



June 9, 2022

Assemblymember Brian Maienschein  
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Sacramento, CA 94249-0077

**RE: California Assembly Bill 2311 – OPPOSE UNLESS AMENDED**  
Motor Vehicle Conditional Sale Contracts: Guaranteed Asset Protection Waivers

Honorable Assemblymember Maienschein:

The undersigned organizations, representing the majority of stakeholders providing or administering consumer “Guaranteed Asset Protection” (GAP) products to California consumers, **strongly oppose** Assembly Bill 2311. The legislation would create unnecessary financial and procedural burdens on lenders, automobile dealers and the companies that provide this product, and the new requirements go well beyond what we have come to understand are issues limited to GAP refunds. AB 2311 will impact the availability of this important consumer protection in California, potentially leaving residents owing on a loan for which they no longer have a vehicle.

GAP products are designed to protect consumers from what can be a large financial loss when their vehicle is, due to damage or theft, considered a total loss and the consumer owes a lender more than the value of the vehicle. When this occurs, the physical damage protection provided by an auto insurance policy will pay the depreciated value of the vehicle. That amount may not be adequate to pay-off the loan. Given the high cost of motor vehicles, the difference (or “gap”) between these two amounts can be substantial, and this unique product provides a consumer with the security and protection needed to avoid having to continue to pay for a vehicle that they no longer own. California’s consumers, who are already impacted by recent housing and inflationary trends, may not be able to afford such cash outlays and for a relatively small cost, they can obtain the financial safeguard provided by a GAP product.

The providers of GAP products understand that cancellation, refunds, and cost are central to the author’s concerns related to this product, yet the provisions included in this legislation could increase the costs of providing the product and encumber consumer access to it., Unfortunately, this will create even more problems in the marketplace that will not benefit consumers.

While there continue to be myriad substantive concerns with the March 30 version of the bill (see details described below and “redline” attached), the following provisions are the highest priority to rectify:

- Remove the requirement that holders (i.e., lenders) have to provide an unearned GAP refund amount when communicating an itemized contract balance - 2982.12(a)(6)
- Temper the “red boxed” disclosure regarding mandatory sales - 2982.12(a)(4)(B)(iii)
- Allow for GAP sales where the loan-to-value maximum is exceeded, or is less than 80% - 2982.12(a)(5)(B)(II) and (III)

- Remove or increase the maximum GAP fee allowable charge - 2982.12(a)(5)

We share the author's goal to ensure that GAP products meet the needs of consumers. We believe the suggested edits (attached) represent a fair compromise and look forward to continuing to work with your office and members of the legislature to make sure that the legislation addresses the concerns raised. However, until we are able to reach consensus on the highest priority issues listed above, we are unfortunately compelled to urge California legislators to oppose passage of AB 2311.

Respectfully submitted by the following organizations:

American Property Casualty Insurance Association (APCIA)  
California New Car Dealers Association (CNCDA)  
Consumer Credit Industry Association (CCIA)  
Guaranteed Asset Protection Alliance (GAPA)  
Independent Auto Dealers Association of California (IADAC)  
National Independent Auto Dealers Association (NIADA)

Cc:  
California Attorney General and Chief of Staff  
Governor's Legislative Unit  
Republican Caucus  
Senate Judiciary Staff

## Highest Priority Areas of Concern

### Section 2982.12(a)(6): GAP Protection Unearned Fee Calculation

This provision is overly burdensome and untenable to obligate the holder to provide an unearned GAP fee calculation—which may not be entirely or easily known – every time the holder confirms the remaining balance to the buyer. The challenge for the holder is the variation in GAP programs nationwide and in California. The holder usually does not know the details of the refund calculation or have such calculations imbedded in their data processing system. This is simply an untenable requirement. As such, our proposed amendments delete this section.

### Section 2982.12(a)(4)(B)(iii): “Red boxed” disclosure regarding mandatory sales

While California car dealers are very familiar with providing consumer disclosures on every single product or service offered to customers, we think the proposed disclosure language in this bill is over the top. In our proposed amendments, we still include consumer “warning” language akin to the spirit of that proposed in the bill, but we change the language slightly and remove the word STOP in all bold print and red font.

### Section 2982.12(a)(5)(B)(II,III): GAP Protection Sales Barred Based on Complicated Vehicle Valuation Formulas

The author proposes to bar sellers from offering customers the option to purchase GAP protection if the conditional sales contract’s loan-to-value (LTV) ratio or amount financed at the contracting date exceeds certain complicated formulas.

*LTV Exceeds GAP Maximum LTV.* The bill as proposed would make it impermissible to sell GAP if the GAP maximum LTV is exceeded at point of loan. Ironically, borrowers with higher LTVs have higher risk and thus an increased need for coverage. Allowing for partial coverage with a proper disclosure will enable Californians at higher risk to gain access to benefits otherwise not permitted under the current draft of this bill. Our draft reflects this approach.

*LTV Less than 80%.* The bill as written bars the sale of GAP on loans with less than an 80% LTV ratio, however this arbitrary provision fails to appreciate market realities. As we have clearly seen with recent vehicle inventory constraints, the value of a vehicle can change drastically depending on the simple economics of supply and demand. Under the complicated formula proposed in this bill, which would be virtually unworkable for dealership staff to implement from a practical standpoint, what if a customer in January 2023 is barred from purchasing GAP protection because their vehicle’s value is off the charts due to supply and demand issues, but when the industry normalizes, the vehicle loses thousands of dollars in value and then is wrecked in a total loss incident? If this customer was barred from purchasing GAP protection and was underwater on the loan, the expected market correction will result in them paying even more for a vehicle they can no longer drive.

California’s car dealers recommend GAP protection to those with loan or personal characteristics that might make the product a good option for them (larger loans, longer loan maturities, previous negative trade-in balances rolled into a new loan, more customer concern over their credit history, etc.). Mandating dealership employees to undertake complicated valuation formulas that are going to vary greatly over time is both impractical and unworkable.

Importantly, these LTV provisions in the current draft of the bill will leave California households

holding the bag when they need a financial safety net like GAP protection.

#### Section 2982.12(a)(5): GAP Protection Capped Charge

The author proposes to bar GAP protection sellers from charging more for the product than two percent of the amount financed under a conditional sales contract. The proposed cap of two percent is very low and would result in an unstable GAP protection market and would cause many dealers to decide that the risk of offering GAP protection to customers who may need it the most is unworkable.

Moreover, if a consumer believes the price of the product is unaffordable for their budget, they can decide not to purchase the product. Importantly, if a consumer gets “buyer’s remorse” after purchase, the bill provides a means whereby they can cancel at any time for a refund – and get a full refund if they cancel in the first 30 days of protection.

While we believe market competition should guide retail pricing, we alternatively propose a cap of five percent of the amount financed as the maximum allowable charge for GAP protection.

#### **Other Areas of Concern and Technical Amendments**

#### Section 2982.12(b)(2): GAP Protection Refund Details and Timelines

While we agree with and support some aspects of AB 2311 as it relates to the importance of prompt payment of any GAP protection refund that may be due to a customer, we differ in our approach on how to practically effectuate those refunds.

In lieu of 25 days, as proposed in the bill, we offer 45 days as a more reasonable and realistic timeline. We would also like to continue working with your office on details regarding pro rata shares of finance charges that must be calculated and repaid.

Further, the March 30 version of the bill stipulates that no refund is due upon a triggering event provided benefits were made available to the consumer. Read another way, if a triggering event occurred and did not result in waiving some or all of the remaining balance, the consumer is still due a refund. *However, as written this affords free coverage to consumers, while providers were on the hook for a potential claim.* We respectfully suggest striking this additional requirement.

#### Section 2982.12(b)(6): GAP Protection Refund Records

The refund process can vary depending on where the request is initiated, which could start with the lender, the dealer, or in some instances the administrator. No one party necessarily has all the component information that went into a refund. For this reason, rather than name just the holder as the keeper of all refund records, we suggest an approach that would provide for each of the applicable entities in the value chain to *retain the records in their possession*.

#### Section 2982.12(a)(5)(B)(ii): GAP Protection Errors and Penalties

Automatically voiding GAP protection due to an error, with no harm attached, and being required to provide refunds within 25 days is overly punitive and so to address this our proposed amendments delete this section.

#### Civil Code Section 2981(e): Definition of “Holder”

The author proposes to add a new definition of “holder” into the Automobile Sales and Finance Act that includes a “seller.” However, the term “seller” is defined and used separate and apart from the term “holder” in multiple instances throughout the Act, and the two terms are sometimes used in

tandem, indicating that “seller” and “holder” are two different entities with different responsibilities and cannot be grouped under the same terminology. Additionally, the term “holder” is used more than 65 times throughout the Act, so we need to be sure that by including this new definition within the context of GAP protection we are not creating unintended consequences.

To address these issues, we propose a new definition of “holder” as “any person that obtains ownership of the conditional sale contract from the seller.” However, further revisions of this definition may be necessary.

#### Civil Code Section 2981(t): Definition of “Guaranteed Asset Protection Waiver”

The author proposes to add a new definition of “guaranteed asset protection waiver,” which we do not oppose in concept. However, the proposed definition does not capture the reality of how GAP protection works. The proposed definition defines GAP protection as “an optional contractual obligation under which a seller agrees, for additional consideration, to cancel or waive all or part of amounts due on the buyer’s conditional sales contract subject to this chapter in the event of a total loss or unrecovered theft of the motor vehicle specified in the conditional sales contract.”

While dealers offer GAP protection as an optional choice for customers, dealers as sellers of this product are not the entities responsible for, or able to, “cancel or waive” all or parts of amounts due on the buyer’s conditional sales contract. The GAP protection provider, in tandem with the finance source that owns the contract, is the entity responsible for that waiver. Dealers only “hold the paper” on a contract until a bank takes it over. Our proposed amendments aim to clarify that fact.

We also offer additional language to further clarify exactly what GAP protection is, copied from the existing reference to “debt cancellation agreements” related to conditional sales contracts in Section 1758.992(h) of the Insurance Code.

#### Section 2982.12(a)(4)(B)(i): Clarification on Ability of Parties to Fulfill Obligations

The author proposes to require a seller of GAP protection to provide a disclosure to the buyer stating, in pertinent part, ... “that the holder of the conditional sales contract is responsible for all obligations to the buyer owed under the guaranteed asset protection waiver, and state the name and address of the holder, if known taking assignment of the conditional sales contract.”

There are multiple practical issues with this proposed requirement. Again, dealers as sellers of GAP protection, and not as GAP protection providers themselves, are not in a position to be responsible for “all obligations to the buyer under the guaranteed asset protection waiver.” As such, we deleted references to “seller” here. In addition, it is very common for dealers not to know the holder who will take assignment of the conditional sales contract the day the sale and delivery of the vehicle take place. In many instances, dealers are shopping an individual purchase contract out to multiple finance sources to assign the contract at the interest rate already agreed to by the dealer and the customer. Depending on an individual finance source’s underwriting processes, a dealer may find out 5 or even 10 days later with which finance source the contract can be successfully assigned. In this common circumstance, dealers would be unable to state the name and address of the holder who will end up with the contract on the day the vehicle is sold.

#### Section 2983.1(b): Statutory Penalties

The author proposes to penalize GAP protection sellers and holders for any accidental or “bona fide” error by mandating that buyers receive three times the amount of any guaranteed asset protection charges paid to the seller or holder. We wholly disagree with this section and think that violation of the provisions related to GAP protection should be able to be enforced just as any other violation of the Act would be. Providing a separate and overly punitive damages amount specific to GAP protection is unnecessary.