CHAPTER 59D

GUARANTEED ASSET PROTECTION WAIVERS

59D.01 APPLICATION.
59D.02 DEFINITIONS.
59D.03 COMMERCIAL TRANSACTIONS EXEMPTED.
59D.04 GUARANTEED ASSET PROTECTION WAIVER REQUIREMENTS.
59D.05 CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICIES.
59D.06 DISCLOSURES.
59D.07 CANCELLATION; REFUNDS.

59D.01 APPLICATION.

(a) This chapter does not apply to:

(1) a policy of insurance offered in compliance with chapters 60A to 79A;

(2) a debt cancellation or debt suspension contract, including a guaranteed asset protection waiver, being offered by a banking institution or credit union in compliance with chapter 48 or 52; and

(3) a debt cancellation or debt suspension contract being offered in compliance with Code of Federal Regulations, title 12, parts 37, 721, or other federal law.

(b) Guaranteed asset protection waivers regulated under this chapter are not insurance and are not subject to chapters 60A to 79A. Persons selling, soliciting, or negotiating guaranteed asset protection waivers to borrowers in compliance with this chapter are exempt from chapter 60K.

(c) The commissioner of commerce has the full investigatory authority of chapter 45 to enforce the terms of this chapter.

History: *1Sp2015 c 1 art 3 s 3*

59D.02 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of this chapter, the terms defined in subdivisions 2 to 10 have the meanings given them.

Subd. 2. **Administrator.** "Administrator" means a person, other than an insurer or creditor who performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

Subd. 3. **Borrower.** "Borrower" means a debtor, retail buyer, or lessee under a finance agreement.

Subd. 4. **Creditor.** "Creditor" means:

(1) the lender in a loan or credit transaction;

(2) the lessor in a lease transaction;

(3) a dealer or seller of motor vehicles that provides credit to purchasers of the motor vehicles provided that the entities comply with this section;

(4) the seller in commercial retail installment transactions; or

(5) the assignees of any of the forgoing to whom the credit obligation is payable.

Subd. 5. **Finance agreement.** "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

Subd. 6. **Free-look period.** "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 30 days.

Subd. 7. **Guaranteed asset protection waiver.** "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 the motor vehicle.

Subd. 8. **Insurer.** "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under Minnesota law.

Subd. 9. **Motor vehicle.** "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. A creditor is prohibited from selling a GAP waiver in conjunction with the sale or lease of any used motor vehicle that is an automobile or truck that is valued at less than $5,000.

Subd. 10. **Person.** "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

History: *1Sp2015 c 1 art 3 s 4*

59D.03 COMMERCIAL TRANSACTIONS EXEMPTED.

Sections 59D.04, subdivision 3, and 59D.06 do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with any transaction not for personal, family, or household purposes.

History: *1Sp2015 c 1 art 3 s 5*

59D.04 GUARANTEED ASSET PROTECTION WAIVER REQUIREMENTS.

Subdivision 1. **Authorization.** GAP waivers may be offered, sold, or provided to borrowers in Minnesota in compliance with this chapter.

Subd. 2. **Payment options.** 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.

Subd. 3. **Certain costs not considered finance charge or interest.** Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with United States Code, title 15, sections 1601 to 1667F, and its implementing regulations under Code of Federal Regulations, title 12, part 226, as they may be amended from time to time, must be separately stated and is not to be considered a finance charge or interest.

Subd. 4. **Insurance.** A retail seller must 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 such policy issued by an insurer. The 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. Retail sellers that are lessors on motor vehicles are not required to insure obligations related to GAP waivers on leased vehicles.

Subd. 5. **Financing agreement.** The GAP waiver must be part of, or a separate addendum to, the finance agreement and must remain a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

Subd. 6. **Purchase restriction.** The extension of credit, the terms of the credit, or the terms and conditions of the related motor vehicle sale or lease must not be conditioned upon the purchase of a GAP waiver.

Subd. 7. **Reporting.** A creditor that offers a GAP waiver must report the sale of, and forward funds received on, all such 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.

Subd. 8. **Fiduciary responsibilities.** 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, must be held by the creditor or administrator in a fiduciary capacity.

Subd. 9. **Defined terms.** The terms defined in section 59D.02 are not intended to provide actual terms that are required in guaranteed asset protection waivers.

History: *1Sp2015 c 1 art 3 s 6*

59D.05 CONTRACTUAL LIABILITY OR OTHER INSURANCE POLICIES.

Subdivision 1. **Reimbursement or payment statement.** Contractual liability or other insurance policies insuring GAP waivers must 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.

Subd. 2. **Coverage of assignee.** Coverage under a contractual liability or other insurance policy insuring a GAP waiver must also cover a subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

Subd. 3. **Term.** Coverage under a contractual liability or other insurance policy insuring a GAP waiver must remain in effect unless canceled or terminated in compliance with applicable laws.

Subd. 4. **Effect of cancellation or termination.** The cancellation or termination of a contractual liability or other insurance policy must not reduce the insurer's responsibility for GAP waivers issued by the creditor before the date of cancellation or termination and for which a premium has been received by the insurer.

History: *1Sp2015 c 1 art 3 s 7*

59D.06 DISCLOSURES.

(a) Guaranteed asset protection waivers must 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, and the identity of any administrator if different from the creditor;

(2) the purchase price and the terms of the GAP waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the GAP waiver;

(3) that the borrower may cancel the GAP waiver within a free-look period as specified in the waiver, and will be entitled to a full refund of the purchase price, so long as no benefits have been provided;

(4) the procedure the borrower must 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;

(5) 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 a refund due;

(6) that in order to receive a 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, must provide a written cancellation request to the creditor, administrator, or other party. If such a request is being made because of the termination of the finance agreement, notice must be provided to the creditor, administrator, or other party within 90 days of the occurrence of the event terminating the finance agreement;

(7) the methodology for calculating a 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

(8) that the extension of credit, the terms of the credit, or the terms and conditions of the related motor vehicle sale or lease are not conditioned upon the purchase of the GAP waiver.

(b) The creditor or any person offering a GAP waiver must provide the following verbatim disclosure in bold, 14-point type, either in a separate writing or as part of the agreement: "THE GAP WAIVER IS OPTIONAL. YOU DO NOT HAVE TO PURCHASE THIS PRODUCT IN ORDER TO BUY [OR LEASE] THIS MOTOR VEHICLE. YOU ALSO HAVE A LIMITED RIGHT TO CANCEL."

History: *1Sp2015 c 1 art 3 s 8*

59D.07 CANCELLATION; REFUNDS.

Subdivision 1. **Refund requirements during free-look period.** A GAP waiver must 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, so long as no benefits have been provided.

Subd. 2. **Refund requirements after free-look period.** (a) Guaranteed asset protection waivers may be cancelable or noncancelable after the free-look period.

(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 a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator, or other party. If such a request is being made because of the termination of the finance agreement, notice must be provided to the creditor, administrator, or other party 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 subdivision 3.

Subd. 3. **How applied.** A refund under subdivision 1 or 2 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.

History: *1Sp2015 c 1 art 3 s 9*