

BILL ANALYSIS

C.S.H.B. 2339
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that Texas should follow the example of other states that have authorized trade-in credit agreements to be offered in connection with motor vehicle retail installment contracts, which provide a credit to be applied toward the purchase or lease of a vehicle from the same dealer or dealer group on the trade-in of a vehicle that is damaged, but not rendered a total loss, as a result of a collision accident. The goal of C.S.H.B. 2339 is to protect Texas motor vehicle buyers against the diminished value of a vehicle as a result of damage due to a collision accident by providing for such trade-in credit agreements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2339 amends the Finance Code to authorize a retail seller of motor vehicle installment contracts to offer to sell to a retail buyer a trade-in credit agreement or similarly named agreement under which such a person agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the contract in connection with which the agreement is offered if the vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied to the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller. The bill establishes that such an agreement is a separate agreement from the retail installment contract, is not a term of the retail installment contract, and is not considered an insurance product. The bill authorizes a retail installment contract to include an amount for a trade-in credit agreement as a separate charge, establishes that such charge is an itemized charge if it is not included in the cash price of the contract, and establishes that a trade-in credit agreement is not subject to Insurance Code provisions relating to unauthorized insurance or unauthorized and independently procured insurance premium tax.

C.S.H.B. 2339 requires a retail seller, to ensure the faithful performance of a retail seller's obligations to a retail buyer under a trade-in agreement, to be insured under a contractual liability reimbursement policy approved by the commissioner of insurance and issued for the benefit of Texas residents. The bill requires a retail seller who offers to a retail buyer a trade-in credit agreement, in addition to other disclosures required by state or federal law, to give the retail buyer at the time the retail installment contract is executed a copy of the written trade-in credit agreement and written notice that the retail buyer is not required to purchase the trade-in credit

agreement as a condition for approval of the retail installment contract; is entitled to cancel the trade-in credit agreement before the 31st day after the date the retail installment contract is executed and receive a full refund; may terminate the trade-in credit agreement at any time on or after the 31st day after the date the retail installment contract is executed and receive a pro rata refund minus any applicable cancellation fee, which may not exceed \$50; and has been provided a clear and concise disclosure of the amount of the credit available during the term of the trade-in credit agreement.

C.S.H.B. 2339 caps the amount charged for a trade-in credit agreement offered in connection with a retail installment contract at five percent of the cash price of the motor vehicle that is the subject of the retail installment contract, including any attached accessories and excluding the price of services related to the sale, the price of service contracts, taxes, and fees for license, title, and registration. The bill requires a trade-in credit agreement to require the retail buyer to provide proof of insurance settlement documents in order to obtain the credit and prohibits such an agreement from requiring the retail buyer to provide any other documentation in order to obtain the credit. The bill requires a retail seller who enters a trade-in credit agreement with a retail buyer to comply with the terms of the trade-in credit agreement in connection with the purchase or lease of a subsequent motor vehicle and to provide any credit required under such an agreement at the time of the purchase or lease of the subsequent vehicle. The bill requires the benefit to be provided in connection with a trade-in credit agreement to bear a reasonable relationship to the amount charged for the trade-in credit agreement and the amount, term, and conditions of the retail installment contract.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2339 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 348.001, Finance Code, is amended by adding Subdivision (11) to read as follows:

(11) "Trade-in credit agreement" means a contractual arrangement under which a retail seller agrees to provide a specified amount as a vehicle trade-in credit for diminished value of that vehicle in the event the

vehicle is damaged, but not rendered a total loss, as a result of a collision accident, with the credit to be applied to the purchase or lease of a different vehicle from that retail seller. A trade-in agreement is a separate agreement from the retail installment contract and is not a term of the retail installment contract.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 348.001, Finance Code, is amended by adding Subdivision (11) to read as follows:

(11) "Trade-in credit agreement" means a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller. A trade-in credit agreement is a separate agreement from a retail installment contract and is not a term of the retail installment contract.

SECTION 2. Section 348.005, Finance Code, is amended to read as follows:

Sec. 348.005. ITEMIZED CHARGE. An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a full service deputy under Section 520.008, Transportation Code.

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the motor vehicle; and

(4) charges authorized for insurance, service contracts, warranties, automobile club memberships, trade-in credit agreements, or a debt cancellation agreement by Subchapter C.

SECTION 3. Subchapter B, Chapter 348, Finance Code is amended by adding Section 348.125 to read as follow:

Sec. 348.125. TRADE-IN CREDIT AGREEMENT OFFERED IN CONNECTION WITH RETAIL INSTALLMENT CONTRACT.

(a) A retail seller may, at the time a retail installment contract is executed, offer to sell to the retail buyer a trade-in credit agreement or similarly named agreement.

(b) A trade-in credit agreement is not considered an insurance product.

(c) To ensure the faithful performance of a retail seller's obligations to the retail buyer under a trade-in credit agreement, the retail seller must be insured under a contractual liability reimbursement policy approved by the commissioner of insurance, issued for the benefit of Texas residents.

(d) In addition to other disclosures required by state or federal law,

the retail seller shall give the retail buyer a copy of the written trade-in agreement and written notice at the time the retail installment contract is executed that the retail buyer:

(1) is not required to purchase the trade-in credit agreement as a condition for approval of the contract;

(2) is entitled to cancel the trade-in credit

SECTION 2. Section 348.005, Finance Code, is amended to read as follows:

Sec. 348.005. ITEMIZED CHARGE. An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a deputy as authorized by rules adopted under Section 520.0071, Transportation Code;

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the motor vehicle; and

(4) charges authorized for insurance, service contracts, warranties, automobile club memberships, trade-in credit agreements, or a debt cancellation agreement by Subchapter C.

SECTION 3. Subchapter B, Chapter 348, Finance Code, is amended by adding Section 348.125 to read as follows:

Sec. 348.125. TRADE-IN CREDIT AGREEMENTS OFFERED IN CONNECTION WITH RETAIL INSTALLMENT CONTRACTS.

(a) Same as introduced version.

(b) Same as introduced version.

(c) Substantially the same as introduced version.

(d) In addition to other disclosures required by state or federal law, if a retail seller offers to a retail buyer a trade-in credit agreement, the retail seller shall give the retail buyer at the time the retail installment contract is executed a copy of the written trade-in credit agreement and written notice that the retail buyer:

(1) is not required to purchase the trade-in credit agreement as a condition for approval of the retail installment contract;

(2) is entitled to cancel the trade-in credit

agreement and receive full refund before the 31st day after the date the contract is executed;

(3) is able to terminate the trade-in agreement at any time after the 30th day after the date the contract is executed and receive a pro-rata refund less any applicable cancellation fee which may not exceed \$50; and

(4) has been provided a clear and concise disclosure as to the amount of the credit available during the term of the trade-in credit agreement.

(e) The amount charged for a trade-in credit agreement made in connection with a retail installment contract may not exceed five percent of the cash price of the vehicle that is the subject of the retail installment contract, including any attached accessories and excluding the price of services related to the sale, the price of service contracts, taxes, and fees for license, title, and registration.

(f) A trade-in credit agreement shall require the retail buyer to provide proof of insurance settlement documents in order to obtain a credit. A trade-in credit agreement may not require the retail buyer to provide any other documentation in order to obtain a credit.

(g) If a retail seller enters a trade-in credit agreement with a retail buyer, then the retail seller must comply with the terms of the trade-in agreement in connection with the purchase or lease of a subsequent motor vehicle. A retail seller must provide any credit required under a trade-in credit agreement at the time of the purchase or lease of a subsequent motor vehicle.

(h) The benefit to be provided in connection with a trade-in credit agreement must bear a reasonable relationship to the amount charged for the agreement and the amount, term, and conditions of the retail installment contract.

SECTION 4. Sections 348.208 (b) and (c), Finance Code, are amended.

SECTION 5. This Act takes effect September 1, 2017.

agreement before the 31st day after the date the retail installment contract is executed and receive a full refund;

(3) may terminate the trade-in credit agreement at any time on or after the 31st day after the date the retail installment contract is executed and receive a pro rata refund minus any applicable cancellation fee which may not exceed \$50; and

(4) has been provided a clear and concise disclosure of the amount of the credit available during the term of the trade-in credit agreement.

(e) The amount charged for a trade-in credit agreement offered in connection with a retail installment contract may not exceed five percent of the cash price of the motor vehicle that is the subject of the retail installment contract, including any attached accessories and excluding the price of services related to the sale, the price of service contracts, taxes, and fees for license, title, and registration.

(f) Substantially the same as introduced version.

(g) Substantially the same as introduced version.

(h) Substantially the same as introduced version.

SECTION 4. Substantially the same as the introduced version.

SECTION 5. Same as introduced version.