

ARKANSAS SENATE
86th General Assembly - Regular Session, 2007
Amendment Form

Subtitle of Senate Bill No. 379

"TO UPDATE AND MAKE TECHNICAL CORRECTIONS TO THE ARKANSAS
INSURANCE CODE, TO CONFORM THE EXAMINATION OF INSURERS AND OTHER
MATTERS TO CURRENT INSURANCE PRACTICES, AND TO ADDRESS VARIOUS
OTHER INSURANCE ISSUES."

Amendment No. 3 to Senate Bill No. 379.

Amend Senate Bill No. 379 as originally introduced:

Page 10, delete line 4 and substitute the following:

"Internal Revenue Code of 1986, ~~as it existed on January 1, 2004.~~

SECTION 19. Arkansas Code Title 4, Chapter 90 is amended to add an additional subchapter to read as follows:

SUBCHAPTER 7 – DEBT CANCELLATION AGREEMENTS

4-90-701. Definition.

As used in this subchapter, "debt cancellation agreement" means a loan term or contractual arrangement modifying a loan term dealing with motor vehicles under which a lender agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the lender upon the occurrence of a specified event other than the death or disability of the borrower, whether or not separate from or a part of other loan documents. Provided, however, for purposes of this subchapter only, the term "debt cancellation agreement" shall not include that form of debt cancellation agreement which constitutes a guaranteed automobile protection waiver agreement or "GAP" waiver agreement. A guaranteed automobile protection waiver agreement or "GAP" waiver agreement means a loan term or a contractual arrangement modifying a loan term dealing with motor vehicles under which a lender agrees to waive, cancel, pay, or satisfy any remaining balance owed on a loan after a total loss or theft of the vehicle.

4-90-702. Requiring borrower to purchase debt cancellation agreement prohibited.

A lender shall not require a borrower to purchase a debt cancellation agreement.



4-90-703. Debt cancellation agreements to be legible – Disclosure requirements.

All terms of a debt cancellation agreement shall be printed or reproduced to render all material provisions of the agreement legible and shall clearly and conspicuously disclose the following information:

(1) If the debt cancellation agreement is provided by or administered by a third party, the debt cancellation agreement shall disclose that fact and provide the name, address, and telephone number of the third party and describe the procedure to follow for filing a claim with that third party under the debt cancellation agreement;

(2) The total retail price of the debt cancellation agreement;

(3) Any limitation or restriction on the cancellation of the entire debt due upon the occurrence of the specified event;

(4) That the purchaser is allowed to cancel the debt cancellation agreement at any time and receive a refund paid directly to the purchaser minus any cancellation fee not to exceed twenty-five dollars (\$25.00) as follows:

(A) If the debt cancellation agreement is cancelled within thirty (30) days of purchase, a purchaser shall receive a full refund of the retail price; or

(B) If the debt cancellation agreement is cancelled at a later time, the purchaser shall receive a pro rata refund of the retail price for the unexpired term based upon the number of elapsed months at the time of the cancellation compared to the total length of the financing agreement; and

(5) That the terms of the debt cancellation agreement financed by the lender are binding on the lender.

4-90-704. Debt cancellation agreements – Restrictions.

No debt cancellation agreement shall be issued that:

(1) Is in any respect in violation of or does not comply with this subchapter;

(2) Contains or incorporates by reference if incorporation by reference is otherwise permissible any inconsistent, ambiguous, illusory, or misleading clauses or exceptions and conditions that deceptively affect the material terms of the debt cancellation agreement;

(3) Has a title, heading, or other indication of its provisions that is misleading; or

(4) Is sold after any representation, oral or written, that is misleading or deceptive with respect to any material term of the contract or any provision of this subchapter.

4-90-705. Application of § 4-88-101 et seq. to debt cancellation agreements and sellers of debt cancellation agreements.

(a) Debt cancellation agreements and sellers of debt cancellation agreements are subject to the provisions of § 4-88-101 et seq., and any violation of any of the provisions of this subchapter constitutes an unconscionable or deceptive act or practice under § 4-88-101 et seq.

(b) All remedies, penalties, and authority granted to the Attorney General under § 4-88-101 et seq. are available to the Attorney General for the enforcement of this subchapter.

SECTION 20. Arkansas Code § 23-60-102(1), concerning the definition of "insurance" under the Arkansas Insurance Code, is amended to read as follows:

(1)(A)(i) "Insurance" is any agreement, contract, or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such an event.

(ii) A "fortuitous event" means any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party.

(B) "Insurance" shall, for purposes of subtitle 3 of this title, be deemed to include "annuities", which are agreements by insurers to make periodic payments that continue during the survival of the measuring life or lives under the agreements or for a specified period.

(C) "Reinsurance" is a contract under which an originating insurer, called the "ceding" insurer, procures insurance for itself in another insurer, called the "assuming" insurer or reinsurer, with respect to part or all of an insurance risk of the originating insurer.

(D)(i) "Insurance" shall not include a debt cancellation agreement.

(ii) "Debt cancellation agreement" is a loan term or contractual arrangement modifying a loan term dealing with motor vehicles under which a lender agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the lender upon the occurrence of a specified event other than the death or disability of the borrower. The agreement may be separate from or a part of other loan documents."

SECTION 21. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the incompatibility of acts of the Eighty-Sixth General Assembly presents difficult compliance issues for the administration of debt cancellation agreements; that in order to avoid a disruption in commerce associated with compliance with other debt cancellation legislation, the enactment of Sections 19 and 20 of this act is immediately necessary. Therefore, an emergency is declared to exist and Sections 19 and 20 of this act being immediately necessary for the preservation of the public peace, health, and safety, Sections 19 and 20 shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

AND

Appropriately renumber the sections of the bill.

AND

Appropriately restate the references to sections 19 and 20 in the Emergency Clause of the bill if sections 19 and 20 are renumbered.

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Miller

DLP/SML - 02-28-2007 11:26

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Secretary