

CHAPTER 48

S.B. No. 539

AN ACT

relating to variable contract rate disclosures for motor vehicle retail installment contracts and to contracts for the retail installment sales of heavy commercial vehicles and for refunds on prepayment.

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

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

(n) "Heavy Commercial Vehicle" means any domestic or foreign truck or truck tractor that weighs 19,000 [25,000] or more pounds gross vehicular weight (GVW) or any trailer or semitrailer designed for use in combination with any truck or truck tractor weighing 19,000 [25,000] or more pounds gross vehicular weight (GVW) and that is not used primarily for personal, family, or household use.

SECTION 2. Section (6), Article 7.02, Title 79, Revised Statutes, as amended (Article 5069-7.02, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) The retail installment contract shall specifically set out the following items:

(a) The cash price as defined in Article 7.01;

(b) The amount of the buyer's down payment, if any, specifying the amounts paid in money and in goods traded in;

(c) Any itemized charges, as defined in Article 7.01. *However, if the contract provides for a variable contract rate as an alternative to the time price differential as authorized by Section (7), Article 7.03, the contract shall set out the method by which that rate is computed and the contract for heavy commercial vehicles is not required to set out the total amount of the time price differential. Notwithstanding the foregoing, the disclosure requirements of Regulation Z of the federal Truth in Lending Regulations and specifically 12 C.F.R. Sec. 226.18(f) (1986), regarding variable rate disclosures shall be applicable as provided therein.* Any charges for insurance, service contracts, or warranties permitted by Article 7.06 may be disclosed in the manner described in Article 7.06;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law or regulation or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not be given.

(e) The above items need not be stated in the sequence or order set forth and additional information may be included.

SECTION 3. Section (6), Article 7.03, Title 79, Revised Statutes, as amended (Article 5069-7.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) The holder of a [any] retail installment contract, *other than for the purchase of a heavy commercial vehicle*, may collect a delinquency charge on each installment in default for a period of more than ten days in an amount not to exceed five percent of each installment or Five Dollars, whichever is less, or, in lieu thereof, interest after maturity on each such installment not to exceed the highest lawful contract rate. *The holder of a retail installment contract for the purchase of a heavy commercial vehicle may collect a delinquency charge on each installment in default for a period of more than ten days in an amount not to exceed five percent of the installment or, in lieu of the delinquency charge, interest after maturity on the installment that does not exceed the highest lawful contract rate. In any retail installment contract, [Provided, that]* only one [such] delinquency charge under this section may be collected on any installment regardless of the period during which it remains in default. In addition, such contracts may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried employee of the seller or holder of the contract, and for court costs and disbursements, and in the event of repossession, sequestration, or other action necessary to secure possession of a motor vehicle securing

the payment of a retail installment contract, such contracts may provide for the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with such repossession or foreclosure, including costs of storing, reconditioning and reselling such motor vehicle, subject to the standards of good faith and commercial reasonableness set by the Uniform Commercial Code as adopted in Texas.

SECTION 4. Article 7.04, Title 79, Revised Statutes, as amended (Article 5069-7.04, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7.04. REFUNDS ON PREPAYMENT. (1) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay it in full at any time before maturity, and if he does so, or when the holder demands payment in full of the unpaid balance of the contract before its final installment is due, the buyer is entitled to receive a ~~[the following]~~ refund credit as provided by this article.

(2) Except as provided by Section (3) of this article, on ~~[thereon: On]~~ a contract payable in substantially equal successive monthly installments commencing one month after the date of the contract, the amount of such refund credit shall represent at least as great a proportion of the finance charge, after first deducting therefrom an acquisition cost of Twenty-five Dollars, as (i) the sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment or demand for payment in full is prior to the due date of the first installment under such contract, then as of the date after such prepayment or demand for payment in full, which is one month after the next succeeding monthly anniversary date of the date of such contract, bears to (ii) the sum of all the monthly balances under the schedule of payments in such contract. When the amount of refund credit is less than One Dollar no refund credit need be made.

(3) On a contract for the sale of a heavy commercial vehicle payable in substantially equal successive monthly installments commencing one month after the date of the contract, the amount of such refund credit shall be at least: (A) an amount that is as great a proportion of the finance charge as (i) the sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment or demand for payment in full is prior to the due date of the first installment under such contract, then as of the date after such prepayment or demand for payment in full, which is one month after the next succeeding monthly anniversary date of the date of such contract, bears to (ii) the sum of all the monthly balances under the schedule of payments in such contract; and from which resulting amount is deducted (B) an acquisition cost of Fifty Dollars. When the amount of refund credit is less than One Dollar no refund credit need be made.

(4) On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the ~~[above described]~~ method set out in Section (2) or (3) of this article, as appropriate, having due regard to the amount of each installment, to the irregularity of each installment period and to the provisions of Sections (2) and (4) of Article 7.03 hereof.

(5) If, subsequent to demand of payment in full under a contract, the buyer and holder agree to reinstate such contract, they may do so and may amend the contract pursuant to Article 7.05 hereof.

SECTION 5. Sections 1, 3, and 4 of this Act apply only to retail installment contracts signed on or after the effective date of this Act. A contract signed before the effective date of this Act is subject to law as it existed when the contract was signed and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. 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.

Ch. 48, § 7

70th LEGISLATURE—REGULAR SESSION

Passed the Senate on March 30, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on April 15, 1987, by a viva-voce vote. Passed the House, with amendment, on April 13, 1987, by a non-record vote.

Approved April 30, 1987.

Effective Sept. 1, 1987.