S T A T E O F N E W Y O R K

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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:

Section 1. Subdivision 6 of section 301 of the personal property law, as amended by chapter 1 of the laws of 1994, is amended to read as follows:

6. "Cash sale price" means the cash sale price stated in a retail instalment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the motor vehicle which is the subject matter of the retail instalment contract if the sale were a sale for cash instead of a retail instalment sale. The cash sale price may include any taxes, registration, license and other fees and charges for insurance, FOR A GUARANTEED ASSET PROTECTION WAIVER, for accessories and their installation and for delivering, servicing, repairing or improving the motor vehicle and for other services incidental to the agreement. It also may include the unpaid balance of any amount financed under an outstanding motor vehicle loan agreement or motor vehicle retail instalment contract or the unpaid portion of the early termination obligation under an outstanding motor vehicle retail lease agreement.

S 2. Section 302A of the personal property law, as amended by chapter 111 of the laws of 1995, is amended to read as follows:

S [302A] 302-A. Total loss notice and waiver of the gap amount. 1. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount as defined in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law, the holder, prior to the execution of the contract, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the buyer would remain liable in the event of a theft, confiscation or total loss of the vehicle. If the holder is 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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contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the holder will waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage; (b) contain a provision informing the buyer that he or she may, as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has been licensed by the superintendent of insurance to write motor vehicle debtor gap insurance in this state; and (c) contain a provision permitting the buyer to indicate whether he or she wants the holder to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage. The notice shall be signed by the buyer. The holder shall provide a copy of the signed notice to the buyer and shall maintain a copy in the holder's files for at least the term of the contract. Failure to provide the notice and to obtain the buyer's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a buyer to pay to the holder, after a total loss of the motor vehicle occasioned by its theft, confiscation or physical damage, the gap amount. No retail installment contract shall be conditioned upon the buyer's obtaining of motor vehicle debtor gap insurance as set forth in subparagraph (B) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 6. This act shall take effect immediately.