

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 425
Commerce and Insurance Committee Substitute Adopted 5/6/21
PROPOSED COMMITTEE SUBSTITUTE S425-PCS45426-TG-26

Short Title: GAP and VVPA Agreement Changes.

(Public)

Sponsors:

Referred to:

April 1, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING GUARANTEED
3 ASSET PROTECTION WAIVERS AND TO CREATE AN ARTICLE GOVERNING
4 VEHICLE VALUE PROTECTION AGREEMENTS.

5 The General Assembly of North Carolina enacts:

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

7 "§ 66-440. Definitions.

8 The following definitions apply in this Article:

- 9 (1) Administrator. – A person that performs administrative or operational
10 functions with respect to guaranteed asset protection waivers.
11 (2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance
12 agreement.
13 (3) Creditor. – Any of the following:
14 a. A lender in a loan or credit transaction.
15 b. A lessor in a lease transaction.
16 c. A vehicle dealer, including a motor vehicle dealer as that term is
17 defined in G.S. 20-286(11), that provides credit to or arranges
18 financing for a purchaser of a vehicle.
19 d. A seller in a commercial retail installment transaction.
20 e. An assignee of any of the foregoing to whom the credit obligation is
21 payable.
22 (4) Free-look period. – The period of time from the effective date of a guaranteed
23 asset protection waiver until the date the borrower may cancel the contract
24 without penalty, fees, or costs to the borrower.
25 (5) Guaranteed asset protection waiver. – Either of the following:
26 a. A contractual agreement in which a creditor ~~agrees for~~ agrees, with or
27 without a separate ~~charge~~ charge, to cancel or waive all or part of
28 amounts due on a borrower's vehicle finance agreement in the event of
29 a total physical damage loss or unrecovered theft of the vehicle, which
30 agreement shall be part of, or a separate addendum to, the vehicle
31 finance agreement. The agreement may also provide, with or without
32 a separate charge, a benefit that waives an amount or provides a
33 borrower with a credit towards the purchase of a replacement vehicle.
34 b. A contractual agreement in which a creditor agrees, with or without a
35 separate charge, to cancel or waive all or part of amounts that may



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1 become due under a borrower's lease agreement as a result of excessive
2 wear and use of a vehicle. The agreement must be part of, or a separate
3 addendum to, the lease agreement. Excess wear and use waivers may
4 also cancel or waive amounts due for excess mileage.

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

7 (6) Insurer. – An insurance company licensed, registered, or otherwise authorized
8 to do business under Chapter 58 of the General Statutes.

9 (7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as well
10 as self-propelled or towed vehicles designed for personal or commercial use,
11 including, but not limited to, automobiles, trucks, motorcycles, recreational
12 vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal
13 watercraft, and trailers for motorcycles, boats, campers, and personal
14 watercraft.

15 (8) Vehicle finance agreement. – A loan, lease, or retail installment sales contract
16 for the purchase or lease of a vehicle."

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

18 **"§ 66-446. Miscellaneous provisions.**

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

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

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

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

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

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

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

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

46 "Article 48.

47 "Vehicle Value Protection Agreements.

48 **"§ 66-470. Scope.**

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

51 **"§ 66-471. Definitions.**

1 The following definitions apply in this Article:

- 2 (1) Administrator. – The person responsible for the administrative or operational
3 functions of vehicle value protection agreements, including, but not limited
4 to, the adjudication of claims or benefit requests by contract holders.
- 5 (2) Commercial. – A transaction wherein the motor vehicle will primarily be used
6 for business purposes rather than personal.
- 7 (3) Contract holder. – A person who is the purchaser or holder of a vehicle value
8 protection agreement.
- 9 (4) Finance agreement. – A loan, retail installment sales contract, or lease for the
10 purchase, refinancing, or lease of a motor vehicle.
- 11 (5) Free-look period. – The period of time from the effective date of the vehicle
12 value protection agreement until the date the vehicle value protection
13 agreement may be canceled without penalty, fees, or costs.
- 14 (6) Insurer. – An insurance company licensed, registered, or otherwise authorized
15 to issue contractual liability insurance under the insurance laws of this State.
- 16 (7) Motor vehicle. – Self-propelled or towed vehicles designed for personal or
17 commercial use, including, but not limited to, automobiles, trucks,
18 motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles,
19 campers, boats, personal watercraft, and related trailers.
- 20 (8) Person. – Includes an individual, company, association, organization,
21 partnership, business trust, corporation, and every form of legal entity.
- 22 (9) Provider. – A person that is obligated to provide a benefit under a vehicle
23 value protection agreement.
- 24 (10) Vehicle value protection agreement. – Includes a contractual agreement that
25 provides a benefit towards either the reduction of some or all of the contract
26 holder's current finance agreement deficiency balance, or towards the
27 purchase or lease of a replacement motor vehicle or purchase of motor vehicle
28 services, upon the occurrence of an adverse event to the motor vehicle,
29 including, but not limited to, a less than total physical damage loss or
30 diminished value or depreciation. An agreement may include related
31 agreements such as trade-in credit agreements, diminished value agreements,
32 depreciation benefit agreements, or other similarly named agreements. The
33 term does not include a guaranteed asset protection waiver as defined in
34 G.S. 66-440(5).

35 **"§ 66-472. Requirements for offering vehicle value protection agreements.**

36 (a) Vehicle value protection agreements in compliance with this Article may be offered,
37 sold, or given to consumers in this State.

38 (b) A provider may perform as an administrator or may utilize a third-party administrator
39 or other designee to be responsible for any and all of the administration of vehicle value
40 protection agreements in compliance with this Article.

41 (c) A contract holder that has been sold a vehicle value protection agreement shall be
42 given or provided access to a copy of the agreement.

43 (d) Notwithstanding any other provision of law to the contrary, any amount charged or
44 financed for a vehicle value protection agreement is an authorized charge that must be separately
45 stated and is not to be considered a finance charge or interest. The amount charged or financed
46 for the agreement may be included within the amount financed under G.S. 25A-9 and shall not
47 be considered a part of the finance charge or interest thereunder.

48 (e) In order to assure the faithful performance of the provider's obligations to its contract
49 holders, each provider shall comply with one of the following requirements:

- 50 (1) Reimbursement insurance policy. – The insurance of all of vehicle value
51 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.

1 Vehicle value protection agreements must disclose in writing and in clear, understandable
2 language that is easy to read, all of 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, without
6 limitation, the purchase price to be paid by the contract holder, if any, the
7 requirements for eligibility, conditions of coverage, and 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
10 protection agreement, and that, if cancelled, the contract holder will be entitled
11 to a full refund of the purchase price paid by the contract holder, if any, so
12 long as no benefits have been provided.
- 13 (4) The procedure the contract holder must follow, if any, to obtain a benefit under
14 the terms and conditions of the vehicle value protection agreement, including,
15 if applicable, a telephone number or website and address where the contract
16 holder may apply for a benefit.
- 17 (5) Whether the vehicle value protection agreement is cancellable after the
18 free-look period and the conditions under which it may be cancelled, including
19 the procedures for requesting any refund of the unearned purchase price paid
20 by the contract holder.
- 21 (6) In the event of cancellation, the methodology for calculating any refund of the
22 unearned purchase price of the vehicle value protection agreement due.
- 23 (7) A statement that neither the extension of credit, nor the terms of the credit, nor
24 the terms of the related motor vehicle sale or lease may be conditioned upon
25 the purchase of the vehicle value protection agreement.
- 26 (8) A statement of the terms, restrictions, or conditions governing cancellation of
27 the vehicle value protection agreement prior to the termination or expiration
28 date of the vehicle value protection agreement by either the provider or the
29 contract holder.

30 **"§ 66-474. Commercial transaction exemptions.**

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

33 **"§ 66-475. Enforcement.**

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

- 37 (1) Order the creditor, provider, administrator, or any other person not in
38 compliance with this Article to cease and desist from product-related
39 operations which are in violation of this Article.
- 40 (2) Impose a penalty of not more than five hundred dollars (\$500.00) per violation
41 and no more than ten thousand dollars (\$10,000) in the aggregate for all
42 violations of a similar nature. For purposes of this section, violations are of a
43 similar nature if the violation consists of the same or similar course of conduct,
44 action, or practice, irrespective of the number of times the action, conduct, or
45 practice which is determined to be a violation of this Article occurred.

46 **"§ 66-476. Intent.**

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

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

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