

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 813

4
5 By: Senator Miller
6
7

For An Act To Be Entitled

8
9 AN ACT TO CLARIFY THAT DEBT CANCELLATION
10 AGREEMENTS ARE NOT INCLUDED IN THE DEFINITION OF
11 INSURANCE UNDER THE ARKANSAS INSURANCE CODE; AND
12 FOR OTHER PURPOSES.
13

Subtitle

14
15 TO CLARIFY THAT DEBT CANCELLATION
16 AGREEMENTS ARE NOT INCLUDED IN THE
17 DEFINITION OF INSURANCE UNDER THE
18 ARKANSAS INSURANCE CODE.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

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

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

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

35 (B) "Insurance" shall, for purposes of subtitle 3 of this
36 title, be deemed to include "annuities", which are agreements by insurers to



1 make periodic payments that continue during the survival of the measuring
2 life or lives under the agreements or for a specified period.

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

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

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

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16 SECTION 2. Arkansas Code Title 4, Chapter 90 is amended to add an
17 additional subchapter to read as follows:

18
19 SUBCHAPTER 7 – DEBT CANCELLATION AGREEMENTS

20
21 4-90-701. Definition.

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

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3 4-90-702. Requiring borrower to purchase debt cancellation agreement
4 prohibited.

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

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8 4-90-703. Debt cancellation agreements to be legible – Disclosure
9 requirements.

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

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

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

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

21 (4) That the purchaser is allowed to cancel the debt
22 cancellation agreement at any time and receive a refund paid directly to the
23 purchaser minus any cancellation fee not to exceed twenty-five dollars
24 (\$25.00) as follows:

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

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

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

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35 4-90-704. Debt cancellation agreements – Restrictions.

36 No debt cancellation agreement shall be issued that:

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

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

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

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

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 13 4-90-705. Application of § 4-88-101 et seq. to debt cancellation
 14 agreements and sellers of debt cancellation agreements.

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

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

22
 23 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 24 General Assembly of the State of Arkansas that the incompatibility of acts of
 25 the Eighty-Sixth General Assembly presents difficult compliance issues for
 26 the administration of debt cancellation agreements; that in order to avoid a
 27 disruption in commerce associated with compliance with other debt
 28 cancellation legislation, the enactment of this act is immediately necessary.
 29 Therefore, an emergency is declared to exist and this act being immediately
 30 necessary for the preservation of the public peace, health, and safety, shall
 31 become effective on:

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

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

36 (3) If the bill is vetoed by the Governor and the veto is

1 overridden, the date the last house overrides the veto.

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