

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1743

By: Leewright

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to financial protection products;  
9 defining terms; allowing for the issuance of motor  
10 vehicle financial protection products; requiring the  
11 issuance of the protection product to be a separate  
12 charge; prohibiting the requirement of a protection  
13 product as a term for sale or lease; allowing for the  
14 use of debt waivers; providing the conditions for a  
15 retail seller or creditor to offer debt waivers;  
16 providing the contractual liabilities of a creditor  
17 issuing a debt waiver; providing for the cancelation  
18 or termination of debt waivers under certain  
19 conditions; providing the procedures the borrower  
20 shall follow to obtain a debt waiver benefit;  
21 authorizing refund in the event of a cancelation of a  
22 debt waiver under certain conditions; providing  
23 exemptions for certain offers of debt waivers;  
24 providing requirements for offering vehicle value  
protection agreements; requiring a contract holder of  
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.

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

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

4       As used in this act:

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

7       2. "Commissioner" means the Insurance Commissioner;

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

11       4. "Finance agreement" means a loan, retail installment sales  
12 contract, or lease for the purchase, refinancing, or lease of a  
13 motor vehicle;

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

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

22       7. "Motor vehicle" means self-propelled or towed vehicles  
23 designed for personal or commercial use including, but not limited  
24 to, automobiles, trucks, motorcycles, recreational vehicles, all-

1 terrain vehicles, snowmobiles, campers, boards, personal watercraft,  
2 and related trailers;

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

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

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

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

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

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

1 motor vehicle financial protection products may be discounted or  
2 given at no charge in connection with the purchase of other non-  
3 credit related goods or services.

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

7 A. As used in this section:

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

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

13 3. "Creditor" means:

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

15 b. the lessor in a lease transaction,

16 c. any retail seller of motor vehicles,

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

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

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

22 a. "guaranteed asset protection waivers" or "GAP waivers"  
23 means a contractual agreement wherein a creditor  
24 agrees, with or without a separate charge, to cancel

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

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

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

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

21 B. As required for offering debt waivers:

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

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

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

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

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

17 C. Contractual Liability or Other Insurance Policies.

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

22 2. Coverage under a contractual liability or other insurance  
23 policy insuring a debt waiver shall also cover any subsequent  
24

1 assignee upon the assignment, sale, or transfer of the finance  
2 agreement.

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

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

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

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

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

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

24

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

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

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

19       7. The methodology for calculating any refund of the unearned  
20 purchase price of the debt waiver, if any, shall be due in the event  
21 of cancelation of the debt waiver or early termination of a finance  
22 agreement; and  
23  
24

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

4        E. Cancellation.

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

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

1        3. If the cancelation of a debt waiver occurs as a result of a  
2 default under the finance agreement or the repossession of the motor  
3 vehicle associated with the finance agreement, or any other  
4 termination of the finance agreement, any refund due may be paid  
5 directly to the creditor or administrator, unless the borrower can  
6 show that the finance agreement has been paid in full.

7        F. Exempt Transactions.

8        1. Debt waivers offered by state or federal banks or credit  
9 unions in compliance with the applicable state or federal law are  
10 exempt from this act.

11       2. Subsection D of this section and Section 5 of this act shall  
12 not apply to debt waivers offered in connection with commercial  
13 transactions.

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

17       A. As used in this section:

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

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

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

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

16        B. Requirements for offering vehicle value protection  
17 agreements:

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

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

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

5           a. insure all of its vehicle value protection agreements  
6 under an insurance policy issued by an insurer  
7 licensed, registered, or otherwise authorized to do  
8 business in this state either:

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

19          (2) at the time the policy is filed with the  
20 Commissioner, and continuously thereafter, (i)  
21 maintain surplus as to policyholders and paid-in  
22 capital of less than Fifteen Million Dollars  
23 (\$15,000,000.00) but at least equal to Ten  
24 Million Dollars (\$10,000,000.00), (ii)

demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1, and (iii) annually file copies of the insurer's audited financial statements, its NAIC Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile,

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

(2) place in trust with the Commissioner a financial security deposit, having a value not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the vehicle value protection agreements for all vehicle value protection agreements issued and in

1 force, but not less than Twenty-five Thousand  
2 Dollars (\$25,000.00), consisting of the  
3 following:

4 (a) a surety bond issued by an authorized  
5 surety,

6 (b) securities of the type eligible for deposit  
7 by authorized insurers in this state,

8 (c) cash,

9 (d) a letter of credit issued by a qualified  
10 financial institution, or

11 (e) another form of security prescribed by  
12 regulations issued by the Commissioner, or

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

1 (\$100,000,000.00). If the provider's parent  
2 company's Form 10-K, Form 20-F, or financial  
3 statements are filed to meet the provider's  
4 financial security requirement, then the parent  
5 company shall agree to guarantee the obligations  
6 of the provider relating to the vehicle value  
7 protection agreements sold by the provider in  
8 this state; and

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

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

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

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

20 3. That the vehicle value protection agreement may be canceled  
21 by the contract holder within a free look period as specified in the  
22 vehicle value protection agreement, and in such an event, the  
23 contract holder shall be entitled to a full refund of the purchase  
24

1 price paid by the contract holder, if any, as long as no benefits  
2 have been provided;

3 4. The procedure the contract holder shall follow, if any, to  
4 obtain a benefit under the terms and conditions of the vehicle value  
5 protection agreement including, if applicable, a telephone number or  
6 website and address where the contract holder may apply for a  
7 benefit;

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

12 6. In the event of cancelation, the methodology for calculating  
13 any refund of the unearned purchase price of the vehicle value  
14 protection agreement due;

15 7. That neither the extension of credit, the terms of the  
16 credit, nor the terms of the related motor vehicle sale or lease may  
17 be conditioned upon the purchase of the vehicle value protection  
18 agreement; and

19 8. Vehicle value protection agreements shall state the terms  
20 and restrictions, or conditions governing cancelation of the vehicle  
21 value protection agreement prior to the termination or expiration  
22 date of the vehicle value protection agreement by either the  
23 provider or the contract holder. The provider of the vehicle value  
24 protection agreement shall mail a written notice to the contract

holder at the last known address of the contract holder contained in the records of the provider at least five (5) days prior to cancelation by the provider. Prior notice shall not be required if the reason for cancelation is nonpayment of the provider fee, a material misrepresentation by the contract holder to the provider or administrator, or a substantial breach of duties by the contract holder relating to the covered product or its use. The notice shall state the effective date of cancelation and the reason for the cancelation. If a vehicle value protection agreement is canceled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund the contract holder one hundred percent (100%) of the unearned pro rata provider fee paid by the contract holder, if any. If coverage under the vehicle value protection agreement continues after a claim, then any refund may deduct claims paid. A reasonable administrative fee may be charged by the provider not to exceed Seventy-five Dollars (\$75.00).

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

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

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

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

7       2. Impose a penalty not to exceed Five Hundred Dollars  
8 (\$500.00) per violation and no more than Ten Thousand Dollars  
9 (\$10,000.00) for aggregated violations of a similar nature. For  
10 purposes of this section, "violations of a similar nature" means the  
11 violation consisted of the same or similar course of conduct,  
12 action, or practice, irrespective of the number of times the action,  
13 conduct, or practice which is determined to be a violation of this  
14 act occurred.

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

18       The Legislature finds that motor vehicle financial protection  
19 products shall not be insurance. All motor vehicle financial  
20 protection products issued prior to and after the effective date of  
21 this act shall not be construed as insurance.

22       SECTION 7. This act shall become effective November 1, 2022.  
23

24       58-2-3528       MR       2/8/2022 1:28:58 PM