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An Act To Amend the Usage and Consumer Protections of Guaranteed Asset Protection Waivers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 229 is enacted to read:

CHAPTER 229

GUARANTEED ASSET PROTECTION WAIVERS

§ 1500-H. Guaranteed asset protection waivers

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administrator" means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to a waiver program.

B. "Borrower" means a debtor or retail buyer under a finance agreement.

C. "Creditor" means:

(1) The lender in a loan or credit transaction;

(2) A person engaged as a retail seller of motor vehicles that provides credit to consumers, as defined in Title 9-A, section 1-301, subsection 10, of the motor vehicles, as long as that person complies with the provisions of this section;

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

(4) The assignee of any of the persons in subparagraphs (1) to (4) to which the credit obligation is payable.

D. "Finance agreement" means a loan or retail installment sales contract for the purchase of a motor vehicle.

E. "Free-look period" means the period of time, not less than 30 days, from the effective date of the waiver until the date the borrower may cancel the waiver contract without penalty, fees or costs to the borrower.

F. "Guaranteed asset protection waiver" or "waiver" means a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of the amount due on a borrower's finance agreement for a motor vehicle in the event of a total physical damage loss or unrecovered theft of the motor vehicle. The waiver must be part of or a separate addendum to the finance agreement.

G. "Insurer" has the same meaning as in Title 24-A, section 4.

H. "Motor vehicle" means a self-propelled vehicle not operated exclusively on railroad tracks; a motorcycle as defined in Title 29-A, section 101, subsection 38; a motor home as defined in Title 29-A, section 101, subsection 40; an all-terrain vehicle as defined in Title 12, section 13001, subsection 3; a snowmobile as defined in Title 12, section 13001, subsection 25; a motorboat as defined in Title 12, section 13001, subsection 16; a personal watercraft as defined in Title 12, section 13001, subsection 23; or a trailer as defined in Title 29-A, section 101, subsection 86. "Motor vehicle" includes vehicles whether self-propelled or towed.

I. "Person" includes an individual, company, association, organization, partnership, business trust, corporation and every form of legal entity.

J. "Superintendent" means the Superintendent of Consumer Credit Protection.

2. Requirements for offering waivers. The following provisions apply to offering waivers.

A. A waiver may be offered, sold or provided to a borrower in this State in compliance with this chapter.

B. A 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.

C. Notwithstanding any other provision of law, any cost to the borrower for a waiver entered into in compliance with the federal Truth in Lending Act, 15 United States Code, Section 1601 et seq. and its implementing regulations, as they may be amended from time to time, must be separately stated and may not be considered a finance charge or interest.

D. A retail seller must insure its waiver obligations under a contractual liability policy or other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its waiver obligations under a contractual liability policy or other insurance policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor or retail seller or may be procured by an administrator to cover a creditor's or retail seller's obligations.

E. A waiver remains a part of the finance agreement upon the assignment, sale or transfer of the finance agreement by the creditor.

F. The extension of credit, the term of credit and the term of the related motor vehicle sale may not be conditioned upon the purchase of a waiver.

G. A creditor that offers a waiver must report the sale of and forward funds received on such a waiver 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.

H. 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.

I. The borrower's primary motor vehicle insurance carrier or, if applicable, the 3rd-party liability carrier shall determine the existence of a total physical damage loss. If no primary motor vehicle insurance or 3rd-party liability insurance is present on the date of loss, then the existence of a total physical damage loss must be determined pursuant to the terms of the waiver.

3. Contractual liability policy or other insurance policies. The following provisions govern a contractual liability policy or other insurance policies insuring waivers.

A. A contractual liability policy or other insurance policy insuring 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 waivers issued by the creditor and purchased by the borrower or held by the borrower.

B. Coverage under a contractual liability or other insurance policy insuring a waiver must also cover any subsequent assignee upon the assignment, sale or transfer of the finance agreement.

C. Coverage under a contractual liability or other insurance policy insuring a waiver must remain in effect unless cancelled or terminated in compliance with applicable insurance laws of this State.

D. The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for waivers issued by the creditor prior to the date of cancellation or termination and for which premium has been received by the insurer.

4. Disclosures. A waiver must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

A. 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;

B. The purchase price and the terms of the waiver, including without limitation the requirements for protection, condition or exclusion associated with the waiver;

C. That the borrower may cancel the waiver within a free-look period as specified in the waiver and will be entitled to a full refund of the purchase price as long as no waiver benefits have been provided;

D. The procedure the borrower must follow, if any, to obtain waiver benefits under the terms and conditions of the waiver and a telephone number and address where the borrower may apply for waiver benefits;

E. Whether or not the waiver is cancellable after the free-look period, the conditions under which it may be cancelled or terminated and the procedures for requesting any refund due;

F. That, in order to receive any refund due in the event of a borrower's cancellation of the waiver agreement or early termination of the finance agreement, the borrower, in accordance with the terms of the waiver, must provide a written request to cancel to the creditor, administrator or other party as specified in the waiver. If a borrower is cancelling the waiver due to early termination of the finance agreement, the borrower must provide a written request to the creditor, administrator or other party within 90 days of the occurrence of the event terminating the finance agreement;

G. The methodology for calculating any refund due of the unearned portion of the purchase price of the waiver in the event of cancellation of the waiver or early termination of the finance agreement; and

H. That the extension of credit, the terms of credit and the terms of the related motor vehicle sale may not be conditioned upon purchase of the waiver.

5. Cancellation. The following provisions govern the cancellation of a waiver.

A. A waiver may be cancellable or noncancellable after the free-look period. A waiver must provide that if a borrower cancels the waiver within the free-look period, the borrower is entitled to a full refund of the purchase price as long as no benefits have been provided.

B. In the event of a borrower's cancellation of the waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free-look period, the borrower is entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator or other party. If the borrower is cancelling the waiver due to the early termination of the finance agreement, the borrower must provide a written request within 90 days of the event terminating the finance agreement.

C. If the cancellation of a 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 paragraph D.

D. Any refund under paragraph A, B or C may be applied by the creditor as a reduction of the amount owed under the finance agreement unless the borrower shows that the finance agreement has been paid in full.

6. Enforcement. The superintendent may require the filing of notification by an administrator pursuant to Title 9-A, section 6-202 and section 6-203, subsection 1. The superintendent may require the filing of waivers in use by an administrator. Upon request by the superintendent, an administrator shall annually file a record of waivers administered by the administrator.

The superintendent may take action that is necessary or appropriate to enforce the provisions of this chapter and to protect borrowers who hold waivers in this State. After notice and opportunity for hearing, the superintendent may:

A. Order the creditor, administrator or any other person not in compliance with this chapter to cease and desist from further waiver-related operations that are in violation of this chapter; and

B. Impose a penalty of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this paragraph, violations must be considered of a similar nature if the violations consist of the same or a similar course of conduct, action or practice, irrespective of the number of times the conduct, action or practice that is determined to be a violation of this chapter occurred.

7. Exemptions. The following exemptions apply.

A. This chapter does not apply to:

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

(2) A debt cancellation or debt suspension contract offered in compliance with 12 Code of Federal Regulations, Part 37 (2017) or 12 Code of Federal Regulations, Part 721 (2017) or other federal law.

B. Subsection 2, paragraph C and subsections 4 and 6 are not applicable to a waiver offered in connection with a retail installment sale associated with a commercial transaction.

C. Waivers governed under this chapter are not insurance and are exempt from the insurance laws of this State. A person is not required to obtain a license as a producer or insurer or in any other capacity be regulated under Title 24-A in order to market, administer, sell or offer to sell a waiver.

Sec. 2. Application. This Act applies to all guaranteed asset protection waivers that become effective on or after January 1, 2018.

SUMMARY

This bill specifies the rights and obligations of parties to a guaranteed asset protection waiver. A guaranteed asset protection waiver is a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of the amount due on a borrower's finance agreement for a motor vehicle in the event of a total physical damage loss or unrecovered theft of the motor vehicle.