

2016 -- H 7712 SUBSTITUTE A

LC004926/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO FINANCIAL INSTITUTIONS - GUARANTEED ASSET PROTECTION

Introduced By: Representative Brian P. Kennedy

Date Introduced: February 24, 2016

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 32

4 GUARANTEED ASSET PROTECTION WAIVERS

5 **19-32-1. Legislative intent and purpose. --** (a) The general assembly finds that  
6 guaranteed asset protection waivers are not insurance. All guaranteed asset protection waivers  
7 issued prior to and after the date of enactment of this chapter shall not be construed as insurance.

8 (b) The purpose of this chapter is to provide a framework within which guaranteed asset  
9 protection waivers are defined and may be offered within this state.

10 (c) This chapter does not apply to:

11 (1) An insurance policy offered by an insurer under title 27 including, but not limited to,  
12 vendor single interest coverage; or

13 (2) A debt cancellation or debt suspension contract being offered in compliance with  
14 §§19-3-1 and 19-5-25 or 12 CFR Part 37 or 12 CFR Part 721 or other federal law.

15 (d) Guaranteed asset protection waivers governed under this section are not insurance and  
16 are exempt from the insurance laws of this state. Persons marketing, selling or offering to sell  
17 guaranteed asset protection waivers to borrowers that comply with this section are exempt from  
18 this state's insurance licensing requirements.

19 **19-32-2. Definitions. --** The following are terms defined for purposes of this chapter and

1 are not intended to provide actual terms required in guaranteed asset protection waivers:

2 (1) "Administrator" means a person, other than an insurer or creditor that performs  
3 administrative or operational functions pursuant to guaranteed asset protection waiver programs.

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

5 (3) "Creditor" means:

6 (i) The lender in a loan or credit transaction;

7 (ii) The lessor in a lease transaction;

8 (iii) Any dealer of motor vehicles that provides credit to retail buyers of such motor  
9 vehicles provided that such entities comply with the provisions of this section;

10 (iv) Any retail seller of motor vehicles as defined herein in commercial retail installment  
11 transactions; or

12 (v) The assignees of any of the foregoing to whom the credit obligation is payable.

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

15 (5) "Free look period" means the period of time from the effective date of the GAP  
16 waiver until the date the borrower may cancel the contract without penalty, fees or costs to the  
17 borrower. This period of time must be not less than thirty (30) days.

18 (6) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual  
19 agreement wherein a creditor agrees for a separate charge to cancel or waive all or part of  
20 amounts due on a borrower's finance agreement in the event of a total physical damage loss or  
21 unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum  
22 to, the finance agreement.

23 (7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to  
24 do business under title 27.

25 (8) "Motor vehicle" means self-propelled or towed vehicles designed for personal or  
26 commercial use, including, but not limited to, automobiles, trucks, motorcycles, recreational  
27 vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and trailers for  
28 motorcycles, boats, campers and personal watercraft.

29 (9) "Person" includes an individual, company, association, organization, partnership,  
30 business trust, corporation, or other legal entity.

31 **19-32-3. Requirements For Offering Guaranteed Asset Protection Waivers. -- (a)**  
32 GAP waivers maybe offered, sold or provided to borrowers in this state in compliance with this  
33 chapter.

34 (b) GAP waivers may, at the option of the creditor, be sold for a single payment, or may

1 be offered with a monthly or periodic payment option.

2 (c) Notwithstanding any provision of the general or public laws to the contrary, any cost  
3 to the borrower for a guaranteed asset protection waiver entered into in compliance with The  
4 Truth in Lending Act, 15 USC §1601 et seq., and its implementing regulations, as they may be  
5 amended from time to time, must be separately stated and is not to be considered a finance charge  
6 or interest.

7 (d) A retail seller must insure its GAP waiver obligations under a contractual liability or  
8 other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its  
9 GAP waiver obligations under a contractual liability policy or other such policy issued by an  
10 insurer. Any such insurance policy may be directly obtained by a creditor, retail seller, or may be  
11 procured by an administrator to cover a creditor's or retail seller's obligations; provided, that retail  
12 sellers that are lessors on motor vehicles are not required to insure obligations related to GAP  
13 waivers on such leased vehicles.

14 (e) The GAP waiver remains a part of the finance agreement upon the assignment, sale or  
15 transfer of such finance agreement by the creditor.

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

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

23 **19-32-4. Contractual Liability or Other Insurance Policies. --** (a) Contractual liability  
24 or other insurance policies insuring GAP waivers must state the obligation of the insurer to  
25 reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the GAP  
26 waivers issued by the creditor and purchased or held by the borrower.

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

30 (c) Coverage under a contractual liability or other insurance policy insuring a GAP  
31 waiver must remain in effect unless cancelled or terminated in compliance with title 27.

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

1           **19-32-5. Disclosures.** -- Guaranteed asset protection waivers must disclose, in writing  
2 and in clear, understandable language that is easy to read, the following:

3           (1) The name and address of the initial creditor and the borrower at the time of sale, and  
4 the identity of any administrator if different from the creditor.

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

7           (3) That the borrower may cancel the GAP waiver within a free look period as specified  
8 in the waiver, and will be entitled to a full refund of the purchase price, as long as no benefits  
9 have been provided; or in the event benefits have been provided, the borrower may receive a full  
10 or partial refund pursuant to the terms of the waiver.

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

14           (5) Whether or not the GAP waiver is cancellable after the free look period, and the  
15 conditions under which it may be cancelled or terminated including the procedures for requesting  
16 any refund due.

17           (6) That in order to receive any refund due in the event of a borrower's cancellation of the  
18 GAP waiver agreement or early termination of the finance agreement after the free look period of  
19 the GAP waiver, the borrower, in accordance with terms of the waiver, must provide a written  
20 request to cancel to the creditor, administrator or such other party, within ninety (90) days of the  
21 occurrence of the event terminating the finance agreement.

22           (7) The methodology for calculating any refund of the unearned purchase price of the  
23 GAP waiver due, in the event of cancellation of the GAP waiver or early termination of the  
24 finance agreement.

25           (8) That neither the extension of credit, the terms of the credit, nor the terms of the  
26 related motor vehicle sale or lease, may be conditioned upon the purchase of the GAP waiver.

27           **19-32-6. Cancellation.** -- (a) GAP waiver agreements may be cancellable or non-  
28 cancellable after the free look period. GAP waivers must provide that if a borrower cancels a  
29 waiver within the free look period, the borrower will be entitled to a full refund of the purchase  
30 price, as long as no benefits have been provided; or in the event benefits have been provided, the  
31 borrower may receive a full or partial refund pursuant to the terms of the waiver.

32           (b) In the event of a borrower's cancellation of the GAP waiver or early termination of the  
33 finance agreement after the agreement has been in effect beyond the free look period, the  
34 borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver

1 unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance  
2 with any applicable terms of the waiver, must provide a written request to the creditor,  
3 administrator or other party, within ninety (90) days of the event terminating the finance  
4 agreement.

5 (c) If the cancellation of a GAP waiver occurs as a result of a default under the finance  
6 agreement or the repossession of the motor vehicle associated with the finance agreement, or any  
7 other termination of the finance agreement, any refund due may be paid directly to the creditor or  
8 administrator and applied as set forth in subsection (d) of this section.

9 (d) Any cancellation refund under subsections (a), (b) or (c) above, may be applied by the  
10 creditor as a reduction of the amount owed under the finance agreement, unless the borrower can  
11 show that the finance agreement has been paid in full.

12 **19-32-7. Commercial Transactions Exempted.** -- Sections 19-32-3(c), 19-32-5 and 19-  
13 32-8 are not applicable to a GAP waiver offered in connection with a lease or retail installment  
14 sale associated with transactions between business entities.

15 **19-32-8. Severability.** -- If any provision of this chapter, or the application of the  
16 provision to any person or circumstances, is held invalid, the remainder of the chapter, and the  
17 application of the provision to persons or circumstances other than those as to which it is held  
18 invalid, is not to be affected.

19 SECTION 2. This act shall take effect upon passage and shall apply to all guaranteed  
20 asset protection waivers which become effective on or after January 1, 2017.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO FINANCIAL INSTITUTIONS - GUARANTEED ASSET PROTECTION

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1           This act would authorize motor vehicle dealers to issue guaranteed asset protection  
2 waivers to consumers while providing consumer protections for guaranteed asset protection  
3 waivers.

4           This act would take effect upon passage and would apply to all guaranteed asset  
5 protection waivers which become effective on or after January 1, 2017.

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