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SENATE DRS85088-MD-43 (02/08)

Short Title: Guaranteed Asset Protection Waivers. (Public)

Sponsors: Senators Meredith, Newton, and Ford (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE GUARANTEED ASSET PROTECTION WAIVERS TO BE
3 AUTHORIZED IN THIS STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 66 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 46.

8 "Guaranteed Asset Protection Waivers.

9 "§ 66-440. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Administrator. – A person that performs administrative or operational
12 functions with respect to guaranteed asset protection waivers.
- 13 (2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance
14 agreement.
- 15 (3) Creditor. – Any of the following:
16 a. A lender in a loan or credit transaction.
17 b. A lessor in a lease transaction.
18 c. A vehicle dealer, including a motor vehicle dealer as that term is
19 defined in G.S. 20-286(11), that provides credit to a purchaser of a
20 vehicle.
21 d. A seller in a commercial retail installment transaction.
22 e. An assignee of any of the foregoing to whom the credit obligation is
23 payable.
- 24 (4) Free look period. – The period of time from the effective date of a
25 guaranteed asset protection waiver until the date the borrower may cancel
26 the contract without penalty, fees, or costs to the borrower.
- 27 (5) Guaranteed asset protection waiver. – A contractual agreement in which a
28 creditor agrees for a separate charge to cancel or waive all or part of amounts
29 due on a borrower's vehicle finance agreement in the event of a total
30 physical damage loss or unrecovered theft of the vehicle, which agreement
31 shall be part of, or a separate addendum to, the vehicle finance agreement.
- 32 (6) Insurer. – An insurance company licensed, registered, or otherwise
33 authorized to do business under Chapter 58 of the General Statutes.
- 34 (7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as
35 well as self-propelled or towed vehicles designed for personal or commercial
36 use, including, but not limited to, automobiles, trucks, motorcycles,



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1 recreational vehicles, all terrain vehicles, snowmobiles, campers, boats,
2 personal watercraft, and trailers for motorcycles, boats, campers, and
3 personal watercraft.

4 (8) Vehicle finance agreement. – A loan, lease, or retail installment sales
5 contract for the purchase or lease of a vehicle.

6 **"§ 66-441. Scope of Article.**

7 (a) Complete Exemptions. – This Article shall not apply to any of the following:

8 (1) An insurance policy offered by an insurer under Chapter 58 of the General
9 Statutes, except as provided in G.S. 66-443.

10 (2) A debt cancellation or debt suspension contract being offered pursuant to 12
11 C.F.R. Part 37, 12 C.F.R. Part 721, or any other federal law.

12 (b) Partial Exemption for Commercial Transactions. – G.S. 66-444, 66-446(c), and
13 66-447 are not applicable to a guaranteed asset protection waiver offered in connection with a
14 lease or retail installment sale associated with a commercial transaction.

15 **"§ 66-442. Guaranteed asset protection waivers not subject to insurance laws.**

16 Guaranteed asset protection waivers are not insurance and are exempt from the provisions
17 of Chapter 58 of the General Statutes, as are persons administering, marketing, selling, or
18 offering to sell guaranteed asset protection waivers to borrowers.

19 **"§ 66-443. Insurance of guaranteed asset protection waivers.**

20 (a) Insurance for Creditors. – Creditors may insure guaranteed asset protection waiver
21 obligations under a contractual liability policy or other similar policy issued by an insurer but
22 shall not be required to do so.

23 (b) Required Terms. – Contractual liability or other insurance policies insuring
24 guaranteed asset protection waivers shall include terms that do all of the following:

25 (1) Obligate the insurer to reimburse or pay to the creditor any sums the creditor
26 is legally obligated to waive under guaranteed asset protection waivers
27 issued by the creditor and purchased or held by the borrower.

28 (2) Provide that the policy covers any subsequent assignee upon the assignment,
29 sale, or transfer of the vehicle finance agreement.

30 (3) Provide that the policy remains in effect unless cancelled or terminated in
31 compliance with applicable insurance laws of this State.

32 (4) Provide that the cancellation or termination of policy shall not reduce the
33 insurer's responsibility for guaranteed asset protection waivers issued by the
34 creditor prior to the date of cancellation or termination and for which
35 premiums have been received by the insurer.

36 (c) Administrators May Procure Insurance. – An insurance policy obtained pursuant to
37 this section may be directly obtained by a creditor or may be procured by an administrator to
38 cover the creditor's obligations.

39 **"§ 66-444. Mandatory terms.**

40 A guaranteed asset protection waiver shall include all of the following written terms in
41 clear, easily understandable language:

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

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

47 (3) The length of the free look period, which shall be at least 30 days, and the
48 procedure by which a borrower may exercise the borrower's rights during
49 that period.

50 (4) The terms required by G.S. 66-445.

1 (5) The methodology for calculating any refund of the unearned purchase price
2 of the guaranteed asset protection waiver due in the event of cancellation of
3 the guaranteed asset protection waiver or early termination of the vehicle
4 finance agreement.

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

9 (7) A statement that neither the extension of credit, the terms of the credit, nor
10 the terms of the related vehicle sale or lease may be conditioned upon the
11 purchase of the guaranteed asset protection waiver.

12 **"§ 66-445. Cancellation.**

13 (a) Cancellation During Free Look Period. – A guaranteed asset protection waiver shall
14 include a term stating that if a borrower cancels the waiver within the free look period, the
15 borrower will be entitled to a full refund so long as no benefits have been provided under the
16 guaranteed asset protection waiver.

17 (b) Cancellation After the Free Look Period. – A guaranteed asset protection waiver
18 may be either cancellable or noncancellable after the free look period. A guaranteed asset
19 protection waiver shall include the following terms regarding cancellation after the free look
20 period:

21 (1) A statement of whether or not the guaranteed asset protection waiver is
22 cancellable or noncancellable after the expiration of the free look period.

23 (2) If the waiver is cancellable, all of the following terms:

24 a. A statement that in the event of a borrower's cancellation of the
25 guaranteed asset protection waiver or early termination of the vehicle
26 finance agreement, the borrower may be entitled to a refund of any
27 unearned portion of the purchase price of the waiver unless the
28 waiver provides otherwise.

29 b. The procedures by which a borrower may cancel the waiver. This
30 term shall include a requirement that in the event that the underlying
31 vehicle finance agreement is terminated, cancellation shall be made
32 by providing a written request to the creditor, administrator, or other
33 party within 90 days of the event terminating the vehicle finance
34 agreement.

35 (c) Cancellation in the Event of Default. – Any cancellation refund under subsections
36 (a) and (b) of this section may be applied by the creditor as a reduction of the amount owed
37 under the vehicle finance agreement unless the borrower can show that the vehicle finance
38 agreement has been paid in full. A guaranteed asset protection waiver shall include a term
39 stating that notwithstanding subsections (a) and (b) of this section, if cancellation of the waiver
40 occurs as a result of a default under the vehicle finance agreement or the repossession of the
41 vehicle associated with the vehicle finance agreement or any other termination of the vehicle
42 finance agreement, any refund due may be paid directly to the creditor or administrator and
43 applied as set forth in this subsection.

44 **"§ 66-446. Miscellaneous provisions.**

45 (a) Article Controls. – The offering and sale of guaranteed asset protection waivers in
46 this State shall be subject to the provisions of this Article.

47 (b) Manner of Payment. – Guaranteed asset protection waivers may, at the option of the
48 creditor, be sold for a single payment or may be offered with a monthly or periodic payment
49 option.

50 (c) Compliance with Truth in Lending Act. – Notwithstanding any other provision of
51 law, any cost to the borrower for a guaranteed asset protection waiver subject to the Truth in

1 Lending Act (15 U.S.C. § 1601, et seq.) and its implementing regulations, as they may be
2 amended from time to time, shall be separately stated and is not to be considered a finance
3 charge or interest.

4 (d) Preservation Upon Transfer. – A guaranteed asset protection waiver shall remain a
5 part of the vehicle finance agreement upon its assignment, sale, or transfer by a creditor.

6 (e) Cannot Be Required. – Neither the extension of credit, the term of credit, nor the
7 term of a related vehicle sale or lease may be conditioned upon the purchase of a guaranteed
8 asset protection waiver.

9 (f) Forwarding of Proceeds. – A creditor that offers a guaranteed asset protection
10 waiver shall report the sale of, and forward funds received on all such waivers to the designated
11 party, if any, as prescribed in any applicable administrative services agreement, contractual
12 liability policy, other insurance policy, or other specified program documents.

13 (g) Fiduciary Duty. – Funds received or held by a creditor or administrator and
14 belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement,
15 shall be held by the creditor or administrator in a fiduciary capacity.

16 **"§ 66-447. Enforcement.**

17 The Attorney General may take action which is necessary or appropriate to enforce the
18 provisions of this Article and to protect guaranteed asset protection waiver holders in this State.
19 After proper notice and opportunity for hearing, the Attorney General may:

20 (1) Order a creditor, administrator, or any other person not in compliance with
21 this Article to cease and desist from further guaranteed asset protection
22 waiver-related operations which are in violation of this Article.

23 (2) Impose a penalty of not more than five hundred dollars (\$500.00) per
24 violation and no more than ten thousand dollars (\$10,000) in the aggregate
25 for all violations of a similar nature. For purposes of this Article, violations
26 are of a similar nature if the violation consists of the same or similar course
27 of conduct, action, or practice, irrespective of the number of times the
28 conduct or practice that is determined to be a violation of the Article
29 occurred.

30 **"§ 66-448. Severability.**

31 If any provision of this Article or the application of the provision to any person or
32 circumstances is held invalid, the remainder of the Article and the application of the provision
33 to persons or circumstances other than those as to which it is held invalid shall not be affected."

34 **SECTION 2.** This act is effective when it becomes law.