

FIRST REGULAR SESSION

HOUSE BILL NO. 521

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HENDERSON.

1569H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 385, RSMo, by adding thereto fifteen new sections relating to motor vehicle financial protection products, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 385, RSMo, is amended by adding thereto fifteen new sections, to
2 be known as sections 385.600, 385.605, 385.610, 385.615, 385.620, 385.625, 385.630,
3 385.635, 385.640, 385.645, 385.650, 385.655, 385.660, 385.665, and 385.670, to read as
4 follows:

- 385.600. For purposes of sections 385.600 to 385.670, the following terms mean:**
- 2 **(1) "Commercial transaction", a transaction involving a motor vehicle in which**
3 **the motor vehicle will primarily be used for business purposes rather than personal**
4 **purposes;**
- 5 **(2) "Consumer", an individual purchaser of a motor vehicle or borrower under**
6 **a finance agreement. The term "consumer" includes any borrower, as defined in section**
7 **385.610, or contract holder, as defined in section 385.640, as applicable;**
- 8 **(3) "Finance agreement", a loan, retail installment sales contract, or lease for the**
9 **purchase, refinancing, or lease of a motor vehicle;**
- 10 **(4) "Free-look period", a period of time from the effective date of the motor**
11 **vehicle financial protection product until the date the motor vehicle financial protection**
12 **product may be cancelled without penalty, fees, or costs. This period of time shall not be**
13 **shorter than thirty days;**
- 14 **(5) "Insurer", an insurance company licensed, registered, or otherwise**
15 **authorized to issue contractual liability insurance under the insurance laws of this state;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (6) "Motor vehicle", any self-propelled or towed vehicle designed for personal or
17 commercial use including, but not limited to, automobiles, trucks, motorcycles,
18 recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal
19 watercraft, and related trailers;

20 (7) "Motor vehicle financial protection product", an agreement that protects a
21 consumer's financial interest in his or her current or future motor vehicle. The term
22 "motor vehicle financial protection product" includes any debt waiver, as defined in
23 section 385.610, and any vehicle value protection agreement, as defined in section
24 385.640;

25 (8) "Person", an individual, company, association, organization, partnership,
26 business trust, or corporation, and every form of legal entity.

385.605. 1. Motor vehicle financial protection products may be offered, sold, or
2 given to consumers in this state in compliance with sections 385.600 to 385.670.

3 2. Notwithstanding any other provision of law, any amount charged or financed
4 for a motor vehicle financial protection product is an authorized charge that shall be
5 separately stated and shall not be considered a finance charge or interest.

6 3. Any extension of credit, terms of credit, or terms of the related motor vehicle
7 sale or lease shall not be conditioned upon the consumer's payment for or financing of
8 any charge for a motor vehicle financial protection product, except that motor vehicle
9 financial protection products may be discounted or given at no charge in connection
10 with the purchase of other noncredit-related goods or services.

11 4. Motor vehicle financial protection products shall not be subject to the
12 requirements of section 408.380.

385.610. For purposes of sections 385.610 to 385.635, the following terms mean:

2 (1) "Administrator", any person, other than an insurer or creditor, who
3 performs administrative or operational functions for debt waiver programs;

4 (2) "Borrower", a debtor or retail buyer or lessee under a finance agreement;

5 (3) "Creditor":

6 (a) The lender in a loan or credit transaction;

7 (b) The lessor in a lease transaction;

8 (c) Any retail seller of motor vehicles;

9 (d) The seller in commercial retail installment transactions; or

10 (e) The assignee of any person described in paragraph (a) to (d) of this
11 subdivision to whom the credit obligation is payable;

12 (4) "Debt waiver", any guaranteed asset protection waiver, excess wear and use
13 waiver, or other product as approved by the department of commerce and insurance;

14 (5) "Excess wear and use waiver", a contractual agreement in which a creditor
15 agrees, with or without a separate charge, to cancel or waive all or part of amounts that
16 may become due under a borrower's lease agreement as a result of excessive wear and
17 use of a motor vehicle, which agreement shall be part of, or a separate addendum to, the
18 lease agreement. Excess wear and use waivers may also cancel or waive amounts due
19 for excess mileage;

20 (6) "Guaranteed asset protection waiver", a contractual agreement in which a
21 creditor agrees, with or without a separate charge, to cancel or waive all or part of
22 amounts due on a borrower's finance agreement in the event of a total physical damage
23 loss or unrecovered theft of the motor vehicle, which agreement shall be part of, or a
24 separate addendum to, the finance agreement. A guaranteed asset protection waiver
25 may also provide, with or without a separate charge, a benefit that waives an amount, or
26 provides a borrower with a credit, toward the purchase of a replacement motor vehicle.

 385.615. 1. (1) A retail seller shall insure its debt waiver obligations under a
2 contractual liability or other insurance policy issued by an insurer. A creditor, other
3 than a retail seller, may insure its debt waiver obligations under a contractual liability
4 policy or other such policy issued by an insurer. Any such insurance policy may be
5 directly obtained by a creditor or retail seller or may be procured by an administrator
6 to cover a creditor's or retail seller's obligations.

7 (2) Notwithstanding the provisions of subdivision (1) of this subsection, retail
8 sellers who are lessors on motor vehicles shall not be required to insure obligations
9 related to debt waivers on such leased motor vehicles.

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

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

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

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

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

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

10 **4. The cancellation or termination of a contractual liability or other insurance**
11 **policy shall not reduce the insurer's responsibility for debt waivers issued by the**
12 **creditor before the date of cancellation or termination and for which premium has been**
13 **received by the insurer.**

385.625. Debt waivers shall disclose in writing and in clear, understandable
2 **language that is easy to read the following:**

3 **(1) The name and address of the initial creditor and the borrower at the time of**
4 **sale, and the identity of any administrator if different from the creditor;**

5 **(2) The purchase price, if any, and the terms of the debt waiver including, but**
6 **not limited to, the requirements for protection, conditions, or exclusions associated with**
7 **the debt waiver;**

8 **(3) A statement that the borrower may cancel the debt waiver within a free-look**
9 **period as specified in the debt waiver and, if so cancelled, shall be entitled to a full**
10 **refund of the purchase price paid by the borrower, if any, so long as no benefits have**
11 **been provided;**

12 **(4) The procedure the borrower is required to follow, if any, to obtain debt**
13 **waiver benefits under the terms and conditions of the debt waiver, including, if**
14 **applicable, a telephone number or website and address where the borrower may apply**
15 **for debt waiver benefits;**

16 **(5) A statement that indicates whether the debt waiver may be cancelled after**
17 **the free-look period and the conditions under which it may be cancelled or terminated,**
18 **including the procedures for requesting any refund of amounts paid;**

19 **(6) A statement that in order to receive any refund due in the event of a**
20 **borrower's cancellation of the debt waiver, the borrower, in accordance with the terms**
21 **of the debt waiver, shall provide a written request to cancel to the creditor,**
22 **administrator, or other such party. If the cancellation of a debt waiver is due to the**
23 **early termination of the finance agreement and no benefit has been or will be provided,**
24 **the borrower, in accordance with the terms of the debt waiver, shall provide a written**
25 **request to cancel to the creditor or administrator within ninety days of the occurrence of**
26 **the event terminating the finance agreement;**

27 **(7) The methodology for calculating any refund of the unearned purchase price**
28 **of the debt waiver, if any, that will be due in the event of cancellation of the debt waiver**
29 **or early termination of the finance agreement; and**

30 **(8) A statement that any extension of credit, terms of the credit, or terms of the**
31 **related motor vehicle sale or lease shall not be conditioned upon the borrower's**
32 **purchase of a debt waiver.**

385.630. 1. Debt waiver agreements may be cancellable or noncancellable after
2 **the free-look period. Debt waivers shall provide that if a borrower cancels a debt waiver**
3 **within the free-look period, the borrower shall be entitled to a full refund of the amount**
4 **the borrower paid, if any, so long as no benefits have been provided.**

5 **2. If, after the debt waiver has been in effect beyond the free-look period, the**
6 **borrower cancels the debt waiver or there is an early termination of the finance**
7 **agreement, the borrower may be entitled to a refund of the amount the borrower paid of**
8 **the unearned portion of the purchase price, if any, less a cancellation fee up to seventy-**
9 **five dollars, if no benefit has been or will be provided. In order to receive any refund**
10 **due in the event of a borrower's cancellation of the debt waiver, the borrower shall**
11 **provide a written request to cancel, in accordance with the terms of the debt waiver, to**
12 **the creditor or administrator. If the cancellation is due to the early termination of the**
13 **finance agreement, the borrower, in accordance with the terms of the debt waiver, shall**
14 **provide a written request to cancel to the creditor or administrator within ninety days of**
15 **the occurrence of the event terminating the finance agreement.**

16 **3. If the cancellation of a debt waiver occurs as a result of a default under the**
17 **finance agreement, the repossession of the motor vehicle associated with the finance**
18 **agreement, or any other termination of the finance agreement, any refund due may be**
19 **paid directly to the creditor or administrator and applied as a reduction of the amount**
20 **owed under the finance agreement unless the borrower can show that the finance**
21 **agreement has been paid in full.**

385.635. 1. Debt waivers offered by state or federal banks or credit unions in
2 **compliance with applicable state or federal law shall be exempt from the provisions of**
3 **sections 385.600 to 385.670.**

4 **2. The provisions of sections 385.625 and 385.660 shall not apply to debt waivers**
5 **offered in connection with commercial transactions.**

385.640. For purposes of sections 385.640 to 385.655, the following terms mean:

2 **(1) "Administrator", any person who is responsible for the administrative or**
3 **operational functions of vehicle value protection agreements including, but not limited**
4 **to, the adjudication of claims or benefit requests by contract holders;**

5 **(2) "Contract holder", a person who is the purchaser or holder of a vehicle value**
6 **protection agreement;**

7 (3) "Provider", a person who is obligated to provide a benefit under a vehicle
8 value protection agreement. A provider may perform as an administrator or retain the
9 services of a third-party administrator;

10 (4) "Vehicle value protection agreement", a contractual agreement that:

11 (a) Provides a benefit toward the reduction of some or all of the contract holder's
12 current finance agreement deficiency balance or toward the purchase or lease of a
13 replacement motor vehicle or motor vehicle services upon the occurrence of an adverse
14 event to the motor vehicle including, but not limited to, loss, theft, damage, obsolescence,
15 diminished value, or depreciation;

16 (b) Does not include debt waivers; and

17 (c) May include agreements such as, but not limited to, trade-in-credit
18 agreements, diminished value agreements, depreciation benefit agreements, or other
19 similarly named agreements.

385.645. 1. A provider may, but is not required to, use an administrator or other
2 designee to be responsible for any and all of the administration of vehicle value
3 protection agreements in compliance with the provisions of sections 385.600 to 385.670.

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

7 **3.** In order to assure the faithful performance of the provider's obligations to its
8 contract holders, each provider shall comply with subdivision (1), (2), or (3) of this
9 subsection, as follows:

10 (1) In order to satisfy the requirements of this subsection under this subdivision,
11 the provider shall insure all its vehicle value protection agreements under an insurance
12 policy that pays or reimburses in the event the provider fails to perform its obligations
13 under the vehicle value protection agreement and that is issued by an insurer who is
14 licensed, registered, or otherwise authorized to do business in this state and who:

15 (a) At the time the insurer's policy is filed with the director of the department of
16 commerce and insurance and continuously thereafter:

17 a. Maintains surplus as to policyholders and paid-in capital of at least fifteen
18 million dollars; and

19 b. Annually files copies of the insurer's financial statements, its annual statement
20 to the National Association of Insurance Commissioners, and the actuarial certification
21 required by and filed in the insurer's state of domicile; or

22 (b) At the time the insurer's policy is filed with the director of the department of
23 commerce and insurance and continuously thereafter:

24 **a. Maintains surplus as to policyholders and paid-in capital of less than fifteen**
25 **million dollars but at least equal to ten million dollars;**

26 **b. Demonstrates to the satisfaction of the director of the department of**
27 **commerce and insurance that the company maintains a ratio of net written premiums,**
28 **wherever written, to surplus as to policyholders and paid-in capital of not greater than**
29 **three to one; and**

30 **c. Annually files copies of the insurer's audited financial statements, its annual**
31 **statement to the National Association of Insurance Commissioners, and the actuarial**
32 **certification required by and filed in the insurer's state of domicile;**

33 **(2) In order to satisfy the requirements of this subsection under this subdivision,**
34 **the provider shall:**

35 **(a) Maintain a funded reserve account for its obligations under its contracts**
36 **issued and outstanding in this state. The reserves shall not be less than forty percent of**
37 **gross consideration received, less claims paid, on the sale of the vehicle value protection**
38 **agreements for all in-force contracts. The reserve account shall be subject to**
39 **examination and review by the director of the department of commerce and insurance;**
40 **and**

41 **(b) Place in trust with the director of the department of commerce and insurance**
42 **a financial security deposit, having a value of not less than five percent of the gross**
43 **consideration received, less claims paid, on the sale of the vehicle value protection**
44 **agreements for all vehicle value protection agreements issued and in force, but not less**
45 **than twenty-five thousand dollars, consisting of one of the following:**

46 **a. A surety bond issued by an authorized surety;**

47 **b. Securities of the type eligible for deposit by authorized insurers in this state;**

48 **c. Cash;**

49 **d. A letter of credit issued by a qualified financial institution; or**

50 **e. Another form of security prescribed by regulations issued by the director of**
51 **the department of commerce and insurance. Any rule or portion of a rule, as that term**
52 **is defined in section 536.010, that is created under the authority delegated in this section**
53 **shall become effective only if it complies with and is subject to all of the provisions of**
54 **chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**
55 **nonseverable and if any of the powers vested with the general assembly pursuant to**
56 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
57 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
58 **proposed or adopted after August 28, 2023, shall be invalid and void; or**

59 **(3) In order to satisfy the requirements of this subsection under this subdivision,**
60 **the provider shall:**

61 (a) Maintain, or together with its parent company maintain, a net worth or
62 stockholders' equity of one hundred million dollars; and

63 (b) Upon request, provide the director of the department of commerce and
64 insurance with a copy of the provider's or the provider's parent company's most recent
65 Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC)
66 within the last calendar year or, if the company does not file with the SEC, a copy of the
67 company's audited financial statements, which show a net worth of the provider or its
68 parent company of at least one hundred million dollars. If the provider's parent
69 company's Form 10-K, Form 20-F, or financial statements are filed to meet the
70 provider's financial security requirement, the parent company shall agree to guarantee
71 the obligations of the provider relating to vehicle value protection agreements sold by
72 the provider in this state.

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

385.650. Vehicle value protection agreements shall disclose in writing and in
2 clear, understandable language that is easy to read the following:

3 (1) The name and address of the provider, contract holder, and administrator, if
4 any;

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

8 (3) A statement that the vehicle value protection agreement may be cancelled by
9 the contract holder within a free-look period as specified in the vehicle value protection
10 agreement and that in such event the contract holder shall be entitled to a full refund of
11 the purchase price paid by the contract holder, if any, so long as no benefits have been
12 provided;

13 (4) The procedure the contract holder shall follow, if any, to obtain a benefit
14 under the terms and conditions of the vehicle value protection agreement, including, if
15 applicable, a telephone number or website and address where the contract holder may
16 apply for a benefit;

17 (5) A statement that indicates whether the vehicle value protection agreement
18 may be cancelled after the free-look period and the conditions under which it may be
19 cancelled, including the procedures for requesting any refund of the unearned purchase
20 price paid by the contract holder;

21 (6) The methodology for calculating any refund of the unearned purchase price
22 of the vehicle value protection agreement due if there is a cancellation;

23 (7) A statement that any extension of credit, terms of the credit, or terms of the
24 related motor vehicle sale or lease shall not be conditioned upon the purchase of the
25 vehicle value protection agreement; and

26 (8) The terms, restrictions, or conditions governing cancellation of the vehicle
27 value protection agreement before the termination or expiration date of the vehicle
28 value protection agreement by either the provider or the contract holder. The provider
29 of the vehicle value protection agreement shall mail a written notice to the contract
30 holder at the last known address of the contract holder contained in the records of the
31 provider at least five days before cancellation by the provider. Prior notice shall not be
32 required if the reason for cancellation is nonpayment of the provider fee, a material
33 misrepresentation by the contract holder to the provider or administrator, or a
34 substantial breach of duties by the contract holder relating to the covered product or its
35 use. The notice shall state the effective date of the cancellation and the reason for the
36 cancellation. If a vehicle value protection agreement is cancelled by the provider for a
37 reason other than nonpayment of the provider fee, the provider shall refund to the
38 contract holder one hundred percent of the unearned pro rata provider fee paid by the
39 contract holder, if any. If coverage under the vehicle value protection agreement
40 continues after a claim, any refund may deduct claims paid. A reasonable
41 administrative fee may be charged by the provider up to seventy-five dollars.

385.655. The provisions of sections 385.650 and 385.660 shall not apply to vehicle
2 value protection agreements offered in connection with a commercial transaction.

385.660. The director of the department of commerce and insurance may take
2 action that is necessary or appropriate to enforce the provisions of sections 385.600 to
3 385.670 and to protect motor vehicle financial protection product consumers in this
4 state. After proper notice and opportunity for hearing, the director of the department
5 of commerce and insurance may:

6 (1) Order the creditor, provider, administrator, or any other person not in
7 compliance with the provisions of sections 385.600 to 385.670 to cease and desist from
8 product-related operations that are in violation of the provisions of sections 385.600 to
9 385.670; and

10 (2) Impose a penalty of not more than five hundred dollars for each violation of
11 the provisions of sections 385.600 to 385.670 and not more than ten thousand dollars in
12 the aggregate for all violations of a similar nature. A violation shall be considered of a
13 similar nature to another violation if the violation consists of the same or similar course
14 of conduct, action, or practice, irrespective of the number of times the action, conduct,
15 or practice that is determined to be a violation of the provisions of sections 385.600 to
16 385.670 occurred.

**385.665. Notwithstanding the provisions of section 385.670, all motor vehicle
2 financial protection products issued before and after August 28, 2023, shall not be
3 considered insurance.**

**385.670. The provisions of sections 385.600 to 385.670 shall apply to all motor
2 vehicle financial protection products that become effective after February 23, 2024.**

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