

Arkansas Enacts Guaranteed Asset Protection Waiver Act

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Last month, the Arkansas legislature passed House Bill 1672 to enact a statutory framework within which guaranteed asset protection (GAP) waivers may be offered in the state. Previously, GAP waivers were largely unregulated in Arkansas. As a result, creditors will need to familiarize themselves with the new law and ensure they take the necessary steps for compliance. The act contains several key provisions that we commonly see in GAP waiver acts.

The new law clarifies that GAP waivers are not insurance and are exempt from the state's insurance laws. Additionally, entities that market, sell, or offer to sell GAP waivers to borrowers who comply with the act are exempt from the state's insurance licensing requirements.

Arkansas law now provides creditors the option to sell GAP waivers for a single payment or with a monthly or periodic payment option. Any cost to the borrower must be separately itemized in the finance agreement, and it will not be considered a part of the finance charge or interest. The act does not set a maximum cost for GAP waivers.

House Bill 1672 requires that GAP waivers remain a part of the finance agreement upon assignment. Further, the extension of credit, the term of credit, or the term of the related motor vehicle sale or lease may not be conditioned upon the purchase of a GAP waiver.

Under the act, debtors must be provided a free look period of not less than 30 days, during which, a debtor may cancel the GAP waiver with no penalty, fees, or costs to the debtor. A debtor exercising the right to cancel under a free look period is entitled to a full refund, so long as no benefits have been provided.

All GAP waivers must contain certain disclosures in clear, understandable language that is easy to read. Those disclosures include but are not limited to, the names of the parties, the price and terms of the GAP waiver, and whether the waiver is cancellable. In addition, Arkansas law establishes requirements regarding cancellation and refunds after the free look period. The penalty for non-compliance with the act is up to \$500 per violation, with a cap of \$10,000 for violations of a similar nature.

Arkansas's new GAP waiver law act will become effective on July 24, 2019. Creditors should review their current forms and policies now, so that they can be ready to comply on that date.

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