STATE OF NEW YORK

3597

2023-2024 Regular Sessions

IN SENATE

February 1, 2023

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

AN ACT to amend the insurance law and the personal property law, in relation to authorizing service charges for gap waivers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (iii) of paragraph 3 of subsection (b) of section 1101 of the insurance law, as amended by chapter 140 of the laws of 1995, is amended to read as follows:

(iii) in the event the lessor, creditor or assignee purchases lessor or creditor gap insurance, the charge to the lessee or debtor for the waiver does not exceed the cost of the lessor or creditor gap insurance coverage **plus any permitted service charge**; provided, however, that nothing contained [~~herein~~] **in this section** shall be construed to prohibit**: (A) the creditor or assignee from including the charge for the waiver plus any permitted service charge in its calculation of payments due under a retail instalment contract; or (B)** the lessor **or assignee** from including the charge for the waiver in the capitalized cost as that term is defined in subdivision eleven of section three hundred thirty-one of the personal property law. **For purposes of this subparagraph, in the case of a new or used motor vehicle which is subject to a retail instalment contract, such permitted service charge may be paid to the creditor or assignee, or to a motor vehicle dealer registered in this state pursuant to the applicable provisions of the vehicle and traffic law.**

§ 2. Subdivision 2 of section 302A of the personal property law, as amended by chapter 111 of the laws of 1995 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

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

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

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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 financial services 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 **plus a service charge not to exceed seven hundred fifty dollars**. 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. This act shall take effect on the thirtieth day after it shall have become a law.