

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 *As Engrossed: S1/24/07 S1/29/07 H2/15/07*

2 86th General Assembly

A Bill

3 Regular Session, 2007

SENATE BILL 110

4

5 By: Senators Miller, Horn, T. Smith, R. Thompson, Altes, J. Jeffress, Bisbee, Luker

6 By: Representatives Anderson, Rosenbaum, Wyatt, Maxwell, *Norton, Harrelson*

7

8

9

For An Act To Be Entitled

10

AN ACT TO CLARIFY THAT DEBT CANCELLATION

11

AGREEMENTS ARE NOT INCLUDED IN THE DEFINITION OF

12

INSURANCE UNDER THE ARKANSAS INSURANCE CODE; AND

13

FOR OTHER PURPOSES.

14

15

Subtitle

16

TO CLARIFY THAT DEBT CANCELLATION

17

AGREEMENTS ARE NOT 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. The agreement may be separate from or a part of other loan
14 documents;

15
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, whether or not separate from or a part of
27 other loan documents.

28
29 4-90-702. Requiring borrower to purchase debt cancellation agreement
30 prohibited.

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

33
34 4-90-703. Debt cancellation agreements to be legible – Disclosure
35 requirements.

36 All terms of a debt cancellation agreement shall be printed or

1 reproduced to render all material provisions of the agreement legible and
2 shall clearly and conspicuously disclose the following information:

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

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

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

11 (4) The amount or portion of the retail price that is either
12 retained by or paid to the seller of the automobile as a commission or any
13 other sort of compensation;

14 (5) That the purchaser is allowed to cancel the debt
15 cancellation agreement at any time and receive a refund paid directly to the
16 purchaser minus any cancellation fee not to exceed twenty-five dollars
17 (\$25.00) as follows:

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

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

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

27
28 4-90-704. Debt cancellation agreements – Restrictions.

29 No debt cancellation agreement shall be issued that:

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

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

36 (3) Has a title, heading, or other indication of its provisions

1 that is misleading;

2 (4) Contains any provision that is unconscionable or that
3 encourages misrepresentation; or

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

7
8 4-90-705. Application of § 4-88-101 et seq. to debt cancellation
9 agreements and sellers of debt cancellation agreements.

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

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

17
18 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that the ability to be made whole
20 following the total loss of a vehicle due to theft, accident, collision, or
21 physical damage is in jeopardy; that the forgiveness of a borrower's
22 obligation and reimbursement of the seller is fair and equitable when the
23 cost to repair or replace the vehicle exceeds the vehicle's value; and that
24 the passage of this act is immediately necessary to protect the parties'
25 respective interests in the vehicle. Therefore, an emergency is declared to
26 exist and this act being immediately necessary for the preservation of the
27 public peace, health, and safety shall become effective on:

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

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

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

34
35 /s/ Miller
36