

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 605 Asset Protection Products
SPONSOR(S): Insurance & Banking Subcommittee, Tramont
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 902

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Herrera	Lloyd
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N	Perez	Clark
3) Commerce Committee			

SUMMARY ANALYSIS

Under the Motor Vehicle Sales Finance Act, individuals, excluding banks, trust companies, savings and loan associations, or credit unions authorized to operate in Florida, must obtain a license from the Office of Financial Regulations (OFR) to conduct motor vehicle retail installment transactions.

Once an entity receives its licensing it is authorized to offer a retail installment contract. A retail installment contract refers to an agreement where a seller retains or acquires a title or lien on a motor vehicle as security, wholly or partially, for the buyer's obligations. When entering into a new retail installment contract, loan contract, or lease agreement for a motor vehicle, a motor vehicle retail installment seller, sales finance company, retail lessor, or any assignee may offer optional guaranteed asset protection products for a fee or otherwise. The term guaranteed asset protection product refers to a provision in a loan, lease, or retail installment contract, or a modification or addendum to such contracts, wherein a creditor agrees to exempt a customer from liability for payment of any or all of the amount exceeding the collateral's value. Vehicle Value Protection Agreement Act (VVPA) and excess wear agreements are not currently regulated by statute.

The bill makes changes related to asset protection products, including:

- **Guaranteed Asset Protection Products:** Limits coverage to cases of total damage or theft. Permits benefits such as waiving a part of the purchase price or providing credit for a replacement vehicle, with the option to offer these benefits at no additional cost. Changes to retail installment contracts include refunding buyers for terminated products, subject to a 90-day notification period and administrative fees. The bill also allows cancellation or noncancellation of products after a 30-day free look period, with refunds paid directly to the vehicle holder in specific circumstances.
- **VVPA:** Establishes a statutory framework for Vehicle Value Protection Agreements (VVPAs), defining them as agreements offering benefits to reduce finance agreement deficiency balances or facilitate the acquisition of replacement motor vehicles or services in adverse events. VVPAs are not considered insurance under the Florida Insurance Code and have specific financial security requirements. The bill imposes requirements for offering VVPAs, ensuring transparent pricing and non-contingent terms on credit extensions or motor vehicle transactions. Providers must adhere to insurance and financial reserve standards. Disclosure requirements include identifying information, agreement terms, cancellation details, and the non-conditionality of credit or vehicle sale/lease terms on VVPA purchase. The bill mandates specific terms in VVPAs, including cancellation conditions and refund details, with penalties for intentional violations outlined.
- **Excess Wear and Use Waiver:** Establishes that an excess wear and use waiver is a contractual agreement within a motor vehicle lease where the lessor, with or without an extra charge, agrees to cancel or waive amounts due under the lease for excessive wear, use, or mileage. Disclosure requirements include total charge, limitations, and cancellation terms with a possible administrative fee capped at \$75.

The bill has no fiscal impact on local government, an indeterminate positive impact on state government revenues and an indeterminate negative effect on expenditures, and an indeterminate economic impact on the private sector.

This bill provides an effective date as of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Office of Financial Regulation

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.¹ OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.² OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.³

Regulation of Consumer Finance

The Division of Consumer Finance is responsible for licensing and overseeing different facets of non-depository financial services sectors.⁴ This includes the regulation of motor vehicle retail installment sellers, governed by Chapter 520 of the Florida Statutes.⁵ According to Chapter 520, Florida Statutes, it is imperative for individuals to hold a license before engaging in the motor vehicle retail installment seller business or operating a branch thereof.⁶

Florida Motor Vehicle Retail Sales Finance Act

Under the Motor Vehicle Sales Finance Act, individuals, excluding banks, trust companies, savings and loan associations, or credit unions authorized to operate in Florida, must obtain a license from the OFR to conduct motor vehicle retail installment transactions.⁷ Florida's Motor Vehicle Retail Sales Finance Act⁸ is administered by the Financial Services Commission.⁹

To obtain a license, an application must be submitted to the Office of Financial Regulation of the Financial Services Commission, adhering to the prescribed form.¹⁰ The Commission may request information essential for assessing eligibility, including details about officers, directors, control persons, members, partners, joint ventures, or individuals with a 10 percent or greater interest in the applicant.¹¹ The Office may seek various information, such as names, age, social security numbers, residential history, qualifications, educational and business background, and disciplinary and criminal history. If approved, the license, valid for up to two years, will be issued.¹² An initial application fee is required, and it is nonrefundable.¹³

A licensed entity must transact business as a motor vehicle retail installment seller solely under its licensed name.¹⁴ Licenses granted under this act are neither transferable nor assignable.¹⁵

¹ Florida Office of Financial Regulation, About Our Agency, <https://flofr.gov/sitePages/AboutOFR.htm> (last visited Jan. 16, 2024).

² *Id.*

³ *Id.*

⁴ Florida Office of Financial Regulations, Agency Analysis of 2024 SB 902, p. 2 (Jan. 16, 2024).

⁵ *Id.*

⁶ *Id.*

⁷ S. 520.03(1), F.S.

⁸ S. 520.01, F.S.

⁹ *Id.* at (2). As to the regulations relating to motor vehicle sales finance, see Fla. Admin. Code R. 69V-50.001 to 69V-50.085. The FSC is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S.

¹⁰ S.520.03(2), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ S.520.03(4), F.S.

¹⁵ *Id.*

Retail Installment Contracts

Once an entity receives its licensing it is authorized to offer a retail installment contract. A retail installment contract refers to an agreement where a seller retains or acquires a title or lien on a motor vehicle as security, wholly or partially, for the buyer's obligations.¹⁶ This includes conditional sales contracts and contracts for the bailment or leasing of a motor vehicle, where the bailee or lessee agrees to pay compensation equivalent to or exceeding the vehicle's value, with the option to become the owner upon full compliance with the contract's provisions.¹⁷

The contract must include, among other things, specific details such as a statement on the absence of liability insurance coverage for bodily injury and property damage, the names and addresses of the seller and buyer, a detailed description of the motor vehicle, including make, year, model, and identification number, as well as financial information like the amount financed, finance charge, total payments, total sale price, and the number, amount, and date of scheduled payments.¹⁸

Moreover, the seller is required to provide a separate written breakdown of the amount financed, disclosing the cash price, down payment, the difference between cash price and down payment, amounts for insurance and other benefits, and any taxes and official fees not covered in the cash price.¹⁹ This breakdown may be presented on a separate disclosure statement or within the same document as the contract, provided it is clearly and prominently segregated.²⁰

Guaranteed Asset Protection Products

When entering into a new retail installment contract, loan contract, or lease agreement for a motor vehicle, a motor vehicle retail installment seller, sales finance company, retail lessor, or any assignee may offer optional guaranteed asset protection products for a fee or otherwise.²¹ The term guaranteed asset protection product refers to a provision in a loan, lease, or retail installment contract, or a modification/addendum to such contracts, wherein a creditor agrees to exempt a customer from liability for payment of any or all of the amount exceeding the collateral's value.²² It is important to note that this product does not fall under the category of insurance as defined by the Florida Insurance Code.²³ This subsection is applicable to all guaranteed asset protection products issued before October 1, 2008.²⁴

To offer guaranteed asset protection products, the motor vehicle retail installment seller, sales finance company, retail lessor, or assignee must adhere to the following²⁵:

- The cost of any guaranteed asset protection product should not exceed the amount of the indebtedness.²⁶
- A guaranteed asset protection product is considered an obligation of any person acquiring the loan contract covering the product.²⁷
- Entities providing guaranteed asset protection products must offer clear and understandable disclosures detailing eligibility requirements, conditions, refunds, and exclusions. The purchase of the product must be optional, and the disclosures should be in plain language and easily readable.²⁸
- The entity must provide a copy of the executed guaranteed asset protection product contract to the buyer, with the entity bearing the burden of proving the contract was provided.²⁹

¹⁶ S. 520.02(17), F.S.

¹⁷ *Id.*

¹⁸ S. 520.07, F.S.

¹⁹ S. 520.07(3), F.S.

²⁰ *Id.*

²¹ S.520.07(11), F.S.

²² S. 520.02(7), F.S.

²³ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. See also s. 624.01, F.S.

²⁴ S. 520.02(7), F.S.

²⁵ S. 520.07(11), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

- Contracts for guaranteed asset protection products cannot include terms allowing the entity to unilaterally modify the contract unless the modification benefits the buyer without additional charges or the buyer is notified of any proposed changes and provided a reasonable opportunity to cancel without penalty before the changes take effect.³⁰
- If a contract for a guaranteed asset protection product is terminated, the entity must refund any unearned fees paid by the buyer unless the contract specifies otherwise. To receive a refund, the buyer must notify the entity of the termination event within 90 days and request a refund. An entity may offer a contract without a refund provision only if a bona fide option for a comparable contract with a refund provision is also offered to the buyer.³¹

Vehicle Value Protection Agreement

A vehicle value protection agreement is a contractual arrangement offering benefits when a vehicle owner replaces the vehicle during trade-in, in case of theft, or after an adverse event affecting the vehicle's value.³² An agreement that complies with the act is not considered insurance and is exempt from regulatory oversight as insurance.³³ Vehicle Value Protection agreements is not currently regulated in Florida.

Excess Wear and Use Coverage

Excess wear and use coverage can be added to a lease agreement to protect lessees from incurring additional charges related to damages or excessive wear on the leased vehicle.³⁴ The liability under most open-end leases is influenced by the vehicle's wear, significantly impacting financial obligations. Excessive wear and tear, as defined in a lease agreement, refers to wear surpassing stipulated standards, often explicitly outlined and required to be reasonable. Similar to excess mileage, excessive wear and tear invariably diminishes the vehicle's value, whether leased or purchased.³⁵

The assumed residual value in the lease is based on the expectation that the vehicle will be returned in a specified condition. This additional coverage typically addresses various issues such as dents, scratches, tire wear, interior stains, and more. It offers reassurance by relieving lessees of financial responsibility for the typical wear and tear on the vehicle.³⁶ Excess wear and use coverage is not currently regulated in Florida.

Effect of the Bill

Guaranteed Asset Protection Products

The bill limits guaranteed asset protection products covering a purchaser's responsibility for paying the debt exceeding the collateral value in cases of total damage or unrecovered theft. It allows the product to offer benefits like waiving a part of the purchase price or providing a credit for a replacement motor vehicle. It also specifies that such agreements and benefits may be offered with or without additional cost to the purchaser.

The bill introduces changes to retail installment contracts, including:

- Refunding buyers for terminated guaranteed asset protection products, unless the contract specifies otherwise. No refund is due if the buyer has received a benefit, and a 90-day notification period is required.
- Authorizing an administrative fee to be deducted from refunds of up to \$75, except for refunds following a 30-day free look period.

³⁰ *Id.*

³¹ *Id.*

³² Colo. Rev. Stat. S. 42-21-101 (2023)

³³ *Id.*

³⁴ Board of Governors of the Federal Reserve System, *More Information about Excessive Wear-and-Tear Charges*, https://www.federalreserve.gov/pubs/leasing/resource/consider/endopen_info10.htm (last visited Jan. 16, 2024).

³⁵ *Id.*

³⁶ *Id.*

- Allowing cancellation or noncancellation of guaranteed asset protection products after a minimum 30-day free look period, provided no benefits are provided.
- Directly paying refunds to the vehicle holder or its assignee for terminations due to default, repossession, or contract termination, unless the retail installment contract is paid in full.

Vehicle Value Protection Agreement Act (VVPA)

The bill creates a statutory framework for VVPA. It provides relevant definitions for administrator, commercial, commission, contract holder, finance agreement, motor vehicle, provider, and vehicle value protection agreement. The bill defines VVPA as an agreement that provides:

- benefits for reducing the current finance agreement deficiency balance of the contract holder; or
- facilitating the acquisition or leasing of a replacement motor vehicle or motor vehicle services in case of adverse events such as loss, theft, damage, obsolescence, diminished value, or depreciation.

VVPAs are not insurance subject to the Florida Insurance Code and are not subject to financial security requirements except as specified in the bill.

Further, the bill creates requirements for offering VVPA for personal use vehicles. VVPA can be offered, sold, or given to consumers as long as:

- Any amount charged or financed is clearly stated for the VVPA and is not considered a finance charge or interest.
- The extension of credit, terms of credit, and terms of the related motor vehicle sale or lease are not contingent upon the consumer's payment for or financing of any charge for a VVPA. However, these agreements may be discounted or provided at no charge with the purchase of noncredit-related goods or services.
- VVPA's are sold only after providing the contract holder with access to a copy of the agreement.

Additionally, the sale of VVPA is prohibited if the coverage duplicates another VVPA for the same vehicle or a guaranteed asset protection product.

- Providers are required to:
 - Insure all VVPA liabilities under a policy from an authorized insurer.
 - Maintain a reserve account not less than 40 percent of gross consideration received, less claims paid, for in-force contracts in the state.
 - Maintain a net worth or stockholders' equity directly or via the worth of its parent company of \$100 million, providing financial statements upon request.

The bill requires all VVPA to disclose the following:

- Identifying information of the provider, purchaser, and administrator;
- Explicit terms of the agreement, including purchase price, eligibility criteria, coverage conditions, and exclusions;
- Notification that the contract is cancelable within a minimum 30-day free look period, with a full refund if canceled during this time and no benefits have been provided;
- Procedure for obtaining benefits, cancellation conditions, and refund details; and
- Credit extension or vehicle sale/lease terms is not conditioned on VVPA purchase.

The bill requires that all VVPA must incorporate the following terms:

- Precise terms and conditions for cancellation by either the provider or contract holder;
- Requirement for the provider to give a 5-day written notice before cancellation, stating the effective date and reason, except in specific circumstances;
- Full refund by the provider if the agreement is canceled for reasons other than nonpayment, deducting any claims paid if coverage continues after a claim; and
- Allowance for a reasonable administrative fee, not exceeding \$75, by the provider.

The bill specifies that any provider, administrators, or any individual intentionally violating Part II of ch. 520, F.S., relating to VVPAs may be subject to fines not to exceed \$500 per violation and no more than \$10,000 for all violations of a similar nature.

Excess Wear and Use Waiver

The bill authorizes an excess wear and use waiver to a contractual agreement within a motor vehicle lease where the lessor, with or without an extra charge, agrees to cancel or waive amounts due under the lease for excessive wear, use, or mileage but the waiver agreement must disclose the following:

- The total charge for the waiver.
- Any exclusions or limitations on the amount of excess wear and use that the waiver covers.
- Terms, restrictions, and conditions for canceling the waiver before its termination or expiration, including a potential administrative fee not exceeding \$75.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 520.02, F.S., relating to definitions.
- Section 2:** Amends s. 520.07, F.S., relating to requirements and prohibitions as to retail installment contracts.
- Section 3:** Redesignates parts II through VI of Ch. 520 as parts III through VII.
- Section 4:** Creates Part II of Ch. 520, F.S., relating to Vehicle Value Protection Agreements.
- Section 5:** Amends s. 521.003, F.S., relating to definitions.
- Section 6:** Creates s. 521.007, F.S., relating to extended wear and use waiver.
- Section 7:** Amends s. 24.118, F.S., relating to other prohibited acts; penalties.
- Section 8:** Amends s. 501.604, F.S., relating to exemptions.
- Section 9:** Amends s. 671.304, F.S., relating to laws not repealed; precedence where code provisions in conflict with other laws; certain statutory remedies retained.
- Section 10:** Providing an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate, as the number of entities subject to the registration requirement is unknown³⁷.

2. Expenditures:

OFR must amend existing rules to incorporate the changes made in the bill, as well as update the Regulatory Enforcement and Licensing (REAL) system and website. These adjustments will have minimal fiscal impact and can be absorbed within OFR's current appropriations³⁸.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³⁷ Office of Financial Regulation, Agency Analysis of 2024 Senate Bill 902, p. 7 (Jan. 18, 2024).

³⁸ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Since GAP products will be limited to total loss cases, consumers may experience increased cost to obtain full coverage by now having to purchase a second product; i.e., both a GAP and a VVPA. Purchasers may experience savings where the products authorized by the bill cover losses that have not previously been provided for by an authorized product.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The retroactive application to "related products" raises constitutional concerns, particularly regarding fairness and due process. Applying regulations retroactively without accompanying findings may infringe on individuals' rights to fair notice and protection against arbitrary government actions, posing potential constitutional issues.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2024, the Insurance & Banking Subcommittee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment makes technical changes, including consolidating the bill's provisions into a single Part of the current Chapter 520, rather than creating a new part of the chapter and an additional chapter of Florida Statute.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.