

Effective 5/3/2023

Chapter 64

Vehicle Value Protection Agreement Act

Part 1

General Provisions

13-64-101 Definitions.

As used in this chapter:

- (1) "Administrative functions" means the same as that term is defined in Section 31A-6b-102.
- (2) "Agreement administrator" means a person who provides administrative functions related to a vehicle value protection agreement.
- (3) "Covered vehicle" means a vehicle that is covered under a vehicle value protection agreement.
- (4) "Division" means the Division of Consumer Protection established in Section 13-2-1.
- (5) "Finance agreement" means the same as that term is defined in Section 31A-6b-102.
- (6) "Insurer" means the same as that term is defined in Section 31A-1-301.
- (7) "Preliminary period" means a time period that:
 - (a) begins the day on which the vehicle value protection agreement becomes effective; and
 - (b) ends the last day on which the purchaser may cancel the vehicle value protection agreement with a full refund.
- (8) "Provider" means a person who is obligated to provide a benefit to another person under a vehicle value protection agreement.
- (9) "Purchaser" means a person who purchases a benefit from another person under a vehicle value protection agreement.
- (10) "Security" means the same as that term is defined in Section 31A-1-301.
- (11) "Vehicle" means the same as that term is defined in Section 31A-6b-102.
- (12)
 - (a) "Vehicle value protection agreement" means an agreement for a separate charge between a provider and purchaser under which the provider agrees to, upon damage, total loss, or unrecovered theft of the purchaser's covered vehicle, provide a benefit to the purchaser that may be applied to:
 - (i) the cash value of the covered vehicle when traded in for a replacement vehicle;
 - (ii) the finance agreement for a replacement vehicle; or
 - (iii) the purchase or lease price of a replacement vehicle.
 - (b) "Vehicle value protection agreement" includes:
 - (i) a vehicle trade-in agreement;
 - (ii) a vehicle diminished value agreement;
 - (iii) a vehicle cash down payment protection agreement; and
 - (iv) a vehicle depreciation benefit agreement.
 - (c) "Vehicle value protection agreement" does not include:
 - (i) insurance or an insurance contract regulated under Title 31A, Insurance Code;
 - (ii) a guaranteed asset protection waiver, as defined in Section 31A-6b-102;
 - (iii) a debt cancellation agreement, as defined in Section 31A-21-109; or
 - (iv) a debt suspension contract, as defined in Section 31A-21-109.

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Part 2

Vehicle Value Protection Agreements

13-64-201 Vehicle value protection agreement -- Required disclosures -- Finance agreement conditions.

- (1) A person may not issue, sell, offer to sell, or otherwise provide a vehicle value protection agreement that does not comply with this chapter.
- (2) A vehicle value protection agreement shall conspicuously disclose:
 - (a) the name, address, and contact information of:
 - (i) the provider;
 - (ii) the agreement administrator, if any; and
 - (iii) the purchaser;
 - (b) the terms of the vehicle value protection agreement, including:
 - (i) the charges under the vehicle value protection agreement;
 - (ii) the benefit eligibility requirements;
 - (iii) the conditions imposed by the vehicle value protection agreement; and
 - (iv) the procedure a purchaser is required to follow to obtain the benefit; and
 - (c) subject to Subsection (3), the terms or restrictions governing cancellation of the vehicle value protection agreement, including:
 - (i) that the purchaser may cancel the vehicle value protection agreement during the preliminary period;
 - (ii) the length of the preliminary period;
 - (iii) the purchaser's right to a refund for cancellation under Section 13-64-203; and
 - (iv) the methodology for calculating any refund to the purchaser for cancellation.
- (3) The disclosure described in Subsection (2)(c)(i) shall:
 - (a) be written in dark bold with at least 12-point type on the first page of the vehicle value protection agreement; and
 - (b) read as follows: "IN ACCORDANCE WITH UTAH CODE SECTION 13-64-203, YOU, THE PURCHASER, MAY CANCEL THIS AGREEMENT AT ANY TIME BEFORE THE END OF THE PRELIMINARY PERIOD DESCRIBED IN THIS AGREEMENT."
- (4) The provider shall provide the purchaser a copy of the vehicle value protection agreement at the time the provider and purchaser enter into the vehicle value protection agreement.
- (5) A finance agreement or vehicle purchase agreement may not be conditioned on a purchaser entering into a vehicle value protection agreement.

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13-64-202 Liability insurance -- Security for payment -- Provider net worth value.

- (1) A provider under a vehicle value protection agreement shall:
 - (a) insure all vehicle value protection agreements the provider enters into under a contractual liability insurance policy that:
 - (i)
 - (A) is issued by an insurer authorized to do business in this state that has a surplus as to policyholders and paid-in capital of less than \$10,000,000 and more than \$5,000,000 and provides evidence to the division that the insurer maintains a ratio of net written premiums to surplus as to policyholders and paid-in capital of not greater than three to one; or

- (B) is issued by an insurer authorized to do business in this state that has as a surplus as to policyholders and paid-in capital of more than \$10,000,000; and
- (ii)
 - (A) requires the insurer to reimburse the purchaser if the provider fails to perform the provider's obligations under a vehicle value protection agreement;
 - (B) covers any amount the provider is required to pay for failure to perform under a vehicle value protection agreement; and
 - (C) allows a purchaser to file with the insurer a claim for reimbursement under the vehicle value protection agreement if the provider does not pay the purchaser within 60 days after the day on which proof of damage, total loss, or unrecovered theft of the covered vehicle is provided to the provider in accordance with the terms of the vehicle value protection agreement;
- (b)
 - (i) maintain a funded reserve account to cover the provider's obligations under all vehicle value protection agreements the provider enters into that is equal to or greater than 40% of money received by, less claims paid to, the provider for the vehicle value protection agreements; and
 - (ii) place in trust with the division a security that is equal to at least 5% of money received by, less claims paid to, the provider for all vehicle value protection agreements the provider enters into and more than \$25,000; or
- (c) maintain, or together with the provider's parent company maintain, a net worth or stockholders' equity of \$100,000,000.
- (2)
 - (a) An insurer described in Subsection (1)(a) shall annually file with the division:
 - (i) a copy of the insurer's audited financial statements;
 - (ii) the insurer's National Association of Insurance Commissioner annual statement; and
 - (iii) the actuarial certification filed in the insurer's state of domicile.
 - (b) The division may examine a reserve account described in Subsection (1)(b).
 - (c) A provider shall, upon request, provide the division a copy of:
 - (i) the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission; or
 - (ii) if the provider does not file with the Securities and Exchange Commission, a copy of the provider's audited financial statements that shows the net worth of the provider or the provider's parent company.

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13-64-203 Preliminary period -- Cancellation -- Refund.

- (1)
 - (a) A vehicle value protection agreement shall provide for a preliminary period of at least 30 days.
 - (b) If a purchaser cancels a vehicle value protection agreement within the preliminary period, the purchaser is entitled to a refund of the charges under the vehicle value protection agreement as follows:
 - (i) if benefits have not been provided, a full refund; or
 - (ii) if benefits have been provided, a refund to the extent provided for in the vehicle value protection agreement.
- (2)

- (a) Except as provided in Subsection (2)(b), if a provider cancels a vehicle value protection agreement, the provider shall mail a written notice to the purchaser at least five days before the day on which the vehicle value protection agreement is canceled.
- (b) A provider may immediately cancel a vehicle value protection agreement upon sending a notice of cancellation to the purchaser if the reason for the cancellation is:
 - (i) the purchaser's failure to pay the provider's fee under the vehicle value protection agreement; or
 - (ii) the purchaser's breach of the purchaser's duties relating to the covered vehicle.
- (3) A notice described in Subsection (2) shall include:
 - (a) the effective date of the cancellation; and
 - (b) the reason for the cancellation.
- (4) If a provider cancels a vehicle value protection agreement for a reason other than the purchaser's failure to pay the provider's fee under the vehicle value protection agreement, the provider:
 - (a) shall refund the purchaser any unearned provider fee under the vehicle value protection agreement;
 - (b) may charge the purchaser an administrative fee of up to \$75; and
 - (c) may deduct the amount of a benefit paid under the vehicle value protection agreement from the refund.

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Part 3

Enforcement

13-64-301 Administration and enforcement -- Division powers -- Fees -- Rulemaking.

- (1) The division shall administer and enforce this chapter in accordance with Chapter 2, Division of Consumer Protection.
- (2) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
 - (a) the division director may impose an administrative fine of up to \$2,500 for each act that is in violation of this chapter, including failure to insure or consider a vehicle value protection agreement as required under Subsection 13-64-202(1); and
 - (b) the division may bring a civil action to enforce this chapter.
- (3) In a civil action by the division to enforce this chapter, the court may:
 - (a) declare that an act or practice violates this chapter;
 - (b) issue an injunction for a violation of this chapter;
 - (c) order disgorgement of any money received after a violation of this chapter;
 - (d) order payment of disgorged money to an injured individual;
 - (e) impose a civil penalty of up to \$2,500 for each violation of this chapter; or
 - (f) award any other relief that the court deems reasonable and necessary.
- (4) If a court grants judgment or injunctive relief to the division, the court shall award the division:
 - (a) reasonable attorney fees;
 - (b) court costs; and
 - (c) investigative fees.
- (5)

- (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- (b) A civil penalty authorized under this section may be imposed in any civil action brought by the division.
- (c) The division shall deposit money received for the payment of a fine or civil penalty under this section into the Consumer Protection Education and Training Fund created in Section 13-2-8.
- (6) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter.

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