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HOUSE BILL 23-1181

BY REPRESENTATIVE(S) Mauro, Snyder, Dickson, Martinez,
Michaelson Jenet, Valdez, Duran;
also SENATOR(S) Hinrichsen and Mullica.

CONCERNING THE REGULATION OF GUARANTEED ASSET PROTECTION
AGREEMENTS.

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

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

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

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

(c) By codifying and updating the GAP agreement rules that are in

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

the code of Colorado regulations, the general assembly will provide Colorado consumers with stability, predictability, and efficiency regarding GAP agreements, while ensuring a fair and viable market for GAP agreement providers and making important updates to the laws that govern these agreements.

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

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

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

(c.7) CHARGES FOR GUARANTEED ASSET PROTECTION AGREEMENTS, AS DEFINED IN SECTION 5-9.3-103 (4), OFFERED IN COMPLIANCE WITH ARTICLE 9.3 OF THIS TITLE 5;

SECTION 3. In Colorado Revised Statutes, **add** article 9.3 to title 5 as follows:

ARTICLE 9.3 **Guaranteed Asset Protection Agreements**

5-9.3-101. Definitions. AS USED IN THIS ARTICLE 9.3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

(2) "DEFICIENCY BALANCE" MEANS THE AMOUNT OWED BY THE CONSUMER UNDER A CONSUMER FINANCE AGREEMENT AT THE TIME OF A TOTAL LOSS OF THE CONSUMER'S MOTOR VEHICLE THAT WAS COLLATERAL SECURING THE CONSUMER FINANCE AGREEMENT, CALCULATED IN

ACCORDANCE WITH THE TERMS OF THE FINANCE AGREEMENT.

(3) "GUARANTEED ASSET PROTECTION ADMINISTRATOR" OR "GAP ADMINISTRATOR" MEANS THE PERSON, OTHER THAN THE CREDITOR OR INSURER, THAT PERFORMS THE ADMINISTRATIVE OR OPERATIONAL FUNCTIONS PURSUANT TO THE GAP AGREEMENT.

(4) (a) "GUARANTEED ASSET PROTECTION AGREEMENT" OR "GAP AGREEMENT" MEANS AN AGREEMENT, STRUCTURED AS EITHER AN INSURANCE POLICY OR A CONTRACTUAL TERM, SOLD OR WRITTEN IN CONNECTION WITH A CONSUMER FINANCE AGREEMENT, THAT RELIEVES ALL OR PART OF A CONSUMER'S LIABILITY FOR THE DEFICIENCY BALANCE REMAINING, AFTER THE PAYMENT OF ALL INSURANCE PROCEEDS, UPON THE TOTAL LOSS OF THE CONSUMER'S MOTOR VEHICLE THAT WAS COLLATERAL SECURING THE CONSUMER FINANCE AGREEMENT, WHETHER THE LOSS OCCURRED FROM THE TOTAL DESTRUCTION OF THE MOTOR VEHICLE, THE UNRECOVERED THEFT OF THE MOTOR VEHICLE, OR BOTH.

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

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

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

(7) "ORIGINAL CREDITOR" MEANS THE CREDITOR THAT MAKES OR ARRANGES A CONSUMER FINANCE AGREEMENT WITH A CONSUMER AND TO WHICH THE FINANCE AGREEMENT IS INITIALLY PAYABLE. "ORIGINAL CREDITOR" DOES NOT INCLUDE ANY ASSIGNEE OF THE FINANCE AGREEMENT.

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

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

(b) THE RETAIL SELLER TAKES OR RETAINS A SECURITY INTEREST IN THE MOTOR VEHICLE.

5-9.3-102. Applicability. (1) THIS ARTICLE 9.3 APPLIES TO EVERY CREDITOR, WHETHER THE CREDITOR IS AN ASSIGNEE OR HOLDER OF A FINANCE AGREEMENT THAT INCLUDES A GAP AGREEMENT. A CREDITOR, ASSIGNEE, OR HOLDER DOES NOT HAVE ANY SUBROGATION RIGHTS AGAINST THE CONSUMER.

(2) THIS ARTICLE 9.3 DOES NOT APPLY TO A GAP AGREEMENT THAT IS INCLUDED IN:

(a) A CONSUMER LEASE;

(b) A LOAN THAT DOES NOT INVOLVE A CONSUMER AS DEFINED IN SECTION 4-1-201 (10.5);

(c) A PRODUCT THAT DOES NOT MEET THE DEFINITION OF A GUARANTEED ASSET PROTECTION AGREEMENT; OR

(d) A TRANSACTION THAT IS NOT SUBJECT TO THE "UNIFORM CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF THIS TITLE 5.

5-9.3-103. Guaranteed asset protection agreement requirements - application. (1) A CREDITOR MAY OFFER, SELL, PROVIDE, OR ADMINISTER A GUARANTEED ASSET PROTECTION AGREEMENT IN CONNECTION WITH A CONSUMER FINANCE AGREEMENT ONLY IF THE CREDITOR AND THE GUARANTEED ASSET PROTECTION AGREEMENT COMPLY FULLY WITH THIS ARTICLE 9.3 AND MEET ALL OF THE FOLLOWING CONDITIONS:

(a) THE CREDITOR PROVIDES TO THE CONSUMER A WRITTEN NOTICE, IN BOLD-FACE TYPE, THAT SPECIFIES THE FOLLOWING:

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

(II) THE AMOUNT OF THE GAP FEE;

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

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

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

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

(b) (I) THE CREDITOR PROVIDES THE CONSUMER WITH A CANCELLATION METHOD THAT IS CONSPICUOUSLY DISPLAYED IN THE GAP AGREEMENT OR IN A SEPARATE, WRITTEN CANCELLATION FORM AND THAT INCLUDES:

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

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

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

(II) IF A CREDITOR WANTS TO PROVIDE AN ALTERNATIVE CANCELLATION METHOD OTHER THAN THE ONE DESCRIBED IN SUBSECTION

(1)(b)(I) OF THIS SECTION, THE CREDITOR MUST CLEARLY AND CONSPICUOUSLY STATE THE ALTERNATIVE METHOD AND INSTRUCTIONS ON HOW TO CANCEL THE GAP AGREEMENT IN THE AGREEMENT;

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

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

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

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

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

5-9.3-104. Guaranteed asset protection fees. (1) (a) THE MAXIMUM GAP FEE THAT A CREDITOR MAY CHARGE FOR A GAP AGREEMENT MUST NOT EXCEED FOUR PERCENT OF THE TOTAL AMOUNT FINANCED IN THE FINANCE AGREEMENT, OR SIX HUNDRED DOLLARS, WHICHEVER AMOUNT IS GREATER.

(b) THIS SUBSECTION (1) DOES NOT APPLY TO ANY GAP AGREEMENT THAT IS SUBJECT TO REGULATION BY THE DIVISION OF INSURANCE PURSUANT TO TITLE 10.

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

(b) IN THE EVENT THAT THE GAP AGREEMENT HAS BEEN SOLD AND A VALID CLAIM HAS BEEN MADE, THE CREDITOR MAY NOT SEEK INDEMNIFICATION FROM THE CONSUMER, CO-BORROWERS, COSIGNERS, OR GUARANTORS.

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

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

5-9.3-105. Calculation and payment of deficiency balance.

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

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

(b) LEGALLY PERMITTED FEES INCURRED AFTER THE EFFECTIVE DATE OF THE FINANCE AGREEMENT;

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

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

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

(f) THE SALVAGE VALUE OF THE MOTOR VEHICLE, AS DETERMINED BY THE CONSUMER'S PRIMARY INSURER OF THE MOTOR VEHICLE, IF THE TOTALED MOTOR VEHICLE IS RETAINED BY THE CONSUMER; AND

(g) DEDUCTIONS TAKEN BY THE CONSUMER'S PRIMARY INSURER OF THE MOTOR VEHICLE FOR PRIOR UNREPAIRED DAMAGE TO THE MOTOR

VEHICLE IF, BEFORE TAKING THE DEDUCTION, THE GAP ADMINISTRATOR OR LENDER HAS DOCUMENTARY PROOF THAT:

(I) THE CONSUMER SUBMITTED AN INSURANCE CLAIM RELATED TO PRIOR UNREPAIRED DAMAGE TO THE MOTOR VEHICLE; OR

(II) THE CONSUMER RECEIVED PAYMENT FOR THE PRIOR UNREPAIRED DAMAGE TO THE MOTOR VEHICLE.

(2) EXCEPT AS PROVIDED IN THIS ARTICLE 9.3, THE GAP AGREEMENT MUST PAY OR WAIVE ALL OF THE DEFICIENCY BALANCE THAT WOULD HAVE BEEN OWED IF:

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

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

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

5-9.3-106. Cancellation of GAP agreement. (1) THE ORIGINAL CREDITOR MUST REFUND TO THE CONSUMER THE UNEARNED GAP FEE PAID PURSUANT TO THE GAP AGREEMENT IF:

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

(b) THE CONSUMER HAS NOT MADE A CLAIM UNDER THE GAP AGREEMENT.

(2) (a) IF THE GAP AGREEMENT IS PROVIDED AS A CONTRACTUAL TERM OF THE FINANCE AGREEMENT, ANY REFUND ISSUED MUST BE CALCULATED USING A PRO RATA METHOD OR ANY OTHER METHOD APPROVED BY THE ADMINISTRATOR.

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

(3) (a) IN THE EVENT THAT THE CONSUMER FINANCE AGREEMENT HAS BEEN ASSIGNED TO A PERSON OTHER THAN THE ORIGINAL CREDITOR, THE ASSIGNEE SHALL SEND NOTICE TO THE ORIGINAL CREDITOR REQUESTING, ON BEHALF OF THE CONSUMER, A REFUND OF THE UNEARNED GAP FEE PURSUANT TO THE GAP AGREEMENT. UPON RECEIPT OF SUCH NOTICE FROM THE ASSIGNEE, THE ORIGINAL CREDITOR SHALL PROVIDE THE UNEARNED GAP FEE TO THE CONSUMER WITHIN THIRTY DAYS.

(b) IF THE ORIGINAL CREDITOR HAS NOT REFUNDED THE UNEARNED GAP FEE TO THE CONSUMER WITHIN THIRTY DAYS PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, THE ASSIGNEE SHALL PROVIDE THE REFUND TO THE CONSUMER, AND THE ORIGINAL CREDITOR OR GAP ADMINISTRATOR SHALL REIMBURSE THE ASSIGNEE FOR THE AMOUNT OF SUCH REFUND NO LATER THAN FORTY-FIVE DAYS AFTER THE ORIGINAL CREDITOR OR GAP ADMINISTRATOR HAS RECEIVED NOTICE FROM THE ASSIGNEE.

(4) A CANCELLATION FEE OF NOT MORE THAN TWENTY-FIVE DOLLARS MAY BE CHARGED TO A CONSUMER IF THE CONSUMER CANCELS THE GAP AGREEMENT MORE THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE GAP AGREEMENT.

5-9.3-107. Filing of claim. A CONSUMER HAS NINETY DAYS AFTER THE LOSS SETTLEMENT FROM ANY PROPERTY DAMAGE INSURANCE OR FROM THE DATE THE CREDITOR NOTIFIES THE CONSUMER OF ANY DEFICIENCY BALANCE OWED, WHICHEVER IS LATER, TO FILE A CLAIM UNDER THE GAP AGREEMENT OR SEEK DEBT CANCELLATION FROM THE CREDITOR.

5-9.3-108. Prohibitions on sale of guaranteed asset protection agreements. (1) A GAP AGREEMENT SHALL NOT BE SOLD TO A CONSUMER

IF:

- (a) THE CONSUMER IS INELIGIBLE FOR A GAP AGREEMENT;
- (b) THE FINANCE AGREEMENT TERMS PRECLUDE COVERAGE UNDER A GAP AGREEMENT;
- (c) THE MOTOR VEHICLE USED AS COLLATERAL FOR THE FINANCE AGREEMENT IS INELIGIBLE FOR COVERAGE UNDER A GAP AGREEMENT;
- (d) THE GAP AGREEMENT LIMITS COVERAGE TO A MAXIMUM LOAN TO VALUE RATIO AND THE TERMS OF THE FINANCE AGREEMENT EXCEED THE MAXIMUM LOAN TO VALUE RATIO STATED IN THE GAP AGREEMENT;
- (e) THE MAXIMUM LOAN TO VALUE RATIO IN THE GAP AGREEMENT EXCEEDS ONE HUNDRED FIFTY PERCENT; OR
- (f) THE TRANSACTION WOULD BE UNCONSCIONABLE AS DESCRIBED IN SECTION 5-4-106, 5-5-109, OR 5-6-112.

5-9.3-109. Enforcement. THE ADMINISTRATOR DESIGNATED IN SECTION 5-6-103 MAY ENFORCE THE PROVISIONS OF THIS ARTICLE 9.3, PURSUANT TO ARTICLE 6 OF THIS TITLE 5, AGAINST ANY CREDITOR OR GAP ADMINISTRATOR WHO VIOLATES THIS ARTICLE 9.3.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO