

1 SB327  
2 183080-4  
3 By Senator Chambliss  
4 RFD: Banking and Insurance  
5 First Read: 16-MAR-17

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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.