

## CHAPTER 82

AN ACT concerning the regulation of guaranteed asset protection waivers and supplementing Title 17 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

### C.17:16BB-1 Purpose of act.

1. a. The purpose of this act is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this State.

b. This act shall not apply to:

- (1) An insurance policy offered by an insurer under the insurance laws of this State; 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 other federal law.

c. Guaranteed asset protection waivers governed under this act 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 act shall be exempt from this State's licensing requirements provided in the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.).

### C.17:16BB-2 Definitions relative to guaranteed asset protection waivers.

2. As used in this act:

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

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

"Commissioner" means the Commissioner of Banking and Insurance.

"Creditor" means:

- (1) the lender in a loan or credit transaction;
- (2) the lessor in a lease transaction;
- (3) a dealer of motor vehicles that provides credit to retail buyers of motor vehicles, provided that the dealer complies with the provisions of this act;
- (4) the seller in commercial retail installment sales transactions; or
- (5) the assignees of any of the foregoing to whom the credit obligation is payable.

"Department" means the Department of Banking and Insurance.

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

"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, which period shall not be less than 30 days.

"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 the amount 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 shall be part of, or a separate addendum to, the finance agreement.

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

"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.

“Person” includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

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

C.17:16BB-3 Conditions for offer of GAP waiver.

3. a. A GAP waiver may be offered, sold or provided to borrowers in this State in compliance with the provisions of this act.

b. A GAP waiver 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 GAP waiver entered into in compliance with the Truth in Lending Act (15 U.S.C. s.1601 et seq.) and its implementing regulations, as they may be amended from time to time, shall be separately stated and shall not be considered a finance charge or interest.

d. A dealer of motor vehicles shall insure its GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a dealer, may insure its GAP waiver obligations under a contractual liability policy or other policy issued by an insurer. Any insurance policy may be directly obtained by a creditor, dealer, or may be procured by an administrator to cover a creditor’s or dealer’s obligations. However, dealers that are lessors of motor vehicles are not required to insure obligations related to GAP waivers on those leased vehicles.

e. The GAP waiver shall remain a part of the finance agreement upon the assignment, sale or transfer of that finance agreement by the creditor.

f. 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 a GAP waiver.

g. Any 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 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 shall be held by that creditor or administrator in a fiduciary capacity.

i. The total physical damage loss of a borrower’s motor vehicle shall be determined in accordance with the terms of the borrower’s primary motor vehicle insurance policy. In instances in which the borrower has no primary motor vehicle insurance or in which the primary motor vehicle insurer is insolvent at the time of loss, then a total loss shall be determined in accordance with the terms of the GAP waiver.

C.17:16BB-4 Obligations of insurer.

4. a. Contractual liability or other insurance policies insuring GAP waivers shall 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.

b. Coverage under a contractual liability or other insurance policy insuring a GAP waiver shall also 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 shall remain in effect unless cancelled or terminated in compliance with applicable insurance laws of this State.

d. The cancellation or termination of a contractual liability or other insurance policy shall 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.

C.17:16BB-5 Contents of GAP waiver agreement.

5. A GAP waiver agreement shall 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; or if benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver.

d. The procedure the borrower shall 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 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, shall provide a written request to cancel to the creditor, administrator or such other party, within 90 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 or lease, may be conditioned upon the purchase of the GAP waiver.

C.17:16BB-6 Cancellation of GAP waiver agreements, free look period.

6. a. GAP waiver agreements may be cancellable or non-cancellable after the free look period. A GAP waiver shall 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; or if benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver.

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, shall provide a written request to the

creditor, administrator or other party, within 90 days 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 subsection d. of this section.

d. Any cancellation refund under subsection a., b. or c. of this section 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.

C.17:16BB-7 Certain exceptions.

7. A GAP waiver offered in connection with a lease or retail installment sale associated with a commercial transaction shall not be subject to: subsection c. of section 3; section 5; or section 8 of this act.

C.17:16BB-8 Actions by commissioner.

8. The commissioner may take any action which is necessary or appropriate to enforce the provisions of this act and to protect guaranteed asset protection waiver holders in this State. After proper notice and opportunity for hearing, the commissioner may:

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

b. Impose a penalty of not more than \$500 per violation and no more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this act, violations are 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 act, conduct or practice which is determined to be a violation of the act occurred.

C.17:16BB-9 GAP not construed as insurance.

9. GAP waivers issued in this State prior to and after the effective date of this act shall not be construed as insurance.

10. This act shall take effect immediately and shall apply to all GAP waivers executed on or after the 180th day next following enactment.

Approved May 11, 2017.