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I N S E N A T E

June 16, 2010

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the personal property law, in relation to motor vehicle leasing and installment sales

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 6 of section 301 of the personal property law,
2 as amended by chapter 1 of the laws of 1994, is amended to read as
3 follows:
4 6. "Cash sale price" means the cash sale price stated in a retail
5 instalment contract for which the seller would sell to the buyer, and
6 the buyer would buy from the seller, the motor vehicle which is the
7 subject matter of the retail instalment contract if the sale were a sale
8 for cash instead of a retail instalment sale. The cash sale price may
9 include any taxes, registration, license and other fees and charges for
10 insurance, FOR A GUARANTEED ASSET PROTECTION WAIVER, for accessories and
11 their installation and for delivering, servicing, repairing or improving
12 the motor vehicle and for other services incidental to the agreement. It
13 also may include the unpaid balance of any amount financed under an
14 outstanding motor vehicle loan agreement or motor vehicle retail instal-
15 ment contract or the unpaid portion of the early termination obligation
16 under an outstanding motor vehicle retail lease agreement.
17 S 2. Section 302A of the personal property law, as amended by chapter
18 111 of the laws of 1995, is amended to read as follows:
19 S [302A] 302-A. Total loss notice and waiver of the gap amount. 1. If
20 the retail instalment contract provides that the buyer shall be respon-
21 sible upon a total loss of the vehicle occasioned by its theft, confis-
22 cation or physical damage for the gap amount as defined in paragraph
23 fifty-two of subsection (a) of section one hundred seven of the insur-
24 ance law, the holder, prior to the execution of the contract, shall by a
25 notice on a separate document conspicuously disclose that fact and the
26 obligations for which the buyer would remain liable in the event of a
27 theft, confiscation or total loss of the vehicle. If the holder is
28 required under subdivision two of this section to offer to waive its

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 contractual right to hold the buyer liable for the gap amount in the
2 event of a total loss of the vehicle occasioned by its theft or physical
3 damage, the notice shall also: (a) state that for a separate charge
4 disclosed in the notice the holder will waive its contractual right to
5 hold the buyer liable for the gap amount in the event of a total loss of
6 the vehicle occasioned by its theft or physical damage; (b) contain a
7 provision informing the buyer that he or she may, as an alternative to
8 purchasing a waiver, be able to purchase insurance covering the gap
9 amount from an insurance company which has been licensed by the super-
10 intendent of insurance to write motor vehicle debtor gap insurance in
11 this state; and (c) contain a provision permitting the buyer to indicate
12 whether he or she wants the holder to waive its contractual right to
13 hold the buyer liable for the gap amount in the event of a total loss of
14 the vehicle occasioned by its theft or physical damage. The notice shall
15 be signed by the buyer. The holder shall provide a copy of the signed
16 notice to the buyer and shall maintain a copy in the holder's files for
17 at least the term of the contract. Failure to provide the notice and to
18 obtain the buyer's signature as required by this subdivision shall
19 invalidate any provision of the agreement which otherwise would obligate
20 a buyer to pay to the holder, after a total loss of the motor vehicle
21 occasioned by its theft, confiscation or physical damage, the gap
22 amount. No retail installment contract shall be conditioned upon the
23 buyer's obtaining of motor vehicle debtor gap insurance as set forth in
24 subparagraph (B) of paragraph twenty-six of subsection (a) of section
25 one thousand one hundred thirteen of the insurance law.

26 2. If the retail instalment contract provides that the buyer shall be
27 responsible upon a total loss of the vehicle occasioned by its theft or
28 physical damage for the gap amount, the holder, prior to the execution
29 of the agreement, shall offer to waive its contractual right to hold the
30 buyer liable for the gap amount in the event of a total loss of the
31 vehicle occasioned by its theft or physical damage, only if motor vehi-
32 cle creditor gap insurance coverage is available to the holder and such
33 coverage is obtained from a property/casualty insurance company, which
34 has been licensed by the superintendent of insurance of this state to
35 write motor vehicle creditor gap insurance in this state. This offer may
36 be made contingent upon the payment by the buyer of a separate charge
37 that shall not exceed the cost of motor vehicle creditor gap insurance
38 covering the retail instalment contract UNLESS SUCH WAIVER IS A GUARAN-
39 TEED ASSET PROTECTION WAIVER AS ESTABLISHED IN SECTION THREE HUNDRED
40 TWO-B OF THIS ARTICLE. Nothing contained in this section shall be
41 construed to authorize a waiver, in connection with a transaction with
42 respect to which motor vehicle creditor gap insurance has not been
43 obtained, of a contractual right to hold the buyer liable for the gap
44 amount in the event of a total loss of the vehicle occasioned by its
45 theft or physical damage.

46 3. A holder shall not be obligated under subdivision two of this
47 section to offer to waive its contractual right to hold the buyer liable
48 for the gap amount if, during the current calendar year or during the
49 odd-numbered calendar year immediately preceding the calendar year in
50 which the agreement is entered into, the holder has received motor vehi-
51 cle creditor gap insurance declination notices or other evidence of
52 unavailability from every insurance company whose name appears on the
53 insurance department compilation of insurance companies which during
54 that calendar year were authorized to write motor vehicle creditor gap
55 insurance in this state. Evidence of these declinations shall be

1 retained by such a holder of such a holder for a period of six years
2 after the expiration of the calendar year in which they were issued.

3 4. In order to enable holders or their anticipated assignees to comply
4 with the requirements imposed by subdivision two of this section, the
5 superintendent of insurance shall compile and make available a period-
6 ically updated list of those insurance companies which are authorized to
7 write motor vehicle creditor gap insurance coverage in this state.

8 5. Nothing in this section shall be construed to apply to the holder,
9 under a retail instalment contract under which the buyer is not liable
10 upon a total loss of the vehicle occasioned by its theft, confiscation
11 or physical damage for the gap amount.

12 S 3. The personal property law is amended by adding a new section
13 302-B to read as follows:

14 S 302-B. GUARANTEED ASSET PROTECTION WAIVERS. 1. "GUARANTEED ASSET
15 PROTECTION WAIVER" OR "GAP WAIVER" MEANS A CONTRACTUAL AGREEMENT WHEREIN
16 A CREDITOR AGREES FOR A SEPARATE CHARGE TO CANCEL OR WAIVE ALL OR PART
17 OF AMOUNTS DUE TO BORROWER'S FINANCE AGREEMENT IN THE EVENT OF A TOTAL
18 PHYSICAL DAMAGE LOSS OR UNRECOVERED THEFT OF THE MOTOR VEHICLE, WHICH
19 AGREEMENT MUST BE PART OF, OR A SEPARATE ADDENDUM TO, THE FINANCE
20 AGREEMENT. FOR PURPOSES OF THIS SECTION, THE TERM MOTOR VEHICLE SHALL
21 INCLUDE SELF PROPELLED OR TOWED VEHICLES DESIGNED FOR PERSONAL OR
22 COMMERCIAL USE, INCLUDING, BUT NOT LIMITED TO, MOTOR VEHICLES AS DEFINED
23 IN SECTION THREE HUNDRED ONE OF THIS ARTICLE, TRUCKS, MOTORCYCLES,
24 RECREATIONAL VEHICLES, ALL TERRAIN VEHICLES, SNOWMOBILES, CAMPERS,
25 BOATS, PERSONAL WATERCRAFT, AND MOTORCYCLE, BOAT, CAMPER, AND PERSONAL
26 WATERCRAFT TRAILERS.

27 2. GAP WAIVERS SHALL BE OFFERED ACCORDING TO THE FOLLOWING:

28 (A) NEITHER THE EXTENSION OF CREDIT, THE TERM OF CREDIT, NOR THE TERM
29 OF THE RELATED MOTOR VEHICLE SALE MAY BE CONDITIONED UPON THE PURCHASE
30 OF A GAP WAIVER.

31 (B) THE GAP WAIVER REMAINS A PART OF THE FINANCE AGREEMENT UPON THE
32 ASSIGNMENT, SALE OR TRANSFER OF SUCH FINANCE AGREEMENT BY THE CREDITOR.

33 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY COST TO THE
34 BORROWER FOR A GAP WAIVER ENTERED INTO IN COMPLIANCE WITH THE TRUTH IN
35 LENDING ACT (15 U.S.C. 1601 ET. SEQ.) AND ITS IMPLEMENTING REGULATIONS,
36 AS THEY MAY BE AMENDED FROM TIME TO TIME, MUST BE SEPARATELY STATED AND
37 IS NOT TO BE CONSIDERED A FINANCE CHARGE OR INTEREST.

38 (D) A BUYER MAY CANCEL THE GAP WAIVER WITHIN A FREE LOOK PERIOD AS
39 SPECIFIED IN THE WAIVER, AND WILL BE ENTITLED TO A FULL REFUND OF THE
40 PURCHASE PRICE, SO LONG AS NO BENEFITS HAVE BEEN PROVIDED; OR IN THE
41 EVENT BENEFITS HAVE BEEN PROVIDED, THE BORROWER MAY RECEIVE A FULL OR
42 PARTIAL REFUND PURSUANT TO THE TERMS OF THE WAIVER. A GAP WAIVER MAY BE
43 CANCELLABLE OR NON-CANCELLABLE AFTER THE FREE LOOK PERIOD. IF A GAP
44 WAIVER IS CANCELLED AFTER THE FREE LOOK PERIOD AND NO BENEFITS HAVE BEEN
45 PAID, A BORROWER MAY BE ENTITLED TO A REFUND PURSUANT TO THE TERMS OF
46 THE WAIVER. IN THE EVENT THE GAP WAIVER IS CANCELLED OR UPON EARLY
47 TERMINATION OF THE FINANCE AGREEMENT, THE GAP WAIVER SHALL DISCLOSE THE
48 METHODOLOGY FOR CALCULATING ANY REFUND OF THE UNEARNED PURCHASE PRICE OF
49 THE GAP WAIVER DUE. IN ORDER TO RECEIVE A REFUND, THE BORROWER, IN
50 ACCORDANCE WITH ANY APPLICABLE TERMS OF THE GAP WAIVER, MUST PROVIDE A
51 WRITTEN REQUEST TO THE CREDITOR, ADMINISTRATOR OR OTHER PARTY, WITHIN
52 NINETY DAYS OF THE EVENT TERMINATING THE GAP WAIVER OR FINANCE AGREE-
53 MENT.

54 (E) THE GAP WAIVER MUST DISCLOSE IN CLEAR AND UNDERSTANDABLE LANGUAGE
55 THE TERMS OF THE GAP WAIVER INCLUDING, BUT NOT LIMITED TO, THE REQUIRE-
56 MENTS FOR PROTECTION, CONDITIONS, OR EXCLUSIONS ASSOCIATED WITH THE GAP

1 WAIVER. THE GAP WAIVER MUST ALSO DISCLOSE THE PROCEDURES THE BORROWER
2 MUST FOLLOW, IF ANY, TO OBTAIN GAP WAIVER BENEFITS.

3 (F) NOTWITHSTANDING PARAGRAPH THREE OF SUBSECTION B OF SECTION ONE
4 THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW, GAP WAIVERS GOVERNED
5 UNDER THIS SECTION ARE NOT INSURANCE AND ARE EXEMPT FROM THE INSURANCE
6 LAWS OF THIS STATE. PERSONS MARKETING, SELLING OR OFFERING TO SELL GAP
7 WAIVERS TO BORROWERS THAT COMPLY WITH THIS SECTION ARE EXEMPT FROM THIS
8 STATE'S INSURANCE LICENSING REQUIREMENTS.

9 S 4. Subdivision 2 of section 335 of the personal property law, as
10 amended by chapter 111 of the laws of 1995, is amended to read as
11 follows:

12 2. If the retail lease agreement provides that the lessee shall be
13 responsible upon a total loss of the vehicle occasioned by its theft or
14 physical damage for the gap amount, the lessor, prior to the execution
15 of the agreement, shall offer to waive its contractual right to hold the
16 lessee liable for the gap amount in the event of a total loss of the
17 vehicle occasioned by its theft or physical damage, only if motor vehi-
18 cle lessor gap insurance coverage is available to the lessor or the
19 anticipated assignee and such coverage is obtained from a
20 property/casualty insurance company, which has been licensed by the
21 superintendent of insurance of this state to write motor vehicle lessor
22 gap insurance in this state. This offer may be made contingent upon the
23 payment by the lessee of a separate charge that shall not exceed the
24 cost of lessor gap insurance covering the retail lease transaction plus
25 an administrative fee not to exceed ten dollars UNLESS SUCH WAIVER IS A
26 GUARANTEED ASSET PROTECTION WAIVER AS ESTABLISHED IN SECTION THREE
27 HUNDRED THIRTY-FIVE-A OF THIS ARTICLE. Nothing contained in this section
28 shall be construed to authorize a waiver, in connection with a trans-
29 action with respect to which lessor gap insurance has not been obtained,
30 of a contractual right to hold the lessee liable for the gap amount in
31 the event of a total loss of the vehicle occasioned by its theft or
32 physical damage.

33 S 5. The personal property law is amended by adding a new section
34 335-A to read as follows:

35 S 335-A. GUARANTEED ASSET PROTECTION WAIVERS. 1. "GUARANTEED ASSET
36 PROTECTION WAIVER" OR "GAP WAIVER" MEANS A CONTRACTUAL AGREEMENT WHEREIN
37 A CREDITOR AGREES FOR A SEPARATE CHARGE TO CANCEL OR WAIVE ALL OR PART
38 OF AMOUNTS DUE TO BORROWER'S FINANCE AGREEMENT IN THE EVENT OF A TOTAL
39 PHYSICAL DAMAGE LOSS OR UNRECOVERED THEFT OF THE MOTOR VEHICLE, WHICH
40 AGREEMENT MUST BE PART OF, OR A SEPARATE ADDENDUM TO, THE FINANCE AGREE-
41 MENT. FOR PURPOSES OF THIS SECTION, THE TERM MOTOR VEHICLE SHALL INCLUDE
42 SELF PROPELLED OR TOWED VEHICLES DESIGNED FOR PERSONAL OR COMMERCIAL OR
43 BUSINESS USE, INCLUDING, BUT NOT LIMITED TO, MOTOR VEHICLES AS DEFINED
44 IN SECTION THREE HUNDRED ONE OF THIS CHAPTER, TRUCKS, MOTORCYCLES,
45 RECREATIONAL VEHICLES, ALL TERRAIN VEHICLES, SNOWMOBILES, CAMPERS,
46 BOATS, PERSONAL WATERCRAFT, AND MOTORCYCLE, BOAT, CAMPER, AND PERSONAL
47 WATERCRAFT TRAILERS.

48 2. GAP WAIVERS SHALL BE OFFERED ACCORDING TO THE FOLLOWING:

49 (A) NEITHER THE EXTENSION OF CREDIT, THE TERM OF CREDIT, NOR THE TERM
50 OF THE RELATED MOTOR VEHICLE LEASE MAY BE CONDITIONED UPON THE PURCHASE
51 OF A GAP WAIVER.

52 (B) THE GAP WAIVER REMAINS A PART OF THE RETAIL LEASE AGREEMENT UPON
53 THE ASSIGNMENT, SALE OR TRANSFER OF SUCH RETAIL LEASE AGREEMENT BY THE
54 CREDITOR.

55 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY COST TO THE
56 BORROWER FOR A GAP WAIVER ENTERED INTO IN COMPLIANCE WITH THE TRUTH IN

1 LENDING ACT (15 U.S.C. 1601 ET. SEQ.) AND ITS IMPLEMENTING REGULATIONS,
2 AS THEY MAY BE AMENDED FROM TIME TO TIME, MUST BE SEPARATELY STATED AND
3 IS NOT TO BE CONSIDERED A FINANCE CHARGE OR INTEREST.

4 (D) A BUYER MAY CANCEL THE GAP WAIVER WITHIN A FREE LOOK PERIOD AS
5 SPECIFIED IN THE WAIVER, AND WILL BE ENTITLED TO A FULL REFUND OF THE
6 PURCHASE PRICE, SO LONG AS NO BENEFITS HAVE BEEN PROVIDED; OR IN THE
7 EVENT BENEFITS HAVE BEEN PROVIDED, THE BORROWER MAY RECEIVE A FULL OR
8 PARTIAL REFUND PURSUANT TO THE TERMS OF THE WAIVER. A GAP WAIVER MAY BE
9 CANCELLABLE OR NON-CANCELLABLE AFTER THE FREE LOOK PERIOD. IF A GAP
10 WAIVER IS CANCELLED AFTER THE FREE LOOK PERIOD AND NO BENEFITS HAVE BEEN
11 PAID, A BORROWER MAY BE ENTITLED TO A REFUND PURSUANT TO THE TERMS OF
12 THE WAIVER. IN THE EVENT THE GAP WAIVER IS CANCELLED OR UPON EARLY
13 TERMINATION OF THE FINANCE AGREEMENT, THE GAP WAIVER SHALL DISCLOSE THE
14 METHODOLOGY FOR CALCULATING ANY REFUND OF THE UNEARNED PURCHASE PRICE OF
15 THE GAP WAIVER DUE. IN ORDER TO RECEIVE A REFUND, THE BORROWER, IN
16 ACCORDANCE WITH ANY APPLICABLE TERMS OF THE GAP WAIVER, MUST PROVIDE A
17 WRITTEN REQUEST TO THE CREDITOR, ADMINISTRATOR OR OTHER PARTY, WITHIN
18 NINETY DAYS OF THE EVENT TERMINATING THE GAP WAIVER OR FINANCE AGREE-
19 MENT.

20 (E) THE GAP WAIVER MUST DISCLOSE IN CLEAR AND UNDERSTANDABLE LANGUAGE
21 THE TERMS OF THE GAP WAIVER INCLUDING, BUT NOT LIMITED TO, THE REQUIRE-
22 MENTS FOR PROTECTION, CONDITIONS, OR EXCLUSIONS ASSOCIATED WITH THE GAP
23 WAIVER. THE GAP WAIVER MUST ALSO DISCLOSE THE PROCEDURES THE BORROWER
24 MUST FOLLOW, IF ANY, TO OBTAIN GAP WAIVER BENEFITS.

25 (F) NOTWITHSTANDING PARAGRAPH THREE OF SUBSECTION B OF SECTION ONE
26 THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW, GAP WAIVERS UNDER THIS
27 SECTION ARE NOT INSURANCE AND ARE EXEMPT FROM THE INSURANCE LAWS OF THIS
28 STATE. PERSONS MARKETING, SELLING OR OFFERING TO SELL GAP WAIVERS TO
29 BORROWERS THAT COMPLY WITH THIS SECTION ARE EXEMPT FROM THIS STATE'S
30 INSURANCE LICENSING REQUIREMENTS.

31 S 6. This act shall take effect immediately.