

LEGISLATIVE UPDATES / GAP

September 2022

The information provided in this legislative update summarizes legislation recently passed, introduced and currently pending. Each bill has been summarized to highlight the pertinent parts that may have an effect on certain F&I products.

This legislative update is created for internal purposes, based on information provided by service contract industry trade association publications and industry discussions conducted by such trade associations. As a courtesy, this legislative update is made available to certain clients to share with their regulatory advisors. Clients should use this information only as a guide for topics to be discussed in more detail with their legal and regulatory advisors.

CALIFORNIA

Bill No.: AB 2311

Subject: GAP Waivers law Changes / Disclosures

Date Filed: 2/16/2022

Effective Date: **PASSED – Effective 01/01/2023**

Summary:

This bill, pursued by the California Attorney General, adds new requirements to the sale and administration of GAP waivers. In pertinent part, Section 2982.12 is added to the Civil Code.

Of material interest, the bill

- Caps the price of a GAP waiver to no more than 4% of the amount financed.
- The GAP waiver must contain a disclosure if the initial loan-to-value ratio (LTV) exceeds the maximum LTV covered by the GAP waiver.
- Prohibits a seller from selling a GAP waiver if the amount financed, less the cost of the GAP waiver, credit insurance, and service contracts, is less than 70% of the MSRP for a new vehicle or NADA average retail value for used vehicles.
- Refund must be on a pro rata basis
- If a full refund is due, the consumer is also entitled to finance charges attributable to the GAP waiver.
- Cancellation fees not allowed.
- Within 60 business days from the termination of a GAP waiver, the holder shall tender the refund or shall cause to be made the refund by instructing, in writing, the administrator or any other appropriate party to make the refund.
- The GAP waiver must include “a notice, circumscribed by a line with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line that contains a stated disclosure as described in the bill.

CALIFORNIA

Bill No.: Draft Rule PRO 03-21

Subject: Complaint and Inquiry Handling and Reporting
Date Filed: 5/20/2022
Effective Date: Will be effective upon adoption

Summary:

The California Department of Consumer Financial Protection (Department) has published draft rules on complaint and inquiry handling and reporting for certain providers of consumer financial products or services.

These rules are being promulgated pursuant to a legislative mandate passed in the California Financial Protection Law in 2021 under CA AB 1864. The California Consumer Financial Protection Law Section 90005 defines a covered person as persons offering or providing consumer financial products or services or affiliates providing a material service to a person offering or providing such products or services.

The proposed rule establishes highly detailed requirements for covered persons to respond to consumer complaints and inquires and to develop and implement written policies and procedures regarding the:

- initiation of complaints or inquiries;
- acknowledgement of receipt of complaints;
- review and evaluation of complaints or inquiries;
- tracking of complaints or inquiries;
- response to complaints or inquiries;
- maintenance of a written record for each complaint;
- retention of copies of written inquiries and responses;
- administration of the complaint and inquiry process without discrimination; and
- quarterly reporting of complaints and inquiries to the Department;

The proposed rule also establishes requirements for such covered persons to develop and implement written policies and procedures for responding to requests from the Department regarding consumer complaints and inquiries.

CALIFORNIA

Bill No.: SB 1311

Subject: Military Consumer Protection Laws
Date Filed: 2/16/2022
Effective Date: **PASSED – Effective 01/01/2023**

Summary:

This bill was initiated by the Attorney General and in material part amends California’s existing military consumer protection laws. The bill states that, “a security interest in a motor vehicle is void, and cannot be perfected, if it would cause a loan procured by a covered member in the course of purchasing the motor vehicle to be exempt from Section 987 of Title 10 of the United States Code, and the loan also funds the purchase of a credit insurance product or credit-related ancillary product.”

Covered member means “a member of the armed forces who is— (A) on active duty under a call or order that does not specify a period of 30 days or less; or (B) on active Guard and Reserve Duty.”

GAPA will be forming a coalition with other associations in an effort to kill or amend the bill. GAPA will confirm whether this bill only impacts the sale of GAP waivers or whether other add-on products are affected.

August UPDATE – despite coalition efforts, this bill has been sent to the governor and will be signed in law. GAPA will be seeking a meeting with the governor’s office to request a bill review.

Conclusion/Action:

A “covered member” will not be able to purchase a GAP waiver when financing a motor vehicle. A Covered Member means: a member of the armed forces who is (a) on active duty under a call or order that does not specify a period of 30 days or less; or (b) on active Guard and Reserve duty.

DELAWARE

Bill No.: HB 429

Subject: GAP & EWU Waivers
Date Filed: 5/17/2022
Effective Date: PENDING (if passed, will take effect immediately)

Summary:

This legislation is being pursued by GAPA. It would expressly exempt guaranteed asset protection waivers from insurance regulation. The bill also expressly authorizes excess wear and use (“EWU”) waiver as a type of guaranteed asset protection waiver, thus exempting EWU from insurance regulation. Additionally, the bill expressly authorizes a gap product to be offered as a service contact.

MICHIGAN

Bill No.: HB 5429

Subject: GAP Waivers, EWT Waivers, and Vehicle Value Protection Agreements
Date Filed: 10/20/2021
Effective Date: PENDING (If passed, 180 days after enactment)

Summary:

This is part of a package of bills being pursued by GAPA in an effort to create regulatory framework for Vehicle Value Protection Agreements (“VVPA”). In addition, the bill amends the definition of GAP waiver to allow for GAP plus and to expressly authorize Excess Wear & Use Waivers. The bills that are included as part of this package are: House Bills 5430, 5431, ~~5432~~ replaced w/ HB 6260, and 5967 and only take effect if they are ALL enacted.

VVPA is defined in the bill as: "Vehicle value protection agreement" includes a contractual agreement that provides a benefit toward either the reduction of some or all of the contract holder's current finance agreement deficiency balance, or toward the purchase or lease of a replacement motor vehicle or motor vehicle services, on the occurrence of an adverse event to the motor vehicle, including but not limited to loss, theft, damage, obsolescence, diminished value, or depreciation. Vehicle value protection agreement may include an agreement such as, but not limited to, a trade-in-credit agreement, diminished value agreement, depreciation benefit agreement, or other similarly named agreement...”

The associated bills noted above, amend the reference to “guaranteed asset protection waivers” to “vehicle value protection products within the insurance code, retail installment sales act, and motor vehicle sales finance act and have no other impact.