
ENGROSSED HOUSE BILL 1530

State of Washington

61st Legislature

2009 Regular Session

By Representatives Kirby and Bailey

Read first time 01/22/09. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to creating the guaranteed asset protection waiver
2 model act; amending RCW 63.14.010; adding a new chapter to Title 48
3 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to
6 provide a framework within which guaranteed asset protection waivers
7 are defined and may be offered within this state.

8 (2) This chapter does not apply to:

9 (a) An insurance policy offered by an insurer under this title; or
10 (b) A federally regulated financial institution operating under 12
11 C.F.R. Part 37 of the office of the comptroller of the currency
12 regulations or credit unions operating under 12 C.F.R. 721.3(g) of the
13 national credit union administration regulations, or state regulated
14 banks, credit unions, and financial institutions operating pursuant to
15 chapter 63.14 RCW. However, an exempt federal or state chartered bank,
16 credit union, or financial institution may elect to offer a guaranteed
17 asset protection waiver that complies with sections 1, 2, and 4 through
18 7 of this act.

1 (3) Guaranteed asset protection waivers are governed under this
2 chapter and are exempt from all other provisions of this title, except
3 RCW 48.02.060 and 48.02.080, chapter 48.04 RCW, and as provided in this
4 chapter.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Administrator" means a person, other than an insurer or
8 creditor that performs administrative or operational functions pursuant
9 to guaranteed asset protection waiver programs.

10 (2) "Borrower" means a debtor, retail buyer, or lessee, under a
11 finance agreement, or a person who receives a loan or enters into a
12 retail installment contract to purchase or lease a motor vehicle or
13 vessel under chapter 63.14 RCW.

14 (3) "Creditor" means:

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

16 (b) The lessor in a lease transaction;

17 (c) Any retail seller of motor vehicles that provides credit to
18 retail buyers of motor vehicles provided the seller complies with this
19 chapter;

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

21 (e) The assignees of any creditor under this subsection to whom the
22 credit obligation is payable.

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

25 (5) "Free look period" means the period of time from the effective
26 date of the waiver until the date the borrower may cancel the waiver
27 without penalty, fees, or costs to the borrower. This period of time
28 must not be shorter than thirty days.

29 (6) "Guaranteed asset protection waiver" or "waiver" means a
30 contractual agreement wherein a creditor agrees for a separate charge
31 to cancel or waive all or part of amounts due that creditor on a
32 borrower's finance agreement with that creditor in the event of a total
33 physical damage loss or unrecovered theft of the motor vehicle, which
34 agreement must be part of, or a separate addendum to, the finance
35 agreement.

36 (7) "Insurer" means an insurance company licensed, registered, or

1 otherwise authorized to do business under the insurance laws of this
2 state.

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

8 (9) "Motor vehicle dealer" has the same meaning as "vehicle dealer"
9 in RCW 46.70.011.

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

13 (11) "Retail buyer" means a person who buys or agrees to buy a
14 motor vehicle or obtain motor vehicle services or agrees to have motor
15 vehicle services rendered or furnished from a retail seller.

16 (12) "Retail seller" means a person engaged in the business of
17 selling motor vehicles or motor vehicle services to retail buyers.

18 (13) "Unregistered marketers" means persons who offer for sale and
19 sell guaranteed asset protection waivers who are not registered under
20 this chapter and who are not otherwise exempt under this chapter.

21 NEW SECTION. **Sec. 3.** (1) This chapter applies only to guaranteed
22 asset protection waivers for financing of motor vehicles as defined in
23 this chapter. Any person or entity must register with the commissioner
24 before marketing, offering for sale or selling a guaranteed asset
25 protection waiver, and before acting as an obligor for a guaranteed
26 asset protection waiver, in this state. However, a retail seller of
27 motor vehicles that assigns more than eighty-five percent of
28 guaranteed asset protection waiver agreements within thirty days of
29 such agreements' effective date, or an insurer authorized to transact
30 such insurance business in this state, are not required to register
31 pursuant to this section. Failure of any retail seller of motor
32 vehicles to assign one hundred percent of guaranteed asset protection
33 waiver agreements within forty-five days of such agreements' effective
34 date will result in that retail seller being required to comply with
35 the registration requirements of this chapter.

36 (2) No person may market, offer for sale, or sell a guaranteed

1 asset protection waiver, or act as an obligor on a guaranteed asset
2 protection waiver in this state without a registration as provided in
3 this chapter, except as set forth in subsection (1) of this section.

4 (3) The application for registration must include the following:

5 (a) The applicant's name, address, and telephone number;

6 (b) The identities of the applicant's executive officers or other
7 officers directly responsible for the waiver business;

8 (c) An application fee of two hundred fifty dollars, which shall be
9 deposited into the guaranteed asset protection waiver account;

10 (d) A copy filed by the applicant with the commissioner of the
11 waivers the applicant intends to offer in this state;

12 (e) A list of all unregistered marketers of guaranteed asset
13 protection waivers on which the applicant will be the obligor;

14 (f) Such additional information as the commissioner may reasonably
15 require.

16 (4) Once registered, the applicant shall keep the information
17 required for registration current by reporting changes within thirty
18 days after the end of the month in which the change occurs.

19 NEW SECTION. **Sec. 4.** (1) Waivers may be offered, sold, or
20 provided to borrowers in this state in compliance with this chapter.

21 (2) Waivers may, at the option of the creditor, be sold for a
22 single payment or may be offered with a monthly or periodic payment
23 option.

24 (3) Notwithstanding any other provision of law, any cost to the
25 borrower for a guaranteed asset protection waiver entered into in
26 compliance with the truth in lending act (15 U.S.C. Sec. 1601 et seq.)
27 and its implementing regulations, as amended, must be separately stated
28 and is not to be considered a finance charge or interest.

29 (4) Nothing in this chapter prohibits a person who is registered,
30 or is otherwise exempt from registration or exempt from this chapter,
31 from insuring its waiver obligation through the purchase of a
32 contractual liability policy or other insurance policy issued by an
33 insurer authorized to transact such insurance in this state.

34 (5) The waiver remains a part of the finance agreement upon the
35 assignment, sale, or transfer of the finance agreement by the creditor.

36 (6) Neither the extension of credit, the term of credit, nor the

1 term of the related motor vehicle sale or lease may be conditioned upon
2 the purchase of a waiver.

3 (7) Any creditor that offers a waiver must report the sale of, and
4 forward funds received on, all waivers to the designated party, if any,
5 as prescribed in any applicable administrative services agreement,
6 contractual liability policy, other insurance policy, or other
7 specified program documents.

8 (8) Funds received or held by a creditor or administrator and
9 belonging to an insurer, creditor, or administrator, under the terms of
10 a written agreement, must be held by that creditor or administrator in
11 a fiduciary capacity.

12 (9) If the guaranteed asset protection waiver is assigned, the name
13 and address of the assignee must be mailed to the borrower within
14 thirty days of the assignment. If at any time the name and address
15 provided to the borrower by the initial creditor are no longer the
16 valid point of contact to apply for waiver benefits, written notice
17 will be mailed to the borrower within thirty days of the change stating
18 the new name and address of the person or entity the borrower should
19 contact to apply for waiver benefits. No waiver may be assigned to an
20 entity that is not registered pursuant to this chapter, unless such
21 entity is exempt from registration or unless the commissioner
22 specifically authorizes such assignment.

23 (10) No person shall knowingly make, publish, or disseminate any
24 false, deceptive, or misleading representation or advertising in the
25 conduct of, or relative to, waiver business. Nor shall any person
26 make, issue, or circulate, or cause to be made, issued, or circulated
27 any misrepresentation of the terms or benefits of any waiver.

28 (11) A person or entity engaged in the guaranteed asset protection
29 waiver business in this state may not refuse to sell or issue any
30 guaranteed asset protection waiver because of the sex, marital status,
31 or sexual orientation as defined in RCW 49.60.040, or the presence of
32 any sensory, mental, or physical disability of the borrower or
33 prospective borrower. The type of benefits, or any term, rate,
34 condition, or type of coverage may not be restricted, modified,
35 excluded, increased, or reduced on the basis of the presence of any
36 sensory, mental, or physical disability of the borrower or prospective
37 borrower.

1 NEW SECTION. **Sec. 5.** (1) Contractual liability or other insurance
2 policies insuring waivers must state the obligation of the insurer to
3 reimburse or pay to the creditor any sums the creditor is legally
4 obligated to waive under the waivers issued by the creditor and
5 purchased or held by the borrower. Contractual liability insurance or
6 other insurance policies insuring waivers must not be purchased by the
7 creditor as part of, or a rider to, vendor single-interest or
8 collateral protection coverages as defined in RCW 48.22.110(4).

9 (2) Coverage under a contractual liability or other insurance
10 policy insuring a waiver must also cover any subsequent assignee upon
11 the assignment, sale, or transfer of the finance agreement.

12 (3) Coverage under a contractual liability or other insurance
13 policy insuring a waiver must remain in effect unless canceled or
14 terminated in compliance with applicable insurance laws of this state.

15 (4) The cancellation or termination of a contractual liability or
16 other insurance policy must not reduce the insurer's responsibility for
17 waivers issued by the creditor prior to the date of cancellation or
18 termination and for which a premium has been received by the insurer.

19 NEW SECTION. **Sec. 6.** Guaranteed asset protection waivers must
20 disclose, as applicable, in writing and in clear, understandable
21 language that is easy to read, the following:

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

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

28 (3) That the borrower may cancel the waiver within a free look
29 period as specified in the waiver, and will be entitled to a full
30 refund of the purchase price, so long as no benefits have been
31 provided; or in the event benefits have been provided, the borrower may
32 receive a full or partial refund pursuant to the terms of the waiver;

33 (4) The procedure the borrower must follow, if any, to obtain
34 waiver benefits under the terms and conditions of the waiver, including
35 a telephone number and address where the borrower may apply for waiver
36 benefits;

1 (5) Whether or not the waiver is cancellable after the free look
2 period and the conditions under which it may be canceled or terminated
3 including the procedures for requesting any refund due;

4 (6) That in order to receive any refund due in the event of a
5 borrower's cancellation of the waiver agreement or early termination of
6 the finance agreement after the free look period of the waiver, the
7 borrower, in accordance with terms of the waiver, must provide a
8 written request to cancel to the creditor, administrator, or such other
9 party, within ninety days of the occurrence of the event terminating
10 the finance agreement;

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

14 (8) That any refund of the purchase price for a waiver that was
15 included in the financing of the motor vehicle or vessel may be applied
16 by the creditor as a reduction of the overall amount owed under the
17 finance agreement, rather than applying the refund strictly to the
18 purchase price of the waiver. This disclosure must be conspicuously
19 presented prior to the purchase of the waiver;

20 (9) That neither the extension of credit, the terms of the credit,
21 nor the terms of the related motor vehicle sale or lease, may be
22 conditioned upon the purchase of the waiver;

23 (10) That the guaranteed asset protection waiver is not credit
24 insurance, nor does it eliminate the borrower's obligation to insure
25 the motor vehicle as provided by laws of this state. Purchasing a
26 guaranteed asset protection waiver does not eliminate the borrower's
27 rights and obligations under the vendor single-interest and collateral
28 protection coverage laws of this state.

29 NEW SECTION. **Sec. 7.** (1) Guaranteed asset protection waiver
30 agreements may be cancellable or noncancellable after the free look
31 period. Waivers must provide that if a borrower cancels a waiver
32 within the free look period, the borrower will be entitled to a full
33 refund of the purchase price, so long as no benefits have been
34 provided; or in the event benefits have been provided, the borrower may
35 receive a full or partial refund pursuant to the terms of the waiver.

36 (2) In the event of a borrower's cancellation of the waiver or
37 early termination of the finance agreement, after the agreement has

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

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

13 (4) Any cancellation refund under this section may be applied by
14 the creditor as a reduction of the overall amount owed under the
15 finance agreement, if the cost of the guaranteed asset protection
16 waiver was included in the financing of the motor vehicle or vessel.

17 (5) Disclosure of how the refund may be applied by the creditor or
18 administrator must be made in accordance with the provisions of section
19 6(8) of this act.

20 NEW SECTION. **Sec. 8.** (1) The commissioner may, subject to chapter
21 48.04 RCW, take action that is necessary or appropriate to enforce this
22 chapter and to protect guaranteed asset protection waiver holders in
23 this state, which includes:

24 (a) Suspending, revoking, or refusing to issue the registration of
25 a person or entity if the registrant fails to comply with any provision
26 of this chapter or fails to comply with any proper order or rule of the
27 commissioner; and

28 (b) After hearing or with the consent of the registrant, and in
29 addition to or in lieu of the suspension, revocation, or refusal to
30 issue any registration, imposing a penalty of not more than two
31 thousand dollars for each violation of this chapter.

32 (2) The commissioner may adopt rules to implement this chapter.

33 NEW SECTION. **Sec. 9.** (1) Any person who markets, offers for sale
34 or sells a guaranteed asset protection waiver, or acts as an obligor
35 for a guaranteed asset protection waiver without a registration, unless
36 otherwise exempt from registration or exempt from this chapter, is

1 acting in violation of this section and is subject to the provisions of
2 section 8 of this act. In addition, any person who knowingly violates
3 this section is guilty of a class B felony punishable under chapter
4 9A.20 RCW.

5 (2) Any criminal penalty imposed under this section is in addition
6 to, and not in lieu of, any other civil or administrative penalty or
7 sanction otherwise authorized under state law.

8 (3) If the commissioner has cause to believe that any person has
9 violated this section, the commissioner may assess a civil penalty of
10 not more than twenty-five thousand dollars for each violation, after
11 providing notice and an opportunity for a hearing in accordance with
12 chapter 48.04 RCW. Upon failure to pay this civil penalty when due,
13 the attorney general may bring a civil action on behalf of the
14 commissioner to recover the unpaid penalty.

15 (4) A person or entity that should have been registered at the time
16 of the sale of a waiver who was not so registered pursuant to this
17 chapter is personally liable for performance of the waiver. Any waiver
18 sold by a person or entity that should have been registered at the time
19 of the sale is voidable, except at the instance of the person or entity
20 who sold the waiver.

21 NEW SECTION. **Sec. 10.** The guaranteed asset protection waiver
22 account is created in the custody of the state treasurer. The fees and
23 fines collected under this chapter must be deposited into the account.
24 Expenditures from the account may be used to implement, administer, and
25 enforce this chapter. Only the commissioner or the commissioner's
26 designee may authorize expenditures from the account. The account is
27 subject to allotment procedures under chapter 43.88 RCW, but an
28 appropriation is not required for expenditures.

29 **Sec. 11.** RCW 63.14.010 and 2003 c 368 s 2 are each amended to read
30 as follows:

31 In this chapter, unless the context otherwise requires:

32 (1) "Goods" means all chattels personal when purchased primarily
33 for personal, family, or household use and not for commercial or
34 business use, but not including money or, except as provided in the
35 next sentence, things in action. The term includes but is not limited
36 to merchandise certificates or coupons, issued by a retail seller, to

1 be used in their face amount in lieu of cash in exchange for goods or
2 services sold by such a seller and goods which, at the time of sale or
3 subsequently, are to be so affixed to real property as to become a part
4 thereof, whether or not severable therefrom;

5 (2) "Lender credit card" means a card or device under a lender
6 credit card agreement pursuant to which the issuer gives to a
7 cardholder residing in this state the privilege of obtaining credit
8 from the issuer or other persons in purchasing or leasing property or
9 services, obtaining loans, or otherwise, and the issuer of which is
10 not: (a) Principally engaged in the business of selling goods; or (b)
11 a financial institution;

12 (3) "Lender credit card agreement" means an agreement entered into
13 or performed in this state prescribing the terms of retail installment
14 transactions pursuant to which the issuer may, with the buyer's
15 consent, purchase or acquire one or more retail sellers' indebtedness
16 of the buyer under a sales slip or memorandum evidencing the purchase,
17 lease, loan, or otherwise to be paid in accordance with the agreement.
18 The issuer of a lender credit card agreement shall not be principally
19 engaged in the business of selling goods or be a financial institution;

20 (4) "Financial institution" means any bank or trust company, mutual
21 savings bank, credit union, or savings and loan association organized
22 pursuant to the laws of any one of the United States of America or the
23 United States of America, or the laws of a foreign country if also
24 qualified to conduct business in any one of the United States of
25 America or pursuant to the laws of the United States of America;

26 (5) "Services" means work, labor, or services of any kind when
27 purchased primarily for personal, family, or household use and not for
28 commercial or business use whether or not furnished in connection with
29 the delivery, installation, servicing, repair, or improvement of goods
30 and includes repairs, alterations, or improvements upon or in
31 connection with real property, but does not include services for which
32 the price charged is required by law to be determined or approved by or
33 to be filed, subject to approval or disapproval, with the United States
34 or any state, or any department, division, agency, officer, or official
35 of either as in the case of transportation services;

36 (6) "Retail buyer" or "buyer" means a person who buys or agrees to
37 buy goods or obtain services or agrees to have services rendered or
38 furnished, from a retail seller;

1 (7) "Retail seller" or "seller" means a person engaged in the
2 business of selling goods or services to retail buyers;

3 (8) "Retail installment transaction" means any transaction in which
4 a retail buyer purchases goods or services from a retail seller
5 pursuant to a retail installment contract, a retail charge agreement,
6 or a lender credit card agreement, as defined in this section, which
7 provides for a service charge, as defined in this section, and under
8 which the buyer agrees to pay the unpaid principal balance in one or
9 more installments or which provides for no service charge and under
10 which the buyer agrees to pay the unpaid balance in more than four
11 installments;

12 (9) "Retail installment contract" or "contract" means a contract,
13 other than a retail charge agreement, a lender credit card agreement,
14 or an instrument reflecting a sale made pursuant thereto, entered into
15 or performed in this state for a retail installment transaction. The
16 term "retail installment contract" may include a chattel mortgage, a
17 conditional sale contract, and a contract in the form of a bailment or
18 a lease if the bailee or lessee contracts to pay as compensation for
19 their use a sum substantially equivalent to or in excess of the value
20 of the goods sold and if it is agreed that the bailee or lessee is
21 bound to become, or for no other or a merely nominal consideration, has
22 the option of becoming the owner of the goods upon full compliance with
23 the provisions of the bailment or lease. The term "retail installment
24 contract" does not include: (a) A "consumer lease," heretofore or
25 hereafter entered into, as defined in RCW 63.10.020; (b) a lease which
26 would constitute such "consumer lease" but for the fact that: (i) It
27 was entered into before April 29, 1983; (ii) the lessee was not a
28 natural person; (iii) the lease was not primarily for personal, family,
29 or household purposes; or (iv) the total contractual obligations
30 exceeded twenty-five thousand dollars; or (c) a lease-purchase
31 agreement under chapter 63.19 RCW;

32 (10) "Retail charge agreement," "revolving charge agreement," or
33 "charge agreement" means an agreement between a retail buyer and a
34 retail seller that is entered into or performed in this state and that
35 prescribes the terms of retail installment transactions with one or
36 more sellers which may be made thereunder from time to time and under
37 the terms of which a service charge, as defined in this section, is to

1 be computed in relation to the buyer's unpaid balance from time to
2 time;

3 (11) "Service charge" however denominated or expressed, means the
4 amount which is paid or payable for the privilege of purchasing goods
5 or services to be paid for by the buyer in installments over a period
6 of time. It does not include the amount, if any, charged for insurance
7 premiums, delinquency charges, attorneys' fees, court costs, any
8 vehicle dealer administrative fee under RCW 46.12.042, any vehicle
9 dealer documentary service fee under RCW 46.70.180(2), or official
10 fees;

11 (12) "Sale price" means the price for which the seller would have
12 sold or furnished to the buyer, and the buyer would have bought or
13 obtained from the seller, the goods or services which are the subject
14 matter of a retail installment transaction. The sale price may include
15 any taxes, registration and license fees, the cost of a guaranteed
16 asset protection waiver, any vehicle dealer administrative fee, any
17 vehicle dealer documentary service fee, and charges for transferring
18 vehicle titles, delivery, installation, servicing, repairs,
19 alterations, or improvements;

20 (13) "Official fees" means the amount of the fees prescribed by law
21 and payable to the state, county, or other governmental agency for
22 filing, recording, or otherwise perfecting, and releasing or
23 satisfying, a retained title, lien, or other security interest created
24 by a retail installment transaction;

25 (14) "Time balance" means the principal balance plus the service
26 charge;

27 (15) "Principal balance" means the sale price of the goods or
28 services which are the subject matter of a retail installment contract
29 less the amount of the buyer's down payment in money or goods or both,
30 plus the amounts, if any, included therein, if a separate identified
31 charge is made therefor and stated in the contract, for insurance, any
32 vehicle dealer administrative fee, any vehicle dealer documentary
33 service fee, and official fees; and the amount actually paid or to be
34 paid by the retail seller pursuant to an agreement with the buyer to
35 discharge a security interest or lien on like-kind goods traded in or
36 lease interest in the circumstance of a lease for like goods being
37 terminated in conjunction with the sale pursuant to a retail
38 installment contract;

1 (16) "Person" means an individual, partnership, joint venture,
2 corporation, association, or any other group, however organized;

3 (17) "Rate" means the percentage which, when multiplied times the
4 outstanding balance for each month or other installment period, yields
5 the amount of the service charge for such month or period.

6 NEW SECTION. **Sec. 12.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 13.** This act is applicable to all guaranteed
11 asset protection waiver agreements entered into on or after January 1,
12 2010.

13 NEW SECTION. **Sec. 14.** Sections 1 through 10, 12, and 13 of this
14 act constitute a new chapter in Title 48 RCW.

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