

ACT No. 374

Regular Session, 2010

HOUSE BILL NO. 452

BY REPRESENTATIVE ARNOLD

1 AN ACT

2 To amend and reenact R.S. 6:969.6(23) and (29), 969.35(A)(2), 969.42, the heading of Part  
3 VIII of Chapter 10-B of Title 6 of the Louisiana Revised Statutes of 1950, and  
4 969.51 and to enact R.S. 6:969.6(34) and (35), 969.52, 969.53, and 969.54, relative  
5 to the Louisiana Motor Vehicle Sales Finance Act; to provide for changes in  
6 definitions; to provide for new definitions; to provide for debt waiver or debt  
7 forgiveness agreements; to provide for requirements of GAP coverage; to provide  
8 for liability, disclosures, or cancellations regarding debt waiver or debt forgiveness  
9 agreements; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 6:969.6(23) and (29), 969.35(A)(2), 969.42, the heading of Part VIII  
12 of Chapter 10-B of Title 6 of the Louisiana Revised Statutes of 1950, and 969.51 are hereby  
13 amended and reenacted and R.S. 6:969.6(34) and (35), 969.52, 969.53, and 969.54 are  
14 hereby enacted to read as follows:

15 §969.6. Definitions

16 As used in this Chapter:

17 \* \* \*

18 (23)(a) "Motor vehicle" means any new or used transportation device,  
19 including automobiles, motorcycles, trucks, and other vehicles that are operated over  
20 the public highways and the streets of this state, but does not include traction  
21 engines, boat trailers, road rollers, implements of husbandry, and other agricultural  
22 vehicles. A manufactured home is deemed to be a "motor vehicle" for purposes of  
23 this Chapter only if it is anticipated at the time of the transaction that the  
24 manufactured home will not be immobilized pursuant to R.S. 9:1149.4.



1 §969.42. Venue for litigation or arbitration; choice of law

2 A. A provision contained in any document relating to a motor vehicle credit  
 3 transaction or debt waiver or debt forgiveness agreement that was entered into in the  
 4 state of Louisiana requiring that litigation or arbitration be conducted outside of this  
 5 state is void and unenforceable.

6 B. Except as to a supervised financial organization, a provision contained in  
 7 any document relating to a motor vehicle credit transaction or debt waiver or debt  
 8 forgiveness agreement that was entered into in the state of Louisiana that seeks to  
 9 apply any law other than Louisiana law to a dispute between the parties to such  
 10 transaction is void and unenforceable.

11 \* \* \*

12 PART VIII. ~~UNIFORM RETAIL INSTALLMENT SALES CONTRACT~~

13 GAP COVERAGE

14 §969.51. ~~Uniform retail installment sales contract~~ GAP coverage; requirements

15 A. ~~The legislature finds that it is beneficial to extenders of credit, consumers,~~  
 16 ~~and new and used motor vehicle dealers to have uniform documents that can be used~~  
 17 ~~in the sale and financing of new and used motor vehicles. Uniform retail installment~~  
 18 ~~sales contracts benefit both parties to a contract by making transactions more~~  
 19 ~~understandable. Debt waiver or debt forgiveness agreements may be offered, sold,~~  
 20 ~~or provided to consumers in this state in compliance with this Chapter.~~

21 B. ~~The commission shall create a uniform retail installment sales contract for~~  
 22 ~~motor vehicle credit transactions subject to this Chapter. The commission shall~~  
 23 ~~promulgate the contract and any rules for use of the form in accordance with the~~  
 24 ~~Administrative Procedure Act no later than January 1, 2007. When creating the~~  
 25 ~~form, the commission shall incorporate all consumer notice and disclosure~~  
 26 ~~requirements provided for in state and federal law. Debt waiver or debt forgiveness~~  
 27 ~~agreements shall be sold for a single premium.~~

28 C. ~~Use of the uniform retail installment sales contract by a lender or seller~~  
 29 ~~shall constitute prima facie evidence of compliance with consumer notice and~~  
 30 ~~disclosure requirements of state and federal law. Notwithstanding any other~~

1 provision of law to the contrary, any cost to a consumer for a debt waiver or debt  
 2 forgiveness agreement entered into in compliance with The Truth in Lending Act,  
 3 15 U.S.C. 1601 et seq., and its implementing regulations, as they may be amended  
 4 from time to time, shall be separately stated and shall not be considered a finance  
 5 charge or interest.

6 D. A seller shall insure its debt waiver or debt forgiveness agreement's  
 7 obligations under a contractual liability or other insurance policy issued by an  
 8 insurer. A lender, other than a seller, may insure its debt waiver or debt forgiveness  
 9 agreement's obligations under a contractual liability policy or other such policy  
 10 issued by an insurer. Any such insurance policy may be directly obtained by a  
 11 lender, seller, or may be procured by an administrator to cover a lender's or seller's  
 12 obligations; however, sellers that are lessors on motor vehicles shall not be required  
 13 to insure obligations related to debt waiver or debt forgiveness agreements on such  
 14 leased vehicles.

15 E. The debt waiver or debt forgiveness agreement remains a part of the  
 16 contract upon the assignment, sale, or transfer of such contract by the seller or  
 17 lender.

18 F. Neither the extension of credit, the term of credit, nor the term of the  
 19 related motor vehicle sale or lease may be conditioned upon the purchase of a debt  
 20 waiver or debt forgiveness agreement.

21 G. Any seller or lender that offers a debt waiver or debt forgiveness  
 22 agreement shall report the sale of, and forward funds received on, all such waivers  
 23 to the designated party, if any, as prescribed in any applicable administrative services  
 24 agreement, contractual liability policy, other insurance policy, or other specified  
 25 program documents.

26 §969.52. Liability; contractual or insurance policies

27 A. Contractual liability or other insurance policies insuring debt waiver or  
 28 debt forgiveness agreements shall state the obligation of the insurer to reimburse or  
 29 pay to the creditor any sums the lender is legally obligated to waive under the debt

1            waiver or debt forgiveness agreement issued by the seller or lender and purchased  
 2            or held by the consumer.

3            B. Coverage under a contractual liability or other insurance policy insuring  
 4            a debt waiver or debt forgiveness agreement shall also cover any subsequent assignee  
 5            upon the assignment, sale, or transfer of the contract.

6            C. Coverage under a contractual liability or other insurance policy insuring  
 7            a debt waiver or debt forgiveness agreement shall remain in effect unless cancelled  
 8            or terminated in compliance with applicable insurance laws of this state.

9            D. The cancellation or termination of a contractual liability or other  
 10           insurance policy shall not reduce the insurer's responsibility for debt waiver or debt  
 11           forgiveness agreements issued by the seller or lender prior to the date of cancellation  
 12           or termination and for which premium has been received by the insurer.

13           §969.53. Cancellation

14           A. Debt waiver or debt forgiveness agreements may be cancelled. Debt  
 15           waiver or debt forgiveness agreements shall provide that if a consumer cancels a  
 16           waiver within the "free-look period", the consumer shall be entitled to a full refund  
 17           of the purchase price, so long as no benefits have been provided; or in the event  
 18           benefits have been provided, the consumer may receive a full or partial refund  
 19           pursuant to the terms of the waiver.

20           B. In the event of a consumer cancellation of the debt waiver or debt  
 21           forgiveness agreement or early termination of the contract, after the agreement has  
 22           been in effect beyond the "free-look period", the consumer is entitled to a refund of  
 23           any unearned portion of the purchase price of the waiver on terms no less favorable  
 24           to the consumer than the method of refund commonly known as the "Rule of 78s"  
 25           or the "sum of digits" refund method. In order to receive a refund, the consumer, in  
 26           accordance with any applicable terms of the waiver, shall provide a written request  
 27           to the lender, administrator, or other party.

28           C. If the cancellation of a debt waiver or debt forgiveness agreement occurs  
 29           as a result of a default under the contract or the repossession of the motor vehicle  
 30           associated with the contract, or any other termination of the contract, any refund due

1           may be paid directly to the lender or administrator and applied as set forth in  
 2           Subsection D of this Section.

3           D. Any cancellation refund under the provisions of this Section may be  
 4           applied by the lender as a reduction of the amount owed under the contract, unless  
 5           the consumer can show that the contract has been paid in full.

6           E. No consumer shall be charged a cancellation fee.

7           §969.54. Disclosures

8           Debt waiver or debt forgiveness agreements shall disclose, as applicable, in  
 9           writing and in clear, understandable language that is easy to read, the following:

10           (1) The name and address of the initial lender and the consumer at the time  
 11           of sale and the identity and address of any administrator if different from the lender.

12           (2) The purchase price and the terms of the debt waiver or debt forgiveness  
 13           agreement, including without limitation, the requirements for protection, conditions,  
 14           or exclusions with the debt waiver or debt forgiveness agreement.

15           (3) A clear statement in the debt waiver or debt forgiveness agreement given  
 16           to the consumer that by its acceptance as an amendment to the contract upon  
 17           assignment, the lender agrees to waive the consumer's liability for the difference  
 18           between the amount owed, excluding past due amounts, payment extensions,  
 19           insurance, prior unrepaired damage for which the consumer has been paid by an  
 20           insurer, or other charges, under the consumer's contract and the amount paid by the  
 21           consumer's primary insurer after a vehicle is deemed a total loss from a peril covered  
 22           by the consumer's primary insurance company or if there is no primary insurance on  
 23           the date of loss, the actual cash value of the motor vehicle at the time of loss as  
 24           determined by an established value guide.

25           (4) That the consumer may cancel the debt waiver or debt forgiveness  
 26           agreement within a "free-look period" as specified in the waiver, and shall be entitled  
 27           to a full refund of the purchase price, so long as no benefits have been provided; or  
 28           in the event benefits have been provided, the consumer may receive a full or partial  
 29           refund of the premium paid pursuant to the terms of the waiver.

1           (5) The procedure the consumer shall follow, if any, to obtain debt waiver  
2           or debt forgiveness agreement benefits under the terms and conditions of the waiver,  
3           including a telephone number and address where the consumer may apply for waiver  
4           benefits.

5           (6) That in order to receive any refund due in the event of a debt waiver or  
6           debt forgiveness agreements's cancellation of the debt waiver or debt forgiveness  
7           agreements or early termination of the contract after the "free-look period" of the  
8           debt waiver or debt forgiveness waiver, the consumer, in accordance with terms of  
9           the waiver, shall provide a written request to cancel to the lender, administrator, or  
10          such other party, within ninety days of the occurrence of the event terminating the  
11          contract.

12          (7) Any refund of the unearned purchase price of the debt waiver or debt  
13          forgiveness agreement due, in the event of cancellation of the debt waiver or debt  
14          forgiveness agreement or early termination of the contract, shall be on terms no less  
15          favorable to the consumer than the method of refund commonly known as the "Rule  
16          of 78s" or the "sum of digits" refund method.

17          (8) That neither the extension of credit, the terms of the credit, nor the terms  
18          of the related motor vehicle sale or lease, may be conditioned upon the purchase of  
19          the debt waiver or debt forgiveness agreements.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_