

# HOUSE . . . . . No. 4925

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 29, 2024.

The committee on Consumer Protection and Professional Licensure, to whom were referred the petition (accompanied by bill, Senate, No. 208) of Jacob R. Oliveira and Meghan Kilcoyne for legislation relative to motor vehicle financial protection products and the petition (accompanied by bill, House, No. 346) of Meghan Kilcoyne relative to motor vehicle financial protection products, reports recommending that the accompanying bill (House, No. 4925) ought to pass.

For the committee,

TACKEY CHAN.

**HOUSE . . . . . No. 4925**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act relative to motor vehicle debt waivers.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 255B of the General Laws, as appearing in the 2022 Official  
2 Edition, is hereby amended by inserting after section 25 the following new section:-

3           Section 26. (a) For purpose of this section, the following words shall have the following  
4 meanings unless the context clearly requires otherwise:

5           “Administrator” means a person, other than an insurer or creditor that performs  
6 administrative or operational functions pursuant to debt waiver programs.

7           “Borrower” means a debtor, retail buyer or lessee, under a finance agreement.

8           "Creditor" means: (i) the lender in a loan or credit transaction; (ii) the lessor in a lease  
9 transaction; (iii) any retail seller of motor vehicles; (iv) the seller in commercial retail installment  
10 transactions; or (v) the assignees of any of the foregoing to whom the credit obligation is  
11 payable.

12           “Commercial” means a transaction wherein the motor vehicle will primarily be used for  
13 business purposes rather than personal.

14           “Consumer” means an individual purchaser of a motor vehicle or borrower under a  
15 finance agreement.

16           “Debt waiver” means: (i) a guaranteed asset protection waiver; (ii) an excess wear and  
17 use waiver; or (iii) other product as approved by the commissioner.

18           "Guaranteed Asset Protection Waiver" or “GAP Waiver” means a contractual agreement  
19 wherein a creditor agrees, with or without a separate charge, to cancel or waive all or part of  
20 amounts due on a borrower’s finance agreement in the event of a total physical damage loss or  
21 unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum  
22 to, the finance agreement. A GAP waiver may also provide, with or without a separate charge, a  
23 benefit that waives an amount, or provides a borrower with a credit, towards the purchase of a  
24 replacement motor vehicle.

25           “Excess wear and use waiver” means a contractual agreement wherein a creditor agrees,  
26 with or without a separate charge, to cancel or waive all or part of amounts that may become due  
27 under a borrower’s lease agreement as a result of excessive wear and use of a motor vehicle,  
28 which agreement must be part of, or a separate addendum to, the lease agreement. Excess wear  
29 and use waivers may also cancel or waive amounts due for excess mileage.

30           “Finance agreement” means a loan, retail installment sales contract or lease for the  
31 purchase, refinancing, or lease of a motor vehicle. Finance agreement also includes a loan with a  
32 term of at least 12 months that is secured by a motor vehicle.

33           “Free look period” means the period of time from the effective date of the debt waiver  
34 until the date the debt waiver may be canceled without penalty, fees or costs. This period of time  
35 shall not be shorter than 30 days.

36           “Insurer” means an insurance company licensed, registered, or otherwise authorized to  
37 issue contractual liability insurance under the insurance laws of this state.

38           "Person" includes an individual, company, association, organization, partnership,  
39 business trust, corporation, and every form of legal entity.

40           (b) The requirements for offering debt waivers include:

41           (1) Debt waivers may be offered, sold or given to consumers in this state in compliance  
42 with this section;

43           (2) Notwithstanding any other provision of law, any amount charged or financed for a  
44 debt waiver is an authorized charge that must be separately stated and is not to be considered a  
45 finance charge or interest;

46           (3) Neither the extension of credit, the terms of credit, nor the terms of the related motor  
47 vehicle sale or lease may be conditioned upon the consumer’s payment for or financing of any  
48 charge for a debt waiver. However, debt waivers may be discounted or given at no charge in  
49 connection with the purchase of other non-credit related goods or services;

50           (4) A retail seller must insure its debt waiver obligations under a contractual liability or  
51 other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its  
52 debt waiver obligations under a contractual liability policy or other such policy issued by an  
53 insurer. Any such insurance policy may be directly obtained by a creditor, or retail seller, or may

54 be procured by an administrator to cover a creditor's or retail seller's obligations. However,  
55 retail sellers that are lessors on motor vehicles are not required to insure obligations related to  
56 debt waivers on such leased motor vehicles;

57 (5) The debt waiver remains a part of the finance agreement upon the assignment, sale or  
58 transfer of such finance agreement by the creditor;

59 (6) Any creditor that offers a debt waiver must report the sale of, and forward funds due  
60 to, the designated party or parties; and

61 (7) Funds received or held by a creditor or administrator and belonging to an insurer,  
62 creditor or administrator must be held by such creditor or administrator in a fiduciary capacity.

63 (c) Coverage under a contractual liability or other insurance policies insuring a debt  
64 waivers must:

65 (1) state the obligation of the insurer to reimburse or pay to the creditor any sums the  
66 creditor is legally obligated to waive under a debt waiver;

67 (2) cover any subsequent assignee upon the assignment, sale or transfer of the finance  
68 agreement; and

69 (3) remain in effect unless cancelled or terminated in compliance with applicable  
70 insurance laws of this state. The cancellation or termination of a contractual liability or other  
71 insurance policy must not reduce the insurer's responsibility for debt waivers issued by the  
72 creditor prior to the date of cancellation or termination and for which premium has been received  
73 by the insurer.

74 (d) Debt waivers must disclose in writing and in clear, understandable language that is  
75 easy to read, the following:

76 (1) The name and address of the initial creditor and the borrower at the time of sale, and  
77 the identity of any administrator if different from the creditor;

78 (2) The purchase price, if any, and the terms of the debt waiver, including without  
79 limitation, the requirements for protection, conditions, or exclusions associated with the debt  
80 waiver;

81 (3) That the borrower may cancel the debt waiver within a free look period as specified in  
82 the debt waiver, and will be entitled to a full refund of the purchase price paid by the borrower, if  
83 any, so long as no benefits have been provided;

84 (4) The procedure the borrower must follow, if any, to obtain debt waiver benefits under  
85 the terms and conditions of the debt waiver, including, if applicable, a telephone number or  
86 website and address where the borrower may apply for debt waiver benefits;

87 (5) Whether or not the debt waiver is cancellable after the free look period and the  
88 conditions under which it may be cancelled or terminated, including the procedures for  
89 requesting any refund of amounts paid;

90 (6) That in order to receive any refund due in the event of a borrower's cancellation of  
91 the debt waiver, the borrower, in accordance with the terms of the debt waiver, must provide a  
92 written request to cancel to the creditor, administrator or other such party. If the cancellation of  
93 a debt waiver is due to the early termination of the finance agreement and no benefit has been or  
94 will be provided, then the borrower, in accordance with the terms of the debt waiver, must

95 provide a written request to cancel to the creditor or administrator within 90 days of the  
96 occurrence of the event terminating the finance agreement;

97 (7) The methodology for calculating any refund of the unearned purchase price of the  
98 debt waiver, if any, that will be due in the event of cancellation of the debt waiver or early  
99 termination of the finance agreement; and

100 (8) That neither the extension of credit, the terms of the credit, nor the terms of the  
101 related motor vehicle sale or lease, may be conditioned upon the borrower's purchase of a debt  
102 waiver.

103 (e)(1) Debt waiver agreements may be cancellable or non-cancellable after the free look  
104 period. Debt waivers must provide that if a borrower cancels a debt waiver within the free look  
105 period, the borrower will be entitled to a full refund of the amount the borrower paid, if any, so  
106 long as no benefits have been provided.

107 (2) In the event of a borrower's cancellation of the debt waiver, or upon the early  
108 termination of the finance agreement, after the debt waiver has been in effect beyond the free  
109 look period, the borrower may be entitled to a refund of the amount the borrower paid of the  
110 unearned portion of the purchase price, if any, less a cancellation fee up to \$75, if no benefit has  
111 been or will be provided. In order to receive any refund due in the event of a borrower's  
112 cancellation of the debt waiver, the borrower must provide a written request to cancel, in  
113 accordance with the terms of the debt waiver, to the creditor or administrator. If the cancellation  
114 is due to the early termination of the finance agreement, then the borrower, in accordance with  
115 the terms of the debt waiver, must provide a written request to cancel to the creditor or

116 administrator within ninety days of the occurrence of the event terminating the finance  
117 agreement.

118 (3) If the cancellation of a debt waiver occurs as a result of a default under the finance  
119 agreement or the repossession of the motor vehicle associated with the finance agreement, or any  
120 other termination of the finance agreement, any refund due may be paid directly to the creditor or  
121 administrator and applied as a reduction of the amount owed under the finance agreement, unless  
122 the borrower can show that the finance agreement has been paid in full.

123 (f) Debt waivers offered by state or federal banks or credit unions in compliance with the  
124 applicable state or federal law are exempt from this section.

125 (g) The commissioner may take action which is necessary or appropriate to enforce the  
126 provisions of this section and to protect consumers. After proper notice and opportunity for  
127 hearing, the commissioner may:

128 (1) Order the creditor, administrator or any other person not in compliance with this  
129 section to cease and desist from product-related operations which are in violation of this section;  
130 or

131 (2) Impose a penalty of not more than \$500 per violation and no more than \$10,000 in the  
132 aggregate for all violations of similar nature. For purposes of this section, violations must be of  
133 a similar nature if the violation consists of the same or similar course of conduct, action or  
134 practice, irrespective of the number of times the action, conduct or practice which is determined  
135 to be a violation of this section occurred.