



SENATE BILL 425: GAP and VVPA Agreement Changes.

2021-2022 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: May 10, 2021
Introduced by: Sens. Woodard, Perry, Johnson	Prepared by: Bill Patterson
Analysis of: Third Edition	Staff Attorney

OVERVIEW: *Senate Bill 425 would modify the law governing the regulation of guaranteed asset protection waivers and would regulate vehicle value protection agreements.*

CURRENT LAW: Article 46 of Chapter 66 of the General Statutes regulates entities offering a guaranteed asset protection (GAP) waiver, which is defined as a contractual agreement in which a creditor agrees, for a separate charge, to cancel or waive all or part of the deficiency in the balance due on a borrower's vehicle in the event of a total physical damage loss or unrecovered theft of the vehicle, after crediting any applicable insurance coverage. Any cost to the borrower for a GAP waiver must be separately stated and is not considered a finance charge or interest.

BILL ANALYSIS:

Section 1 would amend Article 46 to apply to GAP agreements for which the creditor does not charge an additional fee. Section 1 would also amend the definition of "GAP agreement" to make the following agreements subject to the requirements of Article 46, with or without an additional fee:

- An agreement by the creditor to waive or give the borrower a credit towards the purchase of a replacement vehicle.
- An agreement by the creditor to cancel or waive all or part of the amount due under a borrower's lease agreement owing to excessive wear and use of a vehicle or excess mileage.

For purposes of Article 46, a vehicle value protection agreement as defined in Article 48 of Chapter 66 of the General Statutes (to be enacted under Section 3) would not be deemed to be a GAP waiver.

Section 2 would deem the cost of a GAP waiver to be an authorized charge that may be financed under the Retail Installment Sales Act, Chapter 25A of the General Statutes and not a part of the finance charge or interest thereunder.

Section 3 would enact a new Article 48 in Chapter 66 of the General Statutes to regulate entities offering a "vehicle value protection agreement," defined as a contractual agreement that provides one of the following benefits upon the occurrence of an "adverse event:"

- A reduction of the contract holder's current finance agreement deficiency balance.
- A credit toward the purchase or lease of a replacement vehicle or purchase of motor vehicle services.

An "adverse event" triggering the contractor's right to the benefit is defined as including, without limitation, a less than total physical damage loss, or diminished value or depreciation of the vehicle subject to the agreement.

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The term "vehicle value protection agreement" as used in new Article 48 would not include a GAP waiver as defined in Article 46 of Chapter 66 of the General Statutes.

New Article 48 would include the following provisions:

- Required disclosures to the borrower.
- Minimum financial solvency requirements for insurers issuing reimbursement policies.
- A minimum 30-day look back period during which the purchaser may cancel the agreement and receive a full refund so long as no benefits have been provided.
- Provisions governing cancellation of the vehicle value protection agreement and the processing of any refund.
- Enforcement by the Attorney General and fines for violations.

EFFECTIVE DATE: This act becomes effective January 1, 2022, and applies to agreements entered into on or after that date.