

January 17, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 26.1-57 of the North Dakota Century Code, relating to the regulation of guaranteed asset protection waivers; to provide a penalty; and to provide for application.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 26.1-57 of the North Dakota Century Code is created and enacted as follows:

**26.1-57-01. Definitions.**

As used in this chapter:

1. "Administrator" means a person, other than an insurer or creditor, which performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.
2. "Borrower" means a debtor, retail buyer, or lessee, under a finance agreement.
3. "Creditor" means the lender in a loan or credit transaction; the lessor in a lease transaction; a dealer that provides credit to a motor vehicle retail buyer; the seller in a commercial retail installment transaction; or an assignee of any of the these persons.
4. "Dealer" has the same meaning as provided under section 39-01-01.
5. "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.
6. "Free-look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time may not be shorter than thirty days.
7. "Guaranteed asset protection waiver" means a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement if there is a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.
8. "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

9. "Motor vehicle" has the same meaning as provided under section 39-01-01, except the term includes a snowmobile and a trailer for a snowmobile, motorcycle, boat, camper, or personal watercraft.

**26.1-57-02. Scope.**

1. This chapter does not apply to:
  - a. An insurance policy offered by an insurer under the insurance laws of this state;
  - b. A debt cancellation or debt suspension contract offered in compliance with title 12, Code of Federal Regulations, part 37 or title 12, Code of Federal Regulations, part 721, or other federal law; or
  - c. A debt cancellation or debt suspension contract offered by a bank or credit union chartered under the laws of this state.
2. Guaranteed asset protection waivers are not insurance and, except as provided under this chapter, are exempt from the insurance laws of this state. A person marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers which complies with this chapter is exempt from the insurance requirements of this state.

**26.1-57-03. Requirements for offering guaranteed asset protection waivers.**

1. A guaranteed asset protection waiver may be offered, sold, or provided to a borrower in this state in compliance with this chapter.
2. A guaranteed asset protection waiver may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.
3. Notwithstanding any contrary provision of law, any cost to the borrower for a guaranteed asset protection waiver entered in compliance with the federal Truth in Lending Act [15 U.S.C. 1601 et seq.], and related implementing regulations, must be separately stated and is not a finance charge or interest.
4. A dealer shall insure the dealer's guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a dealer, may insure the creditor's guaranteed asset protection waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be obtained directly by a creditor or dealer, or may be procured by an administrator, to cover a creditor's or dealer's obligations. However, a dealer that is a lessor on a motor vehicle is not required to insure obligations related to guaranteed asset protection waivers on that leased vehicle.
5. The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of that finance agreement by the creditor.

6. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.
7. A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.
8. Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, must be held by the creditor or administrator in a fiduciary capacity.

**26.1-57-04. Contractual liability or other insurance policies.**

1. Contractual liability or other insurance policies insuring guaranteed asset protection waivers must 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 or other insurance policy insuring a guaranteed asset protection waiver also must cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.
3. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.
4. The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor before the date of cancellation or termination and for which premium has been received by the insurer.

**26.1-57-05. Disclosures.**

A guaranteed asset protection waiver must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

1. Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.
2. The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor.
3. The purchase price and the terms of the guaranteed asset protection waiver, including the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.
4. The borrower may cancel the guaranteed asset protection waiver within a free-look period as specified in the waiver, and is entitled to a full refund of the purchase price, if no benefits have been provided.

5. The procedure the borrower shall follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address at which the borrower may apply for waiver benefits.
6. The procedure for canceling the guaranteed asset protection waiver and for requesting any refund due.
7. To receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free-look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or such other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
8. The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due, in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement.

#### **26.1-57-06. Cancellation.**

1. A guaranteed asset protection waiver agreement is cancellable. A guaranteed asset protection waiver must provide if a borrower cancels a waiver within the free-look period, the borrower is entitled to a full refund of the purchase price, if benefits have not been provided. If a borrower cancels the waiver after the free-look period and no benefits have been provided, the creditor, administrator, or other authorized party shall provide the borrower a refund of the purchase price, calculated in a manner at least as favorable as using the sum-of-the-digits method, less any cancellation fee no greater than fifty dollars.
2. To receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
3. If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection 4.
4. Any cancellation refund under subsection 1, 2, or 3 may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

### **26.1-57-07. Commercial transactions exempted.**

Subsection 3 of section 26.1-57-03, section 26.1-57-05, and section 26.1-57-06, are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

### **26.1-57-08. Enforcement - Penalty.**

1. The commissioner may take action as necessary or appropriate to enforce this chapter and to protect guaranteed asset protection waiver holders in this state.
2. After proper notice and opportunity for hearing, the commissioner may:
  - a. Order the creditor, administrator, or any other person not in compliance with this chapter to cease and desist from further guaranteed asset protection waiver-related operations that are in violation of this chapter.
  - b. Impose a penalty of not more than five hundred dollars per violation and no more than ten thousand dollars in the aggregate for all violations of a similar nature. For purposes of this chapter, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct or practice determined to be a violation of the chapter occurred.
  - c. Order the creditor, administrator, or any other person not in compliance with this chapter to pay restitution of the guaranteed asset protection waiver purchase price.

**SECTION 2. APPLICATION.** This Act applies to all guaranteed asset protection waivers that become effective on or after the effective date of this Act."

Renumber accordingly