

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2440**

BY DELEGATES WESTFALL, WHITE, B., BOGGS, HARTMAN,

FRICH AND HAMRICK

[Introduced February 14, 2017; 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, scope and legislative intent of section; defining certain terms; specifying  
 4 requirements for offering guaranteed asset protection waivers; requiring contractual  
 5 liability or other insurance policies; providing for disclosures and cancellation; exempting  
 6 commercial transactions; excluding waivers from consumers sales and service tax;  
 7 specifying effective date of section and providing for section to apply to guaranteed asset  
 8 protection waivers issued on and after specified date.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §33-4-22, to read as follows:

**ARTICLE 4. GENERAL PROVISIONS.**

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

1 (a) Short title; scope. -- This section may be cited as the “Guaranteed Asset Protection  
 2 Waiver 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) Nonapplication. -- This section does not apply to:

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

7 (2) A debt cancellation or debt suspension contract being offered in compliance with 12  
 8 CFR, part 37, or 12 CFR part 721, or other federal law.

9 (d) Waivers not insurance.-- Notwithstanding any other provision of this chapter to the  
 10 contrary, guaranteed asset protection waivers governed by this section are not insurance and are  
 11 exempt from all other requirements of this chapter and any other insurance laws of this state,  
 12 except as provided in this section. Persons marketing, selling or offering to sell guaranteed asset  
 13 protection waivers to borrowers that comply with this section are exempt from insurance licensing

14 requirement in this chapter with regard to the marketing, selling or offering to sell guaranteed  
15 asset protection waivers.

16 (e) *Legislative intent.* -- The Legislature finds that guaranteed asset protection waivers are  
17 not insurance and are not subject to the provisions of this chapter, other than as provided in this  
18 section. It is further the findings and intent of the Legislature that all guaranteed asset protection  
19 waivers issued prior to and after the effective date of this section are not insurance and may not  
20 be construed as insurance by any person or by any court.

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

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

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

26 (3) "Creditor" means:

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

28 (B) The lessor in a lease transaction;

29 (C) A retail dealer of motor vehicles licensed under article six, chapter seventeen-a of this  
30 code, that provides credit to buyers as part of a retail sale, provided the dealer complies with the  
31 requirements of this section;

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

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

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

36 (5) "Free look period" means the period of time of a minimum of thirty days from the  
37 effective date of the GAP waiver until the date the borrower may cancel the contract without  
38 penalty, fees or costs to the borrower.

39 (6) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement

40 that is part of or a separate addendum to the finance agreement in which a creditor agrees for a  
41 separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement  
42 if there is a total physical damage loss or unrecovered theft of a motor vehicle.

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

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

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

51 (g) Requirements for offering guaranteed asset protection waivers. -- Guaranteed asset  
52 protection waivers shall comply with the following requirements and conditions:

53 (1) GAP waivers may be offered, sold or provided to borrowers in this state in compliance  
54 with this section.

55 (2) GAP waivers may, at the option of the creditor, be sold for a single payment or may be  
56 offered with a monthly or periodic payment option.

57 (3) GAP waivers shall include a free look period.

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

61 (5) A retail dealer of motor vehicles shall insure its GAP waiver obligations under a  
62 contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail  
63 dealer of motor vehicles, may insure its GAP waiver obligations under a contractual liability policy  
64 or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor,  
65 a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor's or

66 retail dealer's obligations: *Provided*, That retail dealers of motor vehicles that are lessors of motor  
67 vehicles are not required to insure obligations related to GAP waivers on leased vehicles.

68 (6) The GAP waiver remains a part of the finance agreement upon the assignment, sale,  
69 or transfer of the finance agreement by the creditor.

70 (7) The extension of credit, the terms of credit or the terms of the related motor vehicle  
71 sale or lease may not be conditioned upon the purchase of a GAP waiver.

72 (8) A creditor that offers a GAP waiver shall report the sale of and forward funds received  
73 on all GAP waivers to the designated party, if any, as prescribed in any applicable administrative  
74 services agreement, contractual liability policy, other insurance policy or other specified program  
75 document.

76 (9) Funds received or held by a creditor or administrator and belonging to an insurer,  
77 creditor or administrator, pursuant to the terms of a written agreement must be held by the creditor  
78 or administrator in a fiduciary capacity.

79 (10) The sale of guaranteed asset protection waiver contracts is the sale of an intangible  
80 and the gross proceeds from sale of the contract are not subject to the consumer's sales and  
81 service tax imposed in article fifteen, chapter eleven of this code.

82 (h) *Contractual liability or other insurance policies.* --

83 (1) Contractual liability or other insurance policies insuring GAP waivers shall state the  
84 obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally  
85 obligated to waive under the GAP waivers issued by the creditor and purchased or held by the  
86 borrower.

87 (2) Coverage under a contractual liability or other insurance policy insuring a GAP waiver  
88 shall also cover any subsequent assignee upon the assignment, sale or transfer of the finance  
89 agreement.

90 (3) Coverage under a contractual liability or other insurance policy insuring a GAP waiver  
91 shall remain in effect unless canceled or terminated in compliance with applicable insurance laws

92 of this state.

93 (4) The cancellation or termination of a contractual liability or other insurance policy may  
94 not reduce the insurer's responsibility for GAP waivers issued by the creditor prior to the date of  
95 cancellation or termination and for which premiums have been received by the insurer.

96 (i) Disclosures. --

97 Guaranteed asset protection waivers shall disclose, as applicable, in writing and in clear,  
98 understandable language, the following:

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

101 (B) The purchase price and the terms of the GAP waiver, including without limitation, the  
102 requirements for protection, conditions or exclusions associated with the GAP waiver;

103 (C) That the borrower may cancel the GAP waiver within a free look period as specified in  
104 the waiver, and is entitled to a full refund of the purchase price, so long as no benefits have been  
105 provided under the waiver; or if benefits have been provided, the borrower may receive a full or  
106 partial refund pursuant to the terms of the GAP waiver.

107 (D) The procedure the borrower shall follow, if any, to obtain GAP waiver benefits under  
108 the terms and conditions of the waiver, including a telephone number and address where the  
109 borrower may apply for waiver benefits;

110 (E) Whether the GAP waiver may be canceled after the free look period and the conditions  
111 under which it may be canceled or terminated, including the procedures for requesting any refund  
112 due;

113 (F) That in order to receive any refund due if a borrower cancels the GAP waiver  
114 agreement or early termination of the finance agreement after the free look period of the GAP  
115 waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to  
116 cancel to the creditor, administrator or other party as specified in the GAP waiver. If a borrower is  
117 canceled the GAP waiver due to early termination of the finance agreement, the borrower shall

118 provide a written request to the creditor, administrator or other party within ninety days of the  
119 occurrence of the event terminating the finance agreement.

120 (G) The methodology for calculating any refund of the unearned purchase price of the  
121 GAP waiver due if there is cancellation of the GAP waiver or early termination of the finance  
122 agreement; and

123 (H) That neither the extension of credit, the terms of the credit, nor the terms of the related  
124 motor vehicle sale or lease, may be conditioned upon the purchase of the GAP waiver.

125 (i) Cancellation. --

126 (1) Guaranteed asset protection waiver agreements may be cancellable or noncancellable  
127 after the free look period. GAP waivers shall provide that if a borrower cancels a GAP waiver  
128 within the free look period, so long as no benefits have been provided, the borrower is entitled to  
129 a full refund of the purchase price. If benefits have been provided, the borrower may receive a  
130 full or partial refund pursuant to the terms of the GAP waiver.

131 (2) If the borrower cancels the GAP waiver or terminates the finance agreement early but  
132 after the agreement has been in effect beyond the free look period, the borrower may receive a  
133 refund of any unearned portion of the purchase price of the GAP waiver unless the GAP waiver  
134 provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable  
135 terms of the waiver, shall provide a written request to the creditor, administrator or other party. If  
136 the borrower is canceling the GAP waiver due to the early termination of the finance agreement,  
137 the borrower shall provide a written request within ninety days of the event terminating the finance  
138 agreement.

139 (3) If the cancellation of a GAP waiver occurs as a result of a default under the finance  
140 agreement, or the repossession of the motor vehicle associated with the finance agreement, or  
141 any other termination of the finance agreement, any refund due may be paid directly to the creditor  
142 or administrator and applied as set forth in subdivision (4) of this subsection (i).

143 (4) A cancellation or termination refund under subdivision (1), (2) or (3) of this subsection

144 (i) may be applied by the creditor as a reduction of the amount owed under the finance agreement,  
145 unless the borrower can show that the finance agreement has been paid in full.

146 (k) *Commercial transaction exempted.* -- Subsections (g) and (i) of this section do not  
147 apply to a guaranteed asset protection waiver offered in connection with a lease or retail  
148 installment sale associated with a commercial transaction.

149 (l) *Effective date.* -- This section shall take effect July 1, 2017, and apply to all guaranteed  
150 asset protection waivers which become effective on or after January 1, 2018.

NOTE: The purpose of this bill is to specify requirements for offering guaranteed asset protection waivers. The bill requires contractual liability or other insurance policies; provides for disclosures and cancellation; exempts commercial transactions; excludes waivers from consumers sales and service tax; and species effective date of section. The bill also provides that this section applies to guaranteed asset protection waivers issued on and after the effective date of this section.

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