



GAP Waiver Model Act

The Guaranteed Asset Protection Alliance is requesting that the GAPA Model Act language governing guaranteed asset protection waivers (GAP waivers) be substituted in lieu of the task force language in Raised Bill 980. The Guaranteed Asset Protection Alliance (GAPA) is comprised of companies that offer guaranteed asset protection waivers across the country.

A guaranteed asset protection waiver or “GAP waiver” is offered to a borrower when that person is financing the purchase of a car. As soon as the borrower drives off the dealer’s lot, their new car loses significant value. Because of this devaluation, the amount the borrower owes can easily exceed the amount the vehicle is worth. If the borrower destroys the vehicle at that time, they will owe more than what their motor vehicle insurance will pay them. The additional amounts owed would come out of the borrower’s pocket, unless that person obtained a GAP waiver. If a GAP waiver was purchased, the creditor would waive some or all of the amount owed in excess of the primary insurance proceeds. In other words, the creditor simply foregoes seeking payment of the additional amounts owed.

We support the proposed legislation as it creates a uniform set of laws applicable to this product and contains important consumer protections. Similar laws have been passed in 21 other states including Maine, New Hampshire, Rhode Island, and New Jersey. The following is a brief description of the proposed legislation:

Section 1 sets forth that federal and state banks and credit unions are exempt from this act and that this product is not insurance.

Section 2 defines a number of terms relevant to GAP waiver including creditor, borrower, finance agreement and a free look period which permits a borrower to return the product within 30 days for a full refund.

Section 3 specifies things like that the product may be included within the amount financed, that the GAP waiver remains a part of the finance agreement and that the product must be optional.

Section 4 sets forth requirements applicable to contractual liability insurance purchased by creditors.

Section 5 includes a number of required disclosures addressing items like the cost of the product, the terms of the product, cancellation and refund, the free look period and requirement to tell the borrower that the purchase of this product is optional.

Section 6 specifies cancellation and refund requirements.

Section 7 exempts commercial transactions from certain provisions within this legislation.

Section 8 includes relevant enforcement provisions.

GAPA supports this proposed legislation and hopes that you will join us in supporting it as well. Attached is draft legislation that GAPA proposes to be adopted, as well as a list of states that have adopted the GAPA model act.

**Guaranteed Asset Protection
Waiver Model Act**

Section 1. Section _____, revised code is added to read:

Chapter ____ - Financial Institutions

Section _____. Guaranteed Asset Protection Waivers

1. Scope

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

(B) This section does not apply to:

(i) An insurance policy offered by an insurer under the insurance laws of this state; or

(ii) A debt cancellation or debt suspension contract being offered in compliance with Title 36a, 12 CFR Part 37 or 12 CFR Part 721 or other federal law.

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

2. Definitions

The following are terms defined for purposes of this section and are not intended to provide actual terms required in guaranteed asset protection waivers.

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

(B) "Borrower" means a debtor or retail buyer under a finance agreement.

(C) "Creditor" means:

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

(ii) any "[retail seller]" as defined in _____, of motor vehicles that provides credit to "retail buyers" as defined in _____ of such motor vehicles provided that such entities comply with the provisions of this section;

Drafting Note: This is a placeholder for whatever term describes a licensed motor vehicle dealer acting in their capacity as a creditor in the subject state.

(iii) the seller in commercial retail installment transactions; or

(iv) the assignees of any of the foregoing to whom the credit obligation is payable.

(D) "Finance Agreement" means a loan or retail installment sales contract for the purchase of a motor vehicle.

(E) "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 not be shorter than 30 days.

(F) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement wherein 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.

(G) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(H) "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 motorcycle, boat, camper and personal watercraft trailers.

(I) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

3. Requirements For Offering Guaranteed Asset Protection Waivers

(A) GAP waivers maybe offered, sold or provided to borrowers in this state in compliance with this Act.

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

(C) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with The Truth in Lending Act (15 USC 1601 et. seq.) and its implementing regulations, as they may be amended from time to time, must be separately stated and is not to be considered a finance charge or interest.

(D) A retail seller must insure its GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its GAP waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor, retail seller, or may be procured by an administrator to cover a creditor's or retail seller's obligations.

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

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

(G) Any creditor that offers a GAP waiver must report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any 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 such creditor or administrator in a fiduciary capacity.

4. Contractual Liability or Other Insurance Policies

(A) Contractual liability or other insurance policies insuring GAP waivers are insurance and are subject to the applicable provisions of Title 38a and any implementing regulations.

(B) Contractual liability or other insurance policies insuring GAP waivers 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 waivers issued by the creditor and purchased or held by the borrower.

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

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

(E) 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.

5. Disclosures

Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

(A) 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.

(B) 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.

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

(D) 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.

(E) Whether or not the GAP waiver is cancellable after the Free Look Period and the conditions under which it may be cancelled or terminated including the procedures for requesting any refund due.

(F) That in order to receive any refund due in the event of a borrower's cancellation of the GAP waiver agreement or early termination of the finance agreement after the Free Look Period of the GAP waiver, the borrower, in accordance with terms of the waiver, must provide a written request to cancel to the creditor, administrator or such other party. If the GAP waiver is canceled as a result of the early termination of the finance agreement, the borrower shall provide the request within ninety days of the occurrence of the event terminating the finance agreement.

(G) 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.

(H) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale, may be conditioned upon the purchase of the GAP waiver.

6. Cancellation.

(A) Guaranteed asset protection waiver agreements may be cancellable or non-cancellable after the Free Look Period. GAP waivers must provide that if a borrower cancels a waiver within the Free Look Period, the borrower will be entitled to a full refund of the purchase price, so long as no benefits have been provided.

(B) In the event of a borrower's cancellation of the GAP waiver or early termination of the finance agreement, after the agreement has been in effect beyond the Free Look Period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator or other party. If the GAP waiver is canceled as a result of the early termination of

the finance agreement, the borrower shall provide the request within ninety days of the occurrence of the event terminating the finance agreement.

(C) If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement or the repossession of the motor 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 set forth in paragraph (D).

(D) Any cancellation refund under paragraphs (A), (B) or (C) above, may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

7. Commercial Transactions Exempted.

Sections 3(C), 5 and 8 of this Act are not applicable to a guaranteed asset protection waiver offered in connection with a retail installment sale associated with a commercial transaction.

8. Enforcement.

The [Commissioner] may take action which is necessary or appropriate to enforce the provisions of this section and to protect guaranteed asset protection waiver holders in this state. After proper notice and opportunity for hearing, the Commissioner may:

Drafting Note: Reference to “Commissioner” should be amended to accurately describe the regulator title in the subject state.

(A) Order the creditor, administrator or any other person not in compliance with this section to cease and desist from further guaranteed asset protection waiver-related operations which are in violation of this section.

(B) Impose a penalty of not more than five hundred dollars (\$500.00) per violation and no more than ten thousand dollars (\$10,000) in the aggregate for all violations of similar nature. For purposes of this section, 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 section, conduct or practice which is determined to be a violation of the Section occurred.

Section 2. Intent

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

Section 3. Severability Provision

If any provision of this section, or the application of the provision to any person or circumstances, is held invalid, the remainder of the section, and the application of the provision to person or circumstances other than those as to which it is held invalid, is not to be affected.

Section 4. Effective Date

This section becomes effective immediately upon its passage and approval by the Governor, or upon it otherwise becoming a law and applies to all guaranteed asset protection waivers which become effective on or after 180 days from the effective date of the section.



List of GAPA Model Act States (21)

2008

Georgia (SB 470)
Tennessee (HB 3671)

2009

Michigan (HB 4989; HB 4990;
HB 4991; HB 4992)
Washington (HB 1530)

2010

Nebraska (LB 571)
Utah (SB 148)

2011

Texas (HB 2931)

2013

North Carolina (SB 358)
Montana (HB 415)

2015

Minnesota (HF 3)
Nevada (SB 253)
New Hampshire (SB 119)
Oregon (HB 2845)
South Carolina (SB 441)

2016

Rhode Island (SB 2424)
New Jersey (AB 3601)

2017

Alabama (HB 420)
Maine (LD 1506)

2018

Mississippi (SB 2929)
West Virginia (HB 4186)
Wisconsin (AB 663)