

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1743

By: Leewright

4  
5  
6 AS INTRODUCED

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

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

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

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

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

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

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

3 7. "Motor vehicle financial protection product(s)" 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 8. "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 may 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 the same as defined in Section 1 of this  
12 act;

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  
25

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 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  
24

1 wavier 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 provided 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

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 agreements including, but not limited  
10 to, trade-in-credit agreements, diminished value agreements,  
11 depreciation benefit agreements, or other similarly named  
12 agreements.

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

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

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

21           3. In order to assure the faithful performance of the  
22 provider's obligations to its contract holders, each provider shall  
23 be responsible for complying with the requirements of one of the  
24 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 Commissioner, and continuously thereafter, (i)  
7 maintain surplus as to policyholders and paid-in  
8 capital no less than Fifteen Million Dollars  
9 (\$15,000,000.00) and (ii) annually file copies of  
10 the insurer's financial statements, its National  
11 Association of Insurance Commissioners (NAIC)  
12 Annual Statement, and the actuarial certification  
13 required by and filed in the insurer's state of  
14 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 Commissioners.

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:  
24

- (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

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;

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 the rules necessary  
20 to 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 violations 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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18           58-2-2654       MR           1/20/2022 6:15:30 PM  
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