

SENATE No. 208

The Commonwealth of Massachusetts

PRESENTED BY:

Jacob R. Oliveira

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:

Jacob R. Oliveira

Hampden, Hampshire and Worcester

Meghan K. Kilcoyne

12th Worcester

SENATE No. 208

By Mr. Oliveira, a petition (accompanied by bill, Senate, No. 208) of Jacob R. Oliveira and Meghan Kilcoyne for legislation 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, is hereby
2 amended by inserting after chapter 93L the following new chapter:-

3 CHAPTER 93M. 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 (a) The requirements for offering motor vehicle financial protection products include:

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

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

69 (3) Neither the extension of credit, the terms of credit, nor the terms of the related
70 motor vehicle sale or lease may be conditioned upon the consumer’s payment for or financing of
71 any 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 (1) The name and address of the initial creditor and the borrower at the time of sale,
106 and the identity of any administrator if different from the creditor;

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

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

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

116 (5) Whether or not the debt waiver is cancellable after the free look period and the
117 conditions under which it may be cancelled or terminated, including the procedures for
118 requesting any refund of amounts paid;

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

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

129 (8) That neither the extension of credit, the terms of the credit, nor the terms of the
130 related motor vehicle sale or lease, may be conditioned upon the borrower's purchase of a debt
131 waiver.

132 (e) (1)Debt waiver agreements may be cancellable or non-cancellable after the free
133 look period. Debt waivers must provide that if a borrower cancels a debt waiver within the free

134 look period, the borrower will be entitled to a full refund of the amount the borrower paid, if any,
135 so long as no benefits have been provided.

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

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

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

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

157 Section 4. Vehicle Value Protection Agreements

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

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

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

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

168 (3) In order to assure the faithful performance of the provider’s obligations to its
169 contract holders, each provider shall be responsible for complying with the requirements of one
170 of the following three subdivisions:

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

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

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

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

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

- 197 (1) A surety bond issued by an authorized surety;
- 198 (2) Securities of the type eligible for deposit by authorized Insurers in this state;
- 199 (3) Cash;
- 200 (4) A letter of credit issued by a qualified financial institution; or
- 201 (5) Another form of security prescribed by regulations issued by the commissioner;

202 or

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

205 (B) Upon request, provide the commissioner with a copy of the provider's or the
206 provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and
207 Exchange Commission within the last calendar year, or if the company does not file with the
208 Securities and Exchange Commission, a copy of the company's audited financial statements,
209 which shows a net worth of the provider or its parent company of at least \$100 million. If the
210 provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the
211 provider's financial security requirement, then the parent company shall agree to guarantee the
212 obligations of the provider relating to vehicle value protection agreements sold by the provider in
213 this state.

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

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

219 (1) The name and address of the provider, contract holder, and administrator, if any.

220 (2) The terms of the vehicle value protection agreement, including without limitation,
221 the purchase price to be paid by the contract holder if any, the requirements for eligibility,
222 conditions of coverage, or exclusions.

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

227 (4) The procedure the Contract Holder must follow, if any, to obtain a benefit under
228 the terms and conditions of the Vehicle Value Protection Agreement, including, if applicable, a
229 telephone number or website and address where the Contract Holder may apply for a benefit.

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

233 (6) In the event of cancellation, the methodology for calculating any refund of the
234 unearned purchase price of the Vehicle Value Protection Agreement due.

235 (7) That neither the extension of credit, the terms of the credit, nor the terms of the
236 related motor vehicle sale or lease, may be conditioned upon the purchase of the vehicle value
237 protection agreement.

238 (8) Vehicle value protection agreements shall state the terms, restrictions or
239 conditions governing cancellation of the vehicle value protection agreement prior to the
240 termination or expiration date of the vehicle value protection agreement by either the provider or
241 the contract holder. The provider of the vehicle value protection agreement shall mail a written
242 notice to the contract holder at the last known address of the contract holder contained in the
243 records of the provider at least five (5) days prior to cancellation by the provider. Prior notice is
244 not required if the reason for cancellation is nonpayment of the Provider fee, a material
245 misrepresentation by the Contract Holder to the Provider or Administrator, or a substantial
246 breach of duties by the Contract Holder relating to the covered product or its use. The notice
247 shall state the effective date of the cancellation and the reason for the cancellation. If a Vehicle
248 value protection agreement is cancelled by the provider for a reason other than nonpayment of
249 the provider fee, the provider shall refund to the contract holder 100% of the unearned pro rata
250 provider fee paid by the contract holder, if any. If coverage under the vehicle value protection
251 agreement continues after a claim, then any refund may deduct claims paid. A reasonable
252 administrative fee may be charged by the provider up to \$75.

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

255 Section 5. Enforcement and Penalties

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

259 (a) Order the creditor, provider, administrator or any other person not in compliance
260 with this section to cease and desist from product-related operations which are in violation of this
261 section; or

262 (b) Impose a penalty of not more than five hundred dollars (\$500.00) per violation
263 and no more than ten thousand dollars (\$10,000) in the aggregate for all violations of similar
264 nature. For purposes of this section, violations must be of a similar nature if the violation
265 consists of the same or similar course of conduct, action or practice, irrespective of the number
266 of times the action, conduct or practice which is determined to be a violation of this section
267 occurred.

268 Section 6. Severability

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

272 Section 7. Intent

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

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

280 to any vehicle value protection agreement being offered by any provider on or before the
281 effective date of this act.