

Legislative Analysis



GUARANTEED ASSET PROTECTION WAIVERS

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House Bill 4989 (Substitute H-2)
Sponsor: Rep. Tory Rocca

House Bill 4990 (Substitute H-1)
House Bill 4991 as introduced
Sponsor: Rep. Bert Johnson

House Bill 4992 as introduced
Sponsor: Rep. Tim Melton

Committee: Insurance
Complete to 10-5-09

A PRELIMINARY SUMMARY OF HOUSE BILLS 4989-4992 AS REPORTED FROM COMMITTEE

Generally speaking, this package of bills specifies that guaranteed asset protection (GAP) waivers on motor vehicles are not insurance products and are subject to regulation not under the Insurance Code but instead under a new separate act, the Guaranteed Asset Protection Waiver Act.

These waivers are defined in the legislation as contractual agreements in which a creditor (lender) agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

This means the lender agrees to waive amounts due on a vehicle that is totaled in an accident or is stolen and not recovered. It covers, for the vehicle owner, the difference between the amount owed on a vehicle and the amount an insurance company is obligated to pay in the event of an accident or theft. (This is for cases where an individual owes more on a vehicle than its value for insurance purposes.)

House Bill 4989 would create the Guaranteed Asset Protection Waiver Act. The act would be enforced by the Commissioner of the Office of Financial and Insurance Regulation (OFIR). It allows a GAP waiver to be part of, or a separate addendum to, the finance agreement for a motor vehicle, and allows creditors to sell such waivers for a single payment or via a monthly or periodic payment option. The new act requires a "free look" period of at least 30 days during which a customer could cancel the waiver without any costs. It would be up to the creditor (lender) of a waiver was cancelable or not cancelable after the free look period.

House Bill 4990 would amend the Insurance Code (MCL 500.127). It specifies that a GAP waiver subject to the new act is not insurance or the business of insurance and is not

subject to the Insurance Code. A person would not be required to obtain a certificate of authority or a license to market, sell, or offer to sell GAP waivers.

House Bill 4991 would amend the Motor Vehicle Sales Finance Act (MCL 492.113). It allows an installment sales contract to include a guaranteed asset protection waiver (in the contract or as an addendum). The cost of the waiver to the buyer would have to be state separately and would not be considered a finance charge or interest. Such a waiver would have to comply with the new act regulating such waivers.

House Bill 4992 would amend the Retail Installment Sales Act (MCL 445.853). It allows a retail sales contract connected to a transaction that involves a motor vehicle to include a guaranteed asset protection waiver (in the contract or as an addendum). The cost of the waiver to the buyer would have to be state separately and would not be considered a finance charge or interest. Such a waiver would have to comply with the new act regulating such waivers.

FISCAL IMPACT:

The bills have no revenue or budgetary implications, according to OFIR.

POSITIONS:

The Office of Financial and Insurance Regulation supports the legislation. (8-19-09)

The Guaranteed Asset Protection Alliance indicated support for the bills. (8-19-09)

Legislative Analyst: Chris Couch

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