

## BILL ANALYSIS

Senate Research Center

H.B. 2931  
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Business & Commerce  
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Committee Report (Amended)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2931 amends current law relating to certain debt cancellation agreements made in connection with retail installment contracts.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 348.124(a), Finance Code, to authorize a retail seller, in connection with a retail installment transaction under this chapter, to offer to the retail buyer a debt cancellation agreement, including a guaranteed asset protection waiver or similarly named agreement.

SECTION 2. Amends Chapter 348, Finance Code, by adding Subchapter G, as follows:

#### SUBCHAPTER G. CERTAIN DEBT CANCELLATION AGREEMENTS

Sec. 348.601. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) Provides that this subchapter applies only to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder.

(b) Requires that the amount charged for a debt cancellation agreement made in connection with a retail installment contract be created in good faith and be commercially reasonable. Provides that Section 348.124(c) (relating to the amount charged for debt cancellation) does not apply to a debt cancellation agreement regulated under this subchapter.

(c) Prohibits the consumer credit commissioner (commissioner), notwithstanding any other provision of this code, from directly or indirectly setting rates for a debt cancellation agreement to which this subchapter applies.

(d) Provides that the debt cancellation agreement becomes a part of or a separate addendum to the retail installment contract and remains a term of the retail installment contract on the assignment, sale, or transfer by the holder.

Sec. 348.602. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE.

(a) Requires a debt cancellation agreement, in addition to the provisions required by Section 348.603, to fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the retail installment contract;

- (2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the motor vehicle;
- (3) any act of gross negligence by an authorized driver that directly results in the total loss of the motor vehicle;
- (4) conversion, embezzlement, or concealment by any person in lawful possession of the motor vehicle;
- (5) lawful confiscation by an authorized public official;
- (6) the operation, use, or maintenance of the motor vehicle in any race or speed contest;
- (7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;
- (8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;
- (9) use of the motor vehicle for primarily commercial purposes;
- (10) damage that occurs after the motor vehicle has been repossessed;
- (11) damage to the motor vehicle before the purchase of the debt cancellation agreement;
- (12) unpaid insurance premiums and salvage, towing, and storage charges relating to the motor vehicle;
- (13) damage related to any personal property attached to or within the motor vehicle;
- (14) damages associated with falsification of documents by any person not associated with the retail seller or other person canceling the retail buyer's obligation;
- (15) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;
- (16) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;
- (17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and
- (18) any loss occurring outside the United States or outside the United States and Canada.

(b) Authorizes an exclusion of loss or damage not listed in Subsection (a) to be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Sec. 348.603. **REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE.**  
Requires a debt cancellation agreement to state:

- (1) the contact information of the retail seller, the holder, and any administrator of the agreement;
- (2) the name and address of the retail buyer;
- (3) the cost and term of the debt cancellation agreement;
- (4) the procedure the retail buyer must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the retail buyer may provide notice under the debt cancellation agreement;
- (5) the period during which the retail buyer is required to notify the retail seller, the holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the motor vehicle;
- (6) that in order to make a claim, the retail buyer must provide or complete some or all of the following documents and provide those documents to the retail seller, the holder, or any administrator of the agreement:
  - (A) a debt cancellation request form;
  - (B) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;
  - (C) verification of the retail buyer's primary insurance deductible;
  - (D) a copy of any police report filed in connection with the total loss or theft of the motor vehicle; and
  - (E) a copy of the damage estimate;
- (7) that documentation not described by Subdivision (6) or required by the retail seller, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;
- (8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the retail seller, the holder, or any administrator of the agreement may inspect the retail buyer's motor vehicle;
- (9) that the retail seller or holder will cancel all or part of the retail buyer's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the motor vehicle;
- (10) the method to be used to calculate refunds;
- (11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a motor vehicle;
- (12) that purchase of a debt cancellation agreement is not required for the retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;
- (13) that in order to cancel the debt cancellation agreement and receive a refund, the retail buyer must provide a written request to cancel to the retail seller, the holder, or any administrator of the agreement;
- (14) that if total loss or theft of the motor vehicle has not occurred, the retail buyer has 30 days from the date of the retail installment contract or the issuance

of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund; and

(15) that the retail buyer may file a complaint with the commissioner, and include the address, phone number, and Internet website of the commissioner.

Sec. 348.604. APPROVAL OF FORMS FOR DEBT CANCELLATION AGREEMENTS. (a) Requires that debt cancellation agreement forms be submitted to the commissioner for approval. Authorizes debt cancellation agreement forms to include additional language to supplement the terms of the debt cancellation agreement as required by this subchapter.

(b) Provides that if a debt cancellation agreement form is provided to the commissioner for approval, the commissioner has 45 days to approve the form or deny approval of the form. Provides that if after the 45th day the commissioner does not deny the form, the form is considered approved.

(c) Provides that if the debt cancellation agreement form is approved by the commissioner or considered approved as provided by Subsection (b), the terms of the debt cancellation agreement are considered to be in compliance with this subchapter.

(d) Authorizes the commissioner to deny approval of a form only if the form excludes the language required by Sections 348.602 and 348.603 or contains any inconsistent or misleading provisions. Authorizes all form denials to be appealed to the Finance Commission of Texas (commission).

(e) Provides that debt cancellation agreement forms that have been approved by the commissioner or considered approved as provided by Subsection (b) are required to be posted on the commissioner's Internet website and are not confidential under Chapter 552 (Public Information), Government Code, or other law.

Sec. 348.605. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) Requires the retail seller, if a retail buyer purchases a debt cancellation agreement, to provide to the retail buyer a true and correct copy of the agreement not later than the 10th day after the date of the retail installment contract.

(b) Requires a holder to comply with the terms of a debt cancellation agreement not later than the 60th day after the date of receipt of all necessary information required by the holder or administrator of the agreement to process the request.

(c) Prohibits a debt cancellation agreement from knowingly being offered by a retail seller if:

(1) the retail installment contract is already protected by gap insurance; or

(2) the purchase of the debt cancellation agreement is required for the retail buyer to obtain the extension of credit.

(d) Provides that this section does not apply to a debt cancellation agreement offered in connection with the purchase of a commercial vehicle.

(e) Requires the sale of a debt cancellation agreement to be for a single payment.

(f) Requires a holder that offers a debt cancellation agreement to report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Requires that money received or held by a holder or any administrator of a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement be held by the holder or administrator in a fiduciary capacity.

Sec. 348.606. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a) Requires that a refund or credit of the debt cancellation agreement fee be based on the earliest date of:

(1) the prepayment of the retail installment contract in full before the original maturity date;

(2) a demand by the holder for payment in full of the unpaid balance or acceleration;

(3) a request by the retail buyer for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 348.602, except in the case of a partial loss of the covered motor vehicle.

(b) Provides that the refund or credit for the debt cancellation agreement can be rounded to the nearest whole dollar. Provides that a refund or credit is not required if the amount of the refund or credit calculated is less than \$5.

(c) Authorizes the retail buyer, if total loss or theft has not occurred, to cancel the debt cancellation agreement not later than the 30th day after the date of the retail installment contract or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. Requires the holder or any administrator of the agreement, on cancellation, to refund or credit the entire debt cancellation agreement fee. Prohibits a retail buyer from canceling the debt cancellation agreement and subsequently receiving any benefits under the agreement.

(d) Authorizes a holder to, in good faith, rely on a computation by any administrator of the agreement of the balance waived, unless the holder has knowledge that the computation is not correct. Requires the holder, if a computation by the administrator of the balance waived is not correct, to within a reasonable time of learning that the computation is incorrect make the necessary corrections or cause the corrections to be made to the retail buyer's account. Provides that this subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the debt cancellation agreement or computation.

SECTION 3. Provides that the changes in law made by this Act apply only to debt cancellation agreements subject to Subchapter G, Chapter 348, Finance Code, as added by this Act, entered into on or after September 1, 2011.

SECTION 4. Effective date: September 1, 2011.

#### **SUMMARY OF COMMITTEE CHANGES**

(1) Amends SECTION 2, by striking added Section 348.601(c), Finance Code, entirely (page 2, lines 2 through 4) and relettering subsequent subsections accordingly.

(2) Amends SECTION 2, on page 6, line 12, in added Section 348.603(14), Finance Code, by striking "and".

(3) Amends SECTION 2, on page 6, line 15, in added Section 348.603(15), Finance Code, by striking "." and substituting "; and".

(4) Amends SECTION 2, page 6, lines 15 and 16, following added Section 348.603(15), Finance Code, to insert the following:

(16) that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a motor vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

(5) Amends SECTION 2, page 7, lines 8 through 12, by striking added Section 348.604(e), Finance Code, entirely and substituting the following:

(e) If after approval of a form the Office of Consumer Credit Commissioner discovers that approval could have been denied under Subsection (d), the commissioner may order a retail seller, any administrator of the debt cancellation agreement, or a holder to submit a corrected form for approval. Beginning as soon as reasonably practicable after approval of the corrected form, the retail seller, administrator, or holder shall use the corrected form for all sales.

(f) A debt cancellation agreement form that has been approved by the commissioner is public information subject to disclosure under Chapter 552, Government Code. Section 552.110, Government Code, does not apply to a form approved under this subchapter.

(6) Amends SECTION 2, page 8, between lines 15 and 16, following added Section 348.605(g), Finance Code, to add the following:

(h) A retail seller that negotiates a debt cancellation agreement and subsequently assigns the contract shall:

(1) maintain documents relating to the agreement that come into the retail seller's possession; and

(2) on request of the Office of Consumer Credit Commissioner, cooperate in requesting and obtaining access to documents relating to the agreement not in the retail seller's possession.