



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4989 (Substitute H-2 as reported without amendment)
House Bill 4990 (Substitute H-1 as reported without amendment)
House Bills 4991 and 4992 (as reported without amendment)
Sponsor: Representative Tory Rocca (H.B. 4989)
 Representative Bert Johnson (H.B. 4990 & 4991)
 Representative Tim Melton (H.B. 4992)
House Committee: Insurance
Senate Committee: Economic Development and Regulatory Reform

CONTENT

House Bill 4989 (H-2) would create the "Guaranteed Asset Protection Waiver Act" to regulate the sale of guaranteed asset protection (GAP) waivers (contractual agreements in which a creditor 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).

The bill would do the following:

- Beginning 180 days after the bill's effective date, require a creditor that offered, sold, or provided a GAP waiver to comply with the proposed Act.
- Require a GAP waiver to be part of, or a separate addendum to, the finance agreement for a motor vehicle.
- Require an installment seller or retail seller to insure its GAP waiver obligations, unless the seller were a lessor of a motor vehicle.
- Prohibit a creditor from conditioning an extension or term of credit on the purchase of a GAP waiver.
- Require a GAP waiver to disclose specified information, including information about the cancellation of a GAP waiver during a "free look period" (when the borrower would have at least 30 days to cancel without penalty or costs).
- Establish requirements and restrictions for the cancellation of a GAP waiver, including refund provisions.
- Authorize the Commissioner of Financial and Insurance Regulation to take actions to enforce the proposed Act and to protect GAP waiver holders, including assessing administrative fines.
- Exempt certain transactions from the Act.

"Creditor" would mean a person that extends credit to a borrower in connection with the purchase of a motor vehicle; a lessor of a motor vehicle; or an assignee of that person or lessor. The term would include an installment seller that extends credit to, or leases a motor vehicle to, an installment buyer; a sales finance company that extends credit to an installment buyer; and a retail seller that extends credit to, or leases a motor vehicle to, a retail buyer.

"Borrower" would mean a person that purchases, leases, or agrees to purchase or lease a motor vehicle, including an installment buyer and a retail buyer.

"Motor vehicle" would mean a self-propelled or towed device that transports people or property for personal or commercial use. The term would include an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, and personal watercraft, and a motorcycle, boat, camper, or personal watercraft trailer.

House Bill 4990 (H-1) would amend the Insurance Code to specify that a GAP waiver that was subject to the proposed Guaranteed Asset Protection Waiver Act would not be insurance or the business of insurance and would not be subject to the Code.

House Bill 4991 would amend the Motor Vehicle Sales Finance Act to require an installment sale contract to set forth the cost of any GAP waiver for which the seller agreed to extend credit to the buyer.

House Bill 4992 would amend the Retail Installment Sales Act to require a retail installment contract to contain the cost of any GAP waiver for which the seller agreed to extend credit to the buyer, if the transaction involved a vehicle.

The bills are tie-barred. House Bills 4989 (H-2), 4991, and 4992 would take effect 180 days after their enactment.

Proposed MCL 500.127 (H.B. 4990)
MCL 492.113 (H.B. 4991)
445.853 (H.B. 4992)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4989 (H-2) would allow the Commissioner to impose an administrative fine on violators of the proposed Act. The fine would be up to \$500 per violation, with a \$20,000 maximum for multiple violations of a similar nature. There is no information available on estimated violations; however, any revenue generated would be retained by the Office of Financial and Insurance Regulation.

House Bills 4990 (H-1), 4991, and 4992 would have no fiscal impact on State or local government.

Date Completed: 11-13-09

Fiscal Analyst: Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.