

Amendment No. 460

Senate Amendment to Senate Bill No. 253 (BDR 57-795)

Proposed by: Senate Committee on Commerce, Labor and Energy

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/JRS



Date: 4/14/2015

S.B. No. 253—Enacts provisions governing the sale of guaranteed asset protection waivers. (BDR 57-795)



SENATE BILL NO. 253—SENATORS FARLEY;
HARDY AND SETTELMAYER

MARCH 12, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Enacts provisions governing the sale of guaranteed asset protection waivers. (BDR 57-795)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; providing that certain provisions governing insurance are not applicable to guaranteed asset protection waivers; providing for the sale of guaranteed asset protection waivers; prohibiting a creditor from conditioning certain terms of a finance agreement on the purchase of a guaranteed asset protection waiver; requiring the disclosure of certain information in a guaranteed asset protection waiver; setting forth certain requirements concerning the cancellation of a guaranteed asset protection waiver; requiring a retail dealer of vehicles who sells guaranteed asset protection waivers to purchase a policy of contractual liability insurance under certain circumstances; authorizing the Commissioner of Insurance to enforce provisions governing guaranteed asset protection waivers in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 10 of this bill defines the term “guaranteed asset protection waiver” as a contract pursuant to which a creditor, in exchange for separately stated consideration, agrees to waive part or all of the amount owed to the creditor pursuant to a finance agreement in the event of a total physical damage loss or unrecovered theft of the vehicle covered by the finance agreement. **Section 16** of this bill provides that the marketing, issuance, sale, offering for sale, making, proposing to make and administration of guaranteed asset protection waivers is not subject to title 57 of NRS governing insurance except for certain provisions of title 57 of NRS that give the Commissioner of Insurance the authority to regulate and conduct investigations and hearings on violations of law. (NRS 679B.020-679B.125, 679B.130, 679B.136, 679B.140, 679B.159-679B.180, 679B.187-679B.220, 679B.310-679B.370) **Section 16** also provides that provisions governing guaranteed asset protection waivers do not apply to a debt cancellation or debt suspension agreement regulated by certain federal laws, or to a policy of insurance. **Section 17** of this bill prohibits a creditor who sells or offers for sale guaranteed asset protection waivers from including certain words in the name of the business of the creditor that could indicate that the creditor is an insurer.

Section 18 of this bill authorizes a creditor to offer to sell or sell a guaranteed asset protection waiver to a borrower who owes or expects to owe money to the creditor pursuant to

a finance agreement. **Section 18** also provides that the cost to purchase a guaranteed asset protection waiver which meets the specified requirements must be separately stated as part of the amount financed and must not be considered a finance charge or interest, thereby expressly providing that such guaranteed asset protection waivers, specifically, must have their purchase price included as part of the amount financed. **Section 19** of this bill prohibits a creditor from requiring the purchase of a guaranteed asset protection waiver as a condition for the approval of credit, the terms of the credit or the terms of the sale or lease of a vehicle covered by the finance agreement. **Section 20** of this bill requires certain information to be disclosed in a certain manner in a guaranteed asset protection waiver. **Section 21** of this bill: (1) requires a guaranteed asset protection waiver to provide a free-look period in which a borrower may cancel a guaranteed asset protection waiver and receive a full refund; (2) requires a guaranteed asset protection waiver to allow cancellation after the free-look period; (3) requires a borrower to provide a written request for a refund after the cancellation of a guaranteed asset protection waiver outside of the free-look period in order to receive such a refund; and ~~(2)~~ **(4)** authorizes a creditor to apply any refund owed to the borrower because of the cancellation of a guaranteed asset protection waiver to the amount owed to the creditor pursuant to the finance agreement.

Section 22 of this bill requires a retail dealer of vehicles to purchase a policy of contractual liability insurance that insures the obligations of each guaranteed asset protection waiver that the dealer sells or offers for sale other than for a leased vehicle. **Section 23** of this bill requires a creditor to maintain certain records. **Section 24** of this bill requires a creditor to make records concerning guaranteed asset protection waivers available to the Commissioner to enable the Commissioner to enforce provisions governing guaranteed asset protection waivers. **Sections 15 and 25** of this bill authorize the Commissioner to issue a cease and desist order to or impose a civil penalty against a person who violates any provision governing guaranteed asset protection waivers, except where a guaranteed asset protection waiver is sold in connection with a lease or sale of a vehicle for commercial use or resale. **Section 15** also exempts guaranteed asset protection waivers sold in connection with such sales and leases from requirements to disclose certain information.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 57 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 25, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 14, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means a person who is responsible for administering a guaranteed asset protection waiver that is sold or offered for sale by a creditor.*

Sec. 4. *“Benefits” means a waiver, pursuant to a guaranteed asset protection waiver, of part or all of the amount due on a finance agreement after a total physical damage loss or unrecovered theft of a vehicle covered by the finance agreement.*

Sec. 5. *“Borrower” means a person who owes money to a creditor pursuant to a finance agreement.*

Sec. 6. *“Creditor” means a person to whom money is owed pursuant to a finance agreement, including, without limitation, the assignee of such an agreement.*

Sec. 7. *“Dealer” means a seller of a vehicle who provides or arranges for the provision of credit to the buyer of the vehicle for the purpose of financing the purchase of the vehicle.*

Sec. 8. "Finance agreement" means:

1. A loan made to the buyer of a vehicle for the purpose of financing the purchase of the vehicle and that is secured by the vehicle.

2. A lease between a long-term lessee and a long-term lessor.

3. A retail installment contract, as defined in NRS 97.105, for the purchase of a vehicle.

Sec. 9. "Free-look period" means a period beginning on or after the effective date of a guaranteed asset protection waiver in which the borrower may cancel the guaranteed asset protection waiver with no penalty, fee or other cost.

Sec. 10. "Guaranteed asset protection waiver" means a contract pursuant to which a creditor, in exchange for separately stated consideration, agrees to waive part or all of the amount due to the creditor pursuant to a finance agreement in the event of a total physical damage loss or unrecovered theft of a vehicle covered by the finance agreement.

Sec. 11. "Lease" has the meaning ascribed to it in NRS 482.053.

Sec. 12. "Long-term lessee" has the meaning ascribed to it in NRS 482.053.

Sec. 13. "Long-term lessor" has the meaning ascribed to it in NRS 482.053.

Sec. 14. "Vehicle" has the meaning ascribed to it in NRS 482.135, and includes, without limitation, any boat, recreational vehicle, all-terrain vehicle, trailer, personal watercraft or snowmobile.

Sec. 15. 1. The provisions of subsection 2 of section 18 of this act ~~and sections~~ subsection 2 of section 20 of this act and section 25 of this act do not apply to a guaranteed asset protection waiver offered for sale or sold in connection with a lease or retail installment transaction to a buyer or lessor who purchases or leases the vehicle solely or primarily for commercial use or resale.

2. As used in this section, "retail installment transaction" has the meaning ascribed to it in NRS 97.115.

Sec. 16. 1. Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of guaranteed asset protection waivers are not subject to the provisions of title 57 of NRS, except, when applicable, the provisions of NRS 679B.020 to 679B.125, inclusive, 679B.130, 679B.136, 679B.140, 679B.159 to 679B.180, inclusive, 679B.187 to 679B.220, inclusive, and 679B.310 to 679B.370, inclusive.

2. A creditor, an administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer guaranteed asset protection waivers.

3. The provisions of this chapter do not apply to a debt cancellation contract or debt suspension agreement offered in accordance with 12 C.F.R. Part 37 or 721 or to a policy of insurance.

Sec. 17. 1. Except as otherwise provided in this section, a creditor who sells or offers for sale guaranteed asset protection waivers shall not include in the name of the business of the creditor:

(a) The words "insurance," "casualty," "surety," "mutual" or any other word or term that implies that the creditor is engaged in the business of transacting insurance or is a surety company; or

(b) A name that is deceptively similar to the name or description of an insurer or surety company.

2. A creditor may include the word "guaranty" or a similar word in the name of the business of the creditor.

3. This section does not apply to a creditor who, before January 1, 2016, includes in the name of the business of the creditor a name that does not comply with the provisions of subsection 1. Such a creditor shall include in each guaranteed asset protection waiver the creditor sells or offers for sale a statement that the guaranteed asset protection waiver is not a contract of insurance.

Sec. 18. 1. Any creditor may offer to sell or sell a guaranteed asset protection waiver to a borrower who owes or expects to owe money to the creditor pursuant to a finance agreement. A borrower may pay for a guaranteed asset protection waiver using a one-time payment or periodic payments.

2. Except as otherwise provided in section 15 of this act, any cost to a borrower for the purchase of a guaranteed asset protection waiver which is entered into in compliance with the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and any regulations adopted pursuant thereto, must be separately stated as part of the amount financed and must not be considered a finance charge or interest.

3. Upon the sale of a guaranteed asset protection waiver, the guaranteed asset protection waiver becomes a part of the finance agreement. A guaranteed asset protection waiver remains a part of a finance agreement if the finance agreement is assigned, sold or transferred by the creditor.

Sec. 19. A creditor shall not require the purchase of a guaranteed asset protection waiver as a condition for the approval of credit, the terms of the credit or the terms of the sale or lease of a vehicle covered by the finance agreement.

Sec. 20. 1. A guaranteed asset protection waiver must contain a conspicuous statement, printed in at least 12-point type that is larger than the surrounding text and with a heading that is printed in all capital letters, stating that:

(a) A guaranteed asset protection waiver is not a policy of liability or casualty insurance and does not satisfy the requirement to maintain liability insurance pursuant to NRS 485.185; and

(b) Failure to make a timely payment under the terms of the finance agreement may void the guaranteed asset protection waiver.

2. Except as otherwise provided in section 15 of this act, a guaranteed asset protection waiver must disclose, if applicable, in writing and in a clear and conspicuous manner:

~~14.1~~ (a) The name and address of the creditor who sells the guaranteed asset protection waiver and the borrower who purchases the guaranteed asset protection waiver;

~~12.1~~ (b) The identity of any administrator, if different from the creditor;

~~12.1~~ (c) The purchase price and the terms of the guaranteed asset protection waiver, including, without limitation, the requirements for and conditions of coverage and any exclusions associated with the guaranteed asset protection waiver;

~~14.1~~ (d) That the borrower will be provided a full refund of the purchase price of the guaranteed asset protection waiver if the waiver is cancelled within the free-look period and benefits have not been provided;

~~15.1~~ (e) The manner in which the borrower may obtain benefits under a guaranteed asset protection waiver, including, without limitation, a telephone number and address that the borrower may use to apply for benefits;

~~1-6. Whether the guaranteed asset protection waiver may be cancelled after the free look period and, if so, the conditions under which the guaranteed asset protection waiver may be cancelled and the manner in which the borrower may request a cancellation;~~

~~7. The method used to calculate any refund of the purchase price of the guaranteed asset protection waiver if the guaranteed asset protection waiver is cancelled or the finance agreement is terminated; and~~

~~18.7 (f) Notice of the provisions of sections 19 and 21 of this act .77, the manner in which a borrower may request cancellation of a guaranteed asset protection waiver after the free-look period and the method that will be used to calculate any refund due to the borrower pursuant to section 21 of this act.~~

Sec. 21. 1. A guaranteed asset protection waiver must provide a free-look period of not less than 30 days. If the guaranteed asset protection waiver is cancelled within this period and no benefits have been provided, the creditor must refund the full purchase price of the guaranteed asset protection waiver.

2. ~~If a~~ A borrower must be able to cancel a guaranteed asset protection waiver ~~[provides for a refund of any part of the purchase price if the guaranteed asset protection waiver is cancelled]~~ after the free-look period. ~~77 If a guaranteed~~ asset protection waiver is cancelled after the free-look period and no benefits have been provided, the creditor must refund any unearned portion of the purchase price of the guaranteed asset protection waiver in the manner specified in the guaranteed asset protection waiver.

3. To request a full or partial refund of the purchase price of a guaranteed asset protection waiver that is cancelled after the free-look period, the borrower must provide a written request for a refund to the person specified in the terms of the guaranteed asset protection waiver. If the guaranteed asset protection waiver is cancelled because the finance agreement is terminated, the borrower must provide the request within 90 days after the termination of the finance agreement.

~~12.7 4.~~ The creditor may apply any refund owed to the borrower because of the cancellation of a guaranteed asset protection waiver, including, without limitation, cancellation during the free-look period or cancellation caused by a default on the finance agreement or the repossession of the vehicle associated with the finance agreement, to any amount still owed to the creditor under the finance agreement.

Sec. 22. 1. A dealer who sells or offers to sell guaranteed asset protection waivers shall purchase a policy of contractual liability insurance that insures the obligations of each guaranteed asset protection waiver the dealer sells or offers for sale other than a guaranteed asset protection waiver concerning a leased vehicle. Any other type of creditor who sells or offers to sell guaranteed asset protection waivers may purchase such a policy.

2. A policy of contractual liability insurance purchased pursuant to this section must:

(a) Be issued by an insurer who is authorized to transact insurance in this State or pursuant to the provisions of chapter 685A of NRS.

(b) State the obligation of the insurer to reimburse or pay to the creditor any amount that the creditor is obligated to waive pursuant to the guaranteed asset protection waivers insured by the policy.

(c) Provide coverage for any person to whom a guaranteed asset protection waiver is assigned, including, without limitation, as part of a finance agreement.

(d) Remain in effect until the policy is cancelled or terminated.

3. The cancellation or termination of a policy of contractual liability insurance purchased pursuant to this section must not reduce the responsibility of the insurer to provide coverage for guaranteed asset protection waivers:

(a) That were issued by the insured creditor before the date of the cancellation or termination; and

(b) For which the creditor has paid for coverage.

1 **Sec. 23. 1. A creditor or the designee of a creditor shall maintain records**
2 *of the transactions governed by this chapter. The records must include, without*
3 *limitation:*

4 *(a) A copy of each type of guaranteed asset protection waiver that the*
5 *creditor sells or offers for sale;*

6 *(b) The name and address of each borrower who possesses a guaranteed*
7 *asset protection waiver under which the creditor has a duty to perform, to the*
8 *extent that the creditor knows the name and address of each borrower; and*

9 *(c) The date and a description of each claim made by a borrower under a*
10 *guaranteed asset protection waiver.*

11 2. A creditor or the designee of a creditor shall retain all records relating to
12 a guaranteed asset protection waiver for at least 1 year after the contract has
13 expired.

14 3. The records required to be maintained pursuant to this section may be
15 stored on a computer disc or other storage device for a computer from which the
16 records may be readily printed.

17 **Sec. 24. A creditor shall, within 14 business days after a request by the**
18 *Commissioner, make available to the Commissioner for inspection any accounts,*
19 *books and records concerning any guaranteed asset protection waiver sold or*
20 *offered for sale by the creditor which are reasonably necessary to enable the*
21 *Commissioner to determine whether the creditor is in compliance with the*
22 *provisions of this chapter.*

23 **Sec. 25. Except as otherwise provided in section 15 of this act:**

24 1. The Commissioner may order any person, including, without limitation,
25 a creditor or administrator, to cease and desist any conduct that violates any
26 provision of this chapter.

27 2. A person who violates any provision of this chapter may, after a hearing
28 conducted pursuant to NRS 679B.310 to 679B.370, inclusive, be assessed a civil
29 penalty by the Commissioner of not more than \$500 for each act or violation, not
30 to exceed an aggregate amount of \$10,000 for violations of a similar nature. For
31 the purposes of this section, violations shall be deemed to be of a similar nature if
32 the violations consist of the same or similar conduct, regardless of the number of
33 times the conduct occurred.

34 **Sec. 26. The amendatory provisions of this act do not apply to any**
35 *guaranteed asset protection waiver that becomes effective before January 1, 2016.*

36 **Sec. 27. This act becomes effective:**

37 1. Upon passage and approval for the purpose of adopting any regulations and
38 performing any other preparatory administrative tasks necessary to carry out the
39 provisions of this act; and

40 2. On January 1, 2016, for all other purposes.