

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1672

By: Representative Maddox

By: Senator M. Johnson

For An Act To Be Entitled

AN ACT TO REGULATE GUARANTEED ASSET PROTECTION
WAIVERS; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE GUARANTEED ASSET PROTECTION
WAIVERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 90, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Guaranteed Asset Protection Waivers

4-90-801. Legislative intent – Purpose – Scope.

(a) The General Assembly finds that guaranteed asset protection waivers are not insurance.

(b) It is the intent of the General Assembly that all guaranteed asset protection waivers issued in this state, before or after the enactment of this subchapter, are not to be considered insurance.

(c) The purpose of this subchapter is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(d) This subchapter does not apply to:

(1) An insurance policy offered by an insurer under the Arkansas Insurance Code and insurance laws of this state; or



(2) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. Part 37 or 12 C.F.R. Part 721 or other applicable federal laws.

(e)(1) Guaranteed asset protection waivers governed under this subchapter are not insurance and are exempt from the insurance laws of this state.

(2) Persons marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state's insurance licensing requirements.

4-90-802. Definitions.

As used in this subchapter:

(1) "Administrator" means a person, other than an insurer or creditor, that performs administrative or operational functions under a guaranteed asset protection waiver programs;

(2) "Borrower" means a debtor, retail buyer, or lessee under a finance agreement;

(3) "Creditor" means:

(A) A lender in a loan or credit transaction;

(B) A lessor in a lease transaction;

(C) Any retail seller in a retail installment transaction;

(D) A seller in a commercial retail installment transaction; or

(E) An assignee of any of the above to whom a credit obligation is payable;

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

(5) "Free look period" means the period of time, not less than thirty (30) days, from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without imposition of a penalty, fee, or cost to the borrower;

(6) "Guaranteed asset protection waiver" means a contractual agreement wherein a creditor, for a separate charge, agrees to cancel or waive all or part of amounts due on a borrower's finance agreement with the creditor in the case of a total physical damage loss or unrecovered theft of the motor vehicle, and the contractual agreement is part of or a separate

addendum to the borrower's finance agreement;

(7) "Insurer" means an insurance company that is licensed, registered, or otherwise authorized to do business under the insurance laws of this state;

(8) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or commercial use, including without limitation:

- (A) An automobile;
- (B) A truck;
- (C) A motorcycle;
- (D) A recreational vehicle;
- (E) An all-terrain vehicle;
- (F) A snowmobile;
- (G) A camper;
- (H) A boat;
- (I) A personal watercraft;
- (J) A motorcycle trailer;
- (K) A boat trailer;
- (L) A camper trailer; and
- (M) A personal watercraft trailer;

(9) "Person" means an individual, company, association, organization, partnership, business trust, corporation, or any other form of legal entity;

(10) "Retail buyer" means a person who buys or agrees to buy a motor vehicle; and

(11) "Retail seller" means a motor vehicle dealer that sells, or offers to sell, a motor vehicle.

4-90-803. Requirements for offering guaranteed asset protection waivers.

(a) A guaranteed asset protection waiver may be offered, sold, or provided to a borrower in this state under this subchapter.

(b) At the option of the creditor that offers the guaranteed asset protection waiver, a guaranteed asset protection waiver may:

- (1) Be sold for a single payment; or
- (2) Be offered with a monthly or periodic payment option.

(c) Notwithstanding any other provision of law, any cost to the

borrower for a guaranteed asset protection waiver entered into in compliance with The Truth in Lending Act, 15 U.S.C. 1601 et seq., and its implementing federal regulations, as it existed on January 1, 2019, shall be separately itemized in the finance agreement and is not to be considered a finance charge or interest.

(d)(1) A retail seller shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer.

(2) A creditor, other than a retail seller, may insure its guaranteed asset protection waiver obligations under a contractual liability policy or other policy issued by an insurer.

(3)(A) The insurance policy may be directly obtained by a creditor, retail seller, or procured by an administrator to cover a creditor's or retail seller's obligations under the guaranteed asset protection waiver.

(B) A retail seller that is a lessor of motor vehicles and does not assign its finance agreements is not required to insure its obligations related to guaranteed asset protection waivers on its sold or leased vehicles.

(e) The guaranteed asset protection waiver remains a part of the finance agreement upon an assignment, sale, or transfer of the finance agreement by the creditor.

(f) Neither the extension of credit, the term of credit, or the term of the related motor vehicle sale or lease may be conditioned on the purchase of a guaranteed asset protection waiver.

(g) A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all waivers to the designated party, if any, as prescribed in any applicable administration services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(h) Moneys received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, under the terms of a written agreement, shall be held by the creditor or administrator in a fiduciary capacity.

4-90-804. Contractual liability or other insurance policies.

(a) A contractual liability policy or other insurance policy insuring a guaranteed asset protection waiver shall state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waiver issued by the creditor and purchased or held by the borrower.

(b) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver shall also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(c) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver shall remain in effect unless cancelled or terminated in compliance with the applicable insurance laws of this state.

(d) The cancellation or termination of a contractual liability or other insurance policy shall not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor before the date of cancellation or termination and for which a premium has been received by the insurer.

4-90-805. Disclosures.

A guaranteed asset protection wavier shall disclose, as applicable, in writing and in clear and understandable language that is easy to read, the following:

(1) The name and address of the initial creditor, the borrower at the time of sale, and the identity of any administrator, if different from the initial creditor;

(2) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver;

(3) That the borrower may cancel the guaranteed asset protection waiver within a free look period as specified in the guaranteed asset protection waiver, and will be entitled to a full refund of the purchase price, so long as no benefits have been provided;

(4) The procedure the borrower has to follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the guaranteed asset protection waiver, including a telephone number and

address where the borrower may apply for waiver benefits;

(5) Whether or not the guaranteed asset protection is cancellable after the free look period and if so, the conditions under which it may be cancelled or terminated including the procedures for requesting any refund due;

(6)(A) That in order to receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free look period of the guaranteed asset protection waiver, the borrower, according to the terms of the waiver, shall provide a written notice requesting to cancel to the creditor, administrator, or other party.

(B) If the request is being made due to the early termination of the finance agreement, the notice shall be provided to the creditor, administrator, or other party within ninety (90) days of the occurrence of the event terminating the finance agreement;

(7) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due, in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement;

(8) That the extension of credit, the terms of the credit agreement, or the terms of the related motor vehicle sale or lease shall not be conditioned on the purchase of the guaranteed asset protection waiver; and

(9) That the cost of the guaranteed asset protection waiver is not regulated and that the borrower should determine whether the cost of the guaranteed asset protection waiver is reasonable in relation to the protection afforded by the guaranteed asset protection waiver.

4-90-806. Cancellation of guaranteed asset protection waiver.

(a)(1) A guaranteed asset protection waiver agreement may be cancelable or may not be cancelable after the free look period.

(2) A guaranteed asset protection waiver that is cancellable shall provide that if a borrower cancels a guaranteed asset protection waiver within the free look period, the borrower shall be entitled to a full refund of the purchase price, so long as no benefits have been provided.

(b)(1) Upon a borrower's cancellation of the guaranteed asset protection waiver or early termination of the finance agreement, after the

agreement has been in effect beyond the free look period and no benefits have been provided, the borrower shall be entitled to a refund of any unearned portion of the purchase price of the waiver less any cancellation fee no greater than seventy-five dollars (\$75.00) according to the terms of the waiver.

(2) In order to receive a refund, a borrower shall provide a written notice requesting to cancel the guaranteed asset protection waiver to the creditor, administrator, or other party under any applicable terms of the guaranteed asset protection waiver.

(3) If the request is being made due to the early termination of the finance agreement, the notice shall be provided by the borrower to the creditor, administrator, or other party within ninety (90) days of the occurrence of the event terminating the finance agreement.

(c) If the cancellation of the guaranteed asset protection waiver occurs as a result of a default under the finance agreement, the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as stated in subsection (d) of this section.

(d) A cancellation refund under this section may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

4-90-807. Commercial transactions – Exemptions.

Section 4-90-803(c), § 4-90-805, and § 4-90-808 shall not apply to a guaranteed asset protection waiver offered in a commercial transaction involving a lease or retail installment sale.

4-90-808. Enforcement.

(a) The Insurance Commissioner may take action that is necessary or appropriate to enforce this subchapter and to protect guaranteed asset protection waiver holders in this state.

(b) After notice and opportunity for hearing, the commissioner may:

(1) Order the creditor, administrator, or other person that is not complying with this subchapter to cease and desist from further

guaranteed asset protection waiver related operations that are in violation of this subchapter; and

(2)(A) Impose a penalty of no more than five hundred dollars (\$500) per violation and a maximum total of no more than ten thousand dollars (\$10,000) for all violations of a similar nature.

(B) For purposes of this section, a violation shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct, action, or practice that is determined to be a violation has occurred.