

HOUSE No. 416

The Commonwealth of Massachusetts

PRESENTED BY:

Meghan K. 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 debt waivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Meghan K. Kilcoyne</i>	<i>12th Worcester</i>	<i>1/14/2025</i>
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>2/13/2025</i>

HOUSE No. 416

By Representative Kilcoyne of Clinton, a petition (accompanied by bill, House, No. 416) of Meghan K. Kilcoyne and Jacob R. Oliveira relative to motor vehicle debt waivers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act relative to motor vehicle debt waivers.

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. Chapter 255B of the General Laws, as appearing in the 2022 Official
2 Edition, is hereby amended by inserting after section 25 the following new section:-

3 Section 26. (a) For purpose of this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Administrator” means a person, other than an insurer or creditor that performs
6 administrative or operational functions pursuant to debt waiver programs.

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

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

12 “Commercial” means a transaction wherein the motor vehicle will primarily be used for
13 business purposes rather than personal.

14 “Consumer” means an individual purchaser of a motor vehicle or borrower under a
15 finance agreement.

16 “Debt waiver” means: (i) a guaranteed asset protection waiver; (ii) an excess wear and
17 use waiver; or (iii) other product as approved by the commissioner.

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

25 “Excess wear and use waiver” means a contractual agreement wherein a creditor agrees,
26 with or without a separate charge, to cancel or waive all or part of amounts that may become due
27 under a borrower’s lease agreement as a result of excessive wear and use of a motor vehicle,
28 which agreement must be part of, or a separate addendum to, the lease agreement. Excess wear
29 and use waivers may also cancel or waive amounts due for excess mileage.

30 “Finance agreement” means a loan, retail installment sales contract or lease for the
31 purchase, refinancing, or lease of a motor vehicle. Finance agreement also includes a loan with a
32 term of at least 12 months that is secured by a motor vehicle.

“Free look period” means the period of time from the effective date of the debt waiver until the date the debt waiver may be canceled without penalty, fees or costs. This period of time shall not be shorter than 30 days.

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

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

(b) The requirements for offering debt waivers include:

(1) Debt waivers may be offered, sold or given to consumers in this state in compliance with this section;

(2) Notwithstanding any other provision of law, any amount charged or financed for a debt waiver is an authorized charge that must be separately stated and is not to be considered a finance charge or interest;

(3) Neither the extension of credit, the terms of credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the consumer’s payment for or financing of any charge for a debt waiver. However, debt waivers may be discounted or given at no charge in connection with the purchase of other non-credit related goods or services;

(4) A retail seller must insure its debt waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its debt waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor, or retail seller, or may

be procured by an administrator to cover a creditor's or retail seller's obligations. However, retail sellers that are lessors on motor vehicles are not required to insure obligations related to debt waivers on such leased motor vehicles;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide a written request to cancel to the creditor or administrator within 90 days of the occurrence of the event terminating the finance agreement;

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

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

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

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

116 administrator within ninety days of the occurrence of the event terminating the finance
117 agreement.

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

123 (f) Debt waivers offered by state or federal banks or credit unions in compliance with the
124 applicable state or federal law are exempt from this section.

125 (g) The commissioner may take action which is necessary or appropriate to enforce the
126 provisions of this section and to protect consumers. After proper notice and opportunity for
127 hearing, the commissioner may:

128 (1) Order the creditor, administrator or any other person not in compliance with this
129 section to cease and desist from product-related operations which are in violation of this section;
130 or

131 (2) Impose a penalty of not more than \$500 per violation and no more than \$10,000 in the
132 aggregate for all violations of similar nature. For purposes of this section, violations must be of
133 a similar nature if the violation consists of the same or similar course of conduct, action or
134 practice, irrespective of the number of times the action, conduct or practice which is determined
135 to be a violation of this section occurred.