

By: Woolley

H.B. No. 2931

Substitute the following for H.B. No. 2931:

By: Orr

C.S.H.B. No. 2931

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain debt cancellation agreements made in connection
3 with retail installment contracts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 348.124(a), Finance Code, is amended to
6 read as follows:

7 (a) In connection with a retail installment transaction
8 under this chapter, a retail seller may offer to the retail buyer a
9 debt cancellation agreement, including a guaranteed asset
10 protection waiver or similarly named agreement. The retail seller
11 may not require that the purchase of a debt cancellation agreement
12 by the retail buyer be made in order to enter into a retail
13 installment transaction.

14 SECTION 2. Chapter 348, Finance Code, is amended by adding
15 Subchapter G to read as follows:

16 SUBCHAPTER G. CERTAIN DEBT CANCELLATION AGREEMENTS

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

21 (b) The amount charged for a debt cancellation agreement
22 made in connection with a retail installment contract must be
23 created in good faith and be commercially reasonable. Section
24 348.124(c) does not apply to a debt cancellation agreement

1 regulated under this subchapter.

2 (c) Notwithstanding any other provision of this code, the
3 commissioner may not directly or indirectly set rates for a debt
4 cancellation agreement to which this subchapter applies.

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

9 Sec. 348.602. DEBT CANCELLATION AGREEMENTS EXCLUSION

10 LANGUAGE. (a) In addition to the provisions required by Section
11 348.603, a debt cancellation agreement must fully disclose all
12 provisions permitting the exclusion of loss or damage including, if
13 applicable:

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

17 (2) any dishonest, fraudulent, illegal, or
18 intentional act of any authorized driver that directly results in
19 the total loss of the motor vehicle;

20 (3) any act of gross negligence by an authorized
21 driver that directly results in the total loss of the motor vehicle;

22 (4) conversion, embezzlement, or concealment by any
23 person in lawful possession of the motor vehicle;

24 (5) lawful confiscation by an authorized public
25 official;

26 (6) the operation, use, or maintenance of the motor
27 vehicle in any race or speed contest;

- 1 (7) war, whether or not declared, invasion,
2 insurrection, rebellion, revolution, or an act of terrorism;
- 3 (8) normal wear and tear, freezing, or mechanical or
4 electrical breakdown or failure;
- 5 (9) use of the motor vehicle for primarily commercial
6 purposes;
- 7 (10) damage that occurs after the motor vehicle has
8 been repossessed;
- 9 (11) damage to the motor vehicle before the purchase
10 of the debt cancellation agreement;
- 11 (12) unpaid insurance premiums and salvage, towing,
12 and storage charges relating to the motor vehicle;
- 13 (13) damage related to any personal property attached
14 to or within the motor vehicle;
- 15 (14) damages associated with falsification of
16 documents by any person not associated with the retail seller or
17 other person canceling the retail buyer's obligation;
- 18 (15) any unpaid debt resulting from exclusions in the
19 retail buyer's primary physical damage coverage not included in the
20 debt cancellation agreement;
- 21 (16) abandonment of the motor vehicle by the retail
22 buyer only if the retail buyer voluntarily discards, leaves behind,
23 or otherwise relinquishes possession of the motor vehicle to the
24 extent that the relinquishment shows intent to forsake and desert
25 the motor vehicle so that the motor vehicle may be appropriated by
26 any other person;
- 27 (17) any amounts deducted from the primary insurance

1 carrier's settlement due to prior damages; and

2 (18) any loss occurring outside the United States or
3 outside the United States and Canada.

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

7 Sec. 348.603. REQUIRED DEBT CANCELLATION AGREEMENT
8 LANGUAGE. A debt cancellation agreement must state:

9 (1) the contact information of the retail seller, the
10 holder, and any administrator of the agreement;

11 (2) the name and address of the retail buyer;

12 (3) the cost and term of the debt cancellation
13 agreement;

14 (4) the procedure the retail buyer must follow to
15 obtain benefits under the terms of the debt cancellation agreement,
16 including a telephone number and address where the retail buyer may
17 provide notice under the debt cancellation agreement;

18 (5) the period during which the retail buyer is
19 required to notify the retail seller, the holder, or any
20 administrator of the agreement, of any potential loss under the
21 debt cancellation agreement for total loss or theft of the motor
22 vehicle;

23 (6) that in order to make a claim, the retail buyer
24 must provide or complete some or all of the following documents and
25 provide those documents to the retail seller, the holder, or any
26 administrator of the agreement:

27 (A) a debt cancellation request form;

1 (B) proof of loss and settlement payment from the
2 retail buyer's primary comprehensive, collision, or uninsured or
3 underinsured motorist policy or other parties' liability insurance
4 policy for the settlement of the insured total loss of the motor
5 vehicle;

6 (C) verification of the retail buyer's primary
7 insurance deductible;

8 (D) a copy of any police report filed in
9 connection with the total loss or theft of the motor vehicle; and

10 (E) a copy of the damage estimate;

11 (7) that documentation not described by Subdivision
12 (6) or required by the retail seller, the holder, or any
13 administrator of the agreement is not required to substantiate the
14 loss or determine the amount of debt to be canceled;

15 (8) that notwithstanding the collection of the
16 documents under Subdivision (6), on reasonable advance notice the
17 retail seller, the holder, or any administrator of the agreement
18 may inspect the retail buyer's motor vehicle;

19 (9) that the retail seller or holder will cancel all or
20 part of the retail buyer's obligation as provided in the debt
21 cancellation agreement on the occurrence of total loss or theft of
22 the motor vehicle;

23 (10) the method to be used to calculate refunds;

24 (11) the method for calculating the amount to be
25 canceled under the debt cancellation agreement on the occurrence of
26 total loss or theft of a motor vehicle;

27 (12) that purchase of a debt cancellation agreement is

1 not required for the retail buyer to obtain an extension of credit
2 and will not be a factor in the credit approval process;

3 (13) that in order to cancel the debt cancellation
4 agreement and receive a refund, the retail buyer must provide a
5 written request to cancel to the retail seller, the holder, or any
6 administrator of the agreement;

7 (14) that if total loss or theft of the motor vehicle
8 has not occurred, the retail buyer has 30 days from the date of the
9 retail installment contract or the issuance of the debt
10 cancellation agreement, whichever is later, or a longer period as
11 provided under the debt cancellation agreement, to cancel the debt
12 cancellation agreement and receive a full refund; and

13 (15) that the retail buyer may file a complaint with
14 the commissioner, and include the address, phone number, and
15 Internet website of the Office of Consumer Credit Commissioner.

16 Sec. 348.604. APPROVAL OF FORMS FOR DEBT CANCELLATION
17 AGREEMENTS. (a) Debt cancellation agreement forms must be
18 submitted to the commissioner for approval. Debt cancellation
19 agreement forms may include additional language to supplement the
20 terms of the debt cancellation agreement as required by this
21 subchapter.

22 (b) If a debt cancellation agreement form is provided to the
23 commissioner for approval, the commissioner has 45 days to approve
24 the form or deny approval of the form. If after the 45th day the
25 commissioner does not deny the form, the form is considered
26 approved.

27 (c) If the debt cancellation agreement form is approved by

1 the commissioner or considered approved as provided by Subsection
2 (b), the terms of the debt cancellation agreement are considered to
3 be in compliance with this subchapter.

4 (d) The commissioner may deny approval of a form only if the
5 form excludes the language required by Sections 348.602 and 348.603
6 or contains any inconsistent or misleading provisions. All form
7 denials may be appealed to the finance commission.

8 (e) Debt cancellation agreement forms that have been
9 approved by the commissioner or considered approved as provided by
10 Subsection (b) shall be posted on the Office of Consumer Credit
11 Commissioner's Internet website and are not confidential under
12 Chapter 552, Government Code, or other law.

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

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

22 (c) A debt cancellation agreement may not knowingly be
23 offered by a retail seller if:

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

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

1 (d) This section does not apply to a debt cancellation
2 agreement offered in connection with the purchase of a commercial
3 vehicle.

4 (e) The sale of a debt cancellation agreement must be for a
5 single payment.

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

11 (g) Money received or held by a holder or any administrator
12 of a debt cancellation agreement and belonging to an insurance
13 company, holder, or administrator under the terms of a written
14 agreement must be held by the holder or administrator in a fiduciary
15 capacity.

16 Sec. 348.606. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a)
17 A refund or credit of the debt cancellation agreement fee must be
18 based on the earliest date of:

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

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

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

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

1 (b) The refund or credit for the debt cancellation agreement
2 can be rounded to the nearest whole dollar. A refund or credit is
3 not required if the amount of the refund or credit calculated is
4 less than \$5.

5 (c) If total loss or theft has not occurred, the retail
6 buyer may cancel the debt cancellation agreement not later than the
7 30th day after the date of the retail installment contract or the
8 issuance of the debt cancellation agreement, whichever is later, or
9 a later date as provided under the debt cancellation agreement. On
10 cancellation, the holder or any administrator of the agreement
11 shall refund or credit the entire debt cancellation agreement fee.
12 A retail buyer may not cancel the debt cancellation agreement and
13 subsequently receive any benefits under the agreement.

14 (d) A holder may in good faith rely on a computation by any
15 administrator of the agreement of the balance waived, unless the
16 holder has knowledge that the computation is not correct. If a
17 computation by the administrator of the balance waived is not
18 correct, the holder must within a reasonable time of learning that
19 the computation is incorrect make the necessary corrections or
20 cause the corrections to be made to the retail buyer's account. This
21 subsection does not prevent the holder from obtaining reimbursement
22 from the administrator or another responsible for the debt
23 cancellation agreement or computation.

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

1 SECTION 4. This Act takes effect September 1, 2011.