

BILL ANALYSIS

C.S.H.B. 1985
By: Flynn
Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert the benefits of allowing a motor vehicle consumer to purchase a debt cancellation agreement in connection with a motor vehicle installment sale and contend that consumers should be able to purchase such agreements in connection with other types of contracts. C.S.H.B. 1985 seeks to provide consumers additional choices within a predictable regulatory framework by revising provisions relating to such agreements and providing for debt cancellation agreements in connection with certain vehicle leases.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1985 amends the Finance Code to authorize a debt cancellation agreement for certain retail vehicle installment sales that includes insurance coverage as part of the retail buyer's responsibility to the holder, defined by the bill for purposes of provisions governing such agreements as a retail seller or the assignee or transferee of a retail installment contract, to be offered in connection with a retail installment contract for a covered vehicle to which statutory provisions governing retail installment sales apply. The bill specifies that "covered vehicle" includes a self-propelled or towed vehicle designed for personal use and replaces references to motor vehicles in provisions governing such debt cancellation agreements with references to covered vehicles. The bill clarifies that a debt cancellation agreement, guaranteed asset protection waiver, or similarly named agreement made in connection with a motor vehicle retail installment transaction requiring insurance coverage as part of the retail buyer's responsibility to the holder must be offered under provisions governing debt cancellation agreements for certain retail vehicle installment sales that include such insurance coverage.

C.S.H.B. 1985 makes a certain change to the required language for such a debt cancellation agreement relating to the documentation provided to substantiate a loss or determine the amount of debt to be canceled. The bill requires a retail seller that negotiates such a debt cancellation agreement and subsequently assigns the contract to maintain data relating to the agreement that comes into the retail seller's possession and, on the request of the Office of Consumer Credit Commissioner, to cooperate in requesting and obtaining access to data relating to the agreement not in the retail seller's possession. The bill requires a holder, not later than the 60th day after the date such a debt cancellation agreement terminates due to the early termination of the retail installment contract, to refund or credit an appropriate amount of the debt cancellation agreement

fee or cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction to the appropriate person. The bill requires the holder to maintain records of any such refund or credit and to provide electronic access to those records until the later of the fourth anniversary of the date of the contract or the second anniversary of the date of the refund or credit.

C.S.H.B. 1985 sets out provisions governing debt cancellation agreements made in connection with certain vehicle leases that apply only to such agreements that include insurance coverage as part of the lessee's responsibility to the holder, defined by the bill for purposes of provisions governing such agreements as a person who is a lessor or the assignee or transferee of a lease, and excludes from the applicability of those provisions a lease that constitutes certain bailment or lease retail installment transactions. The bill establishes that such a debt cancellation agreement is not insurance, prohibits the amount charged for such a debt cancellation agreement from exceeding five percent of the amount financed pursuant to the lease, and establishes that such a debt cancellation agreement becomes a part of or a separate addendum to the lease and remains a term of the lease on the assignment, sale, or transfer by the holder. The bill requires such a debt cancellation agreement to fully disclose all provisions permitting the exclusion of loss or damage including, if applicable, certain exclusions of loss or damage specified by the bill and authorizes an exclusion of loss or damage not specifically listed in the bill to be included in such an agreement only if the exclusion is disclosed in plain, easy to read language. The bill sets out certain information that must be stated in such a debt cancellation agreement.

C.S.H.B. 1985 requires a lessor to provide to a lessee who purchases an applicable debt cancellation agreement a true and correct copy of the agreement not later than the 10th day after the date of the lease. The bill requires a holder to comply with the terms of such a debt cancellation agreement not later than the 60th day after the date of receipt of all necessary information required by the holder or administrator of the agreement to process the request. The bill prohibits a lessor from knowingly offering such a debt cancellation agreement if the lease is already protected by gap insurance or if the purchase of the debt cancellation agreement is required for the lessee to obtain the extension of credit. The bill requires the sale of such a debt cancellation agreement to be for a single payment. The bill requires a holder that offers such a debt cancellation agreement to report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents and requires money received or held by a holder or any administrator of such a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement to be held by the holder or administrator in a fiduciary capacity. The bill requires a lessor that negotiates such a debt cancellation agreement and subsequently assigns the lease to maintain documents or data relating to the agreement that come into the lessor's possession. The bill exempts from these provisions a debt cancellation agreement offered in connection with the lease of a commercial vehicle.

C.S.H.B. 1985 sets out provisions relating to a refund or credit of fees for applicable debt cancellation agreements made in connection with certain vehicle leases. The bill authorizes the attorney general, if the attorney general reasonably believes that a person is violating or is about to violate the bill's provisions governing such debt cancellation agreements, to bring an action in the name of the state against the person to restrain or enjoin the person from violating such provisions.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1985 may differ from the original in minor or nonsubstantive ways, the

following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 342.4021(a) and (e), Finance Code, are amended to read as follows:

(a) In connection with a loan made under this chapter that is subject to Section 342.201(d) or 342.301(c), a lender may offer to the borrower:

(1) a debt suspension agreement or debt cancellation agreement under similar terms and conditions as such an agreement may be offered by a bank or savings association; or
(2) a debt cancellation agreement under Chapter 354.

(e) The amount charged for a product authorized by Subsection (a) or (b) may not exceed five percent of the amount financed pursuant to the loan made under this chapter [~~must be reasonable~~].

SECTION 2. Subchapter H, Chapter 345, Finance Code, is amended by adding Section 345.358 to read as follows:

Sec. 345.358. DEBT CANCELLATION AGREEMENT. A debt cancellation agreement under Chapter 354 may be offered in connection with a retail installment contract or retail charge agreement.

SECTION 3. Section 348.124(a), Finance Code, is amended to read as follows:

(a) In connection with a retail installment transaction under this chapter, a retail seller may offer to the retail buyer a debt cancellation agreement under Chapter 354, including a guaranteed asset protection waiver or 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

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Subchapter B, Chapter 345, Finance Code, is amended by adding Section 345.084 to read as follows:

Sec. 345.084. DEBT CANCELLATION AGREEMENT. A debt cancellation agreement under Chapter 354 may be offered in connection with a retail installment contract for a covered vehicle to which this chapter applies. For purposes of this section, "covered vehicle" has the meaning assigned by Section 354.001.

SECTION 2. Section 348.124(a), Finance Code, is amended to read as follows:

(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 a guaranteed asset protection waiver or similarly named agreement. If the retail installment transaction requires insurance coverage as part of the retail buyer's responsibility to the holder, the debt cancellation agreement, guaranteed asset protection waiver, or similarly named agreement must be offered under Chapter 354. The retail seller may not require that the purchase of a debt cancellation agreement by the retail buyer be made in

into a retail installment transaction.

SECTION 4. Subchapter G, Chapter 348, Finance Code, is redesignated as Chapter 354, Finance Code, and amended to read as follows:

CHAPTER 354 [SUBCHAPTER—G]. CERTAIN DEBT CANCELLATION AGREEMENTS

Sec. 354.001. DEFINITIONS. In this chapter:

(1) "Contract" means a retail installment contract made under Chapter 345 or 348.

(2) "Covered item" includes a motor vehicle.

(3) "Loan" means:

(A) a loan made under Chapter 342; or

(B) a loan to which Chapter 342 does not apply solely because the loan provides for a rate of interest that is 10 percent a year or less.

(4) "Motor vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

Sec. 354.002 [348.601]. LIMITATION ON CERTAIN DEBT CANCELLATION

order to enter into a retail installment transaction.

SECTION 3. Subchapter G, Chapter 348, Finance Code, is redesignated as Chapter 354, Finance Code, and amended to read as follows:

CHAPTER 354 [SUBCHAPTER—G]. [CERTAIN] DEBT CANCELLATION AGREEMENTS FOR CERTAIN RETAIL VEHICLE INSTALLMENT SALES

Sec. 354.001. DEFINITIONS. In this chapter:

(1) "Contract" means a retail installment contract made under Chapter 345 or 348.

(2) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(3) "Debt cancellation agreement" means a contract term or a contractual arrangement modifying a 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 on the occurrence of the total loss or theft of the covered vehicle that is the subject of the contract but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(4) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a contract.

(5) "Retail buyer" means a person who purchases or agrees to purchase a covered vehicle from a retail seller in a retail installment transaction.

(6) "Retail seller" means a person in the business of selling covered vehicles to retail buyers in retail installment transactions.

Sec. 354.002 [348.601]. LIMITATION ON CERTAIN DEBT CANCELLATION

AGREEMENTS. (a) This chapter [subchapter] applies only to a debt cancellation agreement that includes insurance coverage as part of the borrower's or retail buyer's responsibility to the lender or holder.

(b) The amount charged for a debt cancellation agreement made in connection with a loan or [retail installment] contract may not exceed five percent of the amount financed pursuant to the loan or [retail installment] contract. [Section 348.124(e) does not apply to a debt cancellation agreement regulated under this subchapter.]

(c) The debt cancellation agreement becomes a part of or a separate addendum to the loan or [retail installment] contract and remains a term of the loan or [retail installment] contract on the assignment, sale, or transfer by the lender or holder.

Sec. 354.003 [348.602]. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE.

(a) In addition to the provisions required by Section 354.004 [348.603], a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

- (1) an act occurring after the original maturity date or date of the lender's or holder's acceleration of the loan or [retail installment] contract;
- (2) if the covered item is a motor vehicle, any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the motor vehicle;
- (3) if the covered item is a motor vehicle, any act of gross negligence by an authorized driver that directly results in the total loss of the motor vehicle;
- (4) conversion, embezzlement, or concealment by any person in lawful possession of the covered item [motor vehicle];
- (5) lawful confiscation by an authorized public official;
- (6) if the covered item is a motor vehicle, the operation, use, or maintenance of the motor vehicle in any race or speed contest;
- (7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;
- (8) normal wear and tear, freezing, or

AGREEMENTS. (a) This chapter [subchapter] applies only to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a [retail installment] contract may not exceed five percent of the amount financed pursuant to the [retail installment] contract. Section 348.124(c) does not apply to a debt cancellation agreement regulated under this chapter [subchapter].

(c) The debt cancellation agreement becomes a part of or a separate addendum to the [retail installment] contract and remains a term of the [retail installment] contract on the assignment, sale, or transfer by the holder.

Sec. 354.003 [348.602]. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE.

(a) In addition to the provisions required by Section 354.004 [348.603], a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

- (1) an act occurring after the original maturity date or date of the holder's acceleration of the [retail installment] contract;
- (2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the covered [motor] vehicle;
- (3) any act of gross negligence by an authorized driver that directly results in the total loss of the covered [motor] vehicle;
- (4) conversion, embezzlement, or concealment by any person in lawful possession of the covered [motor] vehicle;
- (5) lawful confiscation by an authorized public official;
- (6) the operation, use, or maintenance of the covered [motor] vehicle in any race or speed contest;
- (7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;
- (8) normal wear and tear, freezing, or

mechanical or electrical breakdown or failure;

(9) use of the covered item ~~[motor vehicle]~~ for primarily commercial purposes;

(10) damage that occurs after the covered item ~~[motor vehicle]~~ has been repossessed;

(11) damage to the covered item ~~[motor vehicle]~~ before the purchase of the debt cancellation agreement;

(12) if the covered item is a motor vehicle, unpaid insurance premiums and salvage, towing, and storage charges relating to the motor vehicle;

(13) damage related to any personal property attached to or within the covered item ~~[motor vehicle]~~;

(14) damages associated with falsification of documents by any person not associated with the lender or retail seller or other person canceling the borrower's or retail buyer's obligation;

(15) any unpaid debt resulting from exclusions in the borrower's or retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered item ~~[motor vehicle]~~ by the borrower or retail buyer only if the borrower or retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered item ~~[motor vehicle]~~ to the extent that the relinquishment shows intent to forsake and desert the covered item ~~[motor vehicle]~~ so that the covered item ~~[motor vehicle]~~ may be appropriated by any other person;

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

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

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

Sec. 354.004 [348.603]. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

(1) the contact information of the lender or the retail seller and ~~[-the]~~ holder, and any administrator of the agreement;

(2) the name and address of the borrower or

mechanical or electrical breakdown or failure;

(9) use of the covered ~~[motor]~~ vehicle for primarily commercial purposes;

(10) damage that occurs after the covered ~~[motor]~~ vehicle has been repossessed;

(11) damage to the covered ~~[motor]~~ vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered ~~[motor]~~ vehicle;

(13) damage related to any personal property attached to or within the covered ~~[motor]~~ vehicle;

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

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

(16) abandonment of the covered ~~[motor]~~ vehicle by the retail buyer only if the retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered ~~[motor]~~ vehicle to the extent that the relinquishment shows intent to forsake and desert the covered ~~[motor]~~ vehicle so that the covered ~~[motor]~~ vehicle may be appropriated by any other person;

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

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

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

Sec. 354.004 [348.603]. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

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

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

retail buyer;

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

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

(5) the period during which the borrower or retail buyer is required to notify the lender or the retail seller or [~~the~~] holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the covered item [~~motor vehicle~~];

(6) if the covered item is a motor vehicle, that in order to make a claim, the borrower or retail buyer must provide or complete some or all of the following documents and provide those documents to the lender or the retail seller or [~~the~~] holder, or any administrator of the agreement:

(A) a debt cancellation request form;

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

(C) verification of the borrower's or retail buyer's primary insurance deductible;

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

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) but [~~or~~] required by the lender or the retail seller or [~~the~~] holder, or any administrator of the agreement, is [~~not~~] required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the lender or the retail seller or [~~the~~] holder, or any administrator of the agreement, may inspect the borrower's or retail buyer's covered item [~~motor vehicle~~];

(9) that the lender or the retail seller or holder will cancel all or part of the borrower's or retail buyer's obligation as

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

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

(5) the period during which the retail buyer is required to notify the retail seller, the holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the covered [~~motor~~] vehicle;

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

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the covered [~~motor~~] vehicle;

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

(D) a copy of any police report filed in connection with the total loss or theft of the covered [~~motor~~] vehicle; and

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) may be [~~or~~] required by the retail seller, the holder, or any administrator of the agreement [~~is not required~~] to substantiate the loss or determine the amount of debt to be canceled;

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

(9) that the retail seller or holder will cancel all or part of the retail buyer's obligation as provided in the debt cancellation agreement

provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered item ~~[motor vehicle]~~;

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

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a covered item ~~[motor vehicle]~~;

(12) that purchase of a debt cancellation agreement is not required for the borrower or retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the borrower or retail buyer must provide a written request to cancel to the lender or the retail seller or ~~[, the]~~ holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered item ~~[motor vehicle]~~ has not occurred, the borrower or retail buyer has 30 days from the date of the loan or ~~[retail installment]~~ contract or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund;

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

(16) that the lender or holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a covered item ~~[motor vehicle]~~, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS LOAN OR CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE COVERED ITEM ~~[VEHICLE]~~ AS STATED IN THE DEBT CANCELLATION AGREEMENT."

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

on the occurrence of total loss or theft of the covered ~~[motor]~~ vehicle;

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

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a covered ~~[motor]~~ vehicle;

(12) that purchase of a debt cancellation agreement is not required for the retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;

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

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

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

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

~~Sec. 354.005 [348.604]. APPROVAL OF FORMS FOR DEBT CANCELLATION AGREEMENTS. (a) Debt cancellation agreement forms must be submitted to the commissioner for approval. Debt cancellation agreement forms may include additional language to supplement the terms of the debt cancellation agreement as required by this subchapter.~~

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

~~[(c) If the debt cancellation agreement form is approved by the commissioner or considered approved as provided by Subsection (b), the terms of the debt cancellation agreement are considered to be in compliance with this subchapter.~~

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

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

~~[(f) A debt cancellation agreement form that has been approved by the commissioner is public information subject to disclosure under Chapter 552, Government Code. Section 552.110, Government Code, does not apply to a form approved under this subchapter.]~~

Sec. 354.005 [348.605]. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) If a borrower or retail buyer purchases a debt cancellation agreement, the lender or retail seller must provide to the borrower or retail buyer a true and correct copy of the agreement not later than the 10th day after the date of the loan or [retail installment] contract.

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

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

(c) If the debt cancellation agreement form is approved by the commissioner or considered approved as provided by Subsection (b), the terms of the debt cancellation agreement are considered to be in compliance with this chapter [subchapter].

(d) The commissioner may deny approval of a form only if the form excludes the language required by Sections 354.003 [348.602] and 354.004 [348.603] or contains any inconsistent or misleading provisions. All form denials may be appealed to the finance commission.

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

(f) A debt cancellation agreement form that has been approved by the commissioner is public information subject to disclosure under Chapter 552, Government Code. Section 552.110, Government Code, does not apply to a form approved under this chapter [subchapter].

Sec. 354.006 [348.605]. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) If a retail buyer purchases a debt cancellation agreement, the retail seller must provide to the retail buyer a true and correct copy of the agreement not later than the 10th day after the date of the [retail installment] contract.

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

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

(1) the loan or [~~retail installment~~] contract is already protected by gap insurance; or

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

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

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

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

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

(h) A lender or retail seller that negotiates a debt cancellation agreement and subsequently assigns the loan or contract shall:

(1) maintain documents relating to the agreement that come into the lender's or retail seller's possession; and

(2) on request of the Office of Consumer Credit Commissioner, cooperate in requesting and obtaining access to documents relating to the agreement not in the lender's or retail seller's possession.

Sec. 354.006 [~~348.606~~]. REFUND FOR DEBT CANCELLATION AGREEMENTS.

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

(1) the prepayment of the loan or [~~retail installment~~] contract in full before the original maturity date;

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

(3) a request by the borrower or retail buyer for cancellation of the debt cancellation

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

(1) the [~~retail installment~~] contract is already protected by gap insurance; or

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

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

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

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

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

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

(1) maintain documents or data relating to the agreement that come into the retail seller's possession; and

(2) on request of the Office of Consumer Credit Commissioner, cooperate in requesting and obtaining access to documents or data relating to the agreement not in the retail seller's possession.

Sec. 354.007 [~~348.606~~]. REFUND FOR DEBT CANCELLATION AGREEMENTS.

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

(1) the prepayment of the [~~retail installment~~] contract in full before the original maturity date;

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

(3) a request by the retail buyer for cancellation of the debt cancellation

agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 354.003 [~~348.602~~], except in the case of a partial loss of the covered item [~~motor vehicle~~].

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

(c) If total loss or theft has not occurred, the borrower or retail buyer may cancel the debt cancellation agreement not later than the 30th day after the date of the loan or [~~retail installment~~] contract or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the lender or holder, or any administrator of the agreement, shall refund or credit the entire debt cancellation agreement fee. A borrower or retail buyer may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

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

agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 354.003 [~~348.602~~], except in the case of a partial loss of the covered [~~motor~~] vehicle.

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

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

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

(e) If the debt cancellation agreement terminates due to the early termination of the contract, the holder shall, not later than the 60th day after the date the debt cancellation agreement terminates:

(1) refund or credit an appropriate amount of the debt cancellation agreement fee; or

(2) cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction to the appropriate person.

(f) The holder shall maintain records of any refund or credit of an amount of a debt

cancellation agreement fee made under Subsection (e) and provide electronic access to those records until the later of the fourth anniversary of the date of the contract or the second anniversary of the date of the refund or credit.

SECTION 5. Section 348.124(c), Finance Code, is repealed.

No equivalent provision.

No equivalent provision.

SECTION 4. Title 5, Finance Code, is amended by adding Chapter 397 to read as follows:

CHAPTER 397. DEBT CANCELLATION AGREEMENTS FOR CERTAIN VEHICLE LEASES

Sec. 397.001. DEFINITIONS. In this chapter:

(1) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(2) "Debt cancellation agreement" means a lease term or a contractual arrangement modifying a lease term under which a lessor or holder agrees to cancel all or part of an obligation of the lessee to pay the lessor or holder on the occurrence of the total loss or theft of the covered vehicle that is the subject of the lease but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(3) "Holder" means a person who is:

(A) a lessor; or

(B) the assignee or transferee of a lease.

(4) "Lease" means a lease for a covered vehicle.

Sec. 397.002. APPLICABILITY. This chapter does not apply to a lease that is a retail installment transaction under Section 345.068 or 348.002.

Sec. 397.003. RELATIONSHIP TO INSURANCE. A debt cancellation agreement to which this chapter applies is not insurance.

Sec. 397.004. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) This chapter applies only to a debt cancellation agreement, including a gap waiver agreement or other

similarly named agreement, that includes insurance coverage as part of the lessee's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a lease may not exceed five percent of the amount financed pursuant to the lease.

(c) The debt cancellation agreement becomes a part of or a separate addendum to the lease and remains a term of the lease on the assignment, sale, or transfer by the holder.

Sec. 397.005. DEBT CANCELLATION AGREEMENTS EXCLUSION

LANGUAGE. (a) In addition to the provisions required by Section 397.006, a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the lease;

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

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

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

(5) lawful confiscation by an authorized public official;

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

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

(8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;

(9) use of the covered vehicle for primarily commercial purposes;

(10) damage that occurs after the covered vehicle has been repossessed;

(11) damage to the covered vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered vehicle;

(13) damage related to any personal

property attached to or within the covered vehicle;

(14) damages associated with falsification of documents by any person not associated with the lessor or other person canceling the lessee's obligation;

(15) any unpaid debt resulting from exclusions in the lessee's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered vehicle by the lessee only if the lessee voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered vehicle to the extent that the relinquishment shows intent to forsake and desert the covered vehicle so that the covered vehicle may be appropriated by any other person;

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

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

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

Sec. 397.006. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

(1) the contact information of the lessor, the holder, and any administrator of the agreement;

(2) the name and address of the lessee;

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

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

(5) the period during which the lessee is required to notify the lessor, the holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the covered vehicle;

(6) that in order to make a claim, the lessee must provide or complete some or all of the following documents and provide those documents to the lessor, the holder, or any

administrator of the agreement:

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the lessee's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the covered vehicle;

(C) verification of the lessee's primary insurance deductible;

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

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) may be required by the lessor, the holder, or any administrator of the agreement to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the lessor, the holder, or any administrator of the agreement may inspect the lessee's covered vehicle;

(9) that the lessor or holder will cancel all or part of the lessee's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered vehicle;

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

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

(12) that purchase of a debt cancellation agreement is not required for the lessee to obtain an extension of credit and will not be a factor in the credit approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the lessee must provide a written request to cancel to the lessor, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered vehicle has not occurred, the lessee has 30 days from the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund; and

(15) that the lessor will cancel certain

amounts under the debt cancellation agreement for total loss or theft of a covered vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS LEASE IN THE CASE OF A TOTAL LOSS OR THEFT OF THE COVERED VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

Sec. 397.007. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) If a lessee purchases a debt cancellation agreement, the lessor must provide to the lessee a true and correct copy of the agreement not later than the 10th day after the date of the lease.

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

(c) A debt cancellation agreement may not knowingly be offered by a lessor if:

(1) the lease is already protected by gap insurance; or

(2) the purchase of the debt cancellation agreement is required for the lessee to obtain the extension of credit.

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

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

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

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

(h) A lessor that negotiates a debt cancellation agreement and subsequently assigns the lease shall maintain documents or data relating to the agreement that come

into the lessor's possession.

Sec. 397.008. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a) A refund or credit of the debt cancellation agreement fee must be based on the earliest date of:

(1) the prepayment of the lease in full before the original maturity date;

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

(3) a request by the lessee for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 397.005, except in the case of a partial loss of the covered vehicle.

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

(c) If total loss or theft has not occurred, the lessee may cancel the debt cancellation agreement not later than the 30th day after the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the holder or any administrator of the agreement shall refund or credit the entire debt cancellation agreement fee. A lessee may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

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

(e) If the debt cancellation agreement terminates due to the early termination of the lease, the holder shall, not later than the 60th day after the date the debt cancellation agreement terminates:

(1) refund or credit an appropriate amount

of the debt cancellation agreement fee; or
(2) cause to be refunded or credited an
appropriate amount of the debt cancellation
agreement fee by providing written
instruction to the appropriate person.

(f) The holder shall maintain records of any
refund or credit of an amount of a debt
cancellation agreement fee made under
Subsection (e) and provide electronic access
to those records until the later of the fourth
anniversary of the date of the lease or the
second anniversary of the date of the refund
or credit.

Sec. 397.009. REMEDY. If the attorney
general reasonably believes that a person is
violating or is about to violate this chapter,
the attorney general may bring an action in
the name of this state against the person to
restrain or enjoin the person from violating
this chapter.

SECTION 6. This Act takes effect
September 1, 2017.

SECTION 5. Same as introduced version.