

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB571

Hearing Date: Monday February 23, 2009
Committee On: Banking, Commerce and Insurance
Introducer: Pahls
One Liner: Adopt the Guaranteed Asset Protection Waiver Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Christensen, Gloor, Langemeier, McCoy, Pahls, Pankonin,
Pirsch, Utter

Nay:

Absent:

Present Not Voting:

Proponents:

Senator Rich Pahls
Justin Brady
Loy Todd

Representing:

Introducer
Guaranteed Asset Protection Alliance
NE New Car & Truck Dealers Association

Opponents:

Ann Frohman

Representing:

NE Department of Insurance

Neutral:

Robert Hallstrom

Representing:

NE Bankers Association

Summary of purpose and/or changes:

OVERVIEW

LB 571 (Pahls) would enact 9 new sections to be known as the Guaranteed Asset Protection Waiver Act to provide requirements and restrictions regarding guaranteed asset protection waivers, which are contractual agreements wherein 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.

SUMMARY

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Guaranteed Asset Protection Waiver Act.

Section 2 would enact a new section to provide that: (1) the purpose of the act is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state; (2) the act does not apply to an insurance policy or a debt cancellation or debt suspension contract; and (3) guaranteed asset protection waivers are exempt from the insurance laws of this state and persons marketing or selling guaranteed asset protection waivers are exempt from this state's insurance licensing requirements.

Section 3 would enact a new section to provide for definitions: "administrator" (a person, other than an insurer or

creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs); "borrower;" "creditor" (the lender in a loan or credit transaction, the lessor in a lease transaction, a retail seller of motor vehicles, the seller in commercial retail installment transactions, or an assignee of any of the foregoing); "finance agreement (a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle);" "free look period;" "guaranteed asset protection waiver" (a contractual agreement wherein 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); "insurer;" "motor vehicle;" and "person."

Section 4 would enact a new section to provide that: (1) guaranteed asset protection waivers may be offered, sold, or provided to borrowers in this state in compliance with the act; (2) guaranteed asset protection waivers may be sold for a single payment or may be offered with a monthly or periodic payment option; (3) any cost to the borrower shall be separately stated and is not to be considered a finance charge or interest; (4) a retail seller shall insure its guaranteed asset waiver obligations and a creditor, other than a retail seller, may insure its guaranteed asset protection waiver obligations under a contractual liability policy directly obtained by a creditor, retail seller, or procured by an administrator to cover a creditor's or retail seller's obligations, except that retail sellers that are lessors are not required to insure obligations related to guaranteed asset protection waivers on lease vehicles; (5) the guaranteed asset protection waiver remains a part of the finance agreement upon assignment, sale, or transfer of the finance agreement by the creditor; (6) the extension of credit, the term of credit, or the term of the motor vehicle sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver; (7) a creditor must report the sale of, and forward funds received on, guaranteed asset protection waivers to the designated parties; and (8) funds received or held by a creditor or administrator for an insurer, creditor, or administrator, shall be held in a fiduciary capacity.

Section 5 would enact a new section to provide that: (1) contractual liability policies insuring guaranteed asset protection waivers shall state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower; (2) coverage under a contractual liability policy insuring a guaranteed asset protection waiver shall also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement; (3) coverage under a contractual liability policy insuring a guaranteed asset protection waiver shall remain in effect unless cancelled or terminated in compliance with the insurance laws of this state; and (4) the cancellation or termination of a contractual liability policy shall not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premium has been received by the insurer.

Section 6 would enact a new section to provide that guaranteed asset protection waivers shall disclose in writing and in clear, understandable language the items set forth in this section.

Section 7 would enact a new section to provide for cancellation of guaranteed asset protection waiver agreements and refunds.

Section 8 would enact a new section to provide that specific provisions of the act are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

Section 9 would enact a new section to provide that the Attorney General may issue cease and desist orders and impose penalties of not more than five hundred dollars per violation and no more than ten thousand dollars in the aggregate for all violations of similar nature.

Section 10 would provide for severability.

Explanation of amendments:

The committee amendments would become the bill. They would make the following changes:

The committee amendments would provide that the Guaranteed Asset Protection Waiver Act would not apply to guaranteed asset protection waivers offered, sold, or provided to borrowers by a financial association. (Section 2 of the committee amendments.)

The committee amendments would replace the definition of "administrator" with "creditor's designee" (a person other than the creditor that performs administrative or operational functions pursuant to a guaranteed asset protection waiver program). The committee amendments would provide for a definition of "financial institution" and would eliminate a definition of "insurer." The committee amendments would amend the definition of "guaranteed asset protection waiver" to provide that it means a contractual agreement wherein 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 the motor vehicle "as determined by the insurer issuing the motor vehicle insurance policy subject to the terms of the waiver." (Section 3 of the bill as introduced and section 3 of the committee amendments.)

The committee amendments would strike provisions which would provide that a retail seller of motor vehicles shall, and a creditor, other than a retail seller, may, insure its guaranteed asset protection waiver obligations under a contractual liability insurance policy. The committee amendments would provide that guaranteed asset protection waivers offered, sold, or provided to buyers under the Guaranteed Asset Protection Waiver Act are not insurance and are exempt from the insurance laws of this state. The committee amendments would provide that persons marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers are exempt from this state's insurance licensing requirements. The committee amendments would provide that guaranteed asset protection waivers shall not be marketed as being insured under a contractual liability policy. (Section 4 of the bill as introduced and section 4 of the committee amendments.)

The committee amendments would provide that a guaranteed asset protection waiver shall disclose that it is not insurance, is not regulated by the Department of Insurance, and that it remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement. (Section 5 of the committee amendments.)

The committee amendments would provide that a creditor or the creditor's designee may offer a borrower a guaranteed asset protection waiver that does not provide for a refund if the creditor or the creditor's designee also offers the borrower a bona fide option to purchase a comparable waiver that provides for a refund. (Section 6 of the committee amendments.)

The committee amendments would insert and amend sections 45-335 and 45-336 of the Nebraska Installment Sales Act and sections 45-1002 and 45-1024 of the Nebraska Installment Loan Act to allow the charge for the guaranteed asset protection waiver to be included in the amount financed. (Sections 7 to 10 of the committee amendments.)

The committee amendments would strike provisions which would authorize the Attorney General to enforce the Guaranteed Asset Protection Waiver Act. (Sections 8 and 9 of the bill as introduced.)

The committee amendments would insert and amend section 60-1411.02 of the motor vehicle industry licensing statutes to authorize the Nebraska Motor Vehicle Industry Licensing Board to sanction violations of the Guaranteed Asset Protection Waiver Act. (Section 11 of the committee amendments.)

Rich Pahls, Chairperson