

AMENDED IN ASSEMBLY MARCH 7, 2011
AMENDED IN ASSEMBLY FEBRUARY 22, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 125

Introduced by Committee on Insurance

January 10, 2011

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~~^{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 1.**

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.*