

ASSEMBLY, No. 3601

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED APRIL 7, 2016

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

SYNOPSIS

Concerns regulation of guaranteed asset protection waivers by DOBI.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the regulation of guaranteed asset protection
2 waivers and supplementing Title 17 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. The purpose of this act is to provide a framework within
8 which guaranteed asset protection waivers are defined and may be
9 offered within this State.

10 b. This act shall not apply to:

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

13 (2) A debt cancellation or debt suspension contract being
14 offered in compliance with 12 C.F.R. Part 37 or 12 C.F.R. Part 721
15 or other federal law.

16 c. Guaranteed asset protection waivers governed under this act
17 are not insurance and are exempt from the insurance laws of this
18 State. Persons marketing, selling or offering to sell guaranteed
19 asset protection waivers to borrowers that comply with this act shall
20 be exempt from this State's licensing requirements provided in the
21 "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001,
22 c.210 (C.17:22A-26 et seq.).

23
24 2. As used in this act:

25 "Administrator" means a person, other than an insurer or
26 creditor, that performs administrative or operational functions
27 pursuant to a guaranteed asset protection waiver program.

28 "Borrower" means a debtor, retail buyer or lessee, under a
29 finance agreement.

30 "Commissioner" means the Commissioner of Banking and
31 Insurance.

32 "Creditor" means:

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

34 (2) the lessor in a lease transaction;

35 (3) a dealer of motor vehicles as defined in R.S.39:1-1 that
36 provides credit to retail buyers of motor vehicles, provided that the
37 dealer complies with the provisions of this act;

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

40 (5) the assignees of any of the foregoing to whom the credit
41 obligation is payable.

42 "Department" means the Department of Banking and Insurance.

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

45 "Free look period" means the period of time from the effective
46 date of the GAP waiver until the date the borrower may cancel the
47 contract without penalty, fees or costs to the borrower, which period
48 shall not be less than 30 days.

1 “Guaranteed asset protection waiver” or “GAP waiver” means a
2 contractual agreement wherein a creditor agrees for a separate
3 charge to cancel or waive all or part of the amount due on a
4 borrower’s finance agreement in the event of a total physical
5 damage loss or unrecovered theft of the motor vehicle, which
6 agreement shall be part of, or a separate addendum to, the finance
7 agreement.

8 “Insurer” means an insurance company licensed, registered, or
9 otherwise authorized to do business under the laws of this State.

10 “Motor vehicle” means self-propelled or towed vehicles designed
11 for personal or commercial use, including but not limited to
12 automobiles, trucks, motorcycles, recreational vehicles, all-terrain
13 vehicles, snowmobiles, campers, boats, personal watercraft, and
14 motorcycle, boat, camper and personal watercraft trailers.

15 “Person” includes an individual, company, association,
16 organization, partnership, business trust, corporation, and every
17 form of legal entity.

18 The terms defined in this section are defined for purposes of this
19 act and are not intended to provide actual terms required in
20 guaranteed asset protection waivers.

21

22 3. a. A GAP waiver may be offered, sold or provided to
23 borrowers in this State in compliance with the provisions of this act.

24 b. A GAP waiver may, at the option of the creditor, be sold for
25 a single payment or may be offered with a monthly or periodic
26 payment option.

27 c. Notwithstanding any other provision of law, any cost to the
28 borrower for a GAP waiver entered into in compliance with the
29 Truth in Lending Act (15 U.S.C. s.1601 et seq.) and its
30 implementing regulations, as they may be amended from time to
31 time, shall be separately stated and shall not be considered a finance
32 charge or interest.

33 d. A dealer of motor vehicles shall insure its GAP waiver
34 obligations under a contractual liability or other insurance policy
35 issued by an insurer. A creditor, other than a dealer, may insure its
36 GAP waiver obligations under a contractual liability policy or other
37 policy issued by an insurer. Any insurance policy may be directly
38 obtained by a creditor, dealer, or may be procured by an
39 administrator to cover a creditor’s or dealer’s obligations.
40 However, dealers that are lessors of motor vehicles are not required
41 to insure obligations related to GAP waivers on those leased
42 vehicles.

43 e. The GAP waiver shall remain a part of the finance
44 agreement upon the assignment, sale or transfer of that finance
45 agreement by the creditor.

46 f. Neither the extension of credit, the terms of the credit, nor
47 the terms of the related motor vehicle sale or lease may be
48 conditioned upon the purchase of a GAP waiver.

- 1 g. Any creditor that offers a GAP waiver shall report the sale
2 of, and forward funds received on, all waivers to the designated
3 party, if any, as prescribed in any applicable administrative services
4 agreement, contractual liability policy, other insurance policy or
5 other specified program documents.
- 6 h. Funds received or held by a creditor or administrator and
7 belonging to an insurer, creditor or administrator, pursuant to the
8 terms of a written agreement shall be held by that creditor or
9 administrator in a fiduciary capacity.
- 10
- 11 4. a. Contractual liability or other insurance policies insuring
12 GAP waivers shall state the obligation of the insurer to reimburse or
13 pay to the creditor any sums the creditor is legally obligated to
14 waive under the GAP waivers issued by the creditor and purchased
15 or held by the borrower.
- 16 b. Coverage under a contractual liability or other insurance
17 policy insuring a GAP waiver shall also cover any subsequent
18 assignee upon the assignment, sale or transfer of the finance
19 agreement.
- 20 c. Coverage under a contractual liability or other insurance
21 policy insuring a GAP waiver shall remain in effect unless
22 cancelled or terminated in compliance with applicable insurance
23 laws of this State.
- 24 d. The cancellation or termination of a contractual liability or
25 other insurance policy shall not reduce the insurer's responsibility
26 for GAP waivers issued by the creditor prior to the date of
27 cancellation or termination and for which premium has been
28 received by the insurer.
- 29
- 30 5. A GAP waiver agreement shall disclose, as applicable, in
31 writing and in clear, understandable language that is easy to read,
32 the following:
- 33 a. The name and address of the initial creditor and the
34 borrower at the time of sale, and the identity of any administrator if
35 different from the creditor.
- 36 b. The purchase price and the terms of the GAP waiver,
37 including without limitation, the requirements for protection,
38 conditions, or exclusions associated with the GAP waiver.
- 39 c. That the borrower may cancel the GAP waiver within a free
40 look period as specified in the waiver, and will be entitled to a full
41 refund of the purchase price, so long as no benefits have been
42 provided; or if benefits have been provided, the borrower may
43 receive a full or partial refund pursuant to the terms of the waiver.
- 44 d. The procedure the borrower shall follow, if any, to obtain
45 GAP waiver benefits under the terms and conditions of the waiver,
46 including a telephone number and address where the borrower may
47 apply for waiver benefits.

1 e. Whether the GAP waiver is cancellable after the free look
2 period and the conditions under which it may be cancelled or
3 terminated, including the procedures for requesting any refund due.

4 f. That in order to receive any refund due in the event of a
5 borrower's cancellation of the GAP waiver agreement or early
6 termination of the finance agreement after the free look period of
7 the GAP waiver, the borrower, in accordance with terms of the
8 waiver, shall provide a written request to cancel to the creditor,
9 administrator or such other party, within 90 days of the occurrence
10 of the event terminating the finance agreement.

11 g. The methodology for calculating any refund of the unearned
12 purchase price of the GAP waiver due in the event of cancellation
13 of the GAP waiver or early termination of the finance agreement.

14 h. That neither the extension of credit, the terms of the credit,
15 nor the terms of the related motor vehicle sale or lease, may be
16 conditioned upon the purchase of the GAP waiver.

17
18 6. a. GAP waiver agreements may be cancellable or non-
19 cancellable after the free look period. A GAP waiver shall provide
20 that if a borrower cancels a waiver within the free look period, the
21 borrower will be entitled to a full refund of the purchase price, so
22 long as no benefits have been provided; or if benefits have been
23 provided, the borrower may receive a full or partial refund pursuant
24 to the terms of the waiver.

25 b. In the event of a borrower's cancellation of the GAP waiver
26 or early termination of the finance agreement after the agreement
27 has been in effect beyond the free look period, the borrower may be
28 entitled to a refund of any unearned portion of the purchase price of
29 the waiver unless the waiver provides otherwise. In order to receive
30 a refund, the borrower, in accordance with any applicable terms of
31 the waiver, shall provide a written request to the creditor,
32 administrator or other party, within 90 days of the event terminating
33 the finance agreement.

34 c. If the cancellation of a GAP waiver occurs as a result of a
35 default under the finance agreement or the repossession of the
36 motor vehicle associated with the finance agreement, or any other
37 termination of the finance agreement, any refund due may be paid
38 directly to the creditor or administrator and applied as set forth in
39 subsection d. of this section.

40 d. Any cancellation refund under subsections a., b. or c. of this
41 section may be applied by the creditor as a reduction of the amount
42 owed under the finance agreement, unless the borrower can show
43 that the finance agreement has been paid in full.

44
45 7. A GAP waiver offered in connection with a lease or retail
46 installment sale associated with a commercial transaction shall not
47 be subject to: subsection c. of section 3; section 5; or section 8 of
48 this act.

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1 8. The commissioner may take any action which is necessary or
2 appropriate to enforce the provisions of this act and to protect
3 guaranteed asset protection waiver holders in this State. After
4 proper notice and opportunity for hearing, the commissioner may:

5 a. Order the creditor, administrator or any other person not in
6 compliance with this act to cease and desist from further guaranteed
7 asset protection waiver-related operations which are in violation of
8 this act.

b. Impose a penalty of not more than \$500 per violation and no more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this act, violations are of a similar nature if the violation consists of the same or similar course of conduct, action or practice, irrespective of the number of times the act, conduct or practice which is determined to be a violation of the act occurred.

17 9. GAP waivers issued in this State prior to and after the
18 effective date of this act shall not be construed as insurance.

20 10. This act shall take effect immediately and shall apply to all
21 GAP waivers executed on or after the 180th day next following
22 enactment.

STATEMENT

27 This bill provides a regulatory framework within which
28 guaranteed asset protection waivers may be offered in this State,
29 and defines them in such a way that they are regarded as a
30 contractual matter under a finance agreement in relation to the
31 purchase or lease of a motor vehicle. In so doing, this bill clarifies
32 that guaranteed asset protection waivers shall not be considered
33 insurance policies and therefore are exempt from the insurance laws
34 of this State.

Guaranteed asset protection waivers, or “GAP waivers,” are contractual agreements entered into directly between a borrower and a finance company, and commonly used in the motor vehicle industry. GAP waivers are classified as addenda to traditional finance contracts, and are meant to protect borrowers from having to make a large lump sum payment to the lender if their vehicles are deemed a total loss and there is a gap between the amount of money owed to the lender and the amount of money at which the insurance adjuster values the “totaled” vehicle. In the event of a total loss, insurance companies only compensate the insured for the market value of the vehicle. Since motor vehicles depreciate at a rapid rate (typically, 11% when you drive off the lot, and 15% - 20% every year thereafter) borrowers often find that they owe thousands of dollars to the finance company even after their insurance companies

1 pay out for the totaled motor vehicle. Essentially, these GAP
2 waivers are debt forgiveness agreements, usually offered and paid
3 for at the time of purchase or lease. GAP waivers are either paid
4 for by the borrower up front, or rolled into the borrower's monthly
5 payments on the vehicle.

6 Since GAP waivers are considered to be private contracts entered
7 into between the borrower and either the dealership or lender,
8 currently there are no statutory provisions or regulations that apply
9 to a dealer or lender offering GAP waivers to borrowers.

10 By comparison, "GAP insurance," referred to as "automobile
11 dealer gap insurance" in the statutes, is purchased as an additional
12 policy or endorsement on a policy from whatever insurance
13 company a borrower uses to otherwise insure the vehicle. It is
14 regulated generally under the insurance law and persons selling the
15 product should be licensed as producers to sell insurance in the
16 State.

17 This bill is based on the Guaranteed Asset Protection Waiver
18 Model Act prepared by the GAP Alliance and addresses many
19 issues related to GAP waivers. It provides a framework for
20 regulating the sale of GAP waivers. Specifically, the bill requires
21 the motor vehicle dealer to provide a notice to all borrowers that the
22 extension of credit, finance, sale or lease may not be conditioned
23 upon the purchase of GAP waiver or insurance.

24 The bill also requires that GAP waivers disclose: (1) the name
25 and address of the initial creditor and borrower; (2) the purchase
26 price and terms of the GAP waiver; (3) that the purchaser may
27 cancel the GAP waiver during the "free-look" period; (4) the
28 procedure for receiving GAP waiver benefits; (5) whether the GAP
29 waiver is cancellable after the "free-look" period ends; (6) that in
30 order to receive a refund for a cancelled GAP waiver, the borrower
31 must submit a written request to the lender within 90 days of the
32 event terminating the finance agreement; and (7) the methodology
33 for calculating any refund of the unearned purchase price of the
34 waiver. The bill also requires dealers of motor vehicles that offer
35 GAP waivers to insure or be indemnified for their GAP waiver
36 obligations.

37 To ensure that these requirements are adhered to, the bill sets
38 fines between \$500 and \$10,000 against creditors who violate the
39 provisions of the bill.