

Assembly Bill No. 125

CHAPTER 24

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

[Approved by Governor May 9, 2011. Filed with Secretary
of State May 10, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 125, Committee on Insurance. Insurance: guaranteed asset protection.

Existing law defines guaranteed automobile 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 rename GAP insurance as guaranteed asset protection insurance and 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 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 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.

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

SECTION 1. Section 1758.96 of the Insurance Code is amended to read:

1758.96. A person licensed pursuant to this article may act as a credit insurance agent for an authorized insurer only with respect to the kinds of insurance specified in this section sold in connection with and incidental to a loan or other extension of credit other than a loan in excess of sixty thousand dollars (\$60,000) relating to or secured by real property where the repayment period does not exceed 10 years. The sale of credit insurance products as specified in this section in excess of sixty thousand dollars (\$60,000) relating to or secured by real property where any compensation, fee, or commission is paid dependent on the placement of credit insurance, requires a license to act as an insurance agent or life agent pursuant to Section 1621 or 1622.

- (a) Credit life insurance.
- (b) Credit disability insurance.
- (c) Credit involuntary unemployment insurance or credit loss-of-income insurance.
- (d) Credit property insurance.
- (e) Guaranteed asset protection (GAP) insurance.
- (f) Any other form of insurance declared by the commissioner to be subject to this section pursuant to subdivision (d) of Section 1758.992.

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

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

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

(b) "Creditor" means a lender of money or a vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest

of that lender, vendor, or lessor, and any affiliate, associate, subsidiary, subcontractor, director, officer, or employee of any of them or any other person in any way associated with any of them.

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

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

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

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

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

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

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

(g) “Credit property insurance” means insurance that provides coverage (1) on personal property pledged or offered as collateral for securing a personal or consumer loan, or (2) on personal property purchased under an installment sales agreement or through a consumer credit transaction, but does not include any insurance that provides theft, collision, liability, property damage, or comprehensive insurance coverage in any automobile or any other self-propelled vehicle that is designed primarily for operation in the air or on the highways, waterways, or sea, and its operating equipment, or that is necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use of those vehicles. However, that excluded insurance does include single interest coverage on any of those vehicles that insures the interest of the creditor in the same manner as collateral secures a loan.

(h) (1) “Guaranteed asset protection” (GAP) insurance means insurance in which a person agrees to indemnify a vehicle purchaser or lessee for some or all of 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 physical damage insurer, pursuant to the terms of a loan, lease agreement, or conditional sales contract used to purchase or lease the vehicle. GAP insurance, whether sold by a credit insurance agent or another type of licensee authorized to sell GAP insurance, may also include a promise to pay up to five thousand dollars (\$5,000) to an insured, in addition to the sum needed to indemnify the insured for the amount owed, to purchase or lease another vehicle.

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

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

(i) The difference between the actual cash value of the purchaser’s or lessee’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 lease agreement or conditional sales contract used to purchase or lease the vehicle.

(ii) 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 physical damage insurer or from a third-party liability insurer. Such a promise may also include a promise to waive some or all of the amount of the purchaser’s or lessee’s deductible.

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

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

(ii) 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 physical damage insurer or from a third-party liability insurer. Such a promise may also include a promise to waive some or all of the amount of the purchaser’s or lessee’s deductible.

(C) Coverage under subparagraphs (A) and (B) may not result in a credit balance in favor of the vehicle purchaser or lessee or include a promise to pay money to a vehicle purchaser or lessee in addition to waiving some or all of the amount owed, including some or all of the amount of the purchaser’s or lessee’s deductible. For purposes of this paragraph, a promise to pay money does not include, and a dealer, creditor, or lender shall be allowed to offer, a discount or credit to a purchaser or lessee as an incentive for purchasing, leasing, or financing a replacement vehicle. However, the

dealer, creditor, or lender shall require the purchaser or lessee to use the discount or credit on a purchase or lease from the dealer or lessor that sold or leased the original vehicle to the purchaser or lessee, or with the creditor or lender that financed the purchase or lease of the original vehicle.

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

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