

- SUBJECT:** Requirements for motor vehicle sales transactions
- COMMITTEE:** Pensions, Investments and Financial Services — committee substitute recommended
- VOTE:** 7 ayes — Truitt, Anderson, Flynn, Hernandez, Parker, Veasey, Woolley
0 nays
2 absent — Anchia, Hopson
- WITNESSES:** For — Victor Vandergriff, Vandergriff Auto Group and Texas Automobile Dealers Association
Against — None
On — Leslie Pettijohn, Office of Consumer Credit Commissioner
- BACKGROUND:** In its 2008 interim report, the House Financial Institutions Committee examined issues related to negative equity and timely payoff of trade-in vehicles by retail sellers based on legislation filed in the 80th Legislature and complaints received by the Office of Consumer Credit Commissioner.
- Negative equity in a motor vehicle occurs when the vehicle owner owes more than the vehicle is worth. The committee found that there often is confusion about the disclosure of negative equity in the contract for a new vehicle. The committee also examined the ramifications for the lack of a specified timeframe in the payoff of a vehicle trade-in and found that, if the dealer fails to resolve the old debt, the consumer could be faced with collection activity and negative credit reporting.
- The committee recommended that all parties in the automobile financing process should benefit from accurate disclosures that properly account for the terms of the transaction and that the Legislature should address these issues by updating Finance Code, ch. 348.
- DIGEST:** CSHB 2438 would require disclosure of equity in a trade-in vehicle, establish a timeframe for a retail seller to retire the outstanding balance of

a trade-in vehicle, and amend several provisions to conform statute with existing practice.

Equity disclosure. A retail seller could not accept a trade-in vehicle for a motor vehicle sold under a retail installment contract unless the seller provided the buyer, before the buyer signed the contract, a completed disclosure form of trade-in equity. The form would have to include a space for the signature of both the seller and buyer and the printed name of the seller, be signed and dated by both parties, and contain:

- the name of the retail buyer;
- the name, address, and telephone number of the retail seller;
- the make, model, year, and vehicle identification number of the trade-in vehicle;
- the date of the retail installment transaction;
- the amount offered by the seller to the buyer for the trade-in vehicle;
- the amount the buyer owed on the trade-in vehicle as of the date of the retail installment contract;
- a statement indicating if the buyer's equity in the trade-in vehicle was positive or negative;
- the cash price of the vehicle being purchased in the transaction;
- the amount financed under the sales contract; and
- a disclosure stating roughly: "If the EQUITY amount is NEGATIVE, the value the retail seller is offering you for your trade-in motor vehicle is less than what you currently owe on your trade-in. The amount of negative equity may be further reduced by the amount of any cash down payment and manufacturer's rebate and may be included in the amount financed under your retail installment contract as an itemized charge."

The seller would be solely responsible for the content and delivery of the required disclosure form. An assignee of a sales contract could not be held responsible for a seller's failure to comply with this requirement.

Requirements for a disclosure form would not create a private right of action. The consumer credit commissioner would have the exclusive jurisdiction to enforce these provisions. The Finance Commission would adopt via rule a standard form for the disclosure of the equity in a retail buyer's trade-in vehicle.

A retail seller could include money advanced to retire an amount owed against a trade-in vehicle or a vehicle declared a total loss by the buyer's insurer in the sales contract only if it were included as an itemized charge. Penalties related to failure to perform a requirement of loan transactions would not apply, and the consumer credit commissioner would have exclusive jurisdiction to enforce this area. Failure of a retail seller to itemize the outstanding amount would not create a private right of action. A retail seller would disclose money advanced as outlined in the federal Truth in Lending standards.

Timeframe for retiring existing debt of a trade-in vehicle. A retail seller would pay the full outstanding balance of a trade-in vehicle no later than 25 days after:

- the date the sales contract was signed by the retail buyer and the buyer received delivery of the vehicle; and
- the date the retail seller received the delivery of the trade-in vehicle and the necessary and appropriate documents to transfer title from the buyer.

Other provisions. The bill would also amend certain provisions, including:

- removing the distinction between domestic and foreign vehicles in determining rate provisions;
- ensuring that each office where retail installment transactions are made was licensed;
- the confidential nature of information related to investigations; and
- document retention requirements.

NOTES:

A similar bill, HB 2590 by McCall, passed the House during the 2007 regular session, but died in the Senate Transportation and Homeland Security Committee.