

GUARANTEED ASSET PROTECTION WAIVERS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill modifies the Insurance Code to address the regulation of guaranteed asset protection waivers, including enacting the Guaranteed Asset Protection Waivers Act.

Highlighted Provisions:

This bill:

- ▶ explains the limited scope of regulation by the Insurance Department of guaranteed asset protection waivers;
- ▶ enacts the Guaranteed Asset Protection Waivers Act, including:
 - defining terms;
 - explaining the relationship with the Insurance Code;
 - providing exemptions;
 - providing for severability;
 - establishing licensing and registration requirements;
 - establishing requirements for a waiver and the issuance, marketing, selling, offering to sell, or provision of a waiver;
 - requiring certain disclosures;
 - addressing cancellation of waiver; and
 - granting the commissioner enforcement authority;
- ▶ addresses relationship to debt cancellation or suspension agreements; and
- ▶ makes technical and conforming amendments.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides an effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **31A-1-103**, as last amended by Laws of Utah 2008, Chapter 382

35 **31A-6a-105**, as last amended by Laws of Utah 2008, Chapter 345

36 **31A-21-109**, as last amended by Laws of Utah 2008, Chapter 382

37 ENACTS:

38 **31A-6b-101**, Utah Code Annotated 1953

39 **31A-6b-102**, Utah Code Annotated 1953

40 **31A-6b-103**, Utah Code Annotated 1953

41 **31A-6b-104**, Utah Code Annotated 1953

42 **31A-6b-201**, Utah Code Annotated 1953

43 **31A-6b-202**, Utah Code Annotated 1953

44 **31A-6b-203**, Utah Code Annotated 1953

45 **31A-6b-204**, Utah Code Annotated 1953

46 **31A-6b-301**, Utah Code Annotated 1953

47 **31A-6b-302**, Utah Code Annotated 1953

48 **31A-6b-303**, Utah Code Annotated 1953

49 **31A-6b-401**, Utah Code Annotated 1953



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **31A-1-103** is amended to read:

53 **31A-1-103. Scope and applicability of title.**

54 (1) This title does not apply to:

55 (a) a retainer contract made by an attorney-at-law:

56 (i) with an individual client; and

57 (ii) under which fees are based on estimates of the nature and amount of services to be

58 provided to the specific client;

59 (b) a contract similar to a contract described in Subsection (1)(a) made with a group of
60 clients involved in the same or closely related legal matters;

61 (c) an arrangement for providing benefits that do not exceed a limited amount of
62 consultations, advice on simple legal matters, either alone or in combination with referral
63 services, or the promise of fee discounts for handling other legal matters;

64 (d) limited legal assistance on an informal basis involving neither an express
65 contractual obligation nor reasonable expectations, in the context of an employment,
66 membership, educational, or similar relationship;

67 (e) legal assistance by employee organizations to their members in matters relating to
68 employment; or

69 (f) death, accident, health, or disability benefits provided to a person by an organization
70 or its affiliate if:

71 (i) the organization is tax exempt under Section 501(c)(3) of the Internal Revenue
72 Code and has had its principal place of business in Utah for at least five years;

73 (ii) the person is not an employee of the organization; and

74 (iii) (A) substantially all the person's time in the organization is spent providing
75 voluntary services:

76 (I) in furtherance of the organization's purposes;

77 (II) for a designated period of time; and

78 (III) for which no compensation, other than expenses, is paid; or

79 (B) the time since the service under Subsection (1)(f)(iii)(A) was completed is no more
80 than 18 months.

81 (2) (a) This title restricts otherwise legitimate business activity.

82 (b) What this title does not prohibit is permitted unless contrary to other provisions of
83 Utah law.

84 (3) Except as otherwise expressly provided, this title does not apply to:

85 (a) those activities of an insurer where state jurisdiction is preempted by Section 514 of
86 the federal Employee Retirement Income Security Act of 1974, as amended;

87 (b) ocean marine insurance;

88 (c) death, accident, health, or disability benefits provided by an organization if the
89 organization:

- 90 (i) has as its principal purpose to achieve charitable, educational, social, or religious
- 91 objectives rather than to provide death, accident, health, or disability benefits;
- 92 (ii) does not incur a legal obligation to pay a specified amount; and
- 93 (iii) does not create reasonable expectations of receiving a specified amount on the part
- 94 of an insured person;
- 95 (d) other business specified in rules adopted by the commissioner on a finding that:
- 96 (i) the transaction of the business in this state does not require regulation for the
- 97 protection of the interests of the residents of this state; or
- 98 (ii) it would be impracticable to require compliance with this title;
- 99 (e) except as provided in Subsection (4), a transaction independently procured through
- 100 negotiations under Section 31A-15-104;
- 101 (f) self-insurance;
- 102 (g) reinsurance;
- 103 (h) subject to Subsection (5), employee and labor union group or blanket insurance
- 104 covering risks in this state if:
- 105 (i) the policyholder exists primarily for purposes other than to procure insurance;
- 106 (ii) the policyholder:
- 107 (A) is not a resident of this state;
- 108 (B) is not a domestic corporation; or
- 109 (C) does not have its principal office in this state;
- 110 (iii) no more than 25% of the certificate holders or insureds are residents of this state;
- 111 (iv) on request of the commissioner, the insurer files with the department a copy of the
- 112 policy and a copy of each form or certificate; and
- 113 (v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as
- 114 if it were authorized to do business in this state; and
- 115 (B) the insurer provides the commissioner with the security the commissioner
- 116 considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of
- 117 Admitted Insurers;
- 118 (i) to the extent provided in Subsection (6):
- 119 (i) a manufacturer's or seller's warranty; and
- 120 (ii) a manufacturer's or seller's service contract; [~~or~~]

121 (j) except to the extent provided in Subsection (7), a public agency insurance mutual[-];
122 or

123 (k) except as provided in Chapter 6b, Guaranteed Asset Protection Waiver Act, a
124 guaranteed asset protection waiver.

125 (4) A transaction described in Subsection (3)(e) is subject to taxation under Section
126 31A-3-301.

127 (5) (a) After a hearing, the commissioner may order an insurer of certain group or
128 blanket contracts to transfer the Utah portion of the business otherwise exempted under
129 Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized
130 insurer.

131 (b) If the commissioner finds that the conditions required for the exemption of a group
132 or blanket insurer are not satisfied or that adequate protection to residents of this state is not
133 provided, the commissioner may require:

134 (i) the insurer to be authorized to do business in this state; or
135 (ii) that any of the insurer's transactions be subject to this title.

136 (6) (a) As used in Subsection (3)(i) and this Subsection (6):

137 (i) "manufacturer's or seller's service contract" means a service contract:

138 (A) made available by:

139 (I) a manufacturer of a product;

140 (II) a seller of a product; or

141 (III) an affiliate of a manufacturer or seller of a product;

142 (B) made available:

143 (I) on one or more specific products; or

144 (II) on products that are components of a system; and

145 (C) under which the person described in Subsection (6)(a)(i)(A) is liable for services to
146 be provided under the service contract including, if the manufacturer's or seller's service
147 contract designates, providing parts and labor;

148 (ii) "manufacturer's or seller's warranty" means the guaranty of:

149 (A) (I) the manufacturer of a product;

150 (II) a seller of a product; or

151 (III) an affiliate of a manufacturer or seller of a product;

152 (B) (I) on one or more specific products; or
153 (II) on products that are components of a system; and
154 (C) under which the person described in Subsection (6)(a)(ii)(A) is liable for services
155 to be provided under the warranty, including, if the manufacturer's or seller's warranty
156 designates, providing parts and labor; and

157 (iii) "service contract" is as defined in Section 31A-6a-101.

158 (b) A manufacturer's or seller's warranty may be designated as:

159 (i) a warranty;

160 (ii) a guaranty; or

161 (iii) a term similar to a term described in Subsection (6)(b)(i) or (ii).

162 (c) This title does not apply to:

163 (i) a manufacturer's or seller's warranty;

164 (ii) a manufacturer's or seller's service contract paid for with consideration that is in
165 addition to the consideration paid for the product itself; and

166 (iii) a service contract that is not a manufacturer's or seller's warranty or manufacturer's
167 or seller's service contract if:

168 (A) the service contract is paid for with consideration that is in addition to the
169 consideration paid for the product itself;

170 (B) the service contract is for the repair or maintenance of goods;

171 (C) the cost of the product is equal to an amount determined in accordance with
172 Subsection (6)(e); and

173 (D) the product is not a motor vehicle.

174 (d) This title does not apply to a manufacturer's or seller's warranty or service contract
175 paid for with consideration that is in addition to the consideration paid for the product itself
176 regardless of whether the manufacturer's or seller's warranty or service contract is sold:

177 (i) at the time of the purchase of the product; or

178 (ii) at a time other than the time of the purchase of the product.

179 (e) (i) For fiscal year 2001-02, the amount described in Subsection (6)(c)(iii)(C) shall
180 be equal to \$3,700 or less.

181 (ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually
182 determine whether the amount described in Subsection (6)(c)(iii)(C) should be adjusted in

183 accordance with changes in the Consumer Price Index published by the United States Bureau
184 of Labor Statistics selected by the commissioner by rule, between:

185 (A) the Consumer Price Index for the February immediately preceding the adjustment;
186 and

187 (B) the Consumer Price Index for February 2001.

188 (iii) If under Subsection (6)(e)(ii) the commissioner determines that an adjustment
189 should be made, the commissioner shall make the adjustment by rule.

190 (7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an
191 entity formed by two or more political subdivisions or public agencies of the state:

192 (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and

193 (ii) for the purpose of providing for the political subdivisions or public agencies:

194 (A) subject to Subsection (7)(b), insurance coverage; or

195 (B) risk management.

196 (b) Notwithstanding Subsection (7)(a)(ii)(A), a public agency insurance mutual may
197 not provide health insurance unless the public agency insurance mutual provides the health
198 insurance using:

199 (i) a third party administrator licensed under Chapter 25, Third Party Administrators;

200 (ii) an admitted insurer; or

201 (iii) a program authorized by Title 49, Chapter 20, Public Employees' Benefit and
202 Insurance Program Act.

203 (c) Except for this Subsection (7), a public agency insurance mutual is exempt from
204 this title.

205 (d) A public agency insurance mutual is considered to be a governmental entity and
206 political subdivision of the state with all of the rights, privileges, and immunities of a
207 governmental entity or political subdivision of the state including all the rights and benefits of
208 Title 63G, Chapter 7, Governmental Immunity Act of Utah.

209 Section 2. Section **31A-6a-105** is amended to read:

210 **31A-6a-105. Prohibited acts.**

211 (1) Except as provided in Subsection 31A-6a-104(2), a service contract provider may
212 not use in its name, a contract, or literature:

213 (a) any of the following words:

- 214 (i) "insurance";
- 215 (ii) "casualty";
- 216 (iii) "surety";
- 217 (iv) "mutual"; or
- 218 (v) another word descriptive of the insurance, casualty, or surety business; or
- 219 (b) a name deceptively similar to the name or description of:
 - 220 (i) an insurance or surety corporation; or
 - 221 (ii) another service contract provider.
- 222 (2) A service contract provider or the service contract provider's representative may
- 223 not:
 - 224 (a) make, permit, or cause to be made a false or misleading statement in connection
 - 225 with the sale, offer to sell, or advertisement of a service contract; or
 - 226 (b) deliberately omit a material statement that would be considered misleading if
 - 227 omitted, in connection with the sale, offer to sell, or advertisement of a service contract.
- 228 (3) A bank, savings and loan association, insurance company, or other lending
- 229 institution may not require the purchase of a service contract as a condition of a loan.
- 230 (4) Except for a bank, savings and loan association, industrial bank, or credit union, a
- 231 service contract provider[~~; unless licensed by the department;~~] may not sell, or be the obligated
- 232 party for:
 - 233 (a) a guaranteed asset protection waiver, unless registered with the commissioner under
 - 234 Chapter 6b, Guaranteed Asset Protection Waiver Act;
 - 235 (b) a debt cancellation agreement, unless licensed by the commissioner; or
 - 236 (c) a debt suspension agreement, unless licensed by the commissioner.

237 Section 3. Section **31A-6b-101** is enacted to read:

238 **CHAPTER 6b. GUARANTEED ASSET PROTECTION WAIVER ACT**

239 **Part 1. General Provisions**

240 **31A-6b-101. Title.**

241 This chapter is known as the "Guaranteed Asset Protection Waiver Act."

242 Section 4. Section **31A-6b-102** is enacted to read:

243 **31A-6b-102. Definitions.**

244 (1) This section defines a term only for purposes of this chapter. A term defined in this

245 section is not required to be used in a guaranteed asset protection waiver.

246 (2) For purposes of this chapter:

247 (a) "Administrative functions" includes providing:

248 (i) document development, processing, and management;

249 (ii) data processing and support;

250 (iii) compliance services;

251 (iv) waiver fee processing;

252 (v) benefit determination;

253 (vi) technology support; or

254 (vii) personnel support.

255 (b) "Administrator" means a person who provides administrative functions related to a
256 guaranteed asset protection waiver.

257 (c) "Borrower" means a person who under a finance agreement is:

258 (i) a debtor;

259 (ii) a retail buyer; or

260 (iii) a lessee.

261 (d) "Creditor" means a person who is:

262 (i) a lender in a loan or credit transaction;

263 (ii) a retail seller of a vehicle that provides credit to a retail buyer of the vehicle;

264 (iii) a lessor in a lease transaction;

265 (iv) a seller in a commercial retail installment transaction; or

266 (v) an assignee of a person listed in this Subsection (2)(d) to whom a credit obligation
267 is payable.

268 (e) "Finance agreement" means one or more of the following for the purchase or lease
269 of a vehicle:

270 (i) a loan;

271 (ii) a retail installment sales contract; or

272 (iii) a lease.

273 (f) "Guaranteed asset protection waiver" means a contract for a separate charge:

274 (i) under which a creditor agrees to waive all or part of the amounts due on a
275 borrower's finance agreement if a vehicle is subject to:

276 (A) a total physical damage loss; or
277 (B) unrecovered theft; and
278 (ii) that is made part of a finance agreement, even if the guaranteed asset protection
279 waiver is stated in a separate addendum to the finance agreement.
280 (g) "Preliminary period" means a time period that:
281 (i) begins the day on which a guaranteed asset protection waiver becomes effective;
282 and
283 (ii) ends the last day on which a borrower may cancel the guaranteed asset protection
284 waiver with a full refund if no benefits have been provided.
285 (h) "Restricted account" means the Guaranteed Asset Protection Waiver Restricted
286 Account created in Section 31A-6b-204.
287 (i) (i) "Vehicle" means a vehicle that is:
288 (A) self propelled or towed; and
289 (B) designed for personal or commercial use.
290 (ii) "Vehicle" includes:
291 (A) an automobile;
292 (B) a truck;
293 (C) a motorcycle;
294 (D) a recreational vehicle;
295 (E) an all terrain vehicle;
296 (F) a snowmobile;
297 (G) a camper;
298 (H) a boat;
299 (I) a personal watercraft; or
300 (J) a trailer for a motorcycle, boat, camper, or personal watercraft.
301 Section 5. Section **31A-6b-103** is enacted to read:
302 **31A-6b-103. Relationship to title -- Scope -- Exemptions.**
303 (1) A guaranteed asset protection waiver:
304 (a) is not an insurance contract; and
305 (b) is not considered a debt cancellation or debt suspension contract for purposes of
306 Section 31A-21-109.

307 (2) A guaranteed asset protection waiver is exempt from the provisions of this title
308 other than this chapter, except to the extent otherwise provided in this chapter.

309 (3) This chapter does not apply to:

310 (a) an insurance contract offered by an insurer under this title; or

311 (b) a debt cancellation or debt suspension contract that:

312 (i) is not a guaranteed asset protection waiver; and

313 (ii) is offered in compliance with:

314 (A) 12 C.F.R. Part 37;

315 (B) 12 C.F.R. Part 721;

316 (C) other federal law; or

317 (D) Section 31A-21-109.

318 (4) A person required to be licensed or registered in accordance with this chapter may
319 not be required to be licensed under another provision of this title for engaging in an act
320 regulated by this chapter.

321 (5) A guaranteed asset protection waiver offered in connection with a loan, lease, or
322 retail installment sale associated with a commercial vehicle transaction is not subject to this
323 title.

324 (6) The following are exempt from this chapter:

325 (a) a bank, as defined in Section 7-1-103;

326 (b) a credit union, as defined in Section 7-1-103;

327 (c) an industrial bank, as defined in Section 7-1-103;

328 (d) a savings and loan association, as defined in Section 7-1-103; or

329 (e) a subsidiary of an entity described in Subsections (6)(a) through (d).

330 Section 6. Section **31A-6b-104** is enacted to read:

331 **31A-6b-104. Severability.**

332 If a provision of this chapter or the application of a provision to a person or
333 circumstance is held invalid, the remainder of this chapter shall be given effect without the
334 invalid provision or application. The provisions of this chapter are severable.

335 Section 7. Section **31A-6b-201** is enacted to read:

336 **Part 2. Waiver Provider Licensing and Registration**

337 **31A-6b-201. Persons who may provide a guaranteed asset protection waiver --**

338 **Requirement to be licensed or registered.**

339 (1) Except as provided in Subsection (2), on and after July 1, 2010, a person may not
340 sell, offer to sell, or otherwise provide a guaranteed asset protection waiver to a borrower in
341 this state unless the person:

342 (a) (i) is:

343 (A) a creditor; or

344 (B) an administrator; and

345 (ii) is registered in accordance with this part; or

346 (b) (i) is an individual who sells vehicles at retail; and

347 (ii) holds a limited line producer license in accordance with Section 31A-23a-103.

348 (2) (a) Subject to the other provisions of this Subsection (2), an entity retail seller of a
349 vehicle may sell, offer to sell, or otherwise provide a guaranteed asset protection waiver to a
350 borrower without being registered under this chapter if the retail seller assigns finance
351 agreements within 90 days.

352 (b) The commissioner may assess each retail seller described in Subsection (2)(a) that
353 is located in this state an annual assessment in accordance with this Subsection (2).

354 (c) The commissioner may assess an annual assessment under this section only if the
355 fees received by the commissioner under Section 31A-6b-202 do not equal or exceed \$100,000.

356 (d) The commissioner shall determine the amount of the annual assessment under this
357 section in accordance with Section 31A-3-103, except that:

358 (i) the annual assessment may not exceed \$50; and

359 (ii) the commissioner may not impose an amount that would reasonably be expected to
360 result in the commissioner receiving in excess of \$100,000 in a fiscal year from the aggregate
361 of:

362 (A) the fees received under Section 31A-6b-202; and

363 (B) the annual assessments under this section.

364 (e) The commissioner shall deposit an annual assessment collected under this section
365 into the restricted account.

366 Section 8. Section **31A-6b-202** is enacted to read:

367 **31A-6b-202. Registration process -- Annual fee.**

368 (1) If a person is required to register under Section 31A-6b-201, to register the person

369 shall submit to the commissioner:

370 (a) an application for registration;

371 (b) a copy of any guaranteed asset protection waiver that the person will issue, market,
372 sell, offer to sell, or otherwise provide in this state; and

373 (c) a registration fee established by the commissioner in accordance with Section
374 31A-3-103, except that the registration fee may not exceed \$1,000.

375 (2) (a) On and after July 1, 2011, a person registered under this title shall pay to the
376 commissioner an annual fee:

377 (i) by no later than July 1 of each year after the day on which the person registers; and

378 (ii) established by the commissioner in accordance with Section 31A-3-103, except
379 that the annual fee may not exceed \$1,000.

380 (b) If a person fails to pay the annual fee required under this Subsection (2) by October
381 1, the person's registration expires.

382 (3) The commissioner shall deposit a fee collected under this section into the restricted
383 account.

384 Section 9. Section **31A-6b-203** is enacted to read:

385 **31A-6b-203. Filing new or changed guaranteed asset protection waiver.**

386 A person required to be registered under Section 31A-6b-201 shall submit to the
387 commissioner at least 30 days before the day on which the person issues, markets, sells, offers
388 to sell, or otherwise provides a guaranteed asset protection waiver in this state:

389 (1) a change to a term of a guaranteed asset protection waiver previously submitted to
390 the commissioner under this chapter; or

391 (2) a guaranteed asset protection waiver that has not previously been submitted to the
392 commissioner under this chapter.

393 Section 10. Section **31A-6b-204** is enacted to read:

394 **31A-6b-204. Guaranteed Asset Protection Waiver Restricted Account.**

395 (1) There is created in the General Fund a restricted account known as the "Guaranteed
396 Asset Protection Waiver Restricted Account."

397 (2) The restricted account shall consist of the money received by the commissioner
398 under this part.

399 (3) The commissioner shall administer the restricted account. Subject to

400 appropriations by the Legislature, the commissioner shall use the money deposited into the
401 restricted account to pay for a cost or expense incurred by the commissioner in the
402 administration, investigation, and enforcement of this chapter.

403 **§→ [(4) The money in the restricted account is nonlapsing.] ←§**

404 Section 11. Section **31A-6b-301** is enacted to read:

405 **Part 3. Requirements for a Guaranteed Asset Protection Waiver**

406 **31A-6b-301. General requirements for a guaranteed asset protection waiver.**

407 (1) A person may not issue, market, sell, offer to sell, or otherwise provide a
408 guaranteed asset protection waiver except in compliance with this chapter.

409 (2) If a creditor assigns, sells, or transfers a finance agreement, a guaranteed asset
410 protection waiver remains a part of the finance agreement.

411 (3) (a) If a borrower finances or otherwise pays the charge for a guaranteed asset
412 protection waiver, the creditor is liable to the borrower for a benefit due under the guaranteed
413 asset protection waiver regardless of whether the retail seller, administrator, or other person
414 who receives the payment from the borrower remits the charge.

415 (b) This Subsection (3) may not be construed to prejudice any claim a creditor may
416 have against a retail seller, administrator, or other person who receives a payment from a
417 borrower but fails to remit the payment.

418 (4) A creditor may require that a guaranteed asset protection waiver that the creditor
419 issues be sold for:

420 (a) a single payment; or

421 (b) periodic payments.

422 (5) The following may not be conditioned on a borrower purchasing a guaranteed asset
423 protection waiver:

424 (a) the extension of credit;

425 (b) a term of credit; or

426 (c) a term of the related vehicle sale or lease.

427 Section 12. Section **31A-6b-302** is enacted to read:

428 **31A-6b-302. Required disclosures.**

429 (1) A guaranteed asset protection waiver shall disclose the information described in

430 Subsection (2):

- 431 (a) in writing; and
- 432 (b) in understandable language that is easy to read.
- 433 (2) A guaranteed asset protection waiver shall disclose:
- 434 (a) the name and address of the initial creditor and the borrower at the time the
435 guaranteed asset protection waiver is executed;
- 436 (b) if there is an administrator for the guaranteed asset protection waiver:
- 437 (i) the name of the administrator;
- 438 (ii) the address of the administrator; and
- 439 (iii) a toll-free number to contact the administrator;
- 440 (c) the charge for the guaranteed asset protection waiver;
- 441 (d) the terms of the guaranteed asset protection waiver, including:
- 442 (i) the requirements for receiving the protection of the guaranteed asset protection
443 waiver;
- 444 (ii) the conditions imposed by the guaranteed asset protection waiver; and
- 445 (iii) the exclusions from the protection of the guaranteed asset protection waiver;
- 446 (e) the procedure the borrower must follow, if any, to obtain a benefit under the
447 guaranteed asset protection waiver, including a telephone number and address where the
448 borrower may apply for a benefit under the guaranteed asset protection waiver;
- 449 (f) that the borrower may cancel the guaranteed asset protection waiver;
- 450 (g) the rights the borrower has to a refund under Section 31A-6b-303;
- 451 (h) if the guaranteed asset protection waiver is cancelled or terminated after the
452 preliminary period:
- 453 (i) the procedures for requesting a refund under Section 31A-6b-303, including that the
454 borrower request a refund in writing in accordance with Section 31A-6b-303; and
- 455 (ii) the methodology for calculating the refund due, if any;
- 456 (i) that none of the following may be conditioned on the purchase of a guaranteed asset
457 protection waiver:
- 458 (i) the extension of credit;
- 459 (ii) a term of credit; or
- 460 (iii) a term of the related vehicle sale or lease; and
- 461 (j) (i) that a guaranteed asset protection waiver is subject to limited regulation by the

462 commissioner; and

463 (ii) that a complaint regarding a guaranteed asset protection waiver may be submitted
464 to the commissioner.

465 Section 13. Section **31A-6b-303** is enacted to read:

466 **31A-6b-303. Cancellation or termination of a guaranteed asset protection waiver.**

467 (1) (a) A borrower may cancel a guaranteed asset protection waiver in accordance with
468 this section.

469 (b) A borrower may not waive by contract the borrower's right to cancel a guaranteed
470 asset protection waiver in accordance with this section.

471 (c) A guaranteed asset protection waiver terminates on the day on which the related
472 finance agreement terminates.

473 (2) (a) A guaranteed asset protection waiver shall provide for a preliminary period of at
474 least 30 days.

475 (b) If a borrower cancels a guaranteed asset protection waiver or if a guaranteed asset
476 protection waiver terminates within the preliminary period, the borrower is entitled to a refund
477 of the charge for the guaranteed asset protection waiver as follows:

478 (i) if benefits have not been provided, a full refund; or

479 (ii) if benefits have been provided, a refund to the extent provided for in the guaranteed
480 asset protection waiver.

481 (3) (a) If a guaranteed asset protection waiver is cancelled by the borrower or
482 terminates after the preliminary period, to obtain a refund of any portion of the charge for the
483 guaranteed asset protection waiver, the borrower shall request the refund:

484 (i) in a writing provided to:

485 (A) the creditor;

486 (B) an administrator; or

487 (C) another person designated in the guaranteed asset protection waiver;

488 (ii) within 90 days of the day on which an event occurs that terminates the finance
489 agreement if the refund is sought on the basis of termination of a finance agreement; and

490 (iii) in accordance with any additional terms in the guaranteed asset protection waiver.

491 (b) If a guaranteed asset protection waiver is cancelled by the borrower or terminates
492 after the preliminary period, but before the term of the finance agreement ends, a borrower is

493 entitled to a refund:

494 (i) of the portion of the charge for the guaranteed asset protection waiver that under the
495 terms of the guaranteed asset protection waiver is considered unearned; and

496 (ii) subject to any other terms of the guaranteed asset protection waiver.

497 (4) (a) If the cancellation of a guaranteed asset protection waiver occurs as a result of
498 any of the following, a refund may be paid directly to the creditor or administrator and applied
499 as provided in Subsection (4)(b):

500 (i) a default under the finance agreement;

501 (ii) the repossession of the vehicle associated with the finance agreement; or

502 (iii) any other type of termination of the finance agreement or guaranteed asset
503 protection waiver.

504 (b) A creditor may apply a refund described in this Subsection (4) to reduce the amount
505 owed under a finance agreement, unless the borrower can show that the finance agreement is
506 paid in full.

507 Section 14. Section **31A-6b-401** is enacted to read:

508 **Part 4. Enforcement**

509 **31A-6b-401. Cease and desist -- Fines.**

510 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
511 commissioner may:

512 (a) order a person who violates this chapter to cease and desist from an act that violates
513 this chapter;

514 (b) impose a penalty:

515 (i) up to \$500 per violation; and

516 (ii) not to exceed the aggregate of \$40,000 in a calendar year for the violations under
517 this chapter of similar nature; or

518 (c) take a combination of actions under this Subsection (1).

519 (2) For purposes of this section, a violation is of a similar nature if the violation
520 consists of the same or similar action, course of conduct, or practice, irrespective of the number
521 of times the action, conduct, or practice occurs that is determined to violate this chapter.

522 Section 15. Section **31A-21-109** is amended to read:

523 **31A-21-109. Debt cancellation agreements and debt suspension agreements.**

524 (1) As used in this section:

525 (a) "Debt cancellation agreement" means a contract between a lender and a borrower
526 where the lender, for a separately stated consideration, agrees to waive all or part of the debt in
527 the event of a fortuitous event such as death, disability, or the destruction of the lender's
528 collateral.

529 (b) "Debt suspension agreement" means a contract between a lender and a borrower
530 where the lender, for a separately stated consideration, agrees to suspend scheduled installment
531 payments for an agreed period of time in the event of a:

- 532 (i) fortuitous event such as involuntary unemployment or accident; or
- 533 (ii) fortuitous condition such as sickness.

534 (c) "Guaranteed asset protection waiver" is as defined in Section 31A-6b-102.

535 [~~(c)~~] (d) "Institution" means:

- 536 (i) a bank as defined in Section 7-1-103;
- 537 (ii) a credit union as defined in Section 7-1-103;
- 538 (iii) an industrial bank as defined in Section 7-1-103; or
- 539 (iv) a savings and loan association as defined in Section 7-1-103.

540 [~~(d)~~] (e) "Regulate the issuance" includes regulation of the following with respect to a
541 debt cancellation agreement or a debt suspension agreement:

- 542 (i) terms;
- 543 (ii) conditions;
- 544 (iii) rates;
- 545 (iv) forms; and
- 546 (v) claims.

547 [~~(e)~~] (f) "Subsidiary" is as defined in Section 7-1-103.

548 (2) Except as provided in Subsection (6), the commissioner has sole jurisdiction over
549 the regulation of a debt cancellation agreement or debt suspension agreement.

550 (3) Subject to this section, the commissioner may by rule, made in accordance with
551 Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- 552 (a) authorize an insurer to issue:
 - 553 (i) a debt cancellation agreement; or
 - 554 (ii) a debt suspension agreement; and

555 (b) regulate the issuance of:

556 (i) a debt cancellation agreement; or

557 (ii) a debt suspension agreement.

558 (4) Except as provided in Subsection (6), a debt cancellation agreement or a debt
559 suspension agreement may be issued only by an insurer authorized to issue a debt cancellation
560 agreement or debt suspension agreement under this section.

561 (5) (a) The rules promulgated by the commissioner under this section shall regulate the
562 issuance of a debt cancellation agreement or debt suspension agreement according to the
563 functional insurance equivalent of each type of debt cancellation agreement or debt suspension
564 agreement.

565 (b) Except as provided in Subsection (5)(c), in accordance with Title 63G, Chapter 3,
566 Utah Administrative Rulemaking Act, the commissioner may by rule determine the functional
567 insurance equivalent of each type of debt cancellation agreement or debt suspension agreement.

568 (c) Notwithstanding Subsection (5)(b), the functional insurance equivalent of a debt
569 cancellation agreement that provides for the cancellation of indebtedness at death is credit life
570 insurance.

571 (6) Notwithstanding the other provisions of this section, the issuance of a debt
572 cancellation agreement or a debt suspension agreement by an institution or a subsidiary of an
573 institution is:

574 (a) not subject to this section; and

575 (b) subject to the jurisdiction of the primary regulator of:

576 (i) the institution; or

577 (ii) the subsidiary of an institution.

578 (7) This section does not apply to a guaranteed asset protection waiver.

579 Section 16. **Effective date.**

580 (1) Sections 31A-6b-201, 31A-6b-202, 31A-6b-203, and 31A-6b-204, take effect on
581 May 11, 2010.

582 (2) Except as provided in Subsection (1), this bill takes effect on July 1, 2010.

Legislative Review Note
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Office of Legislative Research and General Counsel