

BILL ANALYSIS

C.S.H.B. 3338

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a nationally chartered bank offers debt cancellation and suspension contracts, which are considered a part of a loan, not insurance. Since federal law authorizes a nationally chartered bank to offer these services, a state commercial and savings bank has similar authority under state parity rules.

In 2003, the legislature authorized a lender to offer a debt suspension agreement or debt cancellation agreement to a customer as it relates to consumer loans, but the law does not address allowing a lender to offer a customer similar agreements in relation to motor vehicle installment sales.

C.S.H.B. 3338 authorizes a motor vehicle dealer to offer a debt cancellation agreement to a retail buyer.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3338 amends the Finance Code to authorize a retail seller, in connection with a motor vehicle retail installment sales transaction, to offer to the retail buyer a debt cancellation agreement. The bill defines a "debt cancellation agreement" as a retail installment contract term or a contractual arrangement modifying a retail installment contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder upon the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle. The bill prohibits a retail seller from requiring a retail buyer to purchase a debt cancellation agreement in order to enter into a retail installment transaction. The bill provides that a debt cancellation agreement is not considered an insurance product and requires the amount charged for a debt cancellation agreement made in connection with a retail installment contract to be reasonable. The bill requires the retail seller, in addition to other disclosures required by state or federal law, to provide to the retail buyer a separate notice in connection with the retail installment contract stating that the retail buyer is not required to accept or provide a debt cancellation agreement in order to purchase the motor vehicle under a retail installment contract. The bill authorizes the inclusion of an amount for a debt cancellation agreement as a separate charge in a retail installment contract if the agreement is included as a term of a retail installment contract. The bill establishes that a debt cancellation agreement sold by a retail seller of a motor vehicle to a retail buyer is not subject to provisions relating to unauthorized insurance or unauthorized and independently procured insurance premium taxes.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3338 differs from the original by specifying in the definition of a "debt cancellation agreement" that the event obligating a retail seller or holder to cancel a retail buyer's obligation to repay an extension of credit is the total loss or theft of the motor vehicle that is the subject of the retail installment contract, whereas the original refers only to "a specified event." The substitute differs from the original by referring to a retail installment transaction, rather than a loan, a retail seller, rather than a lender, and a retail buyer, rather than a borrower.

C.S.H.B. 3338 differs from the original by prohibiting a debt cancellation agreement from being considered an insurance product, whereas the original provides that a debt cancellation agreement is not considered an insurance product.

C.S.H.B. 3338 adds provisions not in the original requiring the amount charged for a debt cancellation agreement to be reasonable and requiring the retail seller to provide a separate notice to the retail buyer stating that the retail buyer is not required to accept or provide a debt cancellation agreement in order to purchase the motor vehicle under a retail installment contract.

C.S.H.B. 3338 adds a provision not in the original that conditions the authorized inclusion of an amount for a debt cancellation agreement as a separate charge in a retail installment contract on whether the agreement is included as a contract term.

C.S.H.B. 3338 differs from the original by providing for an effective date of September 1, 2009, whereas the original provides for immediate effect contingent on the bill's receiving the necessary two-thirds vote in each house or a September 1, 2009, effective date.