

**PROPOSED AMENDMENTS TO
HOUSE BILL 2845**

1 On page 1 of the printed bill, delete lines 5 through 27 and delete pages
2 2 and 3.

3 On page 4, delete lines 1 through 39 and insert:

4 **“SECTION 1. As used in sections 1 to 7 of this 2015 Act:**

5 **“(1) ‘Borrower’ means an individual who enters into a finance**
6 **agreement that is secured by a motor vehicle or who, in connection**
7 **with purchasing or leasing a motor vehicle, incurs an obligation to pay**
8 **money to a creditor under terms and conditions that are specified in**
9 **a finance agreement.**

10 **“(2) ‘Creditor’ means:**

11 **“(a) A person that:**

12 **“(A) Permits another person to defer or to pay in installments an**
13 **amount due under a finance agreement that is secured by a motor**
14 **vehicle; or**

15 **“(B) Otherwise extends credit to another person under a finance**
16 **agreement that is entered into in connection with purchasing or leas-**
17 **ing a motor vehicle; or**

18 **“(b) An assignee of a person described in paragraph (a) of this**
19 **subsection.**

20 **“(3) ‘Evaluation period’ means a period of at least 30 days after the**
21 **date on which a borrower purchases a guaranteed asset protection**
22 **waiver during which, if the borrower did not receive a benefit from the**

1 **guaranteed asset protection waiver, the borrower may cancel the**
2 **guaranteed asset protection waiver and receive a full refund of the**
3 **purchase price.**

4 **“(4) ‘Finance agreement’ means a contract or other agreement that**
5 **is evidence of a borrower’s obligation to pay money to a creditor and**
6 **that specifies the terms and conditions under which the borrower must**
7 **repay the obligation.**

8 **“(5) ‘Guaranteed asset protection waiver’ means a contractual pro-**
9 **vision of or an addendum to a finance agreement that is secured by a**
10 **motor vehicle under the terms of which a creditor agrees to waive the**
11 **creditor’s right to collect all or part of an amount due from a borrower**
12 **under the terms of the finance agreement or to release a borrower**
13 **from an obligation to pay the creditor an amount due under a finance**
14 **agreement if the motor vehicle:**

15 **“(a) Suffers physical damage that is equivalent to a total loss; or**

16 **“(b) Is stolen and is not recovered.**

17 **“(6) ‘Insurer’ means an insurer that is licensed, registered or oth-**
18 **erwise authorized to transact insurance in this state.**

19 **“(7) ‘Motor vehicle’ means a self-propelled or towed vehicle that is**
20 **designed for personal or commercial use, such as an automobile,**
21 **truck, motorcycle, recreational vehicle, all-terrain vehicle,**
22 **snowmobile, camper, boat, personal watercraft or a trailer for a mo-**
23 **torcycle, boat, camper or personal watercraft.**

24 **“(8) ‘Reimbursement insurance policy’ means an insurance policy**
25 **under the terms of which an insurer reimburses a creditor for an**
26 **amount the creditor must waive under a guaranteed asset protection**
27 **waiver.**

28 **“SECTION 2. (1)(a) A guaranteed asset protection waiver is not in-**
29 **surance and is not subject to the provisions of the Insurance Code. A**
30 **person, other than an insurer, that sells a guaranteed asset protection**

1 waiver in compliance with sections 1 to 7 of this 2015 Act does not
2 become subject to the Insurance Code by reason of the sale.

3 “(b) Notwithstanding any other provision of law, any cost for a
4 guaranteed asset protection waiver into which a borrower enters in
5 compliance with the Truth in Lending Act, 15 U.S.C. 1601 et seq., and
6 regulations promulgated under the Truth in Lending Act, must be
7 stated separately and is not a finance charge or interest.

8 “(2) Sections 1 to 7 of this 2015 Act do not apply to:

9 “(a) An insurance policy that an insurer offers under the provisions
10 of the Insurance Code;

11 “(b) A debt cancellation contract or debt suspension agreement of-
12 fered in compliance with 12 C.F.R. 37.2 or 12 C.F.R. part 721, both as
13 in effect on the effective date of this 2015 Act; or

14 “(c) A state bank, as defined in ORS 706.008 or a credit union, as
15 defined in ORS 723.008.

16 “SECTION 3. A person may not sell a guaranteed asset protection
17 waiver in connection with a sale of a motor vehicle that is used for
18 personal, family or household purposes unless, at the time of the sale:

19 “(1) The person discloses, in writing and in plain and easily under-
20 standable language:

21 “(a) The name, address and other contact information for:

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

23 “(B) The creditor, if different; and

24 “(C) Any other person that is a party to or has duties, responsibil-
25 ities or other obligations under the terms of the guaranteed asset
26 protection waiver.

27 “(b) The purchase price of the guaranteed asset protection waiver.

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

30 “(A) Conditions under which the creditor will waive or decline to

1 waive all or a portion of the obligation that remains under a finance
2 agreement;

3 “(B) The methodology for determining the amount the creditor will
4 waive; and

5 “(C) The length of the evaluation period, if any.

6 “(d) The identity, location and contact information for the person
7 to which the borrower must submit a claim for benefits or a refund
8 under the guaranteed asset protection waiver and the procedure the
9 borrower must follow to submit the claim.

10 “(e) Conditions under which the borrower may cancel the guaran-
11 teed asset protection waiver and the procedure the borrower must
12 follow to cancel, both during the evaluation period and after the
13 evaluation period expires, if the terms of the guaranteed asset pro-
14 tection waiver permit cancellation after the evaluation period expires.

15 “(f) The formula or methodology that will apply to calculating the
16 amount of any refund available under the terms and conditions of the
17 guaranteed asset protection waiver if:

18 “(A) The borrower cancels the guaranteed asset protection waiver
19 during the evaluation period or, if permitted under the terms and
20 conditions of the guaranteed asset protection waiver, after the evalu-
21 ation period expires; or

22 “(B) The finance agreement is terminated early.

23 “(2) The guaranteed asset protection waiver provides that the bor-
24 rower may cancel the guaranteed asset protection waiver during the
25 evaluation period for a full refund of the purchase price if the bor-
26 rower did not receive any benefits.

27 “(3) The creditor states clearly, and the terms of the guaranteed
28 asset protection waiver provide in writing, that purchasing a guaran-
29 teed asset protection waiver is not required in order to obtain credit
30 or complete a purchase or lease of a motor vehicle and does not affect

1 the terms and conditions of credit that a borrower obtains from a
2 creditor.

3 **“SECTION 3a. (1) A guaranteed asset protection waiver must de-**
4 **termine the amount that a creditor waives under the terms of the**
5 **guaranteed asset protection waiver in accordance with the following**
6 **methods:**

7 **“(a) If primary motor vehicle insurance or third party liability in-**
8 **surance covers the amount of a total loss of the motor vehicle, the**
9 **creditor shall waive the difference between:**

10 **“(A) The primary insurer’s or the third party’s determination of the**
11 **motor vehicle’s actual cash value as of the date of the total loss; and**

12 **“(B) The amount the borrower owes under the finance agreement.**

13 **“(b) If primary motor vehicle insurance or third party liability in-**
14 **surance does not cover a total loss of the motor vehicle, if an insurer**
15 **that issued the primary motor vehicle insurance or the third party li-**
16 **ability insurance is insolvent or if the primary motor vehicle insurance**
17 **or third party liability insurance have stated values or limits that are**
18 **less than the actual cash value of the insured motor vehicle, the**
19 **creditor shall waive the difference between:**

20 **“(A) The value of the motor vehicle immediately before the loss or**
21 **theft of the motor vehicle, as shown in a published and generally**
22 **available regional or national guide to motor vehicle values or from**
23 **the best available equivalent information, as specified in the guaran-**
24 **teed asset protection waiver; and**

25 **“(B) The amount the borrower owes under the finance agreement.**

26 **“(2)(a) A guaranteed asset protection waiver need not require a**
27 **creditor to waive:**

28 **“(A) A motor vehicle insurance policy deductible;**

29 **“(B) Delinquent, missed or deferred payments;**

30 **“(C) Late fees or charges;**

1 **“(D) Unearned finance charges, interest or lease charges;**
2 **“(E) Unearned rental payments;**
3 **“(F) Taxes;**
4 **“(G) Refundable items that include, but are not limited to:**
5 **“(i) Charges associated with service contracts;**
6 **“(ii) Prepaid taxes and fees; or**
7 **“(iii) Credit insurance; or**
8 **“(H) Other similar items that the guaranteed asset protection**
9 **waiver specifies.**

10 **“(b) A guaranteed asset protection waiver may specify limits on the**
11 **amount a creditor must waive based on a loan to value ratio, a maxi-**
12 **imum term, a maximum waiver amount or other limits.**

13 **“(3) A guaranteed asset protection waiver may require a creditor**
14 **to waive all or a portion of a motor vehicle insurance policy deduct-**
15 **ible.**

16 **“SECTION 4. (1)(a) A guaranteed asset protection waiver may pro-**
17 **vide that a borrower may cancel the guaranteed asset protection**
18 **waiver after the evaluation period expires or that the guaranteed asset**
19 **protection waiver expires if the finance agreement terminates early.**
20 **If the guaranteed asset protection waiver permits a borrower to cancel**
21 **as provided in this subsection and the borrower did not receive a**
22 **benefit, the borrower is entitled to a refund of a portion of the pur-**
23 **chase price in accordance with a formula or methodology specified in**
24 **the guaranteed asset protection waiver.**

25 **“(b) A borrower shall apply in writing to the person identified in the**
26 **guaranteed asset protection waiver for a refund of all or a portion of**
27 **the purchase price of the guaranteed asset protection waiver within**
28 **90 days after the borrower cancels the guaranteed asset protection**
29 **waiver or the finance agreement terminates.**

30 **“(2) The terms of the guaranteed asset protection waiver may pro-**

1 vide that if the borrower defaults on the obligation set forth in the
2 finance agreement, if the creditor repossesses the motor vehicle that
3 secures the obligation or if the finance agreement terminates for a
4 reason other than the borrower's satisfaction of the obligation set
5 forth in the finance agreement, any refund due as a consequence of
6 the cancellation or termination may be:

7 “(a) Paid directly to the creditor; or

8 “(b) Applied to any outstanding balance on the obligation set forth
9 in the finance agreement, unless the borrower has paid the obligation
10 in full.

11 “(3) Unless canceled as provided in this section, a guaranteed asset
12 protection waiver remains in effect as part of the finance agreement
13 for the term set forth in the guaranteed asset protection waiver even
14 if the finance agreement is sold, assigned or otherwise transferred.

15 “SECTION 5. (1)(a) A creditor other than a person that sells a
16 guaranteed asset protection waiver in connection with a retail sale of
17 a motor vehicle may insure a guaranteed asset protection waiver with
18 a reimbursement insurance policy.

19 “(b) A person that sells a guaranteed asset protection waiver in
20 connection with a retail sale of a motor vehicle shall insure the
21 guaranteed asset protection waiver with a reimbursement insurance
22 policy that meets the requirements set forth in subsection (2) of this
23 section.

24 “(c) A lessor that leases a motor vehicle does not need to insure a
25 guaranteed asset protection waiver that the lessor sells in connection
26 with the lease.

27 “(2) A reimbursement insurance policy for a guaranteed asset pro-
28 tection waiver must state:

29 “(a) The terms of the obligation the insurer has to reimburse the
30 creditor for amounts the creditor must waive under the terms of the

1 **guaranteed asset protection waiver;**

2 **“(b) That the insurer’s obligation to reimburse the creditor extends**
3 **to the creditor’s assignee or any person to which the creditor sells or**
4 **transfers the finance agreement or the guaranteed asset protection**
5 **waiver that the reimbursement insurance policy covers;**

6 **“(c) That the reimbursement insurance policy remains in effect**
7 **until canceled in accordance with applicable provisions of the Insur-**
8 **ance Code; and**

9 **“(d) That a cancellation of the reimbursement insurance policy does**
10 **not affect an insurer’s obligation under the reimbursement insurance**
11 **policy for guaranteed asset protection waivers that the insured sold,**
12 **and for which the insurer received premium payments, before the date**
13 **on which the reimbursement insurance policy was canceled.**

14 **“(3) A person that sells a guaranteed asset protection waiver in**
15 **connection with a sale or lease of a motor vehicle shall report to any**
16 **insurer that has issued a reimbursement insurance policy to the per-**
17 **son the number of guaranteed asset protection waiver sales and any**
18 **other details the insurer requires under the terms of the reimburse-**
19 **ment insurance policy and shall timely forward to the insurer all funds**
20 **due under the terms of the reimbursement insurance policy.**

21 **“SECTION 6. (1) A person that is subject to sections 1 to 7 of this**
22 **2015 Act shall act in a fiduciary capacity with respect to funds the**
23 **person receives or holds for the benefit of another person.**

24 **“(2) A person that sells a guaranteed asset protection waiver in**
25 **connection with a retail sale of a motor vehicle may not:**

26 **“(a) Charge more for the guaranteed asset protection waiver than**
27 **five percent of the amount the borrower finances under a finance**
28 **agreement; or**

29 **“(b) Vary the benefits, terms, conditions or price of the guaranteed**
30 **asset protection waiver on account of a borrower’s race, sex, sexual**

1 **orientation, income or education.”.**

2 _____