
SUBSTITUTE SENATE BILL 5530

State of Washington

61st Legislature

2009 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs and Benton)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to creating the guaranteed asset protection waiver
2 model act; adding a new chapter to Title 48 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to
6 provide a framework within which guaranteed asset protection waivers
7 are defined and may be offered within this state.

8 (2) This chapter does not apply to:

9 (a) An insurance policy offered by an insurer under this title; or

10 (b) A federally regulated financial institution operating under 12
11 C.F.R. Part 37 of the office of the comptroller of the currency
12 regulations or credit unions operating under 12 C.F.R. 721.3(g) of the
13 national credit union administration regulations, or state regulated
14 banks, credit unions, and financial institutions operating pursuant to
15 chapter 63.14 RCW.

16 (3) Guaranteed asset protection waivers are governed under this
17 chapter and are exempt from all other provisions of this title, except
18 RCW 48.02.060 and 48.02.080, chapter 48.04 RCW, and as provided in this
19 chapter.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Administrator" means a person, other than an insurer or
4 creditor that performs administrative or operational functions pursuant
5 to guaranteed asset protection waiver programs.

6 (2) "Borrower" means a debtor, retail buyer, or lessee, under a
7 finance agreement, or a person who receives a loan or enters into a
8 retail installment contract to purchase or lease a motor vehicle or
9 vessel under chapter 63.14 RCW.

10 (3) "Creditor" means:

11 (a) The lender in a loan or credit transaction;

12 (b) The lessor in a lease transaction;

13 (c) Any retail seller of motor vehicles that provides credit to
14 retail buyers of motor vehicles provided the seller complies with this
15 chapter;

16 (d) The seller in commercial retail installment transactions; or

17 (e) The assignees of any creditor under this subsection to whom the
18 credit obligation is payable.

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

21 (5) "Free look period" means the period of time from the effective
22 date of the waiver until the date the borrower may cancel the waiver
23 without penalty, fees, or costs to the borrower. This period of time
24 must not be shorter than thirty days.

25 (6) "Guaranteed asset protection waiver" or "waiver" means a
26 contractual agreement wherein a creditor agrees for a separate charge
27 to cancel or waive all or part of amounts due that creditor on a
28 borrower's finance agreement with that creditor in the event of a total
29 physical damage loss or unrecovered theft of the motor vehicle, which
30 agreement must be part of, or a separate addendum to, the finance
31 agreement.

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

35 (8) "Motor vehicle" means self-propelled or towed vehicles designed
36 for personal or commercial use, including but not limited to
37 automobiles, trucks, motorcycles, recreational vehicles, all-terrain

1 vehicles, snowmobiles, campers, boats, personal watercraft, and
2 motorcycle, boat, camper, and personal watercraft trailers.

3 (9) "Motor vehicle dealer" has the same meaning as "vehicle dealer"
4 in RCW 46.70.011.

5 (10) "Person" includes an individual, company, association,
6 organization, partnership, business trust, corporation, and every form
7 of legal entity.

8 (11) "Retail buyer" means a person who buys or agrees to buy a
9 motor vehicle or obtain motor vehicle services or agrees to have motor
10 vehicle services rendered or furnished from a retail seller.

11 (12) "Retail seller" means a person engaged in the business of
12 selling motor vehicles or motor vehicle services to retail buyers.

13 (13) "Unregistered marketers" means persons who offer for sale and
14 sell guaranteed asset protection waivers who are not registered under
15 this chapter and who are not otherwise exempt under this chapter.

16 NEW SECTION. **Sec. 3.** (1) This chapter applies only to guaranteed
17 asset protection waivers for financing of motor vehicles as described
18 in this chapter. Any person or entity must register with the
19 commissioner before marketing, offering for sale, or selling a
20 guaranteed asset protection waiver, and before acting as an obligor for
21 a guaranteed asset protection waiver in this state. However, a retail
22 seller of motor vehicles that assigns all guaranteed asset protection
23 waiver agreements within twenty days of the agreements' effective date,
24 or an insurer authorized to transact such insurance business in this
25 state, is not required to register pursuant to this section.

26 (2) No person may market, offer for sale, or sell a guaranteed
27 asset protection waiver, or act as an obligor on a guaranteed asset
28 protection waiver in this state without a registration as provided in
29 this chapter, except as set forth in subsection (1) of this section.

30 (3) The application for registration must include the following:

31 (a) The applicant's name, address, and telephone number;

32 (b) The identities of the applicant's executive officers or other
33 officers directly responsible for the waiver business;

34 (c) An application fee of two hundred fifty dollars, which shall be
35 deposited into the guaranteed asset protection waiver account;

36 (d) A copy filed by the applicant with the commissioner of the
37 waivers the applicant intends to offer in this state;

1 (e) A list of all unregistered marketers of guaranteed asset
2 protection waivers on which the applicant will be the obligor;

3 (f) Such additional information as the commissioner may reasonably
4 require.

5 (4) Once registered, the applicant shall keep the information
6 required for registration current by reporting changes within thirty
7 days after the end of the month in which the change occurs.

8 NEW SECTION. **Sec. 4.** (1) Waivers may be offered, sold, or
9 provided to borrowers in this state in compliance with this chapter.

10 (2) Waivers may, at the option of the creditor, be sold for a
11 single payment or may be offered with a monthly or periodic payment
12 option.

13 (3) Notwithstanding any other provision of law, any cost to the
14 borrower for a guaranteed asset protection waiver entered into in
15 compliance with the truth in lending act (15 U.S.C. Sec. 1601 et seq.)
16 and its implementing regulations, as amended, must be separately stated
17 and is not to be considered a finance charge or interest.

18 (4) A retail seller must insure its waiver obligations under a
19 contractual liability or other insurance policy issued by an insurer
20 authorized to transact such insurance in this state. A creditor, other
21 than a retail seller, may insure its waiver obligations under a
22 contractual liability policy or other such policy issued by an insurer
23 authorized to transact such insurance in this state. Any such
24 insurance policy may be directly obtained by a creditor or retail
25 seller, or may be procured by an administrator, to cover a creditor's
26 or retail seller's obligations. However, retail sellers that are
27 lessors on motor vehicles are not required to insure obligations
28 related to waivers on the leased vehicles.

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

31 (6) Neither the extension of credit, the term of credit, nor the
32 term of the related motor vehicle sale or lease may be conditioned upon
33 the purchase of a waiver.

34 (7) Any creditor that offers a waiver must report the sale of, and
35 forward funds received on, all waivers to the designated party, if any,
36 as prescribed in any applicable administrative services agreement,

1 contractual liability policy, other insurance policy, or other
2 specified program documents.

3 (8) Funds received or held by a creditor or administrator and
4 belonging to an insurer, creditor, or administrator, under the terms of
5 a written agreement, must be held by that creditor or administrator in
6 a fiduciary capacity.

7 (9) If the guaranteed asset protection waiver is assigned, the name
8 and address of the assignee must be mailed to the borrower within
9 thirty days of the assignment. If at any time the name and address
10 provided to the borrower by the initial creditor are no longer the
11 valid point of contact to apply for waiver benefits, written notice
12 will be mailed to the borrower within thirty days of the change stating
13 the new name and address of the person or entity the borrower should
14 contact to apply for waiver benefits. No waiver may be assigned to an
15 entity that is not registered pursuant to this chapter, unless such
16 entity is exempt from registration or unless the commissioner
17 specifically authorizes such assignment.

18 (10) No person shall knowingly make, publish, or disseminate any
19 false, deceptive, or misleading representation or advertising in the
20 conduct of, or relative to, waiver business. Nor shall any person
21 make, issue, or circulate, or cause to be made, issued, or circulated
22 any misrepresentation of the terms or benefits of any waiver.

23 (11) A person or entity engaged in the guaranteed asset protection
24 waiver business in this state may not refuse to sell or issue any
25 guaranteed asset protection waiver because of the sex, marital status,
26 or sexual orientation as defined in RCW 49.60.040, or the presence of
27 any sensory, mental, or physical disability of the borrower or
28 prospective borrower. The type of benefits, or any term, rate,
29 condition, or type of coverage may not be restricted, modified,
30 excluded, increased, or reduced on the basis of the presence of any
31 sensory, mental, or physical disability of the borrower or prospective
32 borrower.

33 NEW SECTION. **Sec. 5.** (1) Contractual liability or other insurance
34 policies insuring waivers must state the obligation of the insurer to
35 reimburse or pay to the creditor any sums the creditor is legally
36 obligated to waive under the waivers issued by the creditor and
37 purchased or held by the borrower. Contractual liability insurance or

1 other insurance policies insuring waivers must not be purchased by the
2 creditor as part of, or a rider to, vendor single-interest or
3 collateral protection coverages as defined in RCW 48.22.110(4).

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

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

10 (4) The cancellation or termination of a contractual liability or
11 other insurance policy must not reduce the insurer's responsibility for
12 waivers issued by the creditor prior to the date of cancellation or
13 termination and for which a premium has been received by the insurer.

14 NEW SECTION. **Sec. 6.** Guaranteed asset protection waivers must
15 disclose, as applicable, in writing and in clear, understandable
16 language that is easy to read, the following:

17 (1) The name and address of the initial creditor and the borrower
18 at the time of sale, and the identity of any administrator if different
19 from the creditor;

20 (2) The purchase price and the terms of the waiver, including
21 without limitation, the requirements for protection, conditions, or
22 exclusions associated with the waiver;

23 (3) That the borrower may cancel the waiver within a free look
24 period as specified in the waiver, and will be entitled to a full
25 refund of the purchase price, so long as no benefits have been
26 provided; or in the event benefits have been provided, the borrower may
27 receive a full or partial refund pursuant to the terms of the waiver;

28 (4) The procedure the borrower must follow, if any, to obtain
29 waiver benefits under the terms and conditions of the waiver, including
30 a telephone number and address where the borrower may apply for waiver
31 benefits;

32 (5) Whether or not the waiver is cancellable after the free look
33 period and the conditions under which it may be canceled or terminated
34 including the procedures for requesting any refund due;

35 (6) That in order to receive any refund due in the event of a
36 borrower's cancellation of the waiver agreement or early termination of
37 the finance agreement after the free look period of the waiver, the

1 borrower, in accordance with terms of the waiver, must provide a
2 written request to cancel to the creditor, administrator, or such other
3 party, within ninety days of the occurrence of the event terminating
4 the finance agreement;

5 (7) The methodology for calculating any refund of the unearned
6 purchase price of the waiver due, in the event of cancellation of the
7 waiver or early termination of the finance agreement;

8 (8) That any refund of the purchase price for a waiver that was
9 included in the financing of the motor vehicle or vessel may be applied
10 by the creditor as a reduction of the overall amount owed under the
11 finance agreement, rather than applying the refund strictly to the
12 purchase price of the waiver. This disclosure must be conspicuously
13 presented prior to the purchase of the waiver;

14 (9) That neither the extension of credit, the terms of the credit,
15 nor the terms of the related motor vehicle sale or lease, may be
16 conditioned upon the purchase of the waiver;

17 (10) That the guaranteed asset protection waiver is not credit
18 insurance, nor does it eliminate the borrower's obligation to insure
19 the motor vehicle as provided by laws of this state. Purchasing a
20 guaranteed asset protection waiver does not eliminate the borrower's
21 rights and obligations under the vendor single-interest and collateral
22 protection coverage laws of this state.

23 NEW SECTION. **Sec. 7.** (1) Guaranteed asset protection waiver
24 agreements may be cancellable or noncancellable after the free look
25 period. Waivers must provide that if a borrower cancels a waiver
26 within the free look period, the borrower will be entitled to a full
27 refund of the purchase price, so long as no benefits have been
28 provided; or in the event benefits have been provided, the borrower may
29 receive a full or partial refund pursuant to the terms of the waiver.

30 (2) In the event of a borrower's cancellation of the waiver or
31 early termination of the finance agreement, after the agreement has
32 been in effect beyond the free look period, the borrower may be
33 entitled to a refund of any unearned portion of the purchase price of
34 the waiver unless the waiver provides otherwise. In order to receive
35 a refund, the borrower, in accordance with any applicable terms of the
36 waiver, must provide a written request to the creditor, administrator,

1 or other party, within ninety days of the event terminating the finance
2 agreement.

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

8 (4) Any cancellation refund under this section may be applied by
9 the creditor as a reduction of the overall amount owed under the
10 finance agreement, if the cost of the guaranteed asset protection
11 waiver was included in the financing of the motor vehicle or vessel.

12 (5) Disclosure of how the refund may be applied by the creditor or
13 administrator must be made in accordance with the provisions of section
14 6(8) of this act.

15 NEW SECTION. **Sec. 8.** (1) The commissioner may, subject to chapter
16 48.04 RCW, take action that is necessary or appropriate to enforce this
17 chapter and to protect guaranteed asset protection waiver holders in
18 this state, which includes:

19 (a) Suspending, revoking, or refusing to issue the registration of
20 a person or entity if the registrant fails to comply with any provision
21 of this chapter or fails to comply with any proper order or rule of the
22 commissioner; and

23 (b) After hearing or with the consent of the registrant, and in
24 addition to or in lieu of the suspension, revocation, or refusal to
25 issue any registration, imposing a penalty of not more than two hundred
26 dollars for each violation of this chapter.

27 (2) The commissioner may adopt rules to implement this chapter.

28 NEW SECTION. **Sec. 9.** (1) Any person who markets, offers for sale
29 or sells a guaranteed asset protection waiver, or acts as an obligor
30 for a guaranteed asset protection waiver without a registration is
31 acting in violation of this section and is subject to the provisions of
32 section 8 of this act. In addition, any person who knowingly violates
33 this section is guilty of a class B felony punishable under chapter
34 9A.20 RCW.

35 (2) Any criminal penalty imposed under this section is in addition

1 to, and not in lieu of, any other civil or administrative penalty or
2 sanction otherwise authorized under state law.

3 (3) If the commissioner has cause to believe that any person has
4 violated this section, the commissioner may assess a civil penalty of
5 not more than twenty-five thousand dollars for each violation, after
6 providing notice and an opportunity for a hearing in accordance with
7 chapter 48.04 RCW. Upon failure to pay this civil penalty when due,
8 the attorney general may bring a civil action on behalf of the
9 commissioner to recover the unpaid penalty.

10 (4) A person or entity that should have been registered at the time
11 of the sale of a waiver who was not so registered pursuant to this
12 chapter is personally liable for performance of the waiver. Any waiver
13 sold by a person or entity that should have been registered at the time
14 of the sale is voidable, except at the instance of the person or entity
15 who sold the waiver.

16 NEW SECTION. **Sec. 10.** The guaranteed asset protection waiver
17 account is created in the custody of the state treasurer. The fees and
18 fines collected under this chapter must be deposited into the account.
19 Expenditures from the account may be used to implement, administer, and
20 enforce this chapter. Only the commissioner or the commissioner's
21 designee may authorize expenditures from the account. The account is
22 subject to allotment procedures under chapter 43.88 RCW, but an
23 appropriation is not required for expenditures.

24 NEW SECTION. **Sec. 11.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 12.** This act is applicable to all guaranteed
29 asset protection waiver agreements entered into on or after January 1,
30 2010.

31 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
32 constitute a new chapter in Title 48 RCW.

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