

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Guaranteed Asset Protection Waiver Act.

6 Section 5. Intent; scope; findings.

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

10 (b) This Act does not apply to:

11 (1) an insurance policy offered by an insurer under the
12 insurance laws of this State; or

13 (2) a debt cancellation or debt suspension contract
14 being offered in compliance with 12 CFR Part 37 or 12 CFR
15 Part 721 or other federal law by a bank holding company,
16 financial holding company, bank, savings bank, credit
17 union, or trust company that is authorized to do business
18 under the laws of this State or of the United States.

19 (c) Guaranteed asset protection waivers governed under
20 this Act are not insurance and are exempt from the insurance
21 laws of this State. Persons marketing, selling, or offering to
22 sell guaranteed asset protection waivers to borrowers that
23 comply with this Act are exempt from this State's insurance

1 licensing requirements.

2 (d) The legislature finds that guaranteed asset protection
3 waivers are not insurance. All guaranteed asset protection
4 waivers issued before or after the effective date of this Act
5 shall not be construed as insurance.

6 Section 10. Definitions. The following are terms defined
7 for purposes of this Act and are not intended to provide actual
8 terms required in guaranteed asset protection waivers:

9 "Administrator" means a person, other than an insurer or
10 creditor, that performs administrative or operational
11 functions pursuant to guaranteed asset protection waiver
12 programs.

13 "Borrower" means a debtor, retail buyer, or lessee under a
14 finance agreement.

15 "Creditor" means:

16 (i) the lender in a loan or credit transaction;

17 (ii) the lessor in a lease transaction;

18 (iii) any dealer of motor vehicles that provides credit
19 to retail buyers of such motor vehicles, provided that such
20 entities comply with the provisions of this Act;

21 (iv) the seller in commercial retail installment
22 transactions; or

23 (v) the assignees of any of the foregoing to whom the
24 credit obligation is payable.

25 "Finance agreement" means a loan, lease, or retail

1 installment sales contract for the purchase or lease of a motor
2 vehicle.

3 "Free look period" means the period of time of at least 30
4 days from the effective date of the GAP waiver until the date
5 the borrower may cancel the contract without penalty, fees, or
6 costs to the borrower.

7 "Guaranteed asset protection waiver" or "GAP waiver" means
8 a contractual agreement that is part of, or a separate addendum
9 to, a finance agreement wherein a creditor agrees for a
10 separate charge to cancel or waive all or part of amounts due
11 on a borrower's finance agreement in the event of a total
12 physical damage loss or unrecovered theft of the motor vehicle.

13 "Insurer" means an insurance company licensed, registered,
14 or otherwise authorized to do business under the insurance laws
15 of this State.

16 "Motor vehicle" means self-propelled or towed vehicles
17 designed for personal or commercial use, including, but not
18 limited to, automobiles, trucks, motorcycles, recreational
19 vehicles, all terrain vehicles, snowmobiles, campers, boats,
20 personal watercraft, and motorcycle, boat, camper, and
21 personal watercraft trailers.

22 "Person" includes an individual, company, association,
23 organization, partnership, business trust, and corporation and
24 every form of legal entity.

25 Section 15. Requirements for offering guaranteed asset

1 protection waivers.

2 (a) GAP waivers may be offered, sold, or provided to
3 borrowers in this State in compliance with this Act.

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

7 (c) Notwithstanding any other provision of law, any cost to
8 the borrower for a guaranteed asset protection waiver entered
9 into in compliance with the federal Truth in Lending Act and
10 its implementing regulations must be separately stated and is
11 not to be considered a finance charge or interest.

12 (d) A retail seller must insure its GAP waiver obligations
13 under a contractual liability or other insurance policy issued
14 by an insurer. A creditor, other than a retail seller, may
15 insure its GAP waiver obligations under a contractual liability
16 policy or other such policy issued by an insurer. Any such
17 insurance policy may be directly obtained by a creditor or
18 retail seller or may be procured by an administrator to cover a
19 creditor's or retail seller's obligations. Retail sellers that
20 are lessors on motor vehicles are not required to insure
21 obligations related to GAP waivers on such leased vehicles.

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

25 (f) Neither the extension of credit, the term of credit,
26 nor the term of the related motor vehicle sale or lease may be

1 conditioned upon the purchase of a GAP waiver.

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

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

12 Section 20. Contractual liability or other insurance
13 policies.

14 (a) Contractual liability or other insurance policies
15 insuring GAP waivers must state the obligation of the insurer
16 to reimburse or pay to the creditor any sums the creditor is
17 legally obligated to waive under the GAP waivers issued by the
18 creditor and purchased or held by the borrower.

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

23 (c) Coverage under a contractual liability or other
24 insurance policy insuring a GAP waiver must remain in effect
25 unless cancelled or terminated in compliance with the

1 applicable insurance laws of this State.

2 (d) The cancellation or termination of a contractual
3 liability or other insurance policy must not reduce the
4 insurer's responsibility for GAP waivers (i) issued by the
5 creditor prior to the date of cancellation or termination and
6 (ii) for which a premium has been received by the insurer.

7 Section 25. Disclosures. GAP waivers must disclose, as
8 applicable, in writing and in clear, understandable language
9 that is easy to read, the following:

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

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

17 (3) That the borrower may cancel the GAP waiver within
18 a free look period of at least 30 days as specified in the
19 waiver and will be entitled to a full refund of the
20 purchase price provided that no benefits have been
21 provided.

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

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

5 (6) That in order to receive any refund due in the
6 event of a borrower's cancellation of the GAP waiver
7 agreement or early termination of the finance agreement
8 after the free look period of the GAP waiver, the borrower,
9 in accordance with terms of the waiver, must provide a
10 written request to cancel to the creditor, the
11 administrator, or any other party. If cancelling due to
12 early termination of the finance agreement, the written
13 request to cancel must be made within 90 days of the
14 occurrence of the event terminating the finance agreement.

15 (7) The methodology for calculating any refund of the
16 unearned purchase price of the GAP waiver due in the event
17 of cancellation of the GAP waiver or early termination of
18 the finance agreement.

19 (8) None of the following may be conditioned upon the
20 purchase of the GAP waiver: the extension of credit; the
21 terms of the credit; or the terms of the related motor
22 vehicle sale or lease.

23 Section 30. Cancellation.

24 (a) GAP waiver agreements may be cancellable or
25 non-cancellable after the free look period. GAP waivers must

1 provide that if a borrower cancels a waiver within the free
2 look period, the borrower is entitled to a full refund of the
3 purchase price, provided that no benefits have been provided.

4 (b) In the event of a borrower's cancellation of the GAP
5 waiver or early termination of the finance agreement after the
6 agreement has been in effect beyond the free look period, the
7 borrower is entitled to a refund of any unearned portion of the
8 purchase price of the waiver unless the waiver provides
9 otherwise. In order to receive a refund, the borrower, in
10 accordance with any applicable terms of the waiver, must
11 provide a written request to the creditor, administrator, or
12 other party. If cancelling due to early termination of the
13 finance agreement, the written request to cancel must be made
14 within 90 days of the event terminating the finance agreement.

15 (c) If the cancellation of a GAP waiver occurs as a result
16 of a default under the finance agreement or the repossession of
17 the motor vehicle associated with the finance agreement or any
18 other termination of the finance agreement, any refund due may
19 be paid directly to the creditor or administrator and applied
20 as set forth in subsection (d) of this Section.

21 (d) Any cancellation refund under subsections (a), (b), or
22 (c) of this Section may be applied by the creditor as a
23 reduction of the amount owed under the finance agreement,
24 unless the borrower can show that the finance agreement has
25 been paid in full.

1 Section 35. Commercial transactions exempted. Section 25,
2 Section 40, and subsection (c) of Section 15 do not apply to a
3 GAP waiver offered in connection with a lease or retail
4 installment sale associated with a commercial transaction.

5 Section 40. Enforcement. The Secretary of Financial and
6 Professional Regulation may take any action that is necessary
7 or appropriate to enforce the provisions of this Act and to
8 protect guaranteed asset protection waiver holders in this
9 State. After proper notice and opportunity for hearing, the
10 Secretary may:

11 (1) order the creditor, administrator, or any other
12 person not in compliance with this Act to cease and desist
13 from further guaranteed asset protection waiver-related
14 operations that are in violation of this Act; and

15 (2) impose a penalty of not more than \$500 per
16 violation and no more than \$10,000 in the aggregate for all
17 violations of similar nature; for purposes of this Act,
18 violations are of a similar nature if the violation
19 consists of the same or similar course of conduct, action,
20 or practice, irrespective of the number of times the
21 conduct, action, or practice that is determined to be a
22 violation of the Act occurred.

23 Section 97. Severability. The provisions of this Act are
24 severable under Section 1.31 of the Statute on Statutes.

1 Section 900. The Illinois Insurance Code is amended by
2 changing Section 2.5 as follows:

3 (215 ILCS 5/2.5)

4 Sec. 2.5. Exemptions ~~Exemption~~.

5 (a) This Code shall not be construed to apply to the
6 administration of the Drycleaner Environmental Response Trust
7 Fund under the Drycleaner Environmental Response Trust Fund
8 Act.

9 (b) This Code shall not be construed to apply to guaranteed
10 asset protection waivers regulated under the Guaranteed Asset
11 Protection Waiver Act.

12 (Source: P.A. 90-502, eff. 8-19-97.)