VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6407, relating to guaranteed asset protection waivers.

[H 2109]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6407, as follows:

CHAPTER 64.

GUARANTEED ASSET PROTECTION WAIVERS.

§ 38.2-6400. Definitions.

As used in this chapter, unless the context requires another meaning:

"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.

"Commercial transaction" means a transaction entered into primarily for a purpose other than personal, family, or household purposes.

"Creditor" means:

1. The lender in a loan or credit transaction;

2. The lessor in a lease transaction;

3. The seller in a commercial retail installment transaction; or

4. The assignees of any person described in subdivision 1, 2, or 3 to whom the credit obligation is payable.

"Finance agreement" means (i) a loan secured by a lien on a motor vehicle or (ii) a lease or retail installment sales contract for the lease or purchase of a motor vehicle.

"Free look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the borrower's finance agreement without penalty, fees, or costs to the borrower. This period of time shall not be shorter 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 amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle, which agreement is 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 the Commonwealth.

"Motor vehicle" means any self-propelled or towed vehicle designed for personal or commercial use, including any automobile, truck, motorcycle, off-road vehicle, all-terrain vehicle, recreational vehicle, snowmobile, camper, boat, personal watercraft, and motorcycle, boat, camper, or personal watercraft trailer.

"Retail buyer" means a person who buys motor vehicles not principally for the purpose of resale.

"Retail seller" means person that is regularly engaged in the selling of motor vehicles to retail buyers and that holds any necessary license to sell a motor vehicle to a retail buyer.

§ 38.2-6401. Requirements for offering guaranteed asset protection waivers.

A. Guaranteed asset protection waivers may be offered, sold, or provided to borrowers in the Commonwealth in compliance with this chapter.

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 GAP waiver entered into in compliance with the federal Truth in Lending Act, 15 U.S.C. § 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 retail seller shall 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 policy issued by an insurer as provided in § 38.2-6402. Any such insurance policy may be directly obtained by a creditor or retail seller or may be procured by an administrator to cover a creditor's or retail seller's obligations. However, retail sellers that are lessors on motor vehicles are not required to insure obligations related to GAP waivers on the

leased vehicles.

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

F. Neither the extension of credit, the term of credit, nor the term 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 GAP waivers and shall forward funds received on all GAP 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 the creditor or administrator in a fiduciary capacity.

§ 38.2-6402. Contractual liability or other insurance policies.

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 canceled or terminated in compliance with applicable insurance laws of the Commonwealth.

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 a premium has been received by the insurer.

§ 38.2-6403. Disclosures.

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

1. The name and address of the initial creditor and the borrower at the time of sale;

2. The identity of any administrator if different from the creditor;

3. The purchase price and the terms of the GAP waiver, including the requirements for protection, conditions, or exclusions associated with the GAP waiver;

4. That the borrower may cancel the GAP waiver within a free look period as specified in the waiver and that the borrower is entitled to a full refund of the purchase price if no benefits have been provided;

5. The procedure the borrower is required to 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;

6. Whether or not the GAP waiver is cancelable after the free look period and the conditions under which it may be canceled or terminated, including the procedures for requesting any refund due;

7. 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, is required to 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 90 days of the occurrence of the event terminating the finance agreement;

8. 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; and

9. 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.

§ 38.2-6404. Cancellation.

A. Guaranteed asset protection waiver agreements may be cancelable or non-cancelable after the free look period. GAP waivers 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, if 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 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 the terms of the waiver, is required to 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 90 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 subsection D.

D. Any cancellation refund under subsection A, B, or C 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.

§ 38.2-6405. Commercial transactions.

Subsection C of § 38.2-6401 and § 38.2-6403 do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

§ 38.2-6406. GAP waivers not insurance.

GAP waivers governed under this chapter are not insurance and are exempt from the insurance laws of the Commonwealth. Persons marketing, soliciting, negotiating, selling, or offering to sell GAP waivers that comply with this chapter are exempt from the Commonwealth's licensing requirements.

§ 38.2-6407. Exemptions from chapter.

This chapter does not apply to:

1. Any insurance policy offered by an insurer under the insurance laws of the Commonwealth; or

2. A debt cancellation or debt suspension contract offered (i) by a bank or credit union regulated pursuant to Title 6.2 or (ii) in compliance with 12 C.F.R. Part 37, 12 C.F.R. Part 721, or other federal law.