

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1506

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S.P. 531

In Senate, April 25, 2017

### **An Act To Amend the Usage and Consumer Protections of Guaranteed Asset Protection Waivers**

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Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator WHITTEMORE of Somerset.  
Cosponsored by Representative FOLEY of Wells and  
Representatives: LAWRENCE of South Berwick, SANBORN of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 229** is enacted to read:

3 **CHAPTER 229**

4 **GUARANTEED ASSET PROTECTION WAIVERS**

5 **§1500-H. Guaranteed asset protection waivers**

6 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the  
7 following terms have the following meanings.

8 A. "Administrator" means a person, other than an insurer or creditor, that performs  
9 administrative or operational functions pursuant to a waiver program.

10 B. "Borrower" means a debtor or retail buyer under a finance agreement.

11 C. "Creditor" means:

12 (1) The lender in a loan or credit transaction;

13 (2) A person engaged as a retail seller of motor vehicles that provides credit to  
14 consumers, as defined in Title 9-A, section 1-301, subsection 10, of the motor  
15 vehicles, as long as that person complies with the provisions of this section;

16 (3) The seller in a commercial retail installment transaction; or

17 (4) The assignee of any of the persons in subparagraphs (1) to (4) to which the  
18 credit obligation is payable.

19 D. "Finance agreement" means a loan or retail installment sales contract for the  
20 purchase of a motor vehicle.

21 E. "Free-look period" means the period of time, not less than 30 days, from the  
22 effective date of the waiver until the date the borrower may cancel the waiver  
23 contract without penalty, fees or costs to the borrower.

24 F. "Guaranteed asset protection waiver" or "waiver" means a contractual agreement  
25 in which a creditor agrees for a separate charge to cancel or waive all or part of the  
26 amount due on a borrower's finance agreement for a motor vehicle in the event of a  
27 total physical damage loss or unrecovered theft of the motor vehicle. The waiver  
28 must be part of or a separate addendum to the finance agreement.

29 G. "Insurer" has the same meaning as in Title 24-A, section 4.

30 H. "Motor vehicle" means a self-propelled vehicle not operated exclusively on  
31 railroad tracks; a motorcycle as defined in Title 29-A, section 101, subsection 38; a  
32 motor home as defined in Title 29-A, section 101, subsection 40; an all-terrain  
33 vehicle as defined in Title 12, section 13001, subsection 3; a snowmobile as defined  
34 in Title 12, section 13001, subsection 25; a motorboat as defined in Title 12, section  
35 13001, subsection 16; a personal watercraft as defined in Title 12, section 13001,  
36 subsection 23; or a trailer as defined in Title 29-A, section 101, subsection 86.  
37 "Motor vehicle" includes vehicles whether self-propelled or towed.

1 I. "Person" includes an individual, company, association, organization, partnership,  
2 business trust, corporation and every form of legal entity.

3 J. "Superintendent" means the Superintendent of Consumer Credit Protection.

4 **2. Requirements for offering waivers.** The following provisions apply to offering  
5 wavers.

6 A. A waiver may be offered, sold or provided to a borrower in this State in  
7 compliance with this chapter.

8 B. A waiver may, at the option of the creditor, be sold for a single payment or may  
9 be offered with a monthly or periodic payment option.

10 C. Notwithstanding any other provision of law, any cost to the borrower for a waiver  
11 entered into in compliance with the federal Truth in Lending Act, 15 United States  
12 Code, Section 1601 et seq. and its implementing regulations, as they may be amended  
13 from time to time, must be separately stated and may not be considered a finance  
14 charge or interest.

15 D. A retail seller must insure its waiver obligations under a contractual liability  
16 policy or other insurance policy issued by an insurer. A creditor, other than a retail  
17 seller, may insure its waiver obligations under a contractual liability policy or other  
18 insurance policy issued by an insurer. Any such insurance policy may be directly  
19 obtained by a creditor or retail seller or may be procured by an administrator to cover  
20 a creditor's or retail seller's obligations.

21 E. A waiver remains a part of the finance agreement upon the assignment, sale or  
22 transfer of the finance agreement by the creditor.

23 F. The extension of credit, the term of credit and the term of the related motor  
24 vehicle sale may not be conditioned upon the purchase of a waiver.

25 G. A creditor that offers a waiver must report the sale of and forward funds received  
26 on such a waiver to the designated party, if any, as prescribed in any applicable  
27 administrative services agreement, contractual liability policy, other insurance policy  
28 or other specified program documents.

29 H. Funds received or held by a creditor or administrator and belonging to an insurer,  
30 creditor or administrator, pursuant to the terms of a written agreement, must be held  
31 by the creditor or administrator in a fiduciary capacity.

32 I. The borrower's primary motor vehicle insurance carrier or, if applicable, the 3rd-  
33 party liability carrier shall determine the existence of a total physical damage loss. If  
34 no primary motor vehicle insurance or 3rd-party liability insurance is present on the  
35 date of loss, then the existence of a total physical damage loss must be determined  
36 pursuant to the terms of the waiver.

37 **3. Contractual liability policy or other insurance policies.** The following  
38 provisions govern a contractual liability policy or other insurance policies insuring  
39 wavers.

40 A. A contractual liability policy or other insurance policy insuring waivers must state  
41 the obligation of the insurer to reimburse or pay to the creditor any sums the creditor

1 is legally obligated to waive under the waivers issued by the creditor and purchased  
2 by the borrower or held by the borrower.

3 B. Coverage under a contractual liability or other insurance policy insuring a waiver  
4 must also cover any subsequent assignee upon the assignment, sale or transfer of the  
5 finance agreement.

6 C. Coverage under a contractual liability or other insurance policy insuring a waiver  
7 must remain in effect unless cancelled or terminated in compliance with applicable  
8 insurance laws of this State.

9 D. The cancellation or termination of a contractual liability or other insurance policy  
10 may not reduce the insurer's responsibility for waivers issued by the creditor prior to  
11 the date of cancellation or termination and for which premium has been received by  
12 the insurer.

13 **4. Disclosures.** A waiver must disclose, as applicable, in writing and in clear,  
14 understandable language that is easy to read, the following:

15 A. The name and address of the initial creditor and the borrower at the time of sale,  
16 and the identity of any administrator if different from the creditor;

17 B. The purchase price and the terms of the waiver, including without limitation the  
18 requirements for protection, condition or exclusion associated with the waiver;

19 C. That the borrower may cancel the waiver within a free-look period as specified in  
20 the waiver and will be entitled to a full refund of the purchase price as long as no  
21 waiver benefits have been provided;

22 D. The procedure the borrower must follow, if any, to obtain waiver benefits under  
23 the terms and conditions of the waiver and a telephone number and address where the  
24 borrower may apply for waiver benefits;

25 E. Whether or not the waiver is cancellable after the free-look period, the conditions  
26 under which it may be cancelled or terminated and the procedures for requesting any  
27 refund due;

28 F. That, in order to receive any refund due in the event of a borrower's cancellation  
29 of the waiver agreement or early termination of the finance agreement, the borrower,  
30 in accordance with the terms of the waiver, must provide a written request to cancel  
31 to the creditor, administrator or other party as specified in the waiver. If a borrower  
32 is cancelling the waiver due to early termination of the finance agreement, the  
33 borrower must provide a written request to the creditor, administrator or other party  
34 within 90 days of the occurrence of the event terminating the finance agreement;

35 G. The methodology for calculating any refund due of the unearned portion of the  
36 purchase price of the waiver in the event of cancellation of the waiver or early  
37 termination of the finance agreement; and

38 H. That the extension of credit, the terms of credit and the terms of the related motor  
39 vehicle sale may not be conditioned upon purchase of the waiver.

40 **5. Cancellation.** The following provisions govern the cancellation of a waiver.

1 A. A waiver may be cancellable or noncancellable after the free-look period. A  
2 waiver must provide that if a borrower cancels the waiver within the free-look period,  
3 the borrower is entitled to a full refund of the purchase price as long as no benefits  
4 have been provided.

5 B. In the event of a borrower's cancellation of the waiver or early termination of the  
6 finance agreement, after the agreement has been in effect beyond the free-look  
7 period, the borrower is entitled to a refund of any unearned portion of the purchase  
8 price of the waiver unless the waiver provides otherwise. In order to receive a  
9 refund, the borrower, in accordance with any applicable terms of the waiver, must  
10 provide a written request to the creditor, administrator or other party. If the borrower  
11 is cancelling the waiver due to the early termination of the finance agreement, the  
12 borrower must provide a written request within 90 days of the event terminating the  
13 finance agreement.

14 C. If the cancellation of a waiver occurs as a result of a default under the finance  
15 agreement or the repossession of the motor vehicle associated with the finance  
16 agreement, or any other termination of the finance agreement, any refund due may be  
17 paid directly to the creditor or administrator and applied as set forth in paragraph D.

18 D. Any refund under paragraph A, B or C may be applied by the creditor as a  
19 reduction of the amount owed under the finance agreement unless the borrower  
20 shows that the finance agreement has been paid in full.

21 **6. Enforcement.** The superintendent may require the filing of notification by an  
22 administrator pursuant to Title 9-A, section 6-202 and section 6-203, subsection 1. The  
23 superintendent may require the filing of waivers in use by an administrator. Upon request  
24 by the superintendent, an administrator shall annually file a record of waivers  
25 administered by the administrator.

26 The superintendent may take action that is necessary or appropriate to enforce the  
27 provisions of this chapter and to protect borrowers who hold waivers in this State. After  
28 notice and opportunity for hearing, the superintendent may:

29 A. Order the creditor, administrator or any other person not in compliance with this  
30 chapter to cease and desist from further waiver-related operations that are in violation  
31 of this chapter; and

32 B. Impose a penalty of not more than \$500 per violation and not more than \$10,000  
33 in the aggregate for all violations of a similar nature. For purposes of this paragraph,  
34 violations must be considered of a similar nature if the violations consist of the same  
35 or a similar course of conduct, action or practice, irrespective of the number of times  
36 the conduct, action or practice that is determined to be a violation of this chapter  
37 occurred.

38 **7. Exemptions.** The following exemptions apply.

39 A. This chapter does not apply to:

40 (1) An insurance policy offered by an insurer under the insurance laws of this  
41 State; or

