

House Bill 504

By: Representatives Momtahan of the 17th, Barton of the 5th, McCollum of the 30th, and Williams of the 148th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to provide for procedures, conditions, and limitations relative
3 to vehicle value protection agreements; to require providers of such agreements maintain
4 certain security or liability insurance policies; to require certain disclosures; to provide for
5 cancellation rights; to provide for refunds; to provide for enforcement; to provide for
6 definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
10 trade practices, is amended by adding a new article to read as follows:

11 "ARTICLE 37

12 10-1-950.

13 As used in this article, the term:

H. B. 504

- 14 (1) 'Administrator' means the person delegated by a provider as responsible for the
15 administrative or operational functions of a vehicle value protection agreement,
16 including but not limited to, adjudication of claims or benefit requests by the consumer.
- 17 (2) 'Consumer' means a person who purchases or holds legal rights under a vehicle value
18 protection agreement.
- 19 (3) 'Covered vehicle' means a motor vehicle that is covered under a vehicle value
20 protection agreement.
- 21 (4) 'Finance agreement' means a loan, lease, or retail installment sales contract for the
22 purchase or lease of a motor vehicle that is secured by the motor vehicle and with a term
23 of at least 12 months.
- 24 (5) 'Free look period' means a time period that begins the day on which the vehicle value
25 protection agreement becomes effective and ends the last day on which the consumer
26 may cancel the vehicle value protection agreement with a full refund of the vehicle value
27 protection agreement purchase price.
- 28 (6) 'Motor vehicle' shall have the same meaning as set forth in Code Section 40-1-1.
- 29 (7) 'Provider' means a person that is obligated to provide a benefit under a vehicle value
30 protection agreement.
- 31 (8) 'Vehicle value protection agreement' means a contractual agreement for a separate
32 charge between a provider and consumer under which the provider agrees, upon
33 occurrence of an adverse event to the consumer's covered vehicle, to provide a benefit to
34 the consumer that may be applied to the cash value of the covered vehicle when traded
35 in for a replacement vehicle, the finance agreement for a replacement vehicle, or the
36 purchase or lease price of a replacement vehicle. Such term shall include vehicle trade-in
37 agreements, vehicle diminished value agreements, vehicle cash down payment protection
38 agreements, and vehicle depreciation benefit agreements.

39 10-1-951.

40 (a) A provider shall be authorized to utilize an administrator for fulfillment of the terms
41 of a vehicle value protection agreement.

42 (b) A vehicle value protection agreement shall conspicuously disclose:

43 (1) The name, address, and contact information of:

44 (A) The provider;

45 (B) An administrator, if any; and

46 (C) The consumer;

47 (2) The terms of the vehicle value protection agreement, including:

48 (A) The charges under the vehicle value protection agreement;

49 (B) The benefit eligibility requirements;

50 (C) The conditions imposed by the vehicle value protection agreement; and

51 (D) The procedure a consumer is required to follow to obtain the benefit; and

52 (3) The terms or restrictions governing cancellation of the vehicle value protection
53 agreement, including:

54 (A) That the consumer shall be authorized to cancel the vehicle value protection
55 agreement during the free look period;

56 (B) The length of the free look period;

57 (C) The consumer's right to a refund for cancellation under Code Section 10-1-953;
58 and

59 (D) The methodology for calculating any refund owed the consumer upon cancellation.

60 (c) The disclosure required by subparagraph (b)(3)(A) of this Code section shall
61 conspicuously state upon the first page of the vehicle value protection agreement: 'IN

62 ACCORDANCE WITH GEORGIA CODE SECTION 10-1-953, YOU MAY CANCEL

63 THIS AGREEMENT AT ANY TIME BEFORE THE END OF THE FREE LOOK

64 PERIOD DESCRIBED IN THIS AGREEMENT.'

65 (d) No vehicle value protection agreement shall be sold unless the consumer has been or
66 will be provided access to a copy of such vehicle value protection agreement.

67 (e) A finance agreement or vehicle purchase agreement shall not be conditioned on a
68 consumer entering into a vehicle value protection agreement.

69 10-1-952.

70 No vehicle value protection agreement may be entered into with a consumer unless a
71 provider:

72 (1)(A) Ensures each of its vehicle value protection agreements issued under an
73 insurance policy are issued by an insurer licensed to transact business in this state that:

74 (i) Has on file with the Commissioner of Insurance evidence of possession and
75 maintenance of unimpaired, paid-in capital and surplus of at least \$15 million with
76 annual filings of financial statements, its annual statements with the Securities
77 Valuation Office of the National Association of Insurance Commissioners or an
78 investment grade by a securities rating organization accepted by the National
79 Association of Insurance Commissioners, and the actuarial certification required by
80 and filed in the insurer's state of domicile; or

81 (ii) When an insurer has unimpaired, paid-in capital and surplus of at least
82 \$10 million, demonstrates to the satisfaction of the Commissioner of Insurance that
83 the insurer maintains net written premiums to paid-in capital and surplus of not
84 greater than a 3 to 1 ratio and files its annual statements with the Securities Valuation
85 Office of the National Association of Insurance Commissioners or an investment
86 grade by a securities rating organization accepted by the National Association of
87 Insurance Commissioners, and the actuarial certification required by and filed in the
88 provider's state of domicile;

89 (B) Requires the insurer to reimburse the consumer if the provider fails to perform the
90 provider's obligations under a vehicle value protection agreement;

91 (C) Ensures such insurance covers any amount the provider is required to pay for
92 failure to perform under a vehicle value protection agreement; and
93 (D) Allows a consumer to file with the insurer a claim for reimbursement under the
94 vehicle value protection agreement if the provider does not pay the consumer within 60
95 days after the day on which proof of damage, total loss, or unrecovered theft of the
96 covered vehicle is provided to the provider in accordance with the terms of the vehicle
97 value protection agreement;
98 (2)(A) Maintains a funded reserve account to cover the provider's obligations under all
99 vehicle value protection agreements the provider enters into that is equal to or greater
100 than 40 percent of money received by, less claims paid to, the provider for the vehicle
101 value protection agreements; and
102 (B) Places in a trust with the Commissioner of Insurance a security that is equal to at
103 least 5 percent of money received by, less claims paid to, the provider for all vehicle
104 value protection agreements the provider enters into and more than \$25,000.00; or
105 (3) Maintains, or has a parent company that maintains, a net worth or stockholders'
106 equity of at least \$100 million and, upon any request by the Commissioner of Insurance,
107 files a copy of its Form 10-K or Form 20-F disclosure statements, or, if it does not file
108 with the United States Securities and Exchange Commission, a copy of its audited
109 financial statements reported on generally accepted accounting principles, demonstrating
110 net worth or stockholders' equity of at least \$100 million. If the provider's financial
111 statements are consolidated with those of its parent company, then the provider may
112 comply with the provisions of this paragraph by filing the statements of its parent
113 company.

114 10-1-953.
115 (a) A vehicle value protection agreement shall provide for a free look period of at least 30
116 days.

117 (b) If a consumer cancels a vehicle value protection agreement within the free look period,
118 the consumer shall be entitled to a refund of the charges under the vehicle value protection
119 agreement as follows:

120 (1) When benefits have not been provided under the vehicle value protection agreement,
121 a full refund; or

122 (2) When benefits under the vehicle value protection agreement have been provided, a
123 refund to the extent provided for in the vehicle value protection agreement.

124 (c)(1) Except as otherwise provided for in paragraph (2) of this subsection, if a provider
125 cancels a vehicle value protection agreement, the provider shall mail written notice to the
126 consumer at least five days before the day on which the vehicle value protection
127 agreement terminates.

128 (2) A provider shall be authorized to immediately cancel a vehicle value protection
129 agreement when such cancellation is due to the consumer's failure to pay the provider's
130 fee under the vehicle value protection agreement or a breach by the consumer of the
131 consumer's duties relating to the covered vehicle. Any provider that cancels a vehicle
132 value protection agreement pursuant to this paragraph shall send notice of such
133 cancellation to the consumer, which shall include the effective date of the cancellation
134 and the reason for the cancellation.

135 (d) If a provider cancels a vehicle value protection agreement for a reason other than the
136 consumer's failure to pay the provider's fee under the vehicle value protection agreement,
137 the provider:

138 (1) Shall refund the consumer any unearned provider fee under the vehicle value
139 protection agreement;

140 (2) Shall be authorized to charge the consumer an administrative fee of up to \$75.00; and

141 (3) Shall be authorized to deduct the amount of a benefit paid under the vehicle value
142 protection agreement from the refund.

143 10-1-954.

144 (a) If the Attorney General has reason to believe that any provider or administrator has
145 violated or is violating this article and such violation affects one or more residents of this
146 state, the Attorney General shall be authorized to bring a civil action in any appropriate
147 court to:

148 (1) Enjoin further such violation by the defendant;

149 (2) Enforce compliance with this article;

150 (3) Obtain damages, restitution, or other compensation on behalf of the residents of this
151 state;

152 (4) Impose a civil penalty of up to \$2,500.00 for each violation of this article; and

153 (5) Obtain other remedies permitted under state law.

154 (b) Any violation of this article shall additionally be a violation of Part 2 of Article 15 of
155 this chapter, the 'Fair Business Practices Act of 1975'; provided, however, that only public
156 remedies as administered by the Attorney General shall be available under such part for
157 violations of this article.

158 (c) Nothing in this article shall be construed to prohibit any district attorney, law
159 enforcement officer, official, or agency of this state from initiating or continuing any
160 proceeding in a court against a provider or administrator for a violation of any other civil
161 law or a criminal law of this state."

162 **SECTION 2.**

163 All laws and parts of laws in conflict with this Act are repealed.