**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 37 SO AS TO ENACT THE “GUARANTEED ASSET PROTECTION ACT”, TO PROVIDE A FRAMEWORK WITHIN WHICH GUARANTEED ASSET PROTECTION WAIVERS ARE DEFINED AND MAY BE OFFERED WITHIN THIS STATE, TO PROVIDE REQUIREMENTS FOR OFFERING GUARANTEED ASSET PROTECTION WAIVERS, TO PROVIDE THE DISCLOSURES REQUIRED, TO PROVIDE FOR CANCELLATION OF GUARANTEED ASSET PROTECTION WAIVERS, AND TO PROVIDE FOR ENFORCEMENT OF THIS CHAPTER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Guaranteed Asset Protection Act”.

SECTION 2. Title 37 of the 1976 Code is amended by adding:

“CHAPTER 30

Guaranteed Asset Protection

Section 37‑30‑100. (A) The purpose of this chapter is to provide a framework within which guaranteed asset protection (GAP) waivers are defined and may be offered within this State.

(B) This chapter does not apply to:

(1) an insurance policy offered by an insurer under Title 38; or

(2) a debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. Part 37, or 12 C.F.R. Part 721, or any other federal law.

(C) GAP waivers governed under this chapter are not insurance and are exempt from the provisions of Title 38, as are persons administering, marketing, selling, or offering to sell GAP waivers to borrowers.

Section 37‑30‑110. For purposes of this chapter:

(1) ‘Administrator’ means a person, other than an insurer or creditor that performs administrative or operational functions with respect to GAP waivers.

(2) ‘Borrower’ means a debtor, retail buyer, or lessee under a finance agreement.

(3) ‘Creditor’ means:

(a) a lender in a loan or credit transaction;

(b) a lessor in a lease transaction;

(c) a dealer of motor vehicles that provides credit to a borrower, provided that the entity complies with the provisions of this chapter;

(d) a seller in commercial retail installment transactions; or

(e) an assignee of a lender, lessor, dealer, or seller as defined in this item to whom the credit obligation is payable.

(4) ‘Finance agreement’ means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

(5) ‘Free look period’ means the period of time from the effective date of the GAP waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time must be at least thirty days.

(6) ‘Guaranteed asset protection waiver’ or ‘GAP waiver’ means a contractual agreement in which a creditor 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 the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.

(7) ‘Insurer’ means an insurance company licensed, registered, or otherwise authorized to do business under Title 38.

(8) ‘Motor vehicle’ means self‑propelled or towed vehicles designed for personal or commercial use including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all terrain vehicles, snowmobiles, campers, boats, personal watercraft, and trailers for motorcycles, boats, campers, and personal watercraft.

(9) ‘Person’ means an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

Section 37‑30‑120. (A) The offering and sale of GAP waivers in this State is subject to the provisions of this chapter.

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

(C) Notwithstanding another provision of law, any cost to the borrower for a GAP waiver subject to the Truth in Lending Act, 15 U.S.C. 1601, and its implementing regulations, as amended, or subject to Title 37, is a permitted additional charge that must be separately stated and is not to be considered a finance charge or interest.

(D) A motor vehicle dealer shall insure its GAP waiver obligations under a contractual liability or another insurance policy issued by an insurer. Other creditors may insure their GAP waiver obligations under a contractual liability policy or other policy issued by an insurer. An insurance policy may be obtained directly by a creditor, or may be procured by an administrator to cover a creditor’s obligations. However, dealers of motor vehicles that are lessors on motor vehicles are not required to insure obligations related to GAP waivers on leased vehicles.

(E) A GAP waiver must remain a part of the finance agreement upon its assignment, sale, or transfer by a creditor.

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

(G) A creditor that offers a GAP waiver shall report the sale of and forward funds received on all waivers to the designated party, if any, as prescribed in an applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(H) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator pursuant to the terms of a written agreement must be held by the creditor or administrator in a fiduciary capacity.

Section 37‑30‑130. (A) A contractual liability or other insurance policy insuring a GAP waiver must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the GAP waiver issued by the creditor and purchased or held by the borrower.

(B) Coverage under a contractual liability or other insurance policy insuring a GAP waiver also must cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(C) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this State.

(D) The cancellation or termination of a contractual liability or other insurance policy must not reduce the insurer’s responsibility for GAP waivers issued by the creditor prior to the date of cancellation or termination and for which premium has been received by the insurer.

Section 37‑30‑140. A GAP waiver must include the following terms in clear, easily understandable language:

(1) the name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(2) the purchase price and the terms of the GAP waiver including, without limitation, the requirements for protection, conditions, or exclusions associated with the GAP waiver;

(3) the length of the free look period and the procedure by which a borrower may exercise the borrower’s rights during that period;

(4) the terms required by Section 37‑30‑150;

(5) the procedure the borrower must follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;

(6) the methodology for calculating any refund of the unearned purchase price of the GAP waiver due in the event of cancellation of the GAP waiver or early termination of the finance agreement; and

(7) a statement that neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the purchase of the GAP waiver.

Section 37‑30‑150. (A) A GAP waiver must include a term stating that if a borrower cancels the waiver within the free look period, the borrower is entitled to a full refund if no benefits have been provided under the GAP waiver.

(B) A GAP waiver may be either cancellable or noncancellable after the free look period. A GAP waiver must include:

(1) a statement of whether or not the GAP waiver is cancellable or noncancellable after the expiration of the free look period.

(2) if the waiver is cancellable, all of the following terms apply:

(a) a statement that in the event of a borrower’s cancellation of the GAP waiver or early termination of the finance agreement, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise; and

(b) the procedures by which a borrower may cancel the waiver. This term must include a requirement that if the underlying finance agreement is terminated, cancellation must be made by providing a written request to the creditor, administrator, or other party within ninety days of the event terminating the finance agreement.

(C) A cancellation refund under subsections (A) and (B) may be applied by the creditor as a reduction of the amount owed under the finance agreement unless the borrower shows that the finance agreement has been paid in full. A GAP waiver must include a term stating that notwithstanding subsections (A) and (B), if cancellation of the waiver occurs as a result of a default under the finance agreement or the repossession of the vehicle associated with the finance agreement or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as provided in this subsection.

Section 37‑30‑160. Sections 37‑30‑120(C), 37‑30‑140, and 37‑30‑170 of this chapter are not applicable to a GAP waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

Section 37‑30‑170. The Administrator of the Department of Consumer Affairs may take action necessary to enforce the provisions of this chapter and to protect GAP waiver holders in this State. After proper notice and opportunity for hearing, the administrator may:

(1) order a creditor, administrator, or another person not in compliance with this chapter to cease and desist from further GAP waiver‑related operations; and

(2) impose a penalty of not more than five hundred dollars for each violation of this chapter and no more than ten thousand dollars in the aggregate for all violations of similar nature.

For purposes of this chapter, violations must be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice occurred.”

SECTION 3. This act takes effect upon approval by the Governor and applies to all GAP waivers which become effective one hundred eighty days after the effective date.

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