

FINANCE CODE

TITLE 5. PROTECTION OF CONSUMERS OF FINANCIAL SERVICES
CHAPTER 397. DEBT CANCELLATION AGREEMENTS FOR CERTAIN VEHICLE
LEASES

Sec. 397.001. DEFINITIONS. In this chapter:

(1) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(2) "Debt cancellation agreement" means a lease term or a contractual arrangement modifying a lease term under which a lessor or holder agrees to cancel all or part of an obligation of the lessee to pay the lessor or holder on the occurrence of the total loss or theft of the covered vehicle that is the subject of the lease but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(3) "Holder" means a person who is:

(A) a lessor; or

(B) the assignee or transferee of a lease.

(4) "Lease" means a lease for a covered vehicle.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. [1052](#)), Sec. 7, eff. September 1, 2017.

Sec. 397.002. APPLICABILITY. This chapter does not apply to a lease that is a retail installment transaction under Section [345.068](#) or [348.002](#).

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. [1052](#)), Sec. 7, eff. September 1, 2017.

Sec. 397.003. RELATIONSHIP TO INSURANCE. A debt cancellation agreement to which this chapter applies is not insurance.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. [1052](#)), Sec. 7, eff. September 1, 2017.

Sec. 397.004. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) This chapter applies only to a debt cancellation agreement, including a gap waiver agreement or other similarly named agreement, that includes insurance coverage as part of the lessee's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a lease may not exceed five percent of the adjusted capitalized cost financed pursuant to the lease.

(c) The debt cancellation agreement becomes a part of or a separate addendum to the lease and remains a term of the lease on the assignment, sale, or transfer by the holder.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.005. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE. (a) In addition to the provisions required by Section 397.006, a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the lease;

(2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the covered vehicle;

(3) any act of gross negligence by an authorized driver that directly results in the total loss of the covered vehicle;

(4) conversion, embezzlement, or concealment by any person in lawful possession of the covered vehicle;

(5) lawful confiscation by an authorized public official;

(6) the operation, use, or maintenance of the covered vehicle in any race or speed contest;

(7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;

(8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;

(9) use of the covered vehicle for primarily commercial purposes;

(10) damage that occurs after the covered vehicle has been repossessed;

(11) damage to the covered vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered vehicle;

(13) damage related to any personal property attached to or within the covered vehicle;

(14) damages associated with falsification of documents by any person not associated with the lessor or other person canceling the lessee's obligation;

(15) any unpaid debt resulting from exclusions in the lessee's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered vehicle by the lessee only if the lessee voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered vehicle to the extent that the relinquishment shows intent to forsake and desert the covered vehicle so that the covered vehicle may be appropriated by any other person;

(17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and

(18) any loss occurring outside the United States or outside the United States and Canada.

(b) An exclusion of loss or damage not listed in Subsection (a) may be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. [1052](#)), Sec. 7, eff. September 1, 2017.

Sec. 397.006. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

(1) the contact information of the lessor, the holder, and any administrator of the agreement;

(2) the name and address of the lessee;

(3) the cost and term of the debt cancellation agreement;

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

(5) the period during which the lessee is required to notify the lessor, the holder, or any administrator of the agreement of any potential loss under the debt cancellation agreement for total loss or theft of the covered vehicle;

(6) that in order to make a claim, the lessee must provide or complete some or all of the following documents and provide those documents to the lessor, the holder, or any administrator of the agreement:

(A) a debt cancellation request form;

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

(C) verification of the lessee's primary insurance deductible;

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

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) or required by the lessor, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the lessor, the holder, or any administrator of the agreement may inspect the lessee's covered vehicle;

(9) that the lessor or holder will cancel all or part of the lessee's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered vehicle;

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

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

(12) that purchase of a debt cancellation agreement is not required for the lessee to obtain a lease and will not be a factor in the lease approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the lessee must provide a written request to cancel to the lessor, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered vehicle has not occurred, the lessee has 30 days from the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund; and

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

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. [1052](#)), Sec. 7, eff. September 1, 2017.

Sec. 397.007. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) If a lessee purchases a debt cancellation agreement, the lessor must provide to the lessee a true and correct copy of the agreement not later than the 10th day after the date of the lease.

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

(c) A debt cancellation agreement may not knowingly be offered by a lessor if:

(1) the lease is already protected by gap insurance;
or

(2) the purchase of the debt cancellation agreement is required for the lessee to obtain the lease.

(d) This section does not apply to a debt cancellation agreement offered in connection with the lease of a commercial vehicle.

(e) The sale of a debt cancellation agreement must be for a single payment.

(f) A holder that offers a debt cancellation agreement must report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Money received or held by a holder or any administrator of a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement must be held by the holder or administrator in a fiduciary capacity.

(h) A lessor that negotiates a debt cancellation agreement and subsequently assigns the lease shall maintain documents relating to the agreement that come into the lessor's possession.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. [1052](#)), Sec. 7, eff. September 1, 2017.

Sec. 397.008. REFUND FOR DEBT CANCELLATION AGREEMENTS.

(a) A refund or credit of the debt cancellation agreement fee must be based on the earliest date of:

(1) the prepayment of the lease in full before the original maturity date;

(2) a demand by the holder for payment in full of the unpaid balance or acceleration;

(3) a request by the lessee for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section [397.005](#), except in the case of a partial loss of the covered vehicle.

(b) The refund or credit for the debt cancellation agreement can be rounded to the nearest whole dollar. A refund or credit 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 lessee may cancel the debt cancellation agreement not later than the 30th day after the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the holder or any administrator of the agreement shall refund or credit the entire debt cancellation agreement fee. A lessee may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

(d) A holder may in good faith rely on a computation by any administrator of the agreement of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must within a reasonable time of learning that the computation is incorrect make the necessary corrections or cause the corrections to be made to the lessee's account. This subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the debt cancellation agreement or computation.

(e) If the debt cancellation agreement terminates due to the early termination of the lease, the holder shall, not later than the 60th day after the date the debt cancellation agreement terminates:

(1) refund or credit an appropriate amount of the debt cancellation agreement fee; 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.

(f) The holder shall ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person under Subsection (e)(2) is made not later than the 60th day after the date the debt cancellation agreement terminates.

(g) The holder shall maintain records of any refund or credit of an amount of a debt cancellation agreement fee made under

Subsection (e) and provide electronic access to those records until the later of the fourth anniversary of the date of the lease or the second anniversary of the date of the refund or credit.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.009. ENFORCEMENT. (a) If the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in any method, act, or practice that is a violation of this chapter, the attorney general may bring an action in the name of the state against the person to restrain the person by temporary restraining order, temporary injunction, or permanent injunction from engaging in the method, act, or practice.

(b) An action brought under Subsection (a) may be commenced in the district court of the county in which the person against whom the action is brought resides, has the person's principal place of business, or has done business, in the district court of the county in which any or all parts of the method, act, or practice giving rise to the action occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue a temporary restraining order, temporary injunction, or permanent injunction to restrain or prevent a violation of this chapter and injunctive relief must be issued without bond.

(c) In addition to the request for a temporary restraining order, temporary injunction, or permanent injunction, the attorney general may request, and the trier of fact may award, a civil penalty to be paid to the state in an amount of not more than \$20,000 per violation.

(d) The attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including reasonable investigative costs, court costs, and attorney's fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.