

House Bill 2391

Sponsored by Representatives CLEM, MATTHEWS (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes conditions under which person may sell guaranteed asset protection waivers in connection with sale or lease of motor vehicle. Specifies conditions under which purchaser may cancel or creditor may terminate guaranteed asset protection waiver. Provides that guaranteed asset protection waiver is not insurance and is not subject to provisions of Insurance Code.

Provides that person that sells guaranteed asset protection waiver may insure waiver for losses and expenses incurred in performing obligations under terms of guaranteed asset protection waiver. Specifies requirements for insurance.

Provides that violation of provisions of Act is unlawful practice that is subject to enforcement under Unlawful Trade Practices Act.

A BILL FOR AN ACT

1
2 Relating to guaranteed asset protection waivers; creating new provisions; and amending ORS
3 646.607.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 7 of this 2013 Act:**

6 (1) **"Borrower" means an individual who, in connection with purchasing or leasing a**
7 **motor vehicle, incurs an obligation to pay money to a creditor under terms and conditions**
8 **that are specified in a finance agreement.**

9 (2) **"Creditor" means:**

10 (a) **A person that:**

11 (A) **Permits another person to defer or to pay in installments an amount due for a pur-**
12 **chase or lease of a motor vehicle; or**

13 (B) **Otherwise extends credit to another person for purchasing or leasing a motor vehicle;**
14 **or**

15 (b) **An assignee of a person described in paragraph (a) of this subsection.**

16 (3) **"Evaluation period" means a period of time after the date on which a borrower pur-**
17 **chases a guaranteed asset protection waiver in which the borrower may cancel the guaran-**
18 **teed asset protection waiver and receive a full or partial refund of the purchase price.**

19 (4) **"Finance agreement" means a contract or other agreement that is evidence of a**
20 **borrower's obligation to pay money to a creditor and that specifies the terms and conditions**
21 **under which the borrower must repay the obligation.**

22 (5) **"Guaranteed asset protection waiver" means a contractual provision of or an adden-**
23 **dum to a finance agreement for a purchase or lease of a motor vehicle under the terms of**
24 **which a creditor agrees to waive the creditor's right to collect all or part of an amount due**
25 **from a borrower under the terms of the finance agreement or to release a borrower from**
26 **an obligation to pay the creditor an amount due under a finance agreement if the motor**
27 **vehicle:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) Suffers physical damage that is equivalent to a total loss; or

2 (b) Is stolen and is not recovered.

3 (6) "Insurer" means a domestic insurer, as defined in ORS 731.082.

4 (7) "Motor vehicle" means a motor vehicle, as defined in ORS 801.360, that is sold or
5 leased in this state.

6 (8) "Reimbursement insurance policy" means an insurance policy under the terms of
7 which an insurer reimburses a creditor for losses the creditor experiences and expenses the
8 creditor incurs in performing the creditor's obligations under the terms of a guaranteed as-
9 set protection waiver.

10 **SECTION 2.** (1) A guaranteed asset protection waiver is not insurance and is not subject
11 to the provisions of the Insurance Code. A person, other than an insurer, that sells a guar-
12 anteed asset protection waiver in compliance with sections 1 to 7 of this 2013 Act does not
13 become subject to the Insurance Code by reason of the sale.

14 (2) Sections 1 to 7 of this 2013 Act do not apply to:

15 (a) An insurance policy that an insurer offers under the provisions of the Insurance
16 Code; or

17 (b) A debt cancellation contract or debt suspension agreement, both as defined in 12
18 C.F.R. 37.2, as in effect on the effective date of this 2013 Act.

19 (3) Section 3 of this 2013 Act does not apply to a person that sells a guaranteed asset
20 protection waiver, or to the guaranteed asset protection waiver that the person sells or of-
21 fers to sell, in connection with a finance agreement for sale or lease of a motor vehicle to
22 a person other than an individual who purchases or leases a motor vehicle for personal,
23 family or household purposes.

24 **SECTION 3.** A person may not sell a guaranteed asset protection waiver unless, at the
25 time of the sale:

26 (1) The person discloses, in writing and in plain and easily understandable language:

27 (a) The name, address, telephone number and other contact information of:

28 (A) The person that sells the guaranteed asset protection waiver;

29 (B) The creditor, if different; and

30 (C) Any other person that is a party to or has duties, responsibilities or other obligations
31 in connection with the guaranteed asset protection waiver.

32 (b) The price and total cost to the borrower of the guaranteed asset protection waiver.
33 Costs to the borrower that the person discloses in compliance with the federal Truth in
34 Lending Act, 15. U.S.C. 1601 et seq., and regulations promulgated under that Act, must be
35 separately stated and are not a finance charge or interest within the meaning of the federal
36 Act.

37 (c) The terms and conditions of the guaranteed asset protection waiver, including, but
38 not limited to:

39 (A) Conditions under which the creditor will waive all or a portion of the obligation re-
40 maining under a finance agreement;

41 (B) Conditions under which the creditor may decline to waive all or a portion of the ob-
42 ligation remaining under a finance agreement; and

43 (C) Whether the borrower must pay the entire sum of the purchase price for the guar-
44 anteed asset protection waiver or may pay the purchase price in installments.

45 (d) The identity, location and contact information for the person to which the borrower

1 must submit a claim for benefits under the guaranteed asset protection waiver and the pro-
 2 cedure the borrower must follow to submit the claim.

3 (e) Conditions under which the borrower may cancel the guaranteed asset protection
 4 waiver and the procedure the borrower must follow to cancel, both during the evaluation
 5 period and after the evaluation period expires, if the terms of the guaranteed asset pro-
 6 tection waiver permit cancellation after the evaluation period expires.

7 (f) The formula or methodology that will apply to calculating the amount of any refund
 8 the borrower will receive if:

9 (A) The borrower cancels the guaranteed asset protection waiver, either during or after
 10 the evaluation period; or

11 (B) The finance agreement is terminated early.

12 (2) The guaranteed asset protection waiver provides that the borrower may cancel the
 13 guaranteed asset protection waiver during the evaluation period for a full refund of the
 14 purchase price if the borrower did not receive any benefits or, if the borrower did receive
 15 benefits, for a full or partial refund in accordance with the terms of the guaranteed asset
 16 protection waiver.

17 (3) The person states clearly, and the terms of the guaranteed asset protection waiver
 18 provide in writing, that purchasing a guaranteed asset protection waiver is not required in
 19 order to obtain credit or complete the purchase or lease of a motor vehicle and does not af-
 20 fect the terms and conditions of credit that a borrower obtains from a creditor.

21 SECTION 4. (1)(a) A guaranteed asset protection waiver may provide that a borrower
 22 may cancel the guaranteed asset protection waiver after the evaluation period expires or
 23 that the guaranteed asset protection waiver expires if the finance agreement terminates
 24 early. If the guaranteed asset protection waiver permits a borrower to cancel as provided in
 25 this subsection, the borrower is entitled to a partial refund of the purchase price unless the
 26 terms of the guaranteed asset protection waiver explicitly provide otherwise.

27 (b) Unless the terms of the guaranteed asset protection waiver provide otherwise, the
 28 amount due a borrower that cancels the guaranteed asset protection waiver is the amount
 29 of the purchase price for the guaranteed asset protection waiver multiplied by the number
 30 of days that remain unused under the guaranteed asset protection waiver after the
 31 borrower's cancellation, divided by the total number of days in a period that begins on the
 32 date when the guaranteed asset protection waiver first became effective and ends on the date
 33 on which the guaranteed asset protection waiver would have expired if the borrower had not
 34 canceled.

35 (c) Unless the terms of the guaranteed asset protection waiver provide otherwise, a
 36 borrower shall apply in writing to the creditor or the person identified in the disclosure un-
 37 der section 3 (1)(a) of this 2013 Act for a refund of all or a portion of the purchase price of
 38 a guaranteed asset protection waiver within 90 days after the borrower cancels the guaran-
 39 teed asset protection waiver.

40 (2) The terms of the guaranteed asset protection waiver may provide that if the borrower
 41 defaults on the obligation set forth in the finance agreement, if the creditor repossesses the
 42 motor vehicle that secures the obligation or if the finance agreement terminates for a reason
 43 other than the borrower's satisfaction of the obligation set forth in the finance agreement,
 44 any refund due as a consequence of the cancellation or termination may be:

45 (a) Paid directly to the creditor; or

1 (b) Applied to any outstanding balance on the obligation set forth in the finance agree-
 2 ment, unless the borrower has paid the obligation in full.

3 (3) Unless canceled as provided in this section, a guaranteed asset protection waiver re-
 4 mains in effect as part of the finance agreement for the term set forth in the guaranteed
 5 asset protection waiver even if the finance agreement is sold, assigned or otherwise trans-
 6 ferred.

7 **SECTION 5.** (1)(a) A creditor other than a person that sells a guaranteed asset protection
 8 waiver in connection with a retail sale of a motor vehicle may insure a guaranteed asset
 9 protection waiver with a reimbursement insurance policy.

10 (b) A person that sells a guaranteed asset protection waiver in connection with a retail
 11 sale of a motor vehicle shall insure the guaranteed asset protection waiver with a re-
 12 imbursement insurance policy that meets the requirements set forth in subsection (2) of this
 13 section.

14 (c) A person that leases a motor vehicle does not need to insure a guaranteed asset
 15 protection waiver the person sells in connection with the lease.

16 (2) A reimbursement insurance policy for a guaranteed asset protection waiver must
 17 state:

18 (a) The terms of the obligation the insurer has to reimburse the creditor for amounts
 19 the creditor loses or expenses the creditor incurs in performing the creditor's obligations
 20 under the terms of the guaranteed asset protection waiver;

21 (b) That the insurer's obligation to reimburse the creditor extends to the creditor's
 22 assignee or any person to which the creditor sells or transfers the finance agreement or the
 23 guaranteed asset protection waiver that the reimbursement insurance policy covers;

24 (c) That the reimbursement insurance policy remains in effect until the creditor, the
 25 creditor's assignee or the person to which the creditor sold or transferred the finance
 26 agreement or the guaranteed asset protection waiver cancels or terminates the reimburse-
 27 ment insurance policy in accordance with applicable provisions of the Insurance Code; and

28 (d) That a cancellation of the reimbursement insurance policy does not affect an
 29 insurer's obligation under the reimbursement insurance policy for guaranteed asset pro-
 30 tection waivers that the insured sold, and for which the insurer received premium payments,
 31 before the date on which the reimbursement insurance policy was canceled.

32 (3) A person that sells a guaranteed asset protection waiver in connection with a sale or
 33 lease of a motor vehicle shall report to any insurer that has issued a reimbursement insur-
 34 ance policy to the person the number of guaranteed asset protection waiver sales and any
 35 other details the insurer requires under the terms of the reimbursement insurance policy
 36 and shall timely forward to the insurer all funds due under the terms of the reimbursement
 37 insurance policy.

38 **SECTION 6.** A person that is subject to sections 1 to 7 of this 2013 Act shall act in a
 39 fiduciary capacity with respect to funds the person receives or holds for the benefit of an-
 40 other person.

41 **SECTION 7.** A violation of sections 1 to 7 of this 2013 Act is an unlawful practice under
 42 ORS 646.607 that is subject to enforcement under ORS 646.632.

43 **SECTION 8.** ORS 646.607 is amended to read:

44 646.607. A person engages in an unlawful practice when in the course of the person's business,
 45 vocation or occupation the person:

1 (1) Employs any unconscionable tactic in connection with *[the sale, rental or other disposition]*
2 **selling, renting or otherwise disposing** of real estate, goods or services, or *[collection or enforce-*
3 *ment of]* **collecting or enforcing** an obligation;

4 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon
5 request of the customer, fails to refund *[any]* money *[that has been received]* **the person received**
6 from the customer *[that was for the purchase of]* **to purchase** the undelivered real estate, goods or
7 services and that *[is not retained by]* the seller *[pursuant to]* **does not retain under** any right, claim
8 or defense asserted in good faith. This subsection does not create a warranty obligation and does
9 not apply to a dispute over the quality of real estate, goods or services delivered to a customer;

10 (3) Violates ORS 401.965 (2);

11 (4) Violates a provision of ORS 646A.725 to 646A.750;

12 (5) Violates ORS 646A.530; *[or]*

13 (6) Employs a collection practice that is unlawful under ORS 646.639[.]; **or**

14 **(7) Violates a provision of sections 1 to 7 of this 2013 Act.**

15 **SECTION 9. Sections 1 to 7 of this 2013 Act and the amendments to ORS 646.607 by sec-**
16 **tion 8 of this 2013 Act apply to guaranteed asset protection waivers that are sold or offered**
17 **for sale on or after the effective date of this 2013 Act.**

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