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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS - GUARANTEED ASSET PROTECTION

Introduced By: Senator Roger Picard

Date Introduced: February 11, 2016

Referred To: Senate Judiciary

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; or

12 (2) A debt cancellation or debt suspension contract being offered in compliance with 12  
13 CFR Part 37 or 12 CFR Part 721 or other federal law.

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

18 **19-32-2. Definitions. --** The following are terms defined for purposes of this chapter and  
19 are not intended to provide actual terms required in guaranteed asset protection waivers:

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

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

4           (3) "Creditor" means:

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

6           (ii) The lessor in a lease transaction;

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

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

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

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

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

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

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

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

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

30           **19-32-3. Requirements For Offering Guaranteed Asset Protection Waivers. -- (a)**  
31 GAP waivers maybe offered, sold or provided to borrowers in this state in compliance with this  
32 chapter.

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

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

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

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

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

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

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

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

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

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

33 (d) The cancellation or termination of a contractual liability or other insurance policy  
34 must not reduce the insurer's responsibility for GAP waivers issued by the creditor prior to the

1 date of cancellation or termination and for which premium has been received by the insurer.

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

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

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

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

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

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

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

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

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

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

33 (b) In the event of a borrower's cancellation of the GAP waiver or early termination of the  
34 finance agreement after the agreement has been in effect beyond the free look period, the

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

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

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

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

16 **19-32-8. Enforcement.** -- The commissioner of insurance for the department of business  
17 regulation may take action which is necessary and appropriate to enforce the provisions of this  
18 chapter, and to protect GAP waiver holders in this state. After proper notice and opportunity for  
19 hearing, the commissioner may:

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

23 (2) Impose a penalty of not more than five hundred dollars (\$500) per violation, and not  
24 more than ten thousand dollars (\$10,000) in the aggregate for all violations of similar nature. For  
25 the purposes of this section, violations must be of a similar nature if the violation consists of the  
26 same or similar course of conduct, action or practice, regardless of the number of times the  
27 action, conduct or practice determined to be a violation of the chapter occurred.

28 **19-32-9. Severability.** -- If any provision of this chapter, or the application of the  
29 provision to any person or circumstances, is held invalid, the remainder of the chapter, and the  
30 application of the provision to persons or circumstances other than those as to which it is held  
31 invalid, is not to be affected.

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

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