

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0744.01 Christopher McMichael x4775

HOUSE BILL 23-1181

HOUSE SPONSORSHIP

Mauro, Snyder

SENATE SPONSORSHIP

Hinrichsen and Mullica,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

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

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.

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. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect January 1, 2024; except that, if
13 a referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within the ninety-day period after final adjournment of the general
16 assembly, then the act, item, section, or part will not take effect unless
17 approved by the people at the general election to be held in November
18 2024 and, in such case, will take effect on the date of the official
19 declaration of the vote thereon by the governor.

20 (2) This act applies to guaranteed asset protection agreements
21 entered into on or after the effective date of this act.