

**FINANCE CODE**  
**TITLE 4. REGULATION OF INTEREST, LOANS,**  
**AND FINANCED TRANSACTIONS**  
**SUBTITLE B. LOANS AND FINANCED TRANSACTIONS**  
**CHAPTER 353. COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES**

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## **SUBCHAPTER A. GENERAL PROVISIONS**

### **Section 353.001. Definitions**

In this chapter:

(1) "Commercial vehicle" means a motor vehicle that is not used primarily for personal, family, or household use. The term includes:

- (A) a motor vehicle with a gross vehicular weight of 10,001 pounds or more;
- (B) a motor vehicle that will be owned by a corporation, limited liability company, limited partnership, or other business entity formed, organized, or registered in this state, another state, or another country; and
- (C) a motor vehicle that will be part of a fleet of five or more vehicles owned by the same person.

(2) "Debt cancellation agreement" means an agreement of the holder of the retail installment contract to waive:

- (A) all or part of the difference between the amount owed under a retail installment contract and the amount paid under a physical damage insurance policy maintained by the retail buyer or its assign, in the event of a total loss or theft of the commercial vehicle;
- (B) all or part of the amount owed under the retail installment contract, in the event of the death of the retail buyer; or
- (C) one or more payments owed under the retail installment contract, in the event of the disability of the retail buyer.

(3) "Heavy commercial vehicle" means:

- (A) a commercial vehicle that has a gross vehicular weight of 19,000 pounds or more; or
- (B) a trailer or semitrailer designed for use in combination with a vehicle described by Paragraph (A).

(4) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a retail installment contract.

(5) "Motor vehicle" has the meaning assigned by Section 348.001.

(6) "Precomputed earnings method" means a method of computing the time price differential in which the time price differential is computed at the inception of the contract based on the principal balance for the full contract term, as if the principal balance under the contract will not decline over the term of the contract, and in which the retail buyer agrees to pay the total of payments that includes both the principal balance of the contract and the time price differential.

(7) "Retail buyer" means a person who purchases or agrees to purchase a commercial vehicle from a retail seller in a retail installment transaction.

(8) "Retail installment contract" means one or more instruments entered into in this state that evidence a retail installment transaction. The term includes a security agreement and a document that evidences a bailment or lease described by Section 353.003.

(9) "Retail installment transaction" means a transaction in which a retail buyer purchases a commercial vehicle from a retail seller other than principally for the purpose of resale and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments.

(10) "Retail seller" means a person in the business of selling commercial vehicles to retail buyers in retail installment transactions.

(11) "Scheduled installment earnings method" means a method of computing the time price differential by applying a daily rate to the unpaid principal balance as if each scheduled payment will be paid on the payment's scheduled installment date.

(12) "Time price differential" means the total amount added to the principal balance to determine the balance of the retail buyer's indebtedness under a retail installment contract.

(13) "True daily earnings method" means a method of computing the time price differential by applying a daily rate to the unpaid principal balance based on the actual payment date as provided by Section 353.016.

### **Section 353.002. Presumption Regarding Noncommercial Vehicles; Exception**

(a) A motor vehicle that is not described by Section 353.001(1)(A), (B), or (C) or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Notwithstanding Subsection (a), if a retail buyer represents in writing that a motor vehicle is not for personal, family, or household use, or that the vehicle is for commercial use, a retail seller or holder may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

### **Section 353.003. Bailment or Lease As Retail Installment Transaction**

(a) A bailment or lease of a commercial vehicle is a retail installment transaction if the bailee or lessee:

- (1) contracts to pay as compensation for use of the vehicle an amount that is substantially equal to or exceeds the value of the vehicle; and
- (2) on full compliance with the bailment or lease is bound to become the owner or, for no or nominal additional consideration, has the option to become the owner of the vehicle.

(b) An agreement for the lease of a commercial vehicle does not create a retail installment transaction by merely providing that the rental price is permitted or required to be adjusted under the agreement as determined by the amount realized on the sale or other disposition of the vehicle, as provided by Section 501.112, Transportation Code.

### **Section 353.004. Classification As Retail Installment Transaction Unaffected**

A transaction is not excluded as a retail installment transaction because:

- (1) the retail seller arranges to transfer the retail buyer's obligation;
- (2) the amount of any charge in the transaction is determined by reference to a chart or other information furnished by a financing institution;
- (3) a form for all or part of the retail installment contract is furnished by a financing institution; or
- (4) the credit standing of the retail buyer is evaluated by a financing institution.

### **Section 353.005. Cash Price**

(a) The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction. An advertised price does not necessarily establish a cash price.

(b) The cash price does not include any finance charge.

(c) At the retail seller's option, the cash price may include:

- (1) the price of accessories;
- (2) the price of services related to the sale;
- (3) the price of service contracts;
- (4) taxes; and
- (5) fees for license, title, and registration.

### **Section 353.006. 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 commercial vehicle;
- (4) charges authorized for insurance, service contracts, and warranties by Subchapter C; and
- (5) advances or payments authorized under Section 353.402(b) or (c) made by the retail seller to or for the benefit of the retail buyer.

### **Section 353.007. Additional Charges Permitted**

(a) In addition to the amounts allowed under Sections 353.005 and 353.006, the following amounts may be included as an itemized charge or in the cash price in a retail installment contract for a commercial vehicle:

- (1) any fees prescribed by law;
- (2) any amounts charged by a titling or registration service relating to the sale;
- (3) any other amount agreed to by the retail buyer and retail seller, including amounts payable to the retail seller or another person for the provision of goods or services relating to:
  - (A) the commercial vehicle;
  - (B) the sale or use of the commercial vehicle; or
  - (C) the retail buyer's business in which the commercial vehicle will be used; and
- (4) an amount paid to the retail seller or other person as consideration for a debt cancellation agreement.

(b) If a charge for a debt cancellation agreement is included in the contract, the contract and debt cancellation agreement must each conspicuously disclose that the debt cancellation agreement is optional.

(c) Notwithstanding any other law, a charge for a debt cancellation agreement is not a charge for insurance, and the sale, provision, or waiving of a balance owed or other action relating to a debt cancellation agreement is not considered insurance or engaging in the business of insurance.

### **Section 353.008. Principal Balance; Inclusion of Documentary Fee**

(a) The principal balance under a retail installment contract is computed by:

- (1) adding:
  - (A) the cash price of the commercial vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the sale of the commercial vehicle; and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 353.402(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers; and

(2) the documentary fee may not exceed an amount agreed to in writing by the retail seller and retail buyer.

### **Section 353.009. Applicability of Chapter**

(a) Except as provided by this section, this chapter applies to a retail installment transaction for a commercial vehicle if the retail installment contract states that this chapter applies.

(b) If a retail installment contract does not state that this chapter applies, the transaction is governed by Chapter 348, and this chapter does not apply.

(c) This chapter does not affect or apply to a loan made or the business of making loans under other law of this state and does not affect a rule of law applicable to a retail installment sale that is not a retail installment transaction.

(d) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

### **Section 353.010. Applicability of Other Statutes to Retail Installment Transaction**

(a) A loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction subject to this chapter.

(b) Except as provided by this chapter, an applicable statute, including Title 1 and Chapter 322, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

### **Section 353.011. Federal Disclosure Requirements**

If a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of federal law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

### **Section 353.012. Additional Information Allowed in Contract**

Information not required by this chapter may be included in a retail installment contract.

### **Section 353.013. Order of Items in Contract**

Items required by this chapter to be in a retail installment contract are not required to be stated in the order set forth in this chapter.

### **Section 353.014. Applicability of Insurance Premium Financing Provisions**

Chapter 651, Insurance Code, does not apply to a retail installment transaction.

### **Section 353.015. Conditional Delivery Agreement**

(a) In this section, "conditional delivery agreement" means a contract between a retail seller and prospective retail buyer under the terms of which the retail seller allows the prospective retail buyer the use and benefit of a commercial vehicle for a specified term.

(b) A retail seller and prospective retail buyer may enter into a conditional delivery agreement.

(c) A conditional delivery agreement is:

(1) an enforceable contract; and

(2) void on the execution of a retail installment contract between the parties to the conditional delivery agreement for the sale of the commercial vehicle that is the subject of the conditional delivery agreement.

(d) A conditional delivery agreement may only confer rights consistent with this section and may not confer any legal or equitable rights of ownership, including ownership of the commercial vehicle that is the subject of the conditional delivery agreement.

(e) A conditional delivery agreement may not exceed a term of 15 days.

(f) If a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement:

(1) the parties must agree on the value of the trade-in motor vehicle;

(2) the conditional delivery agreement must contain the agreed value of the trade-in motor vehicle described by Subdivision (1); and

(3) the retail seller must use reasonable care to conserve the trade-in motor vehicle while the vehicle is in the retail seller's possession.

(g) If the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the commercial vehicle that is the subject of the conditional delivery agreement, the retail seller shall, not later than the seventh day after termination of the conditional delivery agreement:

(1) deliver to the prospective retail buyer any trade-in motor vehicle that the prospective retail buyer tendered in connection with the conditional delivery agreement in the same or substantially the same condition as it was at the time of



execution of the agreement and shall return any down payment or other consideration received from the prospective retail buyer in connection with the agreement; or

(2) if the trade-in motor vehicle cannot be returned in the same or substantially the same condition as it was at the time of execution of the conditional delivery agreement, deliver to the prospective retail buyer a sum of money equal to the agreed value of the trade-in motor vehicle as described by Subsection (f) and shall return any down payment or other consideration described by Subdivision (1).

(h) Any money that a retail seller is obligated to provide a prospective retail buyer under Subsection (g) must be tendered at the same time that the trade-in motor vehicle is delivered for return to the prospective retail buyer or when the trade-in motor vehicle would have been delivered if the vehicle was damaged or could not be returned.

(i) If a prospective retail buyer returns a commercial vehicle under a conditional delivery agreement at the request of the retail seller, the retail seller, notwithstanding the period prescribed by Subsection (g), must return the trade-in vehicle at the same time that the commercial vehicle under the conditional delivery agreement is returned by the prospective retail buyer.

(j) The prospective retail buyer shall return the commercial vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the execution of the conditional delivery agreement.

(k) An amount paid or required to be paid by the retail seller under Subsection (g) is subject to review by the commissioner. If the commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount under Subsection (g), the commissioner may order the retail seller to pay the amount to the prospective retail buyer. If the trade-in motor vehicle is not returned by the retail seller in accordance with this section and the retail seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in motor vehicle within the period prescribed by this section, the commissioner may assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in motor vehicle. The commissioner shall provide notice to the retail seller and the prospective retail buyer of the commissioner's determination under this subsection.

(l) Not later than the 30th day after the date the parties receive notice of the commissioner's determination under Subsection (k), the retail seller or prospective retail buyer may file with the commissioner an appeal of the commissioner's determination requesting a time and place for a hearing before a hearings officer designated by the commissioner. A hearing under this subsection is governed by Chapter 2001, Government Code. After the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner shall enter a final order.

(m) A person who files an appeal under Subsection (l) is required to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the commissioner, unless the person cannot afford to pay the deposit and files an affidavit to that effect with the hearings officer in the form and content prescribed by finance commission rule. The entire deposit must be refunded to the person if the person prevails

at the hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable.

(n) Notice of the commissioner's final order under Subsection (l), given to the person in accordance with Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

(o) The hearings officer may order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the commissioner in connection with obtaining a final order under Subsection (l), including attorney's fees, investigative costs, and witness fees.

(p) This section does not:

(1) apply to a bailment agreement under Section 353.003; or

(2) create a private right of action.

(q) Except as otherwise provided by this section, the commissioner has exclusive jurisdiction to enforce this section.

### **Section 353.016. Computation of Time Price Differential Using True Daily Earnings Method**

Under the true daily earnings method, the earned time price differential is computed by multiplying the daily rate of the time price differential by the number of days the actual unpaid principal balance is outstanding. Under this method:

(1) a payment is credited at the time received, with a payment received before the scheduled installment date resulting in a greater reduction in the unpaid principal balance than otherwise scheduled, and a payment received after the scheduled installment date resulting in less of a reduction in the unpaid principal balance than otherwise scheduled;

(2) a partial payment is applied first to time price differential with any remainder applied to the unpaid principal balance; and

(3) accrued but unpaid time price differential is not:

(A) added to the unpaid principal balance; or

(B) compounded.

## **SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT**

### **Section 353.101. Retail Installment Contract General Requirements**

(a) A retail installment contract is required for each retail installment transaction in which the retail buyer is purchasing a commercial vehicle. A retail installment contract may be more than one document.

(b) A retail installment contract must be:

(1) in writing;

- (2) dated;
- (3) signed by the retail buyer and retail seller; and
- (4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).

(c) The printed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

(d) If the commercial vehicle is not delivered when the retail installment contract is executed, the following information may be inserted after the contract is executed:

- (1) the identifying numbers or marks of the vehicle or similar information; and
- (2) the due date of the first installment.

### **Section 353.102. Contract Conditioned on Subsequent Assignment Prohibited**

(a) A retail installment contract may not be conditioned on the subsequent assignment of the contract to a holder.

(b) A provision in violation of this section is void. This subsection does not affect the validity of other provisions of the contract that may be given effect without the voided provision, and to that extent those provisions are severable.

(c) This section does not create a private right of action.

(d) The commissioner has exclusive jurisdiction to enforce this section.

### **Section 353.103. Time Price Differential for Retail Installment Contract**

(a) A retail installment contract may provide for:

- (1) any amount of time price differential permitted under Section 353.104, 353.105, or 353.106; or
- (2) any rate of time price differential not exceeding a yield permitted under Section 353.104, 353.105, or 353.106.

(b) The time price differential may be computed using the:

- (1) precomputed earnings method;
- (2) scheduled installment earnings method; or
- (3) true daily earnings method.

### **Section 353.104. Time Price Differential for Contract with Equal Monthly Successive Payments**

(a) A retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract may provide for a time price differential that does not exceed the add-on charge provided by this section.

(b) The add-on charge is \$ 7.50 per \$ 100 per year on the principal balance for a new commercial vehicle, other than a heavy commercial vehicle, designated by the manufacturer by a model year that is not earlier than the year in which the sale is made.

(c) The add-on charge is \$ 10 per \$ 100 per year on the principal balance for:

(1) a new commercial vehicle not covered by Subsection (b);

(2) a used commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made; or

(3) a new or used heavy commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made.

(d) The add-on charge is \$ 12.50 per \$ 100 per year on the principal balance for a used commercial vehicle not covered by Subsection (c) that is a commercial vehicle designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made.

(e) For a used commercial vehicle not covered by Subsection (c) or (d), the add-on charge is:

(1) \$ 15 per \$ 100 per year on the principal balance; or

(2) \$ 18 per \$ 100 per year on the principal balance if the principal balance under the retail installment contract does not exceed \$ 300.

(f) The time price differential is computed on the original principal balance under the retail installment contract from the date of the contract until the maturity of the final installment, notwithstanding that the balance is payable in installments.

(g) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than \$ 100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(h) For the purpose of a computation under this section, 16 or more days of a month may be considered a full month.

### **Section 353.105. Use of Optional Ceiling**

As an alternative to the maximum rate or amount authorized for a time price differential under Section 353.104 or 353.106, a retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

### **Section 353.106. Time Price Differential for Other Contracts**

A retail installment contract that is payable other than in substantially equal successive monthly installments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective

return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

### **Section 353.107. Charge for Default in Payment of Installment**

(a) A retail installment contract may provide that if an installment remains unpaid after the 10th day after the maturity of the installment for a heavy commercial vehicle or after the 15th day after the maturity of the installment for any other commercial vehicle the holder may collect:

- (1) a delinquency charge that does not exceed five percent of the amount of the installment; or
- (2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate authorized for the contract.

(b) A retail installment contract that provides for the true daily earnings method or the scheduled installment earnings method may provide for the delinquency charge authorized by Subsection (a)(1), the interest authorized by Subsection (a)(2), or both.

(c) Only one delinquency charge under Subsection (a)(1) may be collected on an installment under this section regardless of the duration of the default.

### **Section 353.108. Charges for Collecting Debt**

A retail installment contract may provide for the payment of:

- (1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;
- (2) court costs and disbursements; and
- (3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the commercial vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

### **Section 353.109. Acceleration of Debt Maturity**

A retail installment contract may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

- (1) the retail buyer is in default in the performance of any of the buyer's obligations;
- (2) the holder believes in good faith that the prospect of the buyer's payment or performance is impaired; or

(3) the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or leasing agreement held by the same holder or an affiliate of the holder.

**Section 353.110. Delivery of Copy of Contract**

A retail seller shall:

- (1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or
- (2) mail to the retail buyer at the address shown on the retail installment contract a copy of the retail installment contract as accepted by the retail seller.

**Section 353.111. Buyer's Right to Rescind Contract**

Until the retail seller complies with Section 353.110, a retail buyer who has not received delivery of the commercial vehicle is entitled to:

- (1) rescind the contract;
- (2) receive a refund of all payments made under or in contemplation of the contract; and
- (3) receive the return of all goods traded in to the retail seller under or in contemplation of the contract or, if those goods cannot be returned, to receive the value of those goods.

**Section 353.112. Buyer's Acknowledgment of Delivery of Contract Copy**

(a) Any retail buyer's acknowledgment of delivery of a copy of the retail installment contract must:

- (1) be in at least 10-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and
- (2) appear directly above the buyer's signature.

(b) Any retail buyer's acknowledgment conforming to this section of delivery of a copy of the retail installment contract is, in an action or proceeding by or against a holder of the contract who was without knowledge to the contrary when the holder purchased it, conclusive proof:

- (1) that the copy was delivered to the buyer;
- (2) that the contract did not contain a blank space that was required to have been completed under this chapter when the contract was signed by the buyer; and
- (3) of compliance with Sections 353.011, 353.101, 353.205, 353.403, 353.404, and 353.405.

### **Section 353.113. Amendment of Retail Installment Contract**

On request by a retail buyer, the holder may agree to one or more amendments to the retail installment contract to:

- (1) extend or defer the scheduled due date of all or a part of one or more installments; or
- (2) renew, restate, or reschedule the unpaid balance under the contract.

### **Section 353.114. Charges for Deferring Installment**

(a) If a retail installment contract is amended to defer all or a part of one or more installments for not longer than three months, the holder may collect from the retail buyer:

- (1) an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and
- (2) the amount of the additional cost to the holder for:
  - (A) premiums for continuing in force any insurance coverages provided for by the contract; and
  - (B) any additional necessary official fees.

(b) The minimum charge under Subsection (a)(1) is \$ 1.

### **Section 353.115. Charge for Other Amendment**

(a) If the unpaid balance of a retail installment contract is extended, renewed, restated, or rescheduled under this subchapter and Section 353.114 does not apply, the holder may collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the time price differential for a retail installment contract that is applicable after reclassifying the commercial vehicle by its model year at the time of the amendment.

(b) The principal balance of the amended contract is computed by:

- (1) adding:
  - (A) the unpaid balance as of the date of amendment;
  - (B) the cost of any insurance incidental to the amendment;
  - (C) the amount of each additional necessary official fee; and
  - (D) the amount of each accrued delinquency or collection charge; and
- (2) if the time price differential was computed using the precomputed earnings method or the scheduled installment earnings method, subtracting from the total computed under Subdivision (1) an amount equal to the prepayment refund credit required by Section 353.120 or 353.121, as applicable.

(c) Subsection (b)(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(d) The provisions of this chapter relating to acquisition costs under the refund schedule under Section 353.120 do not apply in computing the principal balance of the amended contract.

#### **Section 353.116. Confirmation of Amendment**

An amendment to a retail installment contract must be confirmed in a writing signed by the retail buyer. The holder shall:

- (1) deliver a copy of the confirmation to the buyer; or
- (2) mail a copy of the confirmation to the buyer at the buyer's most recent address shown on the records of the holder.

#### **Section 353.117. Contract After Amendment**

After amendment the retail installment contract is the original contract and each amendment to the original contract.

#### **Section 353.118. Prepayment of Contract**

A retail buyer may prepay a retail installment contract in full at any time before maturity. This section prevails over a conflicting provision of the contract.

#### **Section 353.119. Refund Credit on Prepayment**

(a) This section does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) If a retail buyer prepays a retail installment contract in full or if the holder of the contract demands payment of the unpaid balance of the contract in full before the contract's final installment is due and the time price differential is computed using the precomputed earnings method or the scheduled installment earnings method, the buyer is entitled to receive a refund credit as provided by Section 353.120 or 353.121, as applicable.

#### **Section 353.120. Amount of Refund Credit for Monthly Installment Contract**

(a) This section:

- (1) applies only to a refund credit on the prepayment of a retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract; and
- (2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method or the scheduled installment earnings method.

(b) On a contract for a commercial vehicle other than a heavy commercial vehicle the minimum amount of the refund credit is computed by:



- (1) subtracting an acquisition cost of \$ 25 from the original time price differential; and
  - (2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).
- (c) On a contract for a heavy commercial vehicle the minimum amount of the refund credit is computed by:
- (1) multiplying the amount of the original time price differential by the percentage of refund computed under Subsection (d); and
  - (2) subtracting an acquisition cost of \$ 150 from the amount computed under Subdivision (1).
- (d) The percentage of refund is computed by:
- (1) computing the sum of all of the monthly balances under the contract's schedule of payments; and
  - (2) dividing the amount computed under Subdivision (1) into the sum of the unpaid monthly balances under the contract's schedule of payments beginning:
    - (A) on the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or
    - (B) if the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the next monthly anniversary date of the contract occurring after the prepayment or demand.
- (e) A refund credit is not required if the amount of the refund credit is less than \$ 1.

**Section 353.121. Refund on Contracts Using Scheduled Installment Earnings Method**

- (a) This section:
- (1) applies to a retail installment contract:
    - (A) that includes precomputed time price differential; and
    - (B) to which Section 353.120 does not apply; and
  - (2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.
- (b) If a retail installment contract is prepaid in full or if the holder demands payment in full of the unpaid balance before final maturity of the contract, the holder earns time price differential for the period beginning on the date of the contract and ending on the date of the earlier of the prepayment or demand, in an amount that does not exceed the amount allowed by this section.
- (c) If prepayment in full or demand for payment in full occurs during an installment period, the holder may retain, in addition to time price differential that accrued during any elapsed installment periods, an amount computed by:

- (1) multiplying the simple annual rate under the contract by the unpaid principal balance of the contract determined according to the schedule of payments to be outstanding on the preceding installment due date;
  - (2) dividing 365 into the product computed under Subdivision (1); and
  - (3) multiplying the number of days in the period, beginning on the day after the installment due date and ending on the date of the earlier of the prepayment or demand, by the result obtained under Subdivision (2).
- (d) In addition to the earned time price differential computed under this section, the holder may also earn a \$ 150 acquisition fee for a heavy commercial vehicle, or a \$ 25 acquisition fee for other commercial vehicles, if the sum of the earned time price differential and the acquisition fee does not exceed the time price differential disclosed in the contract.
- (e) The holder shall refund or credit, as applicable, to the retail buyer the amount computed by subtracting the total amount earned or retained under Subsections (b), (c), and (d) from the total amount of time price differential contracted for and precomputed in the contract.

### **Section 353.122. Reinstatement of Contract After Demand for Payment**

After a demand for payment in full under a retail installment contract, the retail buyer and holder of the contract may:

- (1) agree to reinstate the contract; and
- (2) amend the contract as provided by Section 353.113.

## **SUBCHAPTER C. INSURANCE**

### **Section 353.201. Property Insurance**

- (a) A holder may require a retail buyer to insure the commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest.
- (b) The holder may offer to provide insurance on a commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest, regardless of whether the holder requires a retail buyer to insure the commercial vehicle.
- (c) The insurance required by the holder, and the premiums or charges for any insurance that is provided by the holder, must bear a reasonable relationship to:
- (1) the amount, term, and conditions of the retail installment contract; and
  - (2) the existing hazards or risk of loss, damage, or destruction.
- (d) Any insurance under this section may not:
- (1) cover unusual or exceptional risks; or

- (2) provide coverage not ordinarily included in policies issued to the public or for commercial purposes.
- (e) The holder may include the cost of the insurance as a separate charge in the contract.

**Section 353.202. Credit Life and Credit Health and Accident Insurance**

- (a) A holder may require a retail buyer to provide credit life insurance and credit health and accident insurance.
- (b) The holder may offer to provide credit life insurance and credit health and accident insurance, regardless of whether the holder requires a retail buyer to provide the insurance under Subsection (a).
- (c) A retail seller may offer involuntary unemployment insurance to the buyer at the time the contract is negotiated or executed.
- (d) A holder may include the cost of insurance provided under this section, and a policy or agent fee charged in connection with insurance provided under Subsection (b) or (c), as a separate charge in the contract.

**Section 353.203. Maximum Amount of Credit Life and Credit Health and Accident Coverage**

- (a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract may not exceed:
  - (1) the total amount repayable under the contract; and
  - (2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.
- (b) At any time the total amount of the policies of credit health and accident insurance in force on one retail buyer on one retail installment contract may not exceed the total amount payable under the contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

**Section 353.204. Insurance Statement**

- (a) If insurance is required in connection with a retail installment contract, the holder shall give to the retail buyer a written statement that clearly and conspicuously states that:
  - (1) insurance is required in connection with the contract; and
  - (2) the buyer as an option may furnish the required insurance through:
    - (A) an existing policy of insurance owned or controlled by the buyer; or
    - (B) an insurance policy obtained through an insurance company authorized to do business in this state.
- (b) A statement under Subsection (a) may be provided with or as part of the retail installment contract or separately.

**Section 353.205. Statement If Liability Insurance Not Included in Contract**

If liability insurance coverage for bodily injury and property damage caused to others is not included in a retail installment contract, the retail installment contract or a separate writing must contain, in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included.

**Section 353.206. Buyer's Failure to Provide Evidence of Insurance**

(a) If a retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract, the holder may:

- (1) obtain substitute insurance coverage that is substantially equal to or more limited than the coverage required; and
- (2) add the amount of the premium advanced for the substitute insurance to the unpaid balance of the contract.

(b) Substitute insurance coverage under Subsection (a)(1):

- (1) may at the holder's option be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and
- (2) must be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown on the records of the holder specific written notice that the holder has obtained substitute insurance.

**Section 353.207. Charges for Other Insurance and Forms of Protection Included in Retail Installment Contract**

(a) A retail installment contract may include as a separate charge an amount for insurance coverage that is:

- (1) for a risk of loss or liability reasonably related to:
  - (A) the commercial vehicle;
  - (B) the use of the commercial vehicle; or
  - (C) goods or services that:
    - (i) are related to the commercial vehicle; and
    - (ii) may ordinarily be insured with a commercial vehicle;
- (2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

- (3) ordinarily available in policies or endorsements offered to the public or for commercial purposes.
- (b) A retail installment contract may include as a separate charge an amount for:
- (1) motor vehicle property damage or bodily injury liability insurance;
  - (2) mechanical breakdown insurance;
  - (3) participation in a motor vehicle theft protection plan;
  - (4) insurance to pay all or part of the amount computed by subtracting the proceeds of the retail buyer's basic collision policy on the commercial vehicle from the amount owed on the vehicle in the event of a total loss or theft of the vehicle;
  - (5) a warranty or service contract relating to the commercial vehicle;
  - (6) an identity recovery service contract; or
  - (7) a debt cancellation agreement.
- (b-1) In this section, "identity recovery service contract" means an agreement:
- (1) to provide identity recovery, as defined by Section 1304.003, Occupations Code;
  - (2) that is entered into for a separately stated consideration and for a specified term; and
  - (3) that is financed through a retail installment contract.
- (c) Notwithstanding any other law, service contracts and debt cancellation agreements sold by a retail seller of a commercial vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.
- (d) In addition to the charges for insurance coverage permitted under Subsection (a) or (b), a retail installment contract may include a charge for insurance coverage relating to:
- (1) the commercial vehicle;
  - (2) the use of the commercial vehicle; or
  - (3) the retail installment contract.
- (e) Insurance coverage under Subsection (d) may be provided only by:
- (1) an insurer authorized under the Insurance Code to engage in the business of insurance in this state; or
  - (2) if permitted under the Insurance Code, a surplus lines insurer eligible to provide the insurance under Chapter 981, Insurance Code.
- (f) A retail installment contract must set forth the amount of each charge for insurance coverage under Subsection (d) and the type of the coverage provided for that charge.

**Section 353.208. Holder's Duty If Insurance Is Adjusted or Terminated**

- (a) If insurance for which a charge is included in or added to a retail installment contract is canceled, adjusted, or terminated, the holder shall, at the holder's option:

- (1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or
  - (2) credit the refund to the final maturing installments of the retail installment contract.
- (b) If the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract, the holder shall refund to the retail buyer the difference between those amounts.
- (c) A cash refund is not required under this section if the amount of the refund is less than \$ 1.

**Section 353.209. Gain or Advantage from Insurance Not Additional Charge**

Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract except as specifically provided by this chapter.

**Section 353.210. Adding to Retail Installment Contract Premiums for Insurance Acquired After Transaction**

- (a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies obtained after the date of the retail installment transaction for coverages of the types allowed under Sections 353.201, 353.202, and 353.207, including premiums for the renewal of a policy included in the contract.
- (b) A policy of insurance described by Subsection (a) must comply with the requirements of Sections 353.201, 353.202, 353.203, and 353.207, as applicable.

**Section 353.211. Effect of Adding Premium to Contract**

If a premium is added to the unpaid balance of a retail installment contract under Section 353.206 or 353.210, the rate applicable to the time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance, or the contract may be rescheduled in accordance with Sections 353.114 and 353.115, without reclassifying the commercial vehicle by its year model at the time of the amendment.

**Section 353.212. Financing Entity May Not Require Insurance from Particular Source**

If a retail installment contract presented to a financing entity for acceptance includes any insurance coverage, the financing entity may not directly or indirectly require, as a condition of its agreement to finance the commercial vehicle, that the retail buyer purchase the insurance coverage from a particular source.

**SUBCHAPTER D.  
ACQUISITION OF CONTRACT OR BALANCE**

**Section 353.301. Authority to Acquire**

A person may acquire a retail installment contract or an outstanding balance under a contract from another person on the terms, including the price, to which they agree. Notwithstanding any other law of this state, a person acquiring or assigning a retail installment contract, or any balance under a contract, does not have a duty to disclose to any other person the terms on which a contract or balance under a contract is acquired or assigned, including the consideration for the acquisition or assignment and any discount or difference between the rates, charges, or balance under the contract and the consideration rates, charges, or balance acquired or assigned, as applicable.

**Section 353.302. Lack of Notice Does Not Affect Validity As to Certain Creditors**

Notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the commercial vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

**Section 353.303. Payment by Buyer**

Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or an outstanding balance under the contract, a payment by the buyer to the most recent holder known to the buyer is binding on all subsequent holders.

**SUBCHAPTER E.  
HOLDER'S RIGHTS, DUTIES, AND LIMITATIONS**

**Section 353.401. Seller's Promise to Pay or Tender of Cash to Buyer As Part of Transaction**

A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

**Section 353.402. Seller's Action for Incentive Program or to Pay for Buyer's Motor Vehicle**

(a) A retail seller may pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail 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 vehicle to the buyer.

(b) A retail seller, in connection with a retail installment transaction, may:

- (1) advance money to retire:

(A) an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared a total loss by the buyer's insurer; or

(B) the retail buyer's outstanding obligation under a motor vehicle lease contract, a credit transaction for the purchase of a motor vehicle, or another retail installment transaction; and

(2) finance repayment of that money in a retail installment contract.

(c) A retail seller may pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of a commercial vehicle. In this subsection, "net cash value" means the cash value of a motor vehicle after payment of all amounts secured by the motor vehicle.

### **Section 353.403. Statement of Payments and Amount Due Under Contract**

(a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement during a six-month period without charge. The charge for each additional requested statement may not exceed \$ 1.

### **Section 353.404. Receipt for Cash Payment**

A holder of a retail installment contract shall give the retail buyer a written receipt for each cash payment.

### **Section 353.405. Outstanding Balance Information; Payment in Full**

(a) The holder of a retail installment contract who gives the retail buyer or the buyer's designee outstanding balance information relating to the contract is bound by that information and shall honor that information for a reasonable time.

(b) If the retail buyer or the buyer's designee tenders to the holder as payment in full an amount derived from that outstanding balance information, the holder shall:

(1) accept the amount as payment in full; and

(2) release the holder's lien against the commercial vehicle within a reasonable time not later than the 10th day after the date on which the amount is tendered.

(c) A retail seller must pay in full the outstanding balance of a vehicle traded in to the retail seller as part of the retail installment transaction not later than the 25th day after the date that:

(1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the commercial vehicle; and

(2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.



### **Section 353.406. Liability Relating to Outstanding Balance Information**

A holder who violates Section 353.405 is liable to the retail buyer or the buyer's designee in an amount computed by adding:

- (1) three times the difference between the amount tendered and the amount sought by the holder at the time of tender;
- (2) interest;
- (3) reasonable attorney's fees; and
- (4) costs.

### **Section 353.407. Prohibition on Power of Attorney to Confess Judgment or Assignment of Wages**

A retail installment contract may not contain:

- (1) a power of attorney to confess judgment in this state; or
- (2) an assignment of wages.

### **Section 353.408. Prohibition on Certain Acts of Repossession**

A retail installment contract may not:

- (1) authorize the holder or a person acting on the holder's behalf to:
  - (A) enter the retail buyer's premises in violation of Chapter 9, Business & Commerce Code; or
  - (B) commit a breach of the peace in the repossession of the commercial vehicle; or
- (2) contain, or provide for the execution of, a power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

### **Section 353.409. Buyer's Waiver**

(a) A retail installment contract may not:

- (1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:
  - (A) the collection of payments under the contract; or
  - (B) the repossession of the commercial vehicle; or
- (2) provide that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale.

(b) An act or agreement of the retail buyer before or at the time of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

### **Section 353.410. Transfer of Equity**

(a) With the written consent of the holder, a retail buyer may transfer at any time the buyer's equity in the commercial vehicle subject to the retail installment contract to another person.

(b) The holder may charge for the transfer of equity an amount that does not exceed:

- (1) \$ 25 for a commercial vehicle that is not a heavy commercial vehicle; or
- (2) \$ 50 for a heavy commercial vehicle.

## **SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER**

### **Section 353.501. License Required**

(a) A person may not act as a holder under this chapter unless the person:

- (1) is an authorized lender or a credit union; or
- (2) holds a license issued under Chapter 348 or this chapter.

(b) A person who is required to hold a license under this chapter must ensure that each office at which retail installment transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) A person may not use any device, subterfuge, or pretense to evade the application of this section.

### **Section 353.502. Application Requirements**

(a) The application for a license under this chapter must:

- (1) be under oath;
- (2) identify the applicant's principal parties in interest; and
- (3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

- (1) an investigation fee not to exceed \$ 200; and
- (2) for the license's year of issuance, a license fee in an amount determined as provided by Section 14.107.

### **Section 353.503. Investigation of Application**

On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

#### **Section 353.504. Approval or Denial of Application**

(a) The commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

- (1) command the confidence of the public; and
- (2) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

#### **Section 353.505. Disposition of Fees on Denial of Application**

If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

#### **Section 353.506. Annual License Fee**

Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

#### **Section 353.507. Expiration of License on Failure to Pay Annual Fee**

If the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

- (1) that day; or
- (2) December 31 of the last year for which an annual fee was paid.

#### **Section 353.508. License Suspension or Revocation**

After notice and a hearing the commissioner may suspend or revoke a license if the commissioner finds that:

- (1) the license holder failed to pay the annual license fee, an investigation fee, or another charge imposed by the commissioner;

- (2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or
- (3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

**Section 353.509. Reinstatement of Suspended License; Issuance of New License After Revocation**

The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

**Section 353.510. Surrender of License**

A license holder may surrender a license issued under this chapter by delivering to the commissioner:

- (1) the license; and
- (2) a written notice of the license's surrender.

**Section 353.511. Effect of License Suspension, Revocation, or Surrender**

- (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.
- (b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

**Section 353.512. Transfer or Assignment of License**

A license may be transferred or assigned only with the approval of the commissioner.

**Section 353.513. Adoption of Rules**

- (a) The finance commission may adopt rules to enforce this chapter.
- (b) The commissioner shall recommend proposed rules to the finance commission.

**Section 353.514. General Investigation**

To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

**Section 353.515. Sharing of Information**

To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Motor Vehicles may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.