

# SENATE BILL REPORT

## EHB 1530

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As of March 23, 2009

**Title:** An act relating to creating the guaranteed asset protection waiver model act.

**Brief Description:** Creating the guaranteed asset protection waiver model act.

**Sponsors:** Representatives Kirby and Bailey.

**Brief History:** Passed House: 3/09/09, 96-0.

**Committee Activity:** Financial Institutions, Housing & Insurance: 3/18/09.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff:** Philip Brady (786-7460)

**Background:** Because of depreciation rates, the outstanding loan balance on a financed vehicle may be significantly higher than a vehicle's actual cash value. This is particularly true during the first few years of the loan. If a vehicle is totaled in an accident or stolen, the primary insurance settlement is usually based on the vehicle's actual cash value, not the outstanding loan balance. This may create a deficiency balance, or "gap," that consumers must pay.

Some creditors offer general asset protection waivers (GAP waiver or waiver). A GAP waiver is a contract where a creditor agrees to waive the difference between the fair market value of a totaled or stolen vehicle and the outstanding loan balance, often in exchange for a separate payment. This separate payment can be either one-time or reoccurring. These agreements are not specifically regulated in statute.

The Insurance Commissioner (Commissioner) regulates insurance in Washington. This includes oversight of rates, forms, financial conditions, claims practices, and other matters related to the business of insurance.

**Summary of Bill:** Businesses are not permitted to offer or sell GAP waivers unless they (1) are registered with the Commissioner; or (2) transfer 85 percent of waiver agreements within 30 days, and transfer all waiver agreements within 45 days. Failure to transfer all waiver agreements within 45 days results in an immediate registration requirement. Federally regulated banks are exempt from these provisions, but may choose to participate in the

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program. Applicants for registration must disclose specific information and pay a \$250 fee, and must inform the Commissioner of any changes in any collected information.

Retail car sellers who offer financing and want to sell waivers do not need to have an insurance policy that covers their waiver obligations. All creditors are permitted but not required to insure their waiver obligations. Purchase of a waiver cannot be a condition of an offer of credit or the term of sale or lease and cannot be discriminatory.

Waivers must contain particular disclosures that are written in clear, understandable language, and must clarify the terms of cancellation and refund, a free look period, and procedures necessary for obtaining the waiver's benefits. If a waiver is cancelled due to default or repossession, any refund will be paid to the creditor.

The Commissioner may enforce the chapter, and may impose penalties up to \$2,000 per violation. Persons who sell GAP waivers without registering with the Commissioner are subject to a \$25,000 civil penalty and personal liability for performance. If sale without registration is done knowingly, sale constitutes a Class B felony.

GAP waiver payments may be included in the sale price of a retail installment contract.

All GAP waiver agreements entered into after January 1, 2010, are subject to this chapter.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is very similar to the Senate version, and is based on an agreement between industry and regulators. The purpose is to create a needed superstructure for regulation of GAP waivers in Washington in order to protect consumers.

OTHER: The rules shouldn't apply to consumer loan companies either. An amendment to that effect is coming.

**Persons Testifying:** PRO: Mel Sorensen, Guaranteed Asset Protection Alliance; Drew Bouton, Office of the Insurance Commissioner.

OTHER: Lisa Thatcher, Washington State Financial Service Association.