

SUBJECT: Conditional vehicle sales contracts and contracts subject to rescission

COMMITTEE: Financial Institutions — committee substituted recommended

VOTE: 6 ayes — Solomons, Flynn, Anchia, Anderson, McCall, Orr

0 nays

1 absent — Chavez

WITNESSES: For — Ahmad Keshavarz

Against — Karen Phillips, Texas Automobile Dealers Association

On — Leslie Pettijohn, Consumer Credit Commission

BACKGROUND: A consumer may take possession of a vehicle upon signing a conditional sales agreement that the final purchase of the vehicle would be contingent on the dealer selling the contract to a financier in the secondary market.

DIGEST: CSHB 2534 would prohibit a retail installment contract from being conditioned on the subsequent sale of the contract to a holder. Any such conditional contract would be void.

A seller could rescind a contract if the seller could not assign the contract to a holder because the buyer provided materially false information in negotiating the contract. In order to rescind the contract, information provided by the buyer would have to have been materially false and:

- included on an application for credit;
- included on an odometer statement; or
- related to whether or not the manufacturer of the vehicle had been required by state law to repurchase the vehicle.

All money paid to the seller under a rescinded contract would be refunded in hand to the buyer before the parties could execute a new retail installment contract for the vehicle.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2534 would provide protections to both a borrower and a dealer when contracting for a vehicle purchase. Dishonest dealers sometimes engage in conditional sales in which they have a consumer sign a contract on the spot to purchase a vehicle even though financing has not been obtained. While the consumer believes the sales transaction has been completed and the consumer may drive the vehicle off the lot, the dealer uses the contract only as a basis to obtain financing. The dealer may surprise the consumer some time later by telling the consumer that the person must come into the dealership to sign a different contract or that the terms on the contract have changed based on the financing the dealer located, and that the consumer would have to pay more. In the worst cases, a car buyer could be told months after purchasing a vehicle that it had to be returned because the dealer could not locate financing. CSHB 2534 would prohibit this unscrupulous conditional sales tool that dealers use to corner consumers into immediate purchases.

In addition, CSHB 2534 would protect a dealer's right to rescind a contract if a consumer had provided false information causing the dealer to be unable to sell the contract to a financier. If financing were rejected on the secondary market due to misinformation, it would be appropriate for the dealer to have the right to renegotiate the contract. The "materially false" standard would prevent a dealer from using non-substantive errors on a credit application to void a contract for another reason, such as to free the vehicle for sale at a higher price to another consumer.

**OPPONENTS
SAY:**

CSHB 2534 would not provide appropriate protections to dealers against consumer fraud in a vehicle sales contract. If a consumer provided inaccurate information, it could prevent a dealer from obtaining financing for a sales contract. CSHB 2534 would leave room for argument between the dealer and consumer over what misinformation would be considered "materially false" and grounds for the rescission of a contract. The dealer is in a better position than the consumer to know what misinformation could prevent sale of a contract in the secondary market.

NOTES:

The bill as filed would not have provided dealers with the right to rescind a sales contract if the consumer had provided misinformation.