

Legislative Analysis



MOTOR VEHICLE FINANCIAL PROTECTION PRODUCTS ACT

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<http://www.house.mi.gov/hfa>

House Bill 5429 (proposed substitute H-2)
House Bill 5967 as introduced
Sponsor: Rep. Andrew W. Beeler

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5430 as introduced
Sponsor: Rep. Angela Witwer

House Bill 5431 as introduced
Sponsor: Rep. John N. Damoose

House Bill 5432 as introduced
Sponsor: Rep. Kevin Hertel

Committee: Regulatory Reform
Revised 5-10-22

BRIEF SUMMARY:

House Bills 5429 to 5432 and 5967 would amend different acts pertaining to guaranteed asset protection (GAP) waivers on motor vehicles.

House Bill 5429 would amend the Guaranteed Asset Protection Waiver Act to change its name to the Motor Vehicle Financial Protection Products Act and to do all of the following:

- Divide current and new provisions into Part 1 through Part 6 and Part 9.
- Provide the Department of the Attorney General with oversight of the act instead of the director of the Department of Insurance and Financial Services.
- Apply provisions that currently apply to a GAP waiver on motor vehicles to a debt waiver.
- Allow a motor vehicle financial protection product to be offered, sold, or given to a customer.
- Under certain conditions, allow a cancellation fee if a debt waiver is canceled or a financial protection product terminated by the customer after the free look period, or a reasonable administrative fee to be charged for a cancelled vehicle value protection agreement.
- Require certain vehicle value protection agreement disclosures in writing.
- Exempt certain entities from certain provisions of the act.
- Eliminate current sanctions for a violation of the act and instead authorize the attorney general to enforce the act and protect consumers as provided under the Michigan Consumer Protection Act.
- Apply the bill's provisions to a motor vehicle financial protection product that takes effect on or after 180 days after the bill becomes law.

House Bills 5430 to 5432 would make complementary revisions to different acts to comport with the provisions of HB 5429, while House Bill 5967 would amend the Consumer Protection Act to add violations of the Motor Vehicle Financial Protection Products Act to the definition of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.

Generally speaking, the acts the bills would amend specify that GAP waivers on motor vehicles are not insurance products and are subject to regulation under the Guaranteed Asset Protection Waiver Act instead of the Insurance Code.

These waivers are contractual agreements in which a creditor (lender) agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

This means that the lender agrees to waive amounts due on a vehicle that is totaled in an accident or is stolen and not recovered. It covers, for the vehicle owner, the difference between the amount owed on a vehicle and the amount an insurance company is obligated to pay in the event of an accident or theft. (This is for cases where an individual owes more on a vehicle than its value for insurance purposes.)

DETAILED SUMMARY:

House Bill 5429 would amend the Guaranteed Asset Protection Waiver Act. The act allows a GAP waiver to be part of, or a separate addendum to, the finance agreement for a motor vehicle and allows creditors to sell such waivers for a single payment or via a monthly or periodic payment option. Part 1 of the bill would rename the act as the Motor Vehicle Financial Protection Products Act.

Part 2: Definitions applicable to motor vehicle financial protection products

Several terms would be relocated to Part 4. The term *commissioner* would be deleted and replaced with *department*, which would mean the Department of the Attorney General.

Commercial retail installment transaction or *commercial transaction* would mean that the motor vehicle that is the subject of the transaction will primarily be used for business purposes, rather than personal purposes.

Consumer would mean an individual purchaser of a motor vehicle and would include a borrower and a contract holder (defined in Parts 4 and 5, respectively), as applicable.

Motor vehicle would be revised to specifically include a snowmobile.

Motor vehicle financial protection product would mean an agreement that protects a consumer's financial interest in the consumer's current or future motor vehicle, and includes, but would not be limited to, a debt waiver and a vehicle value protection agreement (defined in Parts 4 and 10, respectively).

The bill would delete the definitions for the terms *installment buyer*, *installment seller*, *Motor Vehicle Sales Finance Act*, *Retail Installment Sales Act*, and *sales finance company*.

Part 3: Requirements for offering motor vehicle financial protection products

The bill would add a new section to the act to allow a motor vehicle financial protection product ("product") to be offered, sold, or given to a customer in the state in compliance with the act. Any amount charged or financed for a product would be an authorized charge and would have to be separately stated and could not be considered a finance charge or interest. The extension and terms of credit, and the terms of the related motor vehicle sale or lease, could not be conditioned on the consumer's payment for or financing of any charge for a product. However,

a product could be discounted or given at no charge in connection with the purchase of other noncredit-related goods or services.

Part 4: Debt waivers

The following definitions would be relocated to Part 4 or newly added by the bill:

Administrator would be revised to mean a person, other than a creditor or insurer, that performs administrative or operational functions in connection with a debt waiver program.

Borrower would mean a debtor, retail buyer, or lessee, under a finance agreement.

Creditor would be revised to mean a person that is any of the following:

- The lender in a loan or credit transaction.
- The lessor in a lease transaction.
- A retail seller of motor vehicles.
- The seller in a commercial retail installment transaction.
- An assignee of a person described above to whom the credit obligation is payable.

Debt waiver would include a **GAP waiver**, an **excess wear and use waiver**, and other products as approved by the Department of the Attorney General. For the purposes of this provision:

GAP waiver would mean 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 finance agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle. It could also provide, with or without a separate charge, a benefit that waives an amount or that provides a borrower with a credit toward the purchase of a replacement motor vehicle.

Excess wear and use waiver would mean a contractual agreement in which a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts that could become due under a borrower's lease agreement as a result of excessive wear and use of a motor vehicle. An excess wear and use waiver could also cancel or waive amounts due for excess mileage.

Under the bill, provisions that currently apply to offering, selling, or providing a GAP waiver would instead apply to offering a debt waiver in Michigan. Numerous provisions would be amended to refer to a debt waiver and to comport with other amendments, such as removing references to defined terms deleted by the bill.

The bill would delete a provision allowing a creditor the option to sell a GAP waiver for a single payment or offer a monthly or periodic payment option and a provision stating that any cost to a borrower for a GAP waiver entered into in compliance with the Truth in Lending Act must be separately stated and is not considered a finance charge or interest. The bill also would delete a provision prohibiting a creditor from conditioning an extension of credit, the term of credit, or the term of a related motor vehicle sale or lease on the purchase of GAP waiver.

Currently, a GAP waiver must provide that if a borrower cancels the waiver during the free look period, the borrower is entitled to a full refund of the purchase price if he or she has not received benefits under the waiver, *or to any full or partial refund included in the waiver if he or she has received benefits*. The bill would delete the italicized language and refer to a debt waiver instead of a GAP waiver. In addition, the bill would revise the information that must be disclosed in writing for a debt waiver to include a website where the borrower could apply for debt waiver benefits.

The act requires certain information to be disclosed in a debt waiver, including that in order to receive any refund due for cancellation of GAP waiver *or the termination of the finance agreement after the free look period*, the borrower must provide a written request for a refund to the creditor, administrator, or other party named in the waiver *within 90 days after the cancellation of the GAP waiver or the occurrence of the event terminating the finance agreement*. The bill would delete the italicized language and apply the provision to a debt waiver. However, the bill would add that if the cancellation of the debt waiver is because of the early termination of the finance agreement and no benefit has been or will be provided, the borrower, in accordance with the terms of the debt waiver, must provide a written request to cancel to the creditor, administrator, or other party named in the waiver no later than 90 days after the occurrence of the event terminating the finance agreement.

Under the act, if a borrower cancels a GAP waiver, or a finance agreement is terminated, after the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price *unless the waiver provided otherwise*. To receive a refund, the borrower must provide a written request to the creditor, administrator, *or other party*, within 90 days after the cancellation of the waiver or the occurrence of the event terminating the finance agreement, that met any applicable notice provisions of the waiver. The bill would delete the italicized language, refer to a debt waiver instead of a GAP waiver, and specify that the refund, if any, a borrower is entitled to is less a cancellation fee of up to \$75 if no benefit has been or will be provided. To receive a refund, the borrower must provide a written request to cancel, in accordance with the terms of the debt waiver, to the creditor or administrator. If the cancellation is because of the early termination of the finance agreement, the written request to cancel must be made within 90 days after the occurrence of the event terminating the finance agreement.

Part 5: Vehicle value protection agreements

The bill would establish the following requirements for offering ***vehicle value protection agreements*** (“agreements”):

- Allow a provider to use an administrator or other designee to be responsible for all of the administration of agreements in compliance with the act.
- Prohibit an agreement from being sold unless the contract holder has been or will be provided access to a copy of the agreement.
- Require, to assure the faithful performance of the provider’s obligations to its contract holder, the provider to be responsible for complying with one of the following:
 - Insuring all agreements under a reimbursement insurance policy issued by an insurer at the time the policy is filed with the director, and continuously after the time of filing complying with either of the following:
 - Maintaining surplus as to policyholders and paid-in capital of \$15.0 million or more and annually filing copies of certain financial statements and of the insurer’s actuarial certification.

- Maintaining surplus as to policyholders and paid-in capital of at least \$10.0 million but less than \$15.0 million, demonstrating to the satisfaction of the Department of the Attorney General that the insurer maintains a ratio of net written premiums to surplus as to policyholders and paid-in capital of not greater than 3 to 1, and annually filing copies of certain financial statements and the insurer’s actuarial certification.
 - Doing both of the following:
 - Maintaining a funded reserve account for its obligations under its contracts issued and outstanding in the state. Reserves could not be less than 40% of gross consideration received, less claims paid, on the sale of the agreements for in-force contracts. The reserve account would have to be subject to examination and review by the Department of the Attorney General.
 - Placing in trust with the Department of the Attorney General a financial security deposit having a value of 5% or more of the gross consideration received, less claims paid, on the sale of the agreements for all agreements issued and in force, but not less than \$25,000, consisting of a surety bond issued by an authorized surety, securities of the type eligible for deposit by insurers, cash, a letter of credit issued by a qualified financial institution, or another form of security prescribed by regulations issued by the Department of the Attorney General.
 - Doing both of the following:
 - Maintaining, alone or with the provider’s parent company, a net worth or stockholders’ equity of \$100.0 million.
 - On request, providing the director with a copy of certain documents filed with the federal Securities and Exchange Commission or a copy of audited financial statements that show a net worth of the provider or the parent company of at least \$100.0 million. If the provider’s parent company’s documents are filed to meet the provider’s financial security requirement, the parent company would have to agree to guarantee the obligations of the provider relating to agreements sold by the provider in Michigan.

Except for the requirements above pertaining to financial security requirements, no other financial security requirements could be required for vehicle value protection agreement providers.

Vehicle value protection agreement would include a contractual agreement that provides a benefit toward either the reduction of some or all of the contract holder’s current outstanding finance agreement balance, or toward the purchase or lease of a replacement motor vehicle or motor vehicle services, upon an adverse event to the motor vehicle. The adverse event could include loss, theft, damage, obsolescence, diminished value, or depreciation. A vehicle value protection agreement could include an agreement such as, but not limited to, a trade-in-credit agreement, diminished value agreement, depreciation benefit agreement, or other similarly named agreement. However, the term would not include a debt waiver.

Vehicle value protection agreement disclosures would require all of the following in writing and in clear, understandable language that is easy to read:

- The name and address of the provider, contract holder, and administrator, if any.
- The terms of the agreement, including the purchase price, if any and the requirements for eligibility, conditions of coverage, or exclusions.
- That the agreement could be canceled by the contract holder during the free look period specified in the agreement, and if canceled, that the contract holder would be entitled to a full refund of the purchase price if no benefits had been provided.
- The procedure the contract holder would have to follow, if any, to obtain a benefit under the terms and conditions of the agreement, and a telephone number or website and address where the contract holder could apply for a benefit.
- Whether the agreement could be canceled after the free look period and, if so, the conditions under which it could be canceled; and the procedures for requesting any refund of the unearned purchase price paid by the contract holder.
- The methodology for calculating any refund of the unearned purchase price of an agreement that is due.
- That the extension of credit, the terms of that credit, and the terms of the related motor vehicle sale or lease could not be conditioned on the purchase of the agreement.
- The terms, restrictions, or conditions governing cancellation of the agreement before the termination or expiration date of the agreement by either the provider or contract holder. The provider of the agreement would have to mail a written notice to the contract holder at his or her last known address contained in the provider's records not less than five days before cancelling the agreement. Prior notice would not be required if the reason for cancellation is nonpayment of provider fee, a material misrepresentation by the contract holder to the provider or administrator, or a substantial breach of duties by the contract holder relating to the covered product or its use. The notice would have to state the effective date of reason for the cancellation. If the agreement were cancelled for a reason other than nonpayment of the provider fee, the provider would have to refund to the contract holder 100% of the unearned pro rata provider fee paid by the contract holder, if any. If coverage under the agreement continues after a claim, claims paid could be deducted from any refund. A reasonable administrative fee could be charged by the provider up to \$75.

The vehicle value protection agreement disclosure requirements described above and Part 6 would not apply to an agreement offered in connection with a commercial transaction.

As used in Part 5:

Administrator would mean the person who may be responsible for the administrative or operational function of vehicle value protection agreements, including the adjudication of claims or benefit requests by contract holders.

Contract holder would mean a person who purchases or holds an agreement.

Provider would mean a person obligated to provide a benefit under an agreement and who could perform as an administrator or retain the services of a third-party administrator.

Part 6: Enforcement

The bill would replace a reference to “guaranteed asset protection waiver holders” with “motor vehicle financial protection product consumers” and would provide that the Department of the Attorney General (instead of the commissioner of the Department of Insurance and Financial Services) may take action that it determines is necessary or appropriate to enforce the act and to protect motor vehicle financial protection product consumers in the state as provided under the Michigan Consumers Protection Act. The bill would eliminate the current sanctions that may be imposed by the director of the Department of Insurance and Financial Services for a violation of the act.

Part 9: Applicability

The act as amended by the bill would apply to a motor vehicle financial protection product that becomes effective on or after 180 days after the effective date of the bill.

Repealer

The bill would repeal section 13 of the act, which now provides that the act does not apply to an insurance policy offered by an insurer under the Insurance Code or to an offer of a debt cancellation or debt suspension contract that complies with federal law. The section also states that a provision requiring any cost to a borrower for a GAP waiver entered into in compliance with the federal Truth in Lending Act to be separately stated and stipulating that it is not considered a finance charge or interest does *not* apply to a GAP waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

Exclusions

The bill would provide that the act does not apply to a debt waiver offered by a state or federal bank, savings bank, or credit union in compliance with the applicable state or federal law. In addition, Part 6 of the bill and a provision that provides that a debt waiver remains a part of the finance agreement if the creditor assigns, sells, or transfers the finance agreement would *not* apply to a debt waiver offered in connection with a commercial transaction.

MCL 492.21 et al.

House Bills 5430 to 5432 would make complementary amendments to several acts to replace references to “guaranteed asset protection waiver” with “motor vehicle financial protection product” and to “the Guaranteed Asset Protection Act” with “the Motor Vehicle Financial Protection Products Act.”

House Bill 5430 would amend the Retail Installment Sales Act. (MCL 445.853)

House Bill 5431 would amend the Motor Vehicle Sales Finance Act. (MCL 492.113)

House Bill 5432 would amend the Insurance Code. (MCL 500.127)

Each bill would take effect, and would apply to a motor vehicle financial protection product that becomes effective on or after, 180 days after the bill’s effective date.

House Bill 5697 would amend the Michigan Consumer Protection Act, which states that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and lists activities that constitute those methods, acts, or practices. The bill would add a violation of the Motor Vehicle Financial Protection Products Act to that list.

Generally speaking, a person who suffers loss as a result of a violation that is an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or commerce may bring a civil action to recover actual damages or \$250, whichever is greater, along with reasonable attorney fees. A person may also bring an action to obtain a declaratory judgment that a method, act, or practice is unlawful under the act or an injunction against a person who is engaging or is about to engage in a method, act, or practice that is unlawful under the act. The act also provides for a class action to be brought under certain circumstances. In addition, the act authorizes the attorney general to bring an action to permanently enjoin a defendant from engaging in a method, act, or practice that is unlawful under the act, and a court may assess a fine of up to \$25,000 if the method, act, or conduct is found to be unlawful.

MCL 445.903

Tie-bars

House Bill 5429 is tie-barred to each of the other bills and each of the other bills is tie-barred to HB 5429. A bill cannot take effect unless every bill to which it is tie-barred is also enacted into law.

FISCAL IMPACT:

House Bills 5429 and 5967 would have an indeterminate fiscal impact on the Department of the Attorney General. Additional personnel hours will likely be required for staff and attorneys to review filings and related information and to enforce the Michigan Consumer Protection Act. If existing staff is not sufficient to comply with the bill, additional costs of approximately \$120,000 annually for any additional administrative FTE position and \$185,000 for any additional attorney FTE position may be required. Additional administrative costs for implementation and IT would also likely be incurred. However, the magnitude of these costs is presently indeterminate. The bill would not have fiscal implications for any other units of state or local government.

House Bills 5430, 5431, and 5432 would not have a direct fiscal impact on any other unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.