

Bill No. SB 2084

Barcode 664816

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Present subsection (7) through (19) of section 520.02, Florida Statutes, are redesignated as subsections (8) through (20), respectively, and a new subsection (7) is added to that section, to read:

520.02 Definitions.--In this act, unless the context or subject matter otherwise requires:

(7) "Guaranteed asset protection products" means loan, lease, or retail installment contract terms, or modifications or addendums to loan, lease, or retail installment contracts, under which a creditor agrees to waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral. This product is not insurance for purposes of the Florida Insurance Code. This subsection applies to all such guaranteed asset protection

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1 products issued before October 1, 2007.

2 Section 2. Subsection (11) is added to section 520.07,
3 Florida Statutes, to read:

4 520.07 Requirements and prohibitions as to retail
5 installment contracts.--

6 (11) In conjunction with entering into a new retail
7 installment contract or contract for a loan, a motor vehicle
8 retail installment seller, as defined in s. 520.02(10), sales
9 finance company, as defined in s. 520.02(18), or retail
10 lessors, as defined in s. 521.003(8), and their assignees may
11 offer, for a fee or otherwise, optional guaranteed asset
12 protection products in accordance with this chapter. The motor
13 vehicle retail installment seller, sales finance company, or
14 retail lessor may not require the purchase of a guaranteed
15 asset protection product as a condition for making the loan.
16 In order to offer any guaranteed asset protection product, the
17 motor vehicle retail installment seller, sales finance
18 company, or retail lessor, and their assignees, must comply
19 with the following:

20 (a) The cost of a guaranteed asset protection product,
21 with respect to any loan covered by the product, may not
22 exceed the amount of the indebtedness.

23 (b) Any contract or agreement pertaining to a
24 guaranteed asset protection product is governed by this
25 section.

26 (c) The guaranteed asset protection product is
27 considered an obligation of any person who purchases or
28 otherwise acquires the loan contract covering the product.

29 (d) Entities providing guaranteed asset protection
30 products shall provide readily understandable disclosures that
31 detail eligibility requirements, conditions, refunds, and

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1 exclusions. The disclosures must state that the purchase of
2 the product is optional. The disclosures must be in plain
3 language and of a type face and size that are easy to read.

4 (e) Entities must provide a copy of the executed
5 guaranteed asset protection product contract to the buyer. The
6 entity bears the burden of proving that the contract was
7 provided to the buyer.

8 (f) Entities may not offer a contract for a guaranteed
9 asset protection product which contains terms giving the
10 entity the right to unilaterally modify the contract unless:

11 1. The modification is favorable to the buyer and is
12 made without an additional charge to the buyer; or

13 2. The buyer is notified of any proposed change and is
14 provided a reasonable opportunity to cancel the contract
15 without penalty before the change takes effect.

16 (g) If a contract for a guaranteed asset protection
17 product is terminated, the entity must refund to the buyer any
18 unearned fees paid for the contract unless the contract
19 provides otherwise. A refund is not due to a consumer who
20 receives a benefit under such product. In order to receive a
21 refund, the buyer must notify the entity of the event
22 terminating the contract and request a refund within 90 days
23 after the occurrence of the event terminating the contract.

24 Any entity may offer a buyer a contract that does not provide
25 for a refund only if the entity also offers that buyer a bona
26 fide option to purchase a comparable contract that provides
27 for a refund.

28 Section 3. Subsection (3) of section 520.35, Florida
29 Statutes, is amended to read:

30 520.35 Revolving accounts.--

31 (3) Notwithstanding the provisions of any other law,

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1 the seller under a revolving account may charge, receive, and
 2 collect a finance charge which may not exceed 15 cents per \$10
 3 per month, computed on all amounts unpaid under the revolving
 4 account from month to month (which need not be a calendar
 5 month) or other regular period, and a delinquency charge not
 6 to exceed ~~\$25~~ ~~\$10~~ for each payment in default for a period of
 7 not less than 10 days, if the charge is agreed upon, in
 8 writing, between the parties before imposing any charge. If
 9 the amount of the finance charge so computed is less than \$1
 10 for any such month, a finance charge of \$1 for any such month
 11 may be charged, received, and collected. If the regular
 12 period is other than such monthly period or if the unpaid
 13 amount is less than or greater than \$5, the permitted finance
 14 charge shall be computed proportionately. Such finance charge
 15 may be computed for all unpaid balances within a range of not
 16 in excess of \$10 on the basis of the median amount within such
 17 range, if as so computed such finance charge is applied to all
 18 unpaid balances within such range.

19 Section 4. Paragraph (r) is added to subsection (1) of
 20 section 624.605, Florida Statutes, to read:

21 624.605 "Casualty insurance" defined.--

22 (1) "Casualty insurance" includes:

23 (r) Insurance for debt-cancellation
 24 products.--Insurance that a creditor may purchase against the
 25 risk of financial loss from the use of debt-cancellation
 26 products with consumer loans, leases, or retail installment
 27 contracts.

28 1. For purposes of this paragraph, the term
 29 "debt-cancellation product" means loan, lease, or retail
 30 installment contract terms, or modifications to loan, lease,
 31 or retail installment contracts, under which a creditor agrees

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1 to cancel or suspend all or part of a customer's obligation to
 2 make payments upon the occurrence of specified events and
 3 includes, but is not limited to, debt-cancellation contracts,
 4 debt-suspension agreements, and guaranteed asset-protection
 5 contracts.

6 2. Debt-cancellation products may be offered by
 7 financial institutions, as defined in s. 655.005(1)(h),
 8 insured depository institutions, as defined in 12 U.S.C. s.
 9 1813(c), and subsidiaries of such institutions, as provided in
 10 the financial institution codes, or by other business entities
 11 as may be specifically authorized by law, and such products
 12 are not insurance for purposes of the Florida Insurance Code.

13 Section 5. Subsection (3) of section 627.553, Florida
 14 Statutes, is amended to read:

15 627.553 Debtor groups.--The lives of a group of
 16 individuals may be insured under a policy issued to a creditor
 17 or its parent holding company, or to a trustee or trustees or
 18 agent designated by two or more creditors, which creditor,
 19 holding company, affiliate, trustee or trustees, or agent
 20 shall be deemed the policyholder, to insure debtors of the
 21 creditor or creditors, subject to the following requirements:

22 (3) The amount of insurance on the life of any debtor
 23 shall at no time exceed the amount owed by the debtor ~~her or~~
 24 ~~him~~ which is repayable in installments to the creditor ~~or~~
 25 ~~\$50,000, whichever is less, except that loans not exceeding 1~~
 26 ~~year's duration shall not be subject to such limits. However,~~
 27 ~~on such loans not exceeding 1 year's duration, the limit of~~
 28 ~~coverage shall not exceed \$50,000 with any one insurer.~~

29 Section 6. Paragraph (b) of subsection (1) of section
 30 627.679, Florida Statutes, is amended to read:

31 627.679 Amount of insurance; disclosure.--

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1 (1)

2 (b) The total amount of credit life insurance on the
 3 life of any debtor with respect to any loan or loans covered
 4 in one or more insurance policies shall at no time exceed the
 5 amount of indebtedness ~~\$50,000 with any one creditor, except~~
 6 ~~that loans not exceeding 1 year's duration shall not be~~
 7 ~~subject to such limits, and on such loans not exceeding 1~~
 8 ~~year's duration, the limits of coverage shall not exceed~~
 9 ~~\$50,000 with any one insurer.~~

10 Section 7. Subsection (2) of section 627.681, Florida
 11 Statutes, is amended to read:

12 627.681 Term and evidence of insurance.--

13 (2) The term of credit disability insurance on any
 14 debtor insured under this section shall not exceed the term of
 15 indebtedness ~~10 years, and for credit transactions that exceed~~
 16 ~~60 months, coverage shall not exceed 60 monthly indemnities.~~

17 Section 8. Paragraphs (g) and (h) of subsection (1) of
 18 section 665.005, Florida Statutes, are amended, and paragraph
 19 (t) is added to that subsection, to read:

20 665.005 Definitions.--

21 (1) As used in the financial institutions codes,
 22 unless the context otherwise requires, the term:

23 (g) "Federal financial institution" means a federally
 24 or nationally chartered or organized financial institution
 25 ~~association, bank, savings bank, or credit union.~~

26 (h) "Financial institution" means a state or federal
 27 savings or thrift association, bank, savings bank, trust
 28 company, international bank agency, international banking
 29 organization, international branch, international
 30 representative office, ~~or~~ international administrative office,
 31 or credit union, or an agreement corporation operating under

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1 s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq.,
2 or an Edge Act corporation organized under s. 25(a) of the
3 Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

4 (t) "Debt-cancellation products" means loan, lease, or
5 retail installment contract terms, or modifications or addenda
6 to loan, lease, or retail installment contracts, under which a
7 creditor agrees to cancel or suspend all or part of a
8 customer's obligation to make payments upon the occurrence of
9 specified events and includes, but is not limited to,
10 debt-cancellation contracts, debt-suspension agreements, and
11 guaranteed asset-protection contracts offered by financial
12 institutions, insured depository institutions, as defined in
13 12 U.S.C. s. 1813(c), and subsidiaries of such institutions.

14 Section 9. Subsection (1) of section 655.79, Florida
15 Statutes, is amended to read:

16 655.79 Deposits and accounts in two or more names;
17 presumption as to vesting on death.--

18 (1) Unless otherwise expressly provided in a contract,
19 agreement, or signature card executed in connection with the
20 opening or maintenance of an account, including a certificate
21 of deposit, a deposit account in the names of two or more
22 persons shall be presumed to have been intended by such
23 persons to provide that, upon the death of any one of them,
24 all rights, title, interest, and claim in, to, and in respect
25 of such deposit account, less all proper setoffs and charges
26 in favor of the institution, vest in the surviving person or
27 persons. Any deposit or account made in the name of two
28 persons who are husband and wife shall be considered a tenancy
29 by the entirety unless otherwise specified in writing.

30 Section 10. Section 655.947, Florida Statutes, is
31 created to read:

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1 655.947 Debt-cancellation products.--

2 (1) Debt-cancellation products may be offered, and a
3 fee may be charged, by financial institutions and subsidiaries
4 of financial institutions subject to this section and the
5 rules and orders of the commission or office. As used in this
6 section, the term "financial institutions" includes those
7 institutions defined in s. 655.005(1), insured depository
8 institutions, as defined in 12 U.S.C. s. 1813, and
9 subsidiaries of these institutions.

10 (2) A financial institution must manage the risks
11 associated with debt-cancellation products in accordance with
12 prudent safety and soundness principles. A financial
13 institution must establish and maintain effective
14 risk-management and control processes over its
15 debt-cancellation products and programs. These processes must
16 include appropriate recognition and financial reporting of
17 income, expenses, assets, and liabilities, and appropriate
18 treatment of all expected and unexpected losses associated
19 with the products. Each financial institution should also
20 assess the adequacy of its internal control and risk-
21 mitigation activities in view of the nature and scope of its
22 debt-cancellation products and programs.

23 (3) The commission shall adopt rules pursuant to ss.
24 120.536(1) and 120.54 to administer this section, which rules
25 must be consistent with 12 C.F.R. part 37, as amended.

26 (4) For purposes of this section and any rules adopted
27 pursuant to this section, a periodic payment option is not
28 required to be offered for any debt-cancellation product
29 designed to protect a customer against a deficiency between
30 the outstanding loan or lease amount and the value of the
31 motor vehicle that is used as collateral for the loan or

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1 lease.

2 Section 11. Section 655.954, Florida Statutes, is
3 amended to read:

4 655.954 Financial institution loans; credit cards.--

5 (1) Notwithstanding any other provision of law, a
6 financial institution shall have the power to make loans or
7 extensions of credit to any person on a credit card or
8 overdraft financing arrangement and to charge, in any billing
9 cycle, interest on the outstanding amount at a rate that is
10 specified in a written agreement, between the financial
11 institution and borrower, governing the credit card account.
12 Such credit card agreement may modify any terms or conditions
13 of such credit card account upon prior written notice of such
14 modification as specified by the terms of the agreement
15 governing the credit card account or by the Truth in Lending
16 Act, 15 U.S.C. ss. 1601 et seq as amended, and the rules and
17 regulations adopted thereunder. Any such notice provided by a
18 financial institution shall specify that the borrower has the
19 right to surrender the credit card whereupon the borrower
20 shall have the right to continue to pay off the borrower's
21 credit card account in the same manner and under the same
22 terms and conditions as then in effect. The borrower's
23 failure to surrender the credit card prior to the
24 modifications becoming effective shall constitute a consent to
25 the modifications.

26 (2) In conjunction with entering into any contract or
27 agreement for a loan, line of credit, or loan extension, a
28 financial institution, an insured depository institution, as
29 defined in 12 U.S.C. s. 1813, and subsidiaries of these
30 institutions, may offer, for a fee or otherwise, optional
31 debt-cancellation products under s. 655.947 and the rules

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1 adopted under that section. The financial institution may not
2 require a person to purchase a debt-cancellation product as a
3 condition for a loan, line of credit, or loan extension.

4 ~~(3)(2)~~ For the purpose of this section, the term:

5 (a) "Billing cycle" has the same meaning as ascribed
6 to it under the federal Truth in Lending Act, as amended, 15
7 U.S.C. ss. 1601 et seq., and the associated regulations which
8 are in effect as of June 30, 2007 ~~1992~~.

9 (b) "Interest" means those charges considered a
10 finance charge under the federal Truth in Lending Act, as
11 amended, 15 U.S.C. ss. 1601 et seq., and the associated
12 regulations which are in effect as of June 30, 2007 ~~1992~~.

13 Section 12. Subsection (2) of section 658.21, Florida
14 Statutes, is amended to read:

15 658.21 Approval of application; findings
16 required.--The office shall approve the application if it
17 finds that:

18 (2) The proposed capitalization is in such amount as
19 the office deems adequate, but in no case may the total
20 capital accounts at opening for a bank be less than ~~\$8~~ \$6
21 million ~~if the proposed bank is to be located in any county~~
22 ~~which is included in a metropolitan statistical area, or \$4~~
23 ~~million if the proposed bank is to be located in any other~~
24 ~~county~~. The total capital accounts at opening for a trust
25 company may not be less than \$3 ~~\$2~~ million. The organizing
26 directors of the proposed bank must directly own or control at
27 least the lesser of \$3 million or 25 percent of the bank's
28 total capital accounts proposed at opening as approved by the
29 office. If the proposed bank will be owned by a single-bank
30 holding company, the organizing directors of the proposed bank
31 collectively must directly own or control at least an amount

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1 of the single-bank holding company's capital accounts equal to
 2 the lesser of \$3 million or 25 percent of the proposed bank's
 3 total capital accounts proposed at opening as approved by the
 4 office. If the proposed bank will be owned by an existing
 5 multibank holding company, the proposed directors must have a
 6 substantial capital investment in the holding company, as
 7 determined by the office. However, the investment is not
 8 required to exceed the amount otherwise required for a
 9 single-bank holding company application. ~~Of total capital~~
 10 ~~accounts at opening, as noted in the application or amendments~~
 11 ~~or changes to the application, at least 25 percent of the~~
 12 ~~capital shall be directly owned or controlled by the~~
 13 ~~organizing directors of the bank. Directors of banks owned by~~
 14 ~~single-bank holding companies shall have direct ownership or~~
 15 ~~control of at least 25 percent of the bank holding company's~~
 16 ~~capital accounts.~~ The office may disallow illegally obtained
 17 currency, monetary instruments, funds, or other financial
 18 resources from the capitalization requirements of this
 19 section. The proposed stock offering must comply with the
 20 requirements of ss. 658.23-658.25 and 658.34-658.37.

21 Section 13. Section 658.34, Florida Statutes, is
 22 amended to read:

23 658.34 Shares of capital stock.--

24 (1) A bank or trust company shall issue its capital
 25 stock with par value of not ~~more than \$100 nor~~ less than \$1
 26 per share.

27 (2) A ~~No~~ bank or trust company may not ~~shall~~ issue any
 28 shares of capital stock at a price less than par value, and
 29 prior to issuance, any such shares must be fully paid in cash.

30 (3) With the approval of the office, a bank or trust
 31 company may issue preferred stock of one or more classes in an

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1 amount and with a par value as approved by the office.

2 (4) With the approval of the office, a bank or trust
3 company may issue less than all the number of shares of any of
4 its capital stock authorized by its articles of incorporation.
5 Such authorized but unissued shares may be issued only for the
6 following purposes:

7 (a) To provide for stock options and warrants as
8 provided in s. 658.35.

9 (b) To declare or pay a stock dividend; however, any
10 such stock dividend must comply with ~~the provisions of this~~
11 section and s. 658.37.

12 (c) To increase the capital of the bank or trust
13 company, ~~with the approval of the office.~~

14 (5) A financial institution may not issue or sell
15 stock of the same class which creates different rights,
16 options, warrants, or benefits among the purchasers or
17 stockholders of that class of stock. This subsection does not
18 prohibit the financial institution from creating uniform
19 restrictions on the transfer of stock as permitted in s.
20 607.0627.

21 Section 14. Subsection (2) of section 658.36, Florida
22 Statutes, is amended to read:

23 658.36 Changes in capital.--

24 (2) A ~~Any~~ state bank or trust company may, ~~with the~~
25 ~~approval of the office,~~ provide for an increase in its capital
26 stock only if the state bank or trust company files a written
27 notice 15 days before the increase.

28 Section 15. Subsections (2) and (5) of section 658.44,
29 Florida Statutes, are amended to read:

30 658.44 Approval by stockholders; rights of dissenters;
31 preemptive rights.--

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1 (2) Written notice of the meeting of, or proposed
2 written consent action by, the stockholders of each
3 constituent state bank or state trust company shall be given
4 to each stockholder of record, whether or not entitled to
5 vote, and whether the meeting is an annual or a special
6 meeting or whether the vote is to be by written consent
7 pursuant to s. 607.0704, and the notice shall state that the
8 purpose or one of the purposes of the meeting, or of the
9 proposed action by the stockholders without a meeting, is to
10 consider the proposed plan of merger and merger agreement.
11 Except to the extent provided otherwise with respect to
12 stockholders of a resulting bank or trust company pursuant to
13 subsection (7), the notice shall also state that dissenting
14 stockholders, including those not entitled to vote but
15 dissenting as set forth in paragraph (c), will be entitled to
16 payment in cash of the value of only those shares held by the
17 stockholders:

18 (a) Which at a meeting of the stockholders are voted
19 against the approval of the plan of merger and merger
20 agreement;

21 (b) As to which, if the proposed action is to be by
22 written consent of stockholders pursuant to s. 607.0704, such
23 written consent is not given by the holder thereof; or

24 (c) With respect to which the holder thereof has given
25 written notice to the constituent state bank or trust company,
26 at or prior to the meeting of the stockholders or on or prior
27 to the date specified for action by the stockholders without a
28 meeting pursuant to s. 607.0704 in the notice of such proposed
29 action, that the stockholder dissents from the plan of merger
30 and merger agreement, and which shares are not voted for
31 approval of the plan or written consent given under paragraph

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1 (a) or paragraph (b).

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3 Hereinafter in this section, the term "dissenting shares"
 4 means and includes only those shares, which may be all or less
 5 than all the shares of any class owned by a stockholder,
 6 described in paragraphs (a), (b), and (c).

7 (5) The fair value, as defined in s. 607.1301(4), of
 8 dissenting shares of each constituent state bank or state
 9 trust company, the owners of which have not accepted an offer
 10 for such shares made pursuant to subsection (3), shall be
 11 determined as of the effective date of the merger under ss.
 12 607.1326-607.1331, except as the procedures for notice and
 13 demand are otherwise provided in this section. ~~by three~~
 14 ~~appraisers, one to be selected by the owners of at least~~
 15 ~~two-thirds of such dissenting shares, one to be selected by~~
 16 ~~the board of directors of the resulting state bank, and the~~
 17 ~~third to be selected by the two so chosen. The value agreed~~
 18 ~~upon by any two of the appraisers shall control and be final~~
 19 ~~and binding on all parties. If, within 90 days from the~~
 20 ~~effective date of the merger, for any reason one or more of~~
 21 ~~the appraisers is not selected as herein provided, or the~~
 22 ~~appraisers fail to determine the value of such dissenting~~
 23 ~~shares, the office shall cause an appraisal of such dissenting~~
 24 ~~shares to be made which will be final and binding on all~~
 25 ~~parties. The expenses of appraisal shall be paid by the~~
 26 ~~resulting state bank or trust company.~~

27 Section 16. This act shall take effect October 1,
 28 2007.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to financial services; amending

8 s. 520.02, F.S.; defining the term "guaranteed

9 asset protection products"; amending s. 520.07,

10 F.S.; setting forth requirements and

11 prohibitions for selling guaranteed asset

12 protection products; amending s. 520.35, F.S.;

13 revising the fee for a delinquency charge;

14 amending s. 624.605, F.S.; including

15 debt-cancellation products under casualty

16 insurance; providing a definition; authorizing

17 certain entities to offer debt-cancellation

18 products under certain circumstances;

19 specifying that such products are not

20 insurance; amending ss. 627.553 and 627.679,

21 F.S.; revising limitations on the amount of

22 authorized insurance for debtors; amending s.

23 627.681, F.S.; revising a limitation on the

24 term of credit disability insurance; amending

25 s. 655.005, F.S.; redefining the terms "federal

26 financial institution" and "financial

27 institution"; defining the term

28 "debt-cancellation products"; amending s.

29 655.79, F.S.; providing that a deposit account

30 by a husband and wife is a tenancy by the

31 entirety; creating s. 655.947, F.S.; providing

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1 a definition; authorizing financial
2 institutions to offer debt-cancellation
3 products; authorizing a fee; requiring the
4 Financial Services Commission to adopt rules;
5 providing that a periodic payment option is not
6 required for certain debt-cancellation
7 products; amending s. 655.954, F.S.;
8 authorizing a financial institution to offer a
9 debt-cancellation product but not as a
10 requirement of receiving a loan; amending s.
11 658.21, F.S.; revising an ownership of capital
12 criterion for capital accounts at financial
13 institutions and one-bank holding companies;
14 amending s. 658.34, F.S.; prohibiting certain
15 stock issuance practices for banks; amending s.
16 658.36, F.S.; requiring a state bank or trust
17 company to file a written notice before
18 increasing its capital stock; amending s.
19 658.44, F.S.; revising criteria for determining
20 the value of dissenting shares of certain
21 entities; providing an effective date.

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