Moving the Metal: The Auto Finance Podcast
Hosts: Brooke Conkle And Chris Capurso
Guest: Brian Casey
Date Aired: 5/26/26

Kicking the Tires on Kentucky: SB 158 and the Add-On Product Revolution

Brooke Conkle (00:10):

Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso (00:20):

And I'm Chris Capurso, of counsel in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Brooke Conkle (00:25):

Today we're joined by our esteemed colleague and friend of the pod, Brian Casey, to discuss a new Kentucky law impacting that dreaded phrase, add-on products. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you: TroutmanFinancialServices.com and ConsumerFinancialServicesLawMonitor.com. And also, we have a bevy of other podcasts that you might find interesting. *The Consumer Finance Podcast*, which, as you might guess, is all things consumer finance related. *The Crypto Exchange*, devoted to trends, challenges, and legal issues in Bitcoin, blockchain, fintech, and regtech. *FCRA Focus*, a podcast dedicated to all things credit reporting. And finally, *Payments Pros*, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out. And speaking of those platforms, if you like what you hear, please leave us a review and let us know how we're doing. We'd love to hear from you. Alternatively, please feel free to reach out to us directly. Our contact information can easily be found on the firm's website, troutman.com. If you enjoy reading our blogs or listening to our podcasts, please also check out our financial services mobile app. To download, simply go to your iOS or Android app store and search for Troutman Pepper Locke. Not only does our app have all of our blog content and podcast episodes in one handy place, it also has a listing of all of the firm's financially focused attorneys. So check it out and see what you think. For today, as I mentioned, we'll be discussing Kentucky SB 158 along with our buddy Brian Casey. Brian, welcome back.

Brian Casey (02:07):

Thank you. Pleasure to be here.

Brooke Conkle (02:09):

Chris, tell us a little bit about the new Kentucky bill and what does it all cover?

Chris Capurso (02:13):

Sure. I'll just do a very high-level summary. At the highest level, it creates a framework for, "vehicle financial protection products." And trying to figure out the definitions, it looks like a family tree because a vehicle financial protection product is either a debt waiver or a vehicle value protection agreement. Now, what's a debt waiver? It's either a GAP agreement or an excess wear and use waiver. So it's kind of these branching definitions of different things. But all-in-all, this law covers all of those different types of things and imposes different requirements for their use. Probably the big one for a lot of folks listening is it does designate VFPPs, the overarching term, the vehicle financial protection products, as not insurance. That's what we're looking for. It requires that they are truly optional, that credit approval and terms cannot be conditioned on purchase of those products. It requires that providers must give clear written disclosure explaining that the products are optional. Price, coverage limits, terms, all those things must be included in the disclosure. And as we've come to expect from these types of laws, there is a mandatory 30-day free-look period within which there can be a full refund unless there's some kind of benefit conferred. Notably, some states differ on this, but there is no requirement that it be cancellable after the 30 days, but it needs to be disclosed whether it is or whether it isn't. The law imposes financial responsibility requirements on providers, such as having contractual liability insurance, which is Brian's bread and butter, a little bit outside of our consumer financial services area, but definitely in the insurance area. And it also clarifies the relationship with kind of credit personal property insurance, which is another one of those products that we see a lot.

Chris Capurso (04:02):

The law distinguishes VFPPs from credit personal property insurance products. So it's kind of creating a dual track where you've got these vehicle financial protection products and you've got credit insurance kind of being regulated along different planes. But that's kind of the overarching view of the bill. We see a lot of these in states where you kind of have these general coverage for ancillary products coming about and having these more fulsome regulatory regimes overlooking them.

Brooke Conkle (04:30):

Thanks, Chris. Brian, the bill introduces the term "vehicle financial protection product." So what kind of products are covered under that umbrella and how does that compare to what dealers and lenders are currently selling today?

Brian Casey (04:45):

Yes, so we have some new acronyms and terms we're going to have to learn based on the tree analogy that Chris mentioned. So vehicle financial protection products, hereinafter referred to as VFPPs, is the overarching concept of which there are two types, the debt waivers, which are conventionally called guaranteed asset protection waivers, and then separately for leased automobiles, excess wear and tear waivers. And the lease wear and tear waivers are relatively recent over the last five, six, seven years during the legislative season. So not all states have adopted laws that sweep in excess wear and tear waivers. So that's a good thing. The second type of VFPP is what Chris mentioned, vehicle value protection agreement, VVPA. And as an aside, we have other products that are termed VPPs, vehicle protection products, some of which are included in the definition of a vehicle value protection product here in Kentucky. The definition of VVPA, vehicle value protection agreement, is very progressive in this statute in a good way, pro-business expansion of the type of products that dealers can offer. As an example, very broad, including obsolescence, diminished value, or depreciation of vehicles. We've had some skirmishes over the years on whether a depreciation product constituted an insurance product. Some state insurance regulators have taken that position. So the legislative solution is what is in play, generally speaking, including in Kentucky. But the definition of VVPA includes loss, theft, or damage. That's very broad and are typically insurance perils. But we have the benefit of this statute which deregulates a product that would otherwise be insurance as not being insurance. And that's where we want to go, as Chris mentioned. So it's a very good statute from a product and consumer perspective in terms of more options for types of coverages that you might want to buy voluntarily when you're purchasing an automobile, usually in the context of it being financed.

Chris Capurso (07:01):

So the bill ties these new rules, this new regime, directly to not only retail installment sales, but also even to consumer loans, which is actually, from a business standpoint, like Brian was saying, kind of welcome because sometimes we have the confusion. It's like, okay, well, it applies to one but not the other. And sometimes that goes back to legislatures not exactly understanding those financial products. But it's helpful to have clarity, if anything. But with these rules being tied back to those types of financing agreements, what should folks be looking for in retail installment contracts or loans to ensure that they are complying with these new provisions?

Brian Casey (07:38):

Well, the GAP waivers and the excess lease wear and tear waivers need to be reviewed to make sure that they're checking the box in terms of the required disclosures, the 30-day free-look period, a statement about the contractual liability insurance policy. So all of the isms and requirements under this statute, they need to get into the product itself if it's going to be appended to a financing agreement and then sold into the secondary market. Now, there are lenders, some are affiliated with motor vehicle manufacturers, that review these types of products before they will even finance the kind of products. So there's a separate business process and group that will review these products for compliance for the very things that you're wanting to ask about here.

Brooke Conkle (08:22):

Brian, SB 158 requires a minimum 30-day free-look period for both debt waivers and vehicle value protection agreements. How does that compare with industry norms, and what sort of operational changes might lenders or dealers need to make?

Brian Casey (08:39):

30-day free-look period is pretty much the norm for these types of products, including vehicle service contracts, which are not captured in this statute, by the way. A few states have shorter periods of 20 days, usually not less than 20, so pretty common among the industry and the statutes that are on the books. So from an operational perspective, usually there's an administrator for these products, a third party that's administering it, and they would normally be responsible for administering the exercise of a free-look right. And depending on when the sale of the financing contract occurs, if that occurs after the 30-day free-look period, then it's really not an issue for the succeeding lender that might buy the financing agreement. And generally speaking, the administrator would be on top of this.

Chris Capurso (09:27):

So obviously 30-day free-look period's one of the big things with these types of products. Another big thing is the idea of what happens with refunds. And there's often confusion not only with consumers, but also industry on what is expected as far as refunds for, say, GAP or other add-on products after a repossession, where the boat's gone but the credit agreement's still in place until a sale or what have you. How does SB 158 clarify or even complicate that picture?

Brian Casey (09:56):

This bill expressly says that in the case of a repossession that the payor, which would probably be in most cases the contractual liability insurance policy issuer, i.e., insurance company, can make the payment directly to the creditor in the case of a repossession. There have been some regulatory enforcement actions, Colorado is one that comes to mind, where lenders were not unilaterally informing the customers or canceling the product on behalf of the customer when they know, for example, the loan has been paid off. That's a different scenario. If there's a foreclosure or default, the lender can be paid directly here in this case.

Brooke Conkle (10:36):

All right. Are there aspects of the sort of Kentucky approach that you expect other states to copy or, frankly, maybe even avoid when they look to regulating similar auto finance products?

Brian Casey (10:49):

I don't really see anything to avoid in here. As I mentioned at the outset, I think the definition of vehicle value protection agreement is broad and what the industry has sought to achieve in other states and has been successful in some other states. In this industry, new products and services are devised almost every year, and rather than going back to the legislative well every year in multiple states, the breadth of this definition is a very good one, I think, in terms of elasticity for additional products that could still fall within the definition of vehicle value protection agreement. So that's a good thing.

Chris Capurso (11:26):

Well, that'll wrap it up for today's podcast. Big month for Kentucky. They host a big horse race and then they get featured on *Moving the Metal*. It's been a really big time for this Commonwealth of Kentucky, our fellow Commonwealth. Thank you to our audience for tuning in. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content you find most helpful. That's the ConsumerFinancialServicesLawMonitor.com and the TroutmanFinancialServices.com blogs. And while you're at it, why don't you head on over to troutman.com and sign up for our consumer financial services mailing list so that you can stay abreast of current issues through our insightful alerts and advisories and receive invitations to our industry insider webinars? And of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2026. That will be generally on the second and fourth Tuesdays of each month. And I would be remiss if I did not thank our guest, Brian Casey, now a two-time podcast guest. Hopefully we'll get him to three times here soon. But thank you, Brian, for joining us. And as always, if anyone listening has any questions or if we can help in any way, please reach out to us. Until next time.
