



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4036/1
ARG:ahe

2017 SENATE BILL 586

November 29, 2017 - Introduced by Senator CRAIG, cosponsored by Representatives PETERSEN, KULP, JARCHOW, TITTL, KUGLITSCH, FIELDS, KATSMAN and SKOWRONSKI. Referred to Committee on Financial Services, Constitution and Federalism.

1 **AN ACT to repeal** 429.104 (13) (a) and 429.204 (2) and (3); **to renumber and**
2 **amend** 429.204 (1); **to consolidate, renumber and amend** 429.104 (13)
3 (intro.) and (b); **to amend** 30.53 (title), 429.104 (13m) and 429.205 (1) (c); **to**
4 **repeal and recreate** 424.201 (3); and **to create** 23.33 (2) (dm) 5., 23.335 (5)
5 (g), 30.53 (5), 218.0148, 350.12 (3) (c) 5. and 429.104 (13k) of the statutes;
6 **relating to:** guaranteed asset protection products sold in connection with
7 vehicle credit sales, loans, and consumer leases.

Analysis by the Legislative Reference Bureau

This bill provides that guaranteed asset protection (gap) waivers may be offered and sold in connection with the credit sale or lease of a vehicle and that gap waivers are not insurance.

Current law imposes certain requirements, including various disclosure requirements, on the lease to an individual of a motor vehicle that is used primarily for personal, family, household, or agricultural purposes; that is for a term of more than four months; and that has a total lease obligation, excluding any option to purchase, of not more than \$25,000 (consumer lease). If applicable, a consumer lease must conspicuously disclose that the lessee is responsible for all or part of the "gap amount." Gap amount is defined as the difference between the amount to be paid by the lessee under the consumer lease in the event of total loss or destruction of the

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leased vehicle during the lease term and the amount received by the lessor from insurance proceeds or other sources as a result of the vehicle's loss or destruction. A lessor under a consumer lease may waive its right to hold a lessee liable for the gap amount, and may include a separate charge in the consumer lease for this waiver, if certain requirements are satisfied, including that the charge is conspicuously disclosed to the lessee. A consumer lease may not be conditioned on the lessee's agreement to obtain insurance or purchase a waiver covering the gap amount. A lessor's waiver of its right to recover the gap amount, if made without separate charge, is not property insurance and is excluded from the credit insurance provisions of the Wisconsin Consumer Act (WCA), which govern insurance to satisfy a debt in connection with a consumer credit transaction.

Current law also imposes certain requirements, including various disclosure requirements, on a retail installment sale of a motor vehicle for personal, family, or household use, and the retail installment contract must be in writing and signed by the buyer. A "retail installment contract" means a contract to sell a motor vehicle at retail in which the price of the motor vehicle is payable in one or more installments over time and in which the dealer has retained title to, or taken a security interest in, the vehicle. A sales finance company that acquires a retail installment contract from a dealer must provide written notice to the buyer of the acquisition and provide a statement of the contract's terms similar to that required of the dealer. A "sales finance company" includes a dealer that sells or leases motor vehicles under retail installment contracts or consumer leases and any person engaged in the business of purchasing or otherwise acquiring retail installment contracts or consumer leases from a dealer or lessor.

This bill provides that gap waivers may be offered and sold to borrowers in compliance with the requirements set forth in the bill. A gap waiver is defined as a contractual obligation under which a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle. A creditor is defined as a sales finance company (which, as discussed above, may include a motor vehicle dealer), a lessor under a consumer lease, or any other lender that extends credit to a buyer for the purchase of a motor vehicle from a dealer, but does not include a state or federally chartered financial institution. A finance agreement is defined as a retail installment contract, a consumer lease, or a loan agreement in which a creditor extends credit for the purchase of a motor vehicle. A borrower is defined as a buyer of a motor vehicle under a retail installment contract; a lessee under a consumer lease; or any other debtor to whom a creditor extends credit for the purchase of a motor vehicle.

Under the bill, a creditor may not require a borrower to purchase a gap waiver. A creditor also may not offer or sell a gap waiver to a borrower unless certain conspicuous written disclosures are provided prior to or concurrent with the execution of the gap waiver agreement, including the following: 1) that the purchase of the gap waiver is optional and that the transaction may not be conditioned on the purchase of a gap waiver; 2) the cost and terms of the gap waiver; and 3) the procedure the borrower must follow to obtain gap waiver benefits. A borrower

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desiring a gap waiver must indicate in writing, after receiving these disclosures, the borrower's desire to purchase a gap waiver.

Under the bill, a gap waiver may be canceled by the borrower at any time without penalty or fee and terminates upon the occurrence of specified events, including payment in full by the borrower of the related credit transaction or any other event specified in the gap waiver. If the cancellation or termination of the gap waiver occurs within 30 days after purchasing the gap waiver, the borrower is generally entitled to a full refund or credit. The borrower is generally entitled to a partial refund or credit if the cancellation or termination occurs thereafter.

Under the bill, a gap waiver must be part of, or a separate addendum to, the finance agreement for the motor vehicle. Any cost to the borrower for a gap waiver entered into in compliance with federal credit laws must be separately stated and is not considered a finance charge or interest. A gap waiver may be assigned and the gap waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

The bill specifies that gap waivers are not insurance and the insurance laws do not apply to them. The bill also specifies that a creditor offering or selling gap waivers must comply with any applicable requirement under the WCA, but further specifies that gap waivers are excluded from the credit insurance provisions of the WCA. The provisions of the bill do not apply to a borrower who purchases a motor vehicle under a retail installment contract primarily for business or commercial purposes and not for personal, family, or household use. However, the bill further specifies that a gap waiver offered or sold in conjunction with the purchase of a motor vehicle to be used primarily for business or commercial purposes, or in conjunction with the lease of a motor vehicle that is not a consumer lease, is not insurance.

The provisions of the bill replace provisions of current law relating to the offer and sale of gap waivers in connection with consumer leases.

The bill also specifies that gap waivers may be offered and sold in connection with the credit sale or lease of trailers, all-terrain vehicles, off-road motorcycles, snowmobiles, and boats or other watercraft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 23.33 (2) (dm) 5. of the statutes is created to read:
2 23.33 (2) (dm) 5. Any all-terrain vehicle or utility terrain vehicle dealer or
3 creditor may offer or sell guaranteed asset protection waivers in connection with the
4 retail sale or lease of all-terrain vehicles or utility terrain vehicles in this state if the
5 dealer or creditor complies with the same requirements applicable with respect to
6 motor vehicles under s. 218.0148. Any guaranteed asset protection waiver offered

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1 or sold under this subdivision shall be treated the same as one offered or sold under
2 s. 218.0148, including that the guaranteed asset protection waiver is not insurance.

3 **SECTION 2.** 23.335 (5) (g) of the statutes is created to read:

4 23.335 (5) (g) Any off-highway motorcycle dealer or creditor may offer or sell
5 guaranteed asset protection waivers in connection with the retail sale or lease of
6 off-highway motorcycles in this state if the dealer or creditor complies with the same
7 requirements applicable with respect to motor vehicles under s. 218.0148. Any
8 guaranteed asset protection waiver offered or sold under this paragraph shall be
9 treated the same as one offered or sold under s. 218.0148, including that the
10 guaranteed asset protection waiver is not insurance.

11 **SECTION 3.** 30.53 (title) of the statutes is amended to read:

12 **30.53 (title) Certificate of origin; requirements; contents; guaranteed**
13 **asset protection waivers.**

14 **SECTION 4.** 30.53 (5) of the statutes is created to read:

15 30.53 (5) GUARANTEED ASSET PROTECTION WAIVERS. Any dealer in boats or creditor
16 may offer or sell guaranteed asset protection waivers in connection with the retail
17 sale or lease of boats in this state if the dealer or creditor complies with the same
18 requirements applicable with respect to motor vehicles under s. 218.0148. Any
19 guaranteed asset protection waiver offered or sold under this subsection shall be
20 treated the same as one offered or sold under s. 218.0148, including that the
21 guaranteed asset protection waiver is not insurance.

22 **SECTION 5.** 218.0148 of the statutes is created to read:

23 **218.0148 Guaranteed asset protection agreements. (1) DEFINITIONS.** In
24 this section:

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1 (a) "Administrator" means a person, other than an insurer or creditor, that
2 performs administrative or operational functions pursuant to guaranteed asset
3 protection waiver programs.

4 (b) "Borrower" means a retail buyer who purchases a motor vehicle under a
5 retail installment contract, a lessee, or any other debtor to whom a creditor extends
6 credit for the purchase of a motor vehicle.

7 (c) "Creditor" means a sales finance company, including any motor vehicle
8 dealer described in s. 218.0101 (34) (b), a lessor, or any other lender that extends
9 credit to a retail buyer for the purchase of a motor vehicle, but does not include a
10 depository institution, as defined in 12 USC 1813 (c) (1), or any state or federal credit
11 union.

12 (d) "Finance agreement" means any of the following:

13 1. A retail installment contract.

14 2. A loan agreement in which a creditor extends credit to a retail buyer for the
15 purchase of a motor vehicle.

16 3. A consumer lease.

17 (e) "Guaranteed asset protection waiver" means a contractual obligation under
18 which a creditor agrees, for a separate charge, to cancel or waive all or part of
19 amounts due on a borrower's finance agreement in the event of a total physical
20 damage loss or unrecovered theft of the motor vehicle specified in the finance
21 agreement.

22 **(2) GUARANTEED ASSET PROTECTION WAIVERS AUTHORIZED.** (a) Subject par. (b),
23 guaranteed asset protection waivers may be offered and sold to borrowers in this
24 state in compliance with the requirements under this section. A guaranteed asset

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1 protection waiver must be part of, or a separate addendum to, the finance agreement
2 for the motor vehicle.

3 (b) A creditor may not require a borrower to purchase a guaranteed asset
4 protection waiver.

5 (c) Guaranteed asset protection waivers may, at the option of the creditor, be
6 offered and sold upon a single payment or with required periodic payments.

7 (d) A guaranteed asset protection waiver may be assigned and the guaranteed
8 asset protection waiver remains a part of the finance agreement upon the
9 assignment, sale, or transfer of the finance agreement by the creditor.

10 (e) Notwithstanding any other provision of law, any cost to the borrower for a
11 guaranteed asset protection waiver entered into in compliance with the federal
12 Truth in Lending Act, 15 USC 1601 et seq., and regulations adopted under that act,
13 shall be separately stated and is not considered a finance charge or interest.

14 (f) A retail seller shall insure its guaranteed asset protection waiver obligations
15 under a contractual liability or other insurance policy issued by an insurer. A
16 creditor, other than a retail seller, may insure its guaranteed asset protection waiver
17 obligations under a contractual liability policy or other such policy issued by an
18 insurer. Any such insurance policy may be directly obtained by a creditor or retail
19 seller or may be procured by an administrator to cover a creditor's or retail seller's
20 obligations. However, if a retail seller is also a lessor, the retail seller is not required
21 to insure obligations related to guaranteed asset protection waivers on motor
22 vehicles leased under a consumer lease.

23 (g) Any creditor that offers a guaranteed asset protection waiver shall report
24 the sale of, and forward funds received on, all guaranteed asset protection waivers
25 to the designated party, if any, prescribed in any applicable administrative services

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1 agreement, contractual liability policy, other insurance policy, or other specified
2 program documents.

3 (h) Funds received or held by a creditor or administrator and belonging to an
4 insurer, creditor, or administrator, pursuant to the terms of a written agreement,
5 shall be held by the creditor or administrator in a fiduciary capacity.

6 (i) Any borrower or potential borrower desiring a guaranteed asset protection
7 waiver shall give a specific, separately signed, affirmative written indication of the
8 borrower's or potential borrower's desire to purchase a guaranteed asset protection
9 waiver after receiving the disclosures required in sub. (3). A separate indication
10 includes a signed, written, affirmative indication within a guaranteed asset
11 protection waiver that is an addendum to the finance agreement.

12 (j) A creditor may, as a provision within a guaranteed asset protection waiver,
13 provide a discount or credit, or may waive or cancel an additional amount, as an
14 incentive for purchasing, leasing, or financing a replacement vehicle. However, the
15 creditor shall require the borrower to use the benefit on a purchase or lease from the
16 retail seller that sold the original vehicle to the borrower, or with the creditor that
17 financed the purchase or lease of the original vehicle. Inclusion of this provision does
18 not cause the guaranteed asset protection waiver to be considered insurance.
19 Notwithstanding any other provision of law, this paragraph also applies to any state
20 or federally chartered bank or credit union.

21 **(3) DISCLOSURE REQUIREMENTS FOR OFFERING GUARANTEED ASSET PROTECTION**
22 **WAIVERS.** (a) No creditor may offer or sell to a borrower a guaranteed asset protection
23 waiver in this state unless all of the following conspicuous written disclosures are
24 provided prior to or concurrent with the execution of the guaranteed asset protection
25 waiver agreement:

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1 1. That the purchase of the guaranteed asset protection waiver is optional and
2 that neither the extension of credit, nor the terms of the credit, nor the terms of the
3 related motor vehicle sale or lease may be conditioned upon the purchase of the
4 guaranteed asset protection waiver.

5 2. The cost and terms of the guaranteed asset protection waiver, including
6 terms relating to the borrower's right to cancel the waiver and obtain a full or partial
7 refund as provided under sub. (4).

8 3. The name and address of the initial creditor and the borrower at the time
9 of the sale or lease, and the identity of any administrator if different from the
10 creditor.

11 4. The purchase price and the terms of the guaranteed asset protection waiver,
12 including the requirements for protection, conditions, or exclusions associated with
13 the guaranteed asset protection waiver.

14 5. The procedure the borrower must follow, if any, to obtain guaranteed asset
15 protection waiver benefits under the terms and conditions of the waiver, including
16 a telephone number and address where the borrower may apply for waiver benefits.

17 (b) Each guaranteed asset protection waiver agreement shall indicate that the
18 agreement is between the borrower and the creditor that sold the guaranteed asset
19 protection waiver and, after any assignment, between the borrower and the
20 assignee.

21 **(4) TERMINATION OR CANCELLATION OF GUARANTEED ASSET PROTECTION WAIVER.** (a)
22 A guaranteed asset protection waiver may be canceled by the borrower at any time
23 without penalty.

24 (b) A guaranteed asset protection waiver terminates no later than the earliest
25 of the following events:

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- 1 1. Cancellation by the borrower.
- 2 2. Payment in full by the borrower of the related credit transaction.
- 3 3. Expiration of any redemption period after a repossession or surrender of the
- 4 motor vehicle specified in the finance agreement.
- 5 4. Upon total physical damage loss or unrecovered theft of the motor vehicle
- 6 specified in the finance agreement, after the creditor has waived the gap amount or
- 7 it is determined that no gap amount exists.
- 8 5. Upon any other event that occurs earlier than the events listed in subds. 1.
- 9 to 4., as specified in the guaranteed asset protection waiver.

10 (c) Subject to par. (d), upon cancellation or termination of a guaranteed asset
11 protection waiver, the borrower is entitled to a refund as follows:

- 12 1. If the cancellation or termination occurs within 30 days after the date the
13 borrower purchased the guaranteed asset protection waiver, the borrower is entitled
14 to a full refund of the guaranteed asset protection waiver cost or a full credit of the
15 guaranteed asset protection waiver cost plus the amount of applicable finance
16 charges.
- 17 2. If the cancellation or termination occurs later than 30 days after the date the
18 borrower purchased the guaranteed asset protection waiver, the borrower is entitled
19 to a partial refund or credit of the guaranteed asset protection waiver cost. At a
20 minimum, the partial refund shall be calculated by a method no less favorable to the
21 borrower than the “rule of 78,” described generally in s. 422.209 (2) (a).

22 (d) No refund is required upon cancellation or termination of a guaranteed
23 asset protection waiver if there has been a total physical damage loss or unrecovered
24 theft of the motor vehicle specified in the finance agreement and the borrower has
25 or will receive the benefit of the guaranteed asset protection waiver.

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1 (e) When calculating the refunds for the unearned guaranteed asset protection
2 waiver charges on agreements that contract for the “rule of 78” method, refunds shall
3 be based on the number of full months earned from the contract date to the actual
4 termination date, counting a fractional month of 16 days or more as a full month.
5 When calculating refunds for the unearned guaranteed asset protection waiver
6 charge on agreements that contract for a pro rata refunding method and a monthly
7 pro rata method is used, the number of full months earned shall be counted in a
8 similar manner.

9 (f) No cancellation fee, termination fee, or similar fee may be assessed in
10 connection with the cancellation or termination of a guaranteed asset protection
11 waiver.

12 (g) Upon cancellation or termination of a guaranteed asset protection waiver,
13 the creditor shall make an appropriate refund or credit of the guaranteed asset
14 protection waiver charge or shall cause to be made an appropriate refund or credit
15 by instructing in writing the appropriate party to make the refund or credit.

16 **(5) APPLICABILITY OF OTHER LAW.** (a) In addition to any requirement applicable
17 under this section, a creditor offering or selling to a borrower a guaranteed asset
18 protection waiver in this state shall comply with any applicable requirement under
19 chs. 421 to 427.

20 (b) Guaranteed asset protection waivers are not insurance and the insurance
21 laws of this state do not apply to them.

22 **(6) COMMERCIAL INSTALLMENT SALES.** This section does not apply to a borrower
23 who purchases a motor vehicle under a retail installment contract if, as provided in
24 s. 218.0142 (11), s. 218.0142 does not apply to the retail installment sale of the motor
25 vehicle. However, a guaranteed asset protection waiver offered or sold in conjunction

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1 with the purchase of a motor vehicle to be used primarily for business or commercial
2 purposes, or in conjunction with the lease of a motor vehicle that is not a consumer
3 lease, is not insurance.

4 (7) TRAILERS. This section applies with respect to towed vehicles, including
5 trailers not required to be registered under ch. 341, to the same extent it applies to
6 motor vehicles, including that a guaranteed asset protection waiver offered or sold
7 in connection with the sale or lease of a towed vehicle is not insurance.

8 **SECTION 6.** 350.12 (3) (c) 5. of the statutes is created to read:

9 350.12 (3) (c) 5. Any snowmobile dealer or creditor may offer or sell guaranteed
10 asset protection waivers in connection with the retail sale or lease of snowmobiles
11 in this state if the dealer or creditor complies with the same requirements applicable
12 with respect to motor vehicles under s. 218.0148. Any guaranteed asset protection
13 waiver offered or sold under this subdivision shall be treated the same as one offered
14 or sold under s. 218.0148, including that the guaranteed asset protection waiver is
15 not insurance.

16 **SECTION 7.** 424.201 (3) of the statutes is repealed and recreated to read:

17 424.201 (3) A guaranteed asset protection waiver, as defined in s. 218.0148 (1)
18 (e).

19 **SECTION 8.** 429.104 (13) (intro.) and (b) of the statutes are consolidated,
20 renumbered 429.104 (13g) and amended to read:

21 429.104 (13g) “Gap protection” insurance means any of the following: (b)
22 Insurance insurance coverage, offered by an insurer authorized to transact business
23 in this state, that provides that another person is liable for the gap amount.

24 **SECTION 9.** 429.104 (13) (a) of the statutes is repealed.

25 **SECTION 10.** 429.104 (13k) of the statutes is created to read:

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1 429.104 (13k) “Gap waiver” means a provision in a consumer lease offered or
2 sold pursuant to the terms of s. 218.0148.

3 **SECTION 11.** 429.104 (13m) of the statutes is amended to read:

4 429.104 (13m) “Gross capitalized cost” means the sum of all amounts
5 capitalized in the consumer lease that, after subtracting the capitalized cost
6 reduction, amortizes to the residual value by the depreciation portion of the periodic
7 lease payments over the scheduled term of the lease or, for a single-payment lease,
8 the single payment. These amounts may include taxes; fees for registration, license,
9 acquisition, administration and assignment; other fees; charges for insurance,
10 service contracts and extended warranties; and charges for a waiver of the
11 contractual obligation to pay the gap amount, for accessories and their installation,
12 for other services and benefits incidental to the consumer lease, and for delivering,
13 servicing, repairing or improving the vehicle. With respect to a vehicle or other
14 property traded in connection with a consumer lease, the term may include the
15 outstanding unpaid balance of the amount financed under a consumer loan, as
16 defined in s. 421.301 (12), or a retail installment contract, as defined in s. 218.0101
17 (32), or the unpaid balance of any early termination costs under a lease or other
18 obligation of the lessee. The term does not include any rent charge.

19 **SECTION 12.** 429.204 (1) of the statutes is renumbered 429.204 and amended
20 to read:

21 **429.204 Gap amount; notice; waiver.** If a consumer lease provides that the
22 lessee is responsible for any or all of the gap amount, the consumer lease shall
23 conspicuously disclose this fact, using the term “gap amount”. The acceptance of a
24 consumer lease may not be conditioned upon the lessee’s agreement to gap protection
25 insurance or a gap waiver. Section 218.0148 governs gap waivers.

