

Senator Wayne A. Harper proposes the following substitute bill:

VEHICLE VALUE PROTECTION AGREEMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill addresses vehicle value protection agreements.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a person to enter into a vehicle value protection agreement under certain circumstances;
- ▶ details requirements for cancellation of a vehicle value protection agreement;
- ▶ requires the provider of a benefit under a vehicle value protection agreement to:
 - obtain contract liability insurance for the vehicle value protection agreement;
 - provide other security for payment under the vehicle value protection agreement; or
 - maintain a certain net worth;
- ▶ authorizes the Division of Consumer Protection (division) to enforce vehicle value protection agreement requirements;
- ▶ requires the insurer under a contract liability insurance policy for a vehicle value protection agreement and a provider of a vehicle value protection agreement to provide certain information to the division;



- 26 ▶ provides fines and civil penalties for a violation of vehicle value protection
- 27 agreement requirements;
- 28 ▶ requires fines and civil penalties received by the division for a violation to be placed
- 29 in the Consumer Protection Education and Training Fund;
- 30 ▶ provides administrative rulemaking authority; and
- 31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **13-2-1 (Superseded 12/31/23)**, as last amended by Laws of Utah 2022, Chapter 201
- 39 **13-2-1 (Effective 12/31/23)**, as last amended by Laws of Utah 2022, Chapters 201, 462

40 ENACTS:

- 41 **13-63-101**, Utah Code Annotated 1953
- 42 **13-63-201**, Utah Code Annotated 1953
- 43 **13-63-202**, Utah Code Annotated 1953
- 44 **13-63-203**, Utah Code Annotated 1953
- 45 **13-63-301**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **13-2-1 (Superseded 12/31/23)** is amended to read:

49 **13-2-1 (Superseded 12/31/23). Consumer protection division established --**

50 **Functions.**

- 51 (1) There is established within the Department of Commerce the Division of Consumer
- 52 Protection.
- 53 (2) The division shall administer and enforce the following:
- 54 (a) Chapter 5, Unfair Practices Act;
- 55 (b) Chapter 10a, Music Licensing Practices Act;
- 56 (c) Chapter 11, Utah Consumer Sales Practices Act;

- 57 (d) Chapter 15, Business Opportunity Disclosure Act;
- 58 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 59 (f) Chapter 21, Credit Services Organizations Act;
- 60 (g) Chapter 22, Charitable Solicitations Act;
- 61 (h) Chapter 23, Health Spa Services Protection Act;
- 62 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 63 (j) Chapter 26, Telephone Fraud Prevention Act;
- 64 (k) Chapter 28, Prize Notices Regulation Act;
- 65 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
- 66 Transaction Information Act;
- 67 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 68 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 69 (o) Chapter 41, Price Controls During Emergencies Act;
- 70 (p) Chapter 42, Uniform Debt-Management Services Act;
- 71 (q) Chapter 49, Immigration Consultants Registration Act;
- 72 (r) Chapter 51, Transportation Network Company Registration Act;
- 73 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 74 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 75 (u) Chapter 54, Ticket Website Sales Act;
- 76 (v) Chapter 56, Ticket Transferability Act; [~~and~~]
- 77 (w) Chapter 57, Maintenance Funding Practices Act[-]; and
- 78 (x) Chapter 63, Vehicle Value Protection Agreement Act.

79 Section 2. Section 13-2-1 (Effective 12/31/23) is amended to read:

80 **13-2-1 (Effective 12/31/23). Consumer protection division established --**

81 **Functions.**

82 (1) There is established within the Department of Commerce the Division of Consumer
83 Protection.

84 (2) The division shall administer and enforce the following:

- 85 (a) Chapter 5, Unfair Practices Act;
- 86 (b) Chapter 10a, Music Licensing Practices Act;
- 87 (c) Chapter 11, Utah Consumer Sales Practices Act;

- 88 (d) Chapter 15, Business Opportunity Disclosure Act;
- 89 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 90 (f) Chapter 21, Credit Services Organizations Act;
- 91 (g) Chapter 22, Charitable Solicitations Act;
- 92 (h) Chapter 23, Health Spa Services Protection Act;
- 93 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 94 (j) Chapter 26, Telephone Fraud Prevention Act;
- 95 (k) Chapter 28, Prize Notices Regulation Act;
- 96 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
- 97 Transaction Information Act;
- 98 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 99 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 100 (o) Chapter 41, Price Controls During Emergencies Act;
- 101 (p) Chapter 42, Uniform Debt-Management Services Act;
- 102 (q) Chapter 49, Immigration Consultants Registration Act;
- 103 (r) Chapter 51, Transportation Network Company Registration Act;
- 104 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 105 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 106 (u) Chapter 54, Ticket Website Sales Act;
- 107 (v) Chapter 56, Ticket Transferability Act;
- 108 (w) Chapter 57, Maintenance Funding Practices Act; [~~and~~]
- 109 (x) Chapter 61, Utah Consumer Privacy Act[-]; and
- 110 (y) Chapter 63, Vehicle Value Protection Agreement Act.

111 Section 3. Section **13-63-101** is enacted to read:

112 **CHAPTER 63. VEHICLE VALUE PROTECTION AGREEMENT ACT**

113 **Part 1. General Provisions**

114 **13-63-101. Definitions.**

115 As used in this chapter:

- 116 (1) "Administrative functions" means the same as that term is defined in Section
- 117 [31A-6b-102.](#)
- 118 (2) "Agreement administrator" means a person who provides administrative functions

119 related to a vehicle value protection agreement.

120 (3) "Covered vehicle" means a vehicle that is covered under a vehicle value protection
121 agreement.

122 (4) "Division" means the Division of Consumer Protection established in Section
123 13-2-1.

124 (5) "Finance agreement" means the same as that term is defined in Section
125 31A-6b-102.

126 (6) "Insurer" means the same as that term is defined in Section 31A-1-301.

127 (7) "Preliminary period" means a time period that:

128 (a) begins the day on which the vehicle value protection agreement becomes effective;

129 and

130 (b) ends the last day on which the purchaser may cancel the vehicle value protection
131 agreement with a full refund.

132 (8) "Provider" means a person who is obligated to provide a benefit to another person
133 under a vehicle value protection agreement.

134 (9) "Purchaser" means a person who purchases a benefit from another person under a
135 vehicle value protection agreement.

136 (10) "Security" means the same as that term is defined in Section 31A-1-301.

137 (11) "Vehicle" means the same as that term is defined in Section 31A-6b-102.

138 (12) (a) "Vehicle value protection agreement" means an agreement for a separate
139 charge between a provider and purchaser under which the provider agrees to, upon damage,
140 total loss, or unrecovered theft of the purchaser's covered vehicle, provide a benefit to the
141 purchaser that may be applied to:

142 (i) the cash value of the covered vehicle when traded in for a replacement vehicle;

143 (ii) the finance agreement for a replacement vehicle; or

144 (iii) the purchase or lease price of a replacement vehicle.

145 (b) "Vehicle value protection agreement" includes:

146 (i) a vehicle trade-in agreement;

147 (ii) a vehicle diminished value agreement;

148 (iii) a vehicle cash down payment protection agreement; and

149 (iv) a vehicle depreciation benefit agreement.

- 150 (c) "Vehicle value protection agreement" does not include:
- 151 (i) insurance or an insurance contract regulated under Title 31A, Insurance Code;
- 152 (ii) a guaranteed asset protection waiver, as defined in Section [31A-6b-102](#);
- 153 (iii) a debt cancellation agreement, as defined in Section [31A-21-108](#); or
- 154 (iv) a debt suspension contract, as defined in Section [31A-21-108](#).

155 Section 4. Section **13-63-201** is enacted to read:

156 **Part 2. Vehicle Value Protection Agreements**

157 **13-63-201. Vehicle value protection agreement -- Required disclosures -- Finance**
158 **agreement conditions.**

159 (1) A person may not issue, sell, offer to sell, or otherwise provide a vehicle value
160 protection agreement that does not comply with this chapter.

161 (2) A vehicle value protection agreement shall conspicuously disclose:

162 (a) the name, address, and contact information of:

163 (i) the provider;

164 (ii) the agreement administrator, if any; and

165 (iii) the purchaser;

166 (b) the terms of the vehicle value protection agreement, including:

167 (i) the charges under the vehicle value protection agreement;

168 (ii) the benefit eligibility requirements;

169 (iii) the conditions imposed by the vehicle value protection agreement; and

170 (iv) the procedure a purchaser is required to follow to obtain the benefit;

171 (c) subject to Subsection (3), the terms or restrictions governing cancellation of the
172 vehicle value protection agreement, including:

173 (i) that the purchaser may cancel the vehicle value protection agreement during the
174 preliminary period;

175 (ii) the length of the preliminary period;

176 (iii) the purchaser's right to a refund for cancellation under Section [13-63-202](#); and

177 (iv) the methodology for calculating any refund to the purchaser for cancellation.

178 (3) The disclosure described in Subsection (2)(c)(i) shall:

179 (a) be written in dark bold with at least 12-point type on the first page of the vehicle
180 value protection agreement; and

181 (b) read as follows: "IN ACCORDANCE WITH UTAH CODE SECTION 13-63-203,
182 YOU, THE PURCHASER, MAY CANCEL THIS AGREEMENT AT ANY TIME BEFORE
183 THE END OF THE PRELIMINARY PERIOD DESCRIBED IN THIS AGREEMENT."

184 (4) The provider shall provide the purchaser a copy of the vehicle value protection
185 agreement at the time the provider and purchaser enter into the vehicle value protection
186 agreement.

187 (5) A finance agreement or vehicle purchase agreement may not be conditioned on a
188 purchaser entering into a vehicle value protection agreement.

189 Section 5. Section 13-63-202 is enacted to read:

190 **13-63-202. Liability insurance -- Security for payment -- Provider net worth**
191 **value.**

192 (1) A provider under a vehicle value protection agreement shall:

193 (a) insure all vehicle value protection agreements the provider enters into under a
194 contractual liability insurance policy that:

195 (i) (A) is issued by an insurer authorized to do business in this state that has a surplus
196 as to policyholders and paid-in capital of less than \$10,000,000 and more than \$5,000,000 and
197 provides evidence to the division that the insurer maintains a ratio of net written premiums to
198 surplus as to policyholders and paid-in capital of not greater than three to one; or

199 (B) is issued by an insurer authorized to do business in this state that has as a surplus as
200 to policyholders and paid-in capital of more than \$10,000,000; and

201 (ii) (A) requires the insurer to reimburse the purchaser if the provider fails to perform
202 the provider's obligations under a vehicle value protection agreement;

203 (B) covers any amount the provider is required to pay for failure to perform under a
204 vehicle value protection agreement; and

205 (C) allows a purchaser to file with the insurer a claim for reimbursement under the
206 vehicle value protection agreement if the provider does not pay the purchaser within 60 days
207 after the day on which proof of damage, total loss, or unrecovered theft of the covered vehicle
208 is provided to the provider in accordance with the terms of the vehicle value protection
209 agreement;

210 (b) (i) maintain a funded reserve account to cover the provider's obligations under all
211 vehicle value protection agreements the provider enters into that is equal to or greater than 40%

212 of money received by, less claims paid to, the provider for the vehicle value protection
213 agreements; and

214 (ii) place in trust with the division a security that is equal to at least 5% of money
215 received by, less claims paid to, the provider for all vehicle value protection agreements the
216 provider enters into and more than \$25,000; or

217 (c) maintain, or together with the provider's parent company maintain, a net worth or
218 stockholders' equity of \$100,000,000.

219 (2) (a) An insurer described in Subsection (1)(a) shall annually file with the division:

220 (i) a copy of the insurer's audited financial statements;

221 (ii) the insurer's National Association of Insurance Commissioner annual statement;

222 and

223 (iii) the actuarial certification filed in the insurer's state of domicile.

224 (b) The division may examine a reserve account described in Subsection (1)(b).

225 (c) A provider shall, upon request, provide the division a copy of:

226 (i) the provider's or the provider's parent company's most recent Form 10-K or Form
227 20-F filed with the Securities and Exchange Commission; or

228 (ii) if the provider does not file with the Securities and Exchange Commission, a copy
229 of the provider's audited financial statements that shows the net worth of the provider or the
230 provider's parent company.

231 Section 6. Section **13-63-203** is enacted to read:

232 **13-63-203. Preliminary period -- Cancellation -- Refund.**

233 (1) (a) A vehicle value protection agreement shall provide for a preliminary period of
234 at least 30 days.

235 (b) If a purchaser cancels a vehicle value protection agreement within the preliminary
236 period, the purchaser is entitled to a refund of the charges under the vehicle value protection
237 agreement as follows:

238 (i) if benefits have not been provided, a full refund; or

239 (ii) if benefits have been provided, a refund to the extent provided for in the vehicle
240 value protection agreement.

241 (2) (a) Except as provided in Subsection (2)(b), if a provider cancels a vehicle value
242 protection agreement, the provider shall mail a written notice to the purchaser at least five days

243 before the day on which the vehicle value protection agreement is canceled.

244 (b) A provider may immediately cancel a vehicle value protection agreement upon
245 sending a notice of cancellation to the purchaser if the reason for the cancellation is:

246 (i) the purchaser's failure to pay the provider's fee under the vehicle value protection
247 agreement; or

248 (ii) the purchaser's breach of the purchaser's duties relating to the covered vehicle.

249 (3) A notice described in Subsection (2) shall include:

250 (a) the effective date of the cancellation; and

251 (b) the reason for the cancellation.

252 (4) If a provider cancels a vehicle value protection agreement for a reason other than
253 the purchaser's failure to pay the provider's fee under the vehicle value protection agreement,
254 the provider:

255 (a) shall refund the purchaser any unearned provider fee under the vehicle value
256 protection agreement;

257 (b) may charge the purchaser an administrative fee of up to \$75; and

258 (c) may deduct the amount of a benefit paid under the vehicle value protection
259 agreement from the refund.

260 Section 7. Section **13-63-301** is enacted to read:

261 **Part 3. Enforcement**

262 **13-63-301. Administration and enforcement -- Division powers -- Fees --**

263 **Rulemaking.**

264 (1) The division shall administer and enforce this chapter in accordance with Chapter
265 2, Division of Consumer Protection.

266 (2) In addition to the division's enforcement powers under Chapter 2, Division of
267 Consumer Protection:

268 (a) the division director may impose an administrative fine of up to \$2,500 for each act
269 that is in violation of this chapter, including failure to insure or consider a vehicle value
270 protection agreement as required under Subsection [13-63-202\(1\)](#); and

271 (b) the division may bring a civil action to enforce this chapter.

272 (3) In a civil action by the division to enforce this chapter, the court may:

273 (a) declare that an act or practice violates this chapter;

- 274 (b) issue an injunction for a violation of this chapter;
- 275 (c) order disgorgement of any money received after a violation of this chapter;
- 276 (d) order payment of disgorged money to an injured individual;
- 277 (e) impose a civil penalty of up to \$2,500 for each violation of this chapter; or
- 278 (f) award any other relief that the court deems reasonable and necessary.
- 279 (4) If a court grants judgment or injunctive relief to the division, the court shall award
- 280 the division:
 - 281 (a) reasonable attorney fees;
 - 282 (b) court costs; and
 - 283 (c) investigative fees.
- 284 (5) (a) A person who violates an administrative or court order issued for a violation of
- 285 this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- 286 (b) A civil penalty authorized under this section may be imposed in any civil action
- 287 brought by the division.
- 288 (c) The division shall deposit money received for the payment of a fine or civil penalty
- 289 under this section into the Consumer Protection Education and Training Fund created in
- 290 Section [13-2-8](#).
- 291 (6) The division may make rules in accordance with Title 63G, Chapter 3, Utah
- 292 Administrative Rulemaking Act, to administer and enforce this chapter.
- 293 **Section 8. Effective date.**
- 294 (1) Except as provided in Subsection (2), this bill takes effect on May 3, 2023.
- 295 (2) The amendments to Section [13-2-1](#) (Effective 12/31/23) take effect on December
- 296 31, 2023.