



**WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO**

2017 Wisconsin Act 161 [2017 Assembly Bill 663]	Guaranteed Asset Protection Products Offered in Connection With Credit Sales, Consumer Leases, and Certain Loans
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2017 Wisconsin Act 161 (“the Act”) creates a framework for authorizing and regulating the sale of a “guaranteed asset protection waiver”¹ (“GAP waiver”) offered in connection with a retail installment contract, a consumer lease, or a loan agreement in which a creditor extends credit to a retail buyer for the purchase or refinancing of a motor vehicle.

The Act specifies conditions that must be satisfied regarding the offer, sale, and assignment of a GAP waiver; the disclosure of information to a borrower purchasing a GAP waiver; and the terms governing the cancellation of a GAP waiver agreement. It also provides that GAP waivers are not subject to regulation as a form of insurance, but are subject to other applicable provisions of the Wisconsin Consumer Act.²

OFFER, SALE, AND ASSIGNMENT OF A GAP WAIVER

The Act authorizes a GAP waiver to be offered and sold by: (1) an all-terrain vehicle or utility terrain vehicle dealer or creditor; (2) an off-highway motorcycle dealer or creditor; (2) a boat dealer or creditor; (3) a snowmobile dealer or creditor; (4) a sales finance company, including a motor vehicle dealer; (5) a lessor; and (6) a lender, other than a depository institution or a state or federal credit union.

¹ “Guaranteed asset protection waiver” means a contractual obligation under which a creditor agrees 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 the motor vehicle that is purchased or leased through the finance agreement.

² The Wisconsin Consumer Act is codified as chs. 421-427, Stats.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

A GAP waiver sold by one of these entities may be subsequently assigned by the seller to another entity, including an entity not listed above, such as a depository institution or credit union.

A retail seller³ that sells a GAP waiver must insure its GAP waiver obligations in accordance with certain conditions specified in the Act, and other sellers of GAP waivers may do so.

A GAP waiver agreement must be part of or a separate addendum to a finance agreement. Any cost to the borrower for a GAP waiver must be stated separately, and is not considered a part of the finance charge or interest. The creditor may choose whether to collect the cost of the GAP waiver through a single payment or with periodic payments.

DISCLOSURES

The Act requires a creditor to disclose to a borrower, before or upon execution of the GAP waiver agreement, all of the following:

- That the purchase of the GAP waiver is optional.
- That the terms of the credit extended or the sale or lease may not be conditioned upon the borrower's agreement to purchase a GAP waiver.
- The cost and terms of the GAP waiver.

After receiving the required disclosures, a borrower must give a specific, signed, affirmative written indication of desire to purchase a GAP waiver, in order to execute the purchase.

CANCELLATION

The Act provides that a GAP waiver may be cancelled by the borrower without penalty or fee. If the cancellation occurs within 30 days after the date on which the GAP waiver was purchased, the borrower is entitled to a full refund. If the cancellation or termination occurs later than 30 days after the purchase date, the borrower is entitled to a partial refund calculated using a method specified by the creditor in the GAP waiver that is no less favorable to the borrower than the "Rule of 78" method.⁴

Effective date: September 1, 2018.

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³ "Retail seller" means a person, firm, or corporation selling or agreeing to sell one or more motor vehicles under a retail installment contract to a buyer for the buyer's personal use or consumption. [s. 218.0101 (33), Stats.]

⁴ The "Rule of 78" method is set forth in s. 422.209 (2) (a), Stats.