarify that if a dealer allows payment over time, the transaction would be subject to art. 5069-7.

Conforming the documentary fee notice language would allow one credit contract to be used under both art. 5069-6 and 5069-7. In addition, amending the requirements for presentation of the notice (boldness, underlining, etc.) would conform these sections to other notice sections relating to consumer credit.

**OPPONENTS
SAY:**

Allowing doctors and dentists to enter into retail installment contracts might encourage this arrangement as some would be tempted to charge the 18 percent maximum interest rate, consequently burdening their patients financially. Many doctors provide a grace period on open accounts during which they do not charge interest, but under HB 1616 they would have an incentive not to do this.

Allowing a doctor to sell a retail installment contract to a collection agency could erode the patient/doctor relationship. A patient would not be able to negotiate with the doctor to allow deferral of payment until well enough to pay, and the finance company would likely not be sympathetic.

NOTES:

The committee amendment would include medical or dental services in the definition of services in VACS art. 5069-6.

SB 872 by Madla, identical to HB 1616 as amended, passed the Senate on April 12 and was reported favorably, without amendment by the House Financial Institutions Committee on April 24. SB 872 is eligible to be considered in lieu of HB 1616.