

House Bill 820 (COMMITTEE SUBSTITUTE)

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 Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide requirements of retail installment sellers to be exempted from reinsurance
3 requirements relating to vehicle service agreements or extended warranty agreements; to
4 provide for an exception to a retail installment seller's requirement to insure its guaranteed
5 asset protection waiver obligations under a contractual liability policy or other such policy;
6 to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 style="text-align:center">**SECTION 1.**

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
10 revising paragraph (1) of subsection (b) of Code Section 33-7-6, relating to property
11 insurance, contract requirements, rules and regulation, and exemption, as follows:

12 "(1) Any contract, agreement, or instrument whereby a person assumes the risk of and
13 the expense or portion thereof for the mechanical breakdown or mechanical failure of a
14 motor vehicle, or for the removal of dents, dings, or creases in a motor vehicle without
15 affecting the existing paint finish using paintless dent repair techniques or the removal
16 of small windshield chips and cracks without replacement of the entire windshield, and
17 shall include those agreements commonly known as vehicle service agreements or
18 extended warranty agreements, if made by a person other than the motor vehicle
19 manufacturer in exchange for a separately stated charge or the cost of the contract or
20 contracts is included on a nonidentifiable basis in the cost of a motor vehicle sold in
21 conjunction therewith, except that this provision shall not apply to:

22 (A) An ~~an~~ agreement underwritten by an insurer licensed to transact insurance in this
23 state, either directly or through a reinsurance contract or, without regard to the
24 requirement that the insurance cannot be obtained from an insurer authorized to do
25 business in this state as required by Code Section 33-5-21, to an agreement

26 underwritten by a surplus lines insurer which has not been rejected by the
 27 Commissioner for such purpose; and
 28 (B) Those agreements commonly known as vehicle service agreements or extended
 29 warranty agreements which are issued, sold, or offered for sale by a retail installment
 30 seller, as defined in Code Section 10-1-31, provided that such retail installment seller:
 31 (i) Maintains, or has a parent company maintain, a net worth or stockholders' equity
 32 of at least \$100 million, provided the parent company guarantees the obligations of
 33 the retail installment seller arising from vehicle service agreements or extended
 34 warranty agreements underwritten pursuant to this subparagraph;
 35 (ii) Complies with the registration requirement prescribed by the Commissioner
 36 through regulation;
 37 (iii) Files with the Commissioner a true and correct copy of the vehicle service
 38 agreement or extended warranty agreement in a form that is consistent with the terms
 39 prescribed by the Commissioner through regulation;
 40 (iv) Files a copy of its Form 10-K or Form 20-F disclosure statements, or if it does
 41 not file such statements with the United States Securities and Exchange Commission,
 42 a copy of its audited financial statements reported on a GAAP basis. If the retail
 43 installment seller's financial statements are consolidated with those of its parent
 44 company, then the retail installment seller may comply with this provision by filing
 45 the statements of its parent company. The statement shall be filed with the
 46 Commissioner 30 days prior to the retail installment seller's initial offering or
 47 delivering of a service agreement or extended warranty agreement, and thereafter, the
 48 statement shall be filed with the Commissioner annually; and
 49 (v) Upon the request of the Commissioner, posts a security deposit or surety bond in
 50 an amount not to exceed \$250,000.00 and in the manner prescribed by the
 51 Commissioner through regulation."

52 **SECTION 2.**

53 Said title is further amended by revising Code Section 33-63-4, relating to offering, selling,
 54 or providing to borrowers guaranteed asset protection waivers, as follows:

55 "33-63-4.

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

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

60 (c) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed
 61 asset protection waiver entered into in compliance with the federal Truth in Lending Act,

62 15 U.S.C. Section 1601, et seq., and its implementing regulations, as they may be amended
63 from time to time, ~~must~~ shall be separately stated and is not to be considered a finance
64 charge or interest.

65 (d) A retail installment seller ~~must~~ shall insure its guaranteed asset protection waiver
66 obligations under a contractual liability or other insurance policy issued by an insurer,
67 except as provided in subsection (i) of this Code section. A creditor other than a retail
68 installment seller may insure its guaranteed asset protection waiver obligations under a
69 contractual liability policy or other such policy issued by an insurer. Any such insurance
70 policy may be directly obtained by a creditor or retail installment seller or may be procured
71 by an administrator to cover a creditor's or retail installment seller's obligations. However,
72 retail installment sellers that are lessors on motor vehicles ~~are not~~ shall not be required to
73 insure obligations related to guaranteed asset protection waivers on such leased vehicles.

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

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

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

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

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

89 (1) Maintains, or has a parent company that maintains, a net worth or stockholders'
90 equity of at least \$100 million, provided the parent company guarantees the obligations
91 of the retail installment seller arising from guaranteed asset protection waivers
92 underwritten pursuant to this subsection; and

93 (2) Files a copy of its Form 10-K or Form 20-F disclosure statements, or, if it does not
94 file with the United States Securities and Exchange Commission, a copy of its audited
95 financial statements reported on generally accepted accounting principles. If the retail
96 installment seller's financial statements are consolidated with those of its parent company,
97 then the retail installment seller may comply with the provisions of this paragraph by
98 filing the statements of its parent company. The statement shall be filed with the

99 Commissioner at least 30 days prior to the retail installment seller's initial offering or
100 delivering a guaranteed asset protection waiver, and thereafter the statement shall be filed
101 with the Commissioner annually."

102 **SECTION 3.**

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