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HOUSE BILL 1530

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Kirby and Bailey

Read first time 01/22/09. Referred to Committee on Financial Institutions & Insurance.

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 debt cancellation or debt suspension contract being offered  
11 in compliance with 12 C.F.R. Part 37, 12 C.F.R. Part 721, or other  
12 federal law.

13 (3) Guaranteed asset protection waivers are governed under this  
14 chapter and are exempt from all other provisions of this title.

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

17 (1) "Administrator" means a person, other than an insurer or

1 creditor that performs administrative or operational functions pursuant  
2 to guaranteed asset protection waiver programs.

3 (2) "Borrower" means a debtor, retail buyer, or lessee, under a  
4 finance agreement.

5 (3) "Creditor" means:

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

7 (b) The lessor in a lease transaction;

8 (c) Any retail seller of motor vehicles that provides credit to  
9 retail buyers of the motor vehicles provided the sellers comply with  
10 this chapter;

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

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

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

16 (5) "Free look period" means the period of time from the effective  
17 date of the waiver until the date the borrower may cancel the contract  
18 without penalty, fees, or costs to the borrower. This period of time  
19 must not be shorter than thirty days.

20 (6) "Guaranteed asset protection waiver" or "waiver" means a  
21 contractual agreement wherein a creditor agrees for a separate charge  
22 to cancel or waive all or part of amounts due on a borrower's finance  
23 agreement in the event of a total physical damage loss or unrecovered  
24 theft of the motor vehicle, which agreement must be part of, or a  
25 separate addendum to, the finance agreement.

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

29 (8) "Motor vehicle" means self-propelled or towed vehicles designed  
30 for personal or commercial use, including but not limited to  
31 automobiles, trucks, motorcycles, recreational vehicles, all-terrain  
32 vehicles, snowmobiles, campers, boats, personal watercraft, and  
33 motorcycle, boat, camper, and personal watercraft trailers.

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

36 (10) "Person" includes an individual, company, association,  
37 organization, partnership, business trust, corporation, and every form  
38 of legal entity.

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

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

6 NEW SECTION. **Sec. 3.** (1) An administrator, an insurer, or a  
7 lender who does not use an administrator, may not offer or sell, or  
8 hold itself out as being able to offer or sell a waiver in this state  
9 unless it has a valid registration issued by the commissioner. A  
10 retail seller of motor vehicles, or an insurer or lender that is  
11 already licensed or authorized to transact business in this state, are  
12 not required to be registered under this section.

13 (2) The application for registration must include the following:

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

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

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

19 (d) A copy, filed by the applicant with the commissioner for  
20 informational purposes only, of the waiver addendums the applicant  
21 intends to offer in this state.

22 (3) Once registered, the applicant shall keep the information  
23 required for registration current by reporting changes within thirty  
24 days after the end of the month in which the change occurs.

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

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

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

35 (4) A retail seller must insure its waiver obligations under a  
36 contractual liability or other insurance policy issued by an insurer.

1 A creditor, other than a retail seller, may insure its waiver  
2 obligations under a contractual liability policy or other such policy  
3 issued by an insurer. Any such insurance policy may be directly  
4 obtained by a creditor or retail seller, or may be procured by an  
5 administrator, to cover a creditor's or retail seller's obligations.  
6 However, retail sellers that are lessors on motor vehicles are not  
7 required to insure obligations related to waivers on the leased  
8 vehicles.

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

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

14 (7) Any creditor that offers a waiver must report the sale of, and  
15 forward funds received on, all waivers to the designated party, if any,  
16 as prescribed in any applicable administrative services agreement,  
17 contractual liability policy, other insurance policy, or other  
18 specified program documents.

19 (8) Funds received or held by a creditor or administrator and  
20 belonging to an insurer, creditor, or administrator, under the terms of  
21 a written agreement, must be held by that creditor or administrator in  
22 a fiduciary capacity.

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

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

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

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

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

4        (1) The name and address of the initial creditor and the borrower  
5 at the time of sale, and the identity of any administrator if different  
6 from the creditor. If the finance agreement is assigned and if the  
7 name and address provided to the borrower by the initial creditor are  
8 no longer the valid point of contact for enforcing the terms of the  
9 waiver, the borrower will receive written notice providing the new name  
10 and address of the person they should contact to enforce the waiver;

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

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

19        (4) The procedure the borrower must follow, if any, to obtain  
20 waiver benefits under the terms and conditions of the waiver, including  
21 a telephone number and address where the borrower may apply for waiver  
22 benefits;

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

26        (6) That in order to receive any refund due in the event of a  
27 borrower's cancellation of the waiver agreement or early termination of  
28 the finance agreement after the free look period of the waiver, the  
29 borrower, in accordance with terms of the waiver, must provide a  
30 written request to cancel to the creditor, administrator, or such other  
31 party, within ninety days of the occurrence of the event terminating  
32 the finance agreement;

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

36        (8) That neither the extension of credit, the terms of the credit,  
37 nor the terms of the related motor vehicle sale or lease, may be  
38 conditioned upon the purchase of the waiver.

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

8           (2) In the event of a borrower's cancellation of the waiver or  
9 early termination of the finance agreement, after the agreement has  
10 been in effect beyond the free look period, the borrower may be  
11 entitled to a refund of any unearned portion of the purchase price of  
12 the waiver unless the waiver provides otherwise. In order to receive  
13 a refund, the borrower, in accordance with any applicable terms of the  
14 waiver, must provide a written request to the creditor, administrator,  
15 or other party, within ninety days of the event terminating the finance  
16 agreement.

17           (3) If the cancellation of a waiver occurs as a result of a default  
18 under the finance agreement or the repossession of the motor vehicle  
19 associated with the finance agreement, or any other termination of the  
20 finance agreement, any refund due may be paid directly to the creditor  
21 or administrator and applied as set forth in subsection (4) of this  
22 section.

23           (4) Any cancellation refund under this section may be applied by  
24 the creditor as a reduction of the amount owed under the finance  
25 agreement, unless the borrower can show that the finance agreement has  
26 been paid in full.

27           NEW SECTION.   **Sec. 8.**   Sections 3(3), 6, and 9 of this act are not  
28 applicable to a guaranteed asset protection waiver offered in  
29 connection with a lease or retail installment sale associated with a  
30 commercial transaction.

31           NEW SECTION.   **Sec. 9.**   The commissioner may take action that is  
32 necessary or appropriate to enforce this chapter and to protect  
33 guaranteed asset protection waiver holders in this state. After proper  
34 notice and opportunity for hearing, the commissioner may:

35           (1) Order the creditor, administrator, or any other person not in

1 compliance with this chapter to cease and desist from further  
2 guaranteed asset protection waiver-related operations that are in  
3 violation of this chapter; and

4 (2) Impose a penalty of not more than five hundred dollars per  
5 violation and not more than ten thousand dollars in the aggregate for  
6 all violations of similar nature. For purposes of this section,  
7 violations must be of a similar nature if the violation consists of the  
8 same or similar course of conduct, action, or practice, irrespective of  
9 the number of times the conduct, action, or practice that is determined  
10 to be a violation of this chapter occurred.

11 NEW SECTION. **Sec. 10.** The guaranteed asset protection waiver  
12 account is created in the custody of the state treasurer. The fees and  
13 fines collected under this chapter must be deposited into the account.  
14 Expenditures from the account may be used only for the costs of  
15 enforcing this chapter. Only the commissioner or the commissioner's  
16 designee may authorize expenditures from the account. The account is  
17 subject to allotment procedures under chapter 43.88 RCW, but an  
18 appropriation is not required for expenditures.

19 NEW SECTION. **Sec. 11.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 12.** This act is applicable to all guaranteed  
24 asset protection waiver agreements entered into on or after January 1,  
25 2010.

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

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