

### **Part 3**

## **Requirements for a Guaranteed Asset Protection Waiver**

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

- (1) A person may not issue, market, sell, offer to sell, or otherwise provide a guaranteed asset protection waiver except in compliance with this chapter.
- (2) If a creditor assigns, sells, or transfers a finance agreement, a guaranteed asset protection waiver remains a part of the finance agreement.
- (3)
  - (a) If a borrower finances or otherwise pays the charge for a guaranteed asset protection waiver, the creditor is liable to the borrower for a benefit due under the guaranteed asset protection waiver regardless of whether the retail seller, administrator, or other person who receives the payment from the borrower remits the charge.
  - (b) This Subsection (3) may not be construed to prejudice any claim a creditor may have against a retail seller, administrator, or other person who receives a payment from a borrower but fails to remit the payment.
- (4) A creditor may require that a guaranteed asset protection waiver that the creditor issues be sold for:
  - (a) a single payment; or
  - (b) periodic payments.
- (5) The following may not be conditioned on a borrower purchasing a guaranteed asset protection waiver:
  - (a) the extension of credit;
  - (b) a term of credit; or
  - (c) a term of the related vehicle sale or lease.

Enacted by Chapter 274, 2010 General Session

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

- (1) A guaranteed asset protection waiver shall disclose the information described in Subsection (2):
  - (a) in writing; and
  - (b) in understandable language that is easy to read.
- (2) A guaranteed asset protection waiver shall disclose:
  - (a) the name and address of the initial creditor and the borrower at the time the guaranteed asset protection waiver is executed;
  - (b) if there is an administrator for the guaranteed asset protection waiver:
    - (i) the name of the administrator;
    - (ii) the address of the administrator; and
    - (iii) a toll-free number to contact the administrator;
  - (c) the charge for the guaranteed asset protection waiver;
  - (d) the terms of the guaranteed asset protection waiver, including:
    - (i) the requirements for receiving the protection of the guaranteed asset protection waiver;
    - (ii) the conditions imposed by the guaranteed asset protection waiver; and
    - (iii) the exclusions from the protection of the guaranteed asset protection waiver;
  - (e) the procedure the borrower must follow, if any, to obtain a benefit under the guaranteed asset protection waiver, including a telephone number and address where the borrower may apply for a benefit under the guaranteed asset protection waiver;

- (f) that the borrower may cancel the guaranteed asset protection waiver;
- (g) the rights the borrower has to a refund under Section 31A-6b-303;
- (h) if the guaranteed asset protection waiver is cancelled or terminated after the preliminary period:
  - (i) the procedures for requesting a refund under Section 31A-6b-303, including that the borrower request a refund in writing in accordance with Section 31A-6b-303; and
  - (ii) the methodology for calculating the refund due, if any;
- (i) that none of the following may be conditioned on the purchase of a guaranteed asset protection waiver:
  - (i) the extension of credit;
  - (ii) a term of credit; or
  - (iii) a term of the related vehicle sale or lease; and
- (j)
  - (i) that a guaranteed asset protection waiver is subject to limited regulation by the commissioner; and
  - (ii) that a complaint regarding a guaranteed asset protection waiver may be submitted to the commissioner.

Enacted by Chapter 274, 2010 General Session

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

- (1)
  - (a) A borrower may cancel a guaranteed asset protection waiver in accordance with this section.
  - (b) A borrower may not waive by contract the borrower's right to cancel a guaranteed asset protection waiver in accordance with this section.
  - (c) A guaranteed asset protection waiver terminates on the day on which the related finance agreement terminates.
- (2)
  - (a) A guaranteed asset protection waiver shall provide for a preliminary period of at least 30 days.
  - (b) If a borrower cancels a guaranteed asset protection waiver or if a guaranteed asset protection waiver terminates within the preliminary period, the borrower is entitled to a refund of the charge for the guaranteed asset protection waiver as follows:
    - (i) if benefits have not been provided, a full refund; or
    - (ii) if benefits have been provided, a refund to the extent provided for in the guaranteed asset protection waiver.
- (3)
  - (a) If a guaranteed asset protection waiver is cancelled by the borrower or terminates after the preliminary period, to obtain a refund of any portion of the charge for the guaranteed asset protection waiver, the borrower shall request the refund:
    - (i) in a writing provided to:
      - (A) the creditor;
      - (B) an administrator; or
      - (C) another person designated in the guaranteed asset protection waiver;
    - (ii) within 90 days of the day on which an event occurs that terminates the finance agreement if the refund is sought on the basis of termination of a finance agreement; and
    - (iii) in accordance with any additional terms in the guaranteed asset protection waiver.

- (b) If a guaranteed asset protection waiver is cancelled by the borrower or terminates after the preliminary period, but before the term of the finance agreement ends, a borrower is entitled to a refund:
  - (i) of the portion of the charge for the guaranteed asset protection waiver that under the terms of the guaranteed asset protection waiver is considered unearned; and
  - (ii) subject to any other terms of the guaranteed asset protection waiver.
- (4)
  - (a) If the cancellation of a guaranteed asset protection waiver occurs as a result of any of the following, a refund may be paid directly to the creditor or administrator and applied as provided in Subsection (4)(b):
    - (i) a default under the finance agreement;
    - (ii) the repossession of the vehicle associated with the finance agreement; or
    - (iii) any other type of termination of the finance agreement or guaranteed asset protection waiver.
  - (b) A creditor may apply a refund described in this Subsection (4) to reduce the amount owed under a finance agreement, unless the borrower can show that the finance agreement is paid in full.

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