

HOUSE BILL No. 4989

May 26, 2009, Introduced by Reps. Rocca, Melton and Johnson and referred to the Committee on Insurance.

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 the commissioner of the office of
5 financial and insurance regulation in the department of energy,
6 labor, and economic growth.

7 (b) "Borrower" means an installment buyer or a retail buyer.

8 (c) "Creditor" means any of the following:

9 (i) An installment seller that extends credit to an installment

1 buyer and any assignee to which that credit obligation is payable.

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

5 (iii) A sales finance company that extends credit to an
6 installment buyer and any assignee to which that credit obligation
7 is payable.

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

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

12 (d) "Finance agreement" means an installment sale contract or
13 a retail installment contract.

14 (e) "Free look period" means a period of time from the
15 effective date of a guaranteed asset protection waiver until the
16 date the borrower may cancel that waiver without penalty, fees, or
17 costs to the borrower. A free look period must be at least 30 days.

18 (f) "Guaranteed asset protection waiver" means a contractual
19 agreement in which a creditor agrees for a separate charge to
20 cancel or waive all or part of amounts due on a borrower's finance
21 agreement in the event of a total physical damage loss or
22 unrecovered theft of a motor vehicle.

23 (g) "Installment buyer" means that term as defined in section
24 2 of the motor vehicle sales finance act, MCL 492.102.

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

27 (i) "Installment seller" means that term as defined in section

1 2 of the motor vehicle sales finance act, MCL 492.102.

2 (j) "Insurer" means an authorized insurer as defined in
3 section 108 of the insurance code of 1956, 1956 PA 218, MCL
4 500.108.

5 (k) "Motor vehicle" means a self-propelled or towed device
6 that transports people or property for personal or commercial use.
7 The term includes, but is not limited to, an automobile, truck,
8 motorcycle, recreational vehicle, all-terrain vehicle, camper,
9 boat, or personal watercraft or a motorcycle, boat, camper, or
10 personal watercraft trailer. The term does not include a device
11 that moves on or is guided by a track or travels through the air.

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

14 (m) "Person" means an individual, limited liability company,
15 partnership, association, corporation, governmental entity, or any
16 other legal entity.

17 (n) "Retail buyer" means that term as defined in section 2 of
18 the retail installment sales act, MCL 445.852.

19 (o) "Retail installment contract" means that term as defined
20 in section 2 of the retail installment sales act, MCL 445.852.

21 (p) "Retail installment sales act" means the retail
22 installment sales act, 1966 PA 224, MCL 445.851 to 445.873.

23 (q) "Retail seller" means that term as defined in section 2 of
24 the retail installment sales act, MCL 445.852.

25 (r) "Sales finance company" means that term as defined in
26 section 2 of the retail installment sales act, MCL 445.852.

27 Sec. 5. (1) All of the following apply to offering, selling,

1 or providing a guaranteed asset protection waiver to a borrower in
2 this state:

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

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

8 (c) At the option of the creditor, a creditor may sell a
9 guaranteed asset protection waiver for a single payment or may
10 offer a monthly or periodic payment option for a guaranteed asset
11 protection waiver.

12 (d) Any cost to a borrower for a guaranteed asset protection
13 waiver entered into in compliance with the truth in lending act, 15
14 USC 1601 to 1667f, and the regulations promulgated under that act,
15 12 CFR part 226, must be separately stated and is not considered a
16 finance charge or interest.

17 (e) Except as provided in subdivision (f), an installment
18 seller or retail seller must insure its guaranteed asset protection
19 waiver obligations under a contractual liability or other insurance
20 policy issued by an insurer. A creditor that is not an installment
21 seller or retail seller may insure its guaranteed asset protection
22 waiver obligations under a contractual liability policy or other
23 insurance policy issued by an insurer. Any creditor may obtain an
24 insurance policy described in this subdivision directly, or an
25 administrator may obtain that policy on behalf of that creditor.

26 (f) An installment seller or retail seller that is a lessor of
27 a motor vehicle is not required to insure its guaranteed asset

1 protection waiver obligation on the leased vehicle under
2 subdivision (e).

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

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

9 (i) Any creditor that offers guaranteed asset protection
10 waivers must report all sales of those waivers, and forward any
11 payments received on those sales, to the designated party, if any,
12 prescribed in any applicable administrative services agreement,
13 contractual liability policy, other insurance policy, or other
14 specified program documents.

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

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

21 (a) A contractual liability or other insurance policy insuring
22 a guaranteed asset protection waiver must state the obligation of
23 the insurer to reimburse or pay to the creditor any amount the
24 creditor is legally obligated to waive under the guaranteed asset
25 protection waiver issued by the creditor and purchased or held by
26 the borrower.

27 (b) Coverage under a contractual liability or other insurance

1 policy insuring a guaranteed asset protection waiver must also
2 cover any subsequent assignee if the finance agreement is assigned,
3 sold, or transferred.

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

8 (d) The cancellation or termination of a contractual liability
9 or other insurance policy must not reduce the insurer's
10 responsibility for guaranteed asset protection waivers issued by
11 the creditor before the date of cancellation or termination and for
12 which the insurer has received premiums.

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

16 (a) The name and address of the initial creditor and the
17 borrower at the time of sale, and the identity of any administrator
18 if different from the creditor.

19 (b) The purchase price and the terms of the guaranteed asset
20 protection waiver, including, but not limited to, the requirements
21 for protection, conditions, or exclusions associated with the
22 guaranteed asset protection waiver.

23 (c) That the borrower may cancel the guaranteed asset
24 protection waiver during the free look period specified in the
25 waiver; and is entitled to a full refund of the purchase price if
26 the borrower has not received benefits under the waiver, or to any
27 full or partial refund included in the waiver if the borrower has

1 received benefits under the waiver.

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

6 (e) Whether or not the borrower may cancel the guaranteed
7 asset protection waiver after the free look period; if so, the
8 conditions under which the borrower may cancel or terminate that
9 waiver; and the procedure the borrower must follow to request any
10 refund due.

11 (f) That in order to receive any refund due for the
12 cancellation of the guaranteed asset protection waiver, or the
13 early termination of the finance agreement after the free look
14 period, the borrower must provide a written request to cancel to
15 the creditor, administrator, or other party named in the waiver
16 within 90 days after the cancellation of the guaranteed asset
17 protection waiver or the occurrence of the event terminating the
18 finance agreement.

19 (g) The methodology for calculating any refund of the unearned
20 purchase price of a guaranteed asset protection waiver due to a
21 borrower for the cancellation of a guaranteed asset protection
22 waiver or early termination of the finance agreement.

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

26 Sec. 9. All of the following apply concerning the cancellation
27 of guaranteed asset protection waivers:

1 (a) A creditor may offer a guaranteed asset protection waiver
2 agreement that is cancelable or not cancelable after the free look
3 period. A guaranteed asset protection waiver must provide that if a
4 borrower cancels the waiver during the free look period, the
5 borrower is entitled to a full refund of the purchase price if the
6 borrower has not received benefits under the waiver, or to any full
7 or partial refund included in the waiver if the borrower has
8 received benefits under the waiver.

9 (b) If a borrower cancels the guaranteed asset protection
10 waiver, or the finance agreement is terminated, after the free look
11 period, the borrower may be entitled to a refund of any unearned
12 portion of the purchase price of the waiver unless the waiver
13 provides otherwise. In order to receive a refund, the borrower,
14 must provide a written request to the creditor, administrator, or
15 other party, within 90 days after the cancellation of the waiver or
16 the occurrence of the event terminating the finance agreement, that
17 meets any applicable notice provisions of the waiver.

18 (c) If the cancellation of a guaranteed asset protection
19 waiver occurs as a result of a default under a finance agreement,
20 the repossession of the motor vehicle associated with the finance
21 agreement, or any other termination of the finance agreement, any
22 refund due may be paid directly to the creditor or administrator
23 and applied as set forth in subdivision (d).

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

1 Sec. 11. The administrator may take any action he or she
2 determines is necessary or appropriate to enforce this act and to
3 protect guaranteed asset protection waiver holders in this state,
4 including, but not limited to, doing any of the following after
5 proper notice and an opportunity for hearing under the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
7 24.328:

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

12 (b) Assess an administrative fine of not more than \$500.00
13 against a person for a violation of this act. However, the
14 administrator may not assess administrative fines under this act
15 against any person that in the aggregate are more than \$10,000.00
16 for multiple violations of a similar nature. For purposes of this
17 subdivision, "similar nature" means that the violations consist of
18 the same or a similar course of conduct, action, or practice,
19 regardless of the number of times that action, conduct, or practice
20 occurs.

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

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

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

27 (2) Sections 5(1)(d), 7, and 11 do not apply to a guaranteed

1 asset protection waiver offered in connection with a lease or
2 retail installment sale associated with a commercial transaction.

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

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

8 (a) Senate Bill No. ___ or House Bill No. 4990 (request no.
9 01431'09 a).

10 (b) Senate Bill No. ___ or House Bill No. 4991 (request no.
11 03124'09).

12 (c) Senate Bill No. ___ or House Bill No. 4992 (request no.
13 03362'09).