



KEVIN PETERSEN

STATE REPRESENTATIVE

Thank you Chairman Katsma and committee members for holding a public hearing on AB 663 relating to: guaranteed asset protection products sold in connection with vehicle credit sales, loans, and consumer leases.

A guaranteed asset protection (GAP) waiver is a contractual agreement wherein a creditor waives the amount of debt in excess of the borrower's primary coverage in the event a motor vehicle is a total loss prior to paying the vehicle loan or lease in full.

The GAP product originates from a lending institution or a car dealership as a supplement to primary auto insurance coverage as protection against theft or damage early in the life of a loan or lease when the initial vehicle depreciation can cause a gap in coverage. GAP coverage is not required, but can be offered at the point of sale or lease of your vehicle. Any customer that wishes to purchase GAP coverage must sign a separate document affirming their intent after receiving written disclosure of the cost and term of the product.

GAP waivers are offered in all 50 states as non-insurance products. Wisconsin currently regulates GAP waivers through a bulletin issued by the Department of Financial Institutions.

We are introducing this bill to update our statutes in regards to guaranteed asset protection (GAP) products. This legislation builds off the guidance from former DFI Secretary Ray Allen. In July of 2015, he released a letter stating, "The Department approves the practice of assessing a charge for GAP when sold as debt cancellation agreements in connection with credit sales and loans. This approval is made under our authority contained in s. 426.104(4), Wis. Stats."

AB 663 clarifies these conditions. Additionally, the bill specifies that GAP products are not an insurance product and agreements made under this bill would comply with the WI Consumer Act.



State of Wisconsin
Department of Financial Institutions

Scott Walker, Governor

Ray Allen, Secretary

Wisconsin Consumer Act
Guaranteed Asset Protection ("GAP") Products

(Applicable only for non-depository institutions)

The Department approves the practice of assessing a charge for GAP when sold as debt cancellation agreements in connection with credit sales and loans, if the conditions listed below are met. This approval is made under our authority contained in s. 426.104(4), Wis. Stats.

- 1) The GAP is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.
- 2) Any customer desiring GAP gives a specific, separately signed, affirmative written indication of the desire after receiving written disclosure of the cost and term of the product.
- 3) In connection with a credit sale and to comply with s. 422.303(1), Wis. Stats., the disclosure requirement under condition (1) and the customers' separately signed written affirmation of their desire to acquire the GAP, along with the cost and term of the GAP, are incorporated within the installment sales contract.
- 4) The GAP agreement indicates that the GAP agreement is between the customer and the creditor that sold the GAP, and after any assignment, between the customer and assignee.
- 5) The GAP agreement may be cancelled at any time by the customer without penalty. The GAP agreement terminates no later than the earliest of the following events; 1) cancellation by the customer, 2) payment in full of the related credit transaction, 3) expiration of any redemption period after a repossession or surrender of the related collateral, 4) upon total loss of the covered collateral after the gap amount is waived or it is determined that no gap amount exists. GAP agreements may also be terminated by the creditor upon other events (e.g., default) that occur earlier than the above events if the GAP agreement so states. If any termination occurs within 30 days of the GAP purchase, the customer is entitled to a full refund of the GAP cost or a full credit of the GAP cost plus the amount of applicable finance charges. If any termination occurs after 30 days, the customer is entitled to a refund/credit of a portion of the GAP cost. At the minimum, the refund allowed shall be calculated by a method no less favorable to the customer than the monthly "Rule of 78." No cancellation fee or similar fee may be assessed. If a GAP benefit has been or will be paid no refund is required. Cancellation provisions shall be disclosed in the GAP agreement. When calculating the refunds for the unearned GAP charges on agreements that contract for the "Rule of 78" method, refunds shall be based on the number of full months earned from the contract date to the actual termination date, counting a fractional month of 16 days or more as a full month. When calculating the refunds for the unearned GAP charge on agreements that contract for a Pro Rata refunding method and a monthly Pro Rata method is used, the number of full months earned shall be counted in a similar manner.

- 6) Upon any termination, the creditor shall make an appropriate refund/credit of the GAP charge or shall cause to be made an appropriate refund/credit by instructing in writing the appropriate party to make such refund/credit.
- 7) The gap agreement complies with the Wisconsin Consumer Act and all terms and conditions are reasonable.

History: Issued 6-6-94, Revised 8-1-04, 10-10-05, 6-5-08, 7-1-15



DAVID CRAIG

STATE SENATOR

Assembly Committee on Financial Institutions
Public Hearing, January 17, 2018
Assembly Bill 663
Senator David Craig, 28th Senate District

Chairman Katsma and Committee Members,

Thank you for taking testimony on Assembly Bill 663 relating to guaranteed asset protection (GAP) products sold in connection with vehicle credit sales, loans, and consumer leases.

GAP products typically involve a loan for a car. The product is designed to protect consumers by offering protection between the value of the car at the time of a total loss by damage or unrecovered theft and the balance owed on the loan. A GAP product is not a requirement for the purchase of a vehicle and may be canceled by the borrower at any time without a penalty or fee. If a customer wishes to purchase this product they will have to sign a separate document affirming their intent after receiving written disclosure of the cost and term of the product.

This legislation builds off of a guidance letter issued by the Department of Financial Institutions (DFI) from 2015 stating DFI approved of GAP product sales and the legislation before you seeks to codify it into state law.

Thank you for allowing me to testify on this important piece of legislation. I am happy to take any questions from committee members.