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RWH/JA

Title 17.
Subtitle 2.
Part 7.
Chapter 16BB
(New)
Guaranteed Asset
Protection
Waivers
§§1-9 -
C.17:16BB-1 to
17:16BB-9
§10 - Note

P.L.2017, CHAPTER 82, *approved May 11, 2017*
Assembly, No. 3601 (*Second Reprint*)

1 AN ACT concerning the regulation of guaranteed asset protection
2 waivers and supplementing ¹**[Title 17]** ²**[Title 56¹]** Title 17² of
3 the Revised Statutes.

4

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

7

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

11 b. This act shall not apply to:

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

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

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

24

25 2. As used in this act:

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

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:

¹Assembly AFI committee amendments adopted May 12, 2016.

²Assembly floor amendments adopted June 16, 2016.

1 “Borrower” means a debtor, retail buyer or lessee, under a
2 finance agreement.

3 ¹“Commissioner” means the Commissioner of Banking and
4 Insurance. ¹ ²“Commisisoner” means the Commissioner of
5 Banking and Insurance. ²

6 “Creditor” means:

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

8 (2) the lessor in a lease transaction;

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

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

14 (5) the assignees of any of the foregoing to whom the credit
15 obligation is payable.

16 ¹“Department” means the Department of Banking and
17 Insurance. ¹ ²“Department” means the Department of Banking and
18 Insurance. ²

19 “Finance agreement” means a loan, lease or retail installment
20 sales contract for the purchase or lease of a motor vehicle.

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

25 “Guaranteed asset protection waiver” or “GAP waiver” means a
26 contractual agreement wherein a creditor agrees for a separate
27 charge to cancel or waive all or part of the amount due on a
28 borrower’s finance agreement in the event of a total physical
29 damage loss or unrecovered theft of the motor vehicle, which
30 agreement shall be part of, or a separate addendum to, the finance
31 agreement.

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

34 “Motor vehicle” means self-propelled or towed vehicles designed
35 for personal or commercial use, including but not limited to
36 automobiles, trucks, motorcycles, recreational vehicles, all-terrain
37 vehicles, snowmobiles, campers, boats, personal watercraft, and
38 motorcycle, boat, camper and personal watercraft trailers.

39 “Person” includes an individual, company, association,
40 organization, partnership, business trust, corporation, and every
41 form of legal entity.

42 The terms defined in this section are defined for purposes of this
43 act and are not intended to provide actual terms required in
44 guaranteed asset protection waivers.

45

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

- 1 b. A GAP waiver may, at the option of the creditor, be sold for
2 a single payment or may be offered with a monthly or periodic
3 payment option.
- 4 c. Notwithstanding any other provision of law, any cost to the
5 borrower for a GAP waiver entered into in compliance with the
6 Truth in Lending Act (15 U.S.C. s.1601 et seq.) and its
7 implementing regulations, as they may be amended from time to
8 time, shall be separately stated and shall not be considered a finance
9 charge or interest.
- 10 d. A dealer of motor vehicles shall insure its GAP waiver
11 obligations under a contractual liability or other insurance policy
12 issued by an insurer. A creditor, other than a dealer, may insure its
13 GAP waiver obligations under a contractual liability policy or other
14 policy issued by an insurer. Any insurance policy may be directly
15 obtained by a creditor, dealer, or may be procured by an
16 administrator to cover a creditor's or dealer's obligations.
17 However, dealers that are lessors of motor vehicles are not required
18 to insure obligations related to GAP waivers on those leased
19 vehicles.
- 20 e. The GAP waiver shall remain a part of the finance
21 agreement upon the assignment, sale or transfer of that finance
22 agreement by the creditor.
- 23 f. Neither the extension of credit, the terms of the credit, nor
24 the terms of the related motor vehicle sale or lease may be
25 conditioned upon the purchase of a GAP waiver.
- 26 g. Any creditor that offers a GAP waiver shall report the sale
27 of, and forward funds received on, all waivers to the designated
28 party, if any, as prescribed in any applicable administrative services
29 agreement, contractual liability policy, other insurance policy or
30 other specified program documents.
- 31 h. Funds received or held by a creditor or administrator and
32 belonging to an insurer, creditor or administrator, pursuant to the
33 terms of a written agreement shall be held by that creditor or
34 administrator in a fiduciary capacity.
- 35 ¹i. The total physical damage loss of a borrower's motor
36 vehicle shall be determined in accordance with the terms of the
37 borrower's primary motor vehicle insurance policy. In instances in
38 which the borrower has no primary motor vehicle insurance or in
39 which the primary motor vehicle insurer is insolvent at the time of
40 loss, then a total loss shall be determined in accordance with the
41 terms of the GAP waiver.¹
- 42
- 43 4. a. Contractual liability or other insurance policies insuring
44 GAP waivers shall state the obligation of the insurer to reimburse or
45 pay to the creditor any sums the creditor is legally obligated to
46 waive under the GAP waivers issued by the creditor and purchased
47 or held by the borrower.

1 b. Coverage under a contractual liability or other insurance
2 policy insuring a GAP waiver shall also cover any subsequent
3 assignee upon the assignment, sale or transfer of the finance
4 agreement.

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

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

14

15 5. A GAP waiver agreement shall disclose, as applicable, in
16 writing and in clear, understandable language that is easy to read,
17 the following:

18 a. The name and address of the initial creditor and the
19 borrower at the time of sale, and the identity of any administrator if
20 different from the creditor.

21 b. The purchase price and the terms of the GAP waiver,
22 including without limitation, the requirements for protection,
23 conditions, or exclusions associated with the GAP waiver.

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

29 d. The procedure the borrower shall follow, if any, to obtain
30 GAP waiver benefits under the terms and conditions of the waiver,
31 including a telephone number and address where the borrower may
32 apply for waiver benefits.

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

36 f. That in order to receive any refund due in the event of a
37 borrower's cancellation of the GAP waiver agreement or early
38 termination of the finance agreement after the free look period of
39 the GAP waiver, the borrower, in accordance with terms of the
40 waiver, shall provide a written request to cancel to the creditor,
41 administrator or such other party, within 90 days of the occurrence
42 of the event terminating the finance agreement.

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

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

1 6. a. GAP waiver agreements may be cancellable or non-
2 cancellable after the free look period. A GAP waiver shall provide
3 that if a borrower cancels a waiver within the free look period, the
4 borrower will be entitled to a full refund of the purchase price, so
5 long as no benefits have been provided; or if benefits have been
6 provided, the borrower may receive a full or partial refund pursuant
7 to the terms of the waiver.

8 b. In the event of a borrower's cancellation of the GAP waiver
9 or early termination of the finance agreement after the agreement
10 has been in effect beyond the free look period, the borrower may be
11 entitled to a refund of any unearned portion of the purchase price of
12 the waiver unless the waiver provides otherwise. In order to receive
13 a refund, the borrower, in accordance with any applicable terms of
14 the waiver, shall provide a written request to the creditor,
15 administrator or other party, within 90 days of the event terminating
16 the finance agreement.

17 c. If the cancellation of a GAP waiver occurs as a result of a
18 default under the finance agreement or the repossession of the
19 motor vehicle associated with the finance agreement, or any other
20 termination of the finance agreement, any refund due may be paid
21 directly to the creditor or administrator and applied as set forth in
22 subsection d. of this section.

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

27
28 7. A GAP waiver offered in connection with a lease or retail
29 installment sale associated with a commercial transaction shall not
30 be subject to: subsection c. of section 3; section 5; or section 8 of
31 this act.

32
33 8. The ¹**[commissioner]** ²**Director of the Division of**
34 **Consumer Affairs**¹ **commissioner**² may take any action which is
35 necessary or appropriate to enforce the provisions of this act and to
36 protect guaranteed asset protection waiver holders in this State.
37 After proper notice and opportunity for hearing, the
38 ¹**[commissioner]** ²**director**¹ **commissioner**² may:

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

43 b. Impose a penalty of not more than \$500 per violation and no
44 more than \$10,000 in the aggregate for all violations of a similar
45 nature. For purposes of this act, violations are of a similar nature if
46 the violation consists of the same or similar course of conduct,
47 action or practice, irrespective of the number of times the act,

1 conduct or practice which is determined to be a violation of the act
2 occurred.

3

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

6

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

10

11

12

13

14 _____
15 Concerns regulation of guaranteed asset protection waivers by
DOBI.

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.



A3601 SCHAER

2

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.

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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.

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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.

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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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7

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.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3601

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 12, 2016

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 3601.

This bill, as amended, provides a regulatory framework within which guaranteed asset protection waivers may be offered in this State, and defines them in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle. In so doing, this bill clarifies that guaranteed asset protection waivers shall not be considered insurance policies and therefore are exempt from the insurance laws 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 percent when driven off the lot, and 15 percent to 20 percent every year thereafter) borrowers often find that they owe thousands of dollars to the finance company even after their insurance companies pay out for the totaled motor vehicle. Essentially, these GAP waivers are debt forgiveness agreements, usually offered and paid for at the time of purchase or lease. GAP waivers are either paid for by the borrower up front, or rolled into the borrower’s monthly payments on the vehicle.

Since GAP waivers are considered to be private contracts entered into between the borrower and either the dealership or lender,

currently there are no statutory provisions or regulations that apply to a dealer or lender offering GAP waivers to borrowers.

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

This bill is based on the Guaranteed Asset Protection Waiver Model Act prepared by the GAP Alliance and provides a framework for the Division of Consumer Affairs in the Department of Law and Public Safety to regulate the sale of GAP waivers.

The bill requires that GAP waiver agreements disclose: (1) the name and address of the initial creditor and borrower; (2) the purchase price and terms of the GAP waiver; (3) that the borrower may cancel the GAP waiver during the “free-look” period; (4) the procedure for receiving GAP waiver benefits; (5) whether the GAP waiver is cancellable after the “free-look” period ends; (6) that in order to receive a refund for a cancelled GAP waiver, the borrower must submit a written request to the lender within 90 days of the event terminating the finance agreement; (7) the methodology for calculating any refund of the unearned purchase price of the waiver; and (8) that the extension of credit, finance, sale or lease may not be conditioned upon the purchase of the GAP waiver.

The bill also requires dealers of motor vehicles that offer GAP waivers to insure or be indemnified for their GAP waiver obligations.

The bill also specifies that the total physical damage loss of a borrower’s motor vehicle shall be determined in accordance with the terms of the borrower’s primary motor vehicle insurance policy. In instances in which the borrower has no primary motor vehicle insurance or in which the primary motor vehicle insurer is insolvent at the time of loss, then a total loss shall be determined in accordance with the terms of the GAP waiver.

To ensure that these requirements are adhered to, the bill sets fines between \$500 and \$10,000 for violations of the provisions of the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- Delete from the reference to “dealers of motor vehicles” in the definition of “creditor” the statutory reference to R.S.39:1-1.
- Provide that the Division of Consumer Affairs and its director, not the Commissioner of Banking and Insurance, are responsible for enforcing the bill’s provisions.

- Specify that the total physical damage loss of a borrower's motor vehicle shall be determined in accordance with the terms of the borrower's primary motor vehicle insurance policy. In instances in which the borrower has no primary motor vehicle insurance or in which the primary motor vehicle insurer is insolvent at the time of loss, then a total loss shall be determined in accordance with the terms of the GAP waiver.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 3601

STATE OF NEW JERSEY

DATED: SEPTEMBER 8, 2016

The Senate Commerce Committee reports favorably Assembly Bill No. 3601 (2R).

This bill provides a regulatory framework within which guaranteed asset protection waivers may be offered in this State, and defines them in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle. In so doing, this bill clarifies that guaranteed asset protection waivers shall not be considered insurance policies and therefore are exempt from the insurance laws 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 pay out for the totaled motor vehicle. Essentially, these GAP waivers are debt forgiveness agreements, usually offered and paid for at the time of purchase or lease. GAP waivers are either paid for by the borrower up front, or rolled into the borrower’s monthly payments on the vehicle.

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

By comparison, “GAP insurance,” referred to as “automobile dealer gap insurance” in the statutes, is purchased as an additional

policy or endorsement on a policy from whatever insurance company a borrower uses to otherwise insure the vehicle. It is regulated generally under the insurance law and persons selling the product should be licensed as producers to sell insurance in the State.

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

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

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

As reported by the committee, this bill is identical to Senate Bill No. 2209, as amended and reported by the committee today.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 3601

STATE OF NEW JERSEY

DATED: NOVEMBER 3, 2016

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3601 (2R).

This bill provides a regulatory framework within which guaranteed asset protection waivers may be offered in this State, and defines them in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle. In so doing, this bill clarifies that guaranteed asset protection waivers shall not be considered insurance policies and therefore are exempt from the insurance laws 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 pay out for the totaled motor vehicle. Essentially, these GAP waivers are debt forgiveness agreements, usually offered and paid for at the time of purchase or lease. GAP waivers are either paid for by the borrower up front, or rolled into the borrower’s monthly payments on the vehicle.

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By comparison, “GAP insurance,” referred to as “automobile dealer gap insurance” in the statutes, is purchased as an additional

policy or endorsement on a policy from whatever insurance company a borrower uses to otherwise insure the vehicle. It is regulated generally under the insurance law and persons selling the product should be licensed as producers to sell insurance in the State.

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

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

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

As reported, this bill is identical to Senate Bill No. 2209 (1R), as also reported by the committee.

FISCAL IMPACT:

In the Legislative Fiscal Estimate for this bill, the Office of Legislative Services (OLS) estimates that the bill may result in a minimal increase in expenditures due to the enforcement of the provisions of the bill by the Department of Banking and Insurance, offset by an indeterminate increase in revenue due to the collection of penalties established under the bill.

The OLS notes that it is plausible that the costs associated with the enforcement provisions of this bill may be absorbed into the existing operating and personnel expenses of the department, thereby avoiding an increase in costs. Further, the OLS cannot determine the nature and number of infractions that creditors may commit, and therefore the amount of revenue generated under the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3601

with Assembly Floor Amendments
(Proposed by Assemblyman SCHAER)

ADOPTED: JUNE 16, 2016

This floor amendment provides that the Commissioner of Banking and Insurance shall be responsible for enforcing the provisions of the bill regarding the regulation of guaranteed asset protection waivers, rather than the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, as the bill currently provides.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3601

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: JUNE 29, 2016

SUMMARY

- Synopsis:** Concerns regulation of guaranteed asset protection waivers by DOBI.
- Type of Impact:** Minimal increase in expenditures to the State General Fund, offset by an indeterminate increase in revenue to the State General Fund.
- Agencies Affected:** Department of Banking and Insurance.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below.		
State Revenue	Indeterminate – See comments below.		

- The Office of Legislative Services (OLS) estimates that Assembly Bill No. 3601 (2R) of 2016 may result in a minimal increase in expenditures due to the enforcement of the provisions of the bill by the Department of Banking and Insurance (department), offset by an indeterminate increase in revenue due to the collection of penalties established under the bill.
- The OLS notes that it is plausible that the costs associated with the enforcement provisions of this bill may be absorbed into the existing operating and personnel expenses of the department, thereby avoiding an increase in costs. Further, the OLS cannot determine the nature and number of infractions that creditors may commit, and therefore the amount of revenue generated, under the bill.

BILL DESCRIPTION

Assembly Bill No. 3601 (2R) of 2016 provides a regulatory framework within which guaranteed asset protection waivers, or “GAP waivers,” may be offered in this State and charges the Department of Banking and Insurance with that responsibility. The bill defines GAP waivers in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle, and, therefore, are exempt from the insurance laws of this State. 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.

The bill authorizes the Commissioner of the Department of Banking and Insurance (commissioner) to take any action necessary to enforce the provisions of the bill. After proper notice and opportunity for a hearing, the commissioner may issue to a creditor in violation of the provisions of the bill a cease and desist order from further GAP waiver-related operations that are in violation of the bill and impose a penalty of not more than \$500 per violation and no more than \$10,000 in aggregate for all violations of a similar nature.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that Assembly Bill No. 3601 (2R) of 2016 may result in a minimal increase in expenditures due to the enforcement of the provisions of the bill by the Department of Banking and Insurance (department), offset by an indeterminate increase in revenue due to the collection of penalties established under the bill.

The bill provides a regulatory framework within which guaranteed asset protection waivers, or “GAP waivers,” may be offered in this State, and provides the department with the authority to enforce the provisions of the bill. As such, the department may incur minimal expenses. The OLS notes that it is plausible that the costs of the enforcement provisions of this bill may be absorbed into the existing operating and personnel expenses of the department, thereby avoiding an increase in costs. Any remaining expenses of the department associated with this bill may be offset by revenue collected from penalties established under the bill. The OLS, however, cannot determine the nature and number of infractions that creditors may commit, and therefore the amount of revenue generated, under the bill.

Section: Commerce, Labor and Industry

Analyst: Sarah M. Schmidt
Assistant Research Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2209

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MAY 16, 2016

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator NIA H. GILL

District 34 (Essex 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.

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.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2209

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 8, 2016

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2209.

This bill, as amended, provides a regulatory framework within which guaranteed asset protection waivers may be offered in this State, and defines them in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle. In so doing, this bill clarifies that guaranteed asset protection waivers shall not be considered insurance policies and therefore are exempt from the insurance laws 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 pay out for the totaled motor vehicle. Essentially, these GAP waivers are debt forgiveness agreements, usually offered and paid for at the time of purchase or lease. GAP waivers are either paid for by the borrower up front, or rolled into the borrower’s monthly payments on the vehicle.

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

By comparison, “GAP insurance,” referred to as “automobile dealer gap insurance” in the statutes, is purchased as an additional

policy or endorsement on a policy from whatever insurance company a borrower uses to otherwise insure the vehicle. It is regulated generally under the insurance law and persons selling the product should be licensed as producers to sell insurance in the State.

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

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

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

As amended and reported, this bill is identical to Assembly Bill No. 3601 (2R), which is also reported by the committee today.

COMMITTEE AMENDMENTS:

The committee amendments:

- Delete from the reference to “dealers of motor vehicles” in the definition of “creditor” the statutory reference to R.S.39:1-1; and
- Specify that the total physical damage loss of a borrower’s motor vehicle shall be determined in accordance with the terms of the borrower’s primary motor vehicle insurance policy. In instances in which the borrower has no primary motor vehicle insurance or in which the primary motor vehicle insurer is insolvent at the time of loss, then a total loss shall be determined in accordance with the terms of the GAP waiver.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2209

STATE OF NEW JERSEY

DATED: NOVEMBER 3, 2016

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2209 (1R).

This bill provides a regulatory framework within which guaranteed asset protection waivers may be offered in this State, and defines them in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle. In so doing, this bill clarifies that guaranteed asset protection waivers shall not be considered insurance policies and therefore are exempt from the insurance laws 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 pay out for the totaled motor vehicle. Essentially, these GAP waivers are debt forgiveness agreements, usually offered and paid for at the time of purchase or lease. GAP waivers are either paid for by the borrower up front, or rolled into the borrower’s monthly payments on the vehicle.

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By comparison, “GAP insurance,” referred to as “automobile dealer gap insurance” in the statutes, is purchased as an additional

policy or endorsement on a policy from whatever insurance company a borrower uses to otherwise insure the vehicle. It is regulated generally under the insurance law and persons selling the product should be licensed as producers to sell insurance in the State.

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

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

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

As reported, this bill is identical to Assembly Bill No. 3601 (2R), as also reported by the committee.

FISCAL IMPACT:

In the Legislative Fiscal Estimate for the identical Assembly bill, the Office of Legislative Services (OLS) estimates that the bill may result in a minimal increase in expenditures due to the enforcement of the provisions of the bill by the Department of Banking and Insurance, offset by an indeterminate increase in revenue due to the collection of penalties established under the bill.

The OLS notes that it is plausible that the costs associated with the enforcement provisions of this bill may be absorbed into the existing operating and personnel expenses of the department, thereby avoiding an increase in costs. Further, the OLS cannot determine the nature and number of infractions that creditors may commit, and therefore the amount of revenue generated under the bill.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2209

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: OCTOBER 17, 2016

SUMMARY

- Synopsis:** Concerns regulation of guaranteed asset protection waivers by DOBI.
- Type of Impact:** Minimal increase in expenditures from the State General Fund, offset by an indeterminate increase in revenue to the State General Fund.
- Agencies Affected:** Department of Banking and Insurance.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) estimates that Senate Bill No. 2209 (1R) of 2016 may result in a minimal increase in expenditures due to the enforcement of the provisions of the bill by the Department of Banking and Insurance (department), offset by an indeterminate increase in revenue due to the collection of penalties established under the bill.
- The OLS notes that it is plausible that the costs associated with the enforcement provisions of this bill may be absorbed into the existing operating and personnel expenses of the department, thereby avoiding any increase. Further, the OLS cannot determine the nature and number of infractions that creditors may commit, and therefore the amount of revenue generated, under the bill.

BILL DESCRIPTION

Senate Bill No. 2209 (1R) of 2016 provides a regulatory framework within which guaranteed asset protection waivers, or “GAP waivers,” may be offered in this State and charges the Department of Banking and Insurance with that responsibility. The bill defines GAP waivers in such a way that they are regarded as a contractual matter under a finance agreement in relation to the purchase or lease of a motor vehicle, and, therefore, are exempt

from the insurance laws of this State. The 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.

The bill authorizes the Commissioner of Banking and Insurance (commissioner) to take any action necessary to enforce the provisions of the bill. After proper notice and opportunity for a hearing, the commissioner may issue to a creditor in violation of the provisions of the bill a cease and desist order from further GAP waiver-related operations that are in violation of the bill and 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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that Senate Bill No. 2209 (1R) of 2016 may result in a minimal increase in expenditures due to the enforcement of the provisions of the bill by the Department of Banking and Insurance (department), offset by an indeterminate increase in revenue due to the collection of penalties established under the bill.

The bill provides a regulatory framework within which guaranteed asset protection waivers, or “GAP waivers,” may be offered in this State, and provides the department with the authority to enforce the provisions of the bill. As such, the department may incur minimal expenses. The OLS notes that it is plausible that the costs of the enforcement provisions of this bill may be absorbed into the existing operating and personnel expenses of the department, thereby avoiding an increase. Any remaining expenses of the department associated with this bill may be offset by revenue collected from penalties established under the bill. The OLS, however, cannot determine the nature and number of infractions that creditors may commit, and therefore the amount of revenue generated, under the bill.

Section: Commerce, Labor and Industry

Analyst: Sarah M. Schmidt
Assistant Research Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Christie Takes Action On Pending Legislation

Thursday, May 11, 2017 Tags: [Bill Action](#)



Trenton, NJ - Governor Chris Christie today signed into law additional bills to support New Jersey's military members, veterans, and their families and show pride in the state's military history. On May 1, he signed a number of bills impacting veterans and the military, including a law creating a program to divert certain veterans accused of non-violent offenses from the criminal justice system and into appropriate mental health and substance use services.

Today, Governor Christie signed A450/S750 (Mazzeo, Andrzejczak, Mukherji, Moriarty, Benson, Daniels, Houghtaling/Beach, Van Drew) creating the Wounded Warrior Caregivers Relief Act, which provides a gross income tax credit of up to \$675 to family caregivers of totally disabled veterans whose injuries occurred as a result of serving on active duty on or after September 11, 2001.

"We must do all we can do to make it easier for military members who have been left with debilitating injuries in the line of duty and their family members who now care for them," said Governor Christie. "This compassionate new law provides a tax credit to ease some of the financial burden on those families and show our appreciation for the many sacrifices they have made to keep their loved ones safe and at home."

Other military and veterans bills signed by Governor Christie allow active duty members of the U.S. Armed Forces who have completed basic training to wear their dress uniform at their high school graduation and require the Department of Military and Veterans' Affairs to work with the Division of Travel and Tourism and the New Jersey Historical Commission to develop an online list with a historic tour of war battles fought and places of historical military significance in New Jersey and its State waters.

Governor Christie also took action on the following bills:

BILL SIGNINGS:

ACS for A-815/ACS for S-1088 (Land, Andrzejczak, Mosquera, Vainieri Huttle, Bramnick/Van Drew, T. Kean) - Concerns Code Blue alert plans to shelter at-risk individuals

A-837/S-468 (Jimenez, Green, Mukherji, Sumter, Munoz/Sacco, Greenstein) - Establishes "Hazardous Drug Safe Handling Act;" requires promulgation of standards and regulations concerning safe handling of hazardous drugs by certain health care personnel

A-1256/S-1381 (Caride, Singleton, Jasey, Wimberly/Bateman) - Requires State Board of Education regulations regarding school nurse certification to include certain minimum eligibility requirements

A-1649/S-853 (Schaer, Pintor Marin, Wimberly, Mukherji/Stack) - Requires local governments and authorities to obtain financing cost estimate from NJ Environmental Infrastructure Trust for certain projects

ACS for A-1973/SCS for S-2401 (Prieto, Handlin/Diegnan, Stack) - "Appraisal Management Company Registration and Regulation Act"

A-1991/S-2722 (Prieto, Jimenez, Oliver/Stack, Cunningham) - Provides two elected members of pension commission of closed Hudson County Employees' Pension Fund may be active or retired county employees

ACS for A-2004/SCS for S-731 (Green, Benson, Moriarty, Mukherji, Pintor Marin/Cruz-Perez, Beach) - Establishes certain penalties for operating or participating in pyramid promotional schemes

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[GOVERNOR'S STATEMENT UPON SIGNING ASSEMBLY BILL NO. 4146](#)

A-2087/SCS for S-2792 (Mukherji, Schaer, Downey, Quijano/Greenstein, Turner) - Grants drivers additional time to resolve parking violations prior to license or registration suspension

A-2340/S-2108 (Benson, Muoio, Gusciora/Greenstein, Diegnan) - Authorizes students in Marie H. Katzenbach school for the deaf to operate State vehicle for driver education and provides protection for such activity under tort claims act

A-2512/S-1899 (DeAngelo, Pintor Marin, Houghtaling/Whelan, Turner) - Requires BPU to render decision on case within 12 months of final public hearing or hold another public hearing prior to deciding case

A-2805/S-2726 (Caputo, Houghtaling, McKeon, Chiaravalloti/Codey, Pou) - Requires DMVA to develop online historic tour identifying locations of war battles and places of significance to war efforts in State

A-3011/S-2796 (Conaway, Singleton/Allen) - Modifies charter of Board of Island Managers of Burlington Island to move elections to November

AS for A-3351/S-2570 (Lampitt, Andrzejczak, Quijano, Holley, Jones, Space/Cruz-Perez, Oroho) - Creates license to manufacturer and sell hard cider and mead

A-3581/SCS for S-2582, 2092 (Downey, Mosquera, Danielsen, Houghtaling, Van Drew, Turner, Moriarty) - Requires Internet-connected baby monitors to include security features

A-3601/S-2209 (Schaer/Vitale, Gill) - Concerns regulation of guaranteed asset protection waivers by DOBI

A-3785/S-2396 (Downey, Houghtaling, Jasey, Singleton, Holley, Caride, Wimberly/Ruiz, Turner) - Requires State to pay educational costs of students who reside in homeless shelter outside district of residence for more than one year

A-4019/S-2491 (Mazzeo, Mukherji, Andrzejczak, Land, DeCroce, McKnight, Danielsen/Cruz-Perez, Madden) - Permits eligible students who are members of United States Armed Forces to wear military uniform at high school graduation

A-4146/S-2521 (Vainieri Huttie, Benson, Lampitt, Johnson, McKnight, Sumter/Vitale, Gordon) – STATEMENT UPON SIGNING - Provides for monitoring and evaluation of transition of mental health and substance use disorder treatment service system and developmental disability system to fee-for-service reimbursement model; makes appropriation

A-4284/S-2675 (Quijano, Benson, Muoio, Caride, Vainieri Huttie, McKnight, Wimberly, Sumter/Diegnan, Beach) - Provides that school districts and nonpublic schools may receive reimbursement for costs incurred on or after January 1, 2016 for testing school drinking water for lead

A-4344/S-2729 (Karabinchak, Pinkin, Coughlin, Wisniewski/Diegnan, Vitale) - Designates portion of Route 18 in East Brunswick as "State Trooper Werner Foerster Memorial Interchange"

AJR-76/SJR-16 (Vainieri Huttie, Holley, McKnight, Jasey/Gill) - Designates September "Affordable Housing Awareness Month"

AJR-130/SJR-92 (Vainieri Huttie, Lampitt/Vitale, Singer) - Designates January 23 of each year as "Maternal Health Awareness Day" in New Jersey

BILLS VETOED:

A-1850/S-2606 (Giblin, DeAngelo, Mukherji, Holley/Diegnan) – ABSOLUTE - Extends by two months seasonal retail consumption alcoholic beverage license

A-1869/S-668 (Wimberly, Vainieri Huttie, Oliver, Tucker, Quijano, Johnson/Rice, Cruz-Perez) - CONDITIONAL - Establishes Division of Minority and Women Business Development and State Chief Disparity Officer to monitor efforts to promote participation by minority-owned and women-owned businesses in State contracting

A-2353/S-367 (Vainieri Huttie, Jasey, Mukherji, Benson, Quijano/Codey, Turner) – CONDITIONAL - Establishes measures to deter steroid use among students; appropriates \$45,000 to DOE for New Jersey State Interscholastic Athletic Association testing of student-athletes for steroids and other performance enhancing substances

A-3091/S-2528 (Munoz, Gusciora, O'Scanlon, Oliver, Lagana, Lampitt, Mukherji, Sumter/Pou, Weinberg, Cunningham) - CONDITIONAL - Bars persons under age 18 from marrying or entering into a civil union

###

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