

1 SB48
2 214963-3
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 11-JAN-22

SYNOPSIS: This bill would relate to credit financing of the sale or lease of motor vehicles. This bill would further define a guaranteed asset protection waiver or GAP waiver to include excess wear and use waivers in consumer lease agreements. This bill would also authorize the sale of motor vehicle value protection agreements to reduce deficiency balances relating to motor vehicle credit financing agreements.

A BILL
TO BE ENTITLED
AN ACT

Relating to the credit financing of the sale or lease of motor vehicles; to amend Section 8-37-2 of the Code of Alabama 1975; to further define a guaranteed asset protection waiver or GAP waiver to include excess wear and use waivers in consumer lease agreements; and to add Chapter 37A to Title 8 of the Code of Alabama 1975, to authorize providers

1 to sell motor vehicle value protection agreements to reduce
2 motor vehicle credit financing agreement deficiency balances
3 under certain conditions.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 8-37-2 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§8-37-2.

8 "For the purposes of this chapter, the following
9 words have the following meanings:

10 "(1) ADMINISTRATOR. A person, other than an insurer
11 or creditor, that performs administrative or operational
12 functions pursuant to guaranteed asset protection waiver
13 programs.

14 "(2) BORROWER. A debtor, retail buyer or lessee,
15 under a finance agreement.

16 "(3) CREDITOR means any of the following:

17 "a. The lender in a loan or credit transaction.

18 "b. The lessor in a lease transaction.

19 "c. Any retail seller of motor vehicles in a retail
20 installment transaction.

21 "d. The seller in commercial retail installment
22 transactions.

23 "e. The assignees of any of the foregoing to whom
24 the credit or lease obligation is payable.

25 "(4) FINANCE AGREEMENT. A loan, lease, or retail
26 installment sales contract for the purchase or lease of a
27 motor vehicle.

1 "(5) FREE LOOK PERIOD. The period of time from the
2 effective date of the GAP waiver until the date the borrower
3 may cancel the GAP waiver without penalty, fees, or costs to
4 the borrower. This period of time shall not be shorter than 30
5 days.

6 "(6) GUARANTEED ASSET PROTECTION WAIVER or GAP
7 WAIVER. A contractual agreement in which a creditor agrees for
8 a separate charge to cancel or waive all or part of amounts
9 due on a borrower's finance agreement in the event of a total
10 physical damage loss or unrecovered theft of the motor
11 vehicle, which agreement shall be part of, or a separate
12 addendum to, the finance agreement. The term also includes an
13 excess wear and use waiver contractual agreement in which a
14 creditor agrees, with or without a separate charge, to cancel
15 or waive all or part of amounts that may become due under a
16 motor vehicle lease agreement of a borrower as a result of
17 excessive wear and use of a leased motor vehicle, including
18 excess mileage, which agreement shall be part of, or a
19 separate addendum to, the lease agreement.

20 "(7) INSURER. An insurance company licensed,
21 registered, or otherwise authorized to do business under the
22 insurance laws of this state.

23 "(8) MOTOR VEHICLE. Self-propelled or towed vehicles
24 designed for personal or commercial use, including, l but not
25 limited to, l automobiles, trucks, motorcycles, recreational
26 vehicles, all terrain vehicles, snowmobiles, campers, boats,

1 personal watercraft, and motorcycle, and boat, camper, and
2 personal watercraft trailers.

3 "(9) PERSON. An individual, company, association,
4 organization, partnership, business trust, corporation, and
5 every form of legal entity."

6 Section 2. Chapter 37A is added to Title 8 of the
7 Code of Alabama 1975, to read as follows:

8 Chapter 37A

9 §8-37A-1.

10 (a) The purpose of this chapter is to define motor
11 vehicle value protection agreements and to authorize the
12 agreements to be offered within this state.

13 (b) This chapter does not apply to either of the
14 following:

15 (1) An insurance policy offered by an insurer under
16 the insurance laws of this state.

17 (2) A debt cancellation or debt suspension contract
18 being offered by a federally regulated financial institution
19 operating under 12 C.F.R. Part 37 or a credit union operating
20 under 12 C.F.R. Part 721 or other federal law; or a debt
21 cancellation or debt suspension contract being offered by a
22 state chartered bank or credit union.

23 (c) Except as provided in this chapter, motor
24 vehicle value protection agreements governed under this
25 chapter are not insurance and are exempt from the insurance
26 laws of this state. Persons marketing, selling, or offering to
27 sell motor vehicle value protection agreements to borrowers

1 that comply with this chapter are exempt from insurance
2 licensing and insurance regulation requirements of this state.

3 (d) This chapter applies only to motor vehicle
4 protection agreements for financing of motor vehicles as
5 defined in this chapter. This chapter does not affect the
6 validity or enforcement of other asset protection waivers,
7 debt cancellation contracts, or debt suspension agreements.

8 §8-37A-2. Definitions.

9 For the purposes of this chapter, the following
10 words shall have the following meanings:

11 (1) ADMINISTRATOR. The person who may be responsible
12 for the administrative or operational function of motor
13 vehicle value protection agreements including, but not limited
14 to, the adjudication of claims or benefit requests by contract
15 holders.

16 (2) CONTRACT HOLDER. A person who is the purchaser
17 or holder of a motor vehicle value protection agreement.

18 (3) FREE LOOK PERIOD. The period of time not less
19 than 30 days from the effective date of a motor vehicle value
20 protection agreement until the date the borrower may cancel
21 the agreement without penalty, fees, or costs to the borrower.

22 (4) MOTOR VEHICLE VALUE PROTECTION AGREEMENT. A
23 contractual agreement that provides a benefit towards either
24 the reduction of all or part of the contract holder's current
25 finance agreement deficiency balance, or towards the purchase
26 or lease of a replacement motor vehicle or motor vehicle
27 services, based on the occurrence of an adverse event to the

1 motor vehicle including, but not limited to, loss, theft,
2 damage, obsolescence, diminished value, or depreciation. A
3 motor vehicle value protection agreement does not include a
4 GAP waiver, as defined in Chapter 37 of this title, but may
5 include similar agreements including, but not limited to,
6 trade-in-credit agreements, diminished value agreements, or
7 depreciation benefit agreements.

8 (5) PROVIDER. A person that is obligated to provide
9 a benefit under a motor vehicle value protection agreement.

10 §8-37A-3.

11 (a) A motor vehicle value protection agreement may
12 be offered, sold, or provided to a borrower or lessor under
13 this chapter.

14 (b) A provider may use an administrator or other
15 designee to be responsible for all or part of the
16 administration of motor vehicle value protection agreements in
17 compliance with this chapter. A provider may act as an
18 administrator or retain the services of a third-party
19 administrator.

20 (c) A motor vehicle value protection agreement shall
21 not be sold unless the contract holder is provided a copy of
22 the agreement.

23 §8-37A-4.

24 In order to assure the faithful performance of the
25 obligations of a provider to its contract holders, the
26 provider shall comply with one of the following:

1 (1) a. Insure all of its motor vehicle value
2 protection agreements under an insurance policy issued by an
3 insurer licensed, registered, or otherwise authorized to do
4 business in this state at the time the policy is filed with
5 the Commissioner of Insurance and continuously thereafter,
6 that meets one of the following criteria:

7 1. Has a surplus as to policyholders and paid-in
8 capital of at least fifteen million dollars (\$15,000,000).

9 2. Has a surplus as to policyholders and paid-in
10 capital of not less than ten million dollars (\$10,000,000),
11 and evidence to the satisfaction of the commissioner that the
12 company maintains a ratio of net written premiums, wherever
13 written, to surplus as to policyholders and paid-in capital of
14 not greater than three to one.

15 b. In addition, the provider shall annually file
16 with the commissioner copies of the insurer's audited
17 financial statements, its NAIC Annual Statement, and the
18 actuarial certification required by and filed in the insurer's
19 state of domicile.

20 (2) a. Maintain a funded reserve account for its
21 obligations under its contracts issued and outstanding in this
22 state. The reserves shall not be less than 40 percent of gross
23 consideration received, less claims paid, on the sale of the
24 motor vehicle value protection agreement for all in-force
25 contracts. The reserve account shall be subject to examination
26 and review by the Superintendent of Banks; and

1 b. Place in trust with the superintendent a
2 financial security deposit, having a value of not less than
3 five percent of the gross consideration received, less claims
4 paid, on the sale of the motor vehicle value protection
5 agreements for all agreements issued and in force, but not
6 less than twenty-five thousand dollars (\$25,000) consisting of
7 one of the following:

8 1. A surety bond issued by an authorized surety.

9 2. Securities of the type eligible for deposit by
10 authorized insurers in this state.

11 3. Cash.

12 4. A letter of credit issued by a qualified
13 financial institution.

14 5. Another form of security prescribed by
15 regulations issued by the superintendent.

16 (3) a. Maintain, or together with its parent company
17 maintain, a net worth or stockholders' equity of one hundred
18 million dollars (\$100,000,000); and

19 b. Upon request, provide the Superintendent of Banks
20 with a copy of the provider's or the provider's parent
21 company's most recent Form 10-K or Form 20-F filed with the
22 Securities and Exchange Commission (SEC) within the last
23 calendar year, or if the company does not file with the SEC, a
24 copy of the company's audited financial statements, which
25 shows a net worth of the provider or its parent company of at
26 least one hundred million dollars (\$100,000,000). If the
27 provider's parent company's Form 10-K, Form 20-F, or financial

1 statements are filed to meet the provider's financial security
2 requirement, then the parent company shall agree to guarantee
3 the obligations of the provider relating to motor vehicle
4 value protection agreements sold by the provider in this
5 state.

6 §8-37A-5.

7 (a) A motor vehicle value protection agreement shall
8 disclose in writing and in clear, understandable language that
9 is easy to read all of the following:

10 (1) The name and address of the provider, contract
11 holder, and administrator, if any.

12 (2) The terms of the agreement including, without
13 limitation, the purchase price to be paid by the contract
14 holder, if any, and the requirements for eligibility,
15 conditions of coverage, or exclusions.

16 (3) A provision that the agreement may be cancelled
17 by the contract holder within a free look period as specified
18 in the agreement, and that in the event the contract holder
19 will be entitled to a full refund of the purchase price paid
20 by the contract holder, if any, so long as no benefits have
21 been provided.

22 (4) The procedure the contract holder must follow,
23 if any, to obtain a benefit under the terms and conditions of
24 the agreement including, if applicable, a telephone number or
25 website and address where the contract holder may apply for a
26 benefit.

1 (5) A provision indicating whether or not the
2 agreement is cancellable after the free look period and the
3 conditions under which it may be cancelled, including the
4 procedures for requesting any refund of the unearned purchase
5 price paid by the contract holder.

6 (6) In the event of cancellation, the methodology
7 for calculating any refund of the unearned purchase price of
8 the agreement due.

9 (7) A provision specifying that neither the
10 extension of credit, the terms of the credit, nor the terms of
11 the related motor vehicle sale or lease, may be conditioned
12 upon the purchase of the agreement.

13 (8) The terms, restrictions, or conditions governing
14 cancellation of the agreement prior to the termination or
15 expiration date of the agreement by either the provider or the
16 contract holder. The provider shall mail a written notice to
17 the contract holder at the last known address of the contract
18 holder contained in the records of the provider at least five
19 days prior to cancellation by the provider. Prior notice is
20 not required if the reason for cancellation is nonpayment of
21 the provider fee, a material misrepresentation by the contract
22 holder to the provider or administrator, or a substantial
23 breach of duties by the contract holder relating to the
24 covered product or its use. The notice shall state the
25 effective date of the cancellation and the reason for the
26 cancellation. If an agreement is cancelled by the provider for
27 a reason other than nonpayment of the provider fee, the

1 provider shall refund to the contract holder all of the
2 unearned pro rata provider fee paid by the contract holder, if
3 any. If coverage under the agreement continues after a claim,
4 any refund may deduct claims paid and a reasonable
5 administrative fee not to exceed seventy-five dollars (\$75).

6 (b) This section shall not apply to commercial
7 transactions.

8 §8-37A-6.

9 (a) The Superintendent of Banks may take action
10 which is necessary or appropriate to enforce this chapter and
11 to protect motor vehicle value protection contract holders in
12 this state. After notice and a hearing, the superintendent may
13 do both of the following:

14 (1) Order the provider, administrator, or any other
15 person not in compliance with this chapter to cease and desist
16 from further actions related to motor vehicle value protection
17 agreements which are in violation of this chapter.

18 (2) Impose a penalty of not more than five hundred
19 dollars (\$500) per violation and no more than ten thousand
20 dollars (\$10,000) in the aggregate for all violations of
21 similar nature. For purposes of this chapter, a violation
22 shall be considered to be of a similar nature if the violation
23 consists of the same or similar course of conduct, action, or
24 practice, irrespective of the number of times the action,
25 conduct, or practice which is determined to be a violation of
26 the chapter occurred.

1 (b) This section shall not apply to motor vehicle
2 value protection agreements offered in connection with a
3 commercial transaction.

4 Section 3. This act shall become effective January
5 1, 2023, following its passage and approval by the Governor,
6 or its otherwise becoming law.