HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/26/95 | HB 1586 Marchant

SUBJECT: Contract to cancel debt on vehicle after total loss

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 7 ayes — Marchant, Carona, Elkins, Giddings, Grusendorf, Gutierrez, Romo

0 nays

2 absent — Hudson, Patterson

WITNESSES: For — Sam Kelley, Texas Automobile Dealers Association; Alice K. Rawlings, Financial Indemnification Consultants, Inc.

Against — None

DIGEST: HB 1586 would allow a motor vehicle seller to offer a contract, for a separate charge, to waive the difference between the cash value of the vehicle and the amount owed if the vehicle was rendered a total loss because of theft or collision. The seller or holder could also waive the deductible amount. The waiver would not be considered insurance and would not be subject to regulation by the commissioner of insurance or the Texas Department of Insurance.

The bill would take effect immediately if approved by two-thirds of the membership of each house.

SUPPORTERS SAY: Many people do not realize that their insurance does not cover the amount of the loan on their vehicle — only the actual value of the car, which is often less than the amount of the loan because of the rapid depreciation of a car and financing periods of four to five years. HB 1586 would protect consumers who find themselves burdened with debt after the total loss of vehicles, would enable sellers and holders to avoid the time, expense, and risk of attempting to collect the balance of a loan, and would allow the seller or holder of the contract to make a profit from offering this valuable service.

The debt cancellation waiver would protect consumers from the average deficiency balance of $1,800. In other words, the average car is worth

$1,800 less than the amount of the loan, so that the buyer would owe $1,800 if the car were stolen or wrecked. After a car accident and possibly a hospital stay, a $1,800 debt looms large, especially in addition to a down payment and monthly payments for a necessary replacement car.

Approximately 32 other states allow debt cancellation waivers because of their benefits to consumers and retail installment contract holders. Not everyone would need to purchase the waiver, but merely offering waivers would educate the public about its liability. New York actually requires sellers to alert buyers of their liability for the loan in the event of total loss of the car.

Although banks or insurance companies can sell such protection now, 40 percent of all Texans cannot acquire standard financing from banks and cannot pay up front for standard insurance — and these are the people who most need the protection. The protection should be available on the retail installment contract to buy the vehicle.

OPPONENTS SAY:

HB 1586 would, in effect, allow car dealers to sell insurance without a license or falling under regulation by the Texas Department of Insurance and to charge higher rates than could be justified by the risk assumed. In other states, the average yearly charge for this kind of financial protection is $250-$300 a year — a hefty sum in light of the infrequency of the consumer collecting.

The National Bank Act preempts the state's authority to regulate national banks that offer debt cancellation contracts, and the Texas Constitution gives state banks authority to offer unregulated debt cancellation contracts. However, the Texas Department of Insurance has found that issuance of debt cancellation contracts by an institution other than a bank constitutes the business of insurance and should be regulated. HB 1586 would circumvent this finding to the potential detriment of consumers and could provide a windfall to sellers and holders of the retail installment contract.

OTHER OPPONENTS SAY:

HB 1586 should at least require that buyers be alerted that a debt cancelled under a waiver would be considered taxable income. Also, the bill would fail to require an appropriate amount of time be granted, as in many other financial decisions, to rescind agreements if buyers decided waivers were not in their interest.