

## NOTICE OF EFFECTIVE DATES

### **PAGE 3**

Missouri SB 398:  
August 28, 2023 (Applies to MVFPPs that become effective after 2/23/2024)

Texas House Bill 2746: Debt Cancellation Agreements  
September 1, 2023

**NEW!** North Carolina SB356/ HB447:  
Motor Vehicle Dealer Laws  
September 1, 2023

Connecticut SB 1033: Revisions to Banking Statutes  
October 1, 2023  
(Applies to consumer contracts on or after 1/1/2024)

### **PAGE 4**

Connecticut SB 1058:  
Consumer Protection  
October 1, 2023

Montana HB 668:  
Service Contracts  
October 1, 2023

Oklahoma SB 593: Automobile Franchise Laws  
November 1, 2023

**NEW!** California AB 1756:  
GAP Refund Calculation  
January 1, 2024

### **PAGE 5**

Colorado HB 1181:  
GAP Agreements  
January 1, 2024

**NEW!** California AB 473 – Motor Vehicle Manufacturers, Distributors, and Dealers  
January 1, 2024

### **PAGE 6**

California SB 793:  
Privacy Notice  
January 1, 2024

Indiana SB 005: Consumer Data Protection  
January 1, 2026

## Government Affairs Newsletter GUARANTEED ASSET PROTECTION

October 2023

### Legislative & Regulatory Updates

The newsletters provide insight into newly introduced and updated legislation during the month. You should review each bill in its entirety to determine the impact and what actions are required, if any, to comply with states laws/regulations. Please note that not all the bills that are being actively pursued are represented in the newsletters.

#### **Massachusetts SB208/ HB346: GAP, EWU, Motor Vehicle Protection Products**

**Legislative Update: Referred to the Joint Consumer Protection and Professional Licensure Committee**

This bill is being pursued by GAPA to implement the revised Model Act. This bill aims to incorporate Chapter 93M, titled "Motor Vehicle Financial Protection Products," into the General Laws. As per the revised Model Act, this bill designates the Commissioner of the Division of Banks as the regulator responsible for enforcing this new statute.

There are ongoing conversations with the Chair of the Joint Consumer Protection and Professional Licensure Committee to advance the bill.

#### **Michigan SB343: VVPA, Debt Waivers**

**Legislative Update: This bill has been introduced and referred to the Senate Regulatory Committee.**

Michigan Senate Bill 343 is part of the package of bills pursued by GAPA to create a statutory framework for Vehicle Value Protection Agreements (VVPA).

The bill largely follows the GAPA model act on vehicle value protection agreements as it:

- Lays out disclosure requirements;
- Mandates a minimum 30-day "free-look" period;
- Provides for enforcement under the Attorney General;
- Provides financial responsibility requirements;
- Prohibits mandating purchase as a condition of sale, lease, or financing of a motor vehicle, and;
- States that such agreements are not insurance.

The bill also amends the definition of GAP waiver in current law to allow for GAP+, agreements without a separate charge, and excess wear and use waivers. These bills are the same as HB 5429-5432 that were pursued in 2022. This bill was rewritten with minor tweaks since it fell the last session, we are hoping it passes during the upcoming session.

#### **Ohio SB157: GAP Revised Model Act**

**Legislative Update: This bill has been newly introduced and referred to the Senate Insurance Committee.**

This is a Revised Model Act. This bill adds section 1310.251 to the Ohio Revised Code and sits under the Title 13 "Commercial Transactions". This bill would enact the GAPA Revised Model including regulatory framework for GAP, EWU, and Vehicle Value Protection Products.

The bill amends the existing GAP Waiver (“debt cancellation or debt suspension product”) statute Sec. 1317.05 to incorporate GAP Plus and clearly state that a GAP Waiver shall not be considered a finance charge or interest. Basic statutory requirements and definition of EWU are added to Title 13 and Vehicle Value Protection Agreements are added to the existing framework for ancillary product protection contracts under the Insurance Code Sec. 3905.426. Third-party obligor EWU is also incorporated into the ancillary product protection contracts section.

The bill specifically references the inclusion of vehicle value protection products, indicating that these products will be subject to regulation. The specific regulations for these products will be outlined within the bill itself, ensuring that proper oversight and consumer protection measures are in place for individuals purchasing or utilizing these products.

### **United States HR 906: Right to Repair**

**Legislative Update: Hearing with House Subcommittee on Innovation, Data, and Commerce held on September 27, 2023**

This bill is a Right to Equitable and Professional Auto Industry Repair Act aimed to ensure consumers have access to data relating to their motor vehicles, critical repair information, and tools, and to provide them choices for the maintenance, service, and repair of their motor vehicles, and for other purposes.

The Repair Act will do the following:

- Prohibit manufacturers from imposing technological or legal barriers that block aftermarket replacement part manufacturers from accessing critical information and tools necessary to develop interoperable products with emerging vehicle technology.
- Establish the right for replacement part manufacturers and independent repair shops to access critical information, tools, and equipment needed to maintain vehicles.
- Require companies producing vehicles equipped with telematics to make any critical repair information and tools available to replacement part manufacturers and repair facilities at a fair and reasonable cost.
- Provide vehicle owners with data and information wirelessly generated by their vehicles.
- Establish a right for vehicle owners to securely share their vehicle's repair and maintenance data with their repairer of choice.

### **Federal Trade Commission Notice of Rule Making**

The FTC has issued a notice of proposed rulemaking (NPRM) to promulgate a “rule on unfair or deceptive fees,” which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees.

### **CFPB and Arbitration Clauses**

Consumer advocacy groups have filed a Petition for Rulemaking with the Consumer Financial Protection Bureau (CFPB) to eliminate mandatory pre-dispute arbitration provisions. The petition requested that the CFPB issue a rule to “allow the consumer to make a meaningful choice on whether to use arbitration after a dispute arises.” The CFPB is focused on companies that use fine print to extract extra money, lock people into unwanted business relationships, gain advantages they could not obtain in fair and competitive markets, or circumvent the rule of law. Media reports indicate that the CFPB welcome will seek public input on the petition, but it has not been confirmed through an official statement by the CFPB.

**Maine Rule Adoption 713**

The Maine Bureau of Consumer Credit Protection (BCCP) amended and adopted proposed rule 2023-109 establishing the fees and procedures for registration of a GAP Administrator and requiring registration through the National Multistate Licensing System (NMLS). GAPA objected to the use of NMLS and asked for other clarifications. The BCCP adopted a definition of the term "Superintendent" but did not otherwise accept any proposed changes. This rule is effective September 2, 2023, and requires all registered GAP Administrators to transition registration to NMLS between November 1 and December 31, 2023.

**Notice of Effective Dates**

**Missouri SB 398: Motor Vehicles**

**Effective Date: August 28, 2023 (Applies to MVFPPs that become effective after 2/23/2024)**

This bill prohibits any manufacturer, importer, or distributor not licensed in the state of Missouri prior to January 1, 2023, from engaging in the business of selling motor vehicles to consumers, except as permitted by the MVFP act.

**Texas HB 2746: Debt Cancellation Agreements**

**Effective Date: September 1, 2023**

This bill amends Section 354.0007 of the Finance Code by adding a section regarding debt cancellation agreements. This bill would allow creditors to shift the refund burden to an administrator or retail seller by written notice within 30 days of termination.

The bill adds that a holder that is the retail seller shall provide a refund or credit within 60 days or provide written instructions to the administrator to cancel not later than the 30th day after the date the debt cancellation agreement terminates due to early termination of the contract. A holder other than a retail seller, shall not later than the 60th day after the date the debt cancellation agreement terminates refund or credit the appropriate amount of the debt cancellation agreement fee or provide written notice within 30 days to the administrator or retail seller to provide the refund.

This bill does not require the refiling of forms to implement.

**North Carolina SB356/HB447: Motor Vehicle Dealer Laws **NEWLY ENACTED!****

**Effective Date: September 1, 2023**

This bill adds various motor vehicle dealer franchise laws primarily to increase the availability of electric vehicles to rural consumers.

This bill makes it unlawful for a manufacturer or distributor that has any franchised dealers to sell, lease, or otherwise distribute one or more series of motor vehicles that are primarily electric or hydrogen vehicles that utilize at least one advanced technology that are not available for purchase by all of its franchised dealers in the state.

The bill amends section 20-305.1 regarding dealer warranty and recall obligations, removing language pertaining to unfair and unreasonable retail rates charged for parts and labor.

### **Connecticut SB 1033: Revisions to Banking Statutes**

Effective Date: October 1, 2023 (Applies to consumer contracts on or after January 1, 2024)

This bill makes various revisions to the Banking statutes of Connecticut. It amends the definition of “APR” and “small loan” to mean the loan calculated according to the provisions of the federal Military Lending Act and defines GAP Waiver to include EWU and GAP+. The bill states that if the borrower cancels such waiver then the administrator or authorized party shall provide a full refund of the purchase price of the GAP waiver entered into or after October 1, 2023. Additionally, it provides that certain small loan requirements apply to loans that are between five thousand to fifty thousand dollars. It shall not provide for an advance exceeding unpaid principal of fifty thousand dollars. The bill adds the definition of “Finance charge” which includes a charge for any ancillary product, membership, or service sold in connection or concurrent with a small loan.

### **Connecticut SB 1058: Consumer Protection, Robocalls**

Effective Date: October 1, 2023

This bill is a comprehensive consumer protection bill, that includes an expansive update to its telemarketing law. Telemarketers will be prohibited from calling consumers without express written consent (EWC), even those *not* on a Do-Not-Call (DNC) list. This bill has the following exemptions, including calls:

- In response to a request or inquiry (would revert to Federal standard of 3 months)
- To a consumer who has purchased from you during the previous 12 months
- To existing customers who have not previously opted out
- As part of a business-to-business contact
- Relative to debt collection
- From nonprofits to consumers if the consumer is a listed member of the organization

### **Montana HB 668: Service Contracts**

Effective Date: October 1, 2023

This bill amends the Montana Code relating to service contracts by adding the MVPPA suite of products to the definition of service contract, including third-party EWU, and incorporates vehicle theft protection products to the current regulatory framework. Montana law currently requires service contracts providers comply with one of three financial assurance models: reimbursement insurance policy, funded reserve and security deposit, or parent company guarantee. The also contains some basic disclosure requirements consistent with the model act. There is no licensing or registration requirement in the statute and enforcement authority is granted to the Department of Justice.

### **Oklahoma SB 593: Automobile Franchise Laws**

Effective Date: November 1, 2023

This bill prohibits manufacturers from denying a claim or implementing chargeback against auto dealer for failure of purchaser of new car to comply with title and registration law. This bill adds that a “factory shall not deny a claim or implement a chargeback against a new motor vehicle dealer after payment of a claim in the event a purchaser of a new vehicle is the subject of a claim fails to comply with titling or registration laws of this state and is not prevented compliance by any action of the dealer.” Lastly, it corrects “charge back” to read as “chargeback” throughout the statute.

### **California AB 1756: GAP Refund Calculation **NEWLY ENACTED!****

Effective Date: January 1, 2024

This bill amends Section 2982.12.(b)(2)(B) to calculate the refund based on the term of the GAP waiver rather than the finance agreement when the term of the finance agreement is longer than the GAP waiver. It reads “calculating a refund on a pro rata basis” shall require multiplying the total dollar amount of guaranteed asset protection waiver

charges by the quotient of the number of calendar days from the termination date to the guaranteed asset protection waiver's original full-term date, including the termination date as a full calendar day, divided by the total number of calendar days in the guaranteed asset protection waiver's original term. This bill now reflects changes to the refund policy sought by GAPA and was signed into law on October 8, 2023.

### **Colorado HB 1181: Guaranteed Asset Protection Agreements**

**Effective Date: January 1, 2024**

This bill is a GAPA initiative and applies to GAP agreements entered on or after the effective date. The bill codifies UCCC Rule 8 and implements product and process enhancements. The act establishes requirements regarding guaranteed asset protection agreements (GAP agreement). A GAP agreement relieves a consumer of liability for all or part of the deficiency balance remaining after the payment of all insurance proceeds upon the total loss of the consumer's motor vehicle.

The act permits a creditor to collect additional charges for a GAP agreement as part of a consumer credit transaction. The act sets forth requirements related to GAP agreements, including:

- Setting conditions and provisions that must be a part of any GAP agreement in order for it to be valid;
- Establishing the method by which the deficiency balance is calculated and what the consumer will be owed pursuant to the GAP agreement in the event of a total loss;
- Detailing procedures for when a consumer files a claim under the consumer's GAP agreement after a total loss;
- Establishing procedures and methods for the cancellation or assignment of a GAP agreement;
- Establishing the maximum fee that may be charged for a GAP agreement, which must not exceed 4% of the total amount financed in the consumer credit transaction or \$600, whichever amount is greater; and
- Prohibiting the sale of a GAP agreement in specified circumstances, such as when the loan to value ratio in the GAP agreement exceeds 150%

### **California SB 793: Privacy Notice & Personal Information**

**Effective Date: January 1, 2024**

Senate Bill 793 adds new section 791.045 to the insurance Code, which codifies the requirement to provide notices not less than annually for the duration of the insurer's and policyholder's relationship. The measure provides that "annually" means at least once in any period of 12 consecutive months during which that relationship exists.

The notice requirements of Section 791.04 (notice of information practices) and 791.045 may be combined into a single notice or provided as separate notices as long as all requirements are met. If the insurance institution or agent uses a separate, standard privacy notice in addition to the notices required by sections 791.04 and 791.045, the notices must clearly state that any rights a consumer, claimant, or beneficiary may have as described in these are not limited by the standard privacy notice that the insurance institution or agent also uses.

An insurance agent or broker is deemed to be in compliance with the notification requirements if the following conditions are met:

The insurer does not provide medical records, personal, or privileged information to a non-affiliated third party.

1. The insurer provides, as part of an abbreviated notice, the website for the insurer's privacy notice and information about the policyholder's rights regarding personal information about them maintained by the insurer, and informs the consumer of the following rights:

- the right to submit a written request to access, correct, amend, or delete the consumer’s personal information and the manner in which the right may be exercised, including the contact information and the mailing address, website address, or both, where the consumer may submit a request.
  - the right to receive a response within 30 business days of the consumer submitting a request to access, correct, amend, or delete their personal information.
  - if the insurance institution refuses the consumer’s request, the right to file a statement regarding what the consumer believes to be accurate and fair information and why the consumer disagrees with the insurance institution’s refusal.
2. The insurer’s policies and practices about disclosing personal or privileged information have not changed from the previous notice provided.

The measure clarifies that an insurer or agent is not required to provide a notice to a former policyholder with whom it no longer has a continuing relationship.

**California AB 473: Motor Vehicle Manufacturers, Distributors, and Dealers **NEWLY ENACTED!!****

**Effective Date: January 1, 2024**

This bill requires a franchisor to use the labor and time guide used by the franchisee for non-warranty work. This will be able to determine a reasonable time allowance for work and services that adds a licensee and adds that a license holder shall not offer a consumer a subscription service for motor vehicle features. They will utilize components and hardware already installed. This bill amends the current Vehicle Code relating to motor vehicle manufacturers, transporters, and dealers. It requires a franchisor to use the labor and time guide used by the franchisee for non-warranty work to determine a reasonable time allowance for work and services. It will allow a franchisee to file a protest with the board alleging that the franchisor's time allowances are not compliant, and the franchise shall have the burden of proof to demonstrate compliance.

The bill adds that a license holder shall not offer a consumer a subscription service for motor vehicle features that utilizes components and hardware already installed. Additionally, it adds the definitions of “motor vehicle feature” and “subscription service”.

The bill amends Section 11713.3 of the Vehicle Code by removing the language regarding franchisor notices, right of refusal, and reimbursement.

The bill amends Section 11713.13 of the Vehicle Code by adding language regarding incentive programs and defines “area of responsibility”.

**Indiana SB 005: Consumer Data Protection**

**Effective Date: January 1, 2026**

This bill amends the current Indiana code by adding Article 15: Consumer Data Protection. It adds the responsibilities of controllers of consumers’ personal data and the requirements for data protection assessments by controllers of consumers’ personal data. The bill additionally includes the exemptions from the bill’s requirements concerning the responsibilities of controllers of consumers’ personal data. The bill gives authority to the attorney general to investigate and enforce suspect or actual violations of the new article.

This bill establishes sets forth the following within the new article:

- Definitions of various terms that apply throughout the article.

- Exemptions from the bill's requirements concerning the responsibilities of controllers of consumers' personal data.
- The rights of an Indiana consumer to do the following:
  - a) Confirm whether or not a controller is processing the consumer's personal data.
  - b) Correct inaccuracies in the consumer's personal data that the consumer previously provided to a controller.
  - c) Delete the consumer's personal data held by a controller.
  - d) Obtain a copy or representative summary of the consumer's personal data that the consumer previously provided to the controller.
  - e) Opt out of the processing of the consumer's personal data for certain purposes.
- The responsibilities of controllers of consumers' personal data.
- The roles of controllers and processors with respect to a consumer's personal data.
- Requirements for data protection impact assessments by controllers of consumers' personal data.
- Requirements for processing de-identified data or pseudonymous data.
- Limitations as to the scope of the new article.
- The authority of the attorney general to investigate and enforce suspected or actual violations of the new article.

The preemption of local rules, regulations, and laws regarding the processing of personal data. Allows the attorney general to publish certain resources on the attorney general's website.

## Legislative Session Status

**States In Regular Session:**

District of Columbia; Massachusetts; Michigan; North Carolina; Ohio; Pennsylvania

**States In Recess:**

New Jersey

**States Upcoming Session Dates:**

November 15: Massachusetts - Adjourn

December 21: Michigan - Adjourn

December 31: Ohio – Adjourn

December 31: Ohio – Pennsylvania

**In Special Session**

Oklahoma, Texas, Wisconsin

## Federal Government Update

Last week, the House Republican conference nominated House Judiciary Committee Chair Jim Jordan for Speaker of the House, although 55 House Republicans said they would not vote for him. Jordan spent the weekend trying to shore up the remaining holdouts and gained momentum throughout the day on Monday, as several anti-Jordan Republicans reversed course and announced their support of the lawmaker.

On Tuesday, Oct. 17, the House took its first vote for Speaker with Jordan falling short by 17 votes after 20 Republicans did not give him their vote. On Wednesday, Oct. 18, Jordan again failed to receive enough votes to become Speaker after 22 Republicans did not vote in his favor. The lack of progress has reignited talk of assigning more powers to Speaker Pro Tempe Patrick McHenry to allow for work on aid packages and funding the government beyond Nov. 17.

The absence of a speaker in the House will have implications on future aid to Israel amid its war on Hamas. Lawmakers on both sides of the aisle are pushing for this funding, although Democrats have floated tying aid for Israel and Ukraine together, while some House Republicans have opposed this notion. On Friday, several top lawmakers, including House Appropriations Ranking Member Rosa DeLauro, Speaker Pro Tempe Patrick McHenry, House Foreign Affairs Chair Michael McCaul, and Ranking Member Greg Meeks, went to the White House to discuss an emergency funding package for Israel. According to the White House, it expects to make a funding request this week for both Ukraine and Israel. National Security Advisor Jake Sullivan remarked, "You can expect intensive engagement with Congress this very week as we work on such a package and seek to secure bipartisan support for it." However, it is unclear how much the House can do without a Speaker. Administration officials previously said the request would aim to address concerns related to the strain that providing additional military support for Israel, Ukraine, and Taiwan would place on the Defense Department's stockpiles.

Meanwhile, Senate Majority Leader Chuck Schumer has directed relevant committee leaders to work with the Biden administration on an aid package to be completed "hopefully within the next few weeks." This package may include both Ukraine and Israel aid, as well as border security funding and Taiwan assistance. Leader Schumer has said that the Senate will move first on passing an aid package. The Senate Foreign Relations Committee held a confirmation hearing for Jack Lew to be US ambassador to Israel on Wednesday, Oct. 18. Senators also received a briefing from the Biden administration intelligence officials this week on the latest updates from Gaza.