

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business, Labor, & Technology.

HB23-1181 be amended as follows:

1 Amend reengrossed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

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

20 **5-2-202. Additional charges.** (1) In addition to the finance
21 charge permitted by this ~~article~~ ARTICLE 2 and in a consumer lease, a
22 creditor may contract for and receive the following additional charges in
23 connection with a consumer credit transaction:

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

27 (c.7) CHARGES FOR GUARANTEED ASSET PROTECTION
28 AGREEMENTS, AS DEFINED IN SECTION 5-9.3-103 (1)(d), OFFERED IN
29 COMPLIANCE WITH ARTICLE 9.3 OF THIS TITLE 5;

30 **SECTION 3.** In Colorado Revised Statutes, **add** article 9.3 to title
31 5 as follows:

32 **ARTICLE 9.3**

33 **Guaranteed Asset Protection Agreements**

34 **5-9.3-101. Definitions.** (1) AS USED IN THIS ARTICLE 9.3, UNLESS
35 THE CONTEXT OTHERWISE REQUIRES:

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

1 (b) "DEFICIENCY BALANCE" MEANS THE AMOUNT OWED BY THE
2 CONSUMER UNDER A CONSUMER FINANCE AGREEMENT AT THE TIME OF A
3 TOTAL LOSS OF THE CONSUMER'S MOTOR VEHICLE THAT WAS COLLATERAL
4 SECURING THE CONSUMER FINANCE AGREEMENT, CALCULATED IN
5 ACCORDANCE WITH THE TERMS OF THE FINANCE AGREEMENT.

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

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

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

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

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

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

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

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

42 (II) THE RETAIL SELLER TAKES OR RETAINS A SECURITY INTEREST
43 IN THE MOTOR VEHICLE.

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

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

8 (a) A CONSUMER LEASE;

9 (b) A DEBT CANCELLATION AGREEMENT IN CONSUMER CREDIT
10 SALES;

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

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

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

17 **5-9.3-103. Guaranteed asset protection agreement**
18 **requirements - application.** (1) A CREDITOR MAY OFFER, SELL, PROVIDE,
19 OR ADMINISTER A GUARANTEED ASSET PROTECTION AGREEMENT IN
20 CONNECTION WITH A CONSUMER FINANCE AGREEMENT ONLY IF THE
21 CREDITOR AND THE GUARANTEED ASSET PROTECTION AGREEMENT
22 COMPLY WITH THIS ARTICLE 9.3 AND IF ALL OF THE FOLLOWING
23 CONDITIONS ARE MET:

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

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

29 (II) THE AMOUNT OF THE GAP FEE;

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

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

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

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

42 (b) (I) THE CREDITOR PROVIDES THE CONSUMER WITH A
43 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 STATEMENT THAT THE CONSUMER MAY CANCEL THE GAP
6 AGREEMENT FOR ANY OR NO REASON WITHIN THIRTY DAYS AFTER THE
7 EFFECTIVE DATE OF THE GAP AGREEMENT, AND THAT THE CONSUMER
8 WILL RECEIVE A FULL REFUND OF THE GAP FEE SO LONG AS NO LOSS OR
9 EVENT COVERED BY THE GAP AGREEMENT HAS OCCURRED; AND

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

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

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

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

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

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

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

31 **5-9.3-104. Guaranteed asset protection fees.** (1) (a) THE
32 MAXIMUM GAP FEE THAT A CREDITOR MAY CHARGE FOR A GAP
33 AGREEMENT MUST NOT EXCEED FIVE PERCENT OF THE TOTAL AMOUNT
34 FINANCED IN THE FINANCE AGREEMENT.

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

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

42 (b) IN THE EVENT THAT THE GAP AGREEMENT HAS BEEN SOLD AND
43 A VALID CLAIM HAS BEEN MADE, THE CREDITOR MAY NOT SEEK

1 INDEMNIFICATION FROM THE CONSUMER, CO-BORROWERS, COSIGNERS, OR
2 GUARANTORS.

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

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

14 **5-9.3-105. Calculation and payment of deficiency balance.**

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

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

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

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

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

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

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

33 (g) DEDUCTIONS TAKEN BY THE CONSUMER'S PRIMARY INSURER OF
34 THE MOTOR VEHICLE FOR PRIOR UNREPAIRED DAMAGE TO THE MOTOR
35 VEHICLE IF, BEFORE TAKING THE DEDUCTION, THE GAP ADMINISTRATOR
36 OR LENDER HAS DOCUMENTARY PROOF THAT:

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

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

41 (2) EXCEPT AS PROVIDED IN THIS ARTICLE 9.3, THE GAP
42 AGREEMENT MUST PAY OR WAIVE ALL OF THE DEFICIENCY BALANCE THAT

1 WOULD HAVE BEEN OWED IF:

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

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

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

15 **5-9.3-106. Cancellation of GAP agreement.** (1) (a) THE
16 ORIGINAL CREDITOR MUST REFUND TO THE CONSUMER THE UNEARNED
17 GAP FEE PAID PURSUANT TO THE GAP AGREEMENT IF:

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

22 (II) THE CONSUMER HAS NOT MADE A CLAIM UNDER THE GAP
23 AGREEMENT.

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

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

32 (3) IN THE EVENT THAT THE CONSUMER FINANCE AGREEMENT HAS
33 BEEN ASSIGNED TO A PERSON OTHER THAN THE ORIGINAL CREDITOR, THE
34 ASSIGNEE SHALL SEND NOTICE TO THE ORIGINAL CREDITOR AND THE GAP
35 ADMINISTRATOR, IF KNOWN, REQUESTING, ON BEHALF OF THE CONSUMER,
36 A REFUND OF THE UNEARNED GAP FEE PURSUANT TO THE GAP
37 AGREEMENT.

38 (4) A CANCELLATION FEE OF NOT MORE THAN FIFTY DOLLARS IF
39 THE CONSUMER CANCELS THE GAP AGREEMENT THIRTY-ONE OR MORE
40 DAYS AFTER THE EFFECTIVE DATE OF THE GAP AGREEMENT.

41 **5-9.3-107. Filing of claim.** A CONSUMER HAS NINETY DAYS
42 AFTER THE LOSS SETTLEMENT FROM ANY PROPERTY DAMAGE INSURANCE
43 OR FROM THE DATE THE CREDITOR NOTIFIES THE CONSUMER OF ANY

1 DEFICIENCY BALANCE OWED, WHICHEVER IS LATER, TO FILE A CLAIM
2 UNDER THE GAP AGREEMENT OR SEEK DEBT CANCELLATION FROM THE
3 CREDITOR.

4 **5-9.3-108. Prohibitions on sale of guaranteed asset protection**
5 **agreements.** (1) A GAP AGREEMENT SHALL NOT BE SOLD TO A
6 CONSUMER IF:

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

8 (b) THE FINANCE AGREEMENT TERMS PRECLUDE COVERAGE UNDER
9 A GAP AGREEMENT;

10 (c) THE MOTOR VEHICLE USED AS COLLATERAL FOR THE FINANCE
11 AGREEMENT IS INELIGIBLE FOR COVERAGE UNDER A GAP AGREEMENT;

12 (d) THE GAP AGREEMENT LIMITS COVERAGE TO A MAXIMUM LOAN
13 TO VALUE RATIO AND THE TERMS OF THE FINANCE AGREEMENT EXCEED
14 THE MAXIMUM LOAN TO VALUE RATIO STATED IN THE GAP AGREEMENT,
15 UNLESS THE CONSUMER HAS PROVIDED AFFIRMATIVE CONSENT TO THE
16 STATED LIMITATION; OR

17 (e) THE TRANSACTION WOULD BE UNCONSCIONABLE AS DESCRIBED
18 IN SECTION 5-4-106, 5-5-109, OR 5-6-112.

19 **5-9.3-109. Enforcement.** (1) THE ADMINISTRATOR DESIGNATED
20 IN SECTION 5-6-103 MAY ENFORCE THE PROVISIONS OF THIS ARTICLE 9.3,
21 PURSUANT TO ARTICLE 6 OF THIS TITLE 5, AGAINST ANY CREDITOR OR GAP
22 ADMINISTRATOR WHO VIOLATES THIS ARTICLE 9.3.

23 **SECTION 5. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect January 1, 2024; except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within the ninety-day period after final adjournment of the general
28 assembly, then the act, item, section, or part will not take effect unless
29 approved by the people at the general election to be held in November
30 2024 and, in such case, will take effect on the date of the official
31 declaration of the vote thereon by the governor.

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

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