

Raised Bill No. 5385

AN ACT CONCERNING GUARANTEED ASSET PROTECTION WAIVERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective January 1, 2023*) (a) For the purposes of this section:

(1) "Administrator" means a person, other than an insurer or creditor, who performs any administrative or operational function on behalf of a creditor as part of the creditor's guaranteed asset protection waiver program;

(2) "Borrower" means an individual in this state who is a debtor, retail buyer or lessee under a finance agreement;

(3) "Commissioner" means the Commissioner of Consumer Protection;

(4) "Creditor" means the lender in a credit or loan transaction concerning a motor vehicle, the lessor in a motor vehicle lease transaction, a motor vehicle dealer providing credit to an individual purchasing a motor vehicle from such dealer, the seller in a commercial retail installment transaction and an assignee of any other person described in this subdivision to whom a credit obligation created as part of a transaction described in this subdivision is payable;

(5) "Finance agreement" means a loan, lease or retail installment sales contract with a borrower for the lease or purchase of a motor vehicle;

(6) "Free look period" means the time period, beginning on the effective date of a guaranteed asset protection waiver and ending not sooner than thirty days after such effective date, during which time period a borrower shall be entitled to cancel a guaranteed asset protection waiver;

(7) "Guaranteed asset protection waiver" or "waiver" means a contractual agreement forming part of a finance agreement, or included as an addendum to a finance agreement, wherein a creditor agrees, for a separate charge, to cancel or waive all or part of the amount due and owing from a borrower pursuant to the finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle that is the subject of such finance agreement;

(8) "Insurer" has the same meaning as provided in section 38a-1 of the general statutes;

(9) "Motor vehicle" means a self-propelled or towed vehicle designed for commercial or personal use, including, but not limited to, an all-terrain vehicle, automobile, boat, camper, motorcycle, personal watercraft, recreational vehicle, snowmobile or truck, or a trailer for a boat, camper, motorcycle, personal watercraft or truck;

(10) "Motor vehicle dealer" means a motor vehicle dealer licensed in accordance with section 14-52 of the general statutes; and

(11) "Person" means an individual, association, business trust, company, corporation, organization, partnership or other legal entity.

(b) (1) Except as provided in subdivision (2) of this subsection:

(A) No person shall market, offer, provide or sell a guaranteed asset protection waiver in this state except in accordance with the provisions of this section, and no such person shall be required to be licensed under the insurance laws and regulations of this state to market, offer, provide or sell such a waiver in this state if such person complies with the provisions of this section; and

(B) No guaranteed asset protection waiver that is marketed, offered, provided or sold in this state in accordance with the provisions of this section shall be deemed to constitute insurance, or be subject to the insurance laws and regulations of this state.

(2) The provisions of this section shall not apply to:

(A) An insurance policy delivered, issued for delivery, renewed, amended or continued in this state; or

(B) A debt cancellation or debt suspension contract offered in accordance with all applicable provisions of federal law, including, but not limited to, 12 CFR Part 37, as amended from time to time, or 12 CFR Part 721, as amended from time to time.

(c) (1) (A) Each guaranteed asset protection waiver marketed, offered, provided or sold to a borrower or prospective borrower in this state may, at the option of the creditor, be payable in a single payment or multiple installment payments, and shall include a free look period during which time period the borrower may cancel such waiver. Each free look period shall begin on the effective date of the guaranteed asset protection waiver and end not sooner than thirty days after such effective date. If a borrower cancels a guaranteed asset protection waiver during the free look period in accordance with the terms of the waiver, the borrower shall be entitled to receive a refund for the unearned portion of the purchase price for such waiver.

(B) Except as otherwise provided in the guaranteed asset protection waiver, the borrower may cancel such waiver following expiration of the free look period, and receive a refund for the unearned portion of the purchase price for such waiver if such

borrower sends a written notice, not later than ninety days after the effective date of such cancellation or termination of the related finance agreement, to the person designated in such waiver to receive such notice. If a guaranteed asset protection waiver is cancelled due to a default under, or early termination of, the related finance agreement or repossession of the related motor vehicle, any refund due and owing to the borrower under the waiver shall be paid to the creditor or administrator. A creditor may deduct, from any refund due and owing to a borrower under a guaranteed asset protection waiver pursuant to this subdivision, any amount due and owing under the related finance agreement unless the borrower can show that such agreement is paid in full.

(C) Notwithstanding any provision of the general statutes, any cost to a borrower for a guaranteed asset protection waiver that is marketed, offered, provided or sold to the borrower in accordance with the federal Truth-in-Lending Act, 15 USC Section 1601 et seq., and the regulations promulgated thereunder, as both may be amended from time to time, shall be separately stated and not considered a finance charge or interest, unless such waiver is marketed, offered, provided or sold in connection with a lease or retail installment sale as part of a commercial transaction.

(2) Each guaranteed asset protection waiver provided or sold to a borrower in this state, other than a waiver provided or sold in connection with a lease or retail installment sale as part of a commercial transaction, shall disclose to the borrower, in easily readable and understandable language:

(A) The name and address of each person who is a creditor, administrator or borrower under such waiver on the date that such waiver is first provided or sold to such borrower;

(B) The purchase price and terms of such waiver, including, but not limited to, all conditions, exclusions and requirements for protection under such waiver;

(C) The manner in which a borrower applies for benefits under such waiver, including all contact information concerning such application;

(D) That such borrower may cancel such waiver during the free look period, whether such borrower may cancel such waiver following expiration of such free look period, and the procedures a borrower follows to receive any refund available to such borrower under such waiver;

(E) The method used to calculate any refund available to such borrower under such waiver;

(F) That such borrower shall not be required to purchase such waiver as a precondition to receiving credit, or leasing or purchasing a motor vehicle, from a creditor; and

(G) That no person shall make any credit term conditional upon the purchase of such waiver.

(3) Each guaranteed asset protection waiver provided or sold to a borrower in this state shall remain part of the related finance agreement upon each assignment, sale or transfer of such agreement by a creditor.

(d) No borrower shall be required to purchase a guaranteed asset protection waiver as a precondition to receiving credit, or leasing or purchasing a motor vehicle, from a creditor, and no person shall make any credit term conditional upon purchase of a waiver.

(e) Each creditor that provides or sells a guaranteed asset protection waiver in this state shall report such provision or sale, and forward all funds received pursuant to such waiver, to the person, if any, designated in an administrative services agreement, insurance policy or other guaranteed asset protection program document to receive such report. Each creditor or administrator that, pursuant to a written agreement, holds or receives funds belonging to an insurer or another creditor or administrator shall be deemed to hold such funds as a fiduciary for such insurer, creditor or administrator.

(f) (1) (A) Each motor vehicle dealer that incurs an obligation pursuant to a guaranteed asset protection waiver shall, either directly or indirectly through an administrator acting on behalf of such dealer, insure such obligation under an insurance policy issued by an insurer, except that no such dealer shall be required to insure such obligation if such waiver concerns a motor vehicle that such dealer has leased to a borrower.

(B) Each creditor, other than a motor vehicle dealer, that incurs an obligation pursuant to a guaranteed asset protection waiver may, either directly or indirectly through an administrator acting on behalf of such creditor, insure such obligation under an insurance policy issued by an insurer.

(2) Each insurance policy insuring a guaranteed asset protection waiver shall:

(A) Be subject to the insurance laws and regulations of this state;

(B) State the insurer's obligation to reimburse or pay, to the creditor that provided or sold the insured waiver, any sums that such creditor is legally required to waive pursuant to such waiver;

(C) Provide coverage to each assignee of the insured waiver upon each assignment, sale or transfer of the related finance agreement; and

(D) Provide coverage that remains effective unless such coverage is cancelled or terminated in accordance with all applicable insurance laws and regulations of this

state. Unless the insurer has not received payment for such policy, such cancellation or termination shall not reduce the liability of the insurer for a waiver provided or sold to a borrower prior to the effective date of such cancellation or termination.

(g) The commissioner may, after providing notice and an opportunity for a hearing in accordance with the provisions of chapter 54 of the general statutes, enjoin any person who violates any provision of this section from marketing, offering, providing or selling guaranteed asset protection waivers in this state, and impose a civil penalty on such person in an amount not to exceed five hundred dollars for each violation or ten thousand dollars in the aggregate for all violations that are of a similar nature. For the purposes of this subsection, violations are of a similar nature if such violations consist of the same or similar actions, conduct or practices.

(h) The commissioner may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.