

House Bill 849

By: Representatives Maxwell of the 17th, Golick of the 40th, Smith of the 134th, Shaw of the 176th, and Rogers of the 29th

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 that excess wear and use waivers shall
3 not be construed as insurance; to provide excess wear and use waivers exemption from
4 insurance laws; to provide for definitions; to provide for the offer and sale of waivers to
5 borrowers; to provide for changes to reimbursement to creditor, assignee coverage, and
6 continuation of coverage; to provide for changes to written disclosure provisions; to provide
7 for cancellation of agreement changes; to provide for cross-references; to provide for
8 revisions to the authority of the Commissioner and penalties; to provide for related matters;
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 63 of Title 33 of the Official Code of Georgia Annotated, relating to guaranteed
13 asset protection waivers, is amended by revising the chapter as follows:

14 "CHAPTER 63

15 33-63-1.

16 The General Assembly finds that guaranteed asset protection waivers and excess wear and
17 use waivers are not insurance. All guaranteed asset protection waivers and excess wear and
18 use waivers issued after the date of enactment of this chapter shall not be construed as
19 insurance.

20 33-63-2.

21 (a) The purpose of this chapter is to provide a framework within which guaranteed asset
22 protection waivers and excess wear and use waivers are defined and may be offered within
23 this state.

24 (b) This chapter shall not apply to:

25 (1) An insurance policy offered by an insurer under the insurance laws of this state; or

26 (2) A debt cancellation or debt suspension contract being offered in compliance with 12
27 C.F.R. Part 37 or 12 C.F.R. Part 721 or other federal law.

28 (c) Guaranteed asset protection waivers and excess wear and use waivers governed under
29 this chapter are not insurance and are exempt from the insurance laws of this state. Persons
30 marketing, selling, or offering to sell guaranteed asset protection waivers and excess wear
31 and use waivers to borrowers that comply with this chapter are exempt from this state's
32 insurance licensing requirements.

33 33-63-3.

34 The following terms are defined for purposes of this chapter and are not intended to
35 provide actual terms required in guaranteed asset protection waivers and excess wear and
36 use waivers:

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

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

41 (3) 'Creditor' means:

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

43 (B) The lessor in a lease transaction;

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

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

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

49 (4) 'Excess wear and use waiver' means a contractual agreement wherein a creditor
50 agrees for a separate charge to cancel or waive all or part of the excess wear and use
51 charges owed by the borrower to the creditor under the lease contract when the borrower
52 returns a leased vehicle to the creditor at termination of the lease, which agreement must
53 be part of, or a separate addendum to, the lease contract.

54 (5) 'Finance agreement' means a loan, lease, or retail installment sales contract for the
55 purchase or lease of a motor vehicle.

56 ~~(5)~~(6) 'Free look period' means the period of time from the effective date of the
57 ~~guaranteed asset protection waiver~~ until the date the borrower may cancel the ~~guaranteed~~
58 ~~asset protection waiver~~ without penalty, fees, or costs to the borrower. This period of
59 time must not be shorter than 30 days.

60 ~~(6)~~(7) 'Guaranteed asset protection waiver' means a contractual agreement wherein a
 61 creditor agrees for a separate charge to cancel or waive all or part of amounts due on a
 62 borrower's finance agreement in the event of a total physical damage loss or unrecovered
 63 theft of the motor vehicle, which agreement must be part of, or a separate addendum to,
 64 the finance agreement.

65 ~~(7)~~(8) 'Insurer' means an insurance company licensed, registered, or otherwise authorized
 66 to do business under the insurance laws of this state.

67 ~~(8)~~(9) 'Motor vehicle' means self-propelled or towed vehicles designed for personal or
 68 commercial use, including but not limited to automobiles, trucks, motorcycles,
 69 recreational vehicles, all-terrain vehicles, campers, boats, personal watercraft, and
 70 motorcycle, boat, camper, and personal watercraft trailers.

71 ~~(9)~~(10) 'Person' includes an individual, company, association, organization, partnership,
 72 business trust, corporation, and every form of legal entity.

73 ~~(10)~~(11) 'Retail buyer' shall have the same meaning as provided in Code Section 10-1-31.

74 ~~(11)~~(12) 'Retail installment seller' shall have the same meaning as provided in Code
 75 Section 10-1-31.

76 (13) 'Waivers' means excess wear and use waivers and guaranteed asset protection
 77 waivers.

78 33-63-4.

79 (a) ~~Guaranteed asset protection waivers~~ Waivers may be offered, sold, or provided to
 80 borrowers in this state in compliance with this chapter.

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

83 (c) Notwithstanding any other provision of law, any cost to the borrower for a ~~guaranteed~~
 84 ~~asset protection~~ waiver entered into in compliance with the federal Truth in Lending Act,
 85 15 U.S.C. Section 1601, et seq., and its implementing regulations, as they may be amended
 86 from time to time, must be separately stated and is not to be considered a finance charge
 87 or interest.

88 (d) A retail installment seller must insure its ~~guaranteed asset protection~~ waiver obligations
 89 under a contractual liability or other insurance policy issued by an insurer. A creditor other
 90 than a retail installment seller may insure its ~~guaranteed asset protection~~ waiver obligations
 91 under a contractual liability policy or other such policy issued by an insurer. Any such
 92 insurance policy may be directly obtained by a creditor or retail installment seller or may
 93 be procured by an administrator to cover a creditor's or retail installment seller's
 94 obligations. However, retail installment sellers that are lessors on motor vehicles are not

95 required to insure obligations related to ~~guaranteed asset protection~~ waivers on such leased
96 vehicles.

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

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

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

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

109 (i) A retail installment seller that offers, provides, or sells a ~~guaranteed asset protection~~
110 waiver in connection with the sale of a motor vehicle shall not be required to insure its
111 ~~guaranteed asset protection~~ waiver if the retail installment seller does both of the following:

112 (1) Maintains, or has a parent company that maintains, a net worth or stockholders'
113 equity of at least \$50 million, provided the parent company guarantees the obligations of
114 the retail installment seller arising from ~~guaranteed asset protection~~ waivers underwritten
115 pursuant to this subsection; and

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

125 33-63-5.

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

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

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

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

140 33-63-6.

141 ~~Guaranteed asset protection waivers~~ Waivers must disclose, as applicable, in writing and
142 in clear, understandable language that is easy to read, the following:

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

145 (2) The purchase price and the terms of the ~~guaranteed asset protection~~ waiver, including
146 without limitation the requirements for protection, conditions, or exclusions associated
147 with the ~~guaranteed asset protection~~ waiver;

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

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

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

158 (6) That in order to receive any refund due in the event of a borrower's cancellation of
159 the ~~guaranteed asset protection~~ waiver agreement or early termination of the finance
160 agreement after the free look period of the ~~guaranteed asset protection~~ waiver, the
161 borrower, in accordance with terms of the waiver, must provide a written request to
162 cancel to the creditor, administrator, or such other party within 90 days after the
163 borrower's decision to cancel the waiver or the occurrence of the event terminating the
164 finance agreement;

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

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

171 33-63-7.

172 (a) ~~Guaranteed asset protection waiver agreements~~ Waivers may be cancelable or
 173 noncancelable after the free look period. ~~Guaranteed asset protection waivers~~ Waivers
 174 must provide that if a borrower cancels a waiver within the free look period, the borrower
 175 will be entitled to a full refund of the purchase price, provided no benefits have been paid;
 176 or in the event benefits have been paid, the borrower may receive a full or partial refund
 177 if the waiver so provides.

178 (b) In the event of a borrower's cancellation of the ~~guaranteed asset protection~~ waiver or
 179 early termination of the finance agreement, after the agreement has been in effect beyond
 180 the free look period, the borrower may be entitled to a refund of any unearned portion of
 181 the purchase price of the waiver unless the waiver provides otherwise. In order to receive
 182 a refund, the borrower, in accordance with any applicable terms of the waiver, must
 183 provide a written request to the creditor, administrator, or other party within 90 days after
 184 the borrower's decision to cancel the waiver or the occurrence of the event terminating the
 185 finance agreement.

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

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

194 33-63-8.

195 Subsection (c) of Code Section 33-63-4 and Code Sections 33-63-6 and 33-63-9 shall not
 196 be applicable to a ~~guaranteed asset protection~~ waiver offered in connection with a lease or
 197 retail installment sale associated with a commercial transaction.

198 33-63-9.

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

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

206 (2) Impose a penalty of not more than \$500.00 per violation and not more than
207 \$10,000.00 in the aggregate for all violations of similar nature. For purposes of this
208 paragraph, violations must be of a similar nature if the violation consists of the same or
209 similar course of conduct, action, or practice, irrespective of the number of times the
210 conduct, action, or practice which is determined to be a violation of this chapter
211 occurred."

212 **SECTION 2.**

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