

State of Wisconsin



2017 Assembly Bill 663

Date of enactment: **March 28, 2018**
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2017 WISCONSIN ACT 161

AN ACT to repeal 429.104 (13) (a) and 429.204 (2) and (3); to renumber and amend 429.204 (1); to consolidate, renumber and amend 429.104 (13) (intro.) and (b); to amend 30.53 (title), 429.104 (13m) and 429.205 (1) (c); to repeal and recreate 424.201 (3); and to create 23.33 (2) (dm) 5., 23.335 (5) (g), 30.53 (5), 218.0148, 350.12 (3) (c) 5. and 429.104 (13k) of the statutes; relating to: guaranteed asset protection products sold in connection with vehicle credit sales, loans, and consumer leases.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 23.33 (2) (dm) 5. of the statutes is created to read:

23.33 (2) (dm) 5. Any all-terrain vehicle or utility terrain vehicle dealer or creditor may offer or sell guaranteed asset protection waivers in connection with the retail sale or lease of all-terrain vehicles or utility terrain vehicles in this state if the dealer or creditor complies with the same requirements applicable with respect to motor vehicles under s. 218.0148. Any guaranteed asset protection waiver offered or sold under this subdivision shall be treated the same as one offered or sold under s. 218.0148, including that the guaranteed asset protection waiver is not insurance.

SECTION 2. 23.335 (5) (g) of the statutes is created to read:

23.335 (5) (g) Any off-highway motorcycle dealer or creditor may offer or sell guaranteed asset protection waivers in connection with the retail sale or lease of off-highway motorcycles in this state if the dealer or creditor complies with the same requirements applicable with respect to motor vehicles under s. 218.0148. Any guaranteed asset protection waiver offered or sold under this

paragraph shall be treated the same as one offered or sold under s. 218.0148, including that the guaranteed asset protection waiver is not insurance.

SECTION 3. 30.53 (title) of the statutes is amended to read:

30.53 (title) Certificate of origin; requirements; contents; guaranteed asset protection waivers.

SECTION 4. 30.53 (5) of the statutes is created to read:

30.53 (5) **GUARANTEED ASSET PROTECTION WAIVERS.** Any dealer in boats or creditor may offer or sell guaranteed asset protection waivers in connection with the retail sale or lease of boats in this state if the dealer or creditor complies with the same requirements applicable with respect to motor vehicles under s. 218.0148. Any guaranteed asset protection waiver offered or sold under this subsection shall be treated the same as one offered or sold under s. 218.0148, including that the guaranteed asset protection waiver is not insurance.

SECTION 5. 218.0148 of the statutes is created to read:

218.0148 Guaranteed asset protection agreements. (1) DEFINITIONS. In this section:

(a) "Administrator" means a person, other than an insurer or creditor, that performs administrative or opera-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

tional functions pursuant to guaranteed asset protection waiver programs.

(b) "Borrower" means a retail buyer who purchases a motor vehicle under a retail installment contract, a lessee, or any other debtor to whom a creditor extends credit for the purchase or refinancing of a motor vehicle.

(c) "Creditor" means a sales finance company, including any motor vehicle dealer described in s. 218.0101 (34) (b), a lessor, or any other lender that extends credit to a borrower for the purchase or refinancing of a motor vehicle, but does not include a depository institution, as defined in 12 USC 1813 (c) (1), or any state or federal credit union.

(d) "Finance agreement" means any of the following:

1. A retail installment contract.
2. A loan agreement in which a creditor extends credit to a borrower for the purchase or refinancing of a motor vehicle.
3. A consumer lease.

(e) "Guaranteed asset protection waiver" means a contractual obligation under which a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle specified in the finance agreement.

(2) **GUARANTEED ASSET PROTECTION WAIVERS AUTHORIZED.** (a) Subject to par. (b), guaranteed asset protection waivers may be offered and sold to borrowers in this state in compliance with the requirements under this section. A guaranteed asset protection waiver must be part of, or a separate addendum to, the finance agreement for the motor vehicle.

(b) A creditor may not require a borrower to purchase a guaranteed asset protection waiver.

(c) Guaranteed asset protection waivers may, at the option of the creditor, be offered and sold upon a single payment or with required periodic payments.

(d) A guaranteed asset protection waiver may be assigned and the guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(e) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the federal Truth in Lending Act, 15 USC 1601 et seq., and regulations adopted under that act, shall be separately stated and is not considered a finance charge or interest.

(f) A retail seller shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its guaranteed asset protection waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor or retail seller or may be procured by an administrator

to cover a creditor's or retail seller's obligations. However, if a retail seller is also a lessor, the retail seller is not required to insure obligations related to guaranteed asset protection waivers on motor vehicles leased under a consumer lease.

(g) Any creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on, all guaranteed asset protection waivers to the designated party, if any, prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

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

(i) Any borrower or potential borrower desiring a guaranteed asset protection waiver shall give a specific, separately signed, affirmative written indication of the borrower's or potential borrower's desire to purchase a guaranteed asset protection waiver after receiving the disclosures required in sub. (3). A separate indication includes a signed, written, affirmative indication within a guaranteed asset protection waiver that is an addendum to the finance agreement.

(j) A creditor may, as a provision within a guaranteed asset protection waiver, provide a discount or credit, or may waive or cancel an additional amount, as an incentive for purchasing, leasing, or financing a replacement vehicle. However, the creditor shall require the borrower to use the benefit on a purchase or lease from the retail seller that sold the original vehicle to the borrower, or with the creditor that financed the purchase or lease of the original vehicle. Inclusion of this provision does not cause the guaranteed asset protection waiver to be considered insurance. Notwithstanding any other provision of law, this paragraph also applies to any state or federally chartered bank or credit union.

(3) **DISCLOSURE REQUIREMENTS FOR OFFERING GUARANTEED ASSET PROTECTION WAIVERS.** (a) No creditor may offer or sell to a borrower a guaranteed asset protection waiver in this state unless all of the following conspicuous written disclosures are provided prior to or concurrent with the execution of the guaranteed asset protection waiver agreement:

1. That the purchase of the guaranteed asset protection waiver is optional and that neither the extension of credit, nor the terms of the credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver.

2. The cost and terms of the guaranteed asset protection waiver, including terms relating to the borrower's right to cancel the waiver and obtain a full or partial refund as provided under sub. (4).

3. The name and address of the initial creditor and the borrower at the time of the sale or lease, and the identity of any administrator if different from the creditor.

4. The purchase price and the terms of the guaranteed asset protection waiver, including the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.

5. The procedure the borrower must follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

(b) Each guaranteed asset protection waiver agreement shall indicate that the agreement is between the borrower and the creditor that sold the guaranteed asset protection waiver and, after any assignment, between the borrower and the assignee.

(4) TERMINATION OR CANCELLATION OF GUARANTEED ASSET PROTECTION WAIVER. (a) A guaranteed asset protection waiver may be canceled by the borrower at any time without penalty.

(b) A guaranteed asset protection waiver terminates no later than the earliest of the following events:

1. Cancellation by the borrower.
2. Payment in full by the borrower of the related credit transaction.
3. Expiration of any redemption period after a repossession or surrender of the motor vehicle specified in the finance agreement.

4. Upon total physical damage loss or unrecovered theft of the motor vehicle specified in the finance agreement, after the creditor has waived the gap amount or it is determined that no gap amount exists.

5. Upon any other event that occurs earlier than the events listed in subs. 1. to 4., as specified in the guaranteed asset protection waiver.

(c) Subject to par. (d), upon cancellation or termination of a guaranteed asset protection waiver, the borrower is entitled to a refund as follows:

1. If the cancellation or termination occurs within 30 days after the date the borrower purchased the guaranteed asset protection waiver, the borrower is entitled to a full refund of the guaranteed asset protection waiver cost or a full credit of the guaranteed asset protection waiver cost plus the amount of applicable finance charges.

2. If the cancellation or termination occurs later than 30 days after the date the borrower purchased the guaranteed asset protection waiver, the borrower is entitled to a partial refund or credit of the guaranteed asset protection waiver cost. At a minimum, the partial refund shall be calculated by a method no less favorable to the borrower than the "rule of 78," described generally in s. 422.209 (2) (a).

(d) No refund is required upon cancellation or termination of a guaranteed asset protection waiver if there has been a total physical damage loss or unrecovered theft of

the motor vehicle specified in the finance agreement and the borrower has or will receive the benefit of the guaranteed asset protection waiver.

(e) When calculating the refunds for the unearned guaranteed asset protection waiver charges on agreements that contract for the "rule of 78" method, refunds shall be based on the number of full months earned from the contract date to the actual termination date, counting a fractional month of 16 days or more as a full month. When calculating refunds for the unearned guaranteed asset protection waiver charge on agreements that contract for a pro rata refunding method and a monthly pro rata method is used, the number of full months earned shall be counted in a similar manner.

(f) No cancellation fee, termination fee, or similar fee may be assessed in connection with the cancellation or termination of a guaranteed asset protection waiver.

(g) Upon cancellation or termination of a guaranteed asset protection waiver, the creditor shall make an appropriate refund or credit of the guaranteed asset protection waiver charge or shall cause to be made an appropriate refund or credit by instructing in writing the appropriate party to make the refund or credit.

(5) APPLICABILITY OF OTHER LAW. (a) In addition to any requirement applicable under this section, a creditor offering or selling to a borrower a guaranteed asset protection waiver in this state shall comply with any applicable requirement under chs. 421 to 427.

(b) Guaranteed asset protection waivers are not insurance and the insurance laws of this state do not apply to them.

(6) COMMERCIAL INSTALLMENT SALES. This section does not apply to a borrower who purchases a motor vehicle under a retail installment contract if, as provided in s. 218.0142 (11), s. 218.0142 does not apply to the retail installment sale of the motor vehicle. However, a guaranteed asset protection waiver offered or sold in conjunction with the purchase of a motor vehicle to be used primarily for business or commercial purposes, or in conjunction with the lease of a motor vehicle that is not a consumer lease, is not insurance.

(7) TRAILERS. This section applies with respect to towed vehicles, including trailers not required to be registered under ch. 341, to the same extent it applies to motor vehicles, including that a guaranteed asset protection waiver offered or sold in connection with the sale or lease of a towed vehicle is not insurance.

SECTION 6. 350.12 (3) (c) 5. of the statutes is created to read:

350.12 (3) (c) 5. Any snowmobile dealer or creditor may offer or sell guaranteed asset protection waivers in connection with the retail sale or lease of snowmobiles in this state if the dealer or creditor complies with the same requirements applicable with respect to motor vehicles under s. 218.0148. Any guaranteed asset protection waiver offered or sold under this subdivision shall be

treated the same as one offered or sold under s. 218.0148, including that the guaranteed asset protection waiver is not insurance.

SECTION 7. 424.201 (3) of the statutes is repealed and recreated to read:

424.201 (3) A guaranteed asset protection waiver, as defined in s. 218.0148 (1) (e).

SECTION 8. 429.104 (13) (intro.) and (b) of the statutes are consolidated, renumbered 429.104 (13g) and amended to read:

429.104 (13g) “Gap protection” insurance” means any of the following: ~~(b) Insurance~~ insurance coverage, offered by an insurer authorized to transact business in this state, that provides that another person is liable for the gap amount.

SECTION 9. 429.104 (13) (a) of the statutes is repealed.

SECTION 10. 429.104 (13k) of the statutes is created to read:

429.104 (13k) “Gap waiver” means a provision in a consumer lease offered or sold pursuant to the terms of s. 218.0148.

SECTION 11. 429.104 (13m) of the statutes is amended to read:

429.104 (13m) “Gross capitalized cost” means the sum of all amounts capitalized in the consumer lease that, after subtracting the capitalized cost reduction, amortizes to the residual value by the depreciation portion of the periodic lease payments over the scheduled term of the lease or, for a single-payment lease, the single payment. These amounts may include taxes; fees for registration, license, acquisition, administration and assignment; other fees; charges for insurance, service contracts and extended warranties; and charges ~~for a waiver of the contractual obligation to pay the gap amount,~~ for accessories and their installation, for other services and benefits incidental to the consumer lease, and for delivering, servic-

ing, repairing or improving the vehicle. With respect to a vehicle or other property traded in connection with a consumer lease, the term may include the outstanding unpaid balance of the amount financed under a consumer loan, as defined in s. 421.301 (12), or a retail installment contract, as defined in s. 218.0101 (32), or the unpaid balance of any early termination costs under a lease or other obligation of the lessee. The term does not include any rent charge.

SECTION 12. 429.204 (1) of the statutes is renumbered 429.204 and amended to read:

429.204 Gap amount; notice; waiver. If a consumer lease provides that the lessee is responsible for any or all of the gap amount, the consumer lease shall conspicuously disclose this fact, using the term “gap amount”. The acceptance of a consumer lease may not be conditioned upon the lessee’s agreement to gap protection ~~insurance or a gap waiver.~~ Section 218.0148 governs gap waivers.

SECTION 13. 429.204 (2) and (3) of the statutes are repealed.

SECTION 14. 429.205 (1) (c) of the statutes is amended to read:

429.205 (1) (c) Any security interest in the leased vehicle or in any proceeds, refunds for cancellation or any other rights of the lessee with respect to the consumer lease or the leased vehicle, including any insurance contracts, ~~gap protection contracts~~ waivers or gap insurance, repair contracts and extended warranty or maintenance service contracts.

SECTION 15. Initial applicability.

(1) This act first applies to guaranteed asset protection waivers and gap waivers entered into on the effective date of this subsection.

SECTION 16. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.