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BILL ANALYSIS

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House Bill 4989 (Substitute H-2 as passed by the House)
House Bill 4990 (Substitute H-1 as passed by the House)
House Bills 4991 and 4992 (as passed by the House)
Sponsor: Representative Tory Rocca (H.B. 4989)
Representative Bert Johnson (H.B. 4990 & 4991)
Representative Tim Melton (H.B. 4992)
House Committee: Insurance
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 11-9-09

CONTENT

House Bill 4989 (H-2) would create the "Guaranteed Asset Protection Waiver Act" to regulate the sale of guaranteed asset protection (GAP) waivers (in which a creditor agreed, for a charge, to waive or cancel amounts due on a finance agreement if a motor vehicle were totally damaged or stolen). The bill would do the following:

- **Require a creditor that offered, sold, or provided a GAP waiver to comply with the proposed Act.**
- **Require a GAP waiver to be part of, or a separate addendum to, the finance agreement for a motor vehicle.**
- **Require an installment seller or retail seller to insure its GAP waiver obligations, unless the seller were a lessor of a motor vehicle.**
- **Prohibit a creditor from conditioning an extension or term of credit on the purchase of a GAP waiver.**
- **Require a GAP waiver to disclose specified information, including information regarding the cancellation of a GAP waiver during a "free look period".**
- **Establish requirements and restrictions for the cancellation of a GAP waiver, including refund provisions.**
- **Authorize the Commissioner of Financial and Insurance Regulation to take actions to enforce the proposed Act and to protect GAP waiver holders, including assessing administrative fines.**
- **Exempt certain transactions from the Act.**

House Bill 4990 (H-1) would amend the Insurance Code to specify that a GAP waiver that was subject to the proposed Guaranteed Asset Protection Waiver Act would not be insurance or the business of insurance and would not be subject to the Code.

House Bill 4991 would amend the Motor Vehicle Sales Finance Act to require an installment sale contract to set forth the cost of any GAP waiver for which the seller agreed to extend credit to the buyer.

House Bill 4992 would amend the Retail Installment Sales Act to require a retail installment contract to contain the cost of any GAP waiver for which the seller agreed to extend credit to the buyer, if the transaction involved a vehicle.

The bills are tie-barred. House Bills 4989 (H-2), 4991, and 4992 would take effect 180 days after their enactment.

House Bill 4989 (H-2)

Offering, Selling, or Providing GAP Waiver

"Guaranteed asset protection waiver" would mean a contractual agreement in which a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

Beginning 180 days after the bill's effective date, a creditor that offered, sold, or provided a GAP waiver in Michigan would have to comply with the proposed Act. A GAP waiver would have to be part of, or a separate addendum to, the finance agreement for a motor vehicle. A creditor could choose to sell a GAP waiver for a single payment or to offer a monthly or periodic payment option for the waiver.

Any cost to a borrower for a GAP waiver entered into in compliance with the Federal Truth in Lending Act and the regulations promulgated under that Act would have to be stated separately and would not be considered a finance charge or interest. This provision would not apply to a GAP waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

Except as provided below for a leased vehicle, an installment seller or retail seller would have to insure its GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor that was not an installment seller or retail seller could insure its GAP waiver obligations under a contractual liability policy or other insurance policy issued by an insurer. Any creditor could obtain an insurance policy directly, or an administrator could obtain that policy on behalf of the creditor. An installment seller or retail seller that was a lessor of a motor vehicle would not be required to insure its GAP waiver obligation on a leased vehicle. ("Administrator" would mean a person, other than a creditor or insurer, that performs administrative or operational functions in connection with a GAP waiver program.)

A creditor could not condition an extension of credit, the term of credit, or the term of a related motor vehicle sale or lease on the purchase of a GAP waiver.

A GAP waver contained in a finance agreement would remain a part of that contract if the creditor assigned, sold, or transferred the contract.

Any creditor that offered GAP waivers would have to report all sales of those waivers, and forward any payments received on those sales, to the designated party, if any, prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

A creditor or administrator that received or held money that belonged to an insurer under the terms of a written agreement for insurance would have to hold that money in a fiduciary capacity.

("Creditor" would mean a person that extends credit to a borrower in connection with the purchase of a motor vehicle; a lessor of a motor vehicle; or an assignee of that person or lessor. The term would include an installment seller that extends credit to, or leases a motor vehicle to, an installment buyer; a sales finance company that extends credit to an installment buyer; and a retail seller that extends credit to, or leases a motor vehicle to, a retail buyer.

"Borrower" would mean a person that purchases, leases, or agrees to purchase or lease a motor vehicle, including an installment buyer and a retail buyer.

"Motor vehicle" would mean a self-propelled or towed device that transports people or property for personal or commercial use. The term would include an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, and personal watercraft, and a motorcycle, boat, camper, or personal watercraft trailer.)

Contractual Liability or Other Insurance Policy

A contractual liability or other insurance policy insuring a GAP waiver would have to state the insurer's obligation to reimburse or pay to the creditor any amount the creditor was legally obligated to waive under the GAP waiver issued by the creditor and purchased or held by the borrower. A contractual liability or other insurance policy insuring a GAP waiver also would have to cover any subsequent assignee if the finance agreement were assigned, sold, or transferred.

Coverage under a contractual liability or other insurance policy insuring a GAP waiver would have to remain in effect unless canceled or terminated in compliance with the Insurance Code. Cancellation or termination of a contractual liability or other insurance policy could not reduce the insurer's responsibility for a GAP waiver issued by the creditor before the date of cancellation or termination and for which the insurer had received premiums.

GAP Waiver Disclosures

A GAP waiver would have to disclose all of the following, in writing and in clear, understandable language that was easy to read:

- -- The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator, if different from the creditor.
- -- The purchase price and the terms of the GAP waiver, including the requirements for protection, conditions, or exclusions associated with it.
- -- That the borrower could cancel the GAP waiver during the "free look period" specified in the waiver.
- -- The procedure the borrower would have to follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, and a telephone number and address where the borrower could apply for waiver benefits.
- -- Whether the borrower could cancel the GAP waiver after the free look period, and, if so, the conditions under which the borrower could cancel or terminate that waiver; and the procedure the borrower would have to follow to request any refund due.
- -- The methodology for calculating any refund of the unearned purchase price of a GAP waiver due to a borrower for the cancellation of a GAP waiver or early termination of the finance agreement.
- -- That a creditor could not condition an extension of credit, the terms of that credit, or the terms of the related finance agreement on the purchase of a GAP waiver.

A GAP waiver also would have to include information (described below) about the refund of the purchase price of the waiver after it was canceled or the finance agreement was terminated.

"Free look period" would mean the period of time during which a borrower may cancel a guaranteed asset protection waiver without penalty, fees, or costs to the borrower. A free look period would have to begin on the effective date of the GAP waiver, and the term of a free look period would have to be at least 30 days.

Cancellation of GAP Waivers

A creditor could offer a GAP waiver agreement that was cancelable or not cancelable after the free look period. A GAP waiver would have to provide that if a borrower canceled the waiver during the free look period, the borrower would be entitled to a full refund of the purchase price if he or she had not received benefits under the waiver, or to any full or partial refund included in the waiver if he or she had received benefits.

If a borrower canceled a GAP waiver, or a finance agreement were terminated, after the free look period, the borrower could be entitled to a refund of any unearned portion of the purchase price unless the waiver provided otherwise. To receive a refund, the borrower would have to provide a written request to the creditor, administrator, or other party, within 90 days after the cancellation of the waiver or the occurrence of the event terminating the finance agreement, that met any applicable notice provisions of the waiver.

If a GAP waiver were canceled as a result of a default under a finance agreement, the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due could be paid directly to the creditor or administrator.

A creditor could apply any cancellation refund as a reduction of the amount owed under the finance agreement, unless the borrower could show that the finance agreement had been paid in full.

Commissioner Responsibilities

The Commissioner of Financial and Insurance Regulation could take any action he or she determined was necessary or appropriate to enforce the proposed Act and to protect a GAP waiver holder in Michigan, including doing any of the following after proper notice of an opportunity for hearing under the Administrative Procedures Act:

-- Order a creditor, administrator, or any other person that did not comply with the proposed Act to cease and desist from further GAP waiver-related operations that violated the Act.
-- Assess an administrative fine of up to $500 against a person for violating the Act.

The Commissioner, however, could not assess against any person administrative fines that, in the aggregate, were more than $20,000 for multiple violations of a similar nature. ("Similar nature" would mean that the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times that action, conduct, or practice occurs.)

Exemptions

The proposed Act would not apply to either of the following:

-- An insurance policy offered by an insurer under the Insurance Code.
-- An offer of a debt cancellation or debt suspension contract that complied with Federal regulations (12 CFR Part 37; 12 CFR Part 721), or other Federal law.

House Bill 4990 (H-1)

Under the bill, a GAP waiver that was subject to the proposed GAP Waiver Act would not be insurance or the business of insurance and would not be subject to the Insurance Code.

A person would not have to obtain a certificate of authority or license under the Code to market, sell, or offer to sell GAP waivers to borrowers in compliance with the proposed Act. A GAP waiver issued before the bill's effective date could not be construed as insurance.

House Bills 4991 and 4992

Under the Motor Vehicle Sales Finance Act and the Retail Installment Sales Act, an installment sale contract and a retail installment contract, respectively, must set forth certain information. The bills would require that information to include the cost of any GAP waiver that the seller agreed to extend credit to the buyer to obtain (if the contract involved a vehicle, under House Bill 4992).

Under the bills, a GAP waiver could be included as part of, or as an addendum to, an installment sale contract or a retail installment contract. An installment seller or retail seller that offered, sold, or provided GAP waivers to installment or retail buyers in Michigan would have to comply with the proposed GAP Waiver Act. Any cost to an installment or retail buyer for a GAP waiver entered into in compliance with the Federal Truth in Lending Act and the regulations promulgated under that Act, would have to be stated separately and would not be considered a finance charge or interest.

Proposed MCL 500.127 (H.B. 4990)
MCL 492.113 (H.B. 4991)
445.853 (H.B. 4992)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4989 (H-2)

The bill would allow the Commissioner to impose an administrative fine on violators of the proposed Act. The fine would be up to $500 per violation, with a $20,000 maximum for multiple violations of a similar nature. There is no information available on estimated violations; however, any revenue generated would be retained by the Office of Financial and Insurance Regulation.

House Bills 4990 (H-1), 4991, & 4992

The bills would have no fiscal impact on State or local government.

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