

1-1 By: Woolley (Senate Sponsor - Van de Putte) H.B. No. 2931
1-2 (In the Senate - Received from the House May 16, 2011;
1-3 May 16, 2011, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2011, reported favorably, as amended, by the
1-5 following vote: Yeas 7, Nays 0; May 20, 2011, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Van de Putte

1-7 Amend H.B. No. 2931 (house engrossed version) as follows:

1-8 (1) Strike added Section 348.601(c), Finance Code (page 2,
1-9 lines 12-14), and reletter subsequent subsections accordingly.

1-10 (2) In added Section 348.603(14), Finance Code (page 3, line
1-11 61), following the semicolon, strike "and".

1-12 (3) In added Section 348.603(15), Finance Code (page 3, line
1-13 64), strike "." and substitute "; and".

1-14 (4) Following added Section 348.603(15), Finance Code (page
1-15 3, between lines 64 and 65), insert the following:

1-16 (16) that the holder will cancel certain amounts under the
1-17 debt cancellation agreement for total loss or theft of a motor
1-18 vehicle, in the following or substantially similar language: "YOU
1-19 WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF
1-20 A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT
1-21 CANCELLATION AGREEMENT."

1-22 (5) Strike added Section 348.604(e), Finance Code (page 4,
1-23 lines 15-19), and substitute the following:

1-24 (e) If after approval of a form the Office of Consumer
1-25 Credit Commissioner discovers that approval could have been denied
1-26 under Subsection (d), the commissioner may order a retail seller,
1-27 any administrator of the debt cancellation agreement, or a holder
1-28 to submit a corrected form for approval. Beginning as soon as
1-29 reasonably practicable after approval of the corrected form, the
1-30 retail seller, administrator, or holder shall use the corrected
1-31 form for all sales.

1-32 (f) A debt cancellation agreement form that has been
1-33 approved by the commissioner is public information subject to
1-34 disclosure under Chapter 552, Government Code. Section 552.110,
1-35 Government Code, does not apply to a form approved under this
1-36 subchapter.

1-37 (6) Following added Section 348.605(g), Finance Code (page
1-38 4, between lines 49 and 50), add the following:

1-39 (h) A retail seller that negotiates a debt cancellation
1-40 agreement and subsequently assigns the contract shall:

1-41 (1) maintain documents relating to the agreement that
1-42 come into the retail seller's possession; and

1-43 (2) on request of the Office of Consumer Credit
1-44 Commissioner, cooperate in requesting and obtaining access to
1-45 documents relating to the agreement not in the retail seller's
1-46 possession.

1-47

1-48 A BILL TO BE ENTITLED
1-49 AN ACT

1-50 relating to certain debt cancellation agreements made in connection
1-51 with retail installment contracts.

1-52 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-53 SECTION 1. Section 348.124(a), Finance Code, is amended to
1-54 read as follows:

1-55 (a) In connection with a retail installment transaction
1-56 under this chapter, a retail seller may offer to the retail buyer a
1-57 debt cancellation agreement, including a guaranteed asset
1-58 protection waiver or similarly named agreement. The retail seller
1-59 may not require that the purchase of a debt cancellation agreement
1-60 by the retail buyer be made in order to enter into a retail
1-61 installment transaction.

1-62 SECTION 2. Chapter 348, Finance Code, is amended by adding

2-1 Subchapter G to read as follows:

2-2 SUBCHAPTER G. CERTAIN DEBT CANCELLATION AGREEMENTS

2-3 Sec. 348.601. LIMITATION ON CERTAIN DEBT CANCELLATION
 2-4 AGREEMENTS. (a) This subchapter applies only to a debt
 2-5 cancellation agreement that includes insurance coverage as part of
 2-6 the retail buyer's responsibility to the holder.

2-7 (b) The amount charged for a debt cancellation agreement
 2-8 made in connection with a retail installment contract must be
 2-9 created in good faith and be commercially reasonable. Section
 2-10 348.124(c) does not apply to a debt cancellation agreement
 2-11 regulated under this subchapter.

2-12 (c) Notwithstanding any other provision of this code, the
 2-13 commissioner may not directly or indirectly set rates for a debt
 2-14 cancellation agreement to which this subchapter applies.

2-15 (d) The debt cancellation agreement becomes a part of or a
 2-16 separate addendum to the retail installment contract and remains a
 2-17 term of the retail installment contract on the assignment, sale, or
 2-18 transfer by the holder.

2-19 Sec. 348.602. DEBT CANCELLATION AGREEMENTS EXCLUSION
 2-20 LANGUAGE. (a) In addition to the provisions required by Section
 2-21 348.603, a debt cancellation agreement must fully disclose all
 2-22 provisions permitting the exclusion of loss or damage including, if
 2-23 applicable:

2-24 (1) an act occurring after the original maturity date
 2-25 or date of the holder's acceleration of the retail installment
 2-26 contract;

2-27 (2) any dishonest, fraudulent, illegal, or
 2-28 intentional act of any authorized driver that directly results in
 2-29 the total loss of the motor vehicle;

2-30 (3) any act of gross negligence by an authorized
 2-31 driver that directly results in the total loss of the motor vehicle;

2-32 (4) conversion, embezzlement, or concealment by any
 2-33 person in lawful possession of the motor vehicle;

2-34 (5) lawful confiscation by an authorized public
 2-35 official;

2-36 (6) the operation, use, or maintenance of the motor
 2-37 vehicle in any race or speed contest;

2-38 (7) war, whether or not declared, invasion,
 2-39 insurrection, rebellion, revolution, or an act of terrorism;

2-40 (8) normal wear and tear, freezing, or mechanical or
 2-41 electrical breakdown or failure;

2-42 (9) use of the motor vehicle for primarily commercial
 2-43 purposes;

2-44 (10) damage that occurs after the motor vehicle has
 2-45 been repossessed;

2-46 (11) damage to the motor vehicle before the purchase
 2-47 of the debt cancellation agreement;

2-48 (12) unpaid insurance premiums and salvage, towing,
 2-49 and storage charges relating to the motor vehicle;

2-50 (13) damage related to any personal property attached
 2-51 to or within the motor vehicle;

2-52 (14) damages associated with falsification of
 2-53 documents by any person not associated with the retail seller or
 2-54 other person canceling the retail buyer's obligation;

2-55 (15) any unpaid debt resulting from exclusions in the
 2-56 retail buyer's primary physical damage coverage not included in the
 2-57 debt cancellation agreement;

2-58 (16) abandonment of the motor vehicle by the retail
 2-59 buyer only if the retail buyer voluntarily discards, leaves behind,
 2-60 or otherwise relinquishes possession of the motor vehicle to the
 2-61 extent that the relinquishment shows intent to forsake and desert
 2-62 the motor vehicle so that the motor vehicle may be appropriated by
 2-63 any other person;

2-64 (17) any amounts deducted from the primary insurance
 2-65 carrier's settlement due to prior damages; and

2-66 (18) any loss occurring outside the United States or
 2-67 outside the United States and Canada.

2-68 (b) An exclusion of loss or damage not listed in Subsection
 2-69 (a) may be included in a debt cancellation agreement only if the

3-1 exclusion is disclosed in plain, easy to read language.
3-2 Sec. 348.603. REQUIRED DEBT CANCELLATION AGREEMENT
3-3 LANGUAGE. A debt cancellation agreement must state:
3-4 (1) the contact information of the retail seller, the
3-5 holder, and any administrator of the agreement;
3-6 (2) the name and address of the retail buyer;
3-7 (3) the cost and term of the debt cancellation
3-8 agreement;
3-9 (4) the procedure the retail buyer must follow to
3-10 obtain benefits under the terms of the debt cancellation agreement,
3-11 including a telephone number and address where the retail buyer may
3-12 provide notice under the debt cancellation agreement;
3-13 (5) the period during which the retail buyer is
3-14 required to notify the retail seller, the holder, or any
3-15 administrator of the agreement, of any potential loss under the
3-16 debt cancellation agreement for total loss or theft of the motor
3-17 vehicle;
3-18 (6) that in order to make a claim, the retail buyer
3-19 must provide or complete some or all of the following documents and
3-20 provide those documents to the retail seller, the holder, or any
3-21 administrator of the agreement:
3-22 (A) a debt cancellation request form;
3-23 (B) proof of loss and settlement payment from the
3-24 retail buyer's primary comprehensive, collision, or uninsured or
3-25 underinsured motorist policy or other parties' liability insurance
3-26 policy for the settlement of the insured total loss of the motor
3-27 vehicle;
3-28 (C) verification of the retail buyer's primary
3-29 insurance deductible;
3-30 (D) a copy of any police report filed in
3-31 connection with the total loss or theft of the motor vehicle; and
3-32 (E) a copy of the damage estimate;
3-33 (7) that documentation not described by Subdivision
3-34 (6) or required by the retail seller, the holder, or any
3-35 administrator of the agreement is not required to substantiate the
3-36 loss or determine the amount of debt to be canceled;
3-37 (8) that notwithstanding the collection of the
3-38 documents under Subdivision (6), on reasonable advance notice the
3-39 retail seller, the holder, or any administrator of the agreement
3-40 may inspect the retail buyer's motor vehicle;
3-41 (9) that the retail seller or holder will cancel all or
3-42 part of the retail buyer's obligation as provided in the debt
3-43 cancellation agreement on the occurrence of total loss or theft of
3-44 the motor vehicle;
3-45 (10) the method to be used to calculate refunds;
3-46 (11) the method for calculating the amount to be
3-47 canceled under the debt cancellation agreement on the occurrence of
3-48 total loss or theft of a motor vehicle;
3-49 (12) that purchase of a debt cancellation agreement is
3-50 not required for the retail buyer to obtain an extension of credit
3-51 and will not be a factor in the credit approval process;
3-52 (13) that in order to cancel the debt cancellation
3-53 agreement and receive a refund, the retail buyer must provide a
3-54 written request to cancel to the retail seller, the holder, or any
3-55 administrator of the agreement;
3-56 (14) that if total loss or theft of the motor vehicle
3-57 has not occurred, the retail buyer has 30 days from the date of the
3-58 retail installment contract or the issuance of the debt
3-59 cancellation agreement, whichever is later, or a longer period as
3-60 provided under the debt cancellation agreement, to cancel the debt
3-61 cancellation agreement and receive a full refund; and
3-62 (15) that the retail buyer may file a complaint with
3-63 the commissioner, and include the address, phone number, and
3-64 Internet website of the Office of Consumer Credit Commissioner.
3-65 Sec. 348.604. APPROVAL OF FORMS FOR DEBT CANCELLATION
3-66 AGREEMENTS. (a) Debt cancellation agreement forms must be
3-67 submitted to the commissioner for approval. Debt cancellation
3-68 agreement forms may include additional language to supplement the
3-69 terms of the debt cancellation agreement as required by this

4-1 subchapter.

4-2 (b) If a debt cancellation agreement form is provided to the
 4-3 commissioner for approval, the commissioner has 45 days to approve
 4-4 the form or deny approval of the form. If after the 45th day the
 4-5 commissioner does not deny the form, the form is considered
 4-6 approved.

4-7 (c) If the debt cancellation agreement form is approved by
 4-8 the commissioner or considered approved as provided by Subsection
 4-9 (b), the terms of the debt cancellation agreement are considered to
 4-10 be in compliance with this subchapter.

4-11 (d) The commissioner may deny approval of a form only if the
 4-12 form excludes the language required by Sections 348.602 and 348.603
 4-13 or contains any inconsistent or misleading provisions. All form
 4-14 denials may be appealed to the finance commission.

4-15 (e) Debt cancellation agreement forms that have been
 4-16 approved by the commissioner or considered approved as provided by
 4-17 Subsection (b) shall be posted on the Office of Consumer Credit
 4-18 Commissioner's Internet website and are not confidential under
 4-19 Chapter 552, Government Code, or other law.

4-20 Sec. 348.605. ADDITIONAL REQUIREMENTS FOR DEBT
 4-21 CANCELLATION AGREEMENTS. (a) If a retail buyer purchases a debt
 4-22 cancellation agreement, the retail seller must provide to the
 4-23 retail buyer a true and correct copy of the agreement not later than
 4-24 the 10th day after the date of the retail installment contract.

4-25 (b) A holder must comply with the terms of a debt
 4-26 cancellation agreement not later than the 60th day after the date of
 4-27 receipt of all necessary information required by the holder or
 4-28 administrator of the agreement to process the request.

4-29 (c) A debt cancellation agreement may not knowingly be
 4-30 offered by a retail seller if:

4-31 (1) the retail installment contract is already
 4-32 protected by gap insurance; or

4-33 (2) the purchase of the debt cancellation agreement is
 4-34 required for the retail buyer to obtain the extension of credit.

4-35 (d) This section does not apply to a debt cancellation
 4-36 agreement offered in connection with the purchase of a commercial
 4-37 vehicle.

4-38 (e) The sale of a debt cancellation agreement must be for a
 4-39 single payment.

4-40 (f) A holder that offers a debt cancellation agreement must
 4-41 report the sale of and forward money received on all such agreements
 4-42 to any designated party as prescribed in any applicable
 4-43 administrative services agreement, contractual liability policy,
 4-44 other insurance policy, or other specified program documents.

4-45 (g) Money received or held by a holder or any administrator
 4-46 of a debt cancellation agreement and belonging to an insurance
 4-47 company, holder, or administrator under the terms of a written
 4-48 agreement must be held by the holder or administrator in a fiduciary
 4-49 capacity.

4-50 Sec. 348.606. REFUND FOR DEBT CANCELLATION AGREEMENTS.

4-51 (a) A refund or credit of the debt cancellation agreement fee must
 4-52 be based on the earliest date of:

4-53 (1) the prepayment of the retail installment contract
 4-54 in full before the original maturity date;

4-55 (2) a demand by the holder for payment in full of the
 4-56 unpaid balance or acceleration;

4-57 (3) a request by the retail buyer for cancellation of
 4-58 the debt cancellation agreement; or

4-59 (4) the total denial of a debt cancellation request
 4-60 based on one of the exclusions listed in Section 348.602, except in
 4-61 the case of a partial loss of the covered motor vehicle.

4-62 (b) The refund or credit for the debt cancellation agreement
 4-63 can be rounded to the nearest whole dollar. A refund or credit is
 4-64 not required if the amount of the refund or credit calculated is
 4-65 less than \$5.

4-66 (c) If total loss or theft has not occurred, the retail
 4-67 buyer may cancel the debt cancellation agreement not later than the
 4-68 30th day after the date of the retail installment contract or the
 4-69 issuance of the debt cancellation agreement, whichever is later, or

5-1 a later date as provided under the debt cancellation agreement. On
5-2 cancellation, the holder or any administrator of the agreement
5-3 shall refund or credit the entire debt cancellation agreement fee.
5-4 A retail buyer may not cancel the debt cancellation agreement and
5-5 subsequently receive any benefits under the agreement.

5-6 (d) A holder may in good faith rely on a computation by any
5-7 administrator of the agreement of the balance waived, unless the
5-8 holder has knowledge that the computation is not correct. If a
5-9 computation by the administrator of the balance waived is not
5-10 correct, the holder must within a reasonable time of learning that
5-11 the computation is incorrect make the necessary corrections or
5-12 cause the corrections to be made to the retail buyer's account. This
5-13 subsection does not prevent the holder from obtaining reimbursement
5-14 from the administrator or another responsible for the debt
5-15 cancellation agreement or computation.

5-16 SECTION 3. The changes in law made by this Act apply only to
5-17 debt cancellation agreements subject to Subchapter G, Chapter 348,
5-18 Finance Code, as added by this Act, entered into on or after
5-19 September 1, 2011.

5-20 SECTION 4. This Act takes effect September 1, 2011.

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