

SUBJECT: Revising debt cancellation agreements for certain installment sales

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 10 ayes — Murphy, Vo, Capriglione, Flynn, Gutierrez, Lambert, Leach, Longoria, Stephenson, Wu

0 nays

1 present not voting — Gervin-Hawkins

WITNESSES: For — David Shurtz, Credit Union Coalition of Texas and Texas Credit Union Association and EECU (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas; Jeff Huffman, Texas Credit Union Association)

Against — Ann Baddour, Texas Appleseed

On — Matthew Nowels, Guaranteed Asset Protection Alliance (*Registered, but did not testify*: Mark Vane, Husch Blackwell Strategies; Matthew Nance, Office of Consumer Credit Commissioner; Laird Doran, The Friedkin Group, on behalf of GSFS Group)

BACKGROUND: Finance Code ch. 354 governs debt cancellation agreements for certain retail vehicle installment sales. Under sec. 354.002, the amount charged for a debt cancellation agreement made in connection with a contract may not exceed 5 percent of the amount financed. This applies to agreements that include insurance coverage as part of the retail buyer's responsibility to the holder of the contract.

It has been suggested that the administrator of a debt cancellation product relating to a retail installment contract is in the best position to dispose of any fee refund obligation that arises as a consequence of such a debt cancellation agreement.

DIGEST: CSHB 2639 would revise provisions relating to debt cancellation agreements for certain retail vehicle installment sales by defining debt cancellation agreement fees, revising refund requirements, and revising the role of certain parties of the agreements.

A "debt cancellation agreement fee" would be the amount charged for a debt cancellation agreement made in connection with a retail installment contract, limited to 5 percent of the amount financed.

The bill would specify that a debt cancellation agreement fee received or held by a retail seller or agreement administrator belonging to an administrator or insurance company would have to be held in a fiduciary capacity until the fee had been forwarded to the party designated by the agreement.

HB 2639 would revise the refund requirements for agreements that were canceled or terminated early. Under the revised requirements, the agreement administrator, rather than the holder of the contract, would be required to refund or cause to be refunded the appropriate amount of the debt cancellation agreement fee to the retail buyer or forward to the holder the amount to be applied as a credit under the contract.

The bill also would revise the recordkeeping requirement for such agreements canceled or terminated early to require the administrator, rather than the holder, to maintain or cause to be maintained such records.

The contract holder would have to notify the agreement administrator if a refund or credit of a debt cancellation fee was based on the prepayment of the contract in full before the maturity date, a demand by the holder for full or accelerated payment, or on a request by the retail buyer to the holder for cancellation of the agreement. The early termination notice would have to be made in writing, including by electronic means, and within 30 days after the prepayment, demand, or request occurred. If the holder provided notice within the 30-day period, the holder's liability to any person for a refund of the debt cancellation agreement fee, or any part of that fee, would be terminated.

HB 2639 would require the contract holder to maintain records of a debt cancellation agreement until the fourth anniversary of the date of the contract.

The bill would repeal certain Finance Code provisions allowing a holder to rely in good faith on computations by an agreement administrator of the balance waived and requiring a holder to ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person was made within a certain timeframe.

The bill would take effect September 1, 2019.