

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1965
By: Harris
Economic Development
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some of the provisions in the Finance Code currently applicable to motor vehicle installment contracts are not appropriate for contracts with commercial buyers purchasing vehicles for commercial use. Currently, the consumer-oriented provisions in Chapter 348 (Motor Vehicle Installment Sales) prevent commercial buyers from contracting for services pertaining to commercial uses that would not be relevant to a consumer purchase.

C.S.S.B. 1965 excepts retail installment contracts for commercial vehicles from certain Finance Code provisions relating to motor vehicle installment contracts.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission is modified in SECTION 4 (Section 348.0015, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 307.051(f), Finance Code, to provide that collateral protection insurance does not include insurance coverage that is insurance on a commercial vehicle securing a retail installment contract under Chapter 348 (Motor Vehicle Installment Sales). Makes a nonsubstantive change.

SECTION 2. Amends Section 341.502(a), Finance Code, to require a contract for a loan under Chapter 342 (Consumer Loans), a retail installment transaction under Chapter 348 other than a contract for a commercial vehicle, or a home equity loan regulated by the Office of Consumer Credit Commissioner to be written in plain language designed to be easily understood by the average consumer and printed in an easily readable font and type size.

SECTION 3. Amends Section 348.001, Finance Code, to define "commercial vehicle."

SECTION 4. Amends Subchapter A, Chapter 348, Finance Code, by adding Section 348.0015, as follows:

Sec. 348.0015. PRESUMPTION REGARDING NONCOMMERCIAL VEHICLES; EXCEPTION. (a) Provides that a motor vehicle that is not described by Section 348.001 (1-a) (A), (B), or (C) (Definitions) or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Authorizes a retail seller or holder to whom the representation is made, if a retailer buyer represents in writing that a motor vehicle is not for personal, family, or household use, or the vehicle is for commercial use, notwithstanding Subsection (a), to rely on that representation unless the retailer, seller, or holder, as applicable, has actual knowledge that the representation is not true.

SECTION 5. Amends Subchapter A, Chapter 348, Finance Code, by adding Section 348.0051, as follows:

Sec. 348.0051. CONTRACTS FOR COMMERCIAL VEHICLES; ADDITIONAL CHARGES PERMITTED. (a) Authorizes certain amounts, notwithstanding Sections

348.004 (Cash Price) and 348.005 (Itemized Charge), and in addition to the amounts allowed under those sections, to be included as an itemized charge or in the cash price in a retail installment contract for a commercial vehicle.

(b) Requires that the contract and any agreement to waive an amount described by Subsection (a)(4) (relating to an amount paid to the retail seller or other person as consideration for the agreement of the holder of the retail installment contract to waive certain amounts), if a charge under Subsection (a)(4) is included in the contract, disclose that the waiver is optional.

(c) Provides that, notwithstanding any other law, the amount described by Subsection (a)(4) is not a charge for insurance, and the sale, provision, or the waiving of a balance owed or other action relating to a waiver of all or part of the amount owed under a retail installment contract for a commercial vehicle is not considered insurance or engaging in the business of insurance.

SECTION 6. Amends Sections 348.006(c) and (d), Finance Code, as follows:

(c) Provides that for a documentary fee to be included in the principal balance of a retail installment contract, the documentary fee is prohibited from exceeding an amount, rather than a reasonable amount, agreed to in writing by the retail seller and retail buyer for a commercial vehicle retail installment contract, rather than a heavy commercial vehicle retail installment contract, and that the buyer's order and the retail installment contract, except for a buyer's order or a retail installment contract for a commercial vehicle, is required to include a certain notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material. Makes nonsubstantive changes.

(d) Requires the retail seller, except for a retail installment contract for a commercial vehicle, 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, to furnish to the retail buyer a written statement containing the notice set out in Subsection (c)(3)(B) (relating to certain formatting of the buyer's order and the retail installment contract) in the language primarily used in the oral sales presentation. Makes a nonsubstantive change.

SECTION 7. Amends Section 348.007, Finance Code, by amending Subsection (a) and adding Subsection (a-2), as follows:

(a) Provides that, except as otherwise provided by this section, each retail installment transaction is subject to this chapter. Makes a nonsubstantive change.

(a-2) Provides that a retail installment transaction in which a retail buyer purchases a commercial vehicle is only subject to the following provisions of this chapter: Subchapter A (General Provisions), unless expressly stated otherwise; Subchapter B (Retail Installment Contract), except Sections 348.102 (Contents of Contract) and 348.123 (Refinancing of Large Installment); Subchapter C (Insurance), except Sections 348.204(b) (relating to requiring the holder to deliver or mail to the retail buyer a certain written statement), 348.206 (Insurance May be Furnished by Buyer), 348.209 (Requirements for Including Insurance Cost in Contract), and 348.210 (Delivery of Insurance Document to Buyer); Subchapter D (Acquisition of Contract or Balance); Subchapter E (Holder's Rights, Duties, and Limitations), except Section 348.407 (Retention or Disposition of Nonattached Personal Property); and Subchapter F (Licensing; Administration of Chapter), except Sections 348.504(a)(2) (relating to the requirement of the commissioner to approve the application and issue to the applicant a license under this chapter if the commissioner finds that the forms and contracts to be used by the applicant are appropriate and adequate to protect the interests of retail buyers), 348.514 (Examination; Access to Records), 348.516 (Payment of Examination Costs and Administration Expenses), and 348.517 (License Holder's Records).

SECTION 8. Amends Section 348.102(c), Finance Code, to delete existing text providing that a contract for a heavy commercial vehicle is not required to set out the total amount of the time price differential.

SECTION 9. Amends Section 348.109, Finance Code, to prohibit a retail installment contract from authorizing the holder to accelerate the maturity of all or a part of the amount owed under the contract unless, if the retail installment contract is for a commercial vehicle, the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or leasing agreement held by the same holder or an affiliate of the holder. Makes a nonsubstantive change.

SECTION 10. Amends Section 348.208, Finance Code, by adding Subsections (d), (e), and (f), as follows:

(d) Authorizes a retail installment contract for a commercial vehicle, in addition to a charge for insurance coverage under Subsection (a) (relating to authorizing a retail buyer and retail seller to agree in a retail installment contract to include a certain charge for insurance coverage) or (b) (relating to authorizing a retail installment contract to include a certain separate charge amount), to include a charge for insurance coverage relating to the commercial vehicle; the use of the commercial vehicle; or the retail installment contract.

(e) Authorizes insurance coverage under Subsection (d) to be provided only by an insurer authorized under the Insurance Code to engage in the business of insurance in this state or if permitted under the Insurance Code, a surplus lines insurer eligible to provide the insurance under Chapter 981 (Surplus Lines Insurance), Insurance Code.

(f) Requires a retail installment contract for a commercial vehicle to set forth the amount of each charge for insurance coverage under Subsection (d) and the type of the coverage provided for that charge.

SECTION 11. Amends Section 348.213(b), Finance Code, to require that a policy of insurance described by Subsection (a) (relating to authorizing a retail buyer and holder to agree to add to the unpaid balance of a retail installment contract premiums for insurance policies) to comply with the applicable requirements of Sections 348.201 (Property Insurance), 348.203 (Maximum Amount of Credit Life and Credit Health and Accident Coverage), and 348.208 (Charges for Other Insurance and Forms of Protection Included in Retail Installment Contract), and, except if the policy relates to a retail installment contract for a commercial vehicle, Section 348.209.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2009.