

By: Woolley

H.B. No. 2931

A BILL TO BE ENTITLED

AN ACT

relating to debt cancellation agreements.

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

SECTION 1. Section 348.124, Finance Code, is amended to read as follows:

Sec. 348.124. DEBT CANCELLATION AGREEMENTS. (a) In connection with a retail installment transaction under this chapter, a retail seller may offer to the retail buyer a debt cancellation agreement, including but not limited to a guaranteed asset protection waiver or other similarly named agreement. The retail seller may not require that the purchase of a debt cancellation agreement by the retail buyer be made in order to enter into a retail installment transaction.

(b) A debt cancellation agreement, including a guaranteed asset protection waiver, is not considered an insurance product.

(c) The commissioner may not promulgate rates, adopt rules, or issue interpretation letters for debt cancellation agreements, including guaranteed asset protection waivers, that include insurance coverage as part of retail buyer's responsibility to holder sold in this state. [~~The amount charged for a debt cancellation agreement made in connection with a retail installment contract must be reasonable.~~]

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

1 SUBCHAPTER G. GUARANTEED ASSET PROTECTION WAIVERS

2 Sec. 348.601. DEFINITIONS.

3 (A) "Creditor" means:

4 (i) the lender in a loan or credit transaction;

5 (ii) the lessor in a lease transaction;

6 (iii) any retail seller, as defined in 348.001(8), of
7 motor vehicles that provides credit to "retail buyers," as defined
8 in 348.001(5), of such motor vehicles provided that such entities
9 comply with the provisions of this section;

10 (iv) the seller in commercial retail installment
11 transactions; or

12 (v) the assignees of any of the foregoing to whom the
13 credit obligation is payable.

14 (B) "Finance agreement" means a loan, lease or retail
15 installment sales contract for the purchase or lease of a motor
16 vehicle.

17 (C) "Free look period" means the period of time from the
18 effective date of the guaranteed asset protection waiver until the
19 date the borrower may cancel the contract without penalty, fees or
20 costs to the borrower. This period of time must not be shorter than
21 30 days.

22 (D) "Guaranteed asset protection waiver" or "GAP waiver"
23 means a contractual agreement, regardless of how the agreement is
24 titled, wherein a creditor agrees for a separate charge to cancel or
25 waive all or part of amounts due on a borrower's finance agreement
26 in the event of a total physical damage loss or unrecovered theft of
27 the motor vehicle, which agreement must be part of, or a separate

1 addendum to, the finance agreement.

2 (E) For purposes of this subchapter, "Motor vehicle" means
3 self-propelled or towed vehicles designed for personal or
4 commercial use, including but not limited to automobiles, trucks,
5 motorcycles, recreational vehicles, all-terrain vehicles,
6 snowmobiles, campers, boats, personal watercraft, and personal
7 watercraft trailers.

8 Sec. 348.6011. SCOPE OF SUBCHAPTER. This subchapter only
9 applies to debt cancellation agreements, including guaranteed
10 asset protection waivers, that include insurance coverage as part
11 of retail buyer's responsibility to holder sold in this state.

12 Sec. 348.602. REQUIREMENTS FOR OFFERING GUARANTEED ASSET
13 PROTECTION WAIVERS.

14 (A) A guaranteed asset protection waiver maybe offered,
15 sold or provided to borrowers in this state in compliance with this
16 Act.

17 (B) A guaranteed asset protection waiver may, at the option
18 of the creditor, be sold for a single payment or may be offered with
19 a monthly or periodic payment option.

20 (C) Notwithstanding any other provision of law, any cost to
21 the borrower for a guaranteed asset protection waiver entered into
22 in compliance with The Truth in Lending Act (15 USC 1601 et. seq.)
23 and its implementing regulations, as they may be amended from time
24 to time, must be separately stated and is not to be considered a
25 finance charge or interest.

26 (D) A guaranteed asset protection waiver remains a part of
27 the finance agreement upon the assignment, sale or transfer of such

1 finance agreement by the creditor.

2 (E) Neither the extension of credit, the term of credit, nor
3 the term of the related motor vehicle sale or lease may be
4 conditioned upon the purchase of a GAP waiver.

5 Sec. 348.603. DISCLOSURES FOR GUARANTEED ASSET PROTECTION
6 WAIVER.

7 (A) A guaranteed asset protection waiver must disclose, as
8 applicable, in writing and in clear, understandable language that
9 is easy to read, the following:

10 (1) The name and address of the initial creditor and
11 the borrower at the time of sale, and the identity of any
12 administrator if different from the creditor.

13 (2) The purchase price and the terms of the guaranteed
14 asset protection waiver, including without limitation, the
15 requirements for protection, conditions, or exclusions associated
16 with the Debt cancellation agreement.

17 (3) That the borrower may cancel the guaranteed asset
18 protection waiver within a free look period as specified in the
19 waiver, and will be entitled to a full refund of the purchase
20 price, so long as no benefits have been provided. In the event
21 benefits have been provided, the borrower may receive a full or
22 partial refund pursuant to the terms of the waiver.

23 (4) The procedure the borrower must follow, if any, to
24 obtain the guaranteed asset protection waiver benefits under the
25 terms and conditions of the waiver, including a telephone number
26 and address where the borrower may apply for waiver benefits.

27 (5) Whether or not the guaranteed asset protection

1 waiver is cancellable after the free look period and the conditions
2 under which it may be cancelled or terminated including the
3 procedures for requesting any refund due.

4 (6) In order to receive any refund due in the event of
5 a borrower's cancellation of the guaranteed asset protection waiver
6 or early termination of the finance agreement after the free look
7 period of the guaranteed asset protection waiver, the borrower, in
8 accordance with terms of the waiver, must provide a written request
9 to cancel to the creditor, administrator or such other party,
10 within ninety days of the occurrence of the event terminating the
11 finance agreement.

12 (7) The methodology for calculating any refund of the
13 unearned purchase price of the guaranteed asset protection waiver
14 due, in the event of cancellation of the guaranteed asset
15 protection waiver or early termination of the finance agreement.

16 (8) That neither the extension of credit, the terms of
17 the credit, nor the terms of the related motor vehicle sale or
18 lease, may be conditioned upon the purchase of the guaranteed asset
19 protection waiver.

20 Sec. 348.604. CANCELLATION OF GUARANTEED ASSET PROTECTION
21 WAIVER.

22 (A) A guaranteed asset protection waiver may be cancellable
23 or non-cancellable after a free look period. A guaranteed asset
24 protection waiver must provide that if a borrower cancels a waiver
25 within the free look period, the borrower will be entitled to a
26 full refund of the purchase price, so long as no benefits have been
27 provided; or in the event benefits have been provided, the borrower

1 may receive a full or partial refund pursuant to the terms of the
2 waiver.

3 (B) In the event of a borrower's cancellation of the
4 guaranteed asset protection waiver or early termination of the
5 finance agreement, after the agreement has been in effect beyond
6 the free look period, the borrower may be entitled to a refund of
7 any unearned portion of the purchase price of the waiver unless the
8 waiver provides otherwise. In order to receive a refund, the
9 borrower, in accordance with any applicable terms of the waiver,
10 must provide a written request to the creditor, administrator or
11 other party, within ninety days of the event terminating the
12 finance agreement.

13 (C) If the cancellation of the guaranteed asset protection
14 waiver occurs as a result of a default under the finance agreement
15 or the repossession of the motor vehicle associated with the
16 finance agreement, or any other termination of the finance
17 agreement, any refund due may be paid directly to the creditor or
18 administrator and applied as set forth in paragraph (D).

19 (D) Any cancellation refund under this section may be
20 applied by the creditor as a reduction of the amount owed under the
21 finance agreement, unless the borrower can show that the finance
22 agreement has been paid in full.

23 Sec. 348.605. ENFORCEMENT. A guaranteed asset protection
24 waivers that meets the requirements of this section is presumed
25 compliant. The Commissioner may, after proper notice and
26 opportunity for hearing:

27 (A) Order the creditor, administrator or any other person

1 not in compliance with this section to cease and desist from further
2 guaranteed asset protection waiver related operations that are in
3 violation of this section.

4 (B) Impose a penalty of not more than five hundred dollars
5 (\$500.00) per violation and no more than ten thousand dollars
6 (\$10,000) in the aggregate for all violations of similar nature.
7 For purposes of this section, violations must be of a similar nature
8 if the violation consists of the same or similar course of conduct,
9 action or practice, irrespective of the number of times the
10 section, conduct or practice which is determined to be a violation
11 of the Section occurred.

12 SECTION 3. This Act applies to all guaranteed asset
13 protection waivers entered into on and after September 1, 2011.

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