GUARANTEED ASSET PROTECTION WAIVER ACT

Act 229 of 2009

AN ACT to regulate guaranteed asset protection waivers offered or provided in connection with finance agreements for certain motor vehicles; to provide for the powers and duties of certain state governmental officers and entities; and to provide remedies.

History: 2009, Act 229, Eff. July 7, 2010

The People of the State of Michigan enact:

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492.21 Short title.

Sec. 1.

This act shall be known and may be cited as the "guaranteed asset protection waiver act".

History: 2009, Act 229, Eff. July 7, 2010

492.23 Definitions.

Sec. 3.

As used in this act:

(a) "Administrator" means a person, other than a creditor or insurer, that performs administrative or operational functions in connection with a guaranteed asset protection waiver program.

(b) "Borrower" means a person that purchases, agrees to purchase, leases, or agrees to lease a motor vehicle. The term includes, but is not limited to, an installment buyer or a retail buyer.

(c) "Commissioner" means the commissioner of the office of financial and insurance regulation in the department of energy, labor, and economic growth.

(d) "Creditor" means a person that extends credit to a borrower in connection with the purchase of a motor vehicle; an assignee of that person; a lessor of a motor vehicle; or an assignee of that lessor. The term includes, but is not limited to, any of the following:

(i) An installment seller that extends credit to an installment buyer and any assignee to which that credit obligation is payable.

(ii) An installment seller that leases a motor vehicle to an installment buyer and any assignee to which the lease payments are payable.

(iii) A sales finance company that extends credit to an installment buyer and any assignee to which that credit obligation is payable.

(iv) A retail seller that extends credit to a retail buyer and any assignee to which that credit obligation is payable.

(v) A retail seller that leases a motor vehicle to a retail buyer and any assignee to which the lease payments are payable.

(e) "Finance agreement" means a loan, lease, or installment sale agreement for a motor vehicle. The term includes, but is not limited to, an installment sale contract, a retail installment contract, or a retail charge agreement.

(f) "Free look period" means the period of time during which a borrower may cancel a guaranteed asset protection waiver without penalty, fees, or costs to the borrower. A free look

period must begin on the effective date of the guaranteed asset protection waiver, and the term of a free look period must be at least 30 days.

(g) "Guaranteed asset protection waiver" means a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

(h) "Installment buyer" means that term as defined in section 2 of the motor vehicle sales finance act, MCL 492.102.

(i) "Installment sale contract" means that term as defined in section 2 of the motor vehicle sales finance act, MCL 492.102.

(j) "Installment seller" means that term as defined in section 2 of the motor vehicle sales finance act, MCL 492.102.

(k) "Insurer" means an authorized insurer as defined in section 108 of the insurance code of 1956, 1956 PA 218, MCL 500.108.

(l) "Motor vehicle" means a self-propelled or towed device that transports people or property for personal or commercial use. The term includes, but is not limited to, an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, or personal watercraft or a motorcycle, boat, camper, or personal watercraft trailer. The term does not include a device that moves on or is guided by a track or travels through the air.

(m) "Motor vehicle sales finance act" means the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(n) "Person" means an individual, limited liability company, partnership, association, corporation, governmental entity, or any other legal entity.

(o) "Retail buyer" means that term as defined in section 2 of the retail installment sales act, MCL 445.852.

(p) "Retail charge agreement" means that term as defined in section 2 of the retail installment sales act, MCL 445.852.

(q) "Retail installment contract" means that term as defined in section 2 of the retail installment sales act, MCL 445.852.

(r) "Retail installment sales act" means the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873.

(s) "Retail seller" means that term as defined in section 2 of the retail installment sales act, MCL 445.852.

(t) "Sales finance company" means that term as defined in section 2 of the motor vehicle sales finance act, MCL 492.102.

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Compiler's Notes: For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

492.25 Offering, selling, or providing guaranteed asset protection waiver; requirements; contractual liability or other insurance policy.

Sec. 5.

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(1) All of the following apply to offering, selling, or providing a guaranteed asset protection waiver to a borrower in this state:

(a) Beginning 180 days after the effective date of this act, a creditor that offers, sells, or provides a guaranteed asset protection waiver in this state must comply with this act.

(b) A guaranteed asset protection waiver must be part of, or a separate addendum to, the finance agreement for the motor vehicle.

(c) At the option of the creditor, a creditor may sell a guaranteed asset protection waiver for a single payment or may offer a monthly or periodic payment option for a guaranteed asset protection waiver.

(d) Any cost to a borrower for a guaranteed asset protection waiver entered into in compliance with the truth in lending act, 15 USC 1601 to 1667f, and the regulations promulgated under that act, 12 CFR part 226, must be separately stated and is not considered a finance charge or interest.

(e) Except as provided in subdivision (f), an installment seller or retail seller must insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor that is not an installment seller or retail seller may insure its guaranteed asset protection waiver obligations under a contractual liability policy or other insurance policy issued by an insurer. Any creditor may obtain an insurance policy described in this subdivision directly, or an administrator may obtain that policy on behalf of that creditor.

(f) An installment seller or retail seller that is a lessor of a motor vehicle is not required to insure its guaranteed asset protection waiver obligation on the leased vehicle under subdivision (e).

(g) A guaranteed asset protection waiver contained in a finance agreement remains a part of that contract if the creditor assigns, sells, or transfers that contract.

(h) A creditor shall not condition an extension of credit, the term of credit, or the term of a related motor vehicle sale or lease on the purchase of a guaranteed asset protection waiver.

(i) Any creditor that offers guaranteed asset protection waivers must report all sales of those waivers, and forward any payments received on those sales, to the designated party, if any, prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(j) A creditor or administrator that receives or holds money that belongs to an insurer under the terms of a written agreement for insurance described in subdivision (e) must hold that money in a fiduciary capacity.

(2) All of the following apply to a contractual liability or other insurance policy described in subsection (1)(e):

(a) A contractual liability or other insurance policy insuring a guaranteed asset protection waiver must state the obligation of the insurer to reimburse or pay to the creditor any amount the creditor is legally obligated to waive under the guaranteed asset protection waiver issued by the creditor and purchased or held by the borrower.

(b) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must also cover any subsequent assignee if the finance agreement is assigned, sold, or transferred.

(c) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(d) The cancellation or termination of a contractual liability or other insurance policy must not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the

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creditor before the date of cancellation or termination and for which the insurer has received premiums.

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492.27 Disclosure; contents.

Sec. 7.

A guaranteed asset protection waiver must disclose, in writing and in clear, understandable language that is easy to read, all of the following, if applicable:

(a) The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor.

(b) The purchase price and the terms of the guaranteed asset protection waiver, including, but not limited to, the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.

(c) That the borrower may cancel the guaranteed asset protection waiver during the free look period specified in the waiver; and is entitled to a full refund of the purchase price if the borrower has not received benefits under the waiver, or to any full or partial refund included in the waiver if the borrower has received benefits under the waiver.

(d) The procedure the borrower must follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, and a telephone number and address where the borrower may apply for waiver benefits.

(e) Whether or not the borrower may cancel the guaranteed asset protection waiver after the free look period; if so, the conditions under which the borrower may cancel or terminate that waiver; and the procedure the borrower must follow to request any refund due.

(f) That in order to receive any refund due for the cancellation of the guaranteed asset protection waiver, or the early termination of the finance agreement after the free look period, the borrower must provide a written request for a refund to the creditor, administrator, or other party named in the waiver within 90 days after the cancellation of the guaranteed asset protection waiver or the occurrence of the event terminating the finance agreement.

(g) The methodology for calculating any refund of the unearned purchase price of a guaranteed asset protection waiver due to a borrower for the cancellation of a guaranteed asset protection waiver or early termination of the finance agreement.

(h) That a creditor may not condition an extension of credit, the terms of that credit, or the terms of the related finance agreement on the purchase of a guaranteed asset protection waiver.

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492.29 Cancellation.

Sec. 9.

All of the following apply concerning the cancellation of guaranteed asset protection waivers:

(a) A creditor may offer a guaranteed asset protection waiver agreement that is cancelable or not cancelable after the free look period. A guaranteed asset protection waiver must provide that if a borrower cancels the waiver during the free look period, the borrower is entitled to a full refund of the purchase price if the borrower has not received benefits under the waiver, or to any full or partial refund included in the waiver if the borrower has received benefits under the waiver.

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(b) If a borrower cancels the guaranteed asset protection waiver, or the finance agreement is terminated, after the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, must provide a written request to the creditor, administrator, or other party, within 90 days after the cancellation of the waiver or the occurrence of the event terminating the finance agreement, that meets any applicable notice provisions of the waiver.

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

(d) A creditor may apply any cancellation refund received under subdivision (a), (b), or (c) as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

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492.31 Commissioner; enforcement of act; notice and hearing; actions.

Sec. 11.

The commissioner may take any action he or she determines is necessary or appropriate to enforce this act and to protect guaranteed asset protection waiver holders in this state, including, but not limited to, doing any of the following after proper notice and an opportunity for hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328:

(a) Order a creditor, administrator, or any other person that does not comply with this act to cease and desist from further guaranteed asset protection waiver-related operations that violate this act.

(b) Assess an administrative fine of not more than $500.00 against a person for a violation of this act. However, the commissioner may not assess administrative fines under this act against any person that in the aggregate are more than $20,000.00 for multiple violations of a similar nature. For purposes of this subdivision, "similar nature" means that the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times that action, conduct, or practice occurs.

History: 2009, Act 229, Eff. July 7, 2010

492.33 Applicability; exceptions.

Sec. 13.

(1) This act does not apply to any of the following:

(a) An insurance policy offered by an insurer under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(b) An offer of a debt cancellation or debt suspension contract that complies with 12 CFR part 37, 12 CFR part 721, or other federal law.

(2) Section 5(1)(d) does not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

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