

BILL ANALYSIS

Senate Research Center

S.B. 1052
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 82nd Texas Legislature, Regular Session, 2011, passed legislation relating to debt cancellation agreements made in connection with retail installment contracts for motor vehicles. A debt cancellation agreement is a non-insurance product that motor vehicle consumers may purchase to cover the difference between a vehicle's value and the amount owed to a lender in the event of theft or total loss.

That legislation balanced consumer protections with a predictable regulatory framework. It was passed as the result of negotiations and compromises between the debt cancellation industry and the Office of Consumer Credit Commissioner (OCCC).

S.B. 1052 expands debt cancellation agreements to be available to be sold on goods such as boats, RVs, and motorcycles, as well as other items financed in Texas. The legislation also repeals the cumbersome form approval process conducted by OCCC. S.B. 1052 moves the language added in 2011 out of Chapter 348, Finance Code, and creates a new chapter for those terms to apply to other items financed. It also makes conforming changes to allow for these new goods to be subject to debt cancellation agreements. (Original Author's / Sponsor's Statement of Intent)

S.B. 1052 amends current law relating to certain retail installment contracts and leases for vehicles and provides for a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 345.005, Finance Code, as follows:

Sec. 345.005. ITEMIZED CHARGE. Provides that an amount charged to a retail buyer in a retail installment contract or retail charge agreement is an itemized charge if the amount is not included in the cash price and is, among other amounts, the amount of charges for a debt cancellation agreement under Chapter 354.

SECTION 2. Amends Subchapter B, Chapter 345, Finance Code, by adding Section 345.084, as follows:

Sec. 345.084. DEBT CANCELLATION AGREEMENT. Authorizes a debt cancellation agreement (DCA) under Chapter 354 to be offered in connection with a retail installment contract for a covered vehicle to which this chapter (Retail Installment Sales) applies. Defines "covered vehicle."

SECTION 3. Amends Section 348.114, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the holder of a retail installment contract (holder) that provides for a time price differential that is computed using the add-on method or the scheduled installment earnings method, rather than a holder of a retail installment contract, to collect from the retail buyer a deferment charge of a certain amount if the retail installment contract is amended to defer all or part of one or more installments for not longer than three months.

(c) Authorizes the holder to charge and receive from the retail buyer time price differential on the unpaid balance of the contract at the rate agreed to in the contract, if a retail installment contract that provides for a time price differential that is computed using the true daily earnings method is amended to defer all or part of one or more installments. Requires the holder to provide written notice to the retail buyer at the time of deferment in a certain manner and meeting certain criteria. Sets forth the language required to be included on the notice. Provides that a holder does not collect a deferment charge by the accrual of time price differential on the unpaid balance of the contract.

SECTION 4. Amends Section 348.124(a), Finance Code, to require that the DCA, 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, be offered under Chapter 354.

SECTION 5. Amends Section 348.208(b), Finance Code, to authorize a retail installment contract to include as a separate charge an amount for a debt cancellation agreement, including a debt cancellation agreement under Chapter 354, if the agreement is included as a term of a retail installment contract under Section 348.124 (Debt Cancellation Agreements).

SECTION 6. Redesignates Subchapter G, Chapter 348, Finance Code, as Chapter 354, Finance Code, and amends it, as follows:

CHAPTER 354. New heading: DEBT CANCELLATION AGREEMENTS FOR CERTAIN
RETAIL VEHICLE INSTALLMENT SALES

Sec. 354.001. DEFINITIONS. Defines "contract," "covered vehicle," "debt cancellation agreement," "holder," "retail buyer," and "retail seller."

Sec. 354.002. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.601 as Section 354.002. (a) Provides that this chapter, rather than this subchapter, applies only to a DCA that includes insurance coverage as part of the retail buyer's responsibility to the holder.

(b) Prohibits the amount charged for a DCA made in connection with a contract, rather than a retail installment contract, from exceeding five percent of the amount financed pursuant to the contract, rather than the retail installment contract. Provides that Section 348.124(c) (relating to requiring the amount charged for a DCA for a retail installment contract to be reasonable) does not apply to a DCA regulated under this chapter, rather than subchapter.

(c) Makes conforming changes.

(d) Provides that a DCA to which this chapter applies is not insurance.

Sec. 354.003. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE. Redesignates existing Section 348.602 as Section 354.003. (a) Requires that a DCA, in addition to the provisions required by Section 354.004, rather than Section 348.603, fully disclose all provisions permitting the exclusion of loss or damage, including certain provisions, if applicable. Changes references to motor vehicle to covered vehicle and makes conforming changes.

(b) Makes no changes to this subsection.

Sec. 354.004. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. Redesignates existing Section 348.603 as Section 354.004. Sets forth certain language that a DCA is required to state. Makes nonsubstantive and conforming changes.

Sec. 354.005. APPROVAL OF FORMS FOR DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.604 as Section 354.005. (a) Makes a conforming change.

(b) Authorizes the consumer credit commissioner (commissioner), on the written request of the person submitting the form, to agree in writing to extend the approval period for an additional 45 days. Provides that if, after the 45th day, or the 90th day if the commissioner agrees to an extension, the commissioner does not deny the form, the form is considered approved.

(c) and (d) Makes conforming changes.

(e) Makes no changes to this subsection.

(f) Makes a conforming change.

Sec. 354.006. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.605 as Section 354.006. (a) Requires the retail seller, if a retail buyer purchases a DCA, to provide the retail buyer a true and correct copy of the DCA not later than the 10th day after the date of the contract, rather than the retail installment contract.

(b) Makes no changes to this subsection.

(c) Makes a conforming change.

(d) through (h) Makes no changes to these subsections.

Sec. 354.007. REFUND FOR DEBT CANCELLATION AGREEMENTS. Redesignates existing Section 348.606 as Section 354.007. (a) Requires that a refund or credit of the DCA fee be based on the earliest date of:

(1) the prepayment of the contract, rather than 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 DCA; or

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

(b) Makes no changes to this subsection.

(c) Makes a conforming change.

(d) Makes no changes to this subsection.

(e) Requires the holder, if the DCA terminates due to the early termination of the contract, to, by a certain date, refund or credit an appropriate amount of the DCA fee, or cause to be refunded or credited an appropriate amount of the DCA fee by providing written instruction to the appropriate person.

(f) Requires the holder to ensure that a refund or credit of an amount of a DCA fee made by another person under Subsection (e)(2) (relating to the holder causing to be refunded or credited an appropriate amount) is made not later than the 60th day after the date the DCA terminates.

(g) Requires the holder to maintain records of any refund or credit of an amount of a DCA fee made under Subsection (e) and provide electronic access to those records until a certain date.

SECTION 7. Amends Title 5, Finance Code, by adding Chapter 397, as follows:

CHAPTER 397. DEBT CANCELLATION AGREEMENTS FOR CERTAIN VEHICLE
LEASES

Sec. 397.001. DEFINITIONS. Defines "covered vehicle," "debt cancellation agreement," "holder," and "lease."

Sec. 397.002. APPLICABILITY. Provides that this chapter does not apply to a lease that is a retail installment transaction under Section 345.068 (Bailment or Lease as Retail Installment Transaction) or 348.002 (Bailment or Lease as Retail Installment Transaction).

Sec. 397.003. RELATIONSHIP TO INSURANCE. Provides that a DCA to which this chapter applies is not insurance.

Sec. 397.004. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) Provides that this chapter applies only to a DCA, 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) Prohibits the amount charged for a DCA made in connection with a lease from exceeding five percent of the adjusted capitalized cost financed pursuant to the lease.

(c) Provides that the DCA 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) Requires that a DCA, in addition to the required provisions, fully disclose all provisions permitting the exclusion of loss or damage, including certain acts.

(b) Authorizes an exclusion of loss or damage not listed in Subsection (a) to be included in a DCA only if the exclusion is disclosed in plain, easy to read language.

Sec. 397.006. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. Requires that a DCA state certain information.

Sec. 397.007. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) Requires a lessor, if a lessee purchases a DCA, to provide to the lessee a true and correct copy of the DCA by a certain date.

(b) Requires a holder to comply with the terms of a DCA by a certain date.

(c) Prohibits a DCA from knowingly being offered by a lessor if the lease is already protected by gap insurance or the purchase of the DCA is required for the lessee to obtain the lease.

(d) Provides that this section does not apply to a DCA offered in connection with the lease of a commercial vehicle.

(e) Requires that the sale of a DCA be for a single payment.

(f) Requires a holder that offers a DCA 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.

(g) Requires that money received or held by a holder or any administrator of a DCA and belonging to an insurance company, holder, or administrator under the terms of a written agreement be held by the holder or administrator in a fiduciary capacity.

(h) Requires a lessor that negotiates a DCA and subsequently assigns the lease to maintain documents relating to the DCA that come into the lessor's possession.

Sec. 397.008. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a) Requires that a refund or credit of the DCA fee be based on a certain date.

(b) Provides that the refund or credit for the DCA can be rounded to the nearest whole dollar. Provides that a refund or credit is not required if the amount of the refund or credit calculated is less than \$5.

(c) Authorizes the lessee, if total loss or theft has not occurred, to cancel the DCA by a certain date. Requires the holder or any administrator of the DCA, on cancellation, to refund or credit the entire DCA fee. Prohibits a lessee from cancelling the DCA and subsequently receiving any benefits under the DCA.

(d) Authorizes a holder to, 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. Requires the holder, if a computation by the administrator of the balance waived is not correct, to 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. Provides that this subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the DCA or computation.

(e) Requires the holder, if the DCA terminates due to the early termination of the lease, to refund or credit an appropriate amount of the DCA fee or cause to be refunded or credited an appropriate amount of the DCA fee by providing written instructions to the appropriate person by a certain date.

(f) Requires the holder to ensure that a refund or credit of an amount of a DCA fee made by another person under Subsection (e)(2) (relating to requiring the holder to cause to be refunded or credited an appropriate amount of the DCA fee) is made not later than the 60th day after the date the DCA terminates.

(g) Requires the holder to maintain records of any refund or credit of an amount of a DCA fee made under Subsection (e) and provide electronic access to those records until a certain date.

Sec. 397.009. ENFORCEMENT. (a) Authorizes the Texas attorney general (attorney general) to bring certain actions in the name of the state against a person

if the attorney general has reason to believe that the person is engaging in, has engaged in, or is about to engage in any method, act, or practice that is a violation of this chapter.

(b) Authorizes an action brought under Subsection (a) to be commenced against a person in violation of this chapter in certain places. Authorizes the court to issue a temporary restraining order, temporary injunction, or permanent injunction to restrain or prevent a violation of this chapter and requires that injunctive relief be issued without bond.

(c) Authorizes the attorney general to request, and the trier of fact to award, in addition to the request for a temporary restraining order, temporary injunction, or permanent injunction, a civil penalty to be paid to the state in an amount of not more than \$20,000 per violation.

(d) Authorizes the attorney general to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including reasonable investigative costs, court costs, and attorney's fees.

SECTION 8. Amends Section 2301.002(36), Occupations Code, to redefine "vehicle lessor."

SECTION 9. Amends Subchapter L, Chapter 2301, Occupations Code, by adding Section 2301.5555, as follows:

Sec. 2301.555. **AUTHORITY TO SIGN VEHICLE LEASE AS LESSOR.** Authorizes a licensed vehicle lease facilitator to sign a vehicle lease agreement as a vehicle lessor before the vehicle lease is assigned, transferred, or conveyed to an ultimate lessor, notwithstanding Section 2301.251 (License Required: Generally).

SECTION 10. Effective date: September 1, 2017.