

## **BILL ANALYSIS**

Senate Research Center  
85R5228 EES-F

S.B. 1052  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 82nd Texas Legislature, Regular Session, 2011, passed legislation relating to debt cancellation agreements made in connection with retail installment contracts for motor vehicles. A debt cancellation agreement is a non-insurance product that motor vehicle consumers may purchase to cover the difference between a vehicle's value and the amount owed to a lender in the event of theft or total loss.

That legislation balanced consumer protections with a predictable regulatory framework. It was passed as the result of negotiations and compromises between the debt cancellation industry and the Office of Consumer Credit Commissioner (OCCC).

S.B. 1052 expands debt cancellation agreements to be available to be sold on goods such as boats, RVs, and motorcycles, as well as other items financed in Texas. The legislation also repeals the cumbersome form approval process conducted by the OCCC. S.B. 1052 moves the language added in 2011 out of Chapter 348, Finance Code, and creates a new chapter for those terms to apply to other items financed. It also makes conforming changes to allow for these new goods to be subject to debt cancellation agreements.

As proposed, S.B. 1052 amends current law relating to debt cancellation agreements offered in connection with certain loans and retail installment contracts and to amounts charged for certain agreements offered in connection with certain loans and 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 Sections 342.4021(a) and (e), Finance Code, as follows:

(a) Includes a debt cancellation agreement (DCA) under Chapter 354, which is redesignated from Subchapter G, Chapter 348, by this Act, as one of certain agreements a lender is authorized to offer to the borrower in connection with a loan made under this chapter (Consumer Loans) that is subject to Section 342.201(d) (relating to a loan contract not secured by real property) and 342.301(c) (relating to a secondary mortgage loan). Makes nonsubstantive changes.

(e) Prohibits the amount charged for a product authorized by Subsection (a) or (b) from exceeding five percent of the amount financed pursuant to the loan made under this chapter. Deletes existing text requiring the amount charged for a product authorized by Subsection (a) or (b) to be reasonable.

SECTION 2. Amends Subchapter H, Chapter 345, Finance Code, by adding Section 345.358, as follows:

Sec. 345.358. DEBT CANCELLATION AGREEMENT. Authorizes a DCA under Chapter 354 to be offered in connection with a retail installment contract or retail charge agreement.

SECTION 3. Amends Section 348.124(a), Finance Code, to authorize a retail seller, in connection with a retail installment transaction under this chapter (Motor Vehicle Installment Sales), to offer to the retail buyer a DCA under Chapter 354, including a guaranteed asset protection waiver or similarly named agreement.

SECTION 4. Redesignates Subchapter G, Chapter 348, Finance Code, as Chapter 354, Finance Code, and amends it, as follows:

#### CHAPTER 354. CERTAIN DEBT CANCELLATION AGREEMENTS

Sec. 354.001. DEFINITIONS. Defines “contract,” “covered item,” “loan,” and “motor vehicle.”

Sec. 354.002. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.601 as Section 354.002. (a) Provides that this chapter, rather than this subchapter (Certain Debt Cancellation Agreements), applies only to a DCA that includes insurance coverage as part of the borrower’s or retail buyer’s responsibility to the lender or holder.

(b) Prohibits the amount charged for a DCA made in connection with a loan or contract, rather than in connection with a retail installment contract, from exceeding five percent of the amount financed pursuant to the loan or contract, rather than pursuant to the retail installment contract. Deletes existing text providing that Section 348.124(c) (relating to the amount charged for a DCA in connection with a retail installment contract) does not apply to a DCA regulated under this subchapter.

(c) Makes conforming changes.

Sec. 354.003. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE. Redesignates existing Section 348.602 as Section 354.003. (a) Sets forth certain provisions permitting the exclusion of loss or damage which a DCA is required to fully disclose, in addition to the provisions required by Section 354.004, rather than required by Section 348.603.

(b) Makes no changes to this subsection.

Sec. 354.004. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. Redesignates existing Section 348.603 as Section 354.004. Sets forth certain language that a DCA is required to state.

Deletes existing text of Section 348.604 (Approval of Forms for Debt Cancellation Agreements).

Sec. 354.005. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.605 as Section 354.005. (a) Requires the lender or retail seller, if a borrower or retail buyer purchases a DCA, to provide the borrower or retail buyer a true and correct copy of the DCA not later than the 10th day after the date of the loan or contract, rather than not later than the 10th day after the date of the retail installment contract.

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

(c) Makes conforming changes.

- (d) Makes no changes to this subsection.
- (e) Makes no changes to this subsection.
- (f) Makes a conforming change.
- (g) Makes conforming changes.
- (h) Requires a lender or retail seller that negotiates a DCA and subsequently assigns the loan or contract to maintain documents relating to the agreement that come into the lender's or retail seller's possession. Makes a conforming change.

Sec. 354.006. REFUND FOR DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.606 as Section 354.006. (a) Requires a refund or credit of the DCA fee to be based on the earliest date of:

- (1) the prepayment of the loan or contract, rather than the prepayment of the retail installment contract, in full before the original maturity date;
- (2) a demand by the lender or holder for payment in full of the unpaid balance or acceleration;
- (3) a request by the borrower or retail buyer for cancellation of the DCA; or
- (4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 354.003, rather than listed in Section 348.602, except in the case of a partial loss of the covered item, rather than except in the case of a partial loss of the covered motor vehicle.

- (b) Makes no changes to this subsection.
- (c) Requires the lender or holder, or any administrator of the agreement, on cancellation, to refund or credit the entire DCA fee. Makes conforming and nonsubstantive changes.
- (d) Requires the lender or 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 borrower's or retail buyer's account. Makes conforming changes.

SECTION 5. Repealer: Section 348.124(c) (relating to the amount charged for a DCA in connection with a retail installment contract), Finance Code.

SECTION 6. Effective date: September 1, 2017.