

HOUSE BILL No. 2622

By Committee on Financial Institutions and Rural Development

2-8

1 AN ACT concerning financial institutions; relating to the financing of
2 motor vehicles; enacting the motor vehicle financial protection
3 products act; providing definitions, requirements and procedures for
4 offering debt waivers and vehicle value protection agreements;
5 administration and enforcement by the consumer and mortgage lending
6 division of the office of the state bank commissioner.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. Sections 1 through 8, and amendments thereto, shall be
10 known and may be cited as the motor vehicle financial protection products
11 act. The purpose of this act is to provide a framework within which motor
12 vehicle financial protection products are defined and may be offered
13 within this state.

14 Sec. 2. As used in sections 1 through 8, and amendments thereto:

15 (a) "Act" means the motor vehicle financial protection products act.

16 (b) "Borrower" means a debtor, retail buyer or lessee under a finance
17 agreement.

18 (c) "Commercial" means a transaction where the motor vehicle will
19 primarily be used for business purposes rather than personal.

20 (d) "Commissioner" means the deputy commissioner of the consumer
21 and mortgage lending division appointed by the bank commissioner
22 pursuant to K.S.A. 75-3135, and amendments thereto.

23 (e) "Consumer" means an individual purchaser of a motor vehicle or
24 borrower under a finance agreement and includes a borrower or contract
25 holder, as applicable.

26 (f) "Contract holder" means a person who is the purchaser or holder
27 of a vehicle value protection agreement.

28 (g) "Creditor" means:

29 (1) The lender in a loan or credit transaction;

30 (2) the lessor in a lease transaction;

31 (3) any retail seller of motor vehicles;

32 (4) the seller in commercial retail installment transactions; or

33 (5) the assignees of any person described in paragraphs (1) through
34 (4) to whom the credit obligation is payable.

35 (h) "Debt waiver" means:

36 (1) A guaranteed asset protection waiver;

1 (2) an excess wear and use waiver; or

2 (3) other products as approved by the commissioner.

3 (i) "Debt waiver administrator" means a person, other than an insurer
4 or creditor, that performs administrative or operational functions pursuant
5 to debt waiver programs.

6 (j) "Excess wear and use waiver" means a contractual agreement
7 where a creditor agrees, with or without a separate charge, to cancel or
8 waive all or part of amounts that may become due under a borrower's lease
9 agreement as a result of excessive wear and use of a motor vehicle. Such
10 waiver shall be a part of, or a separate addendum to, such lease agreement.
11 Excess wear and use waivers may also cancel or waive amounts due for
12 excess mileage.

13 (k) "Finance agreement" means a loan, retail installment sales
14 contract or lease for the purchase, refinancing or lease of a motor vehicle.

15 (l) "Free look period" means the period of time from the effective
16 date of the motor vehicle financial protection product until the date such
17 motor vehicle financial protection product may be canceled without
18 penalty, fees or costs. Such period of time shall not be shorter than 30
19 days.

20 (m) "Guaranteed asset protection waiver" means a contractual
21 agreement where a creditor agrees, with or without a separate charge, to
22 cancel or waive all or part of amounts due on a borrower's finance
23 agreement in the event of a total physical damage loss or unrecovered theft
24 of a motor vehicle. Such waiver shall be a part of, or a separate addendum
25 to, such finance agreement. A guaranteed asset protection waiver may also
26 provide, with or without a separate charge, a benefit that waives an
27 amount, or provides a borrower with a credit, towards the purchase of a
28 replacement motor vehicle.

29 (n) "Insurer" means an insurance company licensed, registered or
30 otherwise authorized to issue contractual liability insurance under the
31 insurance laws of this state.

32 (o) "Motor vehicle" means a self-propelled or towed vehicle designed
33 for personal or commercial use, including, but not limited to, automobiles,
34 trucks, motorcycles, recreational vehicles, all-terrain vehicles,
35 snowmobiles, campers, boats, personal watercraft and related trailers.

36 (p) "Motor vehicle financial protection product" means an agreement
37 that protects a consumer's financial interest in such consumer's current or
38 future motor vehicle, including, but not limited to, debt waivers and
39 vehicle value protection agreements.

40 (q) "NAIC" means the national association of insurance
41 commissioners.

42 (r) "Person" includes an individual, company, association,
43 organization, partnership, business trust, corporation and every form of

1 legal entity.

2 (s) "Provider" means a person who is obligated to provide a benefit
3 under a vehicle value protection agreement. A "provider" may serve as a
4 vehicle value protection agreement administrator or retain the services of a
5 third-party administrator.

6 (t) "Vehicle value protection agreement" means a contractual
7 agreement that provides a benefit towards either the reduction of some or
8 all of the contract holder's current finance agreement deficiency balance,
9 or towards the purchase or lease of a replacement motor vehicle or motor
10 vehicle services, upon the occurrence of an adverse event to the motor
11 vehicle, including, but not limited to, loss, theft, damage, obsolescence,
12 diminished value or depreciation. A "vehicle value protection agreement"
13 does not include debt waivers. A "vehicle value protection agreement" may
14 include agreements, including, but not limited to, trade-in-credit
15 agreements, diminished value agreements, depreciation benefit agreements
16 or other similarly named agreements.

17 (u) "Vehicle value protection agreement administrator" means the
18 person who is responsible for the administrative or operational function of
19 a vehicle value protection agreement, including, but not limited to, the
20 adjudication of claims or benefit requests by contract holders.

21 Sec. 3. (a) Motor vehicle financial protection products may be
22 offered, sold or given to consumers in this state in accordance with this
23 act.

24 (b) Notwithstanding any other provision of law, any amount charged
25 or financed for a motor vehicle financial protection product is an
26 authorized charge that shall be separately stated and shall not be
27 considered a finance charge or interest.

28 (c) The extension of credit, the terms of credit or the terms of the
29 related motor vehicle sale or lease shall not be conditioned upon the
30 consumer's payment for or financing of any charge for a motor vehicle
31 financial protection product. Motor vehicle financial protection products
32 may be discounted or given at no charge in connection with the purchase
33 of other noncredit related goods or services.

34 Sec. 4. (a) A retail seller shall insure such retail seller's debt waiver
35 obligations under a contractual liability or other insurance policy issued by
36 an insurer. A creditor, other than a retail seller, may insure such creditor's
37 debt waiver obligations under a contractual liability policy or other such
38 policy issued by an insurer. Any such insurance policy may be directly
39 obtained by a creditor or retail seller or may be procured by a debt waiver
40 administrator to cover a creditor's or retail seller's obligations. Retail
41 sellers that are lessors on motor vehicles are not required to insure
42 obligations related to debt waivers on such leased motor vehicles.

43 (b) The debt waiver remains a part of the finance agreement upon the

1 assignment, sale or transfer of such finance agreement by the creditor.

2 (c) Any creditor that offers a debt waiver shall report the sale of, and
3 forward funds due to, the designated party.

4 (d) Funds received or held by a creditor or debt waiver administrator
5 and belonging to an insurer, creditor or debt waiver administrator shall be
6 held by such creditor or debt waiver administrator in a fiduciary capacity.

7 (e) Contractual liability or other insurance policies insuring debt
8 waivers shall state the obligation of the insurer to reimburse or pay to the
9 creditor any sums that the creditor is legally obligated to waive under a
10 debt waiver.

11 (f) Coverage under a contractual liability or other insurance policy
12 insuring a debt waiver shall also cover any subsequent assignee upon the
13 assignment, sale or transfer of the finance agreement.

14 (g) Coverage under a contractual liability or other insurance policy
15 insuring a debt waiver shall remain in effect unless canceled or terminated
16 in compliance with applicable insurance laws of this state.

17 (h) The cancellation or termination of a contractual liability or other
18 insurance policy shall not reduce the insurer's responsibility for debt
19 waivers issued by the creditor prior to the date of cancellation or
20 termination and for which premium has been received by the insurer.

21 (i) Debt waivers shall disclose in writing and in clear, understandable
22 language that is easy to read:

23 (1) The name and address of the initial creditor and the borrower at
24 the time of sale and the identity of any debt waiver administrator if
25 different from the creditor;

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

29 (3) that the borrower may cancel the debt waiver within a free look
30 period as specified in the debt waiver and shall be entitled to a full refund
31 of the purchase price paid by the borrower, if any, if benefits have been
32 provided;

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

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

40 (6) that in order to receive any refund due in the event of a borrower's
41 cancellation of the debt waiver, the borrower, in accordance with the terms
42 of the debt waiver, shall provide a written request to cancel to the creditor,
43 debt waiver administrator or other such party. If the cancellation of a debt

1 waiver is due to the early termination of the finance agreement and no
2 benefit has been or will be provided, then the borrower, in accordance with
3 the terms of the debt waiver, shall provide a written request to cancel to the
4 creditor or debt waiver administrator within 90 days of the occurrence of
5 the event terminating the finance agreement;

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

10 (8) the extension of credit, the terms of the credit or the terms of the
11 related motor vehicle sale or lease shall not be conditioned upon the
12 borrower's purchase of a debt waiver.

13 (j) Debt waiver agreements may be cancellable or noncancellable
14 after the free look period. Debt waivers shall provide that if a borrower
15 cancels a debt waiver within the free look period, the borrower shall be
16 entitled to a full refund of the amount the borrower paid, if any, if no
17 benefits have been provided.

18 (k) In the event of a borrower's cancellation of the debt waiver or
19 upon the early termination of the finance agreement, after the debt waiver
20 has been in effect beyond the free look period, the borrower may be
21 entitled to a refund of the amount the borrower paid of the unearned
22 portion of the purchase price, if any, less a cancellation fee not to exceed
23 \$75, if no benefit has been or will be provided. In order to receive any
24 refund due in the event of a borrower's cancellation of the debt waiver, the
25 borrower shall provide a written request to cancel, in accordance with the
26 terms of the debt waiver, to the creditor or debt waiver administrator. If the
27 cancellation is due to the early termination of the finance agreement, the
28 borrower, in accordance with the terms of the debt waiver, shall provide a
29 written request to cancel to the creditor or debt waiver administrator within
30 90 days of the event terminating the finance agreement.

31 (l) If the cancellation of a debt waiver occurs as a result of a default
32 under the finance agreement, the repossession of the motor vehicle
33 associated with the finance agreement or any other termination of the
34 finance agreement, any refund due may be paid directly to the creditor or
35 debt waiver administrator and applied as a reduction of the amount owed
36 under the finance agreement unless the borrower can show that the finance
37 agreement has been paid in full.

38 (m) Debt waivers offered by state or federal banks or credit unions in
39 compliance with the applicable state or federal law shall be exempt from
40 this act.

41 (n) The provisions of subsection (i) and section 6, and amendments
42 thereto, shall not apply to debt waivers offered in connection with
43 commercial transactions.

1 Sec. 5. (a) A provider may, but is not required to, utilize a vehicle
2 value protection agreement administrator or other designee to be
3 responsible for any and all of the administration of vehicle value
4 protection agreements in compliance with this act.

5 (b) Vehicle value protection agreements shall not be sold unless the
6 contract holder has been or will be provided access to a copy of such
7 vehicle value protection agreement.

8 (c) In order to assure the faithful performance of the provider's
9 obligations to such provider's contract holders, each provider shall:

10 (1) Insure all of such provider's vehicle value protection agreements
11 under an insurance policy issued by an insurer licensed, registered or
12 otherwise authorized to do business in this state in one of the following
13 manners:

14 (A) At the time the policy is filed with the commissioner, and
15 continuously thereafter:

16 (i) Maintain a surplus as to policyholders and paid-in capital of at
17 least \$15,000,000; and

18 (ii) annually file copies of the insurer's financial statements, NAIC
19 annual statement and the actuarial certification required by and filed in the
20 insurer's state of domicile;

21 (B) at the time the policy is filed with the commissioner, and
22 continuously thereafter:

23 (i) Maintain a surplus as to policyholders and paid-in capital of at
24 least \$10,000,000;

25 (ii) demonstrate to the satisfaction of the commissioner that the
26 company maintains a ratio of net written premiums, wherever written, to
27 surplus as to policyholders and paid-in capital of not greater than 3 to 1;
28 and

29 (iii) annually files copies of the insurer's audited financial statements,
30 NAIC annual statement and the actuarial certification required by and filed
31 in the insurer's state of domicile; or

32 (C) maintain a funded reserve account for such provider's obligations
33 under such provider's contracts issued and outstanding in this state. The
34 reserves shall not be less than 40% of gross consideration received, less
35 claims paid, on the sale of the vehicle value protection agreement for all
36 in-force contracts. The reserve account shall be subject to examination and
37 review by the commissioner;

38 (2) place in trust with the commissioner a financial security deposit,
39 having a value of not less than 5% of the gross consideration received, less
40 claims paid, on the sale of the vehicle value protection agreement for all
41 vehicle value protection agreements issued and in force, but not less than
42 \$25,000, consisting of one of the following:

43 (A) A surety bond issued by an authorized surety;

1 (B) securities of the type eligible for deposit by authorized insurers in
2 this state;

3 (C) cash;

4 (D) a letter of credit issued by a qualified financial institution; or

5 (E) another form of security prescribed by rules and regulations
6 issued by the commissioner; or

7 (3) (A) maintain, or together with such provider's parent company
8 maintain, a net worth or stockholders' equity of \$100,000,000; and

9 (B) upon request, provide the commissioner with a copy of the
10 provider's or the provider's parent company's most recent form 10-K or
11 form 20-F filed with the securities and exchange commission within the
12 last calendar year or, if the company does not file with the securities and
13 exchange commission, a copy of the company's audited financial
14 statements that shows a net worth of the provider or the provider's parent
15 company of at least \$100,000,000. If the provider's parent company's form
16 10-K, form 20-F or financial statements are filed to meet the provider's
17 financial security requirement, the parent company shall agree to
18 guarantee the obligations of the provider relating to vehicle value
19 protection agreements sold by the provider in this state.

20 (d) No other financial security requirements shall be required for
21 vehicle value protection agreement providers except for the requirements
22 specified in subsection (c).

23 (e) Vehicle value protection agreements shall disclose in writing and
24 in clear, understandable language that is easy to read:

25 (1) The name and address of the provider, contract holder and vehicle
26 value protection agreement administrator, if any;

27 (2) the terms of the vehicle value protection agreement, including, but
28 not limited to, the purchase price to be paid by the contract holder if any,
29 the requirements for eligibility, conditions of coverage or exclusions;

30 (3) that the vehicle value protection agreement may be canceled by
31 the contract holder within a free look period as specified in the vehicle
32 value protection agreement, and that in such event the contract holder shall
33 be entitled to a full refund of the purchase price paid by the contract
34 holder, if any, if no benefits have been provided;

35 (4) the procedure the contract holder shall follow, if any, to obtain a
36 benefit under the terms and conditions of the vehicle value protection
37 agreement, including, if applicable, a telephone number or website and
38 address where the contract holder may apply for a benefit;

39 (5) whether or not the vehicle value protection agreement is
40 cancellable after the free look period and the conditions under which the
41 agreement may be canceled, including the procedures for requesting any
42 refund of the unearned purchase price paid by the contract holder;

43 (6) in the event of cancellation, the methodology for calculating any

1 refund of the unearned purchase price of the vehicle value protection
2 agreement due;

3 (7) the extension of credit, the terms of the credit or the terms of the
4 related motor vehicle sale or lease shall not be conditioned upon the
5 purchase of the vehicle value protection agreement; and

6 (8) vehicle value protection agreements shall state the terms,
7 restrictions or conditions governing cancellation of the vehicle value
8 protection agreement prior to the termination or expiration date of such
9 vehicle value protection agreement by either the provider or the contract
10 holder. The provider of the vehicle value protection agreement shall mail a
11 written notice to the contract holder at the last known address of the
12 contract holder contained in the records of the provider at least five days
13 prior to cancellation by the provider. Prior notice is not required if the
14 reason for cancellation is nonpayment of the provider fee, a material
15 misrepresentation by the contract holder to the provider or vehicle value
16 protection agreement administrator or a substantial breach of duties by the
17 contract holder relating to the covered motor vehicle or the use of such
18 covered motor vehicle. The notice shall state the effective date of the
19 cancellation and the reason for the cancellation. If a vehicle value
20 protection agreement is canceled by the provider for a reason other than
21 nonpayment of the provider fee, the provider shall refund to the contract
22 holder 100% of the unearned pro rata provider fee paid by the contract
23 holder, if any. If coverage under the vehicle value protection agreement
24 continues after a claim, amounts for claims paid may be deducted from
25 any refund. The provider may charge a reasonable administrative fee not to
26 exceed \$75.

27 (f) The provisions of subsection (e) and section 6, and amendments
28 thereto, shall not apply to vehicle value protection agreements offered in
29 connection with a commercial transaction.

30 Sec. 6. The commissioner may take any action that is necessary or
31 appropriate to enforce the provisions of this act and to protect motor
32 vehicle financial protection product consumers in this state. After proper
33 notice and opportunity for a hearing, the commissioner may:

34 (a) Order the creditor, provider, administrator or any other person not
35 in compliance with this act to cease and desist from motor vehicle
36 financial protection product-related operations that are in violation of this
37 act.

38 (b) Impose a penalty of not more than \$500 per violation and not
39 more than \$10,000 in the aggregate for all violations of a similar nature.
40 For purposes of this act, violations shall be of a similar nature if the
41 violation consists of the same or similar course of conduct, action or
42 practice irrespective of the number of times the action, conduct or practice
43 that is determined to be a violation of this act occurred.

1 Sec. 7. Motor vehicle financial protection products under this act
2 shall not be construed to be insurance and shall be exempt from regulation
3 as insurance pursuant to chapter 40 of the Kansas Statutes Annotated, and
4 amendments thereto.

5 Sec. 8. If any provision of this act or the application thereof to any
6 person or circumstances is held invalid, the invalidity shall not affect other
7 provisions or applications of the act that can be given effect without the
8 invalid provision or application, and to this end, the provisions of this act
9 are severable.

10 Sec. 9. This act shall take effect and be in force from and after its
11 publication in the statute book.