

AMENDED IN ASSEMBLY MARCH 7, 2011

AMENDED IN ASSEMBLY FEBRUARY 22, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 125**

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**Introduced by Committee on Insurance**

January 10, 2011

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An act to amend ~~Section~~ Sections 1758.96 and 1758.992 of the Insurance Code, relating to insurance, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 125, as amended, Committee on Insurance. Insurance: guaranteed automobile asset protection.

Existing law defines guaranteed automobile asset protection (GAP) insurance as insurance in which a person agrees to indemnify a vehicle purchaser or lessee for any of the difference between the actual cash value of the insured's vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle.

This bill would define GAP insurance to also cover the difference between money received from the purchaser's or lessee's automobile insurer and some or all of the amount owed on the vehicle at the time of the unrecovered theft or total loss.

Existing law provides that the following is not GAP insurance and does not require an insurance license to sell: (1) a promise contained in a conditional sales contract for the sale of a vehicle by a licensed motor vehicle dealer or a promise contained in a lease agreement for

the lease of a vehicle by a licensed motor vehicle dealer or leasing company to waive all or a portion of the difference between the actual cash value of the insured's vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle; and (2) a promise by a lender, as part of a debt obligation, to purchase or lease a vehicle in which the lender agrees to waive all or a portion of the difference between the actual cash value of the insured's vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle.

This bill would expand the contractual ~~promises agreements~~ exempt from the definition of GAP insurance, and from requiring an insurance license to sell, to include the amount owed on the vehicle at the time of an unrecovered theft or total loss, after credit for money received from the purchaser's or lessee's automobile insurer or from a 3rd-party liability insurer, and that the promise may also include a promise to waive some or all of the amount of the purchaser's or lessee's deductible.

Existing law requires that the above ~~contractually promised contractual~~ coverage may not include a promise to pay money to a vehicle purchaser or lessee in addition to waiving the difference between the actual cash value and the amount owed.

This bill would additionally prohibit coverage resulting in a credit balance in favor of the purchaser or lessee.

The bill would also make conforming and related changes.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1758.96 of the Insurance Code is amended  
2     to read:  
3       1758.96. A person licensed pursuant to this article may act as  
4       a credit insurance agent for an authorized insurer only with respect  
5       to the kinds of insurance specified in this section sold in connection  
6       with and incidental to a loan or other extension of credit other than

1 a loan in excess of sixty thousand dollars (\$60,000) relating to or  
2 secured by real property where the repayment period does not  
3 exceed 10 years. The sale of credit insurance products as specified  
4 in this section in excess of sixty thousand dollars (\$60,000) relating  
5 to or secured by real property where any compensation, fee, or  
6 commission is paid dependent on the placement of credit insurance,  
7 requires a license to act as an insurance agent or life agent pursuant  
8 to Section 1621 or 1622.

9 (a) Credit life insurance.

10 (b) Credit disability insurance.

11 (c) Credit involuntary unemployment insurance or credit  
12 loss-of-income insurance.

13 (d) Credit property insurance.

14 (e) Guaranteed-~~automobile asset~~ protection (GAP) insurance.

15 (f) Any other form of insurance declared by the commissioner  
16 to be subject to this section pursuant to subdivision (d) of Section  
17 1758.992.

18 **SECTION 4.**

19 SEC. 2. Section 1758.992 of the Insurance Code is amended  
20 to read:

21 1758.992. As used in this article, the following definitions have  
22 the following meanings:

23 (a) “Enrollment” means the process of soliciting or accepting  
24 enrollments or applications from a debtor under a credit insurance  
25 policy, which includes informing the debtor of the availability of  
26 coverage, calculating the insurance charge, preparing and delivering  
27 the certificate of insurance or notice of proposed insurance,  
28 answering questions regarding the coverage, or otherwise assisting  
29 the debtor in making an informed decision whether or not to elect  
30 to purchase credit insurance.

31 (b) “Creditor” means a lender of money or a vendor or lessor  
32 of goods, services, property, rights, or privileges, for which  
33 payment is arranged through a credit transaction, or any successor  
34 to the right, title, or interest of that lender, vendor, or lessor, and  
35 any affiliate, associate, subsidiary, subcontractor, director, officer,  
36 or employee of any of them or any other person in any way  
37 associated with any of them.

38 (c) “Credit insurance agent license” means an agent license  
39 issued to an individual or organization for the enrollment and sale  
40 of credit insurance.

1       (d) (1) “Credit insurance” includes credit life insurance, credit  
2       disability insurance, credit involuntary unemployment insurance,  
3       credit loss-of-income insurance, credit property insurance, or  
4       guaranteed-~~automobile asset~~ protection (GAP) insurance.

5       (2) Credit insurance also includes any other form of insurance  
6       offered in connection with an extension of credit that is limited to  
7       partially or wholly extinguishing that credit obligation that the  
8       commissioner determines should be designated a form of credit  
9       insurance.

10      (3) The commissioner may adopt, pursuant to Chapter 3.5  
11     (commencing with Section 11340) of Part 1 of Division 3 of Title  
12     2 of the Government Code, reasonable rules and regulations  
13     necessary to carry out this subdivision.

14      (e) (1) “Credit life insurance” means insurance on the life of a  
15     debtor pursuant to or in connection with a specific loan or other  
16     credit transaction, exclusive of any insurance procured at no  
17     expense to the debtor. Insurance shall be deemed procured at no  
18     expense to the debtor unless the cost of the credit transaction to  
19     the debtor varies depending on whether or not the insurance is  
20     procured.

21      (2) “Credit disability insurance” means insurance on a debtor  
22     to provide indemnity for payments becoming due on a specific  
23     loan or other credit transaction while the debtor is disabled, as  
24     defined in the policy, exclusive of any insurance procured at no  
25     expense to the debtor. Insurance shall be deemed to have been  
26     procured at no expense to the debtor unless the cost of the credit  
27     transaction to the debtor varies depending on whether or not the  
28     insurance is procured.

29      (f) “Credit involuntary unemployment insurance” or “credit  
30     loss-of-income insurance” means insurance issued to provide  
31     indemnity for payments becoming due on a specific loan or other  
32     credit transaction while the debtor is involuntarily unemployed,  
33     as defined in the policy.

34      (g) “Credit property insurance” means insurance that provides  
35     coverage (1) on personal property pledged or offered as collateral  
36     for securing a personal or consumer loan, or (2) on personal  
37     property purchased under an installment sales agreement or through  
38     a consumer credit transaction, but does not include any insurance  
39     that provides theft, collision, liability, property damage, or  
40     comprehensive insurance coverage in any automobile or any other

1 self-propelled vehicle that is designed primarily for operation in  
2 the air or on the highways, waterways, or sea, and its operating  
3 equipment, or that is necessitated by reason of the liability imposed  
4 by law for damages arising out of the ownership, operation,  
5 maintenance, or use of those vehicles. However, that excluded  
6 insurance does include single interest coverage on any of those  
7 vehicles that insures the interest of the creditor in the same manner  
8 as collateral secures a loan.

9 (h) (1) “Guaranteed—~~automobile asset~~ protection” (GAP)  
10 insurance means insurance in which a person agrees to indemnify  
11 a vehicle purchaser or lessee for some or all of the amount owed  
12 on the vehicle at the time of an unrecovered theft or total loss, after  
13 credit for money received from the purchaser’s or lessee’s physical  
14 damage insurer, pursuant to the terms of a loan, lease agreement,  
15 or conditional sales contract used to purchase or lease the vehicle.  
16 GAP insurance, whether sold by a credit insurance agent or another  
17 type of licensee authorized to sell GAP insurance, may also include  
18 a promise to pay up to five thousand dollars (\$5,000) to an insured,  
19 in addition to the sum needed to indemnify the insured for the  
20 amount owed, to purchase or lease another vehicle.

21 (2) GAP insurance does not include, and no insurance license  
22 of any type under this code is required to offer, any of the  
23 following:

24 (A) A ~~promise debt cancellation agreement~~ contained in a  
25 conditional sales contract for the sale of a vehicle by a licensed  
26 motor vehicle dealer, or a ~~promise debt cancellation agreement~~  
27 contained in a lease agreement for the lease of a vehicle by a  
28 licensed motor vehicle dealer or leasing company, to waive some  
29 or all of either of the following:

30 (i) The difference between the actual cash value of the  
31 purchaser’s or lessee’s vehicle at the time of an unrecovered theft  
32 or total loss and the amount owed on the vehicle pursuant to the  
33 terms of a lease agreement or conditional sales contract used to  
34 purchase or lease the vehicle.

35 (ii) The amount owed on the vehicle at the time of an  
36 unrecovered theft or total loss, after credit for money received  
37 from the purchaser’s or lessee’s physical damage insurer or from  
38 a third-party liability insurer. Such a promise may also include a  
39 promise to waive some or all of the amount of the purchaser’s or  
40 lessee’s deductible.

1       (B) A promise by a lender as part of a debt obligation to  
2 purchase or lease a vehicle in which the lender agrees to waive  
3 some or all of either of the following:

4       (i) The difference between the actual cash value of the  
5 purchaser's or lessee's vehicle at the time of an unrecovered theft  
6 or total loss and the amount owed on the vehicle pursuant to the  
7 terms of the debt obligation used to purchase or lease the vehicle.

8       (ii) The amount owed on the vehicle at the time of an  
9 unrecovered theft or total loss, after credit for money received  
10 from the purchaser's or lessee's physical damage insurer or from  
11 a third-party liability insurer. Such a promise may also include a  
12 promise to waive some or all of the amount of the purchaser's or  
13 lessee's deductible.

14      (C) Coverage under subparagraphs (A) and (B) may not result  
15 in a credit balance in favor of the vehicle purchaser or lessee or  
16 include a promise to pay money to a vehicle purchaser or lessee  
17 in addition to waiving some or all of the amount owed, including  
18 some or all of the amount of the purchaser's or lessee's deductible.

19      For purposes of this paragraph, a promise to pay money does not  
20 include, and a dealer, creditor, or lender shall be allowed to offer,  
21 a discount or credit to a purchaser or lessee as an incentive for  
22 purchasing, leasing, or financing a replacement vehicle. However,  
23 ~~the purchaser or lessee shall be required~~ *dealer, creditor, or lender*  
24 *shall require the purchaser or lessee* to use the discount or credit  
25 on a purchase or lease from the dealer or lessor that sold or leased  
26 the original vehicle to the purchaser or lessee, or with the creditor  
27 or lender that financed the purchase or lease of the original vehicle.

28      ~~SEC. 3. This act is an urgency statute necessary for the~~  
29 *immediate preservation of the public peace, health, or safety within*  
30 *the meaning of Article IV of the Constitution and shall go into*  
31 *immediate effect. The facts constituting the necessity are:*

32      *In order to clarify the legality of contracts and the benefits*  
33 *available under those contracts currently being marketed, it is*  
34 *necessary that this act take effect immediately.*