

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4186

BY DELEGATES WESTFALL, HOUSEHOLDER, UPSON, C.

MILLER, FRICH, WHITE, LANE, KESSINGER, MOORE, CRISS

AND NELSON

[Introduced January 18, 2018; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §33-4-22, relating generally to guaranteed asset protection waivers; providing
 3 short title and legislative intent of section; defining certain terms; specifying requirements
 4 for offering guaranteed asset protection waivers; requiring contractual liability or other
 5 insurance policies on guaranteed asset protection waivers in certain circumstances;
 6 providing for disclosures and cancellation; exempting commercial transactions; excluding
 7 waivers from consumer sales and service tax; and providing that section to apply
 8 retrospectively.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-22. Guaranteed Asset Protection Waivers.

1 (a) Short title. – This section may be cited as the “Guaranteed Asset Protection Waiver
 2 Act.”

3 (b) Purpose. – The purpose of this section is to provide a framework within which
 4 guaranteed asset protection waivers are defined and may be offered within this state.

5 (c) Applicability. – This section does not apply to:

6 (1) An insurance policy offered by an insurer under the insurance laws of this state;

7 (2) A debt cancellation or debt suspension contract being offered in compliance with 12
 8 C.F.R. §37.1, et seq., 12 C.F.R. §721.1, et seq., or other federal law; or

9 (3) A contract or other agreement that obligates a third party to indemnify a creditor may
 10 not be considered a guarantee asset protection waiver under this section but shall be considered
 11 insurance under the insurance laws of this state. However, a guaranteed asset protection waiver
 12 shall not be considered insurance as a result of the purchase, administration or operation of the
 13 contractual liability or other insurance policy authorized under subdivision (g)(4).

14 (d) Waivers not insurance. – Guaranteed asset protection waivers governed by this
 15 section are not insurance and are exempt from the insurance laws of this state. Persons

16 marketing, administering, selling or offering to sell guaranteed asset protection waivers to
17 borrowers that comply with this section are exempt from this state's insurance licensing
18 requirement with regard to the marketing, selling or offering to sell guaranteed asset protection
19 waivers.

20 (e) *Legislative intent.* – The Legislature finds that guaranteed asset protection waivers are
21 not insurance and are not subject to the provisions of this chapter, except as provided in this
22 section. It is further the intent of the Legislature that all guaranteed asset protection waivers issued
23 prior to and after the effective date of this section are not insurance and may not be construed as
24 insurance by any court or person.

25 (f) *Definitions.* – The following terms are defined for purposes of this section. These terms
26 are not intended to be used or required in guaranteed asset protection waivers.

27 (1) "Administrator" means a person, other than an insurer or creditor, who performs
28 administrative or operational functions pursuant to guaranteed asset protection waiver programs.
29 Administrative or operational functions may include, but are not limited to:

30 (A) Document development, processing, and support;

31 (B) Compliance Services;

32 (C) Waiver fee processing;

33 (D) Benefit determination and processing;

34 (E) Procurement and administration of the contractual liability or other insurance policy;

35 (F) Technology support; or

36 (G) Personnel support.

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

38 (3) "Creditor" means:

39 (A) The lender in a loan or credit transaction;

40 (B) The lessor in a lease transaction;

41 (C) A retail dealer of motor vehicles licensed under §17A-6-1 et seq. of this code, that

42 provides credit to buyers as part of a retail sale, provided the dealer complies with the
43 requirements of this section;

44 (D) The seller in a commercial retail installment transaction; or

45 (E) The assignees of any of the foregoing persons to whom the credit obligation is payable.

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

48 (5) "Free look period" means the period of time from the effective date of the guaranteed
49 asset protection waiver until the date the borrower may cancel the contract without penalty, fees
50 or costs to the borrower. This period of time may not be less than thirty days.

51 (6) "Guaranteed asset protection waiver" means a contractual agreement that is part of or
52 a separate addendum to the finance agreement in which a creditor agrees for payment of a
53 separate charge to cancel or waive all or part of amounts due to it on a borrower's finance
54 agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle.

55 (7) "Insurer" means an insurance company required to be licensed, registered, or
56 otherwise authorized to do business under the insurance laws of this state.

57 (8) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or
58 commercial use, including, but not limited to, an automobile, truck, motorcycle, recreational
59 vehicle, all-terrain vehicle, snowmobile, camper, boat or personal watercraft and a trailer used to
60 transport a motorcycle, boat, camper or personal watercraft.

61 (9) "Person" includes an individual, company, association, organization, partnership,
62 limited liability company, business trust, corporation and every form of legal entity.

63 (g) Requirements for offering guaranteed asset protection waivers. –

64 (1) Guaranteed asset protection waivers may be offered, sold or provided to borrowers in
65 this state in compliance with this section.

66 (2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a
67 single payment or may be offered with a monthly or periodic payment option.

68 (3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed
69 asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. §1601,
70 et. seq., must be separately stated and may not be considered a finance charge or interest.

71 (4) A retail dealer of motor vehicles shall insure its guaranteed asset protection waiver
72 obligations under a contractual liability or other insurance policy issued by an insurer. A creditor,
73 other than a retail dealer of motor vehicles, may insure its guaranteed asset protection waiver
74 obligations under a contractual liability policy or similar policy issued by an insurer. The insurance
75 policy may be directly obtained by a creditor, a retail dealer of motor vehicles or may be procured
76 by an administrator to cover a creditor's or retail dealer's obligations: *Provided*, That retail dealers
77 of motor vehicles that are lessors of motor vehicles are not required to insure obligations related
78 to guaranteed asset protection waivers on leased vehicles.

79 (5) The guaranteed asset protection waiver remains a part of the finance agreement upon
80 the assignment, sale, or transfer of the finance agreement by the creditor.

81 (6) The extension of credit, the terms of credit or the terms of the related motor vehicle
82 sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver.

83 (7) A creditor that offers a guaranteed asset protection waiver shall report the sale of and
84 forward funds received on all guaranteed asset protection waivers to the designated party, if any,
85 as prescribed in any applicable administrative services agreement, contractual liability policy,
86 other insurance policy or other specified program document.

87 (8) Funds received or held by a creditor or administrator and belonging to an insurer,
88 creditor or administrator, pursuant to the terms of a written agreement must be held by the creditor
89 or administrator in a fiduciary capacity.

90 (9) The sale of guaranteed asset protection waiver contracts is the sale of an intangible
91 and the gross proceeds from sale of the contract are not subject to the consumer's sales and
92 service tax imposed in §11-15-1 et seq. of this code.

93 (h) Contractual liability or other insurance policies. –

94 (1) Contractual liability or other insurance policies insuring guaranteed asset protection
95 waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the
96 creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the
97 creditor and purchased or held by the borrower.

98 (2) Coverage under a contractual liability or other insurance policy insuring a guaranteed
99 asset protection waiver must also cover any subsequent assignee upon the assignment, sale, or
100 transfer of the finance agreement.

101 (3) Coverage under a contractual liability or other insurance policy insuring a guaranteed
102 asset protection waiver must remain in effect unless canceled or terminated in compliance with
103 applicable insurance laws of this state.

104 (4) The cancellation or termination of a contractual liability or other insurance policy may
105 not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the
106 creditor prior to the date of cancellation or termination and for which premiums have been received
107 by the insurer.

108 (i) Disclosures. –

109 Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear,
110 understandable language, the following:

111 (A) The name and address of the initial creditor and the borrower at the time of sale and
112 the identity of any administrator if different from the creditor;

113 (B) The purchase price and the terms of the guaranteed asset protection waiver, including
114 without limitation the requirements for protection, conditions or exclusions associated with the
115 guaranteed asset protection waiver;

116 (C) That the borrower may cancel the guaranteed asset protection waiver within a free
117 look period as specified in the waiver, and may receive a full refund of the purchase price, so long
118 as no benefits have been provided under the waiver; or if benefits have been provided, the
119 borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset

120 protection waiver;

121 (D) The procedure the borrower must follow, if any, to obtain guaranteed asset protection
122 waiver benefits under the terms and conditions of the waiver, including a telephone number and
123 address where the borrower may apply for waiver benefits;

124 (E) Whether the guaranteed asset protection waiver may be canceled after the free look
125 period and the conditions under which it may be canceled or terminated, including the procedures
126 for requesting any refund due;

127 (F) That in order to receive any refund due if a borrower cancels the guaranteed asset
128 protection waiver agreement or early termination of the finance agreement after the free look
129 period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the
130 waiver, shall provide a written request to cancel to the creditor, administrator or other party as
131 specified in the guaranteed asset protection waiver. If a borrower is canceling the guaranteed
132 asset protection waiver due to early termination of the finance agreement, the borrower shall
133 provide a written request to the creditor, administrator or other party within ninety days of the
134 occurrence of the event terminating the finance agreement;

135 (G) The methodology for calculating any refund of the unearned purchase price of the
136 guaranteed asset protection waiver due if there is cancellation of the guaranteed asset protection
137 waiver or early termination of the finance agreement; and

138 (H) That neither the extension of credit, the terms of the credit, nor the terms of the related
139 motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset
140 protection waiver.

141 (i) Cancellation. –

142 (1) Guaranteed asset protection waiver agreements may be cancellable or noncancellable
143 after the free look period. Guaranteed asset protection waivers must provide that if a borrower
144 cancels a guaranteed asset protection waiver within the free look period, so long as no benefits
145 have been provided, the borrower is entitled to a full refund of the purchase price. If benefits have

146 been provided, the borrower may receive a full or partial refund pursuant to the terms of the
147 guaranteed asset protection waiver;

148 (2) If the borrower cancels the guaranteed asset protection waiver or terminates the
149 finance agreement early but after the agreement has been in effect beyond the free look period,
150 the borrower may receive a refund of any unearned portion of the purchase price of the
151 guaranteed asset protection waiver unless the guaranteed asset protection waiver provides
152 otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of
153 the waiver, shall provide a written request to the creditor, administrator or other party. If the
154 borrower is canceling the guaranteed asset protection waiver due to the early termination of the
155 finance agreement, the borrower shall provide a written request within ninety days of the event
156 terminating the finance agreement;

157 (3) If the cancellation of a guaranteed asset protection waiver occurs as a result of a
158 default under the finance agreement, or the repossession of the motor vehicle associated with
159 the finance agreement, or any other termination of the finance agreement, any refund due may
160 be paid directly to the creditor or administrator and applied as set forth in subdivision (4) of this
161 subsection (i), below;

162 (4) A cancellation or termination refund under subdivision (1), (2) or (3) of this subsection
163 (i) may be applied by the creditor as a reduction of the amount owed under the finance agreement,
164 unless the borrower can show that the finance agreement has been paid in full.

165 (k) Commercial transaction exempted. – Subsections (g), (h) and (i) of this section do not
166 apply to a guaranteed asset protection waiver offered in connection with a lease or retail
167 installment sale associated with a commercial transaction.

168 (l) Effective date. – This section shall take effect on the expiration of ninety days after its
169 passage.

NOTE: The purpose of this bill is to clarify that guaranteed asset protection waivers are not insurance; to specify terms and conditions under which guaranteed asset protection waiver contracts may be solid in this state; and to provide an exception for commercial transactions. The bill also provides that it will apply retroactively to guaranteed asset protection waivers in effect on the date of passage.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.