

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7087 (PCB JEC 07-01A) Financial Institutions
SPONSOR(S): Jobs & Entrepreneurship Council &
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Jobs & Entrepreneurship Council	15 Y, 0 N	Holt	Thorn
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates a new insurance product that enables insurers to directly insure, rather than reinsure, banks and other entities against losses resulting from the writing of debt cancellation or debt suspension agreements.

Debt cancellation products are lending transactions between a financial institution and a debtor wherein the financial institution agrees to cancel or suspend the debt upon the occurrence of certain events. The risk of default due to such events, i.e. 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.

Debt cancellation products are not regulated by the Office of Insurance Regulation. They are not regulated by banking regulators, with the exception for some regulation with regards to the sale of the agreements. According to information supplied to staff, almost every state recognizes and approves this type of insurance product as a viable way of protecting the financial institution against the business risk of debt cancellation products.

The bill has a minimal impact to the private sector.

This act takes effect October 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: The bill provides an increase to the stability of families in the event of unforeseen events.

Safeguard individual liberty: The bill increases the products offered by financial institutions and other business entities.

B. EFFECT OF PROPOSED CHANGES:

Sections 1-2 of the bill provide amendments to Part I, Chapter 520, F.S., Motor Vehicle Sales Finance

Section 1: The bill amends s. 520.02, F.S., to renumber subsections and to create a definition for the term "Debt Cancellation Product" as follows:

(19) "Debt Cancellation Product" 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 cancel or suspend all or part of a customer's obligation to make payments upon the occurrence of specified events and includes, but is not limited to, debt cancellation contracts, debt suspension agreements, and guaranteed asset protection.

Section 2: The bill amends s. 520.07, F.S., relating to Requirements and prohibitions as to retail installment contracts.—

The bill adds subsection (11) to section 520.07, F.S., to read in part:

(11) In conjunction with entering into any new retail installment contract or contract for a loan, a motor vehicle retail installment seller as defined in 520.02(10), sales finance company defined in s. 520.02(18), or retail lessors, as defined in s. 521.003(8) and their assignees may offer, for a fee or otherwise, optional debt cancellation products in accordance with this chapter and the rules adopted by the Commission. The motor vehicle retail installment seller, sales finance company, or retail lessor may not require the purchase of a debt cancellation product as a condition for making the loan.

In order to offer any debt cancellation products, the described entities must comply with the following:

1. The cost of any debt cancellation product or products, with respect to any loan covered by the debt cancellation product, shall not exceed the amount of the indebtedness.
2. Any contract or agreement pertaining to a debt cancellation product is governed pursuant to this section.
3. The debt cancellation products are considered an obligation of any person that purchases or otherwise acquires the loan contract covering these products.

The Financial Services Commission is granted rulemaking authority to administer this subsection. Further, the rules shall be limited to prohibited practices and prohibited contract terms, disclosure and refund requirements, and payment of fees.

Section 3 of the bill amends Part II, Chapter 520, F.S., Retail Installment Sales

Section 3: The bill amends s. 520.35, F.S., relating to Revolving accounts.--.

The bill increases the maximum delinquency fee charge for revolving credit accounts from \$10 to \$25. The fee increase correlates the minimum charge pursuant s. 832.10, F.S., relating to a service charge for dishonored checks and pursuant s. 832.08, F.S., relating to the state attorney bad check diversion program fee.

Section 4 of the bill amends Part V, Chapter 624, F.S., Kinds Of Insurance; Limits of Risk; Reinsurance

Section 4: The bill adds paragraph (r) to subsection (1) of section 624.605, F.S., to read in part:

(1) "Casualty insurance" includes:

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

This amendment provides that creditors may purchase insurance to protect against the risk of financial loss from the use of debt cancellation products. Also, the bill defines the term "debt cancellation products" for purposes of this paragraph.

As defined in this paragraph, debt cancellation products may be offered by financial institutions, as defined in s. 655.005(1)(h), including insured depository institutions as defined in 12 U.S.C. s. 1813(c) and subsidiaries of such institutions, as provided in the financial institution codes. Also, this product may be offered by other business entities as may be specifically authorized by law, i.e. motor vehicle retail installment sellers, sales finance companies, or retail lessors. Moreover, these products do not constitute insurance for purposes of the Florida Insurance Code.

Sections 5-7 of the bill amend Chapter 627, Part V, Group Life Insurance Policies and Part IX, Credit Life and Disability Insurances

Sections 5-6: The bill amends ss. 627.553, and 627.679, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased. Additionally, the amendment to s. 627.679, F.S., further provides that the total amount of credit life insurance on the life of any debtor with respect to any loan or loans covered in one or more insurance policies shall at no time exceed the amount of the indebtedness.

Section 7: Amends s. 627.681, F.S., the bill provides that credit disability insurance may be purchased for the entire term of the loan.

Sections 8-11 of the bill amend TITLE XXXVIII, Banks and Banking, Chapter 655, Financial Institutions Generally

Section 8: Amends s. 655.005 by clarifying the definition of a financial institution to include the various entities referenced throughout the Financial Institutions Codes.

This section also adds a definition for debt cancellation products to the Financial Institutions Codes. These products are currently authorized under an order of general application issued by the Office of Financial Regulation in February 2006.

Section 9: Amends s. 655.79, F.S., in conformance to the Florida Supreme Court's recommendation that the section be clarified. See Beal Bank v. Almand and Associates, 780 So. 2d 45 (Fla. 2001). The bill provides that:

Any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing.

Section 10: The bill creates 655.947, F.S., relating to debt cancellation products. Financial institutions, and their subsidiaries, are permitted to sell debt cancellation products in Florida, subject to the rules and orders of the Financial Service Commission. The Financial Service Commission is granted rulemaking authority to administer this section.

Section 11: Amends 655.954, F.S., to reference s. 655.947, F.S., which is a new section created under the bill that authorizes the sale of debt cancellation products in connection with loans. Noteworthy, this the provision that a financial institution may not require⁴ the purchase of a debt cancellation product as a condition for making the loan, line of credit, or loan extension. Other amendments in this section correct cross references.

Sections 12-15 of the bill amend Chapter 658, Banks and Trust Companies

Section 12: Section 658.21, F.S., relates to the organization of new banks and trust companies. Current law requires a bank to have a minimum capital requirement of either \$4 million or \$6 million depending upon the physical location of the new institution. This section is being amended to raise this requirement to \$8 million dollars for all new institutions, regardless of location. For the formation of a new trust company, current law requires \$2 million in capital. The bill increases this requirement to \$3 million.

The bill also provides that the organizing directors of a proposed bank must own or control "at least the lesser of \$3 million or 25% of the bank's total capital accounts proposed at the opening" as approved by the Office of Financial Regulation (Office). Currently the requirement is 25% of the bank's total capital accounts. A parallel provision is included for those situations in which a single-bank holding company is formed at the same time as the formation of the new bank.

Current law does not address minimum requirements for ownership or control of capital accounts by directors of a new bank in cases when the proposed bank will be owned by an existing multi-bank holding company. The bill provides that when the proposed bank will be owned by an existing multi-bank holding company, the proposed directors must have a substantial investment in the holding company as determined by the Office; however, the investment required by the Office cannot exceed the lesser of 25% or 3 million dollars, which is the standard being proposed in the bill for a one-bank holding company application.

The bill clarifies that stock offerings to raise capital for a new bank or trust company are subject to the same limitations/requirements as those followed by existing financial institutions.

Section 13: Currently, banks and trust companies must obtain approval from the Office when they desire to increase capital. The bill eliminates Office approval, but requires that advance notice be provided to the Office under s. 658.36.

The bill creates a new subsection (5) to codify existing Office practice. The bill provides that no stock of the same class may be issued or sold by a financial institution that creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. However, this does not prohibit a financial institution from creating uniform restrictions on the transfer of stock as permitted under the provisions dealing with corporations in general under s. 607.0627, F.S.

This change will provide fairness to all shareholders. This provision also allows flexibility for a financial institution to be structured as an S-corporation or limited liability company and restricts stock transfers that would otherwise jeopardize that corporate structure.

Section 14: This provision is the companion to the changes being made in s. 658.34, regarding increasing capital. The Office's approval is being eliminated under amendments to s. 658.34; however, the financial institution under this section must provide the Office at least 15 days advance notice of its intent to increase its capital stock.

Section 15: The bill clarifies procedures as to who can assert dissenters' rights and the manner of determining fair value of their shares. The bill removes the Office from the process when appraisers disagree as to value. Under the bill, this determination will now be made by the court.

Section 16: Provides for an October 1, 2007 effective date.

C. SECTION DIRECTORY:

- Section 1: Amends s. 520.02, F.S., to create a definition for the term "Debt Cancellation Product."
Section 2: Amends s. 520.07, F.S., relating to requirements and prohibitions as to retail installment contracts.
Section 3: Amends s. 520.35, F.S., relating to revolving accounts.
Section 4: Amends s. 624.605, F.S. relating to kinds of insurance.
Section 5: Amends s. 627.553, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased.
Section 6: Amends s. Amends 627.679, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased. Additionally, the total amount of credit life insurance on the life of any debtor shall not exceed the amount of the indebtedness.
Section 7: Amends s. 627.681, F.S., the bill provides that credit disability insurance may be purchased for the entire term of the loan.
Section 8: Amends s. 655.005 by clarifying the definition of a financial institution. The bill adds a definition for debt cancellation products to the Financial Institutions Codes.
Section 9: Amends s. 655.79, F.S., in conformance to the Florida Supreme Court's recommendation. The bill provides that clarifies accounts relating to husband and wife.
Section 10: The bill creates 655.947, F.S., relating to debt cancellation products. Financial institutions, and their subsidiaries, are permitted to sell debt cancellation products. The Financial Service Commission is granted rulemaking authority.
Section 11: Amends 655.954, F.S., to reference s. 655.947, F.S. Also, the bill provides that purchase of a debt cancellation product in not a condition for making the loan, line of credit, or loan extension.
Section 12: Section 658.21, F.S., relates to the organization of new banks and trust companies and to stock offerings.
Section 13: Amends s. 658.34, F.S., eliminates Office approval to increase capital, but requires that advance notice be provided to the Office under s. 658.36. The bill also creates a new subsection (5) to codify certain existing Office practice. This provision also allows flexibility relating to S-corporation or limited liability company structure.
Section 14: This provision is the companion to the changes being made in s. 658.34, regarding increasing capital and 15 days advance notice of its intent to increase its capital stock.
Section 15: The bill clarifies procedures as to who can assert dissenters' rights and the manner of determining fair value of their shares.
Section 16: Provides for an October 1, 2007 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Minimal impact to the private sector.

D. FISCAL COMMENTS:

Minimal impact to private sector due to increased delinquency fees for revolving credit accounts from \$10 to \$25.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Rule-making authority is granted to the Financial Services Commission to administer Section 2 and Section 10 of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Jobs & Entrepreneurship Council adopted three amendments, two amendments to a strike-all amendment.

The first amendment to amendment removed section 6 from the bill. Section 6 would have prohibited a financial institution from establishing a branch in an affiliate if the affiliate engages in retail commercial business.

The second amendment to amendment authorized certain business entities to offer debt cancellation products in connection with retail installment loans. It also increased the maximum delinquency fee charge for revolving credit accounts from \$10 to \$25. The Office of Financial Regulation was granted rulemaking authority.

The strike-all amendment differs from the bill primarily by amending s. 655.005 to clarify the definition of a financial institution. The amendment added a definition for debt cancellation products to the Financial Institutions Codes. It also created 655.947, F.S., permitting financial institutions, and their subsidiaries to sell debt cancellation products. The Financial Service Commission was also granted rulemaking authority. The amendment provided that purchase of a debt cancellation product is not a condition for making a loan, line of credit, or loan extension.

Further, amendments in the strike-all related to the organization of new banks and trust companies and to stock offerings. An amendment was made to s. 658.34, F.S., eliminating the requirement that the Office of Financial Regulation (Office) approve increases in capital, but requires that advance notice be provided. Other provisions were included that codified certain existing Office practices and allowed flexibility relating to S-corporation or limited liability company structure.