

By: Representative Chism

To: Insurance

HOUSE BILL NO. 1195

1 AN ACT TO CREATE NEW CHAPTER 52, TITLE 83, MISSISSIPPI CODE
 2 OF 1972, TO PROVIDE A FRAMEWORK WITHIN WHICH GUARANTEED ASSET
 3 PROTECTION WAIVERS ARE DEFINED AND MAY BE OFFERED WITHIN THE STATE
 4 OF MISSISSIPPI; TO PROVIDE DEFINITIONS; TO PROVIDE REQUIREMENTS
 5 FOR OFFERING GAP WAIVERS; TO PROVIDE REQUIREMENTS FOR CONTRACTUAL
 6 LIABILITY AND OTHER INSURANCE POLICIES THAT INSURE A GAP WAIVER;
 7 TO PROVIDE DISCLOSURE REQUIREMENTS; TO PROVIDE FOR CANCELLATION;
 8 TO PROVIDE CERTAIN EXEMPTIONS; TO PROVIDE ENFORCEMENT OF THE
 9 CHAPTER; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** The following shall be codified as Section
 12 83-52-1, Mississippi Code of 1972:

13 83-52-1. (1) The purpose of this chapter is to provide a
 14 framework within which guaranteed asset protection waivers are
 15 defined and may be offered within this state.

16 (2) This chapter does not apply to:

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

19 (b) A debt cancellation or debt suspension contract
 20 being offered by any national or state-chartered bank or federal



21 or state-chartered credit union in compliance with 12 C.F.R. Part
22 37, or 12 C.F.R. Part 721, or any other federal law.

23 (3) Guaranteed asset protection waivers governed under this
24 chapter are not insurance and are exempt from the insurance laws
25 of this state. Persons marketing, selling or offering to sell
26 guaranteed asset protection waivers to borrowers that comply with
27 this chapter are exempt from insurance licensing and insurance
28 regulation requirements of this state.

29 **SECTION 2.** The following shall be codified as Section
30 83-52-3, Mississippi Code of 1972:

31 83-52-3. The following are terms defined for purposes of
32 this chapter and are not intended to provide actual terms required
33 in guaranteed asset protection waivers:

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

37 (b) "Borrower" means a debtor, retail buyer or lessee,
38 under a finance agreement.

39 (c) "Creditor" means:

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

41 (ii) The lessor in a lease transaction;

42 (iii) Any "retail seller" of motor vehicles that
43 provides credit to "retail buyers" of such motor vehicles provided
44 that such entities comply with the provisions of this chapter;



45 (iv) The seller in commercial retail installment
46 transactions; or

47 (v) The assignees of any of the creditors listed
48 in subparagraphs (i) through (iv) of this paragraph to whom the
49 credit obligation is payable.

50 (d) "Finance agreement" means a loan, lease or retail
51 installment sales contract for the purchase or lease of a motor
52 vehicle or any other credit extension secured by a motor vehicle.

53 (e) "Free look period" means the period of time from
54 the effective date of the GAP waiver until the date the borrower
55 may cancel the contract without penalty, fees or costs to the
56 borrower. This period of time shall not be shorter than thrity
57 (30) days.

58 (f) "Guaranteed asset protection waiver" or "GAP
59 waiver" means a contractual agreement wherein a creditor agrees
60 for a separate charge to cancel or waive all or part of amounts
61 due on a borrower's finance agreement in the event of a total
62 physical damage loss or unrecovered theft of the motor vehicle,
63 which agreement shall be part of, or a separate addendum to, the
64 finance agreement.

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

68 (h) "Motor vehicle" means self-propelled or towed
69 vehicles designed for personal or commercial use, including but



70 not limited to automobiles, trucks, motorcycles, recreational
71 vehicles, all-terrain vehicles, snowmobiles, campers, boats,
72 personal watercraft, and motorcycle, boat, camper and personal
73 watercraft trailers.

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

77 **SECTION 3.** The following shall be codified as Section
78 83-52-5, Mississippi Code of 1972:

79 83-52-5. (1) GAP waivers may be offered, sold or provided
80 to borrowers in this state under this chapter.

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

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

91 (4) A retail seller shall insure its GAP waiver obligations
92 under a contractual liability or other insurance policy issued by
93 an insurer. A creditor, other than a retail seller, may insure
94 its GAP waiver obligations under a contractual liability policy or



95 other such policy issued by an insurer. Any such insurance policy
96 may be directly obtained by a creditor, retail seller, or may be
97 procured by an administrator to cover a creditor's or retail
98 seller's obligations. However retail sellers that are lessors on
99 motor vehicles are not required to insure obligations related to
100 GAP waivers on such leased vehicles.

101 (5) The GAP waiver shall remain a part of the finance
102 agreement upon the assignment, sale or transfer of such finance
103 agreement by the creditor.

104 (6) Neither the extension of credit, the term of credit, nor
105 the term of the related motor vehicle sale or lease may be
106 conditioned upon the purchase of a GAP waiver.

107 (7) Any creditor that offers a GAP waiver shall report the
108 sale of, and forward funds received on all such waivers to the
109 designated party, if any, as prescribed in any applicable
110 administrative services agreement, contractual liability policy,
111 other insurance policy or other specified program documents.

112 (8) Funds received or held by a creditor or administrator
113 and belonging to an insurer, creditor or administrator, pursuant
114 to the terms of a written agreement shall be held by such creditor
115 or administrator in a fiduciary capacity.

116 **SECTION 4.** The following shall be codified as Section
117 83-52-7, Mississippi Code of 1972:

118 83-52-7. (1) Contractual liability or other insurance
119 policies insuring GAP waivers shall state the obligation of the



120 insurer to reimburse or pay to the creditor any sums the creditor
121 is legally obligated to waive under the GAP waivers issued by the
122 creditor and purchased or held by the borrower.

123 (2) Coverage under a contractual liability or other
124 insurance policy insuring a GAP waiver shall also cover any
125 subsequent assignee upon the assignment, sale or transfer of the
126 finance agreement.

127 (3) Coverage under a contractual liability or other
128 insurance policy insuring a GAP waiver shall remain in effect
129 unless cancelled or terminated in compliance with applicable
130 insurance laws of this state.

131 (4) The cancellation or termination of a contractual
132 liability or other insurance policy shall not reduce the insurer's
133 responsibility for GAP waivers issued by the creditor prior to the
134 date of cancellation or termination and for which the premium has
135 been received by the insurer.

136 **SECTION 5.** The following shall be codified as Section
137 83-52-9, Mississippi Code of 1972:

138 83-52-9. Guaranteed asset protection waivers shall disclose,
139 as applicable, in writing and in clear, understandable language
140 that is easy to read, the following:

141 (a) The name and address of the initial creditor and
142 the borrower at the time of sale, and the identity of any
143 administrator if different from the creditor.



144 (b) The purchase price and the terms of the GAP waiver,
145 including without limitation, the requirements for protection,
146 conditions, or exclusions associated with the GAP waiver.

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

151 (d) The procedure the borrower shall follow, if any,
152 to obtain GAP waiver benefits under the terms and conditions of
153 the waiver, including a telephone number and address where the
154 borrower may apply for waiver benefits.

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

159 (f) That in order to receive any refund due in the
160 event of a borrower's cancellation of the GAP waiver agreement or
161 early termination of the finance agreement after the Free Look
162 Period of the GAP waiver, the borrower, in accordance with terms
163 of the waiver, shall provide a written request to cancel to the
164 creditor, administrator or such other party. If the GAP waiver is
165 cancelled due to the early termination of the finance agreement,
166 the borrower must provide the request within ninety (90) days of
167 the occurrence of the event terminating the finance agreement.



168 (g) The methodology for calculating any refund of the
169 unearned purchase price of the GAP waiver due, in the event of
170 cancellation of the GAP Waiver or early termination of the finance
171 agreement.

172 (h) That neither the extension of credit, the terms of
173 the credit, nor the terms of the related motor vehicle sale or
174 lease, may be conditioned upon the purchase of the GAP waiver.

175 **SECTION 6.** The following shall be codified as Section
176 83-52-11, Mississippi Code of 1972:

177 83-52-11. (1) Guaranteed asset protection waiver agreements
178 may be cancellable or noncancellable after the Free Look Period.
179 GAP waivers shall provide that if a borrower cancels a waiver
180 within the Free Look Period, the borrower will be entitled to a
181 full refund of the purchase price, so long as no benefits have
182 been provided; or in the event benefits have been provided, the
183 borrower may receive a full or partial refund pursuant to the
184 terms of the waiver.

185 (2) In the event of a borrower's cancellation of the GAP
186 waiver or early termination of the finance agreement, after the
187 agreement has been in effect beyond the Free Look Period, the
188 borrower may be entitled to a refund of any unearned portion of
189 the purchase price of the waiver unless the waiver provides
190 otherwise. In order to receive a refund, the borrower, in
191 accordance with any applicable terms of the waiver, shall provide
192 a written request to the creditor, administrator or other party.



193 If the GAP waiver is cancelled due to the early termination of the
194 finance agreement, the borrower must provide the request within
195 ninety (90) days of the event terminating the finance agreement.

196 (3) If the cancellation of a GAP waiver occurs as a result
197 of a default under the finance agreement or the repossession of
198 the motor vehicle associated with the finance agreement, or any
199 other termination of the finance agreement, any refund due may be
200 paid directly to the creditor or administrator and applied as set
201 forth in subsection (4) of this section.

202 (4) Any cancellation refund under subsection (1), (2) or (3)
203 of this section, may be applied by the creditor as a reduction of
204 the amount owed under the finance agreement, unless the borrower
205 can show that the finance agreement has been paid in full.

206 **SECTION 7.** The following shall be codified as Section
207 83-52-13, Mississippi Code of 1972:

208 83-52-13. Section 83-52-5(3), and Sections 83-52-9 and
209 83-52-15 of this chapter are not applicable to a guaranteed asset
210 protection waiver offered in connection with a lease or retail
211 installment sale associated with a commercial transaction.

212 **SECTION 8.** The following shall be codified as Section
213 83-52-15, Mississippi Code of 1972:

214 83-52-15. The Office of Attorney General, Consumer
215 Protection Division, may take action which is necessary or
216 appropriate to enforce the provisions of this chapter and to
217 protect guaranteed asset protection waiver holders in this state.



218 After proper notice and opportunity for hearing, the Office of
219 Attorney General, Consumer Protection Division, may:

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

224 (b) Impose a penalty of not more than Five Hundred
225 Dollars (\$500.00) per violation and not more than Ten Thousand
226 Dollars (\$10,000.00) in the aggregate for all violations of
227 similar nature. For purposes of this paragraph (b), violations
228 shall be of a similar nature if the violation consists of the same
229 or similar course of conduct, action, or practice, irrespective of
230 the number of times the conduct, action, or practice which is
231 determined to be a violation of this chapter occurred.

232 **SECTION 9.** This act shall take effect and be in force from
233 and after July 1, 2018.

