

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:

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

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

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

24 2. If the retail instalment contract provides that the buyer shall be
25 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.

LBD08622-01-3

1 physical damage for the gap amount, the holder, prior to the execution
2 of the agreement, shall offer to waive its contractual right to hold the
3 buyer liable for the gap amount in the event of a total loss of the
4 vehicle occasioned by its theft or physical damage, only if motor vehi-
5 cle creditor gap insurance coverage is available to the holder and such
6 coverage is obtained from a property/casualty insurance company, which
7 has been licensed by the superintendent of financial services of this
8 state to write motor vehicle creditor gap insurance in this state. This
9 offer may be made contingent upon the payment by the buyer of a separate
10 charge that shall not exceed the cost of motor vehicle creditor gap
11 insurance covering the retail instalment contract plus a service charge
12 not to exceed seven hundred fifty dollars. Nothing contained in this
13 section shall be construed to authorize a waiver, in connection with a
14 transaction with respect to which motor vehicle creditor gap insurance
15 has not been obtained, of a contractual right to hold the buyer liable
16 for the gap amount in the event of a total loss of the vehicle occa-
17 sioned by its theft or physical damage.

18 § 3. This act shall take effect on the thirtieth day after it shall
19 have become a law.