

BILL ANALYSIS

C.S.H.B. 2438

By: McCall

Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

For most Texas consumers, purchasing a car is a significant event and investment of resources. Ensuring that the financing of a motor vehicle is transparent and adequately disclosed to a consumer is fundamentally good public policy.

As a result of consumer complaints and legislation considered during the 80th Legislature, Regular Session, 2007, the Texas House of Representatives' Committee on Financial Institutions was charged with studying the practices involved in the sale and financing of a motor vehicle, including the financing of negative equity and the retirement of existing debt on a trade-in vehicle. Dealers often finance the negative equity in a consumer's trade-in vehicle into the ultimate lien on a new vehicle. Experience has shown that failure to itemize negative equity has led to varying degrees of misunderstanding by Texas consumers. Some consumers did not understand what had occurred, and other consumers were under the impression that they were not obligated to pay the negative equity that was included in the purchase contract for their new vehicle.

A second key issue in the financing of a motor vehicle relates to the retirement of existing debt on the trade-in vehicle. Under current state law, there is no explicit requirement for a retail seller to pay off the outstanding balance on a trade-in vehicle, and some dealers do not timely pay the outstanding liens on vehicles received in a trade deal. The previous owner may unknowingly default on a loan or miss payments by no fault of the owner. Damage to credit reports of innocent consumers is only one of the problems associated with this practice.

C.S.H.B. 2438 adds requirements relating to the retirement of existing debt on a trade-in vehicle, adds disclosure requirements, and makes several technical corrections in the area of motor vehicle financing. The bill specifies the laws retail installment transactions are subject to and provides other specifications relating to motor vehicle installment sales.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 3 and 8 of this bill.

ANALYSIS

C.S.H.B. 2438 amends the Finance Code to establish that a retail installment transaction in which a retail buyer purchases a commercial vehicle is subject only to the following:

- the general provisions relating to motor vehicle installment sales, except those provisions relating to the disclosure of trade-in equity on a motor vehicle or unless expressly stated otherwise;
- retail installment contract provisions, except those provisions relating to the contents of a contract and the refinancing of large installments;
- provisions relating to insurance when required in connection with a retail installment

contract, except those requiring a license holder to deliver or mail to the retail buyer a written statement that includes the fact that the retail installment contract includes a premium or rate or charge for the insurance sold or obtained by the holder that is not fixed or approved by the commissioner of insurance, those entitling a retail buyer to furnish insurance coverage if insurance is requested or required, those relating to the requirements for the inclusion of insurance cost in a contract, and those relating to the delivery of the insurance document to a buyer;

- provisions relating to the acquisition of a contract or balance under a contract;
- provisions relating to a license holder's rights, duties, and limitations, except those provisions authorizing a retail seller to include money advanced in the retail installment contract if it is included as an itemized charge and those providing for the retention or disposition of nonattached personal property acquired in the repossession of a motor vehicle;
- provisions relating to licensing requirements for individuals engaged in motor vehicle installment sales, except those relating to the appropriateness and adequacy of forms and contracts used by the applicant for protection of the interests of retail buyers, those relating to examination and access to a license holder's records, those relating to general investigations for suspected violations of motor vehicle retail installment sales, those relating to the payment of examination costs and administration expenses, and those relating to the maintenance of a license holder's records of each retail installment transaction.

The bill establishes that this provision takes effect only if H.B. 4361 or S.B. 1965, proposed by the 81st Legislature, Regular Session, 2009, relating to the regulation of retail installment contracts for commercial vehicles, is passed and becomes law.

C.S.H.B. 2438 prohibits a retail seller from accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment contract unless the retail seller provides to the retail buyer, before the buyer signs the contract, a completed disclosure of trade-in equity form prescribed under the bill's provisions. The bill requires the Finance Commission of Texas to adopt by rule a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle as soon as practicable after the bill's effective date and exempts a retail seller from having to comply with provisions relating to the form until the finance commission prescribes the form. The bill requires the form adopted by the finance commission to contain, at a minimum, 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 motor vehicle; the date of the retail installment contract; the amount offered by the retail seller to the retail buyer for the trade-in motor vehicle; the amount the retail buyer owes on the trade-in motor vehicle as of the date of the retail installment transaction; a statement indicating whether the retail buyer's equity in the trade-in motor vehicle is positive or negative; a disclosure advising the retail buyer that if the equity amount is negative, the value the retail seller is offering for the trade-in motor vehicle is less than what the buyer currently owes on the trade-in and that 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 the retail installment contract as an itemized charge; the cash price of the vehicle being purchased under the retail installment transaction; and the amount financed under the retail installment contract. The bill requires the form adopted by the finance commission to include a space for the signatures of both the retail seller and retail buyer and the printed name of the retail seller and to be signed and dated by the retail seller and retail buyer. The bill makes the retail seller solely responsible for the content and delivery of the required disclosure form. The bill prohibits an assignee of a retail installment contract from being held responsible for a retail seller's failure to comply with the requirements described above. The bill establishes that these provisions relating to the disclosure form do not create a private right of action and that the consumer credit commissioner has exclusive jurisdiction to enforce those provisions. The bill authorizes the finance commission to adopt rules to modify the standard disclosure form to conform to the provisions of, address any official commentary or other interpretation by a federal agency relating to, or address a judicial interpretation by a state or

federal court relating to the Truth in Lending Act or a regulation issued under authority of that act.

C.S.H.B. 2438 increases from 15 to 16 the minimum number of days of a month that may be considered a full month for the purpose of computing the time price differential for motor vehicle retail installment contracts with equal monthly successive payments. The bill authorizes a retail seller of motor vehicles to include money advanced to retire an amount owed against a motor vehicle used as a trade-in or that has been declared a total loss by an insurer in the retail installment contract only if it is included as an itemized charge. The bill establishes that provisions relating to liability for failing to perform a requirement or committing a prohibited act do not apply to a retail seller including advanced money as an itemized charge in a retail installment contract. The bill establishes that such provisions do not create a private right of action and that the consumer credit commissioner has exclusive jurisdiction to enforce those provisions. The bill authorizes a retail seller to disclose advanced money under the circumstances described above in any manner permitted under the federal Truth in Lending Act.

C.S.H.B. 2438 requires a retail seller of motor vehicles to pay in full the outstanding balance of a vehicle traded in not later than the 25th day after the date that the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle and the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

C.S.H.B. 2438 requires a person who is required to hold a license for motor vehicle installment sales to ensure that each office at which retail installment transactions are made, serviced, held, or collected is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with provisions relating to motor vehicle installment sales and rules implementing those provisions. The bill redefines "holder" as a retail seller or the assignee or transferee of a retail installment contract.

C.S.H.B. 2438 authorizes the consumer credit commissioner or the commissioner's representative to administer oaths and examine any person under oath on any subject pertinent to a matter about which the commissioner is authorized or required to consider, investigate, or secure information involving motor vehicle installment sales during an investigation, as well as during an examination. The bill clarifies that all information relating to the examination or investigation process is confidential and that this information includes information obtained from the license holder, the examination report, instructions and attachments, and correspondence between the license holder and the commissioner or the commissioner's representative relating to an examination or investigation of the license holder.

C.S.H.B. 2438 extends the time period a license holder is required to keep the records of each retail installment transaction from the third anniversary of the date the last payment was made on the retail installment transaction to the fourth anniversary of the date of the retail installment transaction, if that anniversary date is later than the second anniversary of the date on which the final entry is made in the record.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2438 adds a provision not in the original specifying the established laws to which a retail installment transaction is subject and establishes that the provision takes effect only if H.B. 4361 or S.B. 1965 is passed and becomes law.

C.S.H.B. 2438 adds provisions not in the original requiring the Finance Commission of Texas, as

soon as practicable after the bill's effective date, to adopt by rule a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle; prohibiting a retail seller from accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment contract unless the retail seller provides to the retail buyer, before the buyer signs the contract, a completed disclosure of trade-in equity form; outlining the requirements and contents of the standard equity disclosure form; providing that the retail seller is solely responsible for the content and delivery of the form; establishing that the provisions relating to the disclosure form do not create a private right of action and that the commissioner of the finance commission has exclusive jurisdiction to enforce such provisions; authorizing the finance commission to adopt rules to modify the standard form to be in accordance with the federal Truth in Lending Act or a regulation issued under authority of that act; and providing that a retail seller is not required to comply with the provisions relating to the disclosure form until the finance commission prescribes the form.

C.S.H.B. 2438 adds provisions not in the original establishing that provisions relating to liability for failing to perform a requirement or committing a prohibited act do not apply to a retail seller including advanced money as an itemized charge in a retail installment contract; that the provisions relating to the inclusion of money advanced in a retail installment contract only if it is included as an itemized charge do not create a private right of action; and that the consumer credit commissioner has exclusive jurisdiction to enforce these provisions. The substitute adds a provision not in the original authorizing a retail seller to disclose money advanced to retire an amount owed against a motor vehicle used as a trade-in or that has been declared a total loss by an insurer in the retail installment contract as an itemized charge in any manner permitted under the federal Truth in Lending Act.

C.S.H.B. 2438 differs from the original by requiring a retail seller to pay in full the outstanding balance of a vehicle traded in not later than the 25th day after the date that the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle and the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer, whereas the original requires payment in full not later than the 20th day after the date of such occurrence.

C.S.H.B. 2438 differs from the original by requiring a person who is required to hold a license for motor vehicle installment sales to ensure that each office at which retail installment transactions are made, serviced, held, or collected is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with provisions relating to motor vehicle installment sales and rules implementing such provisions, whereas the original requires a person under the same circumstances to hold a separate license for each office.

C.S.H.B. 2438 adds a provision not in the original specifying that all information relating to an examination or investigation is confidential and enumerates types of information that are included in that protection of confidentiality.