

AMENDED IN ASSEMBLY FEBRUARY 28, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 436

**Introduced by ~~Committee on Insurance (Solorio (Chair), Hagman (Vice Chair), Carter, Hayashi, Miller, Torres, and Wieckowski)~~
*Assembly Member Solorio***

February 14, 2011

~~An act to amend Section 1758.992 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately. An act to add Section 1720.5 to the Labor Code, relating to public works.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 436, as amended, ~~Committee on Insurance Solorio. Insurance: guaranteed automobile protection. Public works: prevailing wages.~~

Existing law defines "public works," for purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages be paid to workers employed on public works and imposes misdemeanor penalties for a violation of this requirement. Existing law provides that for the purposes of provisions of law relating to the payment of prevailing wages, "public works" includes specified types of construction, alteration, demolition, installation, and repair work.

This bill would revise the definition of "public works" for these purposes to include the construction, alteration, demolition, installation, and repair work done under private contract when specified conditions

are met, including the requirement that the work is performed in connection with the construction or maintenance of renewable energy generation capacity, located on property wholly or partially owned by a school district or community college district, or on public property, specifically to serve a school district or community college district.

Because the violation of prevailing wage requirements by local public entities when engaged in these public works projects would result in the imposition of misdemeanor penalties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1720.5 is added to the Labor Code, to
2 read:

3 1720.5. For the limited purposes of Article 2 (commencing
4 with Section 1770), “public works” also means the construction,
5 alteration, demolition, installation, and repair work done under
6 private contract when both of the following conditions are met:

7 (a) The work is performed in connection with the construction
8 or maintenance of renewable energy generation capacity, located
9 on property wholly or partially owned by a school district or
10 community college district, or on public property, specifically to
11 serve a school district or community college district.

12 (b) The work is performed in connection with a long-term
13 arrangement for the purchase of partially or fully exported power
14 by or for the benefit of the school district or community college
15 district. For purposes of this section, a “long-term arrangement”
16 means an arrangement that will last at least five years.

1 *SEC. 2. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 ~~SECTION 1. Section 1758.992 of the Insurance Code is~~
11 ~~amended to read:~~

12 ~~1758.992. As used in this article, the following definitions have~~
13 ~~the following meanings:~~

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

22 ~~(b) "Creditor" means a lender of money or a vendor or lessor~~
23 ~~of goods, services, property, rights, or privileges, for which~~
24 ~~payment is arranged through a credit transaction, or any successor~~
25 ~~to the right, title, or interest of that lender, vendor, or lessor, and~~
26 ~~any affiliate, associate, subsidiary, subcontractor, director, officer,~~
27 ~~or employee of any of them or any other person in any way~~
28 ~~associated with any of them.~~

29 ~~(c) "Credit insurance agent license" means an agent license~~
30 ~~issued to an individual or organization for the enrollment and sale~~
31 ~~of credit insurance.~~

32 ~~(d) "Credit insurance" includes credit life insurance, credit~~
33 ~~disability insurance, credit involuntary unemployment insurance,~~
34 ~~credit loss-of-income insurance, credit property insurance, or~~
35 ~~guaranteed automobile protection (GAP) insurance.~~

36 ~~Credit insurance also includes any other form of insurance~~
37 ~~offered in connection with an extension of credit that is limited to~~
38 ~~partially or wholly extinguishing that credit obligation that the~~
39 ~~commissioner determines should be designated a form of credit~~
40 ~~insurance.~~

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

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

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

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

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

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

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

16 ~~(A) A promise contained in a conditional sales contract for the~~
17 ~~sale of a vehicle by a licensed motor vehicle dealer, or a promise~~
18 ~~contained in a lease agreement for the lease of a vehicle by a~~
19 ~~licensed motor vehicle dealer or leasing company, to waive some~~
20 ~~or all of either of the following:~~

21 ~~(i) The difference between the actual cash value of the~~
22 ~~purchaser’s or lessee’s vehicle at the time of an unrecovered theft~~
23 ~~or total loss and the amount owed on the vehicle pursuant to the~~
24 ~~terms of a lease agreement or conditional sales contract used to~~
25 ~~purchase or lease the vehicle.~~

26 ~~(ii) The amount owed on the vehicle at the time of an~~
27 ~~unrecovered theft or total loss, after credit for money received~~
28 ~~from the purchaser’s or lessee’s physical damage insurer or from~~
29 ~~a third-party liability insurer. Such a promise may also include a~~
30 ~~promise to waive some or all of the amount of the purchaser’s or~~
31 ~~lessee’s deductible.~~

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

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

39 ~~(ii) The amount owed on the vehicle at the time of an~~
40 ~~unrecovered theft or total loss, after credit for money received~~

1 from the purchaser's or lessee's physical damage insurer or from
2 a third-party liability insurer. Such a promise may also include a
3 promise to waive some or all of the amount of the purchaser's or
4 lessee's deductible.

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

10 For purposes of this paragraph, a promise to pay money does not
11 include, and a dealer, creditor, or lender shall be allowed to offer,
12 a discount or credit to a purchaser or lessee as an incentive for
13 purchasing, leasing, or financing a replacement vehicle. However,
14 the purchaser or lessee shall be required to use the discount or
15 credit on a purchase or lease from the dealer or lessor that sold or
16 leased the original vehicle to the purchaser or lessee, or with the
17 creditor or lender that financed the purchase or lease of the original
18 vehicle.

19 SEC. 2. This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or safety within
21 the meaning of Article IV of the Constitution and shall go into
22 immediate effect. The facts constituting the necessity are:

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