

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Tramont offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 48-421 and insert:

7 asset protection products issued before October 1, 2008.

8 Section 2. Paragraph (g) of subsection (11) of section
9 520.07, Florida Statutes, is amended, and paragraphs (h) and (i)
10 are added to that subsection, to read:

11 520.07 Requirements and prohibitions as to retail
12 installment contracts.-

13 (11) In conjunction with entering into any new retail
14 installment contract or contract for a loan, a motor vehicle
15 retail installment seller as defined in s. 520.02, a sales
16 finance company as defined in s. 520.02, or a retail lessor as

Amendment No.1

17 defined in s. 521.003, and any assignee of such an entity, may
18 offer, for a fee or otherwise, optional guaranteed asset
19 protection products in accordance with this chapter. The motor
20 vehicle retail installment seller, sales finance company, retail
21 lessor, or assignee may not require the purchase of a guaranteed
22 asset protection product as a condition for making the loan. In
23 order to offer any guaranteed asset protection product, a motor
24 vehicle retail installment seller, sales finance company, or
25 retail lessor, and any assignee of such an entity, shall comply
26 with the following:

27 (g) If a contract for a guaranteed asset protection
28 product is terminated, the entity shall refund to the buyer any
29 unearned fees paid for the contract unless the contract provides
30 otherwise. A refund is not due to a consumer who receives a
31 benefit under such product. In order to receive a refund, the
32 buyer must notify the entity of the event terminating the
33 contract and request a refund within 90 days after the
34 occurrence of the event terminating the contract. An entity may
35 offer a buyer a contract that does not provide for a refund only
36 if the entity also offers that buyer a bona fide option to
37 purchase a comparable contract that provides for a refund. An
38 entity may not deduct more than \$75 in administrative fees from
39 a refund made under this subsection.

Amendment No.1

40 (h) Guaranteed asset protection products may be cancelable
41 or noncancelable after a free-look period as defined in s.
42 520.152.

43 (i) If the termination of the guaranteed asset protection
44 product occurs because of a default under the retail installment
45 contract or contract for a loan, the repossession of the motor
46 vehicle associated with the retail installment contract or
47 contract for a loan, or any other termination of the retail
48 installment contract or contract for a loan, the entity may pay
49 any refund due directly to the holder or administrator and apply
50 the refund as a reduction of the amount owed under the retail
51 installment contract or contract for a loan, unless the buyer
52 can show that the retail installment contract has been paid in
53 full.

54 Section 3. Section 520.151, Florida Statutes, is created
55 to read:

56 520.151 Florida Vehicle Value Protection Agreements Act.—
57 Sections 520.151-520.156 may be cited as the "Florida Vehicle
58 Value Protection Agreements Act."

59 Section 4. Section 520.152, Florida Statutes, is created
60 to read:

61 520.152 Definitions.—As used in ss. 520.151-520.156,
62 unless the context or subject matter otherwise requires, the
63 term:

Amendment No.1

64 (1) "Administrator" means the person who is responsible
65 for the administrative or operational function of managing
66 vehicle value protection agreements, including, but not limited
67 to, the adjudication of claims or benefit requests by contract
68 holders.

69 (2) "Commercial transaction" means a transaction in which
70 the motor vehicle subject to the transaction is used primarily
71 for business or commercial purposes.

72 (3) "Contract holder" means a person who is the purchaser
73 or holder of a vehicle value protection agreement.

74 (4) "Finance agreement" means a loan, retail installment
75 sales contract, or lease for the purchase, refinancing, or lease
76 of a motor vehicle.

77 (5) "Free-look period" means the period of time,
78 commencing on the effective date of the contract, during which
79 the buyer may cancel the contract for a full refund of the
80 purchase price. This period may not be shorter than 30 days.

81 (6) "Motor vehicle" has the same meaning as provided in s.
82 520.02.

83 (7) "Provider" means a person that is obligated to provide
84 a benefit under a vehicle value protection agreement. A provider
85 may function as an administrator or retain the services of a
86 third-party administrator.

87 (8) "Vehicle value protection agreement" includes a
88 contractual agreement that provides a benefit toward either the

Amendment No.1

89 reduction of some or all of the contract holder's current
90 finance agreement deficiency balance or the purchase or lease of
91 a replacement motor vehicle or motor vehicle services upon the
92 occurrence of an adverse event to the motor vehicle, including,
93 but not limited to, loss, theft, damage, obsolescence,
94 diminished value, or depreciation. The term does not include
95 guaranteed asset protection products as defined in s. 520.02.
96 Such a product is not insurance for purposes of the Florida
97 Insurance Code.

98 Section 5. Section 520.153, Florida Statutes, is created
99 to read:

100 520.153 Requirements and prohibitions as to vehicle value
101 protection agreements.-

102 (1) Vehicle value protection agreements may be offered,
103 sold, or given to consumers in this state in compliance with
104 this act.

105 (2) Notwithstanding any other law, any amount charged or
106 financed for a vehicle value protection agreement is not
107 considered a finance charge or interest and must be separately
108 stated in the finance agreement and in the vehicle value
109 protection agreement.

110 (3) The extension of credit, the terms of credit, or the
111 terms of the related motor vehicle sale or lease may not be
112 conditioned upon the consumer's payment for or financing of any
113 charge for a vehicle value protection agreement. However, a

Amendment No.1

114 vehicle value protection agreement may be discounted or given at
115 no charge in connection with the purchase of other noncredit-
116 related goods or services.

117 (4) A provider may use an administrator or other designee
118 to administer a vehicle value protection agreement.

119 (5) A vehicle value protection agreement may not be sold
120 or given to any person unless he or she has been or will be
121 provided access to a copy of such vehicle value protection
122 agreement at a reasonable time after such vehicle value
123 protection agreement is sold or given.

124 (6) A vehicle value protection agreement may not be sold
125 or given if coverage is duplicative of another vehicle value
126 protection agreement sold or given to a person or duplicative of
127 a guaranteed asset protection product.

128 (7) Each provider shall do one of the following:

129 (a) Insure all of its vehicle value protection agreements
130 under a policy that pays or reimburses the contract holder in
131 the event the provider fails to perform its obligations under
132 the vehicle value protection agreement. The insurer must be
133 licensed or otherwise authorized or eligible to do business in
134 this state.

135 (b) Maintain a funded reserve account for its obligations
136 under its contracts issued and outstanding in this state. The
137 reserves may not be less than 40 percent of gross consideration
138 received, less claims paid, on the sale of the vehicle value

Amendment No.1

139 protection agreement for all in-force contracts in this state.
140 The reserve must be placed in trust with the office and have a
141 financial security deposit valued at not less than 5 percent of
142 the gross consideration received, less claims paid, on the sale
143 of the vehicle value protection agreements for all vehicle value
144 protection agreements issued and in force in this state, but at
145 least \$25,000. The reserve account must consist of one of the
146 following:

- 147 1. A surety bond issued by an authorized surety.
- 148 2. Securities of the type eligible for deposit by insurers
149 as provided in s. 625.52.
- 150 3. Cash.
- 151 4. A letter of credit issued by a qualified financial
152 institution.

153 (c) Maintain, or together with its parent corporation
154 maintain, a net worth or stockholders' equity of \$100 million
155 and, upon request, provide the office with a copy of the
156 provider's or the provider's parent company's Form 10-K or Form
157 20-F filed with the Securities and Exchange Commission within
158 the last calendar year, or if the company does not file with the
159 Securities and Exchange Commission, a copy of the company's
160 audited financial statements, which must show a net worth of the
161 provider or its parent company of at least \$100 million. If the
162 provider's parent company's Form 10-K, Form 20-F, or financial
163 statements are filed to meet the provider's financial security

Amendment No.1

164 requirement, the parent company must agree to guarantee the
165 obligations of the provider relating to vehicle value protection
166 agreements sold by the provider in this state.

167 (8) A financial security requirement other than those
168 imposed in subsection (7) may not be imposed on vehicle value
169 protection agreement providers.

170 Section 6. Section 520.154, Florida Statutes, is created
171 to read:

172 520.154 Disclosures.—

173 (1) A vehicle value protection agreement must disclose in
174 writing, in clear, understandable language, all of the
175 following:

176 (a) The name and address of the provider, contract holder,
177 and administrator, if any.

178 (b) The terms of the vehicle value protection agreement,
179 including, but not limited to, the purchase price to be paid by
180 the contract holder, if any, the requirements for eligibility
181 and conditions of coverage, and any exclusions.

182 (c) Whether the vehicle value protection agreement may be
183 canceled by the contract holder during a free-look period as
184 defined in s. 520.152, and that, in the event of cancellation,
185 the contract holder is entitled to a full refund of the purchase
186 price, if any, so long as no benefits have been provided.

187 (d) The procedure the contract holder must follow, if any,
188 to obtain a benefit under the terms and conditions of the

Amendment No.1

189 vehicle value protection agreement, including, if applicable, a
190 telephone number, website, or mailing address where the contract
191 holder may apply for a benefit.

192 (e) Whether the vehicle value protection agreement is
193 cancelable after the free-look period and the conditions under
194 which it may be canceled, including the procedures for
195 requesting any refund of the unearned purchase price paid by the
196 contract holder. In the event that the agreement is cancelable,
197 it must include the methodology for calculating any refund due
198 of the unearned purchase price of the vehicle value protection
199 agreement.

200 (f) That the extension of credit, the terms of the credit,
201 or the terms of the related motor vehicle sale or lease may not
202 be conditioned upon the purchase of the vehicle value protection
203 agreement.

204 (2) A vehicle value protection agreement must state the
205 terms, restrictions, or conditions governing cancellation of the
206 vehicle value protection agreement before the termination or
207 expiration date of the vehicle value protection agreement by
208 either the provider or the contract holder. The provider of the
209 vehicle value protection agreement shall mail a written notice
210 to the contract holder at the last known address of the contract
211 holder contained in the records of the provider at least 5 days
212 before cancellation by the provider, which notice must state the
213 effective date of the cancellation and the reason for the

Amendment No.1

214 cancellation. However, such prior notice is not required if the
215 reason for cancellation is nonpayment of the provider fee, a
216 material misrepresentation by the contract holder to the
217 provider or administrator, or a substantial breach of duties by
218 the contract holder relating to the covered motor vehicle or its
219 use. If a vehicle value protection agreement is canceled by the
220 provider for a reason other than nonpayment of the provider fee,
221 the provider must refund to the contract holder 100 percent of
222 the unearned pro rata provider fee paid by the contract holder,
223 if any. If coverage under the vehicle value protection agreement
224 continues after a claim, any refund may reflect a deduction for
225 claims paid and, at the discretion of the provider, an
226 administrative fee of not more than \$75.

227 Section 7. Section 520.155, Florida Statutes, is created
228 to read:

229 520.155 Commercial transactions exempt.—Sections 520.154
230 and 520.156 do not apply to vehicle value protection agreements
231 offered in connection with a commercial transaction.

232 Section 8. Section 520.156, Florida Statutes, is created
233 to read:

234 520.156 Penalties.—A provider, an administrator, or any
235 other person who willfully and intentionally violates ss.
236 520.151-520.155 commits a noncriminal violation as defined in s.
237 775.08(3), punishable by a fine not to exceed \$500 per violation
238 and not more than \$10,000 in the aggregate for all violations of

Amendment No.1

239 a similar nature. For purposes of this section, the term
240 "violations of a similar nature" means violations that consist
241 of the same or similar course of conduct, action, or practice,
242 irrespective of the number of times the action, conduct, or
243 practice determined to be a violation of ss. 520.151-520.155
244 occurred.

245 Section 9. Section 520.157, Florida Statutes, is created
246 to read:

247 520.157 Excess wear and use waiver.-

248 (1) For purposes of this section, the term "excess wear
249 and use waiver" means a contractual agreement wherein a lessor
250 agrees, regardless of whether subject to a separate fee, to
251 cancel or waive all or part of amounts that may become due under
252 a lease agreement as a result of excess wear and use of a motor
253 vehicle, which agreement must be part of, or a separate addendum
254 to, the lease agreement. Such waivers may also cancel or waive
255 amounts due for excess mileage.

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T I T L E A M E N D M E N T

260 Remove lines 5-27 and insert:
261 520.07, F.S.; prohibiting certain entities from deducting more
262 than a specified amount in administrative fees when providing a
263 refund of a guaranteed asset protection product; authorizing

Amendment No.1

264 guaranteed asset protection products to be cancelable or
265 noncancelable under certain circumstances; authorizing certain
266 entities to pay refunds directly to the holder or administrator
267 of a loan under certain circumstances; creating s. 520.151,
268 F.S.; providing a short title; creating s. 520.152, F.S.;
269 defining terms; creating s. 520.153, F.S.; authorizing the
270 offer, sale, or gift of vehicle value protection agreements in
271 compliance with a certain act; specifying a requirement
272 regarding the amount charged or financed for a vehicle value
273 protection agreement; prohibiting the conditioning of credit
274 offers or terms for the sale or lease of a motor vehicle upon a
275 consumer's payment for or financing of any charge for a vehicle
276 value protection agreement; authorizing discounting or giving
277 the vehicle value protection agreement at no charge under
278 certain circumstances; authorizing providers to use an
279 administrator or other designee for administration of vehicle
280 value protection agreements; prohibiting vehicle value
281 protection agreements from being sold under certain
282 circumstances; specifying financial security requirements for
283 providers; prohibiting additional financial security
284 requirements from being imposed on providers; creating s.
285 520.154, F.S.; requiring vehicle value protection agreements to
286 include certain disclosures in writing, in clear and
287 understandable language; requiring vehicle value protection
288 agreements to state the terms, restrictions, or conditions

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Amendment No.1

289 governing cancellation by the provider or the contract holder;
290 specifying requirements for notice by the provider, refund of
291 fees, and deduction of fees in the event the vehicle value
292 protection agreement is canceled; creating s. 520.155, F.S.;
293 providing an exemption for vehicle value protection agreements
294 in connection with a commercial transaction; creating s.
295 520.156, F.S.; providing noncriminal penalties; defining the
296 term "violations of a similar nature"; creating s. 520.157,
297 F.S.; defining the term "excess wear and use waiver";
298 authorizing a retail lessee to contract with a retail lessor for
299 an excess wear and use waiver; prohibiting conditioning the
300 terms of the consumer's motor vehicle lease on his or her
301 payment for any excess wear and use waiver; authorizing
302 discounting or giving the excess wear and use waiver at no
303 charge under certain circumstances; requiring certain
304 disclosures for a lease agreement that includes an excess wear
305 and use waiver; providing construction; providing an effective
306 date.