

[First Reprint]

**SENATE, No. 2209**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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INTRODUCED MAY 16, 2016

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

**Senator Stack**

**SYNOPSIS**

Concerns regulation of guaranteed asset protection waivers by DOBI.

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on September 8, 2016,  
with amendments.



**(Sponsorship Updated As Of: 11/15/2016)**

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 <sup>1</sup>**[as defined in R.S.39:1-1]**<sup>1</sup> 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.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted September 8, 2016.

1       “Free look period” means the period of time from the effective  
2 date of the GAP waiver until the date the borrower may cancel the  
3 contract without penalty, fees or costs to the borrower, which period  
4 shall not be less than 30 days.

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

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

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

19       “Person” includes an individual, company, association,  
20 organization, partnership, business trust, corporation, and every  
21 form of legal entity.

22       The terms defined in this section are defined for purposes of this  
23 act and are not intended to provide actual terms required in  
24 guaranteed asset protection waivers.

25  
26       3. a. A GAP waiver may be offered, sold or provided to  
27 borrowers in this State in compliance with the provisions of this act.

28       b. A GAP waiver may, at the option of the creditor, be sold for  
29 a single payment or may be offered with a monthly or periodic  
30 payment option.

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

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

1 e. The GAP waiver shall remain a part of the finance  
2 agreement upon the assignment, sale or transfer of that finance  
3 agreement by the creditor.

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

7 g. Any creditor that offers a GAP waiver shall report the sale  
8 of, and forward funds received on, all waivers to the designated  
9 party, if any, as prescribed in any applicable administrative services  
10 agreement, contractual liability policy, other insurance policy or  
11 other specified program documents.

12 h. Funds received or held by a creditor or administrator and  
13 belonging to an insurer, creditor or administrator, pursuant to the  
14 terms of a written agreement shall be held by that creditor or  
15 administrator in a fiduciary capacity.

16 <sup>1</sup>i. The total physical damage loss of a borrower's motor  
17 vehicle shall be determined in accordance with the terms of the  
18 borrower's primary motor vehicle insurance policy. In instances in  
19 which the borrower has no primary motor vehicle insurance or in  
20 which the primary motor vehicle insurer is insolvent at the time of  
21 loss, then a total loss shall be determined in accordance with the  
22 terms of the GAP waiver.<sup>1</sup>

23  
24 4. a. Contractual liability or other insurance policies insuring  
25 GAP waivers shall state the obligation of the insurer to reimburse or  
26 pay to the creditor any sums the creditor is legally obligated to  
27 waive under the GAP waivers issued by the creditor and purchased  
28 or held by the borrower.

29 b. Coverage under a contractual liability or other insurance  
30 policy insuring a GAP waiver shall also cover any subsequent  
31 assignee upon the assignment, sale or transfer of the finance  
32 agreement.

33 c. Coverage under a contractual liability or other insurance  
34 policy insuring a GAP waiver shall remain in effect unless  
35 cancelled or terminated in compliance with applicable insurance  
36 laws of this State.

37 d. The cancellation or termination of a contractual liability or  
38 other insurance policy shall not reduce the insurer's responsibility  
39 for GAP waivers issued by the creditor prior to the date of  
40 cancellation or termination and for which premium has been  
41 received by the insurer.

42  
43 5. A GAP waiver agreement shall disclose, as applicable, in  
44 writing and in clear, understandable language that is easy to read,  
45 the following:

46 a. The name and address of the initial creditor and the  
47 borrower at the time of sale, and the identity of any administrator if  
48 different from the creditor.

1       b. The purchase price and the terms of the GAP waiver,  
2 including without limitation, the requirements for protection,  
3 conditions, or exclusions associated with the GAP waiver.

4       c. That the borrower may cancel the GAP waiver within a free  
5 look period as specified in the waiver, and will be entitled to a full  
6 refund of the purchase price, so long as no benefits have been  
7 provided; or if benefits have been provided, the borrower may  
8 receive a full or partial refund pursuant to the terms of the waiver.

9       d. The procedure the borrower shall follow, if any, to obtain  
10 GAP waiver benefits under the terms and conditions of the waiver,  
11 including a telephone number and address where the borrower may  
12 apply for waiver benefits.

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

16       f. That in order to receive any refund due in the event of a  
17 borrower's cancellation of the GAP waiver agreement or early  
18 termination of the finance agreement after the free look period of  
19 the GAP waiver, the borrower, in accordance with terms of the  
20 waiver, shall provide a written request to cancel to the creditor,  
21 administrator or such other party, within 90 days of the occurrence  
22 of the event terminating the finance agreement.

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

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

29  
30       6. a. GAP waiver agreements may be cancellable or non-  
31 cancellable after the free look period. A GAP waiver shall provide  
32 that if a borrower cancels a waiver within the free look period, the  
33 borrower will be entitled to a full refund of the purchase price, so  
34 long as no benefits have been provided; or if benefits have been  
35 provided, the borrower may receive a full or partial refund pursuant  
36 to the terms of the waiver.

37       b. In the event of a borrower's cancellation of the GAP waiver  
38 or early termination of the finance agreement after the agreement  
39 has been in effect beyond the free look period, the borrower may be  
40 entitled to a refund of any unearned portion of the purchase price of  
41 the waiver unless the waiver provides otherwise. In order to receive  
42 a refund, the borrower, in accordance with any applicable terms of  
43 the waiver, shall provide a written request to the creditor,  
44 administrator or other party, within 90 days of the event terminating  
45 the finance agreement.

46       c. If the cancellation of a GAP waiver occurs as a result of a  
47 default under the finance agreement or the repossession of the  
48 motor vehicle associated with the finance agreement, or any other

1 termination of the finance agreement, any refund due may be paid  
2 directly to the creditor or administrator and applied as set forth in  
3 subsection d. of this section.

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

8  
9 7. A GAP waiver offered in connection with a lease or retail  
10 installment sale associated with a commercial transaction shall not  
11 be subject to: subsection c. of section 3; section 5; or section 8 of  
12 this act.

13  
14 8. The commissioner may take any action which is necessary or  
15 appropriate to enforce the provisions of this act and to protect  
16 guaranteed asset protection waiver holders in this State. After  
17 proper notice and opportunity for hearing, the commissioner may:

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

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

29  
30 9. GAP waivers issued in this State prior to and after the  
31 effective date of this act shall not be construed as insurance.

32  
33 10. This act shall take effect immediately and shall apply to all  
34 GAP waivers executed on or after the 180th day next following  
35 enactment.