

2019 HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1181

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1181
1/16/2019
30884

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Regulation of guaranteed asset protection waivers.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing on HB 1181.

Amy Hullet~NDAR: Introduces Matt Nowels.

Matt Nowels~on behalf of the Guaranteed Asset Protection Alliance: Attachment 1.

2:55

Rep Laning: My understanding is this is an optional piece of coverage.

Matt Nowels: Correct.

Rep Laning: Is it going to be mandatorily mentioned to the purchaser at the time he buys it?

Matt Nowels: It better not be. That's part of the requirement that it has to be optional & we tell that them that it is optional.

Rep Laning: Is it going to be mandatory that that buyer be told about this availability?

Matt Nowels: No, I don't think so.

Rep Ruby: Is this a short period of time, a short term buyer?

Matt Nowels: This isn't a dider on your insurance policy, this is part of your finance offered by your creditor.

Rep Ruby: This would be for the period that the loan is higher than the book value?

Matt Nowels: Right.

Rep Kasper: Page 2, line 16, what insurance companies sell those products now?

Matt Nowels: This particular is not an insurance product. So insurers define for other purposes not the gap waiver?

Rep Kasper: What companies are selling these products?

Matt Nowels: It's a transaction that the dealer offers it to you.

Rep Kasper: What does a company make in a guarantee?

Matt Nowels: It's your creditor.

Rep Kasper: What we have here is an additional credit instrument, that's not a product, but customer has to pay for?

Matt Nowels: It's a product often designed by a 3rd entity. It is a promise from your creditor to not come after you for the extra amount.

Rep Kasper: There is no other outside company involved in providing protection to the creditor, but there is a risk?

Matt Nowels: The creditor can & often times do. It's common for a creditor to a for stop gap coverage.

Rep Kasper: Who is that insurance company?

Matt Nowels: All State, Arch, Zurich & down the chain.

Rep Ruby: Don't banks already offer this?

Matt Nowels: That's correct.

Rep Adams: Would this work the same way as life insurance, except it's the gap between book & loan value?

Matt Nowels: It's just not an insurance product, but the way you think about it is correct.

Chairman Keiser: Does gap apply to damaged title depreciation?

Matt Nowels: It would not cover that but there is a product out there.

Rep M Nelson: If the policy was canceled, they are supposed to calculate the refund using sum of the digits method. Can you explain the sum of the digit refund method?

Matt Nowels: It's commonly called the Rules of 78 & that refund method accounts for the idea we spoke about earlier, that the coverage declines verily steeply at first. Then it narrows out & they are above water in the finance area. If the product was canceled, the sum of digit refund allows the company to refund a higher refund.

Rep Kasper: Is there any time in the life of this contract where the owner of the vehicle who has an accident & totaled, will they be obligated to any additional money to cover the loan. Is this going to cover 100% of the gap all of the time?

Matt Nowels: If the borrower has 3 missed payments, the product is not designed to say if you miss the payment, you get a windfall now. They expect that the customer is current on the amount they owe. There are reason they doesn't all or entire balance.

Chairman Keiser: If the service contract is part of the financing & increases the cost, there is no wind fall.

Matt Nowel: That's correct.

Rep Kasper: On the service contract, you are paying extra fee & the premium. Then you have the coverage. You are paying an extra fee & premium for the gap coverage as well. Why should the consumer receive the dollars back that they are entitled to? They are paying the premium but not getting back because it appears you are off setting with the gap coverage with any other contract that they are paying a premium for.

Matt Nowels: The idea is; the gap waiver says we would waive; you're out paying balance. You get a windfall because you get a \$2,000 refund.

Chairman Keiser: The word financing, that's the problem that was included in your financing contract. They lent you the money to pay it & so it's only fair to get it back?

Matt Nowels: Correct.

Rep M Nelson: Is this done a 1-time financing fee even though it's space out for the life of the loan. The amount you're paying on that, is that also following that sum of the digits method or equal as it goes.

Matt Nowels: I don't know for sure, but I suspicion is, it's over the time limit.

Steve Schneider~AIADC: Attachment 2. Submitted testimony.

Chairman Keiser: Anyone here to testify in support, opposition, neutral.

Jon Godfreed~Insurance Commissioner: We treat this anyway. There are some benefits maybe on the supportive side. It's essentially a private agreement between two parties. It puts more structure into it. We support this & the amendment.

Chairman Keiser: What are the wishes of the committee?

Rep Adams: Moves the amendment 19.074.01001.

Vice Chairman Lefor: Second.

Chairman Keiser: Questions on the amendment?

Rep M Nelson: If we move this to the insurance commissioner, but it's not insurance. How do you regulate this?

Jon Godfread: We kicked around where we would put this. It makes the most sense is with the insurance department because we receive the phone calls. We would regulate it by creating this law.

Rep M Nelson: It's not your thing, I'm hunting for the assist to the consumer. Would there be a new type of licensing? Where's the control.

Godfread: The control is on the last page of the bill.

Rep M Nelson: I'm having trouble reigning down the shady operator.

Jon Godfread: There is more construct around it.

Chairman Keiser: On an older used car there is no gap, typically. This is designed for the new car driven off the lot.

Rep Ruby: Other than the enforcement that's included on the last page, also your involvement the insurance company would not cover the full amount that they would.

Jon Godfread: Correct.

Chairman Keiser: Back to the amendment.

Voice vote~motion carried.

Chairman Keiser: Further questions? What are the wishes of the committee?

Rep D Ruby: Moves a Do Pass as Amended.

Rep Kasper: Second.

Roll call was taken for a Do Pass as Amended on HB 1181 with 13 yes, 0 no, 1 absent & Rep D Ruby is the carrier.

January 17, 2019

DA 1/17/19
1 of 5

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 26.1-57 of the North Dakota Century Code, relating to the regulation of guaranteed asset protection waivers; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-57 of the North Dakota Century Code is created and enacted as follows:

26.1-57-01. Definitions.

As used in this chapter:

1. "Administrator" means a person, other than an insurer or creditor, which performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.
2. "Borrower" means a debtor, retail buyer, or lessee, under a finance agreement.
3. "Creditor" means the lender in a loan or credit transaction; the lessor in a lease transaction; a dealer that provides credit to a motor vehicle retail buyer; the seller in a commercial retail installment transaction; or an assignee of any of the these persons.
4. "Dealer" has the same meaning as provided under section 39-01-01.
5. "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.
6. "Free-look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time may not be shorter than thirty days.
7. "Guaranteed asset protection waiver" means a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement if there is a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.
8. "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

9. "Motor vehicle" has the same meaning as provided under section 39-01-01, except the term includes a snowmobile and a trailer for a snowmobile, motorcycle, boat, camper, or personal watercraft.

26.1-57-02. Scope.

1. This chapter does not apply to:
 - a. An insurance policy offered by an insurer under the insurance laws of this state;
 - b. A debt cancellation or debt suspension contract offered in compliance with title 12, Code of Federal Regulations, part 37 or title 12, Code of Federal Regulations, part 721, or other federal law; or
 - c. A debt cancellation or debt suspension contract offered by a bank or credit union chartered under the laws of this state.
2. Guaranteed asset protection waivers are not insurance and, except as provided under this chapter, are exempt from the insurance laws of this state. A person marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers which complies with this chapter is exempt from the insurance requirements of this state.

26.1-57-03. Requirements for offering guaranteed asset protection waivers.

1. A guaranteed asset protection waiver may be offered, sold, or provided to a borrower in this state in compliance with this chapter.
2. A guaranteed asset protection waiver may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.
3. Notwithstanding any contrary provision of law, any cost to the borrower for a guaranteed asset protection waiver entered in compliance with the federal Truth in Lending Act [15 U.S.C. 1601 et seq.], and related implementing regulations, must be separately stated and is not a finance charge or interest.
4. A dealer shall insure the dealer's guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a dealer, may insure the creditor's guaranteed asset protection waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be obtained directly by a creditor or dealer, or may be procured by an administrator, to cover a creditor's or dealer's obligations. However, a dealer that is a lessor on a motor vehicle is not required to insure obligations related to guaranteed asset protection waivers on that leased vehicle.
5. The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of that finance agreement by the creditor.

6. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.
7. A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.
8. Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, must be held by the creditor or administrator in a fiduciary capacity.

26.1-57-04. Contractual liability or other insurance policies.

1. Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.
2. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver also must cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.
3. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.
4. The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor before the date of cancellation or termination and for which premium has been received by the insurer.

26.1-57-05. Disclosures.

A guaranteed asset protection waiver must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

1. Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.
2. The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor.
3. The purchase price and the terms of the guaranteed asset protection waiver, including the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.
4. The borrower may cancel the guaranteed asset protection waiver within a free-look period as specified in the waiver, and is entitled to a full refund of the purchase price, if no benefits have been provided.

5. The procedure the borrower shall follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address at which the borrower may apply for waiver benefits.
6. The procedure for canceling the guaranteed asset protection waiver and for requesting any refund due.
7. To receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free-look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or such other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
8. The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due, in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement.

26.1-57-06. Cancellation.

1. A guaranteed asset protection waiver agreement is cancellable. A guaranteed asset protection waiver must provide if a borrower cancels a waiver within the free-look period, the borrower is entitled to a full refund of the purchase price, if benefits have not been provided. If a borrower cancels the waiver after the free-look period and no benefits have been provided, the creditor, administrator, or other authorized party shall provide the borrower a refund of the purchase price, calculated in a manner at least as favorable as using the sum-of-the-digits method, less any cancellation fee no greater than fifty dollars.
2. To receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
3. If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection 4.
4. Any cancellation refund under subsection 1, 2, or 3 may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

26.1-57-07. Commercial transactions exempted.

Subsection 3 of section 26.1-57-03, section 26.1-57-05, and section 26.1-57-06, are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

26.1-57-08. Enforcement - Penalty.

1. The commissioner may take action as necessary or appropriate to enforce this chapter and to protect guaranteed asset protection waiver holders in this state.
2. After proper notice and opportunity for hearing, the commissioner may:
 - a. Order the creditor, administrator, or any other person not in compliance with this chapter to cease and desist from further guaranteed asset protection waiver-related operations that are in violation of this chapter.
 - b. Impose a penalty of not more than five hundred dollars per violation and no more than ten thousand dollars in the aggregate for all violations of a similar nature. For purposes of this chapter, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct or practice determined to be a violation of the chapter occurred.
 - c. Order the creditor, administrator, or any other person not in compliance with this chapter to pay restitution of the guaranteed asset protection waiver purchase price.

SECTION 2. APPLICATION. This Act applies to all guaranteed asset protection waivers that become effective on or after the effective date of this Act."

Renumber accordingly

Date: Jan 16, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1181

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 19.0741.01001 title .02000

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made by Rep Adams Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ Voice vote ~ Motion carried

Date: Jan 16, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1181

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made by Rep Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	AP	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Ruby

REPORT OF STANDING COMMITTEE

HB 1181: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1181 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 26.1-57 of the North Dakota Century Code, relating to the regulation of guaranteed asset protection waivers; to provide a penalty; and to provide for application.

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4. "Dealer" has the same meaning as provided under section 39-01-01.
5. "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.
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7. "Guaranteed asset protection waiver" means a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement if there is a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.
8. "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.
9. "Motor vehicle" has the same meaning as provided under section 39-01-01, except the term includes a snowmobile and a trailer for a snowmobile, motorcycle, boat, camper, or personal watercraft.

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 - b. A debt cancellation or debt suspension contract offered in compliance with title 12, Code of Federal Regulations, part 37 or title 12, Code of Federal Regulations, part 721, or other federal law; or
 - c. A debt cancellation or debt suspension contract offered by a bank or credit union chartered under the laws of this state.
2. Guaranteed asset protection waivers are not insurance and, except as provided under this chapter, are exempt from the insurance laws of this state. A person marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers which complies with this chapter is exempt from the insurance requirements of this state.

26.1-57-03. Requirements for offering guaranteed asset protection waivers.

1. A guaranteed asset protection waiver may be offered, sold, or provided to a borrower in this state in compliance with this chapter.
2. A guaranteed asset protection waiver may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.
3. Notwithstanding any contrary provision of law, any cost to the borrower for a guaranteed asset protection waiver entered in compliance with the federal Truth in Lending Act [15 U.S.C. 1601 et seq.], and related implementing regulations, must be separately stated and is not a finance charge or interest.
4. A dealer shall insure the dealer's guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a dealer, may insure the creditor's guaranteed asset protection waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be obtained directly by a creditor or dealer, or may be procured by an administrator, to cover a creditor's or dealer's obligations. However, a dealer that is a lessor on a motor vehicle is not required to insure obligations related to guaranteed asset protection waivers on that leased vehicle.
5. The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of that finance agreement by the creditor.
6. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.
7. A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.
8. Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, must be held by the creditor or administrator in a fiduciary capacity.

26.1-57-04. Contractual liability or other insurance policies.

1. Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.
2. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver also must cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.
3. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.
4. The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor before the date of cancellation or termination and for which premium has been received by the insurer.

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1. Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.
2. The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor.
3. The purchase price and the terms of the guaranteed asset protection waiver, including the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.
4. The borrower may cancel the guaranteed asset protection waiver within a free-look period as specified in the waiver, and is entitled to a full refund of the purchase price, if no benefits have been provided.
5. The procedure the borrower shall follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address at which the borrower may apply for waiver benefits.
6. The procedure for canceling the guaranteed asset protection waiver and for requesting any refund due.
7. To receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free-look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or such other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.

8. The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due, in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement.

26.1-57-06. Cancellation.

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2. To receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
3. If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection 4.
4. Any cancellation refund under subsection 1, 2, or 3 may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

26.1-57-07. Commercial transactions exempted.

Subsection 3 of section 26.1-57-03, section 26.1-57-05, and section 26.1-57-06, are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

26.1-57-08. Enforcement - Penalty.

1. The commissioner may take action as necessary or appropriate to enforce this chapter and to protect guaranteed asset protection waiver holders in this state.
2. After proper notice and opportunity for hearing, the commissioner may:
 - a. Order the creditor, administrator, or any other person not in compliance with this chapter to cease and desist from further guaranteed asset protection waiver-related operations that are in violation of this chapter.
 - b. Impose a penalty of not more than five hundred dollars per violation and no more than ten thousand dollars in the aggregate for all violations of a similar nature. For purposes of this chapter, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, regardless of the number of

times the conduct or practice determined to be a violation of the chapter occurred.

- c. Order the creditor, administrator, or any other person not in compliance with this chapter to pay restitution of the guaranteed asset protection waiver purchase price.

SECTION 2. APPLICATION. This Act applies to all guaranteed asset protection waivers that become effective on or after the effective date of this Act."

Renumber accordingly

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1181

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1181
3/11/2019
Job #33470

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to the regulation of guaranteed asset protection waivers; to provide a penalty; and to provide for application.

Minutes:

Att. #1

Chairman Klein: Opened the hearing on HB 1181. All members were present.

Representative Keiser, District 47: introduced the bill. This bill deals with the regulation of Guaranteed Asset Protection waivers also known as GAP waivers, to provide a penalty and provide for application. This isn't an insurance product but it does look and sound like one. GAP insurance is similar to warranty insurance. When you finance a loan, and you can buy an extension. GAP coverage is made available at the time of purchase, you offer coverage for the difference between the cost of the vehicle and the value after a short period of time. If your car is totaled you're paid your insurance total but it will be somewhat less than what you have left on your loan. Typically, you'll lose \$3-5,000. This GAP coverage agrees to pay the difference between purchase price and what the value is at the time the vehicle is involved in a total accident; it's like a warranty. Offered in 26 states, now being heard in North Dakota and many other states. Representative Keiser went through the bill line by line and explained changes to the committee. On

Chairman Klein: So what we had in the code was nothing that related to this GAP insurance, and now we have clear guidelines and definitions for folks who are selling the GAP insurance?

Representative Keiser: That is correct.

Senator Burckhard: Is this like somebody taking out a 72-month loan out on the car and they decide to trade it in after 60 months and find out they have negative equity?

Representative Keiser: No, this is really a collision product.

Chairman Klein: But you have to purchase that at the time, from an agent?

Representative Keiser: You opt in or opt out. Its bought at the same time you're financing your loan for your car. Four years after you purchase your car, the price on your car and on your loan are about the same. This is for that loss associated with depreciation.

Chairman Klein: I think there is a company out there that is selling that you got in an accident and didn't get a new car out of the deal.

Representative Keiser: There isn't one insurance company that markets, we insure for the full value of your car.

Chairman Klein: But you pay for that?

Representative Keiser: Yep.

Senator Burckhard: This is something that if you buy a new car, the finance person at the dealership would suggest it?

Representative Keiser: That's correct.

Levi Andrist, J Group on behalf of the Asset Protection Alliance: testified in support. We worked with the prime sponsor, as well as the attorney general's consumer protection division, the department of financial institutions, the two insurance agent organizations, the two banking organizations in the state, as well as the automobile dealers' association in order to get this bill in the shape that it is.

Chairman Klein: Is this the bill you have someone flying in to talk to us about, but his flight is delayed?

Levi: Yes.

Jeff Ubben, Deputy Insurance Commissioner: testified in support. This is already being done by the insurance department. There really isn't much law regarding these products, we've had the opportunity to see this from time to time so we've drafted a kind of internal memo for guidance for our staff but this would be much better because we could have a law to follow instead of just an in-house memo.

Senator Kreun: Does this just apply to vehicles?

Jeff: Yes, as far as I know it is only used on vehicles. I've pretty much only seen it used on vehicles anyways. The language in here is pretty specific to vehicles.

Vice Chairman Vedaa: Most homes have replacement cost value on their insurance policy.

Chairman Klein: Do you get calls and comments about this? Or is this more so just as you do get a call from time to time, this just helps your agency work through any concerns or questions the public may have?

Jeff: That is exactly right. We get calls from time to time but it's been pretty infrequent. When they do come up we're usually able to work our way through those for the most part. Folks understand that this is not insurance however, there should be some parameters and policies around that and before it was just what the insurance department thought was appropriate and now the legislative assembly has a chance to put that forward.

Vice Chairman Veda: I believe there are insurance companies out there that offer this, is that correct?

Jeff: I believe so yes.

Chairman Klein: Closed the hearing on HB 1181.

See attachment #1 for additional testimony submitted to the committee.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1181
3/11/2019
Job #33485

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to the regulation of guaranteed asset protection waivers; to provide a penalty; and to provide for application.

Minutes:

None.

Chairman Klein: Opened the committee work session on HB 1181. I think there isn't much opposition to this.

Vice Chairman Vedaa: Moved a Do Pass.

Senator Roers: Seconded.

Chairman Klein: I didn't realize that there wasn't language for this yet.

Senator Piepkorn: So this would normally be offered at the time of purchase at the dealership and people and just decide if they want to take it or not?

Chairman Klein: I believe so yes. The idea being that the \$40,000 new car, and we know it's a discussion because that's what the ads tell us and we know that when we drive the car off the lot it loses a lot of its value.

Vice Chairman Vedaa: I would say there are probably a lot of lenders behind this if its offered at the dealership.

Senator Kreun: Is this a onetime payment for insurance or is it renewed annually? Is there a time frame?

Levi Andrist, Guaranteed Asset Protection Alliance: Typically, it's an initial upfront fee. To answer the other questions, these are the General Motor finance companies, they are the ones that hold the dollars if there is a loss and cover the gap.

Senator Kreun: In the testimony it indicated that after about four years it evens out, can you cancel it and get a portion of it back after four years if you've got a six-year loan?

Levi: I don't have a direct answer to that. What I would say is a very important consumer protection in the bill was a 30-day free look back. So if in the first 30 days they decide they actually don't want this coverage, they can go back on it.

Senator Kreun: But just for 30 days?

Levi: Right, that's the free look back.

Senator Kreun: So can you say you only want it for four years instead of the 6-year loan?

Levi: There are cancellation provisions in the bill.

Vice Chairman Vedaa: The way I understood that was typically as you pay your loan off, that major depreciation was right at the beginning so after four years it kind of catches up with your loan.

Senator Kreun: (Inaudible).

Vice Chairman Vedaa: It's like when you get a mortgage and you have to buy that mortgage insurance.

Chairman Klein: Levi?

Levi: It is utterly optional.

Chairman Klein: Who explains to the consumer that there is gonna be a gap? Do most people understand that right out of the shoot?

Levi: From the anecdotes that we have heard it really depends on how astute the customer is, the value of the vehicle, if somebody has had a bad experience previously. The other this is the chief salesperson is really the point of sale at the dealership, so it's really at the dealership.

Chairman Klein: So you're extending your warranty, you're probably financing it at the dealership and then that is another sale option you can purchase also? Cause you're making payments anyway?

Levi: Yes, they are absolutely optional.

Senator Piepkorn: I would imagine there is a difference in the rate between your average economy car and a luxury vehicle? Do you have any idea about that?

Levi: It's a good question, on the house side they testified that for a \$40,000 vehicle this would be in the hundreds of dollars. Again, every company is gonna vary, it depends on the value of the vehicle.

Chairman Klein: And it's a one-time payment that's a part of your financing package, so you aren't coming back every couple of years?

Levi: That's correct.

Vice Chairman Vedaa: You also can get this on your car insurance as well. It just depends when you want to pay for it, on a premium payment or whatever. But it's typically in your initial payment.

Chairman Klein: What I'm hearing is your agent, you've got your new car, you call your agent and say you just got a new car and I want it insured for what I paid for it?

Jeff Ubben, Deputy Insurance Commissioner: If you are purchasing through an agent at an insurance company, that we still consider insurance and that would not fall under the scope of this bill. This is just between the borrower and the lender, if there is a two party agreement between those two parties then it's a GAP waiver. So If you get State Farm to come in as a third party and act as an indemnifier, then that still is considered to be insurance and we would regulate that just like we regulate every other line of insurance.

Chairman Klein: So we have to keep in mind that this is not insurance, the insurance department is just keeping an eye on it.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Burckhard will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1181, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1181 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1181



Attachment 1
Page 1

Please Support House Bill 1181

January 16, 2019

Chairman Keiser and Members of the House Industry, Business, and Labor Committee,

Good morning. My name is Matthew Nowels, and I am here today on behalf of the Guaranteed Asset Protection Alliance in support of House Bill 1181. The Guaranteed Asset Protection Alliance, or GAPA for short, is comprised of companies that offer guaranteed asset protection waivers across the country.

A guaranteed asset protection waiver or "GAP waiver" is offered to a borrower when that person is financing the purchase of a car. As soon as the borrower drives off the dealer's lot, their new car loses significant value. Because of this devaluation, the amount the borrower owes exceeds the amount the vehicle is worth. If the Borrower destroys the vehicle at that time, they will owe more than what their motor vehicle insurance will pay them. The additional amounts owed would come out of the borrower's pocket, unless that person obtained a GAP waiver. If a GAP waiver was purchased, the creditor would waive some or all of the amount owed in excess of the primary insurance proceeds. In other words, the creditor simply foregoes seeking payment of the additional amounts owed.

We support this legislation as it creates a uniform set of laws applicable to this product and contains important consumer protections. Similar laws have been passed in 21 other states including Wisconsin, Michigan, Minnesota, and Montana. Prior to seeking this legislation, we consulted with the ND Insurance Department, the Attorney General's Consumer Protection Division, the two insurance agent associations, the department of financial institutions, the banking community, the property and casualty insurance community, and the automobile dealers association. The following is a brief description of this legislation:

- Section 1 sets forth a number of definitions relevant to GAP waiver including defining terms such as creditor, borrower, finance agreement and a free look period which permits a borrower to return the product within 30 days for a full refund.
- Section 2 sets forth that federal and state banks and credit unions are exempt from this act and that this product is not insurance.
- Section 3 specifies things like that the product may be included within the amount financed, that the GAP waiver remains a part of the finance agreement and that the product must be optional.
- Section 4 sets forth a series of requirements applicable to contractual liability insurance purchased by creditors.

- Section 5 includes a number of required disclosures addressing items like the cost of the product, the terms of the product, cancellation and refund, the free look period and requirement to tell the borrower that the purchase of this product is optional.
- Section 6 specifies that the GAP waiver must be cancellable and that a refund must be provided.
- Section 7 exempts commercial transactions from certain provision within this legislation.
- Section 8 includes relevant enforcement provisions including the ability for the Department to order restitution.

GAPA supports this legislation and hopes that you will join us in supporting it as well. I am happy to answer any questions.

Best Regards,

Matthew Nowels

Attachment 2
Page 1
Jan 16, 2019

APCI/American Property and Casualty Insurance Association

January ¹⁶~~14~~, 2019

House Industry, Business, and Labor Committee

Support HB 1181

Chairman Keiser and Members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCI) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCI represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

APCI supports HB 1181 because it provides helpful clarity to the insurance industry that Guaranteed Asset Protection Waivers, or GAP Waivers, are not insurance. GAP Waivers are offered as non-insurance products in all 50 states. This bill codifies that the product is not insurance and provides important consumer.

We respectfully urge the committee to support HB 1181.

Steve Schneider

sschneider@aiadc.org

312.782.7720



House Bill 1181

Good morning Chairman Klein and members of the Senate Industry Business & Labor Committee. My name is Alan Williams and I am here today on behalf of the Guaranteed Asset Protection Alliance in support of House Bill 1181. The Guaranteed Asset Protection Alliance, or GAPA for short, is comprised of companies that offer guaranteed asset protection waivers across the country.

A guaranteed asset protection waiver or "GAP waiver" is offered to a borrower when that person is financing the purchase of a car. As soon as the borrower drives off the dealer's lot, their new car loses significant value. Because of this devaluation, the amount the borrower owes exceeds the amount the vehicle is worth. If the Borrower destroys the vehicle at that time, they will owe more than what their motor vehicle insurance will pay them. The additional amounts owed would come out of the borrower's pocket, unless that person obtained a GAP waiver. If a GAP waiver was purchased, the creditor would waive some or all of the amount owed in excess of the primary insurance proceeds. In other words, the creditor simply foregoes seeking payment of the additional amounts owed;

We support this legislation as it creates a uniform set of laws applicable to this product and contains important consumer protections. Similar laws have been passed in 21 other states including Wisconsin, Michigan, Minnesota and Montana. Prior to seeking this legislation, we consulted with the Insurance Department, the Attorney General's Consumer Protection Division, the two insurance agent associations, the department of financial institutions, the banking community, and the automobile dealers association. The following is a brief description of this legislation:

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Section 8 includes relevant enforcement provisions including the ability for the Department to order restitution.

GAPA supports this legislation and hopes that you will join us in supporting it as well. I am happy to answer any questions.