

House Bill 820

By: Representatives Maxwell of the 17th, Smith of the 131st, Ehrhart of the 36th, Davis of the 109th, Rice of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 63 of Title 33 of the Official Code of Georgia Annotated, relating to
2 guaranteed asset protection waivers, so as to provide for an exception to a retail installment
3 seller's requirement to insure its guaranteed asset protection waiver obligations under a
4 contractual liability policy or other such policy; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 63 of Title 33 of the Official Code of Georgia Annotated, relating to guaranteed
9 asset protection waivers, is amended by revising Code Section 33-63-4, relating to offering,
10 selling, or providing to borrowers guaranteed asset protection waivers, as follows:

11 "33-63-4.

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

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

16 (c) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed
17 asset protection waiver entered into in compliance with the federal Truth in Lending Act,
18 15 U.S.C. Section 1601, et seq., and its implementing regulations, as they may be amended
19 from time to time, ~~must~~ shall be separately stated and is not to be considered a finance
20 charge or interest.

21 (d) A retail installment seller ~~must~~ shall insure its guaranteed asset protection waiver
22 obligations under a contractual liability or other insurance policy issued by an insurer,
23 except as provided in subsection (i) of this Code section. A creditor other than a retail
24 installment seller may insure its guaranteed asset protection waiver obligations under a
25 contractual liability policy or other such policy issued by an insurer. Any such insurance
26 policy may be directly obtained by a creditor or retail installment seller or may be procured

27 by an administrator to cover a creditor's or retail installment seller's obligations. However,
 28 retail installment sellers that are lessors on motor vehicles ~~are not~~ shall not be required to
 29 insure obligations related to guaranteed asset protection waivers on such leased vehicles.

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

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

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

39 (h) Funds received or held by a creditor or administrator and belonging to an insurer,
 40 creditor, or administrator pursuant to the terms of a written agreement ~~must~~ shall be held
 41 by such creditor or administrator in a fiduciary capacity.

42 (i) A retail installment seller shall not be required to insure its guaranteed asset protection
 43 waiver obligations under a contractual liability policy or other such policy issued by an
 44 insurer if the retail installment seller does both of the following:

45 (1) Maintains, or has a parent company that maintains, a net worth or stockholders'
 46 equity of at least \$100,000,000.00, provided the parent company guarantees the
 47 obligations of the retail installment seller arising from vehicle service agreements or
 48 extended warranty agreements underwritten pursuant to this subsection; and

49 (2) Files a copy of its Form 10-K or Form 20-F disclosure statements, or, if it does not
 50 file with the United States Securities and Exchange Commission, a copy of its audited
 51 financial statements reported on generally accepted accounting principles. If the retail
 52 installment seller's financial statements are consolidated with those of its parent company,
 53 then the retail installment seller may comply with the provisions of this paragraph by
 54 filing the statements of its parent company. The statement shall be filed with the
 55 Commissioner at least 30 days prior to the retail installment seller's initial offering or
 56 delivering a guaranteed asset protection waiver, and thereafter the statement shall be filed
 57 with the Commissioner annually."

58 **SECTION 2.**

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