

CHAPTER 62

H.B. No. 813

AN ACT

relating to the regulation of certain consumer credit transactions; providing civil penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (f), Article 7.01, Title 79, Revised Statutes (Article 5069-7.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) "Cash Price" means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. ~~The term does not include any finance charge [stated in a retail installment contract for which the seller would have sold to the buyer and the buyer would have bought from the seller, the motor vehicle and other goods and services which are the subject matter of such contract if such sale had been a sale for cash. The cash price may include any taxes and charges for delivering, servicing, repairing, altering or improving the motor vehicle, or for installation of the motor vehicle or of goods to the motor vehicle, and charges for accessories and goods related to or used with the motor vehicle, if such charges are made to both cash and credit buyers alike and may include any of the charges described in Subsections (ii) and (iii) of Section (g) of this Article if they are not separately itemized on the contract].~~

SECTION 2. Subsection (h-1), Article 7.01, Title 79, Revised Statutes (Article 5069-7.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(h-1) In addition to the provisions of Section (h) of this article, "principal balance" includes a motor vehicle inspection fee and a documentary fee for services actually rendered to, for or on behalf of the retail buyer in preparing, handling, and processing documents relating to the motor vehicle and the closing of the transaction evidenced by the retail installment contract. If a documentary fee is charged:

- (i) it must be charged to both cash and credit buyers;
- (ii) it may not exceed \$50 [25];
- (iii) it shall be disclosed on the retail installment contract as a separate itemized charge; and
- (iv) the buyer's order and the retail installment contract shall include in reasonable proximity to the point in the buyer's order and retail installment contract where the documentary fee is disclosed the amount of the documentary fee to be charged and the

following notice in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

“A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. BUYERS MAY AVOID PAYMENT OF THE FEE TO THE SELLER BY HANDLING THE DOCUMENTS AND PERFORMING THE SERVICES RELATING TO THE CLOSING OF THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50 [25]. THIS NOTICE IS REQUIRED BY LAW.”

(v) If the language primarily used in the oral sales presentation is not the same as that in which the retail installment contract is written, the seller shall furnish to the buyer a written statement containing the notice set out in Subsection (iv) in the language primarily used in the oral sales presentation.

SECTION 3. Section (9), Article 7.06, Title 79, Revised Statutes (Article 5069–7.06, Vernon’s Texas Civil Statutes), is amended to read as follows:

(9) A buyer and seller may agree to include motor vehicle property damage or bodily injury liability insurance, mechanical breakdown insurance, *motor vehicle theft protection plans, insurance to reimburse the buyer the difference, if any, between the proceeds of the buyer’s basic collision policy on the vehicle and the amount owed on the vehicle, in the event that the vehicle has been rendered a total loss, or a warranty or service contract relating to the motor vehicle as a separate charge in a contract for the sale of a motor vehicle.* If a charge is added to a contract as provided by this section, the contract shall clearly and conspicuously disclose that fact.

SECTION 4. Article 7.09, Title 79, Revised Statutes (Article 5069–7.09, Vernon’s Texas Civil Statutes), is amended to read as follows:

Art. 7.09. APPLICATION. None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. *A seller may pay, promise to pay, or tender cash or other thing of value to the manufacturer, distributor or buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the product to the retail purchaser. A seller may advance funds to retire an amount owed against a vehicle used as a trade-in vehicle and may finance repayment of those funds in a retail installment contract.* Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to, or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to all retail installment transactions as defined in Article 7.01.

The provisions of this Chapter defining specific rates and amounts of charges requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those subjects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas, other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

SECTION 5. Article 7.11, Title 79, Revised Statutes (Article 5069–7.11, Vernon’s Texas Civil Statutes), is amended to read as follows:

Art. 7.11. REGISTRATION. (1) Each holder governed by this chapter who is not a credit union or an authorized lender under Chapter 3 of this title shall register with the Office of Consumer Credit Commissioner. Each holder shall pay an annual fee of \$25 [\$10] for each location at which credit transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year. *If a holder or seller fails to renew the holder’s or seller’s registration, the commissioner shall, not later than 30 days after the expiration of the registration, notify the holder or seller of the expiration, and of the procedures applicable to renewal. A registration renewal*

is timely if filed with the commissioner, together with the annual registration fee, not later than 30 days after receipt of notice of expiration. A holder or seller who fails to renew timely as required by this section is subject to the penalties set forth in Section (2) of this Article.

(2) The commissioner may impose a penalty not to exceed \$50 for failure to register as required by this Article. The commissioner may impose a penalty not to exceed \$250 for failure of the holder to renew the holder's existing registration and submit the appropriate fee as required by this Article. The penalties provided by this section are the sole and exclusive penalties for a violation of this Article. The fact that a holder or seller was not registered as required by this Article at the time of execution of a contract does not render invalid or unenforceable a contract otherwise valid and enforceable and does not subject an unregistered holder to liability to the state or to any person under Article 8.01 of this Subtitle or any other provision of this Subtitle or other law or at common law, other than that liability established by this subsection.

SECTION 6. Section (b), Article 8.01, Title 79, Revised Statutes (Article 5069-8.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) *Except as otherwise provided by a provision of this Subtitle, a [Any] person who violates this Subtitle [or Chapter 14 of this Title] by (i) failing to perform any duty or requirement specifically imposed on him by any provision of this Subtitle [or Chapter 14 of this Title], or by (ii) committing any act or practice prohibited by this Subtitle [or Chapter 14 of this Title], shall be liable to the obligor for a penalty calculated under one of the following procedures but not both:*

(1) *[in] an amount not to exceed three times the actual economic loss suffered by the obligor as a result of the violation, together with reasonable attorneys' fees fixed by the court; or*

(2) *an amount up to [equal to] twice the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 in a transaction in which the amount financed is \$5,000 or less, and not to exceed \$4,000 in a transaction in which the amount financed is in excess of \$5,000 and reasonable attorneys' fees fixed by the court, if the court determines that the violation was material and the finder of fact determines that the violation induced the obligor to enter into a transaction into which the obligor would not have entered into had the violation not occurred.*

SECTION 7. Subsection (3), Section (c), Article 8.01, Title 79, Revised Statutes (Article 5069-8.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(b) of this Act, such violation is corrected as to such obligor by performing the required duty or act and written notice of such violation is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty calculated under one of the following procedures but not both:

(A) *[in] an amount not to exceed the actual economic loss suffered by the obligor as a result of the violation, together with reasonable attorneys' fees fixed by the court; or*

(B) *an amount up to the [equal to the] time price differential or interest contracted for, charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court, if the court determines that the violation was material and the finder of fact determines that the violation induced the obligor to enter into a transaction into which the obligor would not have entered had the violation not occurred.*

SECTION 8. The amendments to Articles 7.11 and 8.01, Title 79, Revised Statutes (Article 5069-7.11 and Article 5069-8.01, Vernon's Texas Civil Statutes), made by this Act apply only to claims made after the effective date of this Act. An action alleging a violation of Article 7.09, Title 79, Revised Statutes, based on an advance of funds by a seller to a purchaser to retire an outstanding indebtedness on a vehicle used by the purchaser as a trade-in vehicle may not be brought after the effective date of this Act. The fee increase provided by Section 5 of this bill is effective September 1, 1993. The remainder of the bill is effective as provided by Section 9 of the bill.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on March 24, 1993: Yeas 131, Nays 1, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 813 on April 19, 1993: Yeas 137, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on April 15, 1993: Yeas 29, Nays 1.

Filed without signature April 30, 1993.

Effective April 30, 1993.