

1 HB420
2 183080-4
3 By Representative Martin
4 RFD: Financial Services
5 First Read: 16-MAR-17

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, guaranteed asset
9 protection waivers are not regulated. The term
10 generally refers to an agreement or contract
11 related to the financing of motor vehicles which
12 protect the borrower for the balance due on a loan
13 when the motor vehicle is totalled or stolen and
14 the casualty insurance payment or other payments
15 are not sufficient to cover the total loan balance.

16 This bill would specifically authorize
17 guaranteed asset protection waivers and regulate
18 the transactions. The Superintendent of Banks would
19 be granted authority to assess a civil penalty for
20 violations.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To specifically authorize and regulate guaranteed
27 asset protection waivers related to motor vehicle loans; to

1 define terms; to provide for enforcement and civil penalties
2 by the Superintendent of Banks; and for this purpose to add
3 Chapter 37 to Title 8, Code of Alabama 1975.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Chapter 37 is added to Title 8, Code of
6 Alabama 1975, to read as follows:

7 CHAPTER 37.

8 §8-37-1.

9 (a) The purpose of this act is to define guaranteed
10 asset protection waivers (GAP waivers) and to provide that GAP
11 waivers may be offered within this state.

12 (b) This act does not apply to either of the
13 following:

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

16 (2) A debt cancellation or debt suspension contract
17 being offered by a federally regulated financial institution
18 operating under 12 CFR Part 37 or a credit union operating
19 under 12 CFR Part 721 or other federal law; or a debt
20 cancellation or debt suspension contract being offered by a
21 state chartered bank or credit union. Debt cancellation and
22 debt suspension contracts being offered by any of these
23 federal or state regulated financial institutions are not
24 insurance and are exempt from the insurance laws of this
25 state.

26 (c) Guaranteed asset protection waivers governed
27 under this act are not insurance and are exempt from the

1 insurance laws of this state. Persons marketing, selling, or
2 offering to sell guaranteed asset protection waivers to
3 borrowers that comply with this act are exempt from insurance
4 licensing and insurance regulation requirements of this state.

5 (d) This act applies only to GAP waivers for
6 financing of motor vehicles as defined in this act. This act
7 does not affect the validity or enforcement of other asset
8 protection waivers, debt cancellation contracts, or debt
9 suspension agreements.

10 §8-37-2.

11 For the purposes of this act, the following words
12 have the following meanings:

13 (1) ADMINISTRATOR. A person, other than an insurer
14 or creditor, that performs administrative or operational
15 functions pursuant to guaranteed asset protection waiver
16 programs.

17 (2) BORROWER. A debtor, retail buyer or lessee,
18 under a finance agreement.

19 (3) CREDITOR means any of the following:

20 a. The lender in a loan or credit transaction.

21 b. The lessor in a lease transaction.

22 c. Any retail seller of motor vehicles provided that
23 the entities comply with the provisions of this act.

24 d. The seller in commercial retail installment
25 transactions.

26 e. The assignees of any of the foregoing to whom the
27 credit or lease obligation is payable.

1 (4) FINANCE AGREEMENT. A loan, lease, or retail
2 installment sales contract for the purchase or lease of a
3 motor vehicle.

4 (5) FREE LOOK PERIOD. The period of time from the
5 effective date of the GAP waiver until the date the borrower
6 may cancel the GAP waiver without penalty, fees, or costs to
7 the borrower. This period of time shall not be shorter than 30
8 days.

9 (6) GUARANTEED ASSET PROTECTION WAIVER or GAP
10 WAIVER. A contractual agreement in which a creditor agrees for
11 a separate charge to cancel or waive all or part of amounts
12 due on a borrower's finance agreement in the event of a total
13 physical damage loss or unrecovered theft of the motor
14 vehicle, which agreement shall be part of, or a separate
15 addendum to, the finance agreement.

16 (7) INSURER. An insurance company licensed,
17 registered, or otherwise authorized to do business under the
18 insurance laws of this state.

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

25 (9) PERSON. An individual, company, association,
26 organization, partnership, business trust, corporation, and
27 every form of legal entity.

1 §8-37-3.

2 (a) GAP waivers maybe offered, sold, or provided to
3 borrowers in this state in compliance with this act.

4 (b) GAP waivers, at the option of the creditor, may
5 be sold for a single payment or may be offered with a monthly
6 or periodic payment option.

7 (c) Notwithstanding any other provision of law and
8 subject to Section 8-37-7, any cost to the borrower for a GAP
9 waiver entered into in compliance with The Truth in Lending
10 Act, 15 USC 1601 et. seq., and its implementing regulations,
11 as they may be amended from time to time, shall be separately
12 stated and is not to be considered a finance charge or
13 interest. If the charge for a GAP waiver is financed, the
14 charge shall be separately itemized on the finance agreement.

15 (d) A retail seller shall insure its GAP waiver
16 obligations under a contractual liability or other insurance
17 policy issued by an insurer. A creditor, other than a retail
18 seller, may insure its GAP waiver obligations under a
19 contractual liability policy or similar policy issued by an
20 insurer. Any insurance policy may be directly obtained by a
21 creditor, retail seller, or may be procured by an
22 administrator to cover a creditor's or retail seller's
23 obligations under the GAP waiver. However retail sellers who
24 do not assign their finance agreements or retail sellers that
25 are lessors of motor vehicles are not required to insure
26 obligations related to GAP waivers on the sold or leased
27 vehicles.

1 (e) A GAP waiver remains a part of the finance
2 agreement upon the assignment, sale, or transfer of the
3 finance agreement by the creditor. The creditor,
4 administrator, or other designated party shall maintain for
5 three years after the maturity date of the finance agreement a
6 copy of or electronic details of each GAP waiver sold
7 regardless of the method of payment and the creditor shall
8 provide copies of or electronic details of the contracts to
9 the Superintendent of Banks upon reasonable advance written
10 notice.

11 (f) Neither the extension of credit, any term of
12 credit, nor the term of the related motor vehicle sale or
13 lease may be conditioned upon the purchase of a GAP waiver.

14 (g) Any creditor that offers a GAP waiver shall
15 report the sale of, and forward funds received on all waivers
16 to the designated party, if any, as prescribed in any
17 applicable administrative services agreement, contractual
18 liability policy, other insurance policy, or other specified
19 program documents.

20 (h) Funds received or held by a creditor or
21 administrator and belonging to an insurer, creditor, or
22 administrator, pursuant to the terms of a written agreement
23 shall be held by the creditor or administrator in a fiduciary
24 capacity.

25 §8-37-4.

26 (a) A contractual liability or other insurance
27 policy insuring a GAP waiver shall state the obligation of the

1 insurer to reimburse or pay to the creditor any sums the
2 creditor is legally obligated to waive under the GAP waiver
3 issued by the creditor and purchased or held by the borrower.

4 (b) Coverage under a contractual liability or other
5 insurance policy insuring a GAP waiver shall also cover any
6 subsequent assignee upon the assignment, sale, or transfer of
7 the finance agreement.

8 (c) Coverage under a contractual liability or other
9 insurance policy insuring a GAP waiver shall remain in effect
10 unless cancelled or terminated in compliance with applicable
11 insurance laws of this state.

12 (d) The cancellation or termination of a contractual
13 liability or other insurance policy shall not reduce the
14 insurer's responsibility for GAP waivers issued by the
15 creditor prior to the date of cancellation or termination and
16 for which premium has been received by the insurer.

17 §8-37-5.

18 Subject to Section 8-37-7, a GAP waiver shall
19 disclose, as applicable, in writing and in clear,
20 understandable language that is easy to read, all of the
21 following:

22 (1) The name and address of the initial creditor and
23 the borrower at the time of sale and the identity of any
24 administrator if different from the creditor.

25 (2) The purchase price and the terms of the GAP
26 waiver, including without limitation, the requirements for

1 protection, conditions, or exclusions associated with the GAP
2 waiver.

3 (3) That the borrower may cancel the GAP waiver
4 within a Free Look Period as specified in the waiver, and will
5 be entitled to a full refund of the purchase price, so long as
6 no benefits have been provided. If cancelled after the Free
7 Look Period and no benefits have been provided, the borrower
8 shall receive a pro rata refund less a cancellation fee no
9 greater than fifty dollars (\$50) in accordance with the terms
10 of the waiver.

11 (4) The procedure the borrower is required to follow
12 in order to obtain GAP waiver benefits under the terms and
13 conditions of the waiver, including a telephone number and
14 address where the borrower may apply for waiver benefits.

15 (5) The procedures for cancelling the GAP waiver and
16 requesting any refund due pursuant to Section 8-37-6.

17 (6) That neither the extension of credit, the terms
18 of the credit, nor the terms of the related motor vehicle sale
19 or lease, may be conditioned upon the purchase of the GAP
20 waiver.

21 (7) That the cost of the GAP waiver is not regulated
22 and that the borrower should determine whether the cost of the
23 GAP waiver is reasonable in relation to the protection
24 afforded by the GAP waiver.

25 §8-37-6.

26 (a) Guaranteed asset protection waiver agreements
27 shall be cancellable. GAP waivers shall provide that if a

1 borrower cancels a waiver within the Free Look Period, the
2 creditor, administrator, or other authorized party shall
3 provide the borrower a full refund of the purchase price of
4 the GAP waiver, provided no benefits have been provided. In
5 the event a borrower cancels the waiver after the Free Look
6 Period and no benefits have been provided, the creditor,
7 administrator, or other authorized party shall provide the
8 borrower a pro rata refund of the purchase price, less any
9 cancellation fee no greater than fifty dollars (\$50) in
10 accordance with the terms of the waiver.

11 (b) In the event of cancellation of the GAP waiver
12 due to early termination of the finance agreement, the
13 creditor shall provide, or cause the administrator or retail
14 seller to provide, within 60 days of termination, any refund
15 due to a borrower without requiring the borrower to request
16 cancellation of the waiver.

17 (c) Any cancellation refund under subsection (a) or
18 (b) may be applied by the creditor as a reduction of the
19 amount owed under the finance agreement unless the borrower
20 can show that the finance agreement has been paid in full.

21 §8-37-7.

22 Subsection (c) of Section 8-37-3 and Sections 8-37-5
23 and 8-37-8 of this act are not applicable to a GAP waiver
24 offered in connection with a lease or retail installment sale
25 associated with a commercial transaction.

26 §8-37-8.

1 (a) The Superintendent of Banks may take action
2 which is necessary or appropriate to enforce the provisions of
3 this act and to protect GAP waiver holders in this state.
4 After proper notice and opportunity for hearing, the
5 superintendent may do both of the following:

6 (1) Order the creditor, administrator, or any other
7 person not in compliance with this section to cease and desist
8 from further GAP waiver-related operations which are in
9 violation of this act.

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

19 (b) If requested by a retail seller, the
20 Superintendent of Banks may determine that the insurance
21 policy required by subsection (d) of Section 8-37-3 is not
22 required for a retail seller that does not assign any of its
23 finance agreements to any entity other than an affiliate and
24 if the affiliated assignee agrees that the insurance policy is
25 waived and the finance agreements will not be further
26 assigned. The superintendent may require the evidence and

1 assurances that the superintendent determines is needed to
2 make that determination.

3 §8-37-9.

4 The Legislature finds that guaranteed asset
5 protection waivers are not insurance. All guaranteed asset
6 protection waivers issued prior to and after the effective
7 date of this act shall not be construed as insurance.

8 Section 2. Creditors and other persons are not
9 required to comply with this act for any GAP waiver entered
10 into prior to the effective date of this act.

11 Section 3. This act shall be effective on January 1,
12 2018.