

HOUSE No. 346

The Commonwealth of Massachusetts

PRESENTED BY:

Meghan Kilcoyne

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to motor vehicle financial protection products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Meghan Kilcoyne</i>	<i>12th Worcester</i>	<i>1/19/2023</i>

HOUSE No. 346

By Representative Kilcoyne of Clinton, a petition (accompanied by bill, House, No. 346) of Meghan Kilcoyne relative to motor vehicle financial protection products. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to motor vehicle financial protection products.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as so appearing in the 2020 Official Edition, are hereby
2 amended by inserting after chapter 93D the following new chapter:-

3 CHAPTER 93E. Motor Vehicle Financial Protection Products

4 Section 1. Definitions

5 For purpose of this chapter, the following words and terms shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Borrower” means a debtor, retail buyer or lessee, under a finance agreement.

8 “Contract Holder” means a person who is the purchaser or holder of a vehicle value
9 protection agreement.

10 "Creditor" means: (i) the lender in a loan or credit transaction; (ii) the lessor in a lease
11 transaction; (iii) any retail seller of motor vehicles; (iv) the seller in commercial retail installment
12 transactions; or (v) the assignees of any of the foregoing to whom the credit obligation is
13 payable.

14 "Commercial" means a transaction wherein the motor vehicle will primarily be used for
15 business purposes rather than personal.

16 "Commissioner" means the Commissioner of Banks

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

19 "Debt waiver" means but is not limited to a (i) guaranteed asset protection waiver, (ii) an
20 excess wear and use waiver, or (iii) other products as approved by the commissioner of
21 insurance.

22 "Guaranteed Asset Protection Waiver" or "GAP Waiver" means a contractual agreement
23 wherein a Creditor agrees, with or without a separate charge, to cancel or waive all or part of
24 amounts due on a borrower's finance agreement in the event of a total physical damage loss or
25 unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum
26 to, the finance agreement. A GAP waiver may also provide, with or without a separate charge, a
27 benefit that waives an amount, or provides a borrower with a credit, towards the purchase of a
28 replacement motor vehicle.

29 "Excess wear and use waiver" means a contractual agreement wherein a creditor agrees,
30 with or without a separate charge, to cancel or waive all or part of amounts that may become due

31 under a borrower's lease agreement as a result of excessive wear and use of a motor vehicle,
32 which agreement must be part of, or a separate addendum to, the lease agreement. Excess wear
33 and use waivers may also cancel or waive amounts due for excess mileage.

34 "Finance agreement" means a loan, retail installment sales contract or lease for the
35 purchase, refinancing, or lease of a motor vehicle.

36 "Free look period" means the period of time from the effective date of the motor vehicle
37 financial protection product until the date the motor vehicle financial protection product may be
38 canceled without penalty, fees or costs. This period of time shall not be shorter than 30 days.

39 "Insurer" means an insurance company licensed, registered, or otherwise authorized to
40 issue contractual liability insurance under the insurance laws of this state.

41 "Motor vehicle" means self-propelled or towed vehicles designed for personal or
42 commercial use, including but not limited to automobiles, trucks, motorcycles, recreational
43 vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and related
44 trailers.

45 "Motor vehicle financial protection products" are agreements defined herein that protect
46 a consumer's financial interest in their current or future motor vehicle and include but are not
47 limited to debt waivers and vehicle value protection agreements. Motor vehicle financial
48 protection products are not insurance.

49 "Person" includes an individual, company, association, organization, partnership,
50 business trust, corporation, and every form of legal entity.

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

54 “Vehicle value protection agreement” includes a contractual agreement that provides a
55 benefit towards either the reduction of some or all of the contract holder’s current finance
56 agreement deficiency balance, or towards the purchase or lease of a replacement motor vehicle
57 or motor vehicle services, upon the occurrence of an adverse event to the motor vehicle including
58 but not limited to loss, theft, damage, obsolescence, diminished value or depreciation. These
59 agreements do not include debt waivers. These agreements may include agreements such as, but
60 not limited to, trade-in-credit agreements, diminished value agreements, depreciation benefit
61 agreements, or other similarly named agreements.

62 Section 2. Requirements for Offering Motor Vehicle Financial Protection Products

63 The requirements for offering motor vehicle financial protection products include:

64 Motor vehicle financial protection products may be offered, sold or given to consumers in
65 this state in compliance with this Act;

66 Notwithstanding any other provision of law, any amount charged or financed for a motor
67 vehicle financial protection product is an authorized charge that must be separately stated and is
68 not to be considered a finance charge or interest; and

69 Neither the extension of credit, the terms of credit, nor the terms of the related motor
70 vehicle sale or lease may be conditioned upon the consumer’s payment for or financing of any
71 charge for a motor vehicle financial protection product. However, motor vehicle financial

72 protection products may be discounted or given at no charge in connection with the purchase of
73 other non-credit related goods or services.

74 Section 3. Debt Waivers

75 (a) For the purposes of this section, the term “Administrator” means a person, other
76 than an insurer or creditor that performs administrative or operational functions pursuant to debt
77 waiver programs.

78 (b) Requirements for offering debt waivers shall include:

79 (1) A retail seller must insure its debt waiver obligations under a contractual liability
80 or other insurance policy issued by an Insurer. A creditor, other than a retail seller, may insure
81 its debt waiver obligations under a contractual liability policy or other such policy issued by an
82 Insurer. Any such insurance policy may be directly obtained by a creditor, or retail seller, or
83 may be procured by an administrator to cover a creditor’s or retail seller’s obligations. However,
84 retail sellers that are lessors on motor vehicles are not required to insure obligations related to
85 debt waivers on such leased motor vehicles;

86 (2) The debt waiver remains a part of the finance agreement upon the assignment,
87 sale or transfer of such finance agreement by the creditor;

88 (3) Any creditor that offers a debt waiver must report the sale of, and forward funds
89 due to, the designated party or parties; and

90 (4) Funds received or held by a creditor or administrator and belonging to an insurer,
91 creditor or administrator must be held by such creditor or administrator in a fiduciary capacity.

92 (c) Coverage under a contractual liability or other insurance policies insuring a debt
93 waivers must:

94 (1) state the obligation of the Insurer to reimburse or pay to the creditor any sums the
95 creditor is legally obligated to waive under a debt waiver;

96 (2) cover any subsequent assignee upon the assignment, sale or transfer of the finance
97 agreement; and

98 (3) remain in effect unless cancelled or terminated in compliance with applicable
99 insurance laws of this state. The cancellation or termination of a contractual liability or other
100 insurance policy must not reduce the Insurer's responsibility for debt waivers issued by the
101 creditor prior to the date of cancellation or termination and for which premium has been received
102 by the Insurer.

103 (d) Debt waivers must disclose in writing and in clear, understandable language that is
104 easy to read, the following:

105 The name and address of the initial creditor and the borrower at the time of sale, and the
106 identity of any administrator if different from the creditor;

107

108 The purchase price, if any, and the terms of the debt waiver, including without limitation,
109 the requirements for protection, conditions, or exclusions associated with the debt waiver;

110

111 That the borrower may cancel the debt waiver within a free look period as specified in the
112 debt waiver, and will be entitled to a full refund of the purchase price paid by the borrower, if
113 any, so long as no benefits have been provided;

114

115 The procedure the borrower must follow, if any, to obtain debt waiver benefits under the
116 terms and conditions of the debt waiver, including, if applicable, a telephone number or website
117 and address where the borrower may apply for debt waiver benefits;

118

119 Whether or not the debt waiver is cancellable after the free look period and the conditions
120 under which it may be cancelled or terminated, including the procedures for requesting any
121 refund of amounts paid;

122

123 That in order to receive any refund due in the event of a borrower's cancellation of the
124 debt waiver, the borrower, in accordance with the terms of the debt waiver, must provide a
125 written request to cancel to the creditor, administrator or other such party. If the cancellation of
126 a debt waiver is due to the early termination of the finance agreement and no benefit has been or
127 will be provided, then the borrower, in accordance with the terms of the debt waiver, must
128 provide a written request to cancel to the creditor or administrator within ninety days of the
129 occurrence of the event terminating the finance agreement;

130

131 The methodology for calculating any refund of the unearned purchase price of the debt
132 waiver, if any, that will be due in the event of cancellation of the debt waiver or early termination
133 of the finance agreement; and

134

135 That neither the extension of credit, the terms of the credit, nor the terms of the related
136 motor vehicle sale or lease, may be conditioned upon the borrower's purchase of a debt waiver.

137

138 (e) (1) Debt waiver agreements may be cancellable or non-cancellable after the free
139 look period. Debt waivers must provide that if a borrower cancels a debt waiver within the free
140 look period, the borrower will be entitled to a full refund of the amount the borrower paid, if any,
141 so long as no benefits have been provided.

142 (2) In the event of a borrower's cancellation of the debt waiver, or upon the early
143 termination of the finance agreement, after the debt waiver has been in effect beyond the free
144 look period, the borrower may be entitled to a refund of the amount the borrower paid of the
145 unearned portion of the purchase price, if any, less a cancellation fee up to \$75, if no benefit has
146 been or will be provided. In order to receive any refund due in the event of a borrower's
147 cancellation of the debt waiver, the borrower must provide a written request to cancel, in
148 accordance with the terms of the debt waiver, to the creditor or administrator. If the cancellation
149 is due to the early termination of the finance agreement, then the borrower, in accordance with
150 the terms of the debt waiver, must provide a written request to cancel to the creditor or
151 administrator within ninety days of the occurrence of the event terminating the finance
152 agreement.

153 (3) If the cancellation of a debt waiver occurs as a result of a default under the
154 finance agreement or the repossession of the motor vehicle associated with the finance
155 agreement, or any other termination of the finance agreement, any refund due may be paid
156 directly to the creditor or administrator and applied as a reduction of the amount owed under the
157 finance agreement, unless the borrower can show that the finance agreement has been paid in
158 full.

159 (f) (1) Debt waivers offered by state or federal banks or credit unions in compliance
160 with the applicable state or federal law are exempt from this Act.

161 (2) Sections 3(c) and 5 are not applicable to debt waivers offered in connection with
162 commercial transactions.

163 Section 4. Vehicle Value Protection Agreements

164 (a) For the purposes of this section, the term “Administrator” means the person who may
165 be responsible for the administrative or operational function of Vehicle Value Protection
166 Agreements including but not limited to the adjudication of claims or benefit requests by
167 Contract Holders.

168

169 (b) Requirements for offering vehicle value protection agreements include:

170 (1) A provider may, but is not required to, utilize an administrator or other designee
171 to be responsible for any and all of the administration of vehicle value protection agreements in
172 compliance with this Act.

173 (2) Vehicle value protection agreements shall not be sold unless the contract holder has
174 been or will be provided access to a copy of that vehicle value protection agreement.

175 (3) In order to assure the faithful performance of the provider's obligations to its
176 contract holders, each provider shall be responsible for complying with the requirements of one
177 of the following three subdivisions:

178 (i) Insure all of its vehicle value protection agreements under an insurance policy that
179 pays or reimburses in the event the provider fails to perform its obligations under the vehicle
180 value protection agreement that is issued by an insurer licensed, registered, or otherwise
181 authorized to do business in this state either:

182 (A) at the time the insurers policy is filed with the commissioner, and continuously
183 thereafter, (1) maintain surplus as to policyholders and paid-in capital of at least fifteen million
184 dollars (\$15,000,000) and (2) annually file copies of the insurer's financial statements, its NAIC
185 Annual Statement, and the actuarial certification required by and filed in the insurer's state of
186 domicile; or

187 (B) at the time the insurers policy is filed with the commissioner, and continuously
188 thereafter, (1) maintain surplus as to policyholders and paid-in capital of less than fifteen million
189 dollars (\$15,000,000) but at least equal to ten million dollars (\$10,000,000), (2) demonstrate to
190 the satisfaction of the commissioner that the company maintains a ratio of net written premiums,
191 wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1, and
192 (3) annually files copies of the insurer's audited financial statements, its NAIC Annual
193 Statement, and the actuarial certification required by and filed in the Insurer's state of domicile;
194 or

195 (ii) (A) Maintain a funded reserve account for its obligations under its contracts
196 issued and outstanding in this state. The reserves shall not be less than forty percent (40%) of
197 gross consideration received, less claims paid, on the sale of the vehicle value protection
198 agreement for all in-force contracts. The reserve account shall be subject to examination and
199 review by the commissioner; and

200 (B) Place in trust with the commissioner a financial security deposit, having a value of
201 not less than five percent (5%) of the gross consideration received, less claims paid, on the sale
202 of the vehicle value protection agreements for all vehicle value protection agreements issued and
203 in force, but not less than \$25,000.00, consisting of one of the following:

- 204 (1) A surety bond issued by an authorized surety;
- 205 (2). Securities of the type eligible for deposit by authorized Insurers in this state;
- 206 (3). Cash;
- 207 (4). A letter of credit issued by a qualified financial institution; or
- 208 (5). Another form of security prescribed by regulations issued by the commissioner;

209 or

210 (iii.)(A) Maintain, or together with its parent company maintain, a net worth or
211 stockholders' equity of \$100 million; and

212 (B) Upon request, provide the commissioner with a copy of the provider's or the
213 provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and
214 Exchange Commission within the last calendar year, or if the company does not file with the
215 Securities and Exchange Commission, a copy of the company's audited financial statements,

216 which shows a net worth of the provider or its parent company of at least \$100 million. If the
217 provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the
218 provider's financial security requirement, then the parent company shall agree to guarantee the
219 obligations of the provider relating to vehicle value protection agreements sold by the provider in
220 this state.

221 (4) Except for the requirements specified in subsection (a)(3) above, no other
222 financial security requirements shall be required for vehicle value protection agreement
223 providers.

224 (c) Vehicle value protection agreements must disclose in writing and in clear,
225 understandable language that is easy to read, the following:

226 The name and address of the provider, contract holder, and administrator, if any.

227

228 The terms of the vehicle value protection agreement, including without limitation, the
229 purchase price to be paid by the contract holder if any, the requirements for eligibility, conditions
230 of coverage, or exclusions.

231

232 That the vehicle value protection agreement may be cancelled by the contract holder
233 within a Free Look Period as specified in the Vehicle Value Protection Agreement, and that in
234 such event the Contract Holder will be entitled to a full refund of the purchase price paid by the
235 Contract Holder, if any, so long as no benefits have been provided.

236

237 The procedure the Contract Holder must follow, if any, to obtain a benefit under the
238 terms and conditions of the Vehicle Value Protection Agreement, including, if applicable, a
239 telephone number or website and address where the Contract Holder may apply for a benefit.

240

241 Whether or not the Vehicle Value Protection Agreement is cancellable after the Free
242 Look Period and the conditions under which it may be cancelled including the procedures for
243 requesting any refund of the unearned purchase price paid by the Contract Holder.

244

245 In the event of cancellation, the methodology for calculating any refund of the unearned
246 purchase price of the Vehicle Value Protection Agreement due.

247

248 That neither the extension of credit, the terms of the credit, nor the terms of the related
249 motor vehicle sale or lease, may be conditioned upon the purchase of the vehicle value protection
250 agreement.

251 (8) Vehicle value protection agreements shall state the terms, restrictions or
252 conditions governing cancellation of the vehicle value protection agreement prior to the
253 termination or expiration date of the vehicle value protection agreement by either the provider or
254 the contract holder. The provider of the vehicle value protection agreement shall mail a written
255 notice to the contract holder at the last known address of the contract holder contained in the
256 records of the provider at least five (5) days prior to cancellation by the provider. Prior notice is
257 not required if the reason for cancellation is nonpayment of the Provider fee, a material

258 misrepresentation by the Contract Holder to the Provider or Administrator, or a substantial
259 breach of duties by the Contract Holder relating to the covered product or its use. The notice
260 shall state the effective date of the cancellation and the reason for the cancellation. If a Vehicle
261 value protection agreement is cancelled by the provider for a reason other than nonpayment of
262 the provider fee, the provider shall refund to the contract holder 100% of the unearned pro rata
263 provider fee paid by the contract holder, if any. If coverage under the vehicle value protection
264 agreement continues after a claim, then any refund may deduct claims paid. A reasonable
265 administrative fee may be charged by the provider up to \$75.

266 (d) Sections 4(c) and 5 are not applicable to vehicle value protection agreements
267 offered in connection with a commercial transaction.

268 Section 5. Enforcement and Penalties

269 The commissioner may take action which is necessary or appropriate to enforce the
270 provisions of this and to protect motor vehicle financial protection product consumers in this
271 state. After proper notice and opportunity for hearing, the commissioner may:

272 Order the creditor, provider, administrator or any other person not in compliance with
273 this section to cease and desist from product-related operations which are in violation of this
274 section; or

275

276 Impose a penalty of not more than five hundred dollars (\$500.00) per violation and no
277 more than ten thousand dollars (\$10,000) in the aggregate for all violations of similar nature. For
278 purposes of this section, violations must be of a similar nature if the violation consists of the

279 same or similar course of conduct, action or practice, irrespective of the number of times the
280 action, conduct or practice which is determined to be a violation of this section occurred.

281 Section 6. Severability

282 If any provision of this chapter, or the application of the provision to any person or
283 circumstances, is held invalid, the remainder of the chapter, and the application of the provision
284 to persons or circumstances other than those as to which it is held invalid, is not to be affected.

285 Section 7. Intent

286 The legislature finds that motor vehicle financial protection products are not insurance.
287 All motor vehicle financial protection products issued prior to and after the date of enactment of
288 this chapter shall not be construed as insurance.

289

290 SECTION 2. Chapter 93M of the General Laws shall take effect immediately upon its
291 passage of this act, or upon it otherwise becoming a law and applies to all motor vehicle financial
292 protection products which become effective on or after 180 days from the effective date of this
293 act. In no event will this chapter require changes to debt waivers being offered by any creditor or
294 to any vehicle value protection agreement being offered by any provider on or before the
295 effective date of this act.