



DONNA CAMPBELL, M.D. FILE # ML-48602-19  
TEXAS STATE SENATOR  
DISTRICT 25

RQ-0302-KP

I.D. # 48602

Re: Request for ruling on SB 1199 – Amendment to Chapter 1304 of the Occupations Code

Dear Attorney General Paxton:

During the 85<sup>th</sup> Legislative Session, I passed SB 1199 which amends Chapter 1304 of the Occupations Code to authorize the sale of a depreciation benefit optional member program. This legislation defines a depreciation benefit optional member program as “a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss.”

It has been brought to my attention that there has been some concern that a depreciation benefit optional program can only be purchased through a financed transaction, and not on a cash or lease transaction. That was never the intent of my legislation. I have attached a copy of my Author Statement of Purpose that I filed with the Senate Business and Industry Committee which states; “Interested parties note the need for consumers in Texas to be able to purchase a depreciation member benefit program from their auto dealer. This product is an optional membership benefit, so the consumer becomes a member of a particular auto group or dealer. In event of total loss, a benefit of a specified dollar amount applies towards the purchase of a new vehicle.” This does not state a specific type of financial transaction.

I am looking for a clarification that will help solidify the position that a depreciation benefit optional membership program can be sold on cash and lease transactions, and not just purchase transactions that are financed. While we understand that the original intent was to allow PowerBuy to be placed on line 4 of the Retail Installment Contract, the way that the definition is now written looks to only allow for purchase on financed transactions. This, as you can imagine, is a huge disadvantage when it comes to auto dealers looking to sell the product.

In the initial discussions that I had with your staff, they indicated that the language of the statute was ambiguous regarding whether the depreciation benefit was required to be financed under chapter 348 or 353. Even if the product needed to be subject to 348 or 353 to be permitted, they thought that the definition of a retail installment transaction could encompass a lease or cash sale. Section 348 specifically references leases and that an installment sale can be paid in cash as long as any amount is deferred.

As you can see, we will need a more binding statement. It is for this reason that I am asking for a ruling that determines if a depreciation benefit optional membership program may be purchased by a cash and lease transaction under the amendment to Chapter 1304 of the Occupations Code.

Sincerely,

State Senator Donna Campbell, M.D.  
Senate District 25

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