

HOUSE SUBSTITUTE TO SENATE BILL 470

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for guaranteed asset protection waivers; to provide for legislative intent; to provide
3 for scope; to provide for purposes; to provide for definitions; to provide for requirements for
4 offering; to provide for contractual liability or other insurance policies; to provide for
5 disclosures; to provide for cancellation; to provide for exempted commercial transactions;
6 to provide for related matters; to provide for an effective date and applicability; to repeal
7 conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
11 adding a new chapter to read as follows:

12 **"CHAPTER 62**

13 33-62-1.

14 The General Assembly finds that guaranteed asset protection waivers are not insurance.
15 All guaranteed asset protection waivers issued after the date of enactment of this chapter
16 shall not be construed as insurance.

17 33-62-2.

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

20 (b) This chapter shall not apply to:

- 21 (1) An insurance policy offered by an insurer under the insurance laws of this state; or
22 (2) A debt cancellation or debt suspension contract being offered in compliance
23 with 12 C.F.R. Part 37 or 12 C.F.R. Part 721 or other federal law.

1 (c) Guaranteed asset protection waivers governed under this chapter are not insurance and
2 are exempt from the insurance laws of this state. Persons marketing, selling, or offering
3 to sell guaranteed asset protection waivers to borrowers that comply with this chapter are
4 exempt from this state's insurance licensing requirements.

5 33-62-3.

6 The following terms are defined for purposes of this chapter and are not intended to
7 provide actual terms required in guaranteed asset protection waivers:

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

11 (2) 'Borrower' means a debtor, retail buyer, or lessee under a finance agreement.

12 (3) 'Creditor' means:

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

14 (B) The lessor in a lease transaction;

15 (C) Any retail installment seller that provides credit to any retail buyer of motor
16 vehicles, provided that such entity complies with the provisions of this chapter;

17 (D) The seller in commercial retail installment transactions; or

18 (E) The assignees of any of the creditors listed in subparagraphs (A) through (D) of
19 this paragraph to whom the credit obligation is payable.

20 (4) 'Finance agreement' means a loan, lease, or retail installment sales contract for the
21 purchase or lease of a motor vehicle.

22 (5) 'Free look period' means the period of time from the effective date of the guaranteed
23 asset protection waiver until the date the borrower may cancel the guaranteed asset
24 protection waiver without penalty, fees, or costs to the borrower. This period of time
25 must not be shorter than 30 days.

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

31 (7) 'Insurer' means an insurance company licensed, registered, or otherwise authorized
32 to do business under the insurance laws of this state.

33 (8) 'Motor vehicle' means self-propelled or towed vehicles designed for personal or
34 commercial use, including but not limited to automobiles, trucks, motorcycles,
35 recreational vehicles, all-terrain vehicles, campers, boats, personal watercraft, and
36 motorcycle, boat, camper, and personal watercraft trailers.

1 (9) 'Person' includes an individual, company, association, organization, partnership,
2 business trust, corporation, and every form of legal entity.

3 (10) 'Retail buyer' shall have the same meaning as provided in Code Section 10-1-31.

4 (11) 'Retail installment seller' shall have the same meaning as provided in Code
5 Section 10-1-31.

6 33-62-4.

7 (a) Guaranteed asset protection waivers may be offered, sold, or provided to borrowers in
8 this state in compliance with this chapter.

9 (b) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a
10 single payment or may be offered with a monthly or periodic payment option.

11 (c) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed
12 asset protection waiver entered into in compliance with the federal Truth in Lending Act,
13 15 U.S.C. 1601 et seq., and its implementing regulations, as they may be amended from
14 time to time, must be separately stated and is not to be considered a finance charge or
15 interest.

16 (d) A retail installment seller must insure its guaranteed asset protection waiver obligations
17 under a contractual liability or other insurance policy issued by an insurer. A creditor other
18 than a retail installment seller may insure its guaranteed asset protection waiver obligations
19 under a contractual liability policy or other such policy issued by an insurer. Any such
20 insurance policy may be directly obtained by a creditor or retail installment seller or may
21 be procured by an administrator to cover a creditor's or retail installment seller's
22 obligations. However, retail installment sellers that are lessors on motor vehicles are not
23 required to insure obligations related to guaranteed asset protection waivers on such leased
24 vehicles.

25 (e) The guaranteed asset protection waiver shall remain a part of the finance agreement
26 upon the assignment, sale, or transfer of such finance agreement by the creditor.

27 (f) Neither the extension of credit, the term of credit, nor the term of the related motor
28 vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection
29 waiver.

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

34 (h) Funds received or held by a creditor or administrator and belonging to an insurer,
35 creditor, or administrator pursuant to the terms of a written agreement must be held by such
36 creditor or administrator in a fiduciary capacity.

1 33-62-5.

2 (a) Contractual liability or other insurance policies insuring guaranteed asset protection
3 waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums
4 the creditor is legally obligated to waive under the guaranteed asset protection waivers
5 issued by the creditor and purchased or held by the borrower.

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

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

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

16 33-62-6.

17 Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear,
18 understandable language that is easy to read, the following:

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

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

24 (3) That the borrower may cancel the guaranteed asset protection waiver within a free
25 look period, as specified in the waiver, and will be entitled to a full refund of the purchase
26 price, provided no benefits have been made; or in the event benefits have been made, the
27 borrower may receive a full or partial refund if the waiver so provides;

28 (4) The procedure the borrower must follow, if any, to obtain guaranteed asset protection
29 waiver benefits under the terms and conditions of the waiver, including a telephone
30 number and address where the borrower may apply for waiver benefits;

31 (5) Whether or not the guaranteed asset protection waiver is cancelable after the free
32 look period and the conditions under which it may be canceled or terminated, including
33 the procedures for requesting any refund due;

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

1 borrower, in accordance with terms of the waiver, must provide a written request to
2 cancel to the creditor, administrator, or such other party within 90 days after the
3 borrower's decision to cancel the waiver or the occurrence of the event terminating the
4 finance agreement;

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

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

11 33-62-7.

12 (a) Guaranteed asset protection waiver agreements may be cancelable or noncancelable
13 after the free look period. Guaranteed asset protection waivers must provide that if a
14 borrower cancels a waiver within the free look period, the borrower will be entitled to a full
15 refund of the purchase price, provided no benefits have been paid; or in the event benefits
16 have been paid, the borrower may receive a full or partial refund if the waiver so provides.

17 (b) In the event of a borrower's cancellation of the guaranteed asset protection waiver or
18 early termination of the finance agreement, after the agreement has been in effect beyond
19 the free look period, the borrower may be entitled to a refund of any unearned portion of
20 the purchase price of the waiver unless the waiver provides otherwise. In order to receive
21 a refund, the borrower, in accordance with any applicable terms of the waiver, must
22 provide a written request to the creditor, administrator, or other party within 90 days after
23 the borrower's decision to cancel the waiver or the occurrence of the event terminating the
24 finance agreement.

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

30 (d) Any cancellation refund under subsection (a), (b), or (c) of this Code section may be
31 applied by the creditor as a reduction of the amount owed under the finance agreement
32 unless the borrower can show that the finance agreement has been paid in full.

1 33-62-8.

2 Subsection (c) of Code Section 33-62-4 and Code Sections 33-62-6 and 33-62-9 shall not
3 be applicable to a guaranteed asset protection waiver offered in connection with a lease or
4 retail installment sale associated with a commercial transaction.

5 33-62-9.

6 The Commissioner of Insurance may take action which is necessary or appropriate to
7 enforce the provisions of this chapter and to protect guaranteed asset protection waiver
8 holders in this state. After proper notice and opportunity for hearing, the commissioner
9 may:

10 (1) Order the creditor, administrator, or any other person not in compliance with this
11 chapter to cease and desist from further guaranteed asset protection waiver related
12 operations which are in violation of this chapter; and

13 (2) Impose a penalty of not more than \$500.00 per violation and not more than
14 \$10,000.00 in the aggregate for all violations of similar nature. For purposes of this
15 paragraph, violations must be of a similar nature if the violation consists of the same or
16 similar course of conduct, action, or practice, irrespective of the number of times the
17 conduct, action, or practice which is determined to be a violation of this chapter
18 occurred."

19 **SECTION 2.**

20 This Act shall become effective on July 1, 2008, and apply to all guaranteed asset protection
21 waivers which shall become effective on or after January 1, 2009.

22 **SECTION 3.**

23 All laws and parts of laws in conflict with this Act are repealed.