

House Bill 2845

Sponsored by Representative CLEM

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 waiver 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 2015 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 addendum**
23 **to a finance agreement for a purchase or lease of a motor vehicle under the terms of which**
24 **a creditor agrees to waive the creditor's right to collect all or part of an amount due from**
25 **a borrower under the terms of the finance agreement or to release a borrower from an ob-**
26 **ligation to pay the creditor an amount due under a finance agreement if the motor vehicle:**

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

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 (b) Is stolen and is not recovered.

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

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

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

9 **SECTION 2.** (1) A guaranteed asset protection waiver is not insurance and is not subject
10 to the provisions of the Insurance Code. A person, other than an insurer, that sells a guar-
11 anteed asset protection waiver in compliance with sections 1 to 7 of this 2015 Act does not
12 become subject to the Insurance Code by reason of the sale.

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

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

16 (b) A debt cancellation contract or debt suspension agreement, both as defined in 12
17 C.F.R. 37.2, as in effect on the effective date of this 2015 Act.

18 (3) Section 3 of this 2015 Act does not apply to a person that sells a guaranteed asset
19 protection waiver, or to the guaranteed asset protection waiver that the person sells or of-
20 fers to sell, in connection with a finance agreement for sale or lease of a motor vehicle to
21 a person other than an individual who purchases or leases a motor vehicle for personal,
22 family or household purposes.

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

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

26 (a) The name, address, telephone number and other contact information for:

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

28 (B) The creditor, if different; and

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

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

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

38 (A) Conditions under which the creditor will waive all or a portion of the obligation that
39 remains under the finance agreement;

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

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

44 (d) The identity, location and contact information for the person to which the borrower
45 must submit a claim for benefits under the guaranteed asset protection waiver and the pro-

cedure the borrower must follow to submit the claim.

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

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

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

(B) The finance agreement is terminated early.

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

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

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

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

(c) Unless the terms of the guaranteed asset protection waiver provide otherwise, a borrower shall apply in writing to the creditor or the person identified in the disclosure under section 3 (1)(a) of this 2015 Act for a refund of all or a portion of the purchase price of a guaranteed asset protection waiver within 90 days after the borrower cancels the guaranteed asset protection waiver.

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

(a) Paid directly to the creditor; or

(b) Applied to any outstanding balance on the obligation set forth in the finance agree-

1 ment, unless the borrower has paid the obligation in full.

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

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

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

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

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

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

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

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

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

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

37 **SECTION 6.** A person that is subject to sections 1 to 7 of this 2015 Act shall act in a
 38 fiduciary capacity with respect to funds the person receives or holds for the benefit of an-
 39 other person.

40 **SECTION 7.** A violation of a provision of sections 1 to 7 of this 2015 Act is an unlawful
 41 practice under ORS 646.607 that is subject to enforcement under ORS 646.632.

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

43 646.607. A person engages in an unlawful practice if in the course of the person's business, vo-
 44 cation or occupation the person:

45 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real

1 estate, goods or services, or collecting or enforcing an obligation;

2 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a
3 customer's request, fails to refund money that the customer gave to the person to purchase the
4 undelivered real estate, goods or services and that the person does not retain pursuant to any right,
5 claim or defense the person may assert in good faith. This subsection does not create a warranty
6 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered
7 to a customer;

8 (3) Violates ORS 401.965 (2);

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

10 (5) Violates ORS 646A.530;

11 (6) Employs a collection practice that is unlawful under ORS 646.639;

12 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2); or

13 (8) Violates ORS 646A.093.

14 (9) **Violates a provision of sections 1 to 7 of this 2015 Act.**

15 **SECTION 9. Sections 1 to 7 of this 2015 Act and the amendments to ORS 646.607 by sec-**
16 **tion 8 of this 2015 Act apply to guaranteed asset protection waivers that are sold or offered**
17 **for sale on or after the effective date of this 2015 Act.**

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