

BILL ANALYSIS

Senate Research Center

H.B. 2459
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Pursuant to Chapter 348 (Motor Vehicle Installment Sales), Finance Code, debt cancellation agreements, or guaranteed auto protection (GAP) waivers, may be sold and financed in connection with motor vehicle retail installment contracts. GAP waivers protect consumers by eliminating an unpaid loan balance in the event that the covered vehicle is stolen or damaged beyond repair and are often triggered due to the fact that a vehicle's value begins to depreciate as soon as it is purchased. GAP waivers are not an insurance product, but rather they are two-party bank transactions.

Current law stipulates that GAP waivers must be created in good faith and be commercially reasonable. The statute does not provide a definition for "commercially reasonable," however, and this ambiguity has created confusion and uncertainty for the banks and other businesses involved with the transactions. In addition, banks fear that the statutory ambiguity leaves them vulnerable to actions by the Consumer Financial Protection Bureau or other lawsuits.

H.B. 2459 seeks to provide certainty, clarity, and protection from legal action to those businesses that provide GAP waivers through motor vehicle retail installment contracts. Specifically, H.B. 2459 removes the "commercially reasonable" standard and stipulates that the amount charged for a GAP waiver may not exceed five percent of the amount financed pursuant to the retail installment contract.

H.B. 2459 amends current law relating to the limitation on the amount that may be charged for certain debt cancellation agreements.

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 348.601(b), Finance Code, to prohibit the amount charged for a debt cancellation agreement made in connection with a retail installment contract from exceeding five percent of the amount financed pursuant to the retail installment contract, rather than requiring 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.

SECTION 2. Effective date: September 1, 2013.