

An Act

ENROLLED SENATE
BILL NO. 1743

By: Leewright of the Senate

and

Bashore of the House

An Act relating to financial protection products; defining terms; allowing for the issuance of motor vehicle financial protection products; requiring the issuance of the protection product to be a separate charge; prohibiting the requirement of a protection product as a term for sale or lease; allowing for the use of debt waivers; providing the conditions for a retail seller or creditor to offer debt waivers; providing the contractual liabilities of a creditor issuing a debt waiver; providing for the cancelation or termination of debt waivers under certain conditions; providing the procedures the borrower shall follow to obtain a debt waiver benefit; authorizing refund in the event of a cancelation of a debt waiver under certain conditions; providing exemptions for certain offers of debt waivers; 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.

SUBJECT: Financial protection products

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:

As used in this act:

1. "Commercial" means a transaction wherein the motor vehicle will primarily be used for business purposes rather than personal;
2. "Commissioner" means the Insurance Commissioner;
3. "Consumer" means an individual purchaser of a motor vehicle or borrower under a finance agreement, and includes a borrower or contract holder as herein defined as applicable;
4. "Finance agreement" means a loan, retail installment sales contract, or lease for the purchase, refinancing, or lease of a motor vehicle;
5. "Free look period" means the period of time from the effective date of the motor vehicle financial protection product until the date the motor vehicle financial protection product may be canceled without penalty, fees, or costs. This period of time shall not be shorter than thirty (30) days;
6. "Insurer" means an insurance company licensed, registered, or otherwise authorized to issue contractual liability insurance under the insurance laws of this state;
7. "Motor vehicle" means self-propelled or towed vehicles designed for personal or commercial use including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boards, personal watercraft, and related trailers;
8. "Motor vehicle financial protection product" means an agreement defined herein that protects a consumer's financial interest in his or her current or future motor vehicle and includes, but is not limited to, debt waiver and vehicle value protection

agreements. A motor vehicle financial protection product shall not mean a service warranty or vehicle protection product warranty; and

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

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

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

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

C. Neither the extension of credit, the terms of credit, nor the terms of the related motor vehicle sale or lease shall be conditioned upon the consumer's payment for or financing of any charge for a motor vehicle financial protection product. However, motor vehicle financial protection products may be discounted or given at no charge in connection with the purchase of other non-credit related goods or services.

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

A. As used in this section:

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

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

3. "Creditor" means:

- a. the lender in a loan or credit transaction,
- b. the lessor in a lease transaction,
- c. any retail seller of motor vehicles,
- d. the seller in commercial retail installment transactions, or
- e. the assignees of any of the foregoing to whom the credit obligation is payable; and

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

- a. "guaranteed asset protection waivers" or "GAP waivers" means a contractual agreement wherein a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts due on a borrower's financial agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which an agreement shall be part of, or as a separate addendum to, the financial agreement. A GAP waiver may also provide, with or without a separate charge, a benefit that waives an amount or provides a borrower with a credit towards the purchase of a replacement motor vehicle,
- b. "excess wear and use waiver" means a contractual agreement wherein a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts that may become due under a borrower's lease agreement as a result of excessive wear and use of a motor vehicle, which an agreement shall be part of, or as a separate addendum to, the lease agreement. Excess wear and use waivers may also cancel or waive amounts due for excess mileage, and
- c. other products as approved by the Insurance Commissioner.

B. As required for offering debt waivers:

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

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

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

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

C. Contractual Liability or Other Insurance Policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Cancelation.

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

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

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

F. Exempt Transactions.

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

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

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

A. As used in this section:

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

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

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

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

B. Requirements for offering vehicle value protection agreements:

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

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

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

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

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

(2) at the time the policy is filed with the Commissioner, and continuously thereafter, (i) maintain surplus as to policyholders and paid-in capital of less than Fifteen Million Dollars (\$15,000,000.00) but at least equal to Ten 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 force, but not less than Twenty-five Thousand Dollars (\$25,000.00), consisting of the following:
 - (a) a surety bond issued by an authorized surety,
 - (b) securities of the type eligible for deposit by authorized insurers in this state,
 - (c) cash,
 - (d) a letter of credit issued by a qualified financial institution, or
 - (e) another form of security prescribed by regulations issued by the Commissioner, or
- c. (1) maintain, or together with its parent company maintain, a net worth or stockholders' equity of One Hundred Million Dollars (\$100,000,000.00), or

- (2) upon request, provide the Commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least One Hundred Million Dollars (\$100,000,000.00). If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial security requirement, then the parent company shall agree to guarantee the obligations of the provider relating to the vehicle value protection agreements sold by the provider in this state; and

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

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

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

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

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

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

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

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

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

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

8. Vehicle value protection agreements shall state the terms and restrictions, or conditions governing cancellation of the vehicle value protection agreement prior to the termination or expiration date of the vehicle value protection agreement by either the provider or the contract holder. The provider of the vehicle value 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 cancellation by the provider. Prior notice shall not be required if the reason for cancellation 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 cancellation and the reason for the cancellation. 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:

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

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

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

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

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

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

Passed the Senate the 8th day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____