

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 571

Introduced by Pahls, 31.

Read first time January 21, 2009

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to consumer protection; to adopt the Guaranteed
- 2 Asset Protection Waiver Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Guaranteed Asset Protection Waiver Act.

3 Sec. 2. (1) The purpose of the Guaranteed Asset
4 Protection Waiver Act is to provide a framework within which
5 guaranteed asset protection waivers are defined and may be offered
6 within this state.

7 (2) The act does not apply to:

8 (a) An insurance policy offered by an insurer under the
9 insurance laws of this state; or

10 (b) A debt cancellation or debt suspension contract being
11 offered in compliance with 12 C.F.R. part 37 or 12 C.F.R. part 721
12 or other federal law as such part or law existed on the effective
13 date of this act.

14 (3) Guaranteed asset protection waivers governed under
15 this section are not insurance and are exempt from the insurance
16 laws of this state. Persons marketing, selling, or offering to
17 sell guaranteed asset protection waivers to borrowers that comply
18 with this section are exempt from this state's insurance licensing
19 requirements.

20 Sec. 3. For purposes of the Guaranteed Asset Protection
21 Waiver Act:

22 (1) Administrator means a person, other than an insurer
23 or creditor that performs administrative or operational functions
24 pursuant to guaranteed asset protection waiver programs;

25 (2) Borrower means a debtor, retail buyer, or lessee,

1 under a finance agreement;

2 (3) Creditor means:

3 (a) The lender in a loan or credit transaction;

4 (b) The lessor in a lease transaction;

5 (c) Any retail seller of motor vehicles that provides
6 credit to retail buyers of such motor vehicles, if such entities
7 comply with the provisions of this section;

8 (d) The seller in commercial retail installment
9 transactions; or

10 (e) The assignees of any of the foregoing to whom the
11 credit obligation is payable;

12 (4) Finance Agreement means a loan, lease, or retail
13 installment sales contract for the purchase or lease of a motor
14 vehicle;

15 (5) Free look period means the period of time from the
16 effective date of the guaranteed asset protection waiver until the
17 date the borrower may cancel the contract without penalty, fees, or
18 costs to the borrower. This period of time must not be shorter than
19 thirty days;

20 (6) Guaranteed asset protection waiver means a
21 contractual agreement wherein a creditor agrees, for a separate
22 charge, to cancel or waive all or part of amounts due on a
23 borrower's finance agreement in the event of a total physical
24 damage loss or unrecovered theft of the motor vehicle, which
25 agreement must be part of, or a separate addendum to, the finance

1 agreement;

2 (7) Insurer means an insurance company license,
3 registered or otherwise authorized to do business under the
4 insurance laws of this state;

5 (8) Motor vehicle means self-propelled or towed vehicles
6 designed for personal or commercial use, including, but not limited
7 to, automobiles, trucks, motorcycles, recreational vehicles, all
8 terrain vehicles, snowmobiles, campers, boats, personal watercraft,
9 and motorcycle, boat, camper, and personal watercraft trailers; and

10 (9) Person includes an individual, company, association,
11 organization, partnership, business trust, corporation, and every
12 form of legal entity.

13 Sec. 4. (1) Guaranteed asset protection waivers may be
14 offered, sold, or provided to borrowers in this state in compliance
15 with the Guaranteed Asset Protection Act.

16 (2) Guaranteed asset protection waivers may, at the
17 option of the creditor, be sold for a single payment or may be
18 offered with a monthly or periodic payment option.

19 (3) Notwithstanding any other provision of law, any cost
20 to the borrower for a guaranteed asset protection waiver entered
21 into in compliance with the federal Truth in Lending Act, 15 U.S.C.
22 1601 et seq. and its implementing regulations, as such act and
23 regulations existed on the effective date of this act, shall be
24 separately stated and is not to be considered a finance charge or
25 interest.

1 (4) A retail seller shall insure its guaranteed asset
2 protection waiver obligations under a contractual liability or
3 other insurance policy issued by an insurer. A creditor, other
4 than a retail seller, may insure its guaranteed asset protection
5 waiver obligations under a contractual liability policy or other
6 such policy issued by an insurer. Any such insurance policy may
7 be directly obtained by a creditor, retail seller, or may be
8 procured by an administrator to cover a creditor's or retail
9 seller's obligations. However, retail sellers that are lessors on
10 motor vehicles are not required to insure obligations related to
11 guaranteed asset protection waivers on such lease vehicles.

12 (5) The guaranteed asset protection waiver remains a part
13 of the finance agreement upon the assignment, sale, or transfer of
14 such finance agreement by the creditor.

15 (6) Neither the extension of credit, the term of credit,
16 nor the term of the related motor vehicle sale or lease may be
17 conditioned upon the purchase of a guaranteed asset protection
18 waiver.

19 (7) Any creditor that offers a guaranteed asset
20 protection waiver must report the sale of, and forward funds
21 received on, all such waivers to the designated party, if any, as
22 prescribed in any applicable administrative services agreement,
23 contractual liability policy, other insurance policy, or other
24 specified program documents.

25 (8) Funds received or held by a creditor or administrator

1 and belonging to an insurer, creditor, or administrator, pursuant
2 to the terms of a written agreement, shall be held by such creditor
3 or administrator in a fiduciary capacity.

4 Sec. 5. (1) Contractual liability or other insurance
5 policies insuring guaranteed asset protection waivers shall state
6 the obligation of the insurer to reimburse or pay to the creditor
7 any sums the creditor is legally obligated to waive under the
8 guaranteed asset protection waivers issued by the creditor and
9 purchased or held by the borrower.

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

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

18 (4) The cancellation or termination of a contractual
19 liability or other insurance policy shall not reduce the insurer's
20 responsibility for guaranteed asset protection waivers issued by
21 the creditor prior to the date of cancellation or termination and
22 for which premium has been received by the insurer.

23 Sec. 6. Guaranteed asset protection waivers shall
24 disclose, as applicable, in writing and in clear, understandable
25 language that is easy to read, the following:

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

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

8 (3) That the borrower may cancel the guaranteed asset
9 protection waiver within a free look period as specified in the
10 waiver, and will be entitled to a full refund of the purchase
11 price, so long as no benefits have been provided. In the event
12 benefits have been provided, the borrower may receive a full or
13 partial refund pursuant to the terms of the waiver;

14 (4) The procedure the borrower shall follow, if any, to
15 obtain guaranteed asset protection waiver benefits under the terms
16 and conditions of the waiver, including a telephone number and
17 address where the borrower may apply for waiver benefits;

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

22 (6) That in order to receive any refund due in the event
23 of a borrower's cancellation of the guaranteed asset protection
24 waiver agreement or early termination of the finance agreement
25 after the free look period of the guaranteed asset protection

1 waiver, the borrower, in accordance with terms of the waiver, shall
2 provide a written request to cancel to the creditor, administrator,
3 or such other party, within ninety days of the occurrence of the
4 event terminating the finance agreement;

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

10 (8) That neither the extension of credit, the terms of
11 the credit, nor the terms of the related motor vehicle sale or
12 lease shall be conditioned upon the purchase of the guaranteed
13 asset protection waiver.

14 Sec. 7. (1) Guaranteed asset protection waiver agreements
15 may be cancellable or noncancellable after the free look period.
16 Guaranteed asset protection waivers shall provide that if a
17 borrower cancels a waiver within the free look period, the borrower
18 will be entitled to a full refund of the purchase price, so long
19 as no benefits have been provided. In the event benefits have
20 been provided, the borrower may receive a full or partial refund
21 pursuant to the terms of the waiver.

22 (2) In the event of a borrower's cancellation of the
23 guaranteed asset protection waiver or early termination of the
24 finance agreement, after the agreement has been in effect beyond
25 the free look period, the borrower may be entitled to a refund of

1 any unearned portion of the purchase price of the waiver unless
2 the waiver provides otherwise. In order to receive a refund, the
3 borrower, in accordance with any applicable terms of the waiver,
4 must provide a written request to the creditor, administrator,
5 or other party, within ninety days of the event terminating the
6 finance agreement.

7 (3) If the cancellation of a guaranteed asset protection
8 waiver occurs as a result of a default under the finance agreement
9 or the repossession of the motor vehicle associated with the
10 finance agreement, or any other termination of the finance
11 agreement, any refund due may be paid directly to the creditor
12 or administrator and applied as set forth in subsection (4) of this
13 section.

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

18 Sec. 8. Subsection (3) of section 4 of this act and
19 sections 6 and 9 of this act are not applicable to a guaranteed
20 asset protection waiver offered in connection with a lease or
21 retail installment sale associated with a commercial transaction.

22 Sec. 9. The Attorney General may take action which is
23 necessary or appropriate to enforce the provisions of this section
24 and to protect guaranteed asset protection waiver holders in
25 this state. After proper notice and opportunity for hearing, the

1 Attorney General may:

2 (1) Order the creditor, administrator, or any other
3 person not in compliance with the Guaranteed Asset Protection
4 Act to cease and desist from further guaranteed asset protection
5 waiver-related operations which are in violation of this section;
6 and

7 (2) Impose a penalty of not more than five hundred
8 dollars per violation and no more than ten thousand dollars in the
9 aggregate for all violations of similar nature. For purposes of
10 the act, violations shall be of a similar nature if the violation
11 consists of the same or similar course of conduct, action, or
12 practice, irrespective of the number of times the conduct, action,
13 or practice which is determined to be a violation of the act
14 occurred.

15 Sec. 10. If any section in this act or any part of any
16 section is declared invalid or unconstitutional, the declaration
17 shall not affect the validity or constitutionality of the remaining
18 portions.