HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1361 Insurance
SPONSOR(S): Brown
TIED BILLS: **IDEN./SIM. BILLS:** SB 2522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee		Callaway	Cooper
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill allows insurers to offer a new insurance product, debt cancellation agreement and debt suspension agreement contractual liability insurance policy (CLP). This product will be offered to creditors for the purpose of covering losses suffered by the creditor in connection with debt cancellation or debt suspension agreements (DCA/DSA).

DCA/DSAs are lending transactions between the financial institutions and the debtor wherein the financial institution agrees to cancel or suspend the debt upon the happening of specified events. The risk of default due to a specified event, normally death, disability, or unemployment, shifts from the debtor to the financial institution. In exchange for this shifting of risk, the creditor charges a fee and agrees to cancel or suspend the debt according to the terms of the agreement. To protect itself, the bank either must set up reserves to cover the risk protected against or seek an insurance policy, a CLP, to indemnify the financial institution for the loss. DCA/DSAs are not regulated by the Office of Insurance Regulation (OIR). DCC/DSAs are not regulated by banking regulators, except for some regulation with regards to the sale of the agreements. Almost every state except Florida recognizes and approves CLPs as a viable way of protecting the financial institution against the business risk of DCA/DSAs.

The bill defines "debt cancellation agreement and debt suspension agreement contractual liability insurance." This will allow insurers to write CLPs to cover debt cancellation and debt suspension products issued by financial institutions. Forms and rates of CLPs will be regulated by the OIR.

The bill also removes the $50,000 policy limit in current law regarding the amount of insurance a debtor can obtain under the credit life insurance law. The deletion of the limit will allow debtors to obtain insurance up to the amount owed to the creditor. This statutory change allows Florida to join the rest of the states regarding the policy limit of credit life insurance and the limit provided in the National Association of Insurance Commissioner's Consumer Credit Insurance Model Act. The $50,000 policy limit is also removed from the amount of coverage under the debtor group life insurance law. Thus, the policy limit for each debtor having debtor group life insurance is limited to the amount of the debt of the debtor. This statutory change allows Florida to join the majority of the states regarding policy limits under the debtor group life insurance law.

The bill does not have a financial impact on state or local governments. It does; however, have an impact on the private sector. (See Fiscal Section for details).

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a new insurance product to be regulated by the Office of Insurance Regulation. The bill removes the dollar policy limit on credit life insurance and debtor group insurance policies and replaces it with the amount of the debt covered.

Safeguard Individual Liberty: The bill removes the dollar policy limit on credit life insurance and debtor group insurance policies and replaces it with the amount of the debt covered.

B. EFFECT OF PROPOSED CHANGES:

The bill creates a new insurance product, debt cancellation agreement and debt suspension agreement contractual liability insurance policy (CLP), for insurance companies to offer to creditors for the purpose of covering losses suffered by the creditor in connection with debt cancellation or debt suspension agreements. Debt Cancellation and Debt Suspension Agreements (DCA/DSA) are frequently used by financial institutions when extending credit or issuing loans to their customers. When made in conjunction with a motor vehicle loans or leases, the agreements are generally referred to as Guaranteed Asset Protection or "GAP" agreements.

The U.S. Office of the Comptroller of the Currency (OCC) defines Debt Cancellation Contracts (DCC) and Debt Suspension Agreements (DSA) in 12 C.F.R. s. 37.2 as follows:

> *Debt cancellation contract* means a loan term or contractual arrangement modifying loan terms under which a bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of the other loan documents.
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> *Debt suspension agreement* means a loan term or contractual arrangement modifying loan terms under which a bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or part of the other loan documents. The term *debt suspension agreement* does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment.

In publishing the notice of the Part 37 final rules, 67 Fed. Reg. 58,962 (2003), the OCC noted the purposes and benefits of Debt Cancellation Products to lenders and borrowers as follows:

> Under a DCC or a DSA, the customer typically agrees to pay an additional fee to the bank in exchange for the bank's promise to cancel or temporarily suspend the borrower's obligation to repay the loan. The fee may be a lump sum that is payable at the outset of a loan (that may be financed over the term of the loan), or the fee may take the form of a monthly or other periodic charge. The fee compensates the bank for releasing borrowers from loan obligations under the circumstance specified in the DCC or DSA. These arrangements also provide customers a convenient method of extinguishing debt in times of financial or personal hardship, and enable the bank to avoid the time and expense of collecting the balance of the loan from a borrower's estate in the event of the borrower's death or other specified circumstances.

Simply put, DCA/DSAs are lending transactions between the financial institutions and the debtor wherein the financial institution agrees to cancel or suspend the debt upon the happening of specified events. It is an agreement between the financial institution and the consumer. The risk of default due to a specified event, normally death, disability, or unemployment, shifts from the debtor to the financial institution. In exchange for this shifting of risk, the creditor charges a fee and agrees to cancel or suspend the debt according to the terms of the agreement. To protect itself, the bank either must set up reserves to cover the risk protected against or seek an insurance policy, a CLP, to indemnify the financial institution for the loss.

According to the Office of Insurance Regulation (OIR), the OCC has interpreted debt cancellation and debt suspension agreements as "incidental to banking" and thus exempt from the state insurance regulation. The OIR also notes the fees and forms of DCC/DSAs are not regulated by banking regulators, except for some regulation with regards to the sale of the agreements.[1]

National banks and federally charted credit unions are authorized, under federal law and regulations, to enter into DCC and DSA (collectively "Debt Cancellation Products") with their loan and credit customers. The regulations promulgated by the OCC and the National Credit Union Administration (NCUA) both note that such activities are incidental to the lending powers of the financial institutions. The OCC has also issued an opinion that GAP agreements are included within the scope of Debt Cancellation Products.

The Florida Statutes do not specifically reference or define debt cancellation products. The issue of whether Florida-chartered financial institutions were authorized to issue these products pursuant to their lending powers was recently addressed by the Office of Financial Regulation (OFR). On February 1, 2006, the OFR issued an Order of General Application to clarify that Florida-chartered financial institutions have the authority to enter into these agreements with their customers. According to OFR, this order ensures competitive equality of Florida-chartered financial institutions with federally chartered or regulated ones.

The OFR's order specifies a number of conditions that must be satisfied by Florida-chartered institutions that desire to enter into these agreements, including a requirement that the financial institution "[s]hall establish and maintain an effective risk management program to ensure the financial institution's safety and soundness concerning Debt Cancellation Products, as is required for a national bank by 12 C.F.R. s. 37.8"

A financial institution can address part of the safety and soundness requirement by ensuring that the financial institution has sufficient reserves to cover anticipated losses associated with its Debt Cancellation Products. Another way to potentially address the requirement would be to purchase insurance (a CLP) to cover anticipated losses that may result from issuing DCA/DSAs. This type of insurance product; however, is not currently authorized under the Florida Insurance Code.

Although authorized by the OFR to offer debt cancellation and debt suspension products, some financial institutions in Florida are reluctant to take on the added business risk without some way for the financial institutions to protect themselves against that risk. According to the bill's proponents, the inability of financial institutions to purchase a contractual liability policy (CLP) to protect against the business risks of offering debt protection products, Florida financial institutions are less competitive than their non-Florida domiciled competitors.

Almost every state except Florida recognizes and approves CLPs as a viable way of protecting the financial institution against the business risk of DCA/DSAs.[2] According to the bill's proponents, in the past 5 or 6 years, some insurance companies have attempted to get a CLP approved by the Office of Insurance Regulation (OIR) to offer to financial institutions. The OIR has denied such approval on several grounds.[3]

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[1] Legislative Analysis from the OIR received on March 28, 2006, on file with the Insurance Committee.
[2] Information provided by a proponent of the bill, on file with the Insurance Committee.
[3] Id.

First, the OIR posits that the underlying DCA/DSA is insurance under s. 624.02, F.S. Second, the OIR alleges CLPs are not consistent with the concepts of liability insurance under Florida law. In this respect, the OIR states the "liability created by the DCA is an accounting principle not an insurance principle." "Liability as used in insurance means a legal liability for loss or damage to a person or property resulting from the failure to fulfill a duty, whether the duty is contractual or a standard of care." Third, the OIR takes the position that CLPs are not specifically provided for under the property and casualty lines of insurance as those lines are defined in s. 624.605, F.S. Fourth, the OIR contends the definition of credit insurance specifically excludes loss or damage resulting from death and disability. Some in the insurance industry disagree with the OIR's positions regarding CLPs.[4]

The OIR believes CLPs replicate credit life and credit disability insurance and directly compete with these insurance products.[5] Part IX of Chapter 627 governs credit life and credit disability insurance. "Credit life insurance" is defined as insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction. "Credit disability insurance" is defined as insurance under which a borrower of money or a purchaser or a lessee of goods is insured in connection with a specific loan or credit transaction against loss or time resulting from accident or sickness. Both types of insurance are sold to a debtor at the time of purchase of goods. Insurers issuing either type of insurance must file its rates and rate changes with the OIR.[6] The Financial Services Commission sets the maximum allowable rates for these types of insurance.[7] Current law also contains restrictions on the amount of credit life and credit disability insurance that can be written and the term of such insurance.[8] The insurer offering a credit life or credit disability policy is required to get the OIR's approval of any forms used in conjunction with the insurance.[9] The OIR must disapprove any credit life or credit disability policy if the benefits of the policy are not reasonable in relation to the premiums charged or if the policy contains provisions that are unjust, unfair, inequitable, misleading, deceptive, or which encourage misrepresentation.[10] Only licensed agents can issue credit life or credit disability polices.[11] In most cases, the policy limit of credit life insurance is $50,000 per debtor.[12]

The bill defines "debt cancellation agreement and debt suspension agreement contractual liability insurance." This will allow insurers to write contractual liability policies to cover debt cancellation and debt suspension products issued by financial institutions. This type of insurance will be sold to financial institutions as opposed to credit life insurance which is sold to the debtor. The OIR will have authority to approve CLPs, approve forms associated with it, and approve rates associated with it. However, the bill does not specifically outline policy limits for such insurance as is set out in statute for credit life insurance.

According to the bill's proponents, the cost of goods financed on credit is increasing; thus, the monetary limit set by statute on credit life insurance and debtor group life insurance is outdated. Florida is the only state that limits credit life insurance policies to a set policy limit other than the amount of the borrower's indebtedness.[13] The National Association of Insurance Commissioners has adopted a Consumer Credit Insurance Model Act (Model Act). For most debts, the Model Act allows the amount of credit life insurance to be based on the net debt of the borrower, rather than a specified dollar amount.

The bill removes the $50,000 policy limit in current law regarding the amount of insurance a debtor can obtain from a creditor under the credit life insurance law. The deletion of the limit will allow debtors to

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4 Id.
5 Legislative Analysis from the OIR received on March 28, 2006, on file with the Insurance Committee.
6 s. 627.6785, F.S. (2005).
7 Id.
8 s. 627.679, F.S. (2005); s. 627.681, F.S. (2005).
9 s. 627.682, F.S. (2005).
10 Id.
11 s. 627.683, F.S. (2005).
12 s. 627.679(1)(b), F.S. (2005).
13 Information provided by a proponent of the bill, on file with the Insurance Committee.

obtain insurance up to the amount owed to the creditor. This statutory change allows Florida to join the rest of the states regarding the policy limit of credit life insurance and the limit provided in the Model Act.

Debtor group life insurance is governed by Part V of chapter 627, F.S. Section 627.553, F.S. provides "[t]he lives of a group of individuals may be insured under a policy issued to a creditor . . . to insure debtors of the creditor." The debtors eligible for debtor group life insurance are all the debtors of the creditor.[14] The policy premium is paid by the creditor and can be paid from sums collected by the creditor's debtors.[15] Generally, each debtor's policy limit is $50,000 or the amount owed to the creditor, whichever is less.[16] Thirty one states cap insurance under the debtor group life insurance law at the amount of the indebtedness; eight states either have no monetary limit or no provision.[17]

The $50,000 maximum policy limit is removed from the amount of coverage under the debtor group life insurance law. Thus, the policy limit for each debtor having debtor group life insurance is changed to the amount of the debt of the debtor and allows Florida to join the majority of the states regarding policy limits under the debtor group life insurance law.

Importantly, the changes to the policy limits of credit life insurance and debtor group life insurance do not require the consumer to purchase such insurance with the policy limit set as the amount of debt. Rather, the changes permit insurers to offer the insurance with the changed policy limits.

C. SECTION DIRECTORY:

Section 1: Creates s. 624.6086, F.S.; defining "debt cancellation agreement and debt suspension agreement contractual liability insurance."

Section 2: Amends s. 627.553, F.S.; requiring the policy limits of the amount of insurance for each debtor in a debtor group life insurance policy to be the amount of the debtor's debt; removing the maximum limit for policy limits for debtor group life insurance policies.

Section 3: Amends s. 627.679, F.S.; requiring the policy limits of the amount of insurance for a debtor under credit life insurance to be the amount of the debtor's debt; removing the $50,000 policy limit for credit life insurance polices.

Section 4; Provides an effective date of "upon becoming a law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Financial Services believes the bill will have no fiscal impact on the agency.

   The OIR believes the bill will have no fiscal impact on the office.

2. Expenditures:

   None.

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[14] s. 627.553(1), F.S. (2005).
[15] s. 627.553(2), F.S. (2005).
[16] s. 627.553(3), F.S. (2005).
[17] Information provided by a proponent of the bill, on file with the Insurance Committee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the OIR, “[f]or a carrier issuing the newly authorized ‘contractual liability’ product, in the event of claims, to the extent such claims could bring a carrier to insolvency, the costs arising from a bank failure could be shifted to Florida policyholders through FIGA assessments for unpaid claims against that insurer issuing the contractual liability coverage.”

Financial institutions would benefit by the bill because they could obtain insurance to protect against the risks of offering debt cancellation products. The purchase of such insurance may allow the financial institution to forgo reserving moneys to cover anticipated losses associated with its issuance of debt cancellation products.

The removal of the monetary policy limit on the amount of credit life insurance or debtor group insurance a policyholder/debtor/borrower can obtain will allow debtors/borrowers to purchase such insurance in amounts to cover their debts to protect them from having to repay the debts in the event of disability, death, unemployment, or other specified circumstances. However, retaining the cap of such insurance at the amount of indebtedness will protect the debtor/borrower from having to pay for too much insurance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR expressed the following concerns in its Legislative Analysis submitted March 28, 2006:

Summary of Concerns

- The bill recognizes and expands the availability of largely unregulated contractual agreements between banks/credit unions and customers that are in competition with authorized carriers marketing similar products;

- The kind of insurance defined by this bill, "debt cancellation agreement and debt suspension agreement contractual liability insurance," fundamentally changes the definition of the term "liability" as used in the context of insurance. In current law, liability for the purpose of insurance means a legal liability for loss or damage to person or property resulting from the failure to fulfill a duty, whether that duty is contractual or a standard of care. With regard to debt cancellation agreements, it is not the failure to perform a duty but the cost of the performance of an agreed upon duty that is now being defined as a loss or damage to person or property;

- The potential risk of insolvency that could occur as result of the costs of performance associated with these agreements, voluntary foregoing the collection of a debt, is being shifted from the banking industry to Florida policyholders through potential FIGA assessments for unpaid claims against that insurer issuing the contractual "liability" coverage.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.