

# HB5907



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB5907

by Rep. Anthony DeLuca

#### SYNOPSIS AS INTRODUCED:

New Act  
215 ILCS 5/2.5

Creates the Guaranteed Asset Protection Waiver Act. Establishes standards to regulate persons offering guaranteed asset protection waivers. Provides for a period of time of at least 30 days from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. Amends the Illinois Insurance Code to exempt guaranteed asset protection waivers from regulation as insurance.

LRB099 20108 MGM 44531 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Guaranteed Asset Protection Waiver Act.

6 Section 5. Intent; scope; findings.

7 (a) The purpose of this Act is to provide a framework  
8 within which guaranteed asset protection waivers are defined  
9 and may be offered within this State.

10 (b) This Act does not apply to:

11 (1) an insurance policy offered by an insurer under the  
12 insurance laws of this State; or

13 (2) a debt cancellation or debt suspension contract  
14 being offered in compliance with 12 CFR Part 37 or 12 CFR  
15 Part 721 or other federal law.

16 (c) Guaranteed asset protection waivers governed under  
17 this Act are not insurance and are exempt from the insurance  
18 laws of this State. Persons marketing, selling, or offering to  
19 sell guaranteed asset protection waivers to borrowers that  
20 comply with this Act are exempt from this State's insurance  
21 licensing requirements.

22 (d) The legislature finds that guaranteed asset protection  
23 waivers are not insurance. All guaranteed asset protection

1       waivers issued before or after the effective date of this Act  
2       shall not be construed as insurance.

3               Section 10. Definitions. The following are terms defined  
4       for purposes of this Act and are not intended to provide actual  
5       terms required in guaranteed asset protection waivers:

6               "Administrator" means a person, other than an insurer or  
7       creditor, that performs administrative or operational  
8       functions pursuant to guaranteed asset protection waiver  
9       programs.

10              "Borrower" means a debtor, retail buyer, or lessee under a  
11       finance agreement.

12              "Creditor" means:

13                      (i) the lender in a loan or credit transaction;

14                      (ii) the lessor in a lease transaction;

15                      (iii) any dealer of motor vehicles that provides credit  
16       to retail buyers of such motor vehicles, provided that such  
17       entities comply with the provisions of this Act;

18                      (iv) the seller in commercial retail installment  
19       transactions; or

20                      (v) the assignees of any of the foregoing to whom the  
21       credit obligation is payable.

22              "Finance agreement" means a loan, lease, or retail  
23       installment sales contract for the purchase or lease of a motor  
24       vehicle.

25              "Free look period" means the period of time of at least 30

1 days from the effective date of the GAP waiver until the date  
2 the borrower may cancel the contract without penalty, fees, or  
3 costs to the borrower.

4 "Guaranteed asset protection waiver" or "GAP waiver" means  
5 a contractual agreement that is part of, or a separate addendum  
6 to, a finance agreement wherein a creditor agrees for a  
7 separate charge to cancel or waive all or part of amounts due  
8 on a borrower's finance agreement in the event of a total  
9 physical damage loss or unrecovered theft of the motor vehicle.

10 "Insurer" means an insurance company licensed, registered,  
11 or otherwise authorized to do business under the insurance laws  
12 of this State.

13 "Motor vehicle" means self-propelled or towed vehicles  
14 designed for personal or commercial use, including, but not  
15 limited to, automobiles, trucks, motorcycles, recreational  
16 vehicles, all terrain vehicles, snowmobiles, campers, boats,  
17 personal watercraft, and motorcycle, boat, camper, and  
18 personal watercraft trailers.

19 "Person" includes an individual, company, association,  
20 organization, partnership, business trust, and corporation and  
21 every form of legal entity.

22 Section 15. Requirements for offering guaranteed asset  
23 protection waivers.

24 (a) GAP waivers may be offered, sold, or provided to  
25 borrowers in this State in compliance with this Act.

1           (b) GAP waivers may, at the option of the creditor, be sold  
2 for a single payment or may be offered with a monthly or  
3 periodic payment option.

4           (c) Notwithstanding any other provision of law, any cost to  
5 the borrower for a guaranteed asset protection waiver entered  
6 into in compliance with the federal Truth in Lending Act and  
7 its implementing regulations must be separately stated and is  
8 not to be considered a finance charge or interest.

9           (d) A retail seller must insure its GAP waiver obligations  
10 under a contractual liability or other insurance policy issued  
11 by an insurer. A creditor, other than a retail seller, may  
12 insure its GAP waiver obligations under a contractual liability  
13 policy or other such policy issued by an insurer. Any such  
14 insurance policy may be directly obtained by a creditor or  
15 retail seller or may be procured by an administrator to cover a  
16 creditor's or retail seller's obligations. Retail sellers that  
17 are lessors on motor vehicles are not required to insure  
18 obligations related to GAP waivers on such leased vehicles.

19           (e) The GAP waiver remains a part of the finance agreement  
20 upon the assignment, sale, or transfer of such finance  
21 agreement by the creditor.

22           (f) Neither the extension of credit, the term of credit,  
23 nor the term of the related motor vehicle sale or lease may be  
24 conditioned upon the purchase of a GAP waiver.

25           (g) Any creditor that offers a GAP waiver must report the  
26 sale of and forward funds received on all such waivers to the

1 designated party, if any, as prescribed in any applicable  
2 administrative services agreement, contractual liability  
3 policy, other insurance policy, or other specified program  
4 documents.

5 (h) Funds received or held by a creditor or administrator  
6 and belonging to an insurer, creditor, or administrator  
7 pursuant to the terms of a written agreement must be held by  
8 such creditor or administrator in a fiduciary capacity.

9 Section 20. Contractual liability or other insurance  
10 policies.

11 (a) Contractual liability or other insurance policies  
12 insuring GAP waivers must state the obligation of the insurer  
13 to reimburse or pay to the creditor any sums the creditor is  
14 legally obligated to waive under the GAP waivers issued by the  
15 creditor and purchased or held by the borrower.

16 (b) Coverage under a contractual liability or other  
17 insurance policy insuring a GAP waiver must also cover any  
18 subsequent assignee upon the assignment, sale, or transfer of  
19 the finance agreement.

20 (c) Coverage under a contractual liability or other  
21 insurance policy insuring a GAP waiver must remain in effect  
22 unless cancelled or terminated in compliance with the  
23 applicable insurance laws of this State.

24 (d) The cancellation or termination of a contractual  
25 liability or other insurance policy must not reduce the

1 insurer's responsibility for GAP waivers (i) issued by the  
2 creditor prior to the date of cancellation or termination and  
3 (ii) for which a premium has been received by the insurer.

4 Section 25. Disclosures. GAP waivers must disclose, as  
5 applicable, in writing and in clear, understandable language  
6 that is easy to read, the following:

7 (1) The name and address of the initial creditor and  
8 the borrower at the time of sale and the identity of any  
9 administrator, if different from the creditor.

10 (2) The purchase price and the terms of the GAP waiver,  
11 including, without limitation, the requirements for  
12 protection, conditions, or exclusions associated with the  
13 GAP waiver.

14 (3) That the borrower may cancel the GAP waiver within  
15 a free look period of at least 30 days as specified in the  
16 waiver and will be entitled to a full refund of the  
17 purchase price provided that no benefits have been  
18 provided.

19 (4) The procedure the borrower must follow, if any, to  
20 obtain GAP waiver benefits under the terms and conditions  
21 of the waiver, including a telephone number and address  
22 where the borrower may apply for waiver benefits.

23 (5) Whether or not the GAP waiver is cancellable after  
24 the free look period and the conditions under which it may  
25 be cancelled or terminated, including the procedures for

1 requesting any refund due.

2 (6) That in order to receive any refund due in the  
3 event of a borrower's cancellation of the GAP waiver  
4 agreement or early termination of the finance agreement  
5 after the free look period of the GAP waiver, the borrower,  
6 in accordance with terms of the waiver, must provide a  
7 written request to cancel to the creditor, the  
8 administrator, or any other party. If cancelling due to  
9 early termination of the finance agreement, the written  
10 request to cancel must be made within 90 days of the  
11 occurrence of the event terminating the finance agreement.

12 (7) The methodology for calculating any refund of the  
13 unearned purchase price of the GAP waiver due in the event  
14 of cancellation of the GAP waiver or early termination of  
15 the finance agreement.

16 (8) None of the following may be conditioned upon the  
17 purchase of the GAP waiver: the extension of credit; the  
18 terms of the credit; or the terms of the related motor  
19 vehicle sale or lease.

20 Section 30. Cancellation.

21 (a) GAP waiver agreements may be cancellable or  
22 non-cancellable after the free look period. GAP waivers must  
23 provide that if a borrower cancels a waiver within the free  
24 look period, the borrower is entitled to a full refund of the  
25 purchase price, provided that no benefits have been provided.



1           (b) In the event of a borrower's cancellation of the GAP  
2 waiver or early termination of the finance agreement after the  
3 agreement has been in effect beyond the free look period, the  
4 borrower is entitled to a refund of any unearned portion of the  
5 purchase price of the waiver unless the waiver provides  
6 otherwise. In order to receive a refund, the borrower, in  
7 accordance with any applicable terms of the waiver, must  
8 provide a written request to the creditor, administrator, or  
9 other party. If cancelling due to early termination of the  
10 finance agreement, the written request to cancel must be made  
11 within 90 days of the event terminating the finance agreement.

12           (c) If the cancellation of a GAP waiver occurs as a result  
13 of a default under the finance agreement or the repossession of  
14 the motor vehicle associated with the finance agreement or any  
15 other termination of the finance agreement, any refund due may  
16 be paid directly to the creditor or administrator and applied  
17 as set forth in subsection (d) of this Section.

18           (d) Any cancellation refund under subsections (a), (b), or  
19 (c) of this Section may be applied by the creditor as a  
20 reduction of the amount owed under the finance agreement,  
21 unless the borrower can show that the finance agreement has  
22 been paid in full.

23           Section 35. Commercial transactions exempted. Section 25,  
24 Section 40, and subsection (c) of Section 15 do not apply to a  
25 GAP waiver offered in connection with a lease or retail

1 installment sale associated with a commercial transaction.

2 Section 40. Enforcement. The Secretary of Financial and  
3 Professional Regulation may take any action that is necessary  
4 or appropriate to enforce the provisions of this Act and to  
5 protect guaranteed asset protection waiver holders in this  
6 State. After proper notice and opportunity for hearing, the  
7 Secretary may:

8 (1) order the creditor, administrator, or any other  
9 person not in compliance with this Act to cease and desist  
10 from further guaranteed asset protection waiver-related  
11 operations that are in violation of this Act; and

12 (2) impose a penalty of not more than \$500 per  
13 violation and no more than \$10,000 in the aggregate for all  
14 violations of similar nature; for purposes of this Act,  
15 violations are of a similar nature if the violation  
16 consists of the same or similar course of conduct, action,  
17 or practice, irrespective of the number of times the  
18 conduct, action, or practice that is determined to be a  
19 violation of the Act occurred.

20 Section 97. Severability. The provisions of this Act are  
21 severable under Section 1.31 of the Statute on Statutes.

22 Section 900. The Illinois Insurance Code is amended by  
23 changing Section 2.5 as follows:

1 (215 ILCS 5/2.5)

2 Sec. 2.5. Exemptions ~~Exemption~~.

3 (a) This Code shall not be construed to apply to the  
4 administration of the Drycleaner Environmental Response Trust  
5 Fund under the Drycleaner Environmental Response Trust Fund  
6 Act.

7 (b) This Code shall not be construed to apply to guaranteed  
8 asset protection waivers regulated under the Guaranteed Asset  
9 Protection Waiver Act.

10 (Source: P.A. 90-502, eff. 8-19-97.)