

BILL ANALYSIS

C.S.S.B. 1052
By: Hughes
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.S.B. 1052 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.S.B. 1052 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. The bill establishes that a debt cancellation agreement to which such provisions apply is not insurance.

C.S.S.B. 1052 authorizes the consumer credit commissioner, if a form for such a debt cancellation agreement is provided to the commissioner for approval, to agree in writing to extend the 45-day approval period for the form for an additional 45 days on the written request of the person submitting the form and clarifies that the form is considered approved if the commissioner does not deny the form after the 90th day of the extended approval period. 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 ensure that a refund or credit of an amount of a debt cancellation agreement fee so made by another person is made not later than the 60th day after the date the debt cancellation agreement terminates. 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.S.B. 1052 authorizes the holder of a motor vehicle retail installment contract that provides for a time price differential that is computed using the true daily earnings method and that is amended to defer all or a part of one or more installments 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. The bill requires the holder, at the time of deferment, to provide a specified written notice to the retail buyer and establishes that the holder does not collect a deferment charge by the accrual of time price differential on the unpaid balance of the contract. The bill specifies that existing statutory provisions governing charges for deferring installments of such contracts apply to those contracts that provide for a time price differential that is computed using the add-on method or the scheduled installment earnings method.

C.S.S.B. 1052 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 adjusted capitalized cost 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.S.B. 1052 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 lease. 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 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.S.B. 1052 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 has reason to believe that a person is engaging in, has engaged in, or is about to engage in any method, act, or practice that is a violation of the bill's provisions governing such debt cancellation agreements, to bring an action in the name of the state against the person to restrain the person by temporary restraining order, temporary injunction, or permanent injunction from engaging in the method, act, or practice. The bill authorizes such an action to be commenced in the district court of the county in which the person against whom the action is brought resides, has the person's principal place of business, or has done business, in the district court of the county in which any or all parts of the method, act, or practice giving rise to the action occurred, or, on the consent of the parties, in a district court of Travis County. The bill authorizes the court to issue a temporary restraining order, temporary injunction, or permanent injunction to restrain or prevent a violation of such provisions and requires injunctive relief to be issued without bond. The bill authorizes the attorney general to request, in addition to the request for a temporary restraining order, temporary injunction, or permanent injunction, and authorizes the trier of fact to award, a civil penalty to be paid to the state capped at \$20,000 per violation. The bill authorizes the attorney general to recover reasonable expenses incurred in obtaining injunctive relief or such civil penalty, including reasonable investigative costs, court costs, and attorney's fees.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1052 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 345.005, Finance Code, is amended to read as follows:

Sec. 345.005. ITEMIZED CHARGE. 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 the amount of:

- (1) fees prescribed by law for filing, recording, or otherwise perfecting, releasing, or satisfying a security interest created in connection with a retail installment transaction or nonfiling insurance premiums as authorized by Section 345.212;
- (2) fees for registration or a certificate of title;
- (3) any taxes;
- (4) fees or charges prescribed by law and connected with the sale or inspection of the goods or services subject to the contract or agreement;
- (5) premiums and other charges for insurance authorized by Subchapter E;

- (6) official fees for a construction permit or the filing or recording of a construction permit;
- (7) a documentary fee authorized under Section 345.251; ~~and~~
- (8) in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement, or construction of real property, reasonable and necessary costs, including amounts, paid by the holder:
 - (A) for title insurance or title examination and opinion that does not exceed the amount set by the commissioner of insurance for title insurance for the transaction;
 - (B) to a person who is not a salaried employee of the holder for an appraisal or inspection or for investigating the credit standing or creditworthiness of the retail buyer; or
 - (C) to an attorney who is not a salaried employee of the holder as a legal fee for the preparation of documents in connection with the transaction; and
- (9) charges for a debt cancellation agreement under Chapter 354.

SECTION 1. Subchapter B, Chapter 345, Finance Code, is amended.

No equivalent provision.

SECTION 2. Same as engrossed version.

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

- (a) If a retail installment contract that provides for a time price differential that is computed using the add-on method or the scheduled installment earnings method is amended to defer all or a part of one or more installments for not longer than three months, the holder may collect from the retail buyer:
 - (1) a deferment charge in an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and
 - (2) the amount of the additional cost to the holder for:
 - (A) premiums for continuing in force any insurance coverages provided for by the contract; and
 - (B) any additional necessary official fees.
- (c) 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 a part of one or more installments, the holder may 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. At the time of deferment, the holder must provide the following written notice to the retail buyer that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from any surrounding written material: "FINANCE CHARGES WILL CONTINUE TO ACCRUE ON THE UNPAID BALANCE AT THE CONTRACT RATE. BY DEFERRING ONE OR MORE INSTALLMENTS, YOU WILL PAY MORE FINANCE CHARGES THAN ORIGINALLY DISCLOSED." A holder does not collect a deferment charge by the accrual of time price differential on the unpaid balance of the contract.

SECTION 2. Section 348.124(a), Finance Code, is amended.

No equivalent provision.

SECTION 4. Same as engrossed version.

SECTION 5. Section 348.208(b), Finance Code, is amended to read as follows:

(b) A retail installment contract may include as a separate charge an amount for:

- (1) motor vehicle property damage or bodily injury liability insurance;
- (2) mechanical breakdown insurance;
- (3) participation in a motor vehicle theft protection plan;
- (4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss;
- (5) a warranty or service contract relating to the motor vehicle;
- (6) an identity recovery service contract; or
- (7) 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.

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].

SECTION 6. 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 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

[CERTAIN] DEBT CANCELLATION AGREEMENTS FOR CERTAIN RETAIL VEHICLE INSTALLMENT SALES

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(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.

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(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.

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;
- (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;

the assignment, sale, or transfer by the holder.

(d) A debt cancellation agreement to which this chapter applies is not insurance.

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- (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) 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 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

(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 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 chapter [~~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 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

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 chapter [~~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. On the written request of the person submitting the form, the commissioner may agree in writing to extend the approval period for an additional 45 days. 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) 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 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

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 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 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 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 ~~[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

~~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 ~~[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 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.

Sec. 397.002. APPLICABILITY.

Sec. 397.003. RELATIONSHIP TO 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.

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;

agreement fee by providing written instruction to the appropriate person.

(f) The holder shall ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person under Subsection (e)(2) is made not later than the 60th day after the date the debt cancellation agreement terminates.

(g) 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 7. 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.

Sec. 397.002. APPLICABILITY.

Sec. 397.003. RELATIONSHIP TO 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 adjusted capitalized cost 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.

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

(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) or required by the lessor, 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 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.

theft of a covered vehicle;

(12) that purchase of a debt cancellation agreement is not required for the lessee to obtain a lease and will not be a factor in the lease 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."

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(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 lease.

(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

(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.

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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.

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 ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person under Subsection (e)(2) is made not later than the 60th day after the date the debt cancellation agreement terminates.

(g) 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. ENFORCEMENT. (a) If the attorney general has reason to believe that a 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, the attorney general may bring an action in the name of the state against the person to restrain the person by temporary restraining order, temporary injunction, or permanent injunction from engaging in the method, act, or practice.

(b) An action brought under Subsection (a) may be commenced in the district court of the county in which the person against whom the action is brought resides, has the person's principal place of business, or has done business, in the district court of the

county in which any or all parts of the method, act, or practice giving rise to the action occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue a temporary restraining order, temporary injunction, or permanent injunction to restrain or prevent a violation of this chapter and injunctive relief must be issued without bond.

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

(d) The attorney general may 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 5. This Act takes effect September 1, 2017.

SECTION 8. Same as engrossed version.