

1 SB48
2 214963-6
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 11-JAN-22

1 SB48

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4 ENROLLED, An Act,

5 Relating to the credit financing of the sale or
6 lease of motor vehicles; to amend Section 8-37-2 of the Code
7 of Alabama 1975; to further define a guaranteed asset
8 protection waiver or GAP waiver to include excess wear and use
9 waivers in consumer lease agreements; and to add Chapter 37A
10 to Title 8 of the Code of Alabama 1975, to authorize providers
11 to sell motor vehicle value protection agreements to reduce
12 motor vehicle credit financing agreement deficiency balances
13 under certain conditions.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 8-37-2 of the Code of Alabama
16 1975, is amended to read as follows:

17 "§8-37-2.

18 "For the purposes of this chapter, the following
19 words have the following meanings:

20 "(1) ADMINISTRATOR. A person, other than an insurer
21 or creditor, that performs administrative or operational
22 functions pursuant to guaranteed asset protection waiver
23 programs.

24 "(2) BORROWER. A debtor, retail buyer or lessee,
25 under a finance agreement.

1 "(3) CREDITOR means any of the following:

2 "a. The lender in a loan or credit transaction.

3 "b. The lessor in a lease transaction.

4 "c. Any retail seller of motor vehicles in a retail
5 installment transaction.

6 "d. The seller in commercial retail installment
7 transactions.

8 "e. The assignees of any of the foregoing to whom
9 the credit or lease obligation is payable.

10 "(4) FINANCE AGREEMENT. A loan, lease, or retail
11 installment sales contract for the purchase or lease of a
12 motor vehicle.

13 "(5) FREE LOOK PERIOD. The period of time from the
14 effective date of the GAP waiver until the date the borrower
15 may cancel the GAP waiver without penalty, fees, or costs to
16 the borrower. This period of time shall not be shorter than 30
17 days.

18 "(6) GUARANTEED ASSET PROTECTION WAIVER or GAP
19 WAIVER. A contractual agreement in which a creditor agrees
20 for, with or without a separate charge, to cancel or waive all
21 or part of amounts due on a borrower's finance agreement in
22 the event of a total physical damage loss or unrecovered theft
23 of the motor vehicle, which agreement shall be part of, or a
24 separate addendum to, the finance agreement. A GAP waiver may
25 also provide, with or without a separate charge, a benefit

1 that waives an amount or provides a borrower with a credit
2 towards the purchase of a replacement motor vehicle. The term
3 also includes an excess wear and use waiver contractual
4 agreement in which a creditor agrees, with or without a
5 separate charge, to cancel or waive all or part of amounts
6 that may become due under a motor vehicle lease agreement of a
7 borrower as a result of excessive wear and use of a leased
8 motor vehicle, including excess mileage, which agreement shall
9 be part of, or a separate addendum to, the lease agreement.

10 "(7) INSURER. An insurance company licensed,
11 registered, or otherwise authorized to do business under the
12 insurance laws of this state.

13 "(8) MOTOR VEHICLE. Self-propelled or towed vehicles
14 designed for personal or commercial use, including, but not
15 limited to, automobiles, trucks, motorcycles, recreational
16 vehicles, all terrain vehicles, snowmobiles, campers, boats,
17 personal watercraft, and motorcycle, and boat, camper, and
18 personal watercraft trailers.

19 "(9) PERSON. An individual, company, association,
20 organization, partnership, business trust, corporation, and
21 every form of legal entity."

22 Section 2. Chapter 37A is added to Title 8 of the
23 Code of Alabama 1975, to read as follows:

24 Chapter 37A

25 §8-37A-1.

1 (a) The purpose of this chapter is to define motor
2 vehicle value protection agreements and to authorize the
3 agreements to be offered within this state.

4 (b) This chapter does not apply to either of the
5 following:

6 (1) An insurance policy offered by an insurer under
7 the insurance laws of this state.

8 (2) A debt cancellation or debt suspension contract
9 being offered by a federally regulated financial institution
10 operating under 12 C.F.R. Part 37 or a credit union operating
11 under 12 C.F.R. Part 721 or other federal law; or a debt
12 cancellation or debt suspension contract being offered by a
13 state chartered bank or credit union.

14 (c) Except as provided in this chapter, motor
15 vehicle value protection agreements governed under this
16 chapter are not insurance and are exempt from the insurance
17 laws of this state. Persons marketing, selling, or offering to
18 sell motor vehicle value protection agreements to borrowers
19 that comply with this chapter are exempt from insurance
20 licensing and insurance regulation requirements of this state.

21 (d) This chapter applies only to motor vehicle
22 protection agreements for financing of motor vehicles as
23 defined in this chapter. This chapter does not affect the
24 validity or enforcement of other asset protection waivers,
25 debt cancellation contracts, or debt suspension agreements.

1 §8-37A-2. Definitions.

2 For the purposes of this chapter, the following
3 words shall have the following meanings:

4 (1) ADMINISTRATOR. The person who may be responsible
5 for the administrative or operational function of motor
6 vehicle value protection agreements including, but not limited
7 to, the adjudication of claims or benefit requests by contract
8 holders.

9 (2) CONTRACT HOLDER. A person who is the purchaser
10 or holder of a motor vehicle value protection agreement.

11 (3) FREE LOOK PERIOD. The period of time not less
12 than 30 days from the effective date of a motor vehicle value
13 protection agreement until the date the borrower may cancel
14 the agreement without penalty, fees, or costs to the borrower.

15 (4) MOTOR VEHICLE VALUE PROTECTION AGREEMENT. A
16 contractual agreement that provides a benefit towards either
17 the reduction of all or part of the contract holder's current
18 finance agreement deficiency balance, or towards the purchase
19 or lease of a replacement motor vehicle or motor vehicle
20 services, based on the occurrence of an adverse event to the
21 motor vehicle including, but not limited to, loss, theft,
22 damage, obsolescence, diminished value, or depreciation. A
23 motor vehicle value protection agreement does not include a
24 GAP waiver, as defined in Chapter 37 of this title, but may
25 include similar agreements including, but not limited to,

1 trade-in-credit agreements, diminished value agreements, or
2 depreciation benefit agreements.

3 (5) PROVIDER. A person that is obligated to provide
4 a benefit under a motor vehicle value protection agreement.

5 §8-37A-3.

6 (a) A motor vehicle value protection agreement may
7 be offered, sold, or provided to a borrower or lessor under
8 this chapter.

9 (b) A provider may use an administrator or other
10 designee to be responsible for all or part of the
11 administration of motor vehicle value protection agreements in
12 compliance with this chapter. A provider may act as an
13 administrator or retain the services of a third-party
14 administrator.

15 (c) A motor vehicle value protection agreement shall
16 not be sold unless the contract holder is provided a copy of
17 the agreement.

18 §8-37A-4.

19 In order to assure the faithful performance of the
20 obligations of a provider to its contract holders, the
21 provider shall comply with one of the following:

22 (1) a. Insure all of its motor vehicle value
23 protection agreements under an insurance policy issued by an
24 insurer licensed, registered, or otherwise authorized to do
25 business in this state at the time the policy is filed with

1 the Commissioner of Insurance and continuously thereafter,
2 that meets one of the following criteria:

3 1. Has a surplus as to policyholders and paid-in
4 capital of at least fifteen million dollars (\$15,000,000).

5 2. Has a surplus as to policyholders and paid-in
6 capital of not less than ten million dollars (\$10,000,000),
7 and evidence to the satisfaction of the commissioner that the
8 company maintains a ratio of net written premiums, wherever
9 written, to surplus as to policyholders and paid-in capital of
10 not greater than three to one.

11 b. In addition, the insurer shall annually file with
12 the commissioner copies of the insurer's audited financial
13 statements, its NAIC Annual Statement, and the actuarial
14 certification required by and filed in the insurer's state of
15 domicile.

16 (2) a. Maintain a funded reserve account for its
17 obligations under its contracts issued and outstanding in this
18 state. The reserves shall not be less than 40 percent of gross
19 consideration received, less claims paid, on the sale of the
20 motor vehicle value protection agreement for all in-force
21 contracts. The reserve account shall be subject to examination
22 and review by the Superintendent of Banks; and

23 b. Place in trust with the superintendent a
24 financial security deposit, having a value of not less than
25 five percent of the gross consideration received, less claims

1 paid, on the sale of the motor vehicle value protection
2 agreements for all agreements issued and in force, but not
3 less than twenty-five thousand dollars (\$25,000) consisting of
4 one of the following:

5 1. A surety bond issued by an authorized surety.

6 2. Securities of the type eligible for deposit by
7 authorized insurers in this state.

8 3. Cash.

9 4. A letter of credit issued by a qualified
10 financial institution.

11 5. Another form of security prescribed by
12 regulations issued by the superintendent.

13 (3) a. Maintain, or together with its parent company
14 maintain, a net worth or stockholders' equity of one hundred
15 million dollars (\$100,000,000); and

16 b. Upon request, provide the Superintendent of Banks
17 with a copy of the provider's or the provider's parent
18 company's most recent Form 10-K or Form 20-F filed with the
19 Securities and Exchange Commission (SEC) within the last
20 calendar year, or if the company does not file with the SEC, a
21 copy of the company's audited financial statements, which
22 shows a net worth of the provider or its parent company of at
23 least one hundred million dollars (\$100,000,000). If the
24 provider's parent company's Form 10-K, Form 20-F, or financial
25 statements are filed to meet the provider's financial security

1 requirement, then the parent company shall agree to guarantee
2 the obligations of the provider relating to motor vehicle
3 value protection agreements sold by the provider in this
4 state.

5 §8-37A-5.

6 (a) A motor vehicle value protection agreement shall
7 disclose in writing and in clear, understandable language that
8 is easy to read all of the following:

9 (1) The name and address of the provider, contract
10 holder, and administrator, if any.

11 (2) The terms of the agreement including, without
12 limitation, the purchase price to be paid by the contract
13 holder, if any, and the requirements for eligibility,
14 conditions of coverage, or exclusions.

15 (3) A provision that the agreement may be cancelled
16 by the contract holder within a free look period as specified
17 in the agreement, and that in the event the contract holder
18 will be entitled to a full refund of the purchase price paid
19 by the contract holder, if any, so long as no benefits have
20 been provided.

21 (4) The procedure the contract holder must follow,
22 if any, to obtain a benefit under the terms and conditions of
23 the agreement including, if applicable, a telephone number or
24 website and address where the contract holder may apply for a
25 benefit.

1 (5) A provision indicating whether or not the
2 agreement is cancellable after the free look period and the
3 conditions under which it may be cancelled, including the
4 procedures for requesting any refund of the unearned purchase
5 price paid by the contract holder.

6 (6) In the event of cancellation, the methodology
7 for calculating any refund of the unearned purchase price of
8 the agreement due.

9 (7) A provision specifying that neither the
10 extension of credit, the terms of the credit, nor the terms of
11 the related motor vehicle sale or lease, may be conditioned
12 upon the purchase of the agreement.

13 (8) The terms, restrictions, or conditions governing
14 cancellation of the agreement prior to the termination or
15 expiration date of the agreement by either the provider or the
16 contract holder. The provider shall mail a written notice to
17 the contract holder at the last known address of the contract
18 holder contained in the records of the provider at least five
19 days prior to cancellation by the provider. Prior notice is
20 not required if the reason for cancellation is nonpayment of
21 the provider fee, a material misrepresentation by the contract
22 holder to the provider or administrator, or a substantial
23 breach of duties by the contract holder relating to the
24 covered product or its use. The notice shall state the
25 effective date of the cancellation and the reason for the

1 cancellation. If an agreement is cancelled by the provider for
2 a reason other than nonpayment of the provider fee, the
3 provider shall refund to the contract holder all of the
4 unearned pro rata provider fee paid by the contract holder, if
5 any. If coverage under the agreement continues after a claim,
6 any refund may deduct claims paid and a reasonable
7 administrative fee not to exceed seventy-five dollars (\$75).

8 (b) This section shall not apply to commercial
9 transactions.

10 §8-37A-6.

11 (a) The Superintendent of Banks may take action
12 which is necessary or appropriate to enforce this chapter and
13 to protect motor vehicle value protection contract holders in
14 this state. After notice and a hearing, the superintendent may
15 do both of the following:

16 (1) Order the provider, administrator, or any other
17 person not in compliance with this chapter to cease and desist
18 from further actions related to motor vehicle value protection
19 agreements which are in violation of this chapter.

20 (2) Impose a penalty of not more than five hundred
21 dollars (\$500) per violation and no more than ten thousand
22 dollars (\$10,000) in the aggregate for all violations of
23 similar nature. For purposes of this chapter, a violation
24 shall be considered to be of a similar nature if the violation
25 consists of the same or similar course of conduct, action, or

1 practice, irrespective of the number of times the action,
2 conduct, or practice which is determined to be a violation of
3 the chapter occurred.

4 (b) This section shall not apply to motor vehicle
5 value protection agreements offered in connection with a
6 commercial transaction.

7 Section 3. This act shall become effective January
8 1, 2023, following its passage and approval by the Governor,
9 or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB48

Senate 01-FEB-22

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 15-MAR-22

By: Senator Whatley