

HOUSE BILL NO. 415

INTRODUCED BY R. HAGAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE GUARANTEED ASSET PROTECTION WAIVER ACT; GRANTING THE DEPARTMENT OF ADMINISTRATION RULEMAKING AUTHORITY; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Title -- scope.** (1) [Sections 1 through 8] may be cited as the "Guaranteed Asset Protection Waiver Act".

(2) The purpose of [sections 1 through 8] is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(3) [Sections 1 through 8] do not apply to:

- (a) an insurance policy offered by an insurer under the insurance laws of this state; or
- (b) a debt cancellation or debt suspension contract being offered in compliance with 32-1-429, 32-3-609, 12 CFR, part 37 or part 721, or other federal law.

(4) Guaranteed asset protection waivers governed by [sections 1 through 8] are not insurance and are exempt from the insurance laws of this state. Persons that comply with [sections 1 through 8] in marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers are exempt from this state's insurance licensing requirements.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 8], the following definitions apply:

- (1) "Administrator" means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.
- (2) "Borrower" means a debtor, retail buyer, or lessee under a finance agreement.
- (3) "Creditor" means:
 - (a) the lender in a loan or credit transaction;

1 (b) the lessor in a lease transaction;

2 (c) a retail dealer of motor vehicles that provides credit to buyers as part of a retail sale, provided that
3 the dealer complies with the provisions of [sections 1 through 8];

4 (d) the seller in commercial retail installment transactions; or

5 (e) the assignees of any of the persons set out in subsections (3)(a) through (3)(d) to whom the credit
6 obligation is payable.

7 (4) "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or
8 lease of a motor vehicle.

9 (5) "Free look period" means the period of time from the effective date of the guaranteed asset protection
10 waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. The
11 period of time may not be less than 30 days.

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

16 (7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business
17 under the insurance laws of this state.

18 (8) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or commercial use,
19 including but not limited to an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile,
20 camper, boat, and personal watercraft and a trailer used to transport a motorcycle, boat, camper, or personal
21 watercraft.

22 (9) "Person" includes an individual, company, association, organization, partnership, business trust,
23 corporation, and every form of legal entity.

24

25 **NEW SECTION. Section 3. Requirements for offering guaranteed asset protection waivers.** (1)
26 GAP waivers may be offered, sold, or provided to borrowers in this state in compliance with [sections 1 through
27 8].

28 (2) GAP waivers may, at the option of the creditor, be sold for a single payment or may be offered with
29 a monthly or periodic payment option.

30 (3) Any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with

1 the Truth in Lending Act, 15 U.S.C. 1601, et. seq., must be separately stated and is not considered a finance
2 charge or interest.

3 (4) A retail dealer of motor vehicles shall insure its GAP waiver obligations under a contractual liability
4 or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure
5 its GAP waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance
6 policy may be directly obtained by a creditor or a retail dealer of motor vehicles or may be procured by an
7 administrator to cover a creditor's or retail dealer's obligations. However, retail dealers of motor vehicles that are
8 lessors of motor vehicles are not required to insure obligations related to GAP waivers on leased vehicles.

9 (5) The GAP waiver remains a part of the finance agreement upon the assignment, sale, or transfer of
10 the finance agreement by the creditor.

11 (6) The extension of credit, the term of credit, or the term of the related motor vehicle sale or lease may
12 not be conditioned upon the purchase of a GAP waiver.

13 (7) A creditor that offers a GAP waiver shall report the sale of and forward funds received on all GAP
14 waivers to the designated party, if any, as prescribed in any applicable administrative services agreement,
15 contractual liability policy, other insurance policy, or other specified program document.

16 (8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or
17 administrator pursuant to the terms of a written agreement must be held by the creditor or administrator in a
18 fiduciary capacity.

19
20 **NEW SECTION. Section 4. Contractual liability or other insurance policies.** (1) Contractual liability
21 or other insurance policies insuring GAP waivers must state the obligation of the insurer to reimburse or pay to
22 the creditor any sums the creditor is legally obligated to waive under the GAP waivers issued by the creditor and
23 purchased or held by the borrower.

24 (2) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must also
25 cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

26 (3) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must remain
27 in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

28 (4) The cancellation or termination of a contractual liability or other insurance policy may not reduce the
29 insurer's responsibility for GAP waivers issued by the creditor prior to the date of cancellation or termination and
30 for which premiums have been received by the insurer.

1
2 **NEW SECTION. Section 5. Disclosures.** Guaranteed asset protection waivers must disclose, as
3 applicable, in writing and in clear, understandable language, the following:

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

6 (2) the purchase price and the terms of the GAP waiver, including without limitation the requirements
7 for protection, conditions, or exclusions associated with the GAP waiver;

8 (3) that the borrower may cancel the GAP waiver within a free look period as specified in the waiver and
9 is entitled to a full refund of the purchase price so long as benefits have not been provided;

10 (4) the procedure the borrower must follow, if any, to obtain GAP waiver benefits under the terms and
11 conditions of the waiver, including a telephone number and address where the borrower may apply for waiver
12 benefits;

13 (5) whether the GAP waiver may be canceled after the free look period and the conditions under which
14 it may be canceled, including the procedures for requesting any refund due;

15 (6) that in order to receive any refund due in the event of a borrower's cancellation of the GAP waiver
16 agreement or early termination of the finance agreement, the borrower, in accordance with terms of the waiver,
17 shall provide a written request to cancel to the creditor, administrator, or other party as specified in the GAP
18 waiver. If a borrower is canceling the GAP waiver due to early termination of the finance agreement, the borrower
19 shall provide a written request to the creditor, administrator, or other party within 90 days of the occurrence of
20 the event terminating the finance agreement.

21 (7) the methodology for calculating any refund of the unearned purchase price of the GAP waiver due
22 in the event of cancellation of the GAP waiver or early termination of the finance agreement; and

23 (8) that the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or
24 lease may not be conditioned upon the purchase of the GAP waiver.

25
26 **NEW SECTION. Section 6. Cancellation.** (1) Guaranteed asset protection waiver agreements may
27 be cancelable or noncancelable after the free look period. GAP waivers must provide that if a borrower cancels
28 a GAP waiver within the free look period, the borrower is entitled to a full refund of the purchase price.

29 (2) If the borrower cancels the GAP waiver or terminates the finance agreement early but after the
30 agreement has been in effect beyond the free look period, the borrower is entitled to a refund of any unearned

1 portion of the purchase price of the GAP waiver unless the GAP waiver provides otherwise. In order to receive
2 a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to
3 the creditor, administrator, or other party. If the borrower is canceling the GAP waiver due to the early termination
4 of the finance agreement, the borrower shall provide a written request within 90 days of the event terminating the
5 finance agreement.

6 (3) If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement, the
7 repossession of the motor vehicle associated with the finance agreement, or other termination of the finance
8 agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in
9 subsection (4).

10 (4) A cancellation or termination refund under subsection (1), (2), or (3) may be applied by the creditor
11 as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance
12 agreement has been paid in full.

13
14 **NEW SECTION. Section 7. Commercial transactions exempted.** [Sections 3(3), 5, and 8] do not
15 apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale
16 associated with a commercial transaction.

17
18 **NEW SECTION. Section 8. Enforcement -- rulemaking.** (1) The department of administration may
19 adopt rules necessary or appropriate to enforce the provisions of this section and to protect guaranteed asset
20 protection waiver holders in this state.

21 (2) After proper notice and opportunity for hearing, the department may:

22 (a) order the creditor, administrator, or other person not in compliance with [sections 1 through 8] to
23 cease and desist from further operations related to guaranteed asset protection waivers that are in violation of
24 [sections 1 through 8]; and

25 (b) impose a penalty of not more than \$500 per violation or more than \$10,000 in the aggregate for all
26 violations of similar nature. For purposes of this section, violations must be considered of a similar nature if the
27 violations consist of the same or similar course of conduct, action, or practice.

28
29 **Section 9.** Section 33-1-102, MCA, is amended to read:

30 **"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance**

1 **organizations -- governmental insurance programs -- service contracts.** (1) A person may not transact a
2 business of insurance in Montana or a business relative to a subject resident, located, or to be performed in
3 Montana without complying with the applicable provisions of this code.

4 (2) The provisions of this code do not apply with respect to:

5 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

6 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

7 (c) fraternal benefit societies, except as stated in chapter 7.

8 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the
9 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

10 (4) This code does not apply to health maintenance organizations to the extent that the existence and
11 operations of those organizations are governed by chapter 31.

12 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
13 chapter 71, parts 21 and 23, and related sections.

14 (6) The department of public health and human services may limit the amount, scope, and duration of
15 services for programs established under Title 53 that are provided under contract by entities subject to this title.
16 The department of public health and human services may establish more restrictive eligibility requirements and
17 fewer services than may be required by this title.

18 (7) This code does not apply to the state employee group insurance program established in Title 2,
19 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
20 13.

21 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
22 for in 2-9-202.

23 (9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
24 plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions
25 undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or
26 self-insurance plan.

27 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
28 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
29 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
30 officials, or employees disability insurance or life insurance through a self-funded program.

1 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
2 of, proposal to make, and administration of a service contract.

3 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
4 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
5 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
6 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
7 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
8 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
9 power surges or accidental damage from handling. A service contract does not include motor club service as
10 defined in 61-12-301.

11 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
12 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
13 the financial risk under the contract with the third party as provided in 7-34-103.

14 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
15 town, the entity is subject to the provisions of this code.

16 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25,
17 part 14.

18 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
19 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide
20 air ambulance services to subscription members and designated members of their households.

21 (14) This code does not apply to guaranteed asset protection waivers that are governed by [sections 1
22 through 8]."

23
24 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
25 codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to [sections 1
26 through 8].

27
28 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

29
30 **NEW SECTION. Section 12. Applicability.** [This act] applies to guaranteed asset protection waivers

1 issued on or after October 1, 2013.

2

- END -