

**CHAPTER 207**

**SB 119 – FINAL VERSION**

03/12/2015 0706s

3June2015... 1343h

06/11/2015 2126EBA

2015 SESSION

15-0883

01/04

SENATE BILL **119**

AN ACT relative to the regulation of consumer guaranty contracts by the insurance department and guaranteed asset protection waivers by the banking department.

SPONSORS: Sen. Carson, Dist 14; Rep. Hunt, Ches 11

COMMITTEE: Commerce

ANALYSIS

This law establishes procedures for regulation of guaranteed asset protection waivers offered in New Hampshire.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT relative to the regulation of consumer guaranty contracts by the insurance department and guaranteed asset protection waivers by the banking department.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

207:1 Consumer Guarantee Contracts; Definitions. Amend RSA 415-C:1, XIV to read as follows:

XIV.(a) "Service contract" means a contract or agreement for a separately stated consideration, and a specified period of time or usage, covering any consumer good, including, but not limited to, any automobile, household system, or appliance, which promises to provide for the service, repair, replacement, or maintenance of the property necessitated by operational or structural failure due to: a defect in materials or workmanship; normal wear and tear; power surges; or accidental damage from handling. This definition shall apply regardless of the name or label of such contract and regardless of the nature of the service contract obligor. A service contract may provide for the payment of incidental indemnity when service repair or replacement is not feasible or economical or under limited circumstances, including, but not limited to, towing, rental, road hazard, emergency road service, lodging, meals, ~~and~~ food loss, **or other minor expenses that directly relate to the failure of the consumer good.**

**(b) "Service contract" includes a contract or agreement for a separately stated consideration, and a specified period of time or usage that provides for any of the following:**

**(1) Repair or replacement of tires and/or wheels on an automobile damaged as a result of coming into contact with road hazards including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;**

**(2) Removal of dents, dings, or creases on an automobile that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing automobile body panels, sanding, bonding, or painting;**

**(3) Repair of chips or cracks in or the replacement of an automobile windshield as a result of damage caused by road hazards; or**

**(4) Replacement of an automobile key or key-fob if the key or key-fob becomes inoperable or is lost or stolen.**

207:2 New Section; Retail Installment Sales of Motor Vehicles. Amend RSA 361-A by inserting after section 7-a the following new section:

361-A:7-b Guaranteed Asset Protection Waivers. Persons subject to or licensed under this chapter may offer, sell, and provide guaranteed asset protection waivers (GAP waivers), as defined in RSA 361-E:2, I(f), in accordance with RSA 361-E. Any violation of RSA 361-E is a violation of this chapter.

207:3 Consumer Guarantee Contracts; Prohibited Acts and Terms. Amend RSA 415-C:7, III(c) to read as follows:

(c) The consumer does not have the right to bring an action to enforce the terms of the contract or otherwise challenge the denial of a claim which the consumer believes is wrongful~~[-subject to the provisions or any alternative dispute resolution procedure specified in the consumer guaranty contract].~~ **Consumer guaranty contracts may include provisions requiring the parties to submit to alternative dispute resolution, including a provision requiring binding arbitration that would expressly limit the right of the consumer to bring an action in a court of law, if such provision complies with and does not impede the rights of the consumer as provided under RSA 542. All arbitration provisions shall state that they are subject to RSA 542; or**

207:4 Consumer Guarantee Contracts; Reimbursement Insurance Policies. Amend RSA 415-C:8, I(b) to read as follows:

(b) The obligation of the reimbursement insurer to reimburse or, **in the event of the obligor's non-performance, to** pay on behalf of the obligor any sums the obligor is legally obligated to pay or shall provide the service which the obligor is legally obligated to undertake according to the obligor's contractual obligations under the consumer guaranty contracts issued or sold by the obligor. In the event the obligor does not provide for covered services within 60 days after the contract holder has submitted proof of loss to the obligor, the contract holder is entitled to apply directly to the reimbursement insurance company for satisfaction.

207:5 Requirements and Prohibitions as to Retail Installment Contracts. Amend RSA 361-A:7, II(d) to read as follows:

(d) The amount, if any, included for insurance, ***guaranteed asset protection waiver***, and other benefits, specifying the types of coverage and benefits, stating separately by rate or in terms of dollars the amount charged for credit sickness, accident and life insurance, whether issued under a group policy or not;

207:6 New Subparagraph; Consumer Guaranty Contracts; Definitions. Amend RSA 415-C:1, III(c) by inserting after subparagraph (6) the following new subparagraph:

(7) Debt cancellation or debt suspension contracts between a creditor and a borrower for the cancellation or suspension of the debt.

207:7 New Chapter; Guaranteed Asset Protection Waivers. Amend RSA by inserting after chapter 361-D the following new chapter:

## CHAPTER 361-E

### GUARANTEED ASSET PROTECTION WAIVERS

#### 361-E:1 Scope.

I. The purpose of this chapter is to provide a framework within which retail sellers and sales finance companies may offer guaranteed asset protection waivers in New Hampshire.

II. This chapter shall not apply to:

- (a) An insurance policy offered by an insurer under the insurance laws of this state; or
- (b) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. part 37, 12 C.F.R. part 721, or other federal law.

#### 361-E:2 Definitions.

I. In this chapter:

- (a) “Administrator” means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.
- (b) “Borrower” means any retail buyer, as defined in RSA 361-A:1, IX.
- (c) “Creditor” means:
  - (1) Any retail seller, as defined in RSA 361-A:1, XII; or
  - (2) Any sales finance company, as defined in RSA 361-A:1, XIII; or
  - (3) The assignees of any of the foregoing to whom the credit obligation is payable.
- (d) “Finance agreement” means a retail installment contract for the purchase of a motor vehicle governed by RSA 361-A.
- (e) “Free look period” means the period of time from the effective date of the guaranteed asset protection (GAP) waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.
- (f) “Guaranteed asset protection waiver” or “GAP waiver” means a contractual agreement wherein 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, which agreement shall be part of, or a separate addendum to, the finance agreement.

(g) “Insurer” means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(h) “Motor vehicle” means a motor vehicle, as defined in RSA 361-A:1, VII.

(i) “Person” includes an individual, company, association, organization, partnership, business trust, corporation, limited liability company, and every other form of legal entity.

II. The terms defined in this section are not intended to provide actual terms required in guaranteed asset protection waivers.

### 361-E:3 Requirements for Offering Guaranteed Asset Protection Waivers.

I. GAP waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

II. Any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. section 1601 et seq., and the regulations adopted thereunder, as amended from time to time, shall be separately stated and shall not be considered a finance charge or interest.

III. The GAP waiver shall remain a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor.

IV. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale shall be conditioned upon the purchase of a GAP waiver.

V. 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 such creditor or administrator in a fiduciary capacity.

361-E:4 Disclosures. Guaranteed asset protection waivers shall disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

I. The name and address of the initial creditor and the borrower at the time of sale, the identity of any administrator if different from the creditor, and a statement that the initial creditor may assign the GAP waiver with the finance agreement to a sales finance company or other assignee.

II. The purchase price and the terms of the GAP waiver, including the requirements for protection, conditions, or exclusions associated with the GAP waiver.

III. That the borrower may cancel the GAP waiver within a free look period as specified in the waiver, and shall be entitled to a full refund of the purchase price, if no benefits have been provided.

IV. The procedure the borrower shall follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

V. Whether or not the GAP waiver is cancellable after the free look period and the conditions under which it may be cancelled or terminated, including the procedures for requesting any refund due.

VI. That in order to receive any refund due in the event of a borrower’s cancellation of the GAP waiver agreement or early termination of the finance agreement after the free look period of the GAP waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or such other party. If the GAP waiver is being cancelled due to the termination of the finance agreement, a written notice to cancel shall be sent to the creditor, administrator, or other such party within 90 days of the occurrence of the event terminating the finance agreement.

VII. The methodology for calculating any refund of the unearned purchase price of the GAP waiver due, in the event of cancellation of the GAP waiver or early termination of the finance agreement.

VIII. That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale, shall be conditioned upon the purchase of the GAP waiver.

#### 361-E:5 Cancellation.

I. Guaranteed asset protection waiver agreements may be cancellable or noncancellable after the free look period. GAP waivers shall provide that if a borrower cancels a waiver within the free look period, the borrower shall be entitled to a full refund of the purchase price, if no benefits have been provided. The free look period shall not be less than 30 days.

II. In the event of a borrower's cancellation of the GAP waiver after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the GAP waiver unless the GAP waiver provides otherwise. In order to receive a refund, the borrower shall, in accordance with the terms of the waiver, provide a written request to cancel to the creditor, administrator, or other such party. If the GAP waiver is being cancelled due to the early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator, or other party, within 90 days of the event terminating the finance agreement. No refund shall be paid or credited if benefits have been provided.

III. If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in paragraph IV.

IV. Any cancellation refund under paragraphs I, II, or III, may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

207:8 Repeal. RSA 415-C:1, III(b)(3), relative to debt cancellation or debt suspension contracts, is repealed.

207:9 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 6, 2015

Effective Date: September 4, 2015