

## **BILL ANALYSIS**

Senate Research Center

S.B. 1429  
By: Averitt  
Business & Commerce  
6-3-2003  
Enrolled

### **DIGEST AND PURPOSE**

Currently, nationally chartered banks offer debt cancellation and suspension contracts, which are considered a part of the loan itself, not insurance. These contracts allow a lender to either cancel the debt in the event of a death, or suspend payments in the event of a health problem, disability, or certain other events. Federal law authorizes nationally chartered banks to offer these services, and under parity rules, state commercial and savings banks have similar authority. However, Texas law does not conform with the authorization provided by preemption.

Currently, lenders also offer gap waiver contracts and service contracts to their auto loan customers. These loans are authorized for auto dealers to offer directly under Section 348.208 (Charges for Other Insurance and Forms of Protection Included in Retail Installment Contract), Finance Code. Direct lenders can offer these contracts to their customers, but cannot finance them directly. Instead, the lender makes the loan for an increased amount and the borrower then has the option of using the additional funds to purchase the gap waiver or a service contract.

S.B. 1429 authorizes debt cancellation, debt suspension, and gap waivers to be offered in regulated consumer loans. S.B. 1429 also prohibits a lender from requiring the purchase of these products and requires the lender to provide a disclosure explaining that fact. This bill also provides that income on these agreements or contracts is not considered interest on the loan.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 342.308, Finance Code, by adding Subsection (d), to authorize costs that conform to Section 342.4021(a) to be added to the loan contract.

SECTION 2. Amends Subchapter I, Chapter 342, Finance Code, by adding Section 342.4021, as follows:

Sec. 342.4021. AGREEMENTS REGARDING DEBT SUSPENSION, DEBT CANCELLATION, AND GAP WAIVER. (a) Authorizes a lender to offer to the borrower certain agreements under similar terms and conditions as such an agreement authorized to be offered by a bank or savings association, in connection with a loan made under this chapter that is subject to Sections 342.201(d) (Maximum Interest Charge) or 342.301(c) (Maximum Interest Charge), Finance Code.

(b) Authorizes a lender to offer a gap waiver agreement to the borrower at the time the loan is made, in connection with a loan made under this chapter that is subject to Sections 342.201(d) (Maximum Interest Charge), Finance Code, that is secured by a motor vehicle.

(c) Prohibits a lender from requiring a borrower to accept or provide an agreement or contract under Subsection (a) or (b).

(d) Requires the lender, in addition to other disclosures required by state or federal law and before offering an agreement or contract authorized by this section, to

provide to the borrower a notice separate from the loan documents stating that the borrower is not required to accept or provide the agreement or contract to obtain the loan.

(e) Requires the amount charged for a product authorized by Subsections (a) and (b) to be reasonable.

SECTION 3. Amends Section 342.411, Finance Code, as follows:

Section. 342.411. New heading: INSURANCE OR OTHER GAIN NOT INTEREST. Includes another agreement or contract permitted under this subchapter as a source of gain or advances. Makes a conforming change.

SECTION 4. Effective date: upon passage or September 1, 2003.