Article 46.

Guaranteed Asset Protection Waivers.

§ 66-440. Definitions.

The following definitions apply in this Article:

(1) Administrator. – A person that performs administrative or operational functions with respect to guaranteed asset protection waivers.

(2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance agreement.

(3) Creditor. – Any of the following:

a. A lender in a loan or credit transaction.

b. A lessor in a lease transaction.

c. A vehicle dealer, including a motor vehicle dealer as that term is defined in G.S. 20-286(11), that provides credit to or arranges financing for a purchaser of a vehicle.

d. A seller in a commercial retail installment transaction.

e. An assignee of any of the foregoing to whom the credit obligation is payable.

(4) Free-look period. – The period of time from the effective date of a guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.

(5) Guaranteed asset protection waiver. – Either of the following:

a. A contractual agreement in which a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts due on a borrower's vehicle finance agreement in the event of a total physical damage loss or unrecovered theft of the vehicle, which agreement shall be part of, or a separate addendum to, the vehicle finance agreement. The agreement may also provide, with or without a separate charge, a benefit that waives an amount or provides a borrower with a credit towards the purchase of a replacement vehicle.

b. A contractual agreement in which a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts that may become due under a borrower's lease agreement as a result of excessive wear and use of a vehicle. The agreement must be part of, or a separate addendum to, the lease agreement. Excess wear and use waivers may also cancel or waive amounts due for excess mileage.

The term does not include a vehicle value protection agreement as defined in G.S. 66-471(10).

(6) Insurer. – An insurance company licensed, registered, or otherwise authorized to do business under Chapter 58 of the General Statutes.

(7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as well as self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and trailers for motorcycles, boats, campers, and personal watercraft.

(8) Vehicle finance agreement. – A loan, lease, or retail installment sales contract for the purchase or lease of a vehicle. (2013-193, s. 1; 2021-172, s. 1.)

§ 66-441. Scope of Article.

(a) Complete Exemptions. – This Article shall not apply to any of the following:

(1) An insurance policy offered by an insurer under Chapter 58 of the General Statutes, except as provided in G.S. 66-443.

(2) A debt cancellation or debt suspension contract being offered pursuant to 12 C.F.R. Part 37, 12 C.F.R. Part 721, or any other federal law.

(b) Partial Exemption for Commercial Transactions. – G.S. 66-444, 66-446(c), and 66-447 are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction. (2013-193, s. 1.)

§ 66-442. Guaranteed asset protection waivers not subject to insurance laws.

Guaranteed asset protection waivers are not insurance and are exempt from the provisions of Chapter 58 of the General Statutes, as are persons administering, marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers. (2013-193, s. 1.)

§ 66-443. Insurance of guaranteed asset protection waivers.

(a) Insurance for Creditors. – Creditors may insure guaranteed asset protection waiver obligations under a contractual liability policy or other similar policy issued by an insurer but shall not be required to do so.

(b) Required Terms. – Contractual liability or other insurance policies insuring guaranteed asset protection waivers shall include terms that do all of the following:

(1) Obligate the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(2) Provide that the policy covers any subsequent assignee upon the assignment, sale, or transfer of the vehicle finance agreement.

(3) Provide that the policy remains in effect unless cancelled or terminated in compliance with applicable insurance laws of this State.

(4) Provide that the cancellation or termination of 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 premiums have been received by the insurer.

(c) Administrators May Procure Insurance. – An insurance policy obtained pursuant to this section may be directly obtained by a creditor or may be procured by an administrator to cover the creditor's obligations. (2013-193, s. 1.)

§ 66-444. Mandatory terms.

A guaranteed asset protection waiver shall include all of the following written terms in clear, easily understandable language:

(1) 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.

(2) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.

(3) The length of the free-look period, which shall be at least 30 days, and the procedure by which a borrower may exercise the borrower's rights during that period.
(4) The terms required by G.S. 66-445.
(5) 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 vehicle finance agreement.
(6) The procedure the borrower must follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.
(7) A statement that neither the extension of credit, the terms of the credit, nor the terms of the related vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver. (2013-193, s. 1.)

§ 66-445. Cancellation.

(a) Cancellation During Free-Look Period. – A guaranteed asset protection waiver shall include a term stating that if a borrower cancels the waiver within the free-look period, the borrower will be entitled to a full refund so long as no benefits have been provided under the guaranteed asset protection waiver.

(b) Cancellation After the Free-Look Period. – A guaranteed asset protection waiver may be either cancellable or noncancellable after the free-look period. A guaranteed asset protection waiver shall include the following terms regarding cancellation after the free-look period:

(1) A statement of whether or not the guaranteed asset protection waiver is cancellable or noncancellable after the expiration of the free-look period.
(2) If the waiver is cancellable, all of the following terms:
a. A statement that in the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise.
b. The procedures by which a borrower may cancel the waiver. This term shall include a requirement that in the event the underlying vehicle finance agreement is terminated, cancellation shall be made by providing a written request to the creditor, administrator, or other party within 90 days of the event terminating the vehicle finance agreement.

(c) Cancellation in the Event of Default. – Any cancellation refund under subsections (a) and (b) of this section may be applied by the creditor as a reduction of the amount owed under the vehicle finance agreement unless the borrower can show that the vehicle finance agreement has been paid in full. A guaranteed asset protection waiver shall include a term stating that notwithstanding subsections (a) and (b) of this section, if cancellation of the waiver occurs as a result of a default under the vehicle finance agreement or the repossession of the vehicle associated with the vehicle finance agreement or any other termination of the vehicle finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in this subsection. (2013-193, s. 1.)

§ 66-446. Miscellaneous provisions.

(a) Article Controls. – The offering and sale of guaranteed asset protection waivers in this State shall be subject to the provisions of this Article.

(b) Manner of Payment. – Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(c) Compliance With Truth in Lending Act. – Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act (15 U.S.C. § 1601, et seq.) and its implementing regulations, as they may be amended from time to time, shall be separately stated and is not to be considered a finance charge or interest. The cost of a guaranteed asset protection waiver sold in compliance with this Article shall be considered an authorized charge that may be financed under Chapter 25A of the General Statutes and shall not be considered a part of the finance charge or interest thereunder.

(d) Preservation Upon Transfer. – A guaranteed asset protection waiver shall remain a part of the vehicle finance agreement upon its assignment, sale, or transfer by a creditor.

(e) Cannot Be Required. – Neither the extension of credit, the term of credit, nor the term of a related vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(f) Forwarding of Proceeds. – 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.

(g) Fiduciary Duty. – 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, shall be held by the creditor or administrator in a fiduciary capacity. (2013-193, s. 1; 2021-172, s. 2.)

§ 66-447. Enforcement.

The Attorney General may take action which is necessary or appropriate to enforce the provisions of this Article and to protect guaranteed asset protection waiver holders in this State. After proper notice and opportunity for hearing, the Attorney General may:

(1) Order a creditor, administrator, or any other person not in compliance with this Article to cease and desist from further guaranteed asset protection waiver-related operations which are in violation of this Article.

(2) Impose a penalty of not more than five hundred dollars ($500.00) per violation and no more than ten thousand dollars ($10,000) in the aggregate for all violations of a similar nature. For purposes of this Article, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct or practice that is determined to be a violation of the Article occurred. (2013-193, s. 1.)

§ 66-448. Severability.

If any provision of this Article or the application of the provision to any person or circumstances is held invalid, the remainder of the Article and the application of the provision to persons or circumstances other than those as to which it is held invalid shall not be affected. (2013-193, s. 1.)