

CHAPTER 2024-142

Committee Substitute for Committee Substitute for Senate Bill No. 902

An act relating to motor vehicle retail financial agreements; amending s. 520.02, F.S.; revising the definition of the term “guaranteed asset protection product”; amending s. 520.07, F.S.; requiring entities to refund the portions of the purchase price of the contract for a guaranteed asset protection product under certain circumstances; prohibiting certain entities from deducting more than a specified amount in administrative fees when providing a refund of a guaranteed asset protection product; authorizing guaranteed asset protection products to be cancelable or noncancelable under certain circumstances; authorizing certain entities to pay refunds directly to the holder or administrator of a loan under certain circumstances; creating s. 520.151, F.S.; providing a short title; creating s. 520.152, F.S.; defining terms; creating s. 520.153, F.S.; authorizing the offer, sale, or gift of vehicle value protection agreements in compliance with a certain act; specifying a requirement regarding the amount charged or financed for a vehicle value protection agreement; prohibiting the conditioning of credit offers or terms for the sale or lease of a motor vehicle upon a consumer’s payment for or financing of any charge for a vehicle value protection agreement; authorizing discounting or giving the vehicle value protection agreement at no charge under certain circumstances; authorizing providers to use an administrator or other designee for administration of vehicle value protection agreements; prohibiting vehicle value protection agreements from being sold under certain circumstances; specifying financial security requirements for providers; prohibiting additional financial security requirements from being imposed on providers; creating s. 520.154, F.S.; requiring vehicle value protection agreements to include certain disclosures in writing, in clear and understandable language; requiring vehicle value protection agreements to state the terms, restrictions, or conditions governing cancellation by the provider or the contract holder; specifying requirements for notice by the provider, refund of fees, and deduction of fees in the event the vehicle value protection agreement is canceled; creating s. 520.155, F.S.; providing an exemption for vehicle value protection agreements in connection with a commercial transaction; creating s. 520.156, F.S.; providing noncriminal penalties; defining the term “violations of a similar nature”; creating s. 520.157, F.S.; defining the term “excess wear and use waiver”; authorizing a retail lessee to contract with a retail lessor for an excess wear and use waiver; prohibiting conditioning the terms of the consumer’s motor vehicle lease on his or her payment for any excess wear and use waiver; authorizing discounting or giving the excess wear and use waiver at no charge under certain circumstances; requiring certain disclosures for a lease agreement that includes an excess wear and use waiver; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 520.02, Florida Statutes, is amended to read:

520.02 Definitions.—In this act, unless the context or subject matter otherwise requires:

(7) “Guaranteed asset protection product” means a loan, lease, or retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, under which a creditor agrees, with or without a separate charge, to cancel or waive a customer’s liability for payment of some or all of the amount by which the debt exceeds the value of the collateral ~~that has incurred total physical damage or is the subject of an unrecovered theft.~~ A guaranteed asset protection product may also provide, with or without a separate charge, a benefit that waives a portion of, or provides a customer with a credit toward, the purchase of a replacement motor vehicle. Such a product is not insurance for purposes of the Florida Insurance Code. This subsection also applies to all guaranteed asset protection products issued before October 1, 2008.

Section 2. Paragraph (g) of subsection (11) of section 520.07, Florida Statutes, is amended, and paragraphs (h) and (i) are added to that subsection, to read:

520.07 Requirements and prohibitions as to retail installment contracts.

(11) In conjunction with entering into any new retail installment contract or contract for a loan, a motor vehicle retail installment seller as defined in s. 520.02, a sales finance company as defined in s. 520.02, or a retail lessor as defined in s. 521.003, and any assignee of such an entity, may offer, for a fee or otherwise, optional guaranteed asset protection products in accordance with this chapter. The motor vehicle retail installment seller, sales finance company, retail lessor, or assignee may not require the purchase of a guaranteed asset protection product as a condition for making the loan. In order to offer any guaranteed asset protection product, a motor vehicle retail installment seller, sales finance company, or retail lessor, and any assignee of such an entity, shall comply with the following:

(g) If a contract for a guaranteed asset protection product is terminated, the entity shall refund to the buyer all any unearned portions of the purchase price of fees paid for the contract unless the contract provides otherwise. A refund is not due to a consumer who receives a benefit under such product. In order to receive a refund, the buyer must notify the entity of the event terminating the contract and request a refund within 90 days after the occurrence of the event terminating the contract. An entity may offer a buyer a contract that does not provide for a refund only if the entity also offers that buyer a bona fide option to purchase a comparable contract that provides for a refund. An entity may not deduct more than \$75 in administrative fees from a refund made under this subsection.

(h) Guaranteed asset protection products may be cancelable or non-cancelable after a free-look period as defined in s. 520.152.

(i) If the termination of the guaranteed asset protection product occurs because of a default under the retail installment contract or contract for a loan, the repossession of the motor vehicle associated with the retail installment contract or contract for a loan, or any other termination of the retail installment contract or contract for a loan, the entity may pay any refund due directly to the holder or administrator and apply the refund as a reduction of the amount owed under the retail installment contract or contract for a loan, unless the buyer can show that the retail installment contract has been paid in full.

Section 3. Section 520.151, Florida Statutes, is created to read:

520.151 Florida Vehicle Value Protection Agreements Act.—Sections 520.151-520.156 may be cited as the “Florida Vehicle Value Protection Agreements Act.”

Section 4. Section 520.152, Florida Statutes, is created to read:

520.152 Definitions.—As used in ss. 520.151-520.156, unless the context or subject matter otherwise requires, the term:

(1) “Administrator” means the person who is responsible for the administrative or operational function of managing vehicle value protection agreements, including, but not limited to, the adjudication of claims or benefit requests by contract holders.

(2) “Commercial transaction” means a transaction in which the motor vehicle subject to the transaction is used primarily for business or commercial purposes.

(3) “Contract holder” means a person who is the purchaser or holder of a vehicle value protection agreement.

(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, commencing on the effective date of the contract, during which the buyer may cancel the contract for a full refund of the purchase price. This period may not be shorter than 30 days.

(6) “Motor vehicle” has the same meaning as provided in s. 520.02.

(7) “Provider” means a person that is obligated to provide a benefit under a vehicle value protection agreement. A provider may function as an administrator or retain the services of a third-party administrator.

(8) “Vehicle value protection agreement” includes a contractual agreement that provides a benefit toward either the reduction of some or all of the contract holder’s current finance agreement deficiency balance or 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. The term does not include guaranteed asset protection products as defined in s. 520.02. Such a product is not insurance for purposes of the Florida Insurance Code.

Section 5. Section 520.153, Florida Statutes, is created to read:

520.153 Requirements and prohibitions as to vehicle value protection agreements.—

(1) Vehicle value protection agreements may be offered, sold, or given to consumers in this state in compliance with this act.

(2) Notwithstanding any other law, any amount charged or financed for a vehicle value protection agreement is not considered a finance charge or interest and must be separately stated in the finance agreement and in the vehicle value protection agreement.

(3) The extension of credit, the terms of credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the consumer’s payment for or financing of any charge for a vehicle value protection agreement. However, a vehicle value protection agreement may be discounted or given at no charge in connection with the purchase of other noncredit-related goods or services.

(4) A provider may use an administrator or other designee to administer a vehicle value protection agreement.

(5) A vehicle value protection agreement may not be sold to any person unless he or she has been or will be provided access to a copy of such vehicle value protection agreement at a reasonable time after such vehicle value protection agreement is sold.

(6) A vehicle value protection agreement may not be sold if coverage is duplicative of another vehicle value protection agreement sold to a person or duplicative of a guaranteed asset protection product.

(7) Each provider shall do one of the following:

(a) Insure all of its vehicle value protection agreements under a policy that pays or reimburses the contract holder in the event the provider fails to perform its obligations under the vehicle value protection agreement. The insurer must be licensed or otherwise authorized or eligible to do business in this state.

(b) Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves may not be less than 40 percent of gross consideration received, less claims paid, on the sale of the vehicle value protection agreement for all in-force contracts in this state. The reserve must be placed in trust with the office and have a financial security deposit valued at not less than 5 percent 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 in this state, but at least \$25,000. The reserve account must consist of one of the following:

1. A surety bond issued by an authorized surety.
2. Securities of the type eligible for deposit by insurers as provided in s. 625.52.
3. Cash.
4. A letter of credit issued by a qualified financial institution.

(c) Maintain, or together with its parent corporation maintain, a net worth or stockholders' equity of \$100 million and, upon request, provide the office with a copy of the provider's or the provider's parent company's Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year, or if the company does not file with the Securities and Exchange Commission, a copy of the company's audited financial statements, which must show a net worth of the provider or its parent company of at least \$100 million. 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, the parent company must agree to guarantee the obligations of the provider relating to vehicle value protection agreements sold by the provider in this state.

(8) A financial security requirement other than those imposed in subsection (7) may not be imposed on vehicle value protection agreement providers.

Section 6. Section 520.154, Florida Statutes, is created to read:

520.154 Disclosures.—

(1) A vehicle value protection agreement must disclose in writing, in clear, understandable language, all of the following:

(a) The name and address of the provider, contract holder, and administrator, if any.

(b) The terms of the vehicle value protection agreement, including, but not limited to, the purchase price to be paid by the contract holder, if any, the requirements for eligibility and conditions of coverage, and any exclusions.

(c) Whether the vehicle value protection agreement may be canceled by the contract holder during a free-look period as defined in s. 520.152, and that, in the event of cancellation, the contract holder is entitled to a full refund of the purchase price, if any, so long as no benefits have been provided.

(d) The procedure the contract holder must follow, if any, to obtain a benefit under the terms and conditions of the vehicle value protection agreement, including, if applicable, a telephone number, website, or mailing address where the contract holder may apply for a benefit.

(e) Whether 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. In the event that the agreement is cancelable, it must include the methodology for calculating any refund due of the unearned purchase price of the vehicle value protection agreement.

(f) That the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of the vehicle value protection agreement.

(2) A vehicle value protection agreement must state the terms, restrictions, or conditions governing cancellation of the vehicle value protection agreement before 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 5 days before cancellation by the provider, which notice must state the effective date of the cancellation and the reason for the cancellation. However, such prior notice is not 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 motor vehicle or its use. If a vehicle value protection agreement is canceled by the provider for a reason other than nonpayment of the provider fee, the provider must refund to the contract holder 100 percent 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, any refund may reflect a deduction for claims paid and, at the discretion of the provider, an administrative fee of not more than \$75.

Section 7. Section 520.155, Florida Statutes, is created to read:

520.155 Commercial transactions exempt.—Sections 520.154 and 520.156 do not apply to vehicle value protection agreements offered in connection with a commercial transaction.

Section 8. Section 520.156, Florida Statutes, is created to read:

520.156 Penalties.—A provider, an administrator, or any other person who willfully and intentionally violates ss. 520.151-520.155 commits a noncriminal violation as defined in s. 775.08(3), punishable by a fine not to exceed \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this section, the term “violations of a similar nature” means violations that consist of the same or similar course of conduct, action, or practice, irrespective of the number of times the action, conduct, or practice determined to be a violation of ss. 520.151-520.155 occurred.

Section 9. Section 520.157, Florida Statutes, is created to read:

520.157 Excess wear and use waiver.—

(1) For purposes of this section, the term “excess wear and use waiver” means a contractual agreement wherein a lessor agrees, regardless of whether subject to a separate fee, to cancel or waive all or part of amounts that may become due under a lease agreement as a result of excess wear and use of a motor vehicle, which agreement must be part of, or a separate addendum to, the lease agreement. Such waivers may also cancel or waive amounts due for excess mileage.

(2) A retail lessee may contract with a retail lessor for an excess wear and use waiver in connection with a lease agreement.

(3) The terms of the related motor vehicle lease may not be conditioned upon the consumer’s payment for any excess wear and use waiver. However, excess wear and use waivers may be discounted or given at no charge in connection with the purchase of other noncredit-related goods.

(4) A lease agreement that includes an excess wear and use waiver must disclose all of the following:

(a) The total charge for the excess wear and use waiver.

(b) Any exclusions or limitations on the amount of excess wear and use which may be waived under the excess wear and use waiver.

(c) The terms, restrictions, or conditions governing cancellation of the excess wear and use waiver before the termination or expiration of the excess wear and use waiver, which may include an administrative fee of not more than \$75.

(5) An excess wear and use waiver is not insurance for purposes of the Florida Insurance Code.

Section 10. This act shall take effect October 1, 2024.

Approved by the Governor May 6, 2024.

Filed in Office Secretary of State May 6, 2024.