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3. NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, GUARANTEED ASSET PROTECTION WAIVERS GOVERNED UNDER THIS ARTICLE DO NOT CONSTITUTE INSURANCE AS DEFINED IN SECTION ONE THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW. PERSONS MARKETING, SELLING OR OFFERING TO SELL GUARANTEED ASSET PROTECTION WAIVERS TO BORROWERS THAT COMPLY WITH THIS ARTICLE ARE NOT AGENTS, BROKERS, OR INTERMEDIARIES AS DEFINED IN SECTION TWO THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW AND ARE NOT DOING AN INSURANCE BUSINESS AS PROVIDED UNDER SECTION ONE THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW.

S 556. DEFINITIONS. THE FOLLOWING TERMS ARE DEFINED FOR PURPOSES OF THIS ARTICLE AND ARE NOT INTENDED TO PROVIDE ACTUAL TERMS REQUIRED IN GUARANTEED ASSET PROTECTION WAIVERS.

1. "ADMINISTRATOR" MEANS A PERSON, OTHER THAN AN AUTHORIZED INSURER OR CREDITOR THAT PERFORMS ADMINISTRATIVE OR OPERATIONAL FUNCTIONS PURSUANT TO GUARANTEED ASSET PROTECTION WAIVER PROGRAMS.

2. "AUTHORIZED INSURER" MEANS AN INSURANCE COMPANY LICENSED, REGISTERED, OR OTHERWISE AUTHORIZED TO DO BUSINESS IN THIS STATE AS DEFINED IN SECTION THREE HUNDRED ONE OF THIS CHAPTER.

3. "BORROWER" MEANS A DEBTOR, RETAIL BUYER OR LESSEE, UNDER A FINANCE AGREEMENT.

4. "CREDITOR" MEANS:

(A) THE LENDER IN A LOAN OR CREDIT TRANSACTION;

(B) THE LESSOR IN A LEASE TRANSACTION;

(C) ANY "RETAIL SELLER", AS DEFINED IN SECTION THREE HUNDRED ONE OF THIS CHAPTER OR "RETAIL LESSOR" AS DEFINED IN SECTION THREE HUNDRED THIRTY-ONE OF THIS CHAPTER, OF MOTOR VEHICLES THAT PROVIDES CREDIT TO "RETAIL BUYERS", AS DEFINED IN SECTION THREE HUNDRED ONE OF THIS CHAPTER OR "RETAIL LESSEE" AS DEFINED IN SECTION THREE HUNDRED THIRTY-ONE OF THIS CHAPTER, OF SUCH MOTOR VEHICLES PROVIDED THAT SUCH ENTITIES COMPLY WITH THE PROVISIONS OF THIS SECTION;

(D) THE SELLER IN COMMERCIAL RETAIL INSTALLMENT TRANSACTIONS; OR

(E) THE ASSIGNEES OF ANY OF THE FOREGOING TO WHOM THE CREDIT OBLIGATION IS PAYABLE.

5. "FINANCE AGREEMENT" MEANS A LOAN, LEASE OR RETAIL INSTALLMENT SALES CONTRACT FOR THE PURCHASE OR LEASE OF A MOTOR VEHICLE.

6. "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 THIRTY DAYS.

7. "GUARANTEED ASSET PROTECTION WAIVER" OR "GAP WAIVER" MEANS A CONTRACTUAL AGREEMENT WHEREIN A CREDITOR AGREES, FOR A SEPARATE CHARGE, TO CANCEL OR WAIVE THE GAP AMOUNT AS DEFINED IN SUBDIVISION FIFTEEN OF SECTION THREE HUNDRED THIRTY-ONE OF THIS CHAPTER 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. GAP AMOUNT SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION FIFTEEN OF SECTION THREE HUNDRED THIRTY-ONE OF THIS CHAPTER, BUT SHALL NOT BE DEEMED TO INCLUDE ANY AMOUNTS ACTUALLY REFUNDED FROM OTHER SOURCES.

8. "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.

1 9. "PERSON" INCLUDES AN INDIVIDUAL, COMPANY, ASSOCIATION, ORGANIZA-
2 TION, PARTNERSHIP, BUSINESS TRUST, CORPORATION, AND EVERY FORM OF LEGAL
3 ENTITY.

4 S 557. REQUIREMENTS FOR OFFERING GUARANTEED ASSET PROTECTION WAIVERS.
5 NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW:

6 1. GAP WAIVERS MAY BE OFFERED, SOLD OR PROVIDED TO BORROWERS IN THIS
7 STATE IN COMPLIANCE WITH THIS CHAPTER.

8 2. GAP WAIVERS MAY, AT THE OPTION OF THE CREDITOR, BE SOLD FOR A
9 SINGLE PAYMENT OR MAY BE OFFERED WITH A MONTHLY OR PERIODIC PAYMENT
10 OPTION.

11 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY COST TO THE BORROW-
12 ER FOR A GUARANTEED ASSET PROTECTION WAIVER ENTERED INTO IN COMPLIANCE
13 WITH THE TRUTH IN LENDING ACT (15 USC 1601 ET. SEQ.) AND ITS IMPLEMENT-
14 ING REGULATIONS, AS THEY MAY BE AMENDED FROM TIME TO TIME, MUST BE SEPA-
15 RATELY STATED AND IS NOT TO BE CONSIDERED A FINANCE CHARGE OR INTEREST.

16 4. A RETAIL SELLER MUST INSURE ITS GAP WAIVER OBLIGATIONS UNDER A
17 CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICY ISSUED BY AN AUTHORIZED
18 INSURER. A CREDITOR, OTHER THAN A RETAIL SELLER, MAY INSURE ITS GAP
19 WAIVER OBLIGATIONS UNDER A CONTRACTUAL LIABILITY POLICY OR OTHER SUCH
20 POLICY ISSUED BY AN AUTHORIZED INSURER. ANY SUCH INSURANCE POLICY MAY BE
21 DIRECTLY OBTAINED BY A CREDITOR, RETAIL SELLER, OR MAY BE PROCURED BY AN
22 ADMINISTRATOR TO COVER A CREDITOR'S OR RETAIL SELLER'S OBLIGATIONS.
23 HOWEVER RETAIL SELLERS THAT ARE LESSORS ON MOTOR VEHICLES ARE NOT
24 REQUIRED TO INSURE OBLIGATIONS RELATED TO GAP WAIVERS ON SUCH LEASED
25 VEHICLES.

26 5. THE GAP WAIVER REMAINS A PART OF THE FINANCE AGREEMENT UPON THE
27 ASSIGNMENT, SALE OR TRANSFER OF SUCH FINANCE AGREEMENT BY THE CREDITOR.

28 6. NEITHER THE EXTENSION OF CREDIT, THE TERM OF CREDIT, NOR THE TERM
29 OF THE RELATED MOTOR VEHICLE SALE OR LEASE MAY BE CONDITIONED UPON THE
30 PURCHASE OF A GAP WAIVER.

31 7. ANY CREDITOR THAT OFFERS A GAP WAIVER MUST REPORT THE SALE OF, AND
32 FORWARD FUNDS RECEIVED ON ALL SUCH WAIVERS TO THE DESIGNATED PARTY, IF
33 ANY, AS PRESCRIBED IN ANY APPLICABLE ADMINISTRATIVE SERVICES AGREEMENT,
34 CONTRACTUAL LIABILITY POLICY, OTHER INSURANCE POLICY OR OTHER SPECIFIED
35 PROGRAM DOCUMENTS.

36 8. FUNDS RECEIVED OR HELD BY A CREDITOR OR ADMINISTRATOR AND BELONGING
37 TO AN AUTHORIZED INSURER, CREDITOR OR ADMINISTRATOR, PURSUANT TO THE
38 TERMS OF A WRITTEN AGREEMENT MUST BE HELD BY SUCH CREDITOR OR ADMINIS-
39 TRATOR IN A FIDUCIARY CAPACITY.

40 9. A RETAIL SELLER MUST, AT THE TIME OF OFFERING ANY GAP WAIVER, ALSO
41 DISCLOSE ALTERNATIVE PRODUCTS INCLUDING PRODUCTS OFFERED UNDER SECTION
42 THREE THOUSAND FOUR HUNDRED TWENTY-SEVEN OF THE INSURANCE LAW. THE
43 RETAIL SELLER IS NOT REQUIRED TO BE LICENSED UNDER THE INSURANCE LAWS,
44 RULES, OR REGULATIONS IN ORDER TO DISCLOSE SUCH ALTERNATIVE PRODUCTS.

45 S 558. CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICIES.

46 1. CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICIES INSURING GAP
47 WAIVERS MUST STATE THE OBLIGATION OF THE AUTHORIZED INSURER TO REIMBURSE
48 OR PAY TO THE CREDITOR ANY SUMS THE CREDITOR IS LEGALLY OBLIGATED TO
49 WAIVE UNDER THE GAP WAIVERS ISSUED BY THE CREDITOR AND PURCHASED OR HELD
50 BY THE BORROWER.

51 2. COVERAGE UNDER A CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICY
52 INSURING A GAP WAIVER MUST ALSO COVER ANY SUBSEQUENT ASSIGNEE UPON THE
53 ASSIGNMENT, SALE OR TRANSFER OF THE FINANCE AGREEMENT.

54 3. COVERAGE UNDER A CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICY
55 INSURING A GAP WAIVER MUST REMAIN IN EFFECT UNLESS CANCELLED OR TERMI-
56 NATED IN COMPLIANCE WITH APPLICABLE INSURANCE LAWS OF THIS STATE.

1 4. THE CANCELLATION OR TERMINATION OF A CONTRACTUAL LIABILITY OR OTHER
2 INSURANCE POLICY MUST NOT REDUCE THE AUTHORIZED INSURER'S RESPONSIBILITY
3 FOR GAP WAIVERS ISSUED BY THE CREDITOR PRIOR TO THE DATE OF CANCELLATION
4 OR TERMINATION AND FOR WHICH PREMIUM HAS BEEN RECEIVED BY THE AUTHORIZED
5 INSURER.

6 S 559. DISCLOSURES. GUARANTEED ASSET PROTECTION WAIVERS MUST DISCLOSE,
7 AS APPLICABLE, IN WRITING AND IN CLEAR, UNDERSTANDABLE LANGUAGE THAT IS
8 EASY TO READ, THE FOLLOWING:

9 1. THE NAME AND ADDRESS OF THE INITIAL CREDITOR AND THE BORROWER AT
10 THE TIME OF SALE, AND THE IDENTITY OF ANY ADMINISTRATOR IF DIFFERENT
11 FROM THE CREDITOR.

12 2. THE PURCHASE PRICE AND THE TERMS OF THE GAP WAIVER, INCLUDING WITH-
13 OUT LIMITATION, THE REQUIREMENTS FOR PROTECTION, CONDITIONS, OR EXCLU-
14 SIONS ASSOCIATED WITH THE GAP WAIVER.

15 3. THAT THE BORROWER MAY CANCEL THE GAP WAIVER WITHIN A FREE LOOK
16 PERIOD AS SPECIFIED IN THE WAIVER, AND WILL BE ENTITLED TO A FULL REFUND
17 OF THE PURCHASE PRICE, SO LONG AS NO BENEFITS HAVE BEEN PROVIDED; OR IN
18 THE EVENT BENEFITS HAVE BEEN PROVIDED, THE BORROWER MAY RECEIVE A FULL
19 OR PARTIAL REFUND PURSUANT TO THE TERMS OF THE WAIVER.

20 4. THE PROCEDURE THE BORROWER MUST FOLLOW, IF ANY, TO OBTAIN GAP WAIV-
21 ER BENEFITS UNDER THE TERMS AND CONDITIONS OF THE WAIVER, INCLUDING A
22 TELEPHONE NUMBER AND ADDRESS WHERE THE BORROWER MAY APPLY FOR WAIVER
23 BENEFITS.

24 5. WHETHER OR NOT THE GAP WAIVER IS CANCELLABLE AFTER THE FREE LOOK
25 PERIOD AND THE CONDITIONS UNDER WHICH IT MAY BE CANCELLED OR TERMINATED
26 INCLUDING THE PROCEDURES FOR REQUESTING ANY REFUND DUE.

27 6. THAT IN ORDER TO RECEIVE ANY REFUND DUE IN THE EVENT OF A BORROW-
28 ER'S CANCELLATION OF THE GAP WAIVER AGREEMENT OR EARLY TERMINATION OF
29 THE FINANCE AGREEMENT AFTER THE FREE LOOK PERIOD OF THE GAP WAIVER, THE
30 BORROWER, IN ACCORDANCE WITH TERMS OF THE WAIVER, MUST PROVIDE A WRITTEN
31 REQUEST TO CANCEL TO THE CREDITOR, ADMINISTRATOR OR SUCH OTHER PARTY,
32 WITHIN NINETY DAYS OF THE OCCURRENCE OF THE EVENT TERMINATING THE
33 FINANCE AGREEMENT.

34 7. THE METHODOLOGY FOR CALCULATING ANY REFUND OF THE UNEARNED PURCHASE
35 PRICE OF THE GAP WAIVER DUE, IN THE EVENT OF CANCELLATION OF THE GAP
36 WAIVER OR EARLY TERMINATION OF THE FINANCE AGREEMENT.

37 8. THAT NEITHER THE EXTENSION OF CREDIT, THE TERMS OF THE CREDIT, NOR
38 THE TERMS OF THE RELATED MOTOR VEHICLE SALE OR LEASE, MAY BE CONDITIONED
39 UPON THE PURCHASE OF THE GAP WAIVER.

40 S 560. CANCELLATION. 1. GUARANTEED ASSET PROTECTION WAIVER AGREEMENTS
41 MAY BE CANCELLABLE OR NON-CANCELLABLE AFTER THE FREE LOOK PERIOD. GAP
42 WAIVERS MUST PROVIDE THAT IF A BORROWER CANCELS A WAIVER WITHIN THE FREE
43 LOOK PERIOD, THE BORROWER WILL BE ENTITLED TO A FULL REFUND OF THE
44 PURCHASE PRICE, SO LONG AS NO BENEFITS HAVE BEEN PROVIDED; OR IN THE
45 EVENT BENEFITS HAVE BEEN PROVIDED, THE BORROWER MAY RECEIVE A FULL OR
46 PARTIAL REFUND PURSUANT TO THE TERMS OF THE WAIVER.

47 2. IN THE EVENT OF A BORROWER'S CANCELLATION OF THE GAP WAIVER OR
48 EARLY TERMINATION OF THE FINANCE AGREEMENT, AFTER THE AGREEMENT HAS BEEN
49 IN EFFECT BEYOND THE FREE LOOK PERIOD, THE BORROWER MAY BE ENTITLED TO A
50 REFUND OF ANY UNEARNED PORTION OF THE PURCHASE PRICE OF THE WAIVER
51 UNLESS THE WAIVER PROVIDES OTHERWISE. IN ORDER TO RECEIVE A REFUND, THE
52 BORROWER, IN ACCORDANCE WITH ANY APPLICABLE TERMS OF THE WAIVER, MUST
53 PROVIDE A WRITTEN REQUEST TO THE CREDITOR, ADMINISTRATOR OR OTHER PARTY,
54 WITHIN NINETY DAYS OF THE EVENT TERMINATING THE FINANCE AGREEMENT.

55 3. IF THE CANCELLATION OF A GAP WAIVER OCCURS AS A RESULT OF A DEFAULT
56 UNDER THE FINANCE AGREEMENT OR THE REPOSSESSION OF THE MOTOR VEHICLE

1 ASSOCIATED WITH THE FINANCE AGREEMENT, OR ANY OTHER TERMINATION OF THE
2 FINANCE AGREEMENT, ANY REFUND DUE MAY BE PAID DIRECTLY TO THE CREDITOR
3 OR ADMINISTRATOR AND APPLIED AS SET FORTH IN SUBDIVISION FOUR.

4 4. ANY CANCELLATION REFUND UNDER SUBDIVISIONS ONE, TWO OR THREE OF
5 THIS SUBDIVISION, MAY BE APPLIED BY THE CREDITOR AS A REDUCTION OF THE
6 AMOUNT OWED UNDER THE FINANCE AGREEMENT, UNLESS THE BORROWER CAN SHOW
7 THAT THE FINANCE AGREEMENT HAS BEEN PAID IN FULL.

8 S 561. COMMERCIAL TRANSACTIONS EXEMPTED. SUBDIVISION THREE OF SECTION
9 FIVE HUNDRED FIFTY-SEVEN AND SECTIONS FIVE HUNDRED FIFTY-NINE AND FIVE
10 HUNDRED SIXTY-TWO OF THIS ARTICLE ARE NOT APPLICABLE TO A GUARANTEED
11 ASSET PROTECTION WAIVER OFFERED IN CONNECTION WITH A LEASE OR RETAIL
12 INSTALLMENT SALE ASSOCIATED WITH A COMMERCIAL TRANSACTION.

13 S 562. ENFORCEMENT. THE SUPERINTENDENT OF FINANCIAL SERVICES MAY TAKE
14 ACTION WHICH IS NECESSARY OR APPROPRIATE TO ENFORCE THE PROVISIONS OF
15 THIS SECTION AND TO PROTECT GUARANTEED ASSET PROTECTION WAIVER HOLDERS
16 IN THIS STATE. AFTER PROPER NOTICE AND OPPORTUNITY FOR HEARING, SUCH
17 SUPERINTENDENT MAY:

18 1. ORDER THE CREDITOR, ADMINISTRATOR OR ANY OTHER PERSON NOT IN
19 COMPLIANCE WITH THIS SECTION TO CEASE AND DESIST FROM FURTHER GUARANTEED
20 ASSET PROTECTION WAIVER-RELATED OPERATIONS WHICH ARE IN VIOLATION OF
21 THIS SECTION.

22 2. IMPOSE A PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS (\$500.00)
23 PER VIOLATION AND NO MORE THAN TEN THOUSAND DOLLARS (\$10,000) IN THE
24 AGGREGATE FOR ALL VIOLATIONS OF SIMILAR NATURE. FOR PURPOSES OF THIS
25 SECTION, VIOLATIONS MUST BE OF A SIMILAR NATURE IF THE VIOLATION
26 CONSISTS OF THE SAME OR SIMILAR COURSE OF CONDUCT, ACTION OR PRACTICE,
27 IRRESPECTIVE OF THE NUMBER OF TIMES THE SECTION, CONDUCT OR PRACTICE
28 WHICH IS DETERMINED TO BE A VIOLATION OF THE SECTION OCCURRED.

29 S 563. INTENT. THE LEGISLATURE FINDS THAT GUARANTEED ASSET PROTECTION
30 WAIVERS ARE NOT INSURANCE. ALL GUARANTEED ASSET PROTECTION WAIVERS
31 ISSUED PRIOR TO AND AFTER THE DATE OF ENACTMENT OF THIS SECTION SHALL
32 NOT BE CONSTRUED AS INSURANCE.

33 S 564. SEVERABILITY. IF ANY PROVISION OF THIS SECTION, OR THE APPLICA-
34 TION OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCES, IS HELD INVALID,
35 THE REMAINDER OF THE SECTION, AND THE APPLICATION OF THE PROVISION TO
36 ANY PERSON OR CIRCUMSTANCES OTHER THAN THOSE AS TO WHICH IT IS HELD
37 INVALID, IS NOT TO BE AFFECTED.

38 S 2. Section 357 of the banking law is amended by adding a new subdi-
39 vision 8 to read as follows:

40 8. A LICENSEE MAY OFFER TO A BORROWER A GUARANTEED ASSET PROTECTION
41 WAIVER AS DEFINED IN ARTICLE THIRTEEN OF THE PERSONAL PROPERTY LAW.

42 S 3. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law.