

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SENATE BILL 425
RATIFIED BILL**

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING GUARANTEED
ASSET PROTECTION WAIVERS AND TO CREATE AN ARTICLE GOVERNING
VEHICLE VALUE PROTECTION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-440 reads as rewritten:

"§ 66-440. Definitions.

The following definitions apply in this Article:

- (1) Administrator. – A person that performs administrative or operational functions with respect to guaranteed asset protection waivers.
- (2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance agreement.
- (3) Creditor. – Any of the following:
 - a. A lender in a loan or credit transaction.
 - b. A lessor in a lease transaction.
 - c. A vehicle dealer, including a motor vehicle dealer as that term is defined in G.S. 20-286(11), that provides credit to or arranges financing for a purchaser of a vehicle.
 - d. A seller in a commercial retail installment transaction.
 - e. An assignee of any of the foregoing to whom the credit obligation is payable.
- (4) Free-look period. – The period of time from the effective date of a guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.
- (5) Guaranteed asset protection waiver. – Either of the following:
 - a. A contractual agreement in which a creditor ~~agrees for~~ agrees, with or without a separate ~~charge~~ charge, to cancel or waive all or part of amounts due on a borrower's vehicle finance agreement in the event of a total physical damage loss or unrecovered theft of the vehicle, which agreement shall be part of, or a separate addendum to, the vehicle finance agreement. The agreement 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 vehicle.
 - b. A contractual agreement in which 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 vehicle. The agreement must be part of, or a separate addendum to, the lease agreement. Excess wear and use waivers may also cancel or waive amounts due for excess mileage.

The term does not include a vehicle value protection agreement as defined in G.S. 66-471(10).



- (6) Insurer. – An insurance company licensed, registered, or otherwise authorized to do business under Chapter 58 of the General Statutes.
- (7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as well as 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, boats, personal watercraft, and trailers for motorcycles, boats, campers, and personal watercraft.
- (8) Vehicle finance agreement. – A loan, lease, or retail installment sales contract for the purchase or lease of a vehicle."

SECTION 2. G.S. 66-446 reads as rewritten:

"§ 66-446. Miscellaneous provisions.

(a) Article Controls. – The offering and sale of guaranteed asset protection waivers in this State shall be subject to the provisions of this Article.

(b) Manner of Payment. – Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(c) Compliance With Truth in Lending Act. – Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver ~~subject to~~ entered into in compliance with the Truth in Lending Act (15 U.S.C. § 1601, et seq.) and its implementing regulations, as they may be amended from time to time, shall be separately stated and is not to be considered a finance charge or interest. The cost of a guaranteed asset protection waiver sold in compliance with this Article shall be considered an authorized charge that may be financed under Chapter 25A of the General Statutes and shall not be considered a part of the finance charge or interest thereunder.

(d) Preservation Upon Transfer. – A guaranteed asset protection waiver shall remain a part of the vehicle finance agreement upon its assignment, sale, or transfer by a creditor.

(e) Cannot Be Required. – Neither the extension of credit, the term of credit, nor the term of a related vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(f) Forwarding of Proceeds. – A creditor that offers a guaranteed asset protection waiver shall report the sale of and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Fiduciary Duty. – Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, shall be held by the creditor or administrator in a fiduciary capacity."

SECTION 3. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 48.

"Vehicle Value Protection Agreements.

"§ 66-470. Scope.

The purpose of this Article is to provide a framework within which vehicle value protection agreements are defined and may be offered within this State.

"§ 66-471. Definitions.

The following definitions apply in this Article:

- (1) Administrator. – The person responsible for the administrative or operational functions of vehicle value protection agreements, including, but not limited to, the adjudication of claims or benefit requests by contract holders.
- (2) Commercial. – A transaction wherein the motor vehicle will primarily be used for business purposes rather than personal.

- (3) Contract holder. – A person who is the purchaser or holder of a vehicle value protection agreement.
- (4) Finance agreement. – A loan, retail installment sales contract, or lease for the purchase, refinancing, or lease of a motor vehicle.
- (5) Free-look period. – The period of time from the effective date of the vehicle value protection agreement until the date the vehicle value protection agreement may be canceled without penalty, fees, or costs.
- (6) Insurer. – An insurance company licensed, registered, or otherwise authorized to issue contractual liability insurance under the insurance laws of this State.
- (7) Motor vehicle. – 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, boats, personal watercraft, and related trailers.
- (8) Person. – Includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.
- (9) Provider. – A person that is obligated to provide a benefit under a vehicle value protection agreement.
- (10) Vehicle value protection agreement. – Includes 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 purchase of motor vehicle services, upon the occurrence of an adverse event to the motor vehicle, including, but not limited to, a less than total physical damage loss or diminished value or depreciation. An agreement may include related agreements such as trade-in credit agreements, diminished value agreements, depreciation benefit agreements, or other similarly named agreements. The term does not include a guaranteed asset protection waiver as defined in G.S. 66-440(5).

"§ 66-472. Requirements for offering vehicle value protection agreements.

- (a) Vehicle value protection agreements in compliance with this Article may be offered, sold, or given to consumers in this State.
- (b) A provider may perform as an administrator or may utilize a third-party administrator or other designee to be responsible for any and all of the administration of vehicle value protection agreements in compliance with this Article.
- (c) A contract holder that has been sold a vehicle value protection agreement shall be given or provided access to a copy of the agreement.
- (d) Notwithstanding any other provision of law to the contrary, any amount charged or financed for a vehicle value protection agreement is an authorized charge that must be separately stated and is not to be considered a finance charge or interest. The amount charged or financed for the agreement may be included within the amount financed under G.S. 25A-9 and shall not be considered a part of the finance charge or interest thereunder.
- (e) In order to assure the faithful performance of the provider's obligations to its contract holders, each provider shall comply with one of the following requirements:
 - (1) Reimbursement insurance policy. – The insurance of all of vehicle value protection agreements under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to do business in this State that meets one of the following criteria:
 - a. The insurer issuing the reimbursement policy must continuously maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars (\$15,000,000).

- b. The insurer issuing the reimbursement insurance policy must continuously maintain surplus as to policyholders and paid-in capital of less than fifteen million dollars (\$15,000,000) but at least ten million dollars (\$10,000,000), and the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three-to-one (3:1).
- (2) Maintenance of net worth. – A provider shall do all of the following:
- a. Maintain, or together with its parent company maintain, a net worth or stockholders' equity of at least one hundred million dollars (\$100,000,000).
 - b. Maintain 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). If the provider's parent company's Form 10-K, Form 20-F, or financial statements are utilized to meet the provider's financial security requirement, then the parent company shall agree to guarantee the obligations of the provider relating to vehicle value protection agreements sold by the provider in this State.

Except for the requirements specified in this subsection, no other financial security requirements shall be required for vehicle value protection agreement providers.

(f) Neither the extension of credit, nor 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 vehicle value protection agreement. Vehicle value protection agreements may be discounted or given at no charge in connection with the purchase of other noncredit-related goods or services.

(g) A vehicle value protection agreement shall include a term stating that if a contract holder cancels the agreement within the free-look period, the contract holder will be entitled to a full refund of the purchase price paid by the contract holder, if any, so long as no benefits have been provided. A free-look period must be at least 30 days.

(h) If the provider of the vehicle value protection agreement cancels the agreement, the provider 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 days prior to cancellation. Prior notice to the contract holder 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 product or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation. If a vehicle value protection agreement is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to 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, not exceeding seventy-five dollars (\$75.00), may be charged by the provider.

§ 66-473. Disclosures.

Vehicle value protection agreements must disclose in writing and in clear, understandable language that is easy to read, all of 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, if any, the requirements for eligibility, conditions of coverage, and exclusions.
- (3) A statement that the vehicle value protection agreement may be cancelled by the contract holder within a free-look period as specified in the vehicle value protection agreement, and that, if cancelled, the contract holder will be entitled to a full refund of the purchase price paid by the contract holder, if any, so long as no benefits have been provided.
- (4) 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 or website and address where the contract holder may apply for a benefit.
- (5) Whether the vehicle value protection agreement is cancellable after the free-look period and the conditions under which it may be cancelled, 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) A statement that neither the extension of credit, nor 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.
- (8) A statement of the terms, 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.

"§ 66-474. Commercial transaction exemptions.

G.S. 66-473(5) and (7) shall not apply to vehicle value protection agreements offered in connection with a commercial transaction.

"§ 66-475. Enforcement.

The Attorney General may take action necessary or appropriate to enforce the provisions of this Article and to protect vehicle value protection agreement consumers in this State. After proper notice and opportunity for hearing, the Attorney General may do the following:

- (1) Order the creditor, provider, administrator, or any other person not in compliance with this Article to cease and desist from product-related operations which are in violation of this Article.
- (2) Impose a penalty of not more than five hundred dollars (\$500.00) per violation and no more than ten thousand dollars (\$10,000) in the aggregate for all violations of a similar nature. For purposes of this section, violations are of a similar nature if the violation consists 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 Article occurred.

"§ 66-476. Intent.

Vehicle value protection agreements are not insurance and are exempt from the provisions of Chapter 58 of the General Statutes, as are persons administering, marketing, selling, or offering to sell vehicle value protection agreements to consumers. All vehicle value protection agreements issued prior to and after the date of enactment of this Article shall not be construed as insurance."

SECTION 4. If any provision of this act, or the application of that provision to any person or circumstances, is held invalid, the remainder of this act, and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

SECTION 5. This act becomes effective January 1, 2022, and applies to agreements entered into on or after that date.

In the General Assembly read three times and ratified this the 21st day of October, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2021