

By: Senator(s) Parks

To: Business and Financial
Institutions; Insurance

SENATE BILL NO. 2929
(As Sent to Governor)

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 CFR Part 37,
22 or 12 CFR 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 who 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, who issues, makes or provides a GAP waiver,
36 or who performs administrative or operational functions pursuant
37 to guaranteed asset protection waiver programs.

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

40 (c) "Commissioner" means the Commissioner of Insurance
41 for the State of Mississippi.

42 (d) "Creditor" means:

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

44 (ii) The lessor in a lease transaction;



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

48 (iv) The seller in commercial retail installment
49 transactions; or

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

53 (e) "Finance agreement" means a loan, lease or retail
54 installment sales contract for the purchase or lease of a motor
55 vehicle or any other credit extension secured by a motor vehicle.

56 (f) "Free look period" means the period of time from
57 the effective date of the GAP waiver until the date the borrower
58 may cancel the contract without penalty, fees or costs to the
59 borrower. This period of time shall not be shorter than thirty
60 (30) days.

61 (g) "Guaranteed asset protection waiver" or "GAP
62 waiver" means a contractual agreement wherein a creditor agrees
63 for a separate charge to cancel or waive, or an administrator
64 agrees for a separate charge to pay, all or part of amounts due on
65 a borrower's finance agreement in the event of a total physical
66 damage loss or unrecovered theft of the motor vehicle. A GAP
67 waiver in which the creditor cancels or waives amount due shall be
68 part of, or a separate addendum to, the finance agreement.



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

72 (i) "Motor vehicle" means self-propelled or towed
73 vehicles designed for personal or commercial use, including, but
74 not limited to, automobiles, trucks, motorcycles, recreational
75 vehicles, all-terrain vehicles, snowmobiles, campers, boats,
76 personal watercraft, and motorcycle, boat, camper and personal
77 watercraft trailers.

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

81 **SECTION 3.** The following shall be codified as Section
82 83-52-5, Mississippi Code of 1972:

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

85 (2) GAP waivers may, at the option of the creditor or
86 administrator, be sold for a single payment or may be offered with
87 a monthly or periodic payment option.

88 (3) Notwithstanding any other provision of law to the
89 contrary, any cost to the borrower for a guaranteed asset
90 protection waiver entered into in compliance with the Truth in
91 Lending Act (15 USC 1601 et seq.) and its implementing
92 regulations, as they may be amended from time to time, shall be



93 separately stated and is not to be considered a finance charge or
94 interest.

95 (4) A retail seller or administrator shall insure its GAP
96 waiver obligations under a contractual liability or other
97 insurance policy issued by an insurer. A creditor, other than a
98 retail seller, may insure its GAP waiver obligations under a
99 contractual liability policy or other such policy issued by an
100 insurer. Any such insurance policy may be directly obtained by a
101 creditor, retail seller, or may be procured by an administrator to
102 cover a creditor's or retail seller's obligations. However,
103 retail sellers that are lessors on motor vehicles are not required
104 to insure obligations related to GAP waivers on such leased
105 vehicles.

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

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

112 (7) Any creditor or administrator that offers a GAP waiver
113 shall report the sale of, and forward funds received on all such
114 waivers to the designated party, if any, as prescribed in any
115 applicable administrative services agreement, contractual
116 liability policy, other insurance policy or other specified
117 program documents.



118 (8) Funds received or held by a creditor or administrator
119 and belonging to an insurer, creditor or administrator, pursuant
120 to the terms of a written agreement, shall be held by such
121 creditor or administrator in a fiduciary capacity.

122 **SECTION 4.** The following shall be codified as Section
123 83-52-7, Mississippi Code of 1972:

124 83-52-7. (1) Contractual liability or other insurance
125 policies insuring GAP waivers shall state the obligation of the
126 insurer to reimburse or pay to the creditor or administrator any
127 sums the creditor is legally obligated to waive, or administrator
128 is legally obligated to pay, under the GAP waivers issued by the
129 creditor or administrator and purchased or held by the borrower.

130 (2) Coverage under a contractual liability or other
131 insurance policy insuring a GAP waiver shall also cover any
132 subsequent assignee upon the assignment, sale or transfer of the
133 finance agreement.

134 (3) Coverage under a contractual liability or other
135 insurance policy insuring a GAP waiver shall remain in effect
136 unless cancelled or terminated in compliance with applicable
137 insurance laws of this state.

138 (4) The cancellation or termination of a contractual
139 liability or other insurance policy shall not reduce the insurer's
140 responsibility for GAP waivers issued by the creditor or
141 administrator prior to the date of cancellation or termination and
142 for which the premium has been received by the insurer.



143 **SECTION 5.** The following shall be codified as Section
144 83-52-9, Mississippi Code of 1972:

145 83-52-9. Guaranteed asset protection waivers shall disclose,
146 as applicable, in writing and in clear, understandable language
147 that is easy to read, the following:

148 (a) The name and address of the initial creditor and
149 the borrower at the time of sale, and the identity of any
150 administrator if different from the creditor.

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

154 (c) That the borrower may cancel the GAP waiver within
155 a free look period as specified in the waiver, and will be
156 entitled to a full refund of the purchase price, so long as no
157 benefits have been provided.

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

162 (e) Whether or not the GAP waiver is cancellable after
163 the free look period and the conditions under which it may be
164 cancelled or terminated, including the procedures for requesting
165 any refund due.

166 (f) That in order to receive any refund due in the
167 event of a borrower's cancellation of the GAP waiver agreement or



168 early termination of the finance agreement after the free look
169 period of the GAP waiver, the borrower, in accordance with terms
170 of the waiver, shall provide a written request to cancel to the
171 creditor, administrator or such other party. If the GAP waiver is
172 cancelled due to the early termination of the finance agreement,
173 the borrower must provide the request within ninety (90) days of
174 the occurrence of the event terminating the finance agreement.

175 (g) The methodology for calculating any refund of the
176 unearned purchase price of the GAP waiver due, in the event of
177 cancellation of the GAP waiver or early termination of the finance
178 agreement.

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

182 **SECTION 6.** The following shall be codified as Section
183 83-52-11, Mississippi Code of 1972:

184 183-52-11. (1) Guaranteed asset protection waiver agreements may
185 be cancellable or noncancellable after the free look period. GAP
186 waivers shall provide that if a borrower cancels a waiver within
187 the free look period, the borrower will be entitled to a full
188 refund of the purchase price, so long as no benefits have been
189 provided; or in the event benefits have been provided, the
190 borrower may receive a full or partial refund pursuant to the
191 terms of the waiver.



192 (2) In the event of a borrower's cancellation of the GAP
193 waiver or early termination of the finance agreement, after the
194 agreement has been in effect beyond the free look period, the
195 borrower may be entitled to a refund of any unearned portion of
196 the purchase price of the waiver unless the waiver provides
197 otherwise. In order to receive a refund, the borrower, in
198 accordance with any applicable terms of the waiver, shall provide
199 a written request to the creditor, administrator or other party.
200 If the GAP waiver is cancelled due to the early termination of the
201 finance agreement, the borrower must provide the request within
202 ninety (90) days of the event terminating the finance agreement.

203 (3) If the cancellation of a GAP waiver occurs as a result
204 of a default under the finance agreement or the repossession of
205 the motor vehicle associated with the finance agreement, or any
206 other termination of the finance agreement, any refund due may be
207 paid directly to the creditor or administrator and applied as set
208 forth in subsection (4) of this section.

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

213 **SECTION 7.** The following shall be codified as Section
214 83-52-13, Mississippi Code of 1972:

215 83-52-13. Sections 83-52-5(3), 83-52-9 and 83-52-15 of this
216 chapter are not applicable to a guaranteed asset protection waiver



217 offered in connection with a lease or retail installment sale
218 associated with a commercial transaction.

219 **SECTION 8.** The following shall be codified as Section
220 83-52-15, Mississippi Code of 1972:

221 83-52-15. The commissioner may take action which is
222 necessary or appropriate to enforce the provisions of this chapter
223 and to protect guaranteed asset protection waiver holders in this
224 state. After proper notice and opportunity for hearing, the
225 commissioner may:

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

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

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

