

1 SB48
2 214963-4
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 11-JAN-22

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the credit financing of the sale or
12 lease of motor vehicles; to amend Section 8-37-2 of the Code
13 of Alabama 1975; to further define a guaranteed asset
14 protection waiver or GAP waiver to include excess wear and use
15 waivers in consumer lease agreements; and to add Chapter 37A
16 to Title 8 of the Code of Alabama 1975, to authorize providers
17 to sell motor vehicle value protection agreements to reduce
18 motor vehicle credit financing agreement deficiency balances
19 under certain conditions.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 8-37-2 of the Code of Alabama
22 1975, is amended to read as follows:

23 "§8-37-2.

24 "For the purposes of this chapter, the following
25 words have the following meanings:

26 "(1) ADMINISTRATOR. A person, other than an insurer
27 or creditor, that performs administrative or operational

1 functions pursuant to guaranteed asset protection waiver
2 programs.

3 "(2) BORROWER. A debtor, retail buyer or lessee,
4 under a finance agreement.

5 "(3) CREDITOR means any of the following:

6 "a. The lender in a loan or credit transaction.

7 "b. The lessor in a lease transaction.

8 "c. Any retail seller of motor vehicles in a retail
9 installment transaction.

10 "d. The seller in commercial retail installment
11 transactions.

12 "e. The assignees of any of the foregoing to whom
13 the credit or lease obligation is payable.

14 "(4) FINANCE AGREEMENT. A loan, lease, or retail
15 installment sales contract for the purchase or lease of a
16 motor vehicle.

17 "(5) FREE LOOK PERIOD. The period of time from the
18 effective date of the GAP waiver until the date the borrower
19 may cancel the GAP waiver without penalty, fees, or costs to
20 the borrower. This period of time shall not be shorter than 30
21 days.

22 "(6) GUARANTEED ASSET PROTECTION WAIVER or GAP
23 WAIVER. A contractual agreement in which a creditor agrees
24 for, with or without a separate charge, to cancel or waive all
25 or part of amounts due on a borrower's finance agreement in
26 the event of a total physical damage loss or unrecovered theft
27 of the motor vehicle, which agreement shall be part of, or a

1 separate addendum to, the finance agreement. A GAP waiver may
2 also provide, with or without a separate charge, a benefit
3 that waives an amount or provides a borrower with a credit
4 towards the purchase of a replacement motor vehicle. The term
5 also includes an excess wear and use waiver contractual
6 agreement in which a creditor agrees, with or without a
7 separate charge, to cancel or waive all or part of amounts
8 that may become due under a motor vehicle lease agreement of a
9 borrower as a result of excessive wear and use of a leased
10 motor vehicle, including excess mileage, which agreement shall
11 be part of, or a separate addendum to, the lease agreement.

12 "(7) INSURER. An insurance company licensed,
13 registered, or otherwise authorized to do business under the
14 insurance laws of this state.

15 "(8) MOTOR VEHICLE. Self-propelled or towed vehicles
16 designed for personal or commercial use, including, but not
17 limited to, automobiles, trucks, motorcycles, recreational
18 vehicles, all terrain vehicles, snowmobiles, campers, boats,
19 personal watercraft, and motorcycle, and boat, camper, and
20 personal watercraft trailers.

21 "(9) PERSON. An individual, company, association,
22 organization, partnership, business trust, corporation, and
23 every form of legal entity."

24 Section 2. Chapter 37A is added to Title 8 of the
25 Code of Alabama 1975, to read as follows:

26 Chapter 37A

27 §8-37A-1.

1 (a) The purpose of this chapter is to define motor
2 vehicle value protection agreements and to authorize the
3 agreements to be offered within this state.

4 (b) This chapter does not apply to either of the
5 following:

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

8 (2) A debt cancellation or debt suspension contract
9 being offered by a federally regulated financial institution
10 operating under 12 C.F.R. Part 37 or a credit union operating
11 under 12 C.F.R. Part 721 or other federal law; or a debt
12 cancellation or debt suspension contract being offered by a
13 state chartered bank or credit union.

14 (c) Except as provided in this chapter, motor
15 vehicle value protection agreements governed under this
16 chapter are not insurance and are exempt from the insurance
17 laws of this state. Persons marketing, selling, or offering to
18 sell motor vehicle value protection agreements to borrowers
19 that comply with this chapter are exempt from insurance
20 licensing and insurance regulation requirements of this state.

21 (d) This chapter applies only to motor vehicle
22 protection agreements for financing of motor vehicles as
23 defined in this chapter. This chapter does not affect the
24 validity or enforcement of other asset protection waivers,
25 debt cancellation contracts, or debt suspension agreements.

26 §8-37A-2. Definitions.

1 For the purposes of this chapter, the following
2 words shall have the following meanings:

3 (1) ADMINISTRATOR. The person who may be responsible
4 for the administrative or operational function of motor
5 vehicle value protection agreements including, but not limited
6 to, the adjudication of claims or benefit requests by contract
7 holders.

8 (2) CONTRACT HOLDER. A person who is the purchaser
9 or holder of a motor vehicle value protection agreement.

10 (3) FREE LOOK PERIOD. The period of time not less
11 than 30 days from the effective date of a motor vehicle value
12 protection agreement until the date the borrower may cancel
13 the agreement without penalty, fees, or costs to the borrower.

14 (4) MOTOR VEHICLE VALUE PROTECTION AGREEMENT. A
15 contractual agreement that provides a benefit towards either
16 the reduction of all or part of the contract holder's current
17 finance agreement deficiency balance, or towards the purchase
18 or lease of a replacement motor vehicle or motor vehicle
19 services, based on the occurrence of an adverse event to the
20 motor vehicle including, but not limited to, loss, theft,
21 damage, obsolescence, diminished value, or depreciation. A
22 motor vehicle value protection agreement does not include a
23 GAP waiver, as defined in Chapter 37 of this title, but may
24 include similar agreements including, but not limited to,
25 trade-in-credit agreements, diminished value agreements, or
26 depreciation benefit agreements.

1 (5) PROVIDER. A person that is obligated to provide
2 a benefit under a motor vehicle value protection agreement.

3 §8-37A-3.

4 (a) A motor vehicle value protection agreement may
5 be offered, sold, or provided to a borrower or lessor under
6 this chapter.

7 (b) A provider may use an administrator or other
8 designee to be responsible for all or part of the
9 administration of motor vehicle value protection agreements in
10 compliance with this chapter. A provider may act as an
11 administrator or retain the services of a third-party
12 administrator.

13 (c) A motor vehicle value protection agreement shall
14 not be sold unless the contract holder is provided a copy of
15 the agreement.

16 §8-37A-4.

17 In order to assure the faithful performance of the
18 obligations of a provider to its contract holders, the
19 provider shall comply with one of the following:

20 (1) a. Insure all of its motor vehicle value
21 protection agreements under an insurance policy issued by an
22 insurer licensed, registered, or otherwise authorized to do
23 business in this state at the time the policy is filed with
24 the Commissioner of Insurance and continuously thereafter,
25 that meets one of the following criteria:

26 1. Has a surplus as to policyholders and paid-in
27 capital of at least fifteen million dollars (\$15,000,000).

1 2. Has a surplus as to policyholders and paid-in
2 capital of not less than ten million dollars (\$10,000,000),
3 and evidence to the satisfaction of the commissioner that the
4 company maintains a ratio of net written premiums, wherever
5 written, to surplus as to policyholders and paid-in capital of
6 not greater than three to one.

7 b. In addition, the insurer shall annually file with
8 the commissioner copies of the insurer's audited financial
9 statements, its NAIC Annual Statement, and the actuarial
10 certification required by and filed in the insurer's state of
11 domicile.

12 (2) a. Maintain a funded reserve account for its
13 obligations under its contracts issued and outstanding in this
14 state. The reserves shall not be less than 40 percent of gross
15 consideration received, less claims paid, on the sale of the
16 motor vehicle value protection agreement for all in-force
17 contracts. The reserve account shall be subject to examination
18 and review by the Superintendent of Banks; and

19 b. Place in trust with the superintendent a
20 financial security deposit, having a value of not less than
21 five percent of the gross consideration received, less claims
22 paid, on the sale of the motor vehicle value protection
23 agreements for all agreements issued and in force, but not
24 less than twenty-five thousand dollars (\$25,000) consisting of
25 one of the following:

26 1. A surety bond issued by an authorized surety.

1 2. Securities of the type eligible for deposit by
2 authorized insurers in this state.

3 3. Cash.

4 4. A letter of credit issued by a qualified
5 financial institution.

6 5. Another form of security prescribed by
7 regulations issued by the superintendent.

8 (3) a. Maintain, or together with its parent company
9 maintain, a net worth or stockholders' equity of one hundred
10 million dollars (\$100,000,000); and

11 b. Upon request, provide the Superintendent of Banks
12 with a copy of the provider's or the provider's parent
13 company's most recent Form 10-K or Form 20-F filed with the
14 Securities and Exchange Commission (SEC) within the last
15 calendar year, or if the company does not file with the SEC, a
16 copy of the company's audited financial statements, which
17 shows a net worth of the provider or its parent company of at
18 least one hundred million dollars (\$100,000,000). If the
19 provider's parent company's Form 10-K, Form 20-F, or financial
20 statements are filed to meet the provider's financial security
21 requirement, then the parent company shall agree to guarantee
22 the obligations of the provider relating to motor vehicle
23 value protection agreements sold by the provider in this
24 state.

25 §8-37A-5.

1 (a) A motor vehicle value protection agreement shall
2 disclose in writing and in clear, understandable language that
3 is easy to read all of the following:

4 (1) The name and address of the provider, contract
5 holder, and administrator, if any.

6 (2) The terms of the agreement including, without
7 limitation, the purchase price to be paid by the contract
8 holder, if any, and the requirements for eligibility,
9 conditions of coverage, or exclusions.

10 (3) A provision that the agreement may be cancelled
11 by the contract holder within a free look period as specified
12 in the agreement, and that in the event the contract holder
13 will be entitled to a full refund of the purchase price paid
14 by the contract holder, if any, so long as no benefits have
15 been provided.

16 (4) The procedure the contract holder must follow,
17 if any, to obtain a benefit under the terms and conditions of
18 the agreement including, if applicable, a telephone number or
19 website and address where the contract holder may apply for a
20 benefit.

21 (5) A provision indicating whether or not the
22 agreement is cancellable after the free look period and the
23 conditions under which it may be cancelled, including the
24 procedures for requesting any refund of the unearned purchase
25 price paid by the contract holder.

1 (6) In the event of cancellation, the methodology
2 for calculating any refund of the unearned purchase price of
3 the agreement due.

4 (7) A provision specifying that neither the
5 extension of credit, the terms of the credit, nor the terms of
6 the related motor vehicle sale or lease, may be conditioned
7 upon the purchase of the agreement.

8 (8) The terms, restrictions, or conditions governing
9 cancellation of the agreement prior to the termination or
10 expiration date of the agreement by either the provider or the
11 contract holder. The provider shall mail a written notice to
12 the contract holder at the last known address of the contract
13 holder contained in the records of the provider at least five
14 days prior to cancellation by the provider. Prior notice is
15 not required if the reason for cancellation is nonpayment of
16 the provider fee, a material misrepresentation by the contract
17 holder to the provider or administrator, or a substantial
18 breach of duties by the contract holder relating to the
19 covered product or its use. The notice shall state the
20 effective date of the cancellation and the reason for the
21 cancellation. If an agreement is cancelled by the provider for
22 a reason other than nonpayment of the provider fee, the
23 provider shall refund to the contract holder all of the
24 unearned pro rata provider fee paid by the contract holder, if
25 any. If coverage under the agreement continues after a claim,
26 any refund may deduct claims paid and a reasonable
27 administrative fee not to exceed seventy-five dollars (\$75).

1 (b) This section shall not apply to commercial
2 transactions.

3 §8-37A-6.

4 (a) The Superintendent of Banks may take action
5 which is necessary or appropriate to enforce this chapter and
6 to protect motor vehicle value protection contract holders in
7 this state. After notice and a hearing, the superintendent may
8 do both of the following:

9 (1) Order the provider, administrator, or any other
10 person not in compliance with this chapter to cease and desist
11 from further actions related to motor vehicle value protection
12 agreements which are in violation of this chapter.

13 (2) Impose a penalty of not more than five hundred
14 dollars (\$500) per violation and no more than ten thousand
15 dollars (\$10,000) in the aggregate for all violations of
16 similar nature. For purposes of this chapter, a violation
17 shall be considered to be of a similar nature if the violation
18 consists of the same or similar course of conduct, action, or
19 practice, irrespective of the number of times the action,
20 conduct, or practice which is determined to be a violation of
21 the chapter occurred.

22 (b) This section shall not apply to motor vehicle
23 value protection agreements offered in connection with a
24 commercial transaction.

25 Section 3. This act shall become effective January
26 1, 2023, following its passage and approval by the Governor,
27 or its otherwise becoming law.

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Senate

Read for the first time and referred to
the Senate committee on Judiciary..... 11-JAN-22

Read for the second time and placed on
the calendar..... 18-JAN-22

Read for the third time and passed as
amended 01-FEB-22

Yeas 32
Nays 0

Patrick Harris,
Secretary.