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SENATE BILL 23-015

BY SENATOR(S) Rodriguez and Will;
also REPRESENTATIVE(S) Snyder and Taggart, Bird, Duran, Lindsay.

CONCERNING VEHICLE VALUE PROTECTION AGREEMENTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 21 to title 42 as follows:

ARTICLE 21
Vehicle Value Protection Agreements

42-21-101. Definitions. AS USED IN THIS ARTICLE 21, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" MEANS THE PERSON THAT IS RESPONSIBLE FOR THE ADMINISTRATIVE OR OPERATIONAL FUNCTIONS OF A VEHICLE VALUE PROTECTION AGREEMENT. THESE FUNCTIONS INCLUDE THE ADJUDICATION OF BENEFIT REQUESTS BY CONTRACT HOLDERS.

(2) "CONTRACT HOLDER" MEANS A PERSON THAT IS THE PURCHASER

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OF OR HOLDER OF A VEHICLE VALUE PROTECTION AGREEMENT.

(3) "COVERED VEHICLE" MEANS A VEHICLE THAT IS THE SUBJECT OF A VEHICLE VALUE PROTECTION AGREEMENT.

(4) "DEALER" MEANS:

(a) A MOTOR VEHICLE DEALER AS DEFINED IN SECTION 44-20-102 (18);

(b) A POWERSPORTS VEHICLE DEALER AS DEFINED IN SECTION 44-20-402 (12);

(c) A USED MOTOR VEHICLE DEALER AS DEFINED IN SECTION 44-20-102 (26); OR

(d) A USED POWERSPORTS VEHICLE DEALER AS DEFINED IN SECTION 44-20-402 (20).

(5) "FINANCE AGREEMENT" MEANS A LOAN AGREEMENT FOR THE PURCHASE OR REFINANCING OF A VEHICLE; A RETAIL INSTALLMENT SALES CONTRACT FOR THE PURCHASE, REFINANCING, OR LEASE OF A VEHICLE; OR AN AGREEMENT TO LEASE A VEHICLE.

(6) "INSURER" MEANS A LICENSED INSURANCE COMPANY AUTHORIZED TO ISSUE CONTRACTUAL LIABILITY INSURANCE UNDER TITLE 10.

(7) "PROVIDER" MEANS A PERSON THAT IS OBLIGATED TO PROVIDE A BENEFIT IN ACCORDANCE WITH A VEHICLE VALUE PROTECTION AGREEMENT.

(8) "SECURE BILL OF SALE" IS AN AGREEMENT BETWEEN A DEALER AND A CONTRACT HOLDER THAT:

(a) IDENTIFIES THE VEHICLE BY YEAR, MAKE, AND VIN OR BY OTHER IDENTIFYING INFORMATION;

(b) SHOWS THE TIME AND DATE OF SALE; AND

(c) IS SIGNED BY BOTH THE BUYER AND THE SELLER.

(9) "VEHICLE" MEANS:

- (a) A MOTOR VEHICLE AS DEFINED IN SECTION 42-1-102 (58);
- (b) A POWERSPORTS VEHICLE AS DEFINED IN SECTION 44-20-402 (11);
- (c) A CAMPER COACH AS DEFINED IN SECTION 42-1-102 (13); OR
- (d) A CAMPER TRAILER AS DEFINED IN SECTION 42-1-102 (14).

(10) (a) "VEHICLE VALUE PROTECTION AGREEMENT" MEANS A CONTRACTUAL AGREEMENT BETWEEN A PROVIDER AND A CONTRACT HOLDER THAT PROVIDES BENEFITS APPLIED TOWARD:

(I) THE VALUE OF THE CONTRACT HOLDER'S COVERED VEHICLE UPON THE OCCURRENCE OF THE FOLLOWING:

(A) AN ADVERSE EVENT, INCLUDING DAMAGE INCURRED AND REPORTED ON A VEHICLE HISTORY REPORT, CAUSING THE COVERED VEHICLE TO DECREASE IN VALUE;

(B) THE TOTAL LOSS OR UNRECOVERED THEFT OF THE COVERED VEHICLE THAT, AT THE TIME OF THE LOSS OR THEFT, HAD DECREASED IN VALUE COMPARED TO THE VALUE OF THE VEHICLE AT THE TIME IT WAS PURCHASED; OR

(C) EVENTS COVERED BY A CONTRACTUAL AGREEMENT BETWEEN A DEALER AND A CONTRACT HOLDER THAT PROVIDE THE CONTRACT HOLDER A LOYALTY BENEFIT WHEN THE CONTRACT HOLDER RETURNS TO THE DEALER TO PURCHASE OR LEASE A REPLACEMENT VEHICLE AFTER A TOTAL LOSS, UNRECOVERED THEFT, OR TRADE-IN OF THE COVERED VEHICLE; OR

(II) THE FINANCE AGREEMENT FOR OR SECURE BILL OF SALE ON A REPLACEMENT VEHICLE UPON THE OCCURRENCE OF AN EVENT DESCRIBED IN SUBSECTIONS (10)(a)(I)(A) TO (10)(a)(I)(C) OF THIS SECTION.

(b) "VEHICLE VALUE PROTECTION AGREEMENT" INCLUDES A TRADE-IN AGREEMENT, DIMINISHED VALUE AGREEMENT, CASH DOWN PAYMENT PROTECTION AGREEMENT, OR DEPRECIATION BENEFIT AGREEMENT.

(c) "VEHICLE VALUE PROTECTION AGREEMENT" DOES NOT INCLUDE A DEBT WAIVER OR A MOTOR VEHICLE SERVICE CONTRACT AS DEFINED IN SECTION 42-11-101 (3).

42-21-102. Requirements for offering vehicle value protection agreements. (1) A PROVIDER SHALL NOT OFFER A VEHICLE VALUE PROTECTION AGREEMENT UNLESS THE AGREEMENT MEETS THE REQUIREMENTS OF THIS ARTICLE 21. A PROVIDER SHALL NOT CONDITION THE EXTENSION OF CREDIT, THE TERMS OF CREDIT, OR THE TERMS OF THE RELATED VEHICLE SALE OR LEASE UPON THE PURCHASE OF A VEHICLE VALUE PROTECTION AGREEMENT.

(2) TO COMPLY WITH THIS SECTION, A VEHICLE VALUE PROTECTION AGREEMENT MUST:

(a) PROVIDE A BENEFIT TO THE CONTRACT HOLDER UPON THE TRADE-IN, TOTAL LOSS, OR UNRECOVERED THEFT OF A COVERED VEHICLE. THE BENEFIT MAY BE:

(I) A CREDIT TOWARD THE PURCHASE OR LEASE OF A SUBSEQUENT OR REPLACEMENT VEHICLE; OR

(II) AN AMOUNT APPLIED TO THE CASH VALUE OF THE COVERED VEHICLE AT THE TIME OF TRADE-IN;

(b) IDENTIFY, IN THE CONTRACT, THE ADMINISTRATOR OR PROVIDER, THE DEALER, THE CONTRACT HOLDER, AND THE TERMS OF THE SALE;

(c) (I) GUARANTEE THE PROVIDER'S OBLIGATIONS BY AN INSURANCE POLICY THAT COMPLIES WITH SECTION 42-21-105; AND

(II) CONSPICUOUSLY STATE THAT THE PROVIDER'S OBLIGATIONS ARE GUARANTEED BY AN INSURANCE POLICY, ISSUED BY AN INSURER, THAT PAYS THE CONTRACT HOLDER IF THE PROVIDER FAILS TO PERFORM ITS OBLIGATIONS UNDER THE VEHICLE VALUE PROTECTION AGREEMENT;

(d) OUTLINE THE TERMS, INCLUDING THE PURCHASE PRICE OF THE COVERED VEHICLE AND ANY ELIGIBILITY REQUIREMENTS, CONDITIONS OF COVERAGE, OR EXCLUSIONS, OF THE VEHICLE VALUE PROTECTION AGREEMENT;

(e) NOTIFY THE CONTRACT HOLDER OF THE FOLLOWING:

(I) WHETHER THE VEHICLE VALUE PROTECTION AGREEMENT IS CANCELLABLE AND THE PROCEDURES FOR REQUESTING ANY REFUND OF THE UNEARNED PURCHASE PRICE OF THE AGREEMENT PAID BY THE CONTRACT HOLDER;

(II) THE METHODOLOGY FOR CALCULATING ANY REFUND OF THE UNEARNED PURCHASE PRICE OF THE VEHICLE VALUE PROTECTION AGREEMENT AFTER THE AGREEMENT IS CANCELED;

(III) ANY PROCEDURES THE CONTRACT HOLDER MUST FOLLOW TO OBTAIN A BENEFIT UNDER THE TERMS AND CONDITIONS OF THE VEHICLE VALUE PROTECTION AGREEMENT AND, IF APPLICABLE, A TELEPHONE NUMBER, WEBSITE, AND ADDRESS WHERE THE CONTRACT HOLDER MAY APPLY FOR A BENEFIT; AND

(IV) THAT NEITHER THE EXTENSION OF CREDIT, THE TERMS OF CREDIT, NOR THE TERMS OF THE RELATED VEHICLE SALE OR LEASE MAY BE CONDITIONED UPON THE PURCHASE OF THE VEHICLE VALUE PROTECTION AGREEMENT; AND

(f) STATE THE TERMS, RESTRICTIONS, AND CONDITIONS GOVERNING CANCELLATION OF THE VEHICLE VALUE PROTECTION AGREEMENT PRIOR TO THE TERMINATION DATE OF THE AGREEMENT BY EITHER THE PROVIDER OR THE CONTRACT HOLDER.

42-21-103. Requirements for a provider to cancel a vehicle value protection agreement. (1) (a) TO CANCEL A VEHICLE VALUE PROTECTION AGREEMENT, THE PROVIDER MUST 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 BY THE PROVIDER; EXCEPT THAT THE CANCELLATION TAKES EFFECT IMMEDIATELY UPON THE PROVIDER SENDING THE NOTICE TO THE CONTRACT HOLDER IF THE REASON FOR THE CANCELLATION IS:

(I) NONPAYMENT OF ANY PROVIDER FEE REQUIRED TO BE PAID BY THE CONTRACT HOLDER;

(II) A MATERIAL MISREPRESENTATION BY THE CONTRACT HOLDER TO THE PROVIDER; OR

(III) A SUBSTANTIAL BREACH OF DUTIES BY THE CONTRACT HOLDER RELATING TO THE COVERED VEHICLE OR ITS USE.

(b) THE NOTICE MUST STATE THE EFFECTIVE DATE OF THE CANCELLATION AND THE REASON FOR THE CANCELLATION.

(2) (a) 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 TO THE CONTRACT HOLDER, ON A PRO RATA BASIS, ANY UNEARNED PROVIDER FEE PAID BY THE CONTRACT HOLDER; EXCEPT THAT THE PROVIDER MAY CHARGE A REASONABLE ADMINISTRATIVE FEE OF UP TO SEVENTY-FIVE DOLLARS.

(b) IF COVERAGE UNDER THE VEHICLE VALUE PROTECTION AGREEMENT CONTINUED AFTER A BENEFIT WAS PAID UNDER THE AGREEMENT, THE PROVIDER MAY DEDUCT THE AMOUNT OF THE BENEFIT PAID FROM THE REFUND TO THE CONTRACT HOLDER.

42-21-104. Third-party administrator. A PROVIDER MAY PERFORM AS AN ADMINISTRATOR OR RETAIN THE SERVICES OF A THIRD-PARTY ADMINISTRATOR. AN ADMINISTRATOR HAS THE SAME POWERS AND DUTIES ESTABLISHED UNDER THIS ARTICLE 21 AS A PROVIDER.

42-21-105. Vehicle value protection agreements - contractual liability insurance policies. (1) A PROVIDER SHALL GUARANTEE THE PROVIDER'S OBLIGATIONS BY AN INSURANCE POLICY, ISSUED BY AN INSURER, THAT PAYS THE CONTRACT HOLDER IF THE PROVIDER FAILS TO PERFORM THE OBLIGATIONS IN ACCORDANCE WITH THE VEHICLE VALUE PROTECTION AGREEMENT.

(2) TO COMPLY WITH THIS SECTION, AN INSURANCE POLICY REQUIRED IN SUBSECTION (1) OF THIS SECTION MUST PROVIDE THAT:

(a) IF THE PROVIDER FAILS TO PERFORM ITS OBLIGATIONS UNDER THE VEHICLE VALUE PROTECTION AGREEMENT, THE CONTRACTUAL LIABILITY INSURER WILL PAY ALL COVERED AMOUNTS THAT THE PROVIDER IS LEGALLY OBLIGATED TO PAY ACCORDING TO THE AGREEMENT; AND

(b) THE CONTRACT HOLDER MAY FILE DIRECTLY WITH THE INSURER FOR REIMBURSEMENT IF THE PAYMENT DUE UNDER THE TERMS OF THE VEHICLE VALUE PROTECTION AGREEMENT IS NOT MADE BY THE PROVIDER WITHIN SIXTY DAYS AFTER PROOF OF LOSS OR TRADE-IN OF THE COVERED VEHICLE HAS BEEN FILED IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

42-21-106. Vehicle value protection agreements not insurance.

A VEHICLE VALUE PROTECTION AGREEMENT THAT COMPLIES WITH THIS ARTICLE 21 IS NOT INSURANCE AND IS EXEMPT FROM REGULATION AS INSURANCE PURSUANT TO TITLE 10.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to vehicle value protection agreements made on or after the applicable effective date of this act.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO