

1 ENGROSSED SENATE
2 BILL NO. 1743

By: Leewright of the Senate

3 and

4 Bashore of the House

5
6 An Act relating to financial protection products;
7 defining terms; allowing for the issuance of motor
8 vehicle financial protection products; requiring the
9 issuance of the protection product to be a separate
10 charge; prohibiting the requirement of a protection
11 product as a term for sale or lease; allowing for the
12 use of debt waivers; providing the conditions for a
13 retail seller or creditor to offer debt waivers;
14 providing the contractual liabilities of a creditor
15 issuing a debt waiver; providing for the cancelation
16 or termination of debt waivers under certain
17 conditions; providing the procedures the borrower
18 shall follow to obtain a debt waiver benefit;
19 authorizing refund in the event of a cancelation of a
20 debt waiver under certain conditions; providing
21 exemptions for certain offers of debt waivers;
22 providing requirements for offering vehicle value
23 protection agreements; requiring a contract holder of
24 a vehicle value protection agreement to provide copy
of agreement; requiring contract holders to follow
certain fiduciary requirements to ensure faithful
performance; requiring agreements to disclose certain
information; providing for promulgation of rules;
providing penalties for certain violations;
establishing that motor vehicle financial protection
products shall not be insurance; providing for
codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 140.2 of Title 15, unless there
is created a duplication in numbering, reads as follows:

1 As used in this act:

2 1. "Commercial" means a transaction wherein the motor vehicle
3 will primarily be used for business purposes rather than personal;

4 2. "Commissioner" means the Insurance Commissioner;

5 3. "Consumer" means an individual purchaser of a motor vehicle
6 or borrower under a finance agreement, and includes a borrower or
7 contract holder as herein defined as applicable;

8 4. "Finance agreement" means a loan, retail installment sales
9 contract, or lease for the purchase, refinancing, or lease of a
10 motor vehicle;

11 5. "Free look period" means the period of time from the
12 effective date of the motor vehicle financial protection product
13 until the date the motor vehicle financial protection product may be
14 canceled without penalty, fees, or costs. This period of time shall
15 not be shorter than thirty (30) days;

16 6. "Insurer" means an insurance company licensed, registered,
17 or otherwise authorized to issue contractual liability insurance
18 under the insurance laws of this state;

19 7. "Motor vehicle" means self-propelled or towed vehicles
20 designed for personal or commercial use including, but not limited
21 to, automobiles, trucks, motorcycles, recreational vehicles, all-
22 terrain vehicles, snowmobiles, campers, boards, personal watercraft,
23 and related trailers;

1 8. "Motor vehicle financial protection product" means an
2 agreement defined herein that protects a consumer's financial
3 interest in his or her current or future motor vehicle and includes,
4 but is not limited to, debt waiver and vehicle value protection
5 agreements. A motor vehicle financial protection product shall not
6 mean a service warranty or vehicle protection product warranty; and

7 9. "Person" means an individual, company, association,
8 organization, partnership, business trust, corporation, and every
9 form of legal entity.

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 140.3 of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Motor vehicle financial protection products may be offered,
14 sold, or given to consumers in this state in compliance with this
15 act.

16 B. Notwithstanding any other provision of law, any amount
17 charged or financed for a motor vehicle financial protection product
18 is an authorized charge that must be separately stated and not be
19 considered a financial charge or interest.

20 C. Neither the extension of credit, the terms of credit, nor
21 the terms of the related motor vehicle sale or lease shall be
22 conditioned upon the consumer's payment for or financing of any
23 charge for a motor vehicle financial protection product. However,
24 motor vehicle financial protection products may be discounted or

1 given at no charge in connection with the purchase of other non-
2 credit related goods or services.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 140.4 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 A. As used in this section:

7 1. "Administrator" means a person, other than an insurer or
8 creditor that performs administrative or operational functions
9 pursuant to debt waiver programs;

10 2. "Borrower" means a debtor, retail buyer, or lessee, under a
11 finance agreement;

12 3. "Creditor" means:

13 a. the lender in a loan or credit transaction,

14 b. the lessor in a lease transaction,

15 c. any retail seller of motor vehicles,

16 d. the seller in commercial retail installment
17 transactions, or

18 e. the assignees of any of the foregoing to whom the
19 credit obligation is payable; and

20 4. "Debt waiver" includes, but is not limited to:

21 a. "guaranteed asset protection waivers" or "GAP waivers"
22 means a contractual agreement wherein a creditor
23 agrees, with or without a separate charge, to cancel
24 or waive all or part of amounts due on a borrower's

1 financial agreement in the event of a total physical
2 damage loss or unrecovered theft of the motor vehicle,
3 which an agreement shall be part of, or as a separate
4 addendum to, the financial agreement. A GAP waiver
5 may also provide, with or without a separate charge, a
6 benefit that waives an amount or provides a borrower
7 with a credit towards the purchase of a replacement
8 motor vehicle,

9 b. "excess wear and use waiver" means a contractual
10 agreement wherein a creditor agrees, with or without a
11 separate charge, to cancel or waive all or part of
12 amounts that may become due under a borrower's lease
13 agreement as a result of excessive wear and use of a
14 motor vehicle, which an agreement shall be part of, or
15 as a separate addendum to, the lease agreement.

16 Excess wear and use waivers may also cancel or waive
17 amounts due for excess mileage, and

18 c. other products as approved by the Insurance
19 Commissioner.

20 B. As required for offering debt waivers:

21 1. A retail seller shall insure its debt waiver obligations
22 under a contractual liability or other insurance policy issued by an
23 insurer. A creditor other than retail sellers may insure its debt
24 waiver obligations under a contractual liability policy or other

1 such policy issued by an insurer. Any such insurance policy may be
2 directly obtained by a creditor or retail seller or may be obtained
3 by an administrator to cover a creditor's or retail seller's
4 obligations. However, retail sellers that are lessors on motor
5 vehicles are not required to insure obligations related to debt
6 waivers on such leased motor vehicles;

7 2. The debt waiver remains a part of the finance agreement upon
8 the assignment, sale, or transfer of such finance agreement by the
9 creditor;

10 3. Any creditor that offers a debt waiver shall report the sale
11 of, and subsequently forward the funds due to, the designated party
12 or parties; and

13 4. Funds received or held by a creditor or administrator that
14 belong to an insurer, creditor, or administrator shall be held by
15 such creditor or administrator in a fiduciary capacity.

16 C. Contractual Liability or Other Insurance Policies.

17 1. Contractual liability or other insurance policies insuring
18 debt waivers shall state the obligation of the insurer to reimburse
19 or pay to the creditor any sums the creditor is legally obligated to
20 waive under a debt waiver.

21 2. Coverage under a contractual liability or other insurance
22 policy insuring a debt waiver shall also cover any subsequent
23 assignee upon the assignment, sale, or transfer of the finance
24 agreement.

1 3. Coverage under a contractual liability or other insurance
2 policy insuring a debt waiver shall remain in effect unless canceled
3 or terminated in compliance with applicable insurance laws of this
4 state.

5 4. The cancelation or termination of a contractual liability or
6 other insurance policy shall not reduce the insurer's responsibility
7 for debt waivers issued by the creditor prior to the date of
8 cancelation or termination and for which the premium has been
9 received by the insurer.

10 D. Debt waivers shall disclose in writing and in clear,
11 understandable language the following:

12 1. The name and address of the initial creditor and the
13 borrower at the time of sale and identity of any administrator if
14 different from the creditor;

15 2. The purchase price, if any, and the terms of the debt waiver
16 including without limitation, the requirements of protection,
17 conditions, or exclusions associated with the debt waiver;

18 3. That the borrower may cancel the debt waiver within a free
19 look period, as specified in the debt waiver, and will be entitled
20 to a full refund of the purchase price paid by the borrower, if any,
21 as long as no benefits have been provided;

22 4. The procedures the borrower shall follow, if any, to obtain
23 debt waiver benefits under the terms and conditions of the debt
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1 waiver including, if applicable, a telephone number or website and
2 address where the borrower may apply for debt waiver benefits;

3 5. Whether or not the debt waiver may be canceled after the
4 free look period and the conditions under which it may be canceled
5 or terminated including the procedures for requesting any refund of
6 amounts paid;

7 6. That in order to receive any refund due in the event of a
8 borrower's cancelation of the debt waiver, the borrower, in
9 accordance with the term of the debt waiver, shall provide a written
10 request to cancel to the creditor, administrator, or other such
11 party. If the cancelation of a debt waiver is due to an early
12 termination of the finance agreement and no benefit has been or will
13 be provided, then the borrower, in accordance with the terms of the
14 debt waiver, shall provide a written request to cancel to the
15 creditor or administrator within ninety (90) days of the occurrence
16 of the event terminating the finance agreement;

17 7. The methodology for calculating any refund of the unearned
18 purchase price of the debt waiver, if any, shall be due in the event
19 of cancelation of the debt waiver or early termination of a finance
20 agreement; and

21 8. That neither the extension of credit, the terms of the
22 credit, nor the terms of the related motor vehicle sale or lease,
23 may be conditioned upon the borrower's purchase of a debt waiver.

24 E. Cancelation.

1 1. Debt waiver agreements may be cancelable or non-cancelable
2 following the free look period. Debt waivers shall provide the
3 borrower, if a borrower cancels a debt waiver within the free look
4 period, a full refund of the amount the borrower paid, if any, as
5 long as no benefits have been provided.

6 2. In the event of a borrower's cancelation of the debt waiver
7 or upon the early termination of the finance agreement after the
8 debt waiver has been in effect beyond the free look period, the
9 borrower may be entitled to a refund of the amount the borrower paid
10 of the unearned portion of the purchase price, if any, minus a
11 cancelation fee not to exceed Seventy-five Dollars (\$75.00), if no
12 benefit has been or will be provided. In order to receive any
13 refund due in the event of a borrower's cancellation of the debt
14 waiver, the borrower shall provide a written request to cancel, in
15 accordance with the terms of the debt waiver, to the creditor or
16 administrator. If the cancelation is due to the early termination
17 of the finance agreement, then the borrower, in accordance with the
18 terms of the debt waiver, shall provide a written request to cancel
19 to the creditor or administrator within ninety (90) days of the
20 occurrence of the event terminating the finance agreement.

21 3. If the cancelation of a debt waiver occurs as a result of a
22 default under the finance agreement or the repossession of the motor
23 vehicle associated with the finance agreement, or any other
24 termination of the finance agreement, any refund due may be paid

1 directly to the creditor or administrator, unless the borrower can
2 show that the finance agreement has been paid in full.

3 F. Exempt Transactions.

4 1. Debt waivers offered by state or federal banks or credit
5 unions in compliance with the applicable state or federal law are
6 exempt from this act.

7 2. Subsection D of this section and Section 5 of this act shall
8 not apply to debt waivers offered in connection with commercial
9 transactions.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 140.5 of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

13 A. As used in this section:

14 1. "Administrator" means the person who may be responsible for
15 the administrative or operational function of vehicle value
16 protection agreements including, but not limited to, the
17 adjudication of claims or benefits requested by contract holders;

18 2. "Contract holder" means a person who is the purchaser or
19 holder of a vehicle value protection agreement;

20 3. "Provider" means a person that is obligated to provide a
21 benefit under a vehicle value protection agreement. A provider may
22 perform as an administrator or retain the services of a third-party
23 administrator; and

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1 4. "Vehicle value protection agreement" means a contractual
2 agreement that provides a benefit towards either the reduction of
3 some or all of the contract holder's current finance agreement
4 deficiency balance, or towards the purchase or lease of a
5 replacement motor vehicle or motor vehicle services, upon the
6 occurrence of an adverse event to the motor vehicle including, but
7 not limited to, loss, theft, damage, obsolescence, diminished value,
8 or depreciation. These agreements do not include debt waivers.
9 These agreements may include, but not be limited to, trade-in-credit
10 agreements, diminished value agreements, depreciation benefit
11 agreements, or other similarly named agreements.

12 B. Requirements for offering vehicle value protection
13 agreements:

14 1. A provider may utilize an administrator or other designee to
15 be responsible for any and all of the administration of vehicle
16 value protection agreements in compliance with this act;

17 2. Vehicle value protection agreements shall not be sold unless
18 the contract holder has been or will be provided access to a copy of
19 that vehicle value protection agreement;

20 3. In order to assure the faithful performance of the
21 provider's obligations to its contract holders, each provider shall
22 be responsible for complying with the requirements of one of the
23 following:

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1 a. insure all of its vehicle value protection agreements
2 under an insurance policy issued by an insurer
3 licensed, registered, or otherwise authorized to do
4 business in this state either:

5 (1) at the time the policy is filed with the
6 Insurance Commissioner, and continuously
7 thereafter, (i) maintain surplus as to
8 policyholders and paid-in capital no less than
9 Fifteen Million Dollars (\$15,000,000.00) and (ii)
10 annually file copies of the insurer's financial
11 statements, its National Association of Insurance
12 Commissioners (NAIC) Annual Statement, and the
13 actuarial certification required by and filed in
14 the insurer's state of domicile, or

15 (2) at the time the policy is filed with the
16 Commissioner, and continuously thereafter, (i)
17 maintain surplus as to policyholders and paid-in
18 capital of less than Fifteen Million Dollars
19 (\$15,000,000.00) but at least equal to Ten
20 Million Dollars (\$10,000,000.00), (ii)
21 demonstrate to the satisfaction of the
22 Commissioner that the company maintains a ratio
23 of net written premiums, wherever written, to
24 surplus as to policyholders and paid-in capital

1 of not greater than 3 to 1, and (iii) annually
2 file copies of the insurer's audited financial
3 statements, its NAIC Annual Statement, and the
4 actuarial certification required by and filed in
5 the insurer's state of domicile,

6 b. (1) maintain a funded reserve account for its
7 obligations under its contracts issued and
8 outstanding in this state. The reserves shall
9 not be less than forty percent (40%) of gross
10 considerations received, less claims paid, on the
11 sale of the vehicle value protection agreement
12 for all in-force contracts. The reserve account
13 shall be subject to examination and review by the
14 Commissioner,

15 (2) place in trust with the Commissioner a financial
16 security deposit, having a value not less than
17 five percent (5%) of the gross consideration
18 received, less claims paid, on the sale of the
19 vehicle value protection agreements for all
20 vehicle value protection agreements issued and in
21 force, but not less than Twenty-five Thousand
22 Dollars (\$25,000.00), consisting of the
23 following:
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- 1 (a) a surety bond issued by an authorized
- 2 surety,
- 3 (b) securities of the type eligible for deposit
- 4 by authorized insurers in this state,
- 5 (c) cash,
- 6 (d) a letter of credit issued by a qualified
- 7 financial institution, or
- 8 (e) another form of security prescribed by
- 9 regulations issued by the Commissioner, or

- 10 c. (1) maintain, or together with its parent company
- 11 maintain, a net worth or stockholders' equity of
- 12 One Hundred Million Dollars (\$100,000,000.00), or
- 13 (2) upon request, provide the Commissioner with a
- 14 copy of the provider's or the provider's parent
- 15 company's most recent Form 10-K or Form 20-F
- 16 filed with the Securities and Exchange Commission
- 17 (SEC) within the last calendar year, or if the
- 18 company does not file with the SEC, a copy of the
- 19 company's audited financial statements, which
- 20 shows a net worth of the provider or its parent
- 21 company of at least One Hundred Million Dollars
- 22 (\$100,000,000.00). If the provider's parent
- 23 company's Form 10-K, Form 20-F, or financial
- 24 statements are filed to meet the provider's

1 financial security requirement, then the parent
2 company shall agree to guarantee the obligations
3 of the provider relating to the vehicle value
4 protection agreements sold by the provider in
5 this state; and

6 4. Except for the requirements in paragraph 3 of subsection B
7 of this section, no other financial security requirements shall be
8 required for vehicle value protection agreement providers.

9 C. Vehicle value protection agreements shall disclose in
10 writing and in clear, understandable language the following:

11 1. The name and address of the provider, contract holder, and
12 administrator, if any;

13 2. The terms of the vehicle value protection agreement
14 including without limitation, the purchase price to be paid by the
15 contract holder, the requirements for eligibility, conditions of
16 coverage, or exclusions;

17 3. That the vehicle value protection agreement may be canceled
18 by the contract holder within a free look period as specified in the
19 vehicle value protection agreement, and in such an event, the
20 contract holder shall be entitled to a full refund of the purchase
21 price paid by the contract holder, if any, as long as no benefits
22 have been provided;

23 4. The procedure the contract holder shall follow, if any, to
24 obtain a benefit under the terms and conditions of the vehicle value

1 protection agreement including, if applicable, a telephone number or
2 website and address where the contract holder may apply for a
3 benefit;

4 5. Whether or not the vehicle value protection agreement is
5 cancelable after the free look period and the conditions under which
6 it may be canceled including the procedures for requesting any
7 refund of the unearned purchase price paid by the contract holder;

8 6. In the event of cancelation, the methodology for calculating
9 any refund of the unearned purchase price of the vehicle value
10 protection agreement due;

11 7. That neither the extension of credit, the terms of the
12 credit, nor the terms of the related motor vehicle sale or lease may
13 be conditioned upon the purchase of the vehicle value protection
14 agreement; and

15 8. Vehicle value protection agreements shall state the terms
16 and restrictions, or conditions governing cancelation of the vehicle
17 value protection agreement prior to the termination or expiration
18 date of the vehicle value protection agreement by either the
19 provider or the contract holder. The provider of the vehicle value
20 protection agreement shall mail a written notice to the contract
21 holder at the last known address of the contract holder contained in
22 the records of the provider at least five (5) days prior to
23 cancelation by the provider. Prior notice shall not be required if
24 the reason for cancelation is nonpayment of the provider fee, a

1 material misrepresentation by the contract holder to the provider or
2 administrator, or a substantial breach of duties by the contract
3 holder relating to the covered product or its use. The notice shall
4 state the effective date of cancelation and the reason for the
5 cancelation. If a vehicle value protection agreement is canceled by
6 the provider for a reason other than nonpayment of the provider fee,
7 the provider shall refund the contract holder one hundred percent
8 (100%) of the unearned pro rata provider fee paid by the contract
9 holder, if any. If coverage under the vehicle value protection
10 agreement continues after a claim, then any refund may deduct claims
11 paid. A reasonable administrative fee may be charged by the
12 provider not to exceed Seventy-five Dollars (\$75.00).

13 D. Subsection C of this section and Section 5 of this act shall
14 not apply to vehicle value protection agreements offered in
15 connection with a commercial transaction.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 140.6 of Title 15, unless there
18 is created a duplication in numbering, reads as follows:

19 The Insurance Commissioner shall promulgate rules necessary to
20 enforce the provisions of this act. After proper notice and
21 opportunity for hearing the Commissioner may:

22 1. Order the creditor, provider, administrator, or any other
23 person not in compliance with this act to cease and desist from
24 product related operations which are in violation of this act; and

1 2. Impose a penalty not to exceed Five Hundred Dollars
2 (\$500.00) per violation and no more than Ten Thousand Dollars
3 (\$10,000.00) for aggregated violations of a similar nature. For
4 purposes of this section, "violations of a similar nature" means the
5 violation consisted of the same or similar course of conduct,
6 action, or practice, irrespective of the number of times the action,
7 conduct, or practice which is determined to be a violation of this
8 act occurred.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 140.7 of Title 15, unless there
11 is created a duplication in numbering, reads as follows:

12 The Legislature finds that motor vehicle financial protection
13 products shall not be insurance. All motor vehicle financial
14 protection products issued prior to and after the effective date of
15 this act shall not be construed as insurance.

16 SECTION 7. This act shall become effective November 1, 2022.

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