

1 HB343  
2 183080-2  
3 By Representative Martin  
4 RFD: Financial Services  
5 First Read: 02-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 in compliance with 12 CFR Part 37 or 12 CFR Part  
18 721 or other federal law; or a debt cancellation or debt  
19 suspension contract being offered by a state chartered bank or  
20 credit union.

21 (c) Guaranteed asset protection waivers governed  
22 under this act are not insurance and are exempt from the  
23 insurance laws of this state. Persons marketing, selling, or  
24 offering to sell guaranteed asset protection waivers to  
25 borrowers that comply with this act are exempt from insurance  
26 licensing and regulation requirements of this state.

27 §8-37-2.

1                   For the purposes of this act, the following words  
2 have the following meanings:

3                   (1) ADMINISTRATOR. A person, other than an insurer  
4 or creditor, that performs administrative or operational  
5 functions pursuant to guaranteed asset protection waiver  
6 programs.

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

9                   (3) CREDITOR means any of the following:

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

11                   b. The lessor in a lease transaction.

12                   c. Any retail seller of motor vehicles provided that  
13 the entities comply with the provisions of this section.

14                   d. The seller in commercial retail installment  
15 transactions.

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

18                   (4) FINANCE AGREEMENT. A loan, lease, or retail  
19 installment sales contract for the purchase or lease of a  
20 motor vehicle.

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

26                   (6) GUARANTEED ASSET PROTECTION WAIVER or GAP  
27 WAIVER. A contractual agreement in which a creditor agrees for

1 a separate charge to cancel or waive all or part of amounts  
2 due on a borrower's finance agreement in the event of a total  
3 physical damage loss or unrecovered theft of the motor  
4 vehicle, which agreement shall be part of, or a separate  
5 addendum to, the finance agreement.

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

9 (8) MOTOR VEHICLE. Self-propelled or towed vehicles  
10 designed for personal or commercial use, including but not  
11 limited to automobiles, trucks, motorcycles, recreational  
12 vehicles, all terrain vehicles, snowmobiles, campers, boats,  
13 personal watercraft, and motorcycle, and boat, camper and  
14 personal watercraft trailers.

15 (9) PERSON. An individual, company, association,  
16 organization, partnership, business trust, corporation, and  
17 every form of legal entity.

18 §8-37-3.

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

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

24 (c) Notwithstanding any other provision of law and  
25 subject to Section 8-37-7, any cost to the borrower for a GAP  
26 waiver entered into in compliance with The Truth in Lending  
27 Act, 15 USC 1601 et. seq., and its implementing regulations,

1 as they may be amended from time to time, shall be separately  
2 stated and is not to be considered a finance charge or  
3 interest. If the charge for a GAP waiver is financed, the  
4 charge shall be separately itemized on the finance agreement.

5 (d) A retail seller shall insure its GAP waiver  
6 obligations under a contractual liability or other insurance  
7 policy issued by an insurer. A creditor, other than a retail  
8 seller, may insure its GAP waiver obligations under a  
9 contractual liability policy or similar policy issued by an  
10 insurer. Any insurance policy may be directly obtained by a  
11 creditor, retail seller, or may be procured by an  
12 administrator to cover a creditor's or retail seller's  
13 obligations. However retail sellers who do not assign their  
14 finance agreements or retail sellers that are lessors of motor  
15 vehicles are not required to insure obligations related to GAP  
16 waivers on the leased vehicles.

17 (e) A GAP waiver remains a part of the finance  
18 agreement upon the assignment, sale, or transfer of the  
19 finance agreement by the creditor. The creditor,  
20 administrator, or other designated party shall maintain for  
21 three years after the maturity date of the finance agreement a  
22 copy of or electronic details of each GAP waiver sold  
23 regardless of the method of payment and the creditor shall  
24 provide copies of or electronic details of the contracts to  
25 the Superintendent of Banks upon reasonable advance written  
26 notice.

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

4 (g) The creditor may charge a fee for a GAP waiver  
5 that may vary between individual borrowers in relation to the  
6 amount and maturity date of the underlying loan or extension  
7 of credit. The creditor shall be entitled to negotiate a  
8 lesser fee on an individual basis.

9 (h) Any creditor that offers a GAP waiver shall  
10 report the sale of, and forward funds received on all waivers  
11 to the designated party, if any, as prescribed in any  
12 applicable administrative services agreement, contractual  
13 liability policy, other insurance policy, or other specified  
14 program documents.

15 (i) Funds received or held by a creditor or  
16 administrator and belonging to an insurer, creditor, or  
17 administrator, pursuant to the terms of a written agreement  
18 shall be held by the creditor or administrator in a fiduciary  
19 capacity.

20 §8-37-4.

21 (a) A contractual liability or other insurance  
22 policy insuring a GAP waiver shall state the obligation of the  
23 insurer to reimburse or pay to the creditor any sums the  
24 creditor is legally obligated to waive under the GAP waiver  
25 issued by the creditor and purchased or held by the borrower.

26 (b) Coverage under a contractual liability or other  
27 insurance policy insuring a GAP waiver shall also cover any

1 subsequent assignee upon the assignment, sale, or transfer of  
2 the finance agreement.

3 (c) Coverage under a contractual liability or other  
4 insurance policy insuring a GAP waiver shall remain in effect  
5 unless cancelled or terminated in compliance with applicable  
6 insurance laws of this state.

7 (d) The cancellation or termination of a contractual  
8 liability or other insurance policy shall not reduce the  
9 insurer's responsibility for GAP waivers issued by the  
10 creditor prior to the date of cancellation or termination and  
11 for which premium has been received by the insurer.

12 §8-37-5.

13 Subject to Section 8-37-7, a GAP waiver shall  
14 disclose, as applicable, in writing and in clear,  
15 understandable language that is easy to read, all of the  
16 following:

17 (1) The name and address of the initial creditor and  
18 the borrower at the time of sale and the identity of any  
19 administrator if different from the creditor.

20 (2) The purchase price and the terms of the GAP  
21 waiver, including without limitation, the requirements for  
22 protection, conditions, or exclusions associated with the GAP  
23 waiver.

24 (3) That the borrower may cancel the GAP waiver  
25 within a Free Look Period as specified in the waiver, and will  
26 be entitled to a full refund of the purchase price, so long as  
27 no benefits have been provided. If cancelled after the Free



1 Look Period and no benefits have been provided, the borrower  
2 shall receive a pro rata refund less a cancellation fee no  
3 greater than seventy-five dollars (\$75) in accordance with the  
4 terms of the waiver.

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

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

11 (6) That neither the extension of credit, the terms  
12 of the credit, nor the terms of the related motor vehicle sale  
13 or lease, may be conditioned upon the purchase of the GAP  
14 waiver.

15 §8-37-6.

16 (a) Guaranteed asset protection waiver agreements  
17 shall be cancellable. GAP waivers shall provide that if a  
18 borrower cancels a waiver within the Free Look Period, the  
19 borrower shall be entitled to a full refund of the purchase  
20 price, provided no benefits have been provided. In the event a  
21 borrower cancels the waiver after the Free Look Period and no  
22 benefits have been provided, the borrower shall be entitled to  
23 a pro rata refund of the purchase price, less any cancellation  
24 fee no greater than seventy-five dollars (\$75) in accordance  
25 with the terms of the waiver.

26 (b) In the event of cancellation of the GAP waiver  
27 due to early termination of the finance agreement, the

1 creditor shall provide, or cause to be provided, within 60  
2 days of termination, any refund due to a borrower without  
3 requiring the borrower to request cancellation of the waiver.

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

8 §8-37-7.

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

13 §8-37-8.

14 The Superintendent of Banks may take action which is  
15 necessary or appropriate to enforce the provisions of this act  
16 and to protect GAP waiver holders in this state. After proper  
17 notice and opportunity for hearing, the superintendent may do  
18 both of the following:

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

23 (2) Impose a penalty of not more than five hundred  
24 dollars (\$500) per violation and no more than ten thousand  
25 dollars (\$10,000) in the aggregate for all violations of  
26 similar nature. For purposes of this act, a violation shall be  
27 considered to be of a similar nature if the violation consists

1 of the same or similar course of conduct, action, or practice,  
2 irrespective of the number of times the action, conduct, or  
3 practice which is determined to be a violation of the act  
4 occurred.

5 §8-37-9.

6 The legislature finds that guaranteed asset  
7 protection waivers are not insurance. All guaranteed asset  
8 protection waivers issued prior to and after the date of  
9 enactment of this section shall not be construed as insurance.

10 Section 2. This act becomes effective on January 1,  
11 2018.