

By: Flynn

H.B. No. 2639

A BILL TO BE ENTITLED

AN ACT

relating to debt cancellation agreements offered in connection with certain retail installment contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 354.001, Finance Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Debt cancellation agreement fee" means the amount charged for a debt cancellation agreement made in connection with a contract.

SECTION 2. Section 354.002(b), Finance Code, is amended to read as follows:

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

SECTION 3. Section 354.004, Finance Code, is amended to read as follows:

Sec. 354.004. 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 debt cancellation agreement;

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

(3) the cost and term of the debt cancellation

1 agreement;

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

6 (5) the period during which the retail buyer is
7 required to notify the retail seller, the holder, or any
8 administrator of the agreement of any potential loss under the debt
9 cancellation agreement for total loss or theft of the covered
10 vehicle;

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

15 (A) a debt cancellation request form;

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

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

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

25 (E) a copy of the damage estimate;

26 (7) that documentation not described by Subdivision
27 (6) or required by the retail seller, the holder, or any

1 administrator of the agreement is not required to substantiate the
2 loss or determine the amount of debt to be canceled;

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

7 (9) that the retail seller or holder will cancel all or
8 part of the retail buyer's obligation as provided in the debt
9 cancellation agreement on the occurrence of total loss or theft of
10 the covered vehicle;

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

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

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

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

22 (14) that if total loss or theft of the covered vehicle
23 has not occurred, the retail buyer has 30 days from the date of the
24 contract or the issuance of the debt cancellation agreement,
25 whichever is later, or a longer period as provided under the debt
26 cancellation agreement, to cancel the debt cancellation agreement
27 and receive a full refund of the debt cancellation agreement fee;

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

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

10 SECTION 4. Sections 354.006(a), (b), (f), (g), and (h),
11 Finance Code, are amended to read as follows:

12 (a) If a retail buyer purchases a debt cancellation
13 agreement, the retail seller must provide to the retail buyer a true
14 and correct copy of the debt cancellation agreement not later than
15 the 10th day after the date of the contract.

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

21 (f) A retail seller ~~[holder]~~ that offers a debt cancellation
22 agreement must report the sale ~~[of]~~ and forward the debt
23 cancellation agreement fee ~~[money received on all such agreements]~~
24 to the ~~[any]~~ designated party as prescribed in any applicable debt
25 cancellation agreement ~~[administrative services agreement,~~
26 ~~contractual liability policy, other insurance policy, or other~~
27 ~~specified]~~ program documents.

(g) Until the debt cancellation agreement fee has been forwarded to the designated party as prescribed in any applicable debt cancellation agreement program documents, the debt cancellation agreement fee ~~[Money]~~ received or held by a retail seller ~~[holder]~~ or any administrator of a debt cancellation agreement and belonging to an administrator or any insurance company~~[, holder, or administrator]~~ under the terms of a written agreement must be held by the retail seller ~~[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 debt cancellation 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 debt cancellation agreement not in the retail seller's possession.

SECTION 5. The heading to Section 354.007, Finance Code, is amended to read as follows:

Sec. 354.007. REFUND OR CREDIT FOR DEBT CANCELLATION AGREEMENTS.

SECTION 6. Sections 354.007(b), (c), (e), and (g), Finance Code, are amended to read as follows:

(b) The refund or credit for the debt cancellation agreement fee can be rounded to the nearest whole dollar. A refund or credit of the debt cancellation agreement fee 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 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 of the debt cancellation agreement, the recipient of the debt cancellation agreement fee ~~[holder or any administrator of the agreement]~~ shall refund the entire debt cancellation agreement fee or forward to the holder the entire debt cancellation agreement fee to be applied as a credit under the contract ~~[the entire debt cancellation agreement fee]~~. A retail buyer may not cancel the debt cancellation agreement and subsequently receive any benefits under the debt cancellation agreement.

(e) If the debt cancellation agreement terminates due to the early termination of the contract, the recipient of the debt cancellation agreement fee ~~[holder]~~ shall, not later than the 60th day after the date the debt cancellation agreement terminates, [+]

[(1)] refund an appropriate amount of the debt cancellation agreement fee to the retail buyer or forward to the holder ~~[credit]~~ an appropriate amount of the debt cancellation agreement fee to be applied as a credit under the contract ~~[+ 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]~~.

(g) The recipient of the debt cancellation agreement fee ~~[holder]~~ shall maintain records of any refund or credit of an amount

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

5 SECTION 7. Chapter 354, Finance Code, is amended by adding
6 Section 354.008 to read as follows:

7 Sec. 354.008. RECORDKEEPING. The holder shall maintain
8 records of a debt cancellation agreement until the fourth
9 anniversary of the date of the contract.

10 SECTION 8. Sections 354.007(d) and (f), Finance Code, are
11 repealed.

12 SECTION 9. Section 354.008, Finance Code, as added by this
13 Act, applies only to a retail installment contract entered into on
14 or after the effective date of this Act. A retail installment
15 contract entered into before the effective date of this Act is
16 governed by the law in effect on the date the contract was entered
17 into, and the former law is continued in effect for that purpose.

18 SECTION 10. This Act takes effect September 1, 2019.