

**SUBSTITUTE FOR
HOUSE BILL NO. 4989**

A bill to regulate guaranteed asset protection waivers offered or provided in connection with finance agreements for certain motor vehicles; to provide for the powers and duties of certain state governmental officers and entities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "guaranteed asset protection waiver act".

3 Sec. 3. As used in this act:

4 (a) "Administrator" means a person, other than a creditor or
5 insurer, that performs administrative or operational functions in
6 connection with a guaranteed asset protection waiver program.

7 (b) "Borrower" means a person that purchases, agrees to
8 purchase, leases, or agrees to lease a motor vehicle. The term

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1 includes, but is not limited to, an installment buyer or a retail
2 buyer.

3 (c) "Commissioner" means the commissioner of the office of
4 financial and insurance regulation in the department of energy,
5 labor, and economic growth.

6 (d) "Creditor" means a person that extends credit to a
7 borrower in connection with the purchase of a motor vehicle; an
8 assignee of that person; a lessor of a motor vehicle; or an
9 assignee of that lessor. The term includes, but is not limited to,
10 any of the following:

11 (i) An installment seller that extends credit to an installment
12 buyer and any assignee to which that credit obligation is payable.

13 (ii) An installment seller that leases a motor vehicle to an
14 installment buyer and any assignee to which the lease payments are
15 payable.

16 (iii) A sales finance company that extends credit to an
17 installment buyer and any assignee to which that credit obligation
18 is payable.

19 (iv) A retail seller that extends credit to a retail buyer and
20 any assignee to which that credit obligation is payable.

21 (v) A retail seller that leases a motor vehicle to a retail
22 buyer and any assignee to which the lease payments are payable.

23 (e) "Finance agreement" means a loan, lease, or installment
24 sale agreement for a motor vehicle. The term includes, but is not
25 limited to, an installment sale contract, a retail installment
26 contract, or a retail charge agreement.

27 [(f) "Free look period" means the period of time during which a

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1 borrower may cancel a guaranteed asset protection waiver without penalty,
2 fees, or costs to the borrower. A free look period must begin on the
3 effective date of the guaranteed asset protection waiver, and the term of
4 a free look period must be at least 30 days.]

5 (g) "Guaranteed asset protection waiver" means a contractual
6 agreement in which a creditor agrees for a separate charge to
7 cancel or waive all or part of amounts due on a borrower's finance
8 agreement in the event of a total physical damage loss or
9 unrecovered theft of a motor vehicle.

10 (h) "Installment buyer" means that term as defined in section
11 2 of the motor vehicle sales finance act, MCL 492.102.

12 (i) "Installment sale contract" means that term as defined in
13 section 2 of the motor vehicle sales finance act, MCL 492.102.

14 (j) "Installment seller" means that term as defined in section
15 2 of the motor vehicle sales finance act, MCL 492.102.

16 (k) "Insurer" means an authorized insurer as defined in
17 section 108 of the insurance code of 1956, 1956 PA 218, MCL
18 500.108.

19 (l) "Motor vehicle" means a self-propelled or towed device that
20 transports people or property for personal or commercial use. The
21 term includes, but is not limited to, an automobile, truck,
22 motorcycle, recreational vehicle, all-terrain vehicle, camper,
23 boat, or personal watercraft or a motorcycle, boat, camper, or
24 personal watercraft trailer. The term does not include a device
25 that moves on or is guided by a track or travels through the air.

26 (m) "Motor vehicle sales finance act" means the motor vehicle
27 sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(n) "Person" means an individual, limited liability company,

1 partnership, association, corporation, governmental entity, or any
2 other legal entity.

3 (o) "Retail buyer" means that term as defined in section 2 of
4 the retail installment sales act, MCL 445.852.

5 (p) "Retail charge agreement" means that term as defined in
6 section 2 of the retail installment sales act, MCL 445.852.

7 (q) "Retail installment contract" means that term as defined
8 in section 2 of the retail installment sales act, MCL 445.852.

9 (r) "Retail installment sales act" means the retail
10 installment sales act, 1966 PA 224, MCL 445.851 to 445.873.

11 (s) "Retail seller" means that term as defined in section 2 of
12 the retail installment sales act, MCL 445.852.

13 (t) "Sales finance company" means that term as defined in
14 section 2 of the motor vehicle sales finance act, MCL 492.102.

15 Sec. 5. (1) All of the following apply to offering, selling,
16 or providing a guaranteed asset protection waiver to a borrower in
17 this state:

18 (a) Beginning 180 days after the effective date of this act, a
19 creditor that offers, sells, or provides a guaranteed asset
20 protection waiver in this state must comply with this act.

21 (b) A guaranteed asset protection waiver must be part of, or a
22 separate addendum to, the finance agreement for the motor vehicle.

23 (c) At the option of the creditor, a creditor may sell a
24 guaranteed asset protection waiver for a single payment or may
25 offer a monthly or periodic payment option for a guaranteed asset
26 protection waiver.

27 (d) Any cost to a borrower for a guaranteed asset protection

1 waiver entered into in compliance with the truth in lending act, 15
2 USC 1601 to 1667f, and the regulations promulgated under that act,
3 12 CFR part 226, must be separately stated and is not considered a
4 finance charge or interest.

5 (e) Except as provided in subdivision (f), an installment
6 seller or retail seller must insure its guaranteed asset protection
7 waiver obligations under a contractual liability or other insurance
8 policy issued by an insurer. A creditor that is not an installment
9 seller or retail seller may insure its guaranteed asset protection
10 waiver obligations under a contractual liability policy or other
11 insurance policy issued by an insurer. Any creditor may obtain an
12 insurance policy described in this subdivision directly, or an
13 administrator may obtain that policy on behalf of that creditor.

14 (f) An installment seller or retail seller that is a lessor of
15 a motor vehicle is not required to insure its guaranteed asset
16 protection waiver obligation on the leased vehicle under
17 subdivision (e).

18 (g) A guaranteed asset protection waiver contained in a
19 finance agreement remains a part of that contract if the creditor
20 assigns, sells, or transfers that contract.

21 (h) A creditor shall not condition an extension of credit, the
22 term of credit, or the term of a related motor vehicle sale or
23 lease on the purchase of a guaranteed asset protection waiver.

24 (i) Any creditor that offers guaranteed asset protection
25 waivers must report all sales of those waivers, and forward any
26 payments received on those sales, to the designated party, if any,
27 prescribed in any applicable administrative services agreement,

1 contractual liability policy, other insurance policy, or other
2 specified program documents.

3 (j) A creditor or administrator that receives or holds money
4 that belongs to an insurer under the terms of a written agreement
5 for insurance described in subdivision (e) must hold that money in
6 a fiduciary capacity.

7 (2) All of the following apply to a contractual liability or
8 other insurance policy described in subsection (1)(e):

9 (a) A contractual liability or other insurance policy insuring
10 a guaranteed asset protection waiver must state the obligation of
11 the insurer to reimburse or pay to the creditor any amount the
12 creditor is legally obligated to waive under the guaranteed asset
13 protection waiver issued by the creditor and purchased or held by
14 the borrower.

15 (b) Coverage under a contractual liability or other insurance
16 policy insuring a guaranteed asset protection waiver must also
17 cover any subsequent assignee if the finance agreement is assigned,
18 sold, or transferred.

19 (c) Coverage under a contractual liability or other insurance
20 policy insuring a guaranteed asset protection waiver must remain in
21 effect unless canceled or terminated in compliance with the
22 insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

23 (d) The cancellation or termination of a contractual liability
24 or other insurance policy must not reduce the insurer's
25 responsibility for guaranteed asset protection waivers issued by
26 the creditor before the date of cancellation or termination and for
27 which the insurer has received premiums.

1 Sec. 7. A guaranteed asset protection waiver must disclose, in
2 writing and in clear, understandable language that is easy to read,
3 all of the following, if applicable:

4 (a) The name and address of the initial creditor and the
5 borrower at the time of sale, and the identity of any administrator
6 if different from the creditor.

7 (b) The purchase price and the terms of the guaranteed asset
8 protection waiver, including, but not limited to, the requirements
9 for protection, conditions, or exclusions associated with the
10 guaranteed asset protection waiver.

11 (c) That the borrower may cancel the guaranteed asset
12 protection waiver during the free look period specified in the
13 waiver; and is entitled to a full refund of the purchase price if
14 the borrower has not received benefits under the waiver, or to any
15 full or partial refund included in the waiver if the borrower has
16 received benefits under the waiver.

17 (d) The procedure the borrower must follow, if any, to obtain
18 guaranteed asset protection waiver benefits under the terms and
19 conditions of the waiver, and a telephone number and address where
20 the borrower may apply for waiver benefits.

21 (e) Whether or not the borrower may cancel the guaranteed
22 asset protection waiver after the free look period; if so, the
23 conditions under which the borrower may cancel or terminate that
24 waiver; and the procedure the borrower must follow to request any
25 refund due.

26 (f) That in order to receive any refund due for the
27 cancellation of the guaranteed asset protection waiver, or the

1 early termination of the finance agreement after the free look
2 period, the borrower must provide a written request for a refund to
3 the creditor, administrator, or other party named in the waiver
4 within 90 days after the cancellation of the guaranteed asset
5 protection waiver or the occurrence of the event terminating the
6 finance agreement.

7 (g) The methodology for calculating any refund of the unearned
8 purchase price of a guaranteed asset protection waiver due to a
9 borrower for the cancellation of a guaranteed asset protection
10 waiver or early termination of the finance agreement.

11 (h) That a creditor may not condition an extension of credit,
12 the terms of that credit, or the terms of the related finance
13 agreement on the purchase of a guaranteed asset protection waiver.

14 Sec. 9. All of the following apply concerning the cancellation
15 of guaranteed asset protection waivers:

16 (a) A creditor may offer a guaranteed asset protection waiver
17 agreement that is cancelable or not cancelable after the free look
18 period. A guaranteed asset protection waiver must provide that if a
19 borrower cancels the waiver during the free look period, the
20 borrower is entitled to a full refund of the purchase price if the
21 borrower has not received benefits under the waiver, or to any full
22 or partial refund included in the waiver if the borrower has
23 received benefits under the waiver.

24 (b) If a borrower cancels the guaranteed asset protection
25 waiver, or the finance agreement is terminated, after the free look
26 period, the borrower may be entitled to a refund of any unearned
27 portion of the purchase price of the waiver unless the waiver

1 provides otherwise. In order to receive a refund, the borrower,
2 must provide a written request to the creditor, administrator, or
3 other party, within 90 days after the cancellation of the waiver or
4 the occurrence of the event terminating the finance agreement, that
5 meets any applicable notice provisions of the waiver.

6 (c) If the cancellation of a guaranteed asset protection
7 waiver occurs as a result of a default under a finance agreement,
8 the repossession of the motor vehicle associated with the finance
9 agreement, or any other termination of the finance agreement, any
10 refund due may be paid directly to the creditor or administrator
11 and applied as set forth in subdivision (d).

12 (d) A creditor may apply any cancellation refund received
13 under subdivision (a), (b), or (c) as a reduction of the amount
14 owed under the finance agreement, unless the borrower can show that
15 the finance agreement has been paid in full.

16 Sec. 11. The commissioner may take any action he or she
17 determines is necessary or appropriate to enforce this act and to
18 protect guaranteed asset protection waiver holders in this state,
19 including, but not limited to, doing any of the following after
20 proper notice and an opportunity for hearing under the
21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
22 24.328:

23 (a) Order a creditor, administrator, or any other person that
24 does not comply with this act to cease and desist from further
25 guaranteed asset protection waiver-related operations that violate
26 this act.

27 (b) Assess an administrative fine of not more than \$500.00

1 against a person for a violation of this act. However, the
2 commissioner may not assess administrative fines under this act
3 against any person that in the aggregate are more than \$20,000.00
4 for multiple violations of a similar nature. For purposes of this
5 subdivision, "similar nature" means that the violations consist of
6 the same or a similar course of conduct, action, or practice,
7 regardless of the number of times that action, conduct, or practice
8 occurs.

9 Sec. 13. (1) This act does not apply to any of the following:

10 (a) An insurance policy offered by an insurer under the
11 insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

12 (b) An offer of a debt cancellation or debt suspension
13 contract that complies with 12 CFR part 37, 12 CFR part 721, or
14 other federal law.

15 (2) Section 5(1)(d) does not apply to a guaranteed asset
16 protection waiver offered in connection with a lease or retail
17 installment sale associated with a commercial transaction.

18 Enacting section 1. This act takes effect 180 days after the
19 date this act is enacted into law.

20 Enacting section 2. This act does not take effect unless all
21 of the following bills of the 95th Legislature are enacted into
22 law:

23 (a) House Bill No. 4990.

24 (b) House Bill No. 4991.

25 (c) House Bill No. 4992.