

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 23-0744.01 Christopher McMichael x4775

**HOUSE BILL 23-1181**

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**HOUSE SPONSORSHIP**

**Mauro, Snyder**

**SENATE SPONSORSHIP**

**Hinrichsen and Mullica,**

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**House Committees**  
Business Affairs & Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE REGULATION OF GUARANTEED ASSET PROTECTION**  
102 **AGREEMENTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill codifies and updates rules regarding guaranteed asset protection agreements (GAP agreement). A GAP agreement relieves a consumer of liability for all or part of the deficiency balance remaining after the payment of all insurance proceeds upon the total loss of the consumer's motor vehicle.

**Section 2** of the bill permits a creditor to collect additional charges

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing law.*  
*Dashes through the words or numbers indicate deletions from existing law.*

or fees for a GAP agreement as part of a consumer credit transaction.

**Section 3:**

- Sets conditions and provisions that must be a part of any GAP agreement in order for it to be valid and for a creditor to receive an additional charge or fee in relation to the GAP agreement;
- Establishes the method by which the deficiency balance is calculated and what the consumer will be owed pursuant to the GAP agreement in the event of a total loss;
- Details when a consumer must submit the consumer's GAP agreement claim after a total loss;
- Establishes the maximum fee that may be charged for a GAP agreement, which must not exceed 5% of the amount financed in the consumer credit transaction; and
- Prohibits the sale of a GAP agreement in specified circumstances.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds and declares that:

4 (a) A guaranteed asset protection agreement (GAP agreement) is  
5 either an insurance policy or contractual term that protects a consumer in  
6 the event that the consumer's motor vehicle that is collateral used to  
7 secure credit is deemed a total loss;

8 (b) The attorney general's office has regulated GAP agreements  
9 for nearly two decades, but there have been few updates to the rules  
10 during that time; and

11 (c) By codifying and updating the GAP agreement rules that are  
12 in the code of Colorado regulations, the general assembly will provide  
13 Colorado consumers with stability, predictability, and efficiency  
14 regarding GAP agreements, while ensuring a fair and viable market for  
15 GAP agreement providers and making important updates to the laws that  
16 govern these agreements.

1           **SECTION 2.** In Colorado Revised Statutes, 5-2-202, **amend** (1)  
2 introductory portion; and **add** (1)(c.5) and (1)(c.7) as follows:

3           **5-2-202. Additional charges.** (1) In addition to the finance  
4 charge permitted by this ~~article~~ ARTICLE 2 and in a consumer lease, a  
5 creditor may contract for and receive the following additional charges in  
6 connection with a consumer credit transaction:

7           (c.5) CHARGES FOR DEBT CANCELLATION CONTRACTS OR DEBT  
8 SUSPENSION CONTRACTS OFFERED IN COMPLIANCE WITH 12 CFR PART 37  
9 OR 12 CFR PART 721 OR OTHER FEDERAL LAW;

10           (c.7) CHARGES FOR GUARANTEED ASSET PROTECTION, AS DEFINED  
11 IN SECTION 5-2-215 (1)(c), OFFERED IN COMPLIANCE WITH SECTION  
12 5-2-215;

13           **SECTION 3.** In Colorado Revised Statutes, **add** 5-2-215 as  
14 follows:

15           **5-2-215. Guaranteed asset protection agreements - definitions**  
16 **- rules.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
17 REQUIRES:

18           (a) "CONSUMER FINANCE AGREEMENT" OR "FINANCE AGREEMENT"  
19 MEANS A RETAIL INSTALLMENT SALES CONTRACT OR CONSUMER CREDIT  
20 TRANSACTION, OTHER THAN A CONSUMER LEASE, FOR THE PURCHASE OR  
21 REFINANCE OF A MOTOR VEHICLE.

22           (b) "DEFICIENCY BALANCE" MEANS THE AMOUNT OWED BY THE  
23 CONSUMER UNDER A CONSUMER FINANCE AGREEMENT AT THE TIME OF A  
24 TOTAL LOSS OF THE CONSUMER'S MOTOR VEHICLE THAT WAS COLLATERAL  
25 SECURING THE CONSUMER FINANCE AGREEMENT, CALCULATED IN  
26 ACCORDANCE WITH THE TERMS OF THE FINANCE AGREEMENT.

27           (c) (I) "GUARANTEED ASSET PROTECTION AGREEMENT" OR "GAP

1 AGREEMENT" MEANS AN AGREEMENT, STRUCTURED AS EITHER AN  
2 INSURANCE POLICY OR A CONTRACTUAL TERM, SOLD OR WRITTEN IN  
3 CONNECTION WITH A CONSUMER FINANCE AGREEMENT, THAT RELIEVES  
4 ALL OR PART OF A CONSUMER'S LIABILITY FOR THE DEFICIENCY BALANCE  
5 REMAINING, AFTER THE PAYMENT OF ALL INSURANCE PROCEEDS, UPON THE  
6 TOTAL LOSS OF THE CONSUMER'S MOTOR VEHICLE THAT WAS COLLATERAL  
7 SECURING THE CONSUMER FINANCE AGREEMENT, WHETHER THE LOSS  
8 OCCURRED FROM THE TOTAL DESTRUCTION OF THE MOTOR VEHICLE, THE  
9 UNRECOVERED THEFT OF THE MOTOR VEHICLE, OR BOTH.

10 (II) A GAP AGREEMENT MAY ALSO PROVIDE A CONSUMER WITH A  
11 BENEFIT THAT WAIVES A CERTAIN AMOUNT OR PROVIDES A CREDIT FOR A  
12 CERTAIN AMOUNT TOWARD THE PURCHASE OF A REPLACEMENT MOTOR  
13 VEHICLE.

14 (d) "GUARANTEED ASSET PROTECTION FEE" OR "GAP FEE" MEANS  
15 THE FEE, CHARGE, PREMIUM, OR OTHER AMOUNT THAT A CREDITOR MAY  
16 CHARGE A CONSUMER FOR A GUARANTEED ASSET PROTECTION  
17 AGREEMENT.

18 (e) "MOTOR VEHICLE" MEANS A SELF-PROPELLED OR TOWED  
19 VEHICLE DESIGNED FOR PERSONAL OR COMMERCIAL USE, INCLUDING BUT  
20 NOT LIMITED TO AUTOMOBILES, TRUCKS, MOTORCYCLES, RECREATIONAL  
21 VEHICLES, ALL-TERRAIN VEHICLES, SNOWMOBILES, CAMPERS, BOATS,  
22 PERSONAL WATERCRAFT, AND RELATED TRAILERS.

23 (f) "RETAIL INSTALLMENT SALES CONTRACT" MEANS A RETAIL  
24 CONTRACT TO SELL A MOTOR VEHICLE TO A CONSUMER IN WHICH:

25 (I) THE CONSUMER AGREES TO PAY THE RETAIL SELLER OVER TIME,  
26 IN INSTALLMENTS, THE COST OF THE MOTOR VEHICLE PLUS INTEREST; AND

27 (II) THE RETAIL SELLER TAKES OR RETAINS A SECURITY INTEREST

1 IN THE MOTOR VEHICLE.

2 (2) A CREDITOR MAY CONTRACT FOR, CHARGE, AND RECEIVE A  
3 GAP FEE FOR A GAP AGREEMENT, AS A CHARGE THAT IS IN ADDITION TO  
4 ANY FINANCE CHARGE IMPOSED OR AUTHORIZED PURSUANT TO SECTION  
5 5-2-201, IF THE GAP AGREEMENT SATISFIES THE REQUIREMENTS OF THIS  
6 SECTION AND IF ALL OF THE FOLLOWING CONDITIONS ARE MET AS PART OF  
7 THE GAP AGREEMENT:

8 (a) THE CREDITOR PROVIDES TO THE CONSUMER A WRITTEN  
9 NOTICE, IN BOLDFACE TYPE, THAT SPECIFIES THE FOLLOWING:

10 (I) THAT THE PURCHASE OF A GAP AGREEMENT IS NOT REQUIRED  
11 IN ORDER TO OBTAIN THE CREDIT OR ANY PARTICULAR OR FAVORABLE  
12 CREDIT TERMS;

13 (II) THE GAP FEE;

14 (III) THAT THE CONSUMER MAY WISH TO CONSULT AN INSURANCE  
15 AGENT TO DETERMINE WHETHER SIMILAR COVERAGE MAY BE OBTAINED  
16 THROUGH AN INSURANCE PRODUCT AND AT WHAT COST;

17 (IV) THAT THE GAP AGREEMENT BENEFITS MAY DECREASE OVER  
18 THE TERM OF THE FINANCE AGREEMENT;

19 (V) THAT THE CONSUMER MAY CANCEL THE GAP AGREEMENT FOR  
20 ANY OR NO REASON WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF  
21 THE GAP AGREEMENT, AND THAT THE CONSUMER WILL RECEIVE A FULL  
22 REFUND OF THE GAP FEE SO LONG AS NO LOSS OR EVENT COVERED BY THE  
23 GAP AGREEMENT HAS OCCURRED; AND

24 (VI) THAT THE GAP AGREEMENT IS NOT A SUBSTITUTE FOR  
25 COLLISION OR PROPERTY DAMAGE INSURANCE;

26 (b) (I) THE CREDITOR PROVIDES THE CONSUMER WITH A  
27 CANCELLATION METHOD THAT IS CONSPICUOUSLY DISPLAYED IN THE GAP

1 AGREEMENT OR IN A SEPARATE, WRITTEN CANCELLATION FORM AND THAT  
2 INCLUDES:

3 (A) THE NAME, MAILING ADDRESS, E-MAIL ADDRESS, OR PHONE  
4 NUMBER THAT MAY BE USED TO CANCEL THE GAP AGREEMENT;

5 (B) A CLEAR AND CONSPICUOUS STATEMENT THAT THE CONSUMER  
6 HAS AN UNCONDITIONAL RIGHT TO CANCEL THE GAP AGREEMENT FOR A  
7 FULL REFUND WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE  
8 GAP AGREEMENT; AND

9 (C) A CLEAR AND CONSPICUOUS STATEMENT THAT THE CONSUMER  
10 MUST COMPLETE AND RETURN THE CANCELLATION FORM OR SEND OTHER  
11 WRITTEN NOTICE OF CANCELLATION TO THE MAILING ADDRESS OR E-MAIL  
12 ADDRESS THAT THE CREDITOR PROVIDES OR CALL THE PHONE NUMBER  
13 LISTED IN ORDER TO CANCEL THE GAP AGREEMENT.

14 (II) IF A CREDITOR WANTS TO PROVIDE AN ALTERNATIVE  
15 CANCELLATION METHOD OTHER THAN THE ONE DESCRIBED IN SUBSECTION  
16 (2)(b)(I) OF THIS SECTION, THE CREDITOR MUST CLEARLY AND  
17 CONSPICUOUSLY STATE THE ALTERNATIVE METHOD AND INSTRUCTIONS ON  
18 HOW TO CANCEL THE GAP AGREEMENT IN THE AGREEMENT;

19 (c) THE CONSUMER PROVIDES TO THE CREDITOR AN AFFIRMATIVE,  
20 WRITTEN AUTHORIZATION FOR THE PURCHASE OF THE GAP AGREEMENT;  
21 AND

22 (d) THE CREDITOR DELIVERS TO THE CONSUMER, IN WRITING, THE  
23 GAP AGREEMENT, WHICH MUST INCLUDE:

24 (I) A WRITTEN DESCRIPTION OF THE GAP AGREEMENT'S BENEFITS,  
25 TERMS, CONDITIONS, AND EXCLUSIONS;

26 (II) A CLEAR AND CONSPICUOUS STATEMENT THAT DISCLOSES ANY  
27 LIMITATION IN COVERAGE UNDER THE GAP AGREEMENT; AND

1 (III) THE PROCEDURE AND TIMING TO BE FOLLOWED IN ORDER TO  
2 SUBMIT A CLAIM AFTER A TOTAL LOSS.

3 (3) IF ANY CONDITION DESCRIBED IN SUBSECTION (2) OF THIS  
4 SECTION IS NOT MET, THEN THE GAP FEE IS NOT A PERMITTED ADDITIONAL  
5 CHARGE UNDER SECTION 5-2-202 (1)(c.7).

6 (4) (a) THE MAXIMUM GAP FEE THAT A CREDITOR MAY CHARGE  
7 FOR A GAP AGREEMENT MUST NOT EXCEED FIVE PERCENT OF THE TOTAL  
8 AMOUNT FINANCED IN THE FINANCE AGREEMENT.

9 (b) SUBSECTION (4)(a) OF THIS SECTION DOES NOT APPLY TO ANY  
10 GAP AGREEMENT THAT IS SUBJECT TO REGULATION BY THE DIVISION OF  
11 INSURANCE PURSUANT TO TITLE 10.

12 (5) EVERY FINANCE AGREEMENT THAT INCLUDES A GAP FEE FOR  
13 A GAP AGREEMENT SHALL CONTAIN, EITHER IN THE FINANCE AGREEMENT  
14 OR GAP AGREEMENT SIGNED BY THE CONSUMER, THE FOLLOWING  
15 STATEMENT:

16 IF THIS TRANSACTION CONTAINS A FEE, CHARGE, OR  
17 PREMIUM FOR GUARANTEED ASSET PROTECTION, ALL  
18 HOLDERS AND ASSIGNEES OF THIS CONSUMER CREDIT  
19 TRANSACTION ARE SUBJECT TO ALL CLAIMS AND DEFENSES  
20 THAT THE CONSUMER COULD ASSERT AGAINST THE  
21 ORIGINAL CREDITOR RESULTING FROM THE CONSUMER'S  
22 PURCHASE OF THE GUARANTEED ASSET PROTECTION.

23 (6) (a) A CREDITOR MAY CONTRACT FOR, CHARGE, AND RECEIVE  
24 ONLY ONE GAP FEE AS PART OF A GAP AGREEMENT, REGARDLESS OF THE  
25 NUMBER OF CO-BORROWERS, COSIGNERS, OR GUARANTORS IN THE FINANCE  
26 AGREEMENT.

27 (b) IF A CONSUMER PURCHASES A GAP AGREEMENT, THE CREDITOR

1 MAY NOT SEEK INDEMNIFICATION FROM THE CONSUMER, CO-BORROWERS,  
2 COSIGNERS, OR GUARANTORS.

3 (7) (a) THE GAP AGREEMENT MUST PAY OR WAIVE ALL OR PART  
4 OF THE DEFICIENCY BALANCE AND MAY PROVIDE A WAIVER OF A CERTAIN  
5 AMOUNT OR CREDIT OF A CERTAIN AMOUNT TOWARD THE PURCHASE OF A  
6 REPLACEMENT MOTOR VEHICLE.

7 (b) THE CALCULATION OF THE PAYMENT OR WAIVER OF THE  
8 DEFICIENCY BALANCE MAY EXCLUDE THE FOLLOWING, AS LONG AS THESE  
9 EXCLUSIONS ARE CLEARLY SPECIFIED IN THE GAP AGREEMENT:

10 (I) AMOUNTS OWED FOR UNPAID INSTALLMENTS UNDER THE  
11 FINANCE AGREEMENT, INCLUDING ANY FEES OR SURCHARGES IMPOSED AS  
12 LATE CHARGES FOR UNPAID INSTALLMENTS;

13 (II) LEGALLY PERMITTED FEES INCURRED AFTER THE EFFECTIVE  
14 DATE OF THE FINANCE AGREEMENT;

15 (III) FEES FOR THE RETURN OR DISHONOR OF CHECKS OR OTHER  
16 INSTRUMENTS TENDERED AS PAYMENT;

17 (IV) PREMIUMS OR FEES FOR LEGALLY PERMITTED INSURANCE  
18 ADDED AFTER THE EFFECTIVE DATE OF THE FINANCE AGREEMENT;

19 (V) REFUNDS OWED ON CANCELLABLE SERVICE CONTRACTS AND  
20 OTHER PROTECTION PRODUCTS THAT WERE FINANCED IN THE FINANCE  
21 AGREEMENT;

22 (VI) THE SALVAGE VALUE OF THE MOTOR VEHICLE, AS  
23 DETERMINED BY THE CONSUMER'S PRIMARY INSURER OF THE MOTOR  
24 VEHICLE, IF THE TOTALED MOTOR VEHICLE IS RETAINED BY THE  
25 CONSUMER; AND

26 (VII) DEDUCTIONS TAKEN BY THE CONSUMER'S PRIMARY INSURER  
27 OF THE MOTOR VEHICLE AND ASSOCIATED PAYMENTS RECEIVED BY THE



1 CONSUMER FOR PRIOR UNREPAIRED DAMAGE TO THE MOTOR VEHICLE,  
2 WHICH DEDUCTIONS AND PAYMENTS MUST BE SUPPORTED BY CLEAR,  
3 WRITTEN DOCUMENTATION.

4 (c) THE GAP AGREEMENT MUST PAY OR WAIVE ALL OR PART OF  
5 THE DEFICIENCY BALANCE THAT WOULD HAVE BEEN OWED IF:

6 (I) THE CONSUMER HAD MAINTAINED PROPERTY DAMAGE  
7 INSURANCE COVERING THE ACTUAL CASH VALUE OF THE MOTOR VEHICLE  
8 AS OF THE DATE OF LOSS, EVEN IF THE CONSUMER HAS NOT MAINTAINED  
9 SUCH PROPERTY DAMAGE INSURANCE; OR

10 (II) THE CREDITOR HAD PURCHASED PROPERTY DAMAGE  
11 INSURANCE FOR THE MOTOR VEHICLE PURSUANT TO SECTION 5-2-209.

12 (8) THE GAP AGREEMENT MUST PROVIDE THE CONSUMER WITH A  
13 FULL REFUND OR CREDIT OF THE AMOUNT OF THE CONSUMER'S  
14 DEDUCTIBLE CHARGED FOR PROPERTY DAMAGE, UP TO FIVE HUNDRED  
15 DOLLARS, AS PART OF THE PAYMENT OF, OR RELIEF FROM, LIABILITY FOR  
16 THE DEFICIENCY BALANCE. THE GAP AGREEMENT MAY PROVIDE  
17 ADDITIONAL COVERAGE FOR THE CONSUMER'S DEDUCTIBLE IN EXCESS OF  
18 FIVE HUNDRED DOLLARS.

19 (9) (a) THE CREDITOR MUST REFUND TO THE CONSUMER THE  
20 UNEARNED GAP FEE PAID PURSUANT TO THE GAP AGREEMENT IF:

21 (I) THE FINANCE AGREEMENT IS PREPAID PRIOR TO MATURITY OR  
22 THE MOTOR VEHICLE IS NO LONGER IN THE CONSUMER'S POSSESSION DUE  
23 TO THE CREDITOR'S LAWFUL REPOSSESSION AND DISPOSITION OF THE  
24 COLLATERAL; AND

25 (II) THE CONSUMER HAS NOT MADE A CLAIM UNDER THE GAP  
26 AGREEMENT.

27 (b) IF THE GAP AGREEMENT IS PROVIDED AS A CONTRACTUAL

1 TERM OF THE FINANCE AGREEMENT, ANY REFUND ISSUED MUST BE  
2 CALCULATED USING A PRO RATA METHOD AND MAY CHARGE AN  
3 ADMINISTRATIVE CANCELLATION FEE NOT TO EXCEED SEVENTY-FIVE  
4 DOLLARS.

5 (c) IF THE GAP AGREEMENT IS PROVIDED AS INSURANCE, ANY  
6 REFUND ISSUED MUST BE CALCULATED USING A METHOD AUTHORIZED  
7 UNDER APPLICABLE INSURANCE STATUTES, RULES, OR INTERPRETATIONS  
8 OF THE COMMISSIONER OF INSURANCE PURSUANT TO TITLE 10.

9 (10) A CONSUMER HAS NINETY DAYS AFTER THE LOSS SETTLEMENT  
10 FROM ANY PROPERTY DAMAGE INSURANCE OR FROM THE DATE THE  
11 CREDITOR NOTIFIES THE CONSUMER OF ANY DEFICIENCY BALANCE OWED,  
12 WHICHEVER IS LATER, TO FILE A CLAIM UNDER THE GAP AGREEMENT OR  
13 SEEK DEBT CANCELLATION FROM THE CREDITOR.

14 (11) A GAP AGREEMENT SHALL NOT BE SOLD TO A CONSUMER IF:

15 (a) THE CONSUMER IS INELIGIBLE FOR A GAP AGREEMENT;

16 (b) THE FINANCE AGREEMENT TERMS PRECLUDE COVERAGE UNDER  
17 A GAP AGREEMENT;

18 (c) THE MOTOR VEHICLE USED AS COLLATERAL FOR THE FINANCE  
19 AGREEMENT IS INELIGIBLE FOR COVERAGE UNDER A GAP AGREEMENT; OR

20 (d) THE TRANSACTION WOULD BE UNCONSCIONABLE AS DESCRIBED  
21 IN SECTION 5-4-106, 5-5-109, OR 5-6-112.

22 (12) THIS SECTION DOES NOT APPLY TO A GAP AGREEMENT THAT  
23 IS INCLUDED IN:

24 (a) A CONSUMER LEASE;

25 (b) DEBT CANCELLATION AGREEMENTS IN CONSUMER CREDIT  
26 SALES;

27 (c) LOANS THAT DO NOT INVOLVE CONSUMERS AS DEFINED IN

1 SECTION 4-1-201 (10.5);

2 (d) PRODUCTS THAT DO NOT MEET THE DEFINITION OF A  
3 GUARANTEED ASSET PROTECTION AGREEMENT; OR

4 (e) TRANSACTIONS THAT ARE NOT SUBJECT TO THE "UNIFORM  
5 CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF THIS TITLE 5.

6 (13) THIS SECTION APPLIES TO EVERY CREDITOR, WHETHER THE  
7 CREDITOR IS AN ASSIGNEE OR HOLDER OF A FINANCE AGREEMENT  
8 CONTAINING A GAP FEE FOR A GAP AGREEMENT. A CREDITOR, ASSIGNEE,  
9 OR HOLDER DOES NOT HAVE ANY SUBROGATION RIGHTS AGAINST THE  
10 CONSUMER.

11 **SECTION 4. Applicability.** This act applies to guaranteed asset  
12 protection agreements entered into on or after the effective date of this  
13 act.

14 **SECTION 5. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, or safety.