

EHB 1530 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

ADOPTED 04/08/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to
4 provide a framework within which guaranteed asset protection waivers
5 are defined and may be offered within this state.

6 (2) This chapter does not apply to:

7 (a) An insurance policy offered by an insurer under this title; or

8 (b) A federally regulated financial institution operating under 12
9 C.F.R. Part 37 of the office of the comptroller of the currency
10 regulations or credit unions operating under 12 C.F.R. 721.3(g) of the
11 national credit union administration regulations, or state regulated
12 banks, credit unions, financial institutions operating pursuant to
13 chapter 63.14 RCW, and consumer loan companies operating pursuant to
14 chapter 31.04 RCW. However, an exempt federal or state chartered bank,
15 credit union, or financial institution may elect to offer a guaranteed
16 asset protection waiver that complies with sections 1, 2, and 4 through
17 7 of this act.

18 (3) Guaranteed asset protection waivers are governed under this
19 chapter and are exempt from all other provisions of this title, except
20 RCW 48.02.060 and 48.02.080, chapter 48.04 RCW, and as provided in this
21 chapter.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply
23 throughout this chapter unless the context clearly requires otherwise.

24 (1) "Administrator" means a person, other than an insurer or
25 creditor that performs administrative or operational functions pursuant
26 to guaranteed asset protection waiver programs.

27 (2) "Borrower" means a debtor, retail buyer, or lessee, under a
28 finance agreement, or a person who receives a loan or enters into a

1 retail installment contract to purchase or lease a motor vehicle or
2 vessel under chapter 63.14 RCW.

3 (3) "Creditor" means:

4 (a) The lender in a loan or credit transaction;

5 (b) The lessor in a lease transaction;

6 (c) Any retail seller of motor vehicles that provides credit to
7 retail buyers of motor vehicles provided the seller complies with this
8 chapter;

9 (d) The seller in commercial retail installment transactions; or

10 (e) The assignees of any creditor under this subsection to whom the
11 credit obligation is payable.

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

14 (5) "Free look period" means the period of time from the effective
15 date of the waiver until the date the borrower may cancel the waiver
16 without penalty, fees, or costs to the borrower. This period of time
17 must not be shorter than thirty days.

18 (6) "Guaranteed asset protection waiver" or "waiver" means a
19 contractual agreement wherein a creditor agrees for a separate charge
20 to cancel or waive all or part of amounts due that creditor on a
21 borrower's finance agreement with that creditor in the event of a total
22 physical damage loss or unrecovered theft of the motor vehicle, which
23 agreement must be part of, or a separate addendum to, the finance
24 agreement.

25 (7) "Insurer" means an insurance company licensed, registered, or
26 otherwise authorized to do business under the insurance laws of this
27 state.

28 (8) "Motor vehicle" means self-propelled or towed vehicles designed
29 for personal or commercial use, including but not limited to
30 automobiles, trucks, motorcycles, recreational vehicles, all-terrain
31 vehicles, snowmobiles, campers, boats, personal watercraft, and
32 motorcycle, boat, camper, and personal watercraft trailers.

33 (9) "Motor vehicle dealer" has the same meaning as "vehicle dealer"
34 in RCW 46.70.011.

35 (10) "Person" includes an individual, company, association,
36 organization, partnership, business trust, corporation, and every form
37 of legal entity.

1 (11) "Retail buyer" means a person who buys or agrees to buy a
2 motor vehicle or obtain motor vehicle services or agrees to have motor
3 vehicle services rendered or furnished from a retail seller.

4 (12) "Retail seller" means a person engaged in the business of
5 selling motor vehicles or motor vehicle services to retail buyers.

6 (13) "Unregistered marketers" means persons who offer for sale and
7 sell guaranteed asset protection waivers who are not registered under
8 this chapter and who are not otherwise exempt under this chapter.

9 NEW SECTION. **Sec. 3.** (1) This chapter applies only to guaranteed
10 asset protection waivers for financing of motor vehicles as defined in
11 this chapter. Any person or entity must register with the commissioner
12 before marketing, offering for sale or selling a guaranteed asset
13 protection waiver, and before acting as an obligor for a guaranteed
14 asset protection waiver, in this state. However, a retail seller of
15 motor vehicles that assigns more than eighty-five percent of
16 guaranteed asset protection waiver agreements within thirty days of
17 such agreements' effective date, or an insurer authorized to transact
18 such insurance business in this state, are not required to register
19 pursuant to this section. Failure of any retail seller of motor
20 vehicles to assign one hundred percent of guaranteed asset protection
21 waiver agreements within forty-five days of such agreements' effective
22 date will result in that retail seller being required to comply with
23 the registration requirements of this chapter.

24 (2) No person may market, offer for sale, or sell a guaranteed
25 asset protection waiver, or act as an obligor on a guaranteed asset
26 protection waiver in this state without a registration as provided in
27 this chapter, except as set forth in subsection (1) of this section.

28 (3) The application for registration must include the following:

29 (a) The applicant's name, address, and telephone number;

30 (b) The identities of the applicant's executive officers or other
31 officers directly responsible for the waiver business;

32 (c) An application fee of two hundred fifty dollars, which shall be
33 deposited into the guaranteed asset protection waiver account;

34 (d) A copy filed by the applicant with the commissioner of the
35 waivers the applicant intends to offer in this state;

36 (e) A list of all unregistered marketers of guaranteed asset
37 protection waivers on which the applicant will be the obligor;

1 (f) Such additional information as the commissioner may reasonably
2 require.

3 (4) Once registered, the applicant shall keep the information
4 required for registration current by reporting changes within thirty
5 days after the end of the month in which the change occurs.

6 NEW SECTION. **Sec. 4.** (1) Waivers may be offered, sold, or
7 provided to borrowers in this state in compliance with this chapter.

8 (2) Waivers may, at the option of the creditor, be sold for a
9 single payment or may be offered with a monthly or periodic payment
10 option.

11 (3) Notwithstanding any other provision of law, any cost to the
12 borrower for a guaranteed asset protection waiver entered into in
13 compliance with the truth in lending act (15 U.S.C. Sec. 1601 et seq.)
14 and its implementing regulations, as amended, must be separately stated
15 and is not to be considered a finance charge or interest.

16 (4) Nothing in this chapter prohibits a person who is registered,
17 or is otherwise exempt from registration or exempt from this chapter,
18 from insuring its waiver obligation through the purchase of a
19 contractual liability policy or other insurance policy issued by an
20 insurer authorized to transact such insurance in this state.

21 (5) The waiver remains a part of the finance agreement upon the
22 assignment, sale, or transfer of the finance agreement by the creditor.

23 (6) Neither the extension of credit, the term of credit, nor the
24 term of the related motor vehicle sale or lease may be conditioned upon
25 the purchase of a waiver.

26 (7) Any creditor that offers a waiver must report the sale of, and
27 forward funds received on, all waivers to the designated party, if any,
28 as prescribed in any applicable administrative services agreement,
29 contractual liability policy, other insurance policy, or other
30 specified program documents.

31 (8) Funds received or held by a creditor or administrator and
32 belonging to an insurer, creditor, or administrator, under the terms of
33 a written agreement, must be held by that creditor or administrator in
34 a fiduciary capacity.

35 (9) If the guaranteed asset protection waiver is assigned, the name
36 and address of the assignee must be mailed to the borrower within
37 thirty days of the assignment. If at any time the name and address

1 provided to the borrower by the initial creditor are no longer the
2 valid point of contact to apply for waiver benefits, written notice
3 will be mailed to the borrower within thirty days of the change stating
4 the new name and address of the person or entity the borrower should
5 contact to apply for waiver benefits. No waiver may be assigned to an
6 entity that is not registered pursuant to this chapter, unless such
7 entity is exempt from registration or unless the commissioner
8 specifically authorizes such assignment.

9 (10) No person shall knowingly make, publish, or disseminate any
10 false, deceptive, or misleading representation or advertising in the
11 conduct of, or relative to, waiver business. Nor shall any person
12 make, issue, or circulate, or cause to be made, issued, or circulated
13 any misrepresentation of the terms or benefits of any waiver.

14 (11) A person or entity engaged in the guaranteed asset protection
15 waiver business in this state may not refuse to sell or issue any
16 guaranteed asset protection waiver because of the sex, marital status,
17 or sexual orientation as defined in RCW 49.60.040, or the presence of
18 any sensory, mental, or physical disability of the borrower or
19 prospective borrower. The type of benefits, or any term, rate,
20 condition, or type of coverage may not be restricted, modified,
21 excluded, increased, or reduced on the basis of the presence of any
22 sensory, mental, or physical disability of the borrower or prospective
23 borrower.

24 NEW SECTION. **Sec. 5.** (1) Contractual liability or other insurance
25 policies insuring waivers must state the obligation of the insurer to
26 reimburse or pay to the creditor any sums the creditor is legally
27 obligated to waive under the waivers issued by the creditor and
28 purchased or held by the borrower. Contractual liability insurance or
29 other insurance policies insuring waivers must not be purchased by the
30 creditor as part of, or a rider to, vendor single-interest or
31 collateral protection coverages as defined in RCW 48.22.110(4).

32 (2) Coverage under a contractual liability or other insurance
33 policy insuring a waiver must also cover any subsequent assignee upon
34 the assignment, sale, or transfer of the finance agreement.

35 (3) Coverage under a contractual liability or other insurance
36 policy insuring a waiver must remain in effect unless canceled or
37 terminated in compliance with applicable insurance laws of this state.

1 (4) The cancellation or termination of a contractual liability or
2 other insurance policy must not reduce the insurer's responsibility for
3 waivers issued by the creditor prior to the date of cancellation or
4 termination and for which a premium has been received by the insurer.

5 NEW SECTION. **Sec. 6.** Guaranteed asset protection waivers must
6 disclose, as applicable, in writing and in clear, understandable
7 language that is easy to read, the following:

8 (1) The name and address of the initial creditor and the borrower
9 at the time of sale, and the identity of any administrator if different
10 from the creditor;

11 (2) The purchase price and the terms of the waiver, including
12 without limitation, the requirements for protection, conditions, or
13 exclusions associated with the waiver;

14 (3) That the borrower may cancel the waiver within a free look
15 period as specified in the waiver, and will be entitled to a full
16 refund of the purchase price, so long as no benefits have been
17 provided; or in the event benefits have been provided, the borrower may
18 receive a full or partial refund pursuant to the terms of the waiver;

19 (4) The procedure the borrower must follow, if any, to obtain
20 waiver benefits under the terms and conditions of the waiver, including
21 a telephone number and address where the borrower may apply for waiver
22 benefits;

23 (5) Whether or not the waiver is cancellable after the free look
24 period and the conditions under which it may be canceled or terminated
25 including the procedures for requesting any refund due;

26 (6) That in order to receive any refund due in the event of a
27 borrower's cancellation of the waiver agreement or early termination of
28 the finance agreement after the free look period of the waiver, the
29 borrower, in accordance with terms of the waiver, must provide a
30 written request to cancel to the creditor, administrator, or such other
31 party, within ninety days of the occurrence of the event terminating
32 the finance agreement;

33 (7) The methodology for calculating any refund of the unearned
34 purchase price of the waiver due, in the event of cancellation of the
35 waiver or early termination of the finance agreement;

36 (8) That any refund of the purchase price for a waiver that was
37 included in the financing of the motor vehicle or vessel may be applied

1 by the creditor as a reduction of the overall amount owed under the
2 finance agreement, rather than applying the refund strictly to the
3 purchase price of the waiver. This disclosure must be conspicuously
4 presented prior to the purchase of the waiver;

5 (9) That neither the extension of credit, the terms of the credit,
6 nor the terms of the related motor vehicle sale or lease, may be
7 conditioned upon the purchase of the waiver;

8 (10) That the guaranteed asset protection waiver is not credit
9 insurance, nor does it eliminate the borrower's obligation to insure
10 the motor vehicle as provided by laws of this state. Purchasing a
11 guaranteed asset protection waiver does not eliminate the borrower's
12 rights and obligations under the vendor single-interest and collateral
13 protection coverage laws of this state.

14 NEW SECTION. **Sec. 7.** (1) Guaranteed asset protection waiver
15 agreements may be cancellable or noncancellable after the free look
16 period. Waivers must provide that if a borrower cancels a waiver
17 within the free look period, the borrower will be entitled to a full
18 refund of the purchase price, so long as no benefits have been
19 provided; or in the event benefits have been provided, the borrower may
20 receive a full or partial refund pursuant to the terms of the waiver.

21 (2) In the event of a borrower's cancellation of the waiver or
22 early termination of the finance agreement, after the agreement has
23 been in effect beyond the free look period, the borrower may be
24 entitled to a refund of any unearned portion of the purchase price of
25 the waiver unless the waiver provides otherwise. In order to receive
26 a refund, the borrower, in accordance with any applicable terms of the
27 waiver, must provide a written request to the creditor, administrator,
28 or other party, within ninety days of the event terminating the finance
29 agreement.

30 (3) If the cancellation of a waiver occurs as a result of a default
31 under the finance agreement or the repossession of the motor vehicle
32 associated with the finance agreement, any refund due may be paid
33 directly to the creditor or administrator and applied as set forth in
34 subsection (4) of this section.

35 (4) Any cancellation refund under this section may be applied by
36 the creditor as a reduction of the overall amount owed under the

1 finance agreement, if the cost of the guaranteed asset protection
2 waiver was included in the financing of the motor vehicle or vessel.

3 (5) Disclosure of how the refund may be applied by the creditor or
4 administrator must be made in accordance with the provisions of section
5 6(8) of this act.

6 NEW SECTION. **Sec. 8.** (1) The commissioner may, subject to chapter
7 48.04 RCW, take action that is necessary or appropriate to enforce this
8 chapter and to protect guaranteed asset protection waiver holders in
9 this state, which includes:

10 (a) Suspending, revoking, or refusing to issue the registration of
11 a person or entity if the registrant fails to comply with any provision
12 of this chapter or fails to comply with any proper order or rule of the
13 commissioner; and

14 (b) After hearing or with the consent of the registrant, and in
15 addition to or in lieu of the suspension, revocation, or refusal to
16 issue any registration, imposing a penalty of not more than two
17 thousand dollars for each violation of this chapter.

18 (2) The commissioner may adopt rules to implement this chapter.

19 NEW SECTION. **Sec. 9.** (1) Any person who markets, offers for sale
20 or sells a guaranteed asset protection waiver, or acts as an obligor
21 for a guaranteed asset protection waiver without a registration, unless
22 otherwise exempt from registration or exempt from this chapter, is
23 acting in violation of this section and is subject to the provisions of
24 section 8 of this act. In addition, any person who knowingly violates
25 this section is guilty of a class B felony punishable under chapter
26 9A.20 RCW.

27 (2) Any criminal penalty imposed under this section is in addition
28 to, and not in lieu of, any other civil or administrative penalty or
29 sanction otherwise authorized under state law.

30 (3) If the commissioner has cause to believe that any person has
31 violated this section, the commissioner may assess a civil penalty of
32 not more than twenty-five thousand dollars for each violation, after
33 providing notice and an opportunity for a hearing in accordance with
34 chapter 48.04 RCW. Upon failure to pay this civil penalty when due,
35 the attorney general may bring a civil action on behalf of the
36 commissioner to recover the unpaid penalty.

1 (4) A person or entity that should have been registered at the time
2 of the sale of a waiver who was not so registered pursuant to this
3 chapter is personally liable for performance of the waiver. Any waiver
4 sold by a person or entity that should have been registered at the time
5 of the sale is voidable, except at the instance of the person or entity
6 who sold the waiver.

7 NEW SECTION. **Sec. 10.** The guaranteed asset protection waiver
8 account is created in the custody of the state treasurer. The fees and
9 fines collected under this chapter must be deposited into the account.
10 Expenditures from the account may be used to implement, administer, and
11 enforce this chapter. Only the commissioner or the commissioner's
12 designee may authorize expenditures from the account. The account is
13 subject to allotment procedures under chapter 43.88 RCW, but an
14 appropriation is not required for expenditures.

15 **Sec. 11.** RCW 63.14.010 and 2003 c 368 s 2 are each amended to read
16 as follows:

17 In this chapter, unless the context otherwise requires:

18 (1) "Goods" means all chattels personal when purchased primarily
19 for personal, family, or household use and not for commercial or
20 business use, but not including money or, except as provided in the
21 next sentence, things in action. The term includes but is not limited
22 to merchandise certificates or coupons, issued by a retail seller, to
23 be used in their face amount in lieu of cash in exchange for goods or
24 services sold by such a seller and goods which, at the time of sale or
25 subsequently, are to be so affixed to real property as to become a part
26 thereof, whether or not severable therefrom;

27 (2) "Lender credit card" means a card or device under a lender
28 credit card agreement pursuant to which the issuer gives to a
29 cardholder residing in this state the privilege of obtaining credit
30 from the issuer or other persons in purchasing or leasing property or
31 services, obtaining loans, or otherwise, and the issuer of which is
32 not: (a) Principally engaged in the business of selling goods; or (b)
33 a financial institution;

34 (3) "Lender credit card agreement" means an agreement entered into
35 or performed in this state prescribing the terms of retail installment
36 transactions pursuant to which the issuer may, with the buyer's

1 consent, purchase or acquire one or more retail sellers' indebtedness
2 of the buyer under a sales slip or memorandum evidencing the purchase,
3 lease, loan, or otherwise to be paid in accordance with the agreement.
4 The issuer of a lender credit card agreement shall not be principally
5 engaged in the business of selling goods or be a financial institution;

6 (4) "Financial institution" means any bank or trust company, mutual
7 savings bank, credit union, or savings and loan association organized
8 pursuant to the laws of any one of the United States of America or the
9 United States of America, or the laws of a foreign country if also
10 qualified to conduct business in any one of the United States of
11 America or pursuant to the laws of the United States of America;

12 (5) "Services" means work, labor, or services of any kind when
13 purchased primarily for personal, family, or household use and not for
14 commercial or business use whether or not furnished in connection with
15 the delivery, installation, servicing, repair, or improvement of goods
16 and includes repairs, alterations, or improvements upon or in
17 connection with real property, but does not include services for which
18 the price charged is required by law to be determined or approved by or
19 to be filed, subject to approval or disapproval, with the United States
20 or any state, or any department, division, agency, officer, or official
21 of either as in the case of transportation services;

22 (6) "Retail buyer" or "buyer" means a person who buys or agrees to
23 buy goods or obtain services or agrees to have services rendered or
24 furnished, from a retail seller;

25 (7) "Retail seller" or "seller" means a person engaged in the
26 business of selling goods or services to retail buyers;

27 (8) "Retail installment transaction" means any transaction in which
28 a retail buyer purchases goods or services from a retail seller
29 pursuant to a retail installment contract, a retail charge agreement,
30 or a lender credit card agreement, as defined in this section, which
31 provides for a service charge, as defined in this section, and under
32 which the buyer agrees to pay the unpaid principal balance in one or
33 more installments or which provides for no service charge and under
34 which the buyer agrees to pay the unpaid balance in more than four
35 installments;

36 (9) "Retail installment contract" or "contract" means a contract,
37 other than a retail charge agreement, a lender credit card agreement,
38 or an instrument reflecting a sale made pursuant thereto, entered into

1 or performed in this state for a retail installment transaction. The
2 term "retail installment contract" may include a chattel mortgage, a
3 conditional sale contract, and a contract in the form of a bailment or
4 a lease if the bailee or lessee contracts to pay as compensation for
5 their use a sum substantially equivalent to or in excess of the value
6 of the goods sold and if it is agreed that the bailee or lessee is
7 bound to become, or for no other or a merely nominal consideration, has
8 the option of becoming the owner of the goods upon full compliance with
9 the provisions of the bailment or lease. The term "retail installment
10 contract" does not include: (a) A "consumer lease," heretofore or
11 hereafter entered into, as defined in RCW 63.10.020; (b) a lease which
12 would constitute such "consumer lease" but for the fact that: (i) It
13 was entered into before April 29, 1983; (ii) the lessee was not a
14 natural person; (iii) the lease was not primarily for personal, family,
15 or household purposes; or (iv) the total contractual obligations
16 exceeded twenty-five thousand dollars; or (c) a lease-purchase
17 agreement under chapter 63.19 RCW;

18 (10) "Retail charge agreement," "revolving charge agreement," or
19 "charge agreement" means an agreement between a retail buyer and a
20 retail seller that is entered into or performed in this state and that
21 prescribes the terms of retail installment transactions with one or
22 more sellers which may be made thereunder from time to time and under
23 the terms of which a service charge, as defined in this section, is to
24 be computed in relation to the buyer's unpaid balance from time to
25 time;

26 (11) "Service charge" however denominated or expressed, means the
27 amount which is paid or payable for the privilege of purchasing goods
28 or services to be paid for by the buyer in installments over a period
29 of time. It does not include the amount, if any, charged for insurance
30 premiums, delinquency charges, attorneys' fees, court costs, any
31 vehicle dealer administrative fee under RCW 46.12.042, any vehicle
32 dealer documentary service fee under RCW 46.70.180(2), or official
33 fees;

34 (12) "Sale price" means the price for which the seller would have
35 sold or furnished to the buyer, and the buyer would have bought or
36 obtained from the seller, the goods or services which are the subject
37 matter of a retail installment transaction. The sale price may include
38 any taxes, registration and license fees, the cost of a guaranteed

1 asset protection waiver, any vehicle dealer administrative fee, any
2 vehicle dealer documentary service fee, and charges for transferring
3 vehicle titles, delivery, installation, servicing, repairs,
4 alterations, or improvements;

5 (13) "Official fees" means the amount of the fees prescribed by law
6 and payable to the state, county, or other governmental agency for
7 filing, recording, or otherwise perfecting, and releasing or
8 satisfying, a retained title, lien, or other security interest created
9 by a retail installment transaction;

10 (14) "Time balance" means the principal balance plus the service
11 charge;

12 (15) "Principal balance" means the sale price of the goods or
13 services which are the subject matter of a retail installment contract
14 less the amount of the buyer's down payment in money or goods or both,
15 plus the amounts, if any, included therein, if a separate identified
16 charge is made therefor and stated in the contract, for insurance, any
17 vehicle dealer administrative fee, any vehicle dealer documentary
18 service fee, and official fees; and the amount actually paid or to be
19 paid by the retail seller pursuant to an agreement with the buyer to
20 discharge a security interest or lien on like-kind goods traded in or
21 lease interest in the circumstance of a lease for like goods being
22 terminated in conjunction with the sale pursuant to a retail
23 installment contract;

24 (16) "Person" means an individual, partnership, joint venture,
25 corporation, association, or any other group, however organized;

26 (17) "Rate" means the percentage which, when multiplied times the
27 outstanding balance for each month or other installment period, yields
28 the amount of the service charge for such month or period.

29 NEW SECTION. **Sec. 12.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 13.** This act is applicable to all guaranteed
34 asset protection waiver agreements entered into on or after January 1,
35 2010.

1 NEW SECTION. **Sec. 14.** Sections 1 through 10, 12, and 13 of this
2 act constitute a new chapter in Title 48 RCW."

EHB 1530 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

ADOPTED 04/08/2009

3 On page 1, line 2 of the title, after "act;" strike the remainder
4 of the title and insert "amending RCW 63.14.010; adding a new chapter
5 to Title 48 RCW; and prescribing penalties."

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