

The Senate Committee on Regulated Industries and Utilities offered the following substitute to HB 187:

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 38

12 10-1-970.

13 As used in this article, the term:

- 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, including
16 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 10-1-971.

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, including, but
51 not limited to, any requirement that the consumer return to the dealer where the vehicle
52 was purchased to obtain a benefit, if applicable, such term shall only be enforceable if
53 it was agreed separately on a signed form laying out only such condition; and

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

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

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

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

60 (C) The consumer's right to a refund for cancellation under Code Section 10-1-973;
61 and

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

63 (c) The disclosure required by subparagraph (b)(3)(A) of this Code section shall
64 conspicuously state upon the first page of the vehicle value protection agreement: 'IN
65 ACCORDANCE WITH GEORGIA CODE SECTION 10-1-973, YOU MAY CANCEL

66 THIS AGREEMENT AT ANY TIME BEFORE THE END OF THE FREE LOOK
67 PERIOD DESCRIBED IN THIS AGREEMENT.'

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

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

72 10-1-972.

73 No vehicle value protection agreement may be entered into with a consumer unless a
74 provider:

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

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

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

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

117 10-1-973.

118 (a) A vehicle value protection agreement shall provide for a free look period of at least 30
119 days.

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

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

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

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

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

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

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

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

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

146 10-1-974.

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

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

152 (2) Enforce compliance with this article;

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

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

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

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

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

165 **SECTION 2.**

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