



MEMORANDUM

May 18, 2015

To: Chair Floyd Prozanski
Senate Judiciary Committee

From: Theresa Van Winkle, Senior Policy Advisor

Subject: House Bill 2845-A (Guaranteed asset protection waivers)

As you and your fellow committee members deliberate on the provisions of House Bill 2845-A, which expands the sale of guaranteed asset protection (GAP) waivers in Oregon, the Department of Consumer and Business Services (DCBS) would like to provide background information about the availability of GAP coverage and how it's regulated in this state, and the department's concerns about the bill.

While a GAP waiver and GAP insurance for a leased or financed vehicle are similar in regards to its coverage, there is a significant difference in how and why they are sold. If a vehicle is totaled, both products pay the difference between the vehicle's current actual cash value and the current outstanding balance on the loan or lease. A GAP waiver is a direct agreement between a borrower and financial institution that protects a borrower from a loan or lease deficiency, akin to debt cancellation. Under GAP insurance, the carrier pays claims to the finance company holding the loan or lease on the borrower's behalf.

Currently, GAP waivers are exempted from Oregon's Insurance Code if they are provided as part of a financing agreement at no additional charge or are issued by a bank or credit union. For banks and credit unions, GAP waivers are considered as direct activities related to the loan or lease and allowed under either the Code of Federal Regulations (for national banks) or the National Credit Union Administration's incidental powers rule. All other GAP agreements sold in Oregon are regulated under the Insurance Code. Examples of regulatory activities include requiring GAP policy forms to be filed for approval by DCBS, the filing and review of rates charged to consumers, and requiring admitted GAP insurers to meet insurance financial solvency requirements.

House Bill 2845-A modifies the statutory definition of a GAP waiver and exempts GAP waivers from the Insurance Code. If this bill is enacted, sellers of GAP waivers would not be required to have licenses or meet financial solvency requirements, waiver forms will not be filed or approved for compliance with current Insurance Code standards, and rates will not be reviewed.

Collectively, these changes shift many of the consumer protections to the discretion of the contract writer versus statutory standards.

Although there is little difference in the consumer's eye regarding the purpose of GAP coverage, there is a big difference with who can provide assistance if issues arise with a GAP waiver. As GAP insurance is regulated by DCBS, the Insurance Division's consumer advocates and other staff can resolve differences between a consumer and a carrier or seller. Complaints regarding GAP waivers as outlined under House Bill 2845-A would be regulated under the Unlawful Trade Practices Act.

The department is planning to assemble a work group during the 2015 interim to address issues regarding GAP and credit insurance transparency and consumer protections. The catalyst stems from stakeholder discussions on a 2015 DCBS-sponsored bill that died in committee. Given that the work group's charge dovetails into the provisions of House Bill 2845-A, if the bill does not reach the Governor's desk, GAP waivers can be added to the work plan.

DCBS is neutral on House Bill 2845.