A bill to be entitled

An act relating to financial services; amending s. 520.02, F.S.; defining the term "debt cancellation product"; amending s. 520.07, F.S.; authorizing certain entities to offer optional debt cancellation products under certain circumstances; prohibiting such entities from requiring purchase of such products as a condition for certain financial transactions; providing requirements for offering such products; authorizing the Financial Services Commission to adopt rules; providing limitations; amending s. 520.35, F.S.; revising a fee relating to certain revolving accounts; amending s. 624.605, F.S.; including debt cancellation products under casualty insurance; providing a definition; authorizing certain entities to offer debt cancellation products under certain circumstances; specifying such products as not constituting insurance; amending ss. 627.553 and 627.679, F.S.; revising limitations on the amount of authorized insurance for debtors; amending s. 627.681, F.S.; revising a limitation on the term of credit disability insurance; amending s. 655.005, F.S.; revising and providing definitions; amending s. 655.79, F.S.; specifying certain accounts as tenancies by the entireties; creating s. 655.947, F.S.; authorizing financial institutions to offer debt cancellation products; authorizing a fee; providing a definition; providing requirements for financial institutions relating to debt cancellation products; requiring the Financial Services Commission to adopt

rules; amending s. 655.954, F.S.; authorizing certain institutions to offer optional debt cancellation products with certain financial transactions; prohibiting requiring such products as a condition of such transactions; updating definitions; amending s. 658.21, F.S.; revising ownership requirements for capital accounts at opening for a bank or trust company; providing capital investment requirements for owners of certain holding companies; amending s. 658.34, F.S.; revising requirements for shares of capital stock of banks and trust companies; providing restrictions on issuance or sale of certain stock under certain circumstances; amending s. 658.36, F.S.; requiring a state bank or trust company to file a written notice before increasing its capital stock; amending s. 658.44, F.S.; revising certain notice requirements relating to dissenting stockholders; revising criteria for determining the value of dissenting shares of certain entities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (5) through (19) of section 520.02, Florida Statutes, are renumbered as subsections (6) through (20), respectively, and new subsection (5) is added to that section to read:

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

(5) "Debt cancellation product" means a loan, lease, or

retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, 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. Subsection (11) is added to section 520.07, Florida Statutes, to read:

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

(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 s. 520.02, sales finance company as defined in s. 520.02, or retail lessor as defined in s. 521.003, and any assignee of such entities, 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, retail lessor, or assignee may not require the purchase of a debt cancellation product as a condition for making the loan.

(a) In order to offer any debt cancellation product, a motor vehicle retail installment seller, sales finance company, or retail lessor, and any assignee of such entities, shall comply with the following:

1. The cost of any debt cancellation product, 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 shall be governed by this section.

3. A debt cancellation product is considered an obligation of any person that purchases or otherwise acquires the loan contract covering such product.

(b) The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this subsection. The rules shall be limited to prohibited practices and prohibited contract terms, disclosure and refund requirements, and payment of fees.

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

520.35 Revolving accounts.--

(3) Notwithstanding the provisions of any other law, the seller under a revolving account may charge, receive, and collect a finance charge which may not exceed 15 cents per $10 per month, computed on all amounts unpaid under the revolving account from month to month (which need not be a calendar month) or other regular period, and a delinquency charge not to exceed $25 ~~$10~~ for each payment in default for a period of not less than 10 days, if the charge is agreed upon, in writing, between the parties before imposing any charge. If the amount of the finance charge so computed is less than $1 for any such month, a finance charge of $1 for any such month may be charged, received, and collected. If the regular period is other than such monthly period or if the unpaid amount is less than or greater than $5, the permitted finance charge shall be computed proportionately. Such finance charge may be computed for all

unpaid balances within a range of not in excess of $10 on the basis of the median amount within such range, if as so computed such finance charge is applied to all unpaid balances within such range.

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

624.605 "Casualty insurance" defined.--

(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.

1. For purposes of this paragraph, the term "debt cancellation products" means loan, lease, or retail installment contract terms, or modifications 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 contracts.

2. 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, or by other business entities as may be specifically authorized by law, and such products shall not constitute insurance for purposes of the Florida Insurance Code.

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

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

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

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

627.679 Amount of insurance; disclosure.--

(1)

(b) 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 ~~$50,000 with any one creditor, except that loans not exceeding 1 year's duration shall not be subject to such limits, and on such loans not exceeding 1 year's duration, the limits of coverage shall not exceed $50,000 with any one insurer~~.

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

627.681 Term and evidence of insurance.--

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

Section 8. Paragraphs (g) and (h) of subsection (1) of section 655.005, Florida Statutes, are amended, and paragraph (t) is added to that subsection, to read:

655.005 Definitions.--

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

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

(h) "Financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking organization, international branch, international representative office, ~~or~~ international administrative office, or credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

(t) "Debt cancellation products" means loan, lease, or retail installment contract terms, or modifications 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 contracts offered by financial institutions, insured depository institutions as defined in 12 U.S.C. s. 1813(c), and subsidiaries of such institutions.

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

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

(1) Unless otherwise expressly provided in a contract, agreement, or signature card executed in connection with the opening or maintenance of an account, including a certificate of deposit, a deposit account in the names of two or more persons shall be presumed to have been intended by such persons to provide that, upon the death of any one of them, all rights, title, interest, and claim in, to, and in respect of such deposit account, less all proper setoffs and charges in favor of the institution, vest in the surviving person or persons. 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. Section 655.947, Florida Statutes, is created to read:

655.947 Debt cancellation products.--

(1) Debt cancellation products may be offered, and a fee may be charged, by financial institutions and subsidiaries of

financial institutions subject to the provisions of this section and the rules and orders of the commission or office. As used in this section, the term "financial institutions" includes those defined in s. 655.005(1)(h), insured depository institutions as defined in 12 U.S.C. s. 1813, and subsidiaries of such institutions.

(2) A financial institution shall manage the risks associated with debt cancellation products in accordance with prudent safety and soundness principles. A financial institution shall establish and maintain effective risk management and control processes over its debt cancellation products and programs. Such processes shall include appropriate recognition and financial reporting of income, expenses, assets, and liabilities and appropriate treatment of all expected and unexpected losses associated with the products. Each financial institution shall also assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation products and programs.

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

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

655.954 Financial institution loans; credit cards.--

(1) Notwithstanding any other provision of law, a financial institution shall have the power to make loans or extensions of credit to any person on a credit card or overdraft financing arrangement and to charge, in any billing cycle,

interest on the outstanding amount at a rate that is specified in a written agreement, between the financial institution and borrower, governing the credit card account. Such credit card agreement may modify any terms or conditions of such credit card account upon prior written notice of such modification as specified by the terms of the agreement governing the credit card account or by the Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended, and the rules and regulations adopted under such act. Any such notice provided by a financial institution shall specify that the borrower has the right to surrender the credit card whereupon the borrower shall have the right to continue to pay off the borrower's credit card account in the same manner and under the same terms and conditions as then in effect. The borrower's failure to surrender the credit card prior to the modifications becoming effective shall constitute a consent to the modifications.

(2) In conjunction with entering into any contract or agreement for a loan, line of credit, or loan extension, a financial institution, insured depository institution as defined in 12 U.S.C. s. 1813, and subsidiaries of such institutions may offer, for a fee or otherwise, optional debt cancellation products pursuant to s. 655.947 and rules adopted under that section. The financial institution may not require the purchase of a debt cancellation product as a condition for making the loan, line of credit, or loan extension.

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

(a) "Billing cycle" has the same meaning as ascribed to it under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et

seq., as amended, and the associated regulations which are in effect as of June 30, 2007 ~~1992~~.

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

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

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

(2) The proposed capitalization is in such amount as the office deems adequate, but in no case may the total capital accounts at opening for a bank be less than $8 ~~$6~~ million ~~if the proposed bank is to be located in any county which is included in a metropolitan statistical area, or $4 million if the proposed bank is to be located in any other county~~. The total capital accounts at opening for a trust company may not be less than $3 ~~$2~~ million. The organizing directors of the proposed bank shall directly own or control at least the lesser of $3 million or 25 percent of the bank's total capital accounts proposed at opening as approved by the office. When the proposed bank will be owned by a single-bank holding company, the organizing directors of the proposed bank collectively shall directly own or control at least an amount of the single-bank holding company's capital accounts equal to the lesser of $3 million or 25 percent of the proposed bank's total capital accounts proposed at opening as approved by the office. When the proposed bank will be owned by an existing multi-bank holding

company, the proposed directors shall have a substantial capital investment in the holding company, as determined by the office; however, such investment shall not be required to exceed the amount otherwise required for a single-bank holding company application. ~~Of total capital accounts at opening, as noted in the application or amendments or changes to the application, at least 25 percent of the capital shall be directly owned or controlled by the organizing directors of the bank. Directors of banks owned by single bank holding companies shall have direct ownership or control of at least 25 percent of the bank holding company's capital accounts.~~ The office may disallow illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section. The proposed stock offering must comply with the requirements of ss. 658.23-659.25 and ss. 658.34-658.37.

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

658.34 Shares of capital stock.--

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

(2) No bank or trust company shall issue any shares of capital stock at a price less than par value, and prior to issuance, any such shares must be fully paid in cash.

(3) With the approval of the office, a bank or trust company may issue preferred stock of one or more classes in an amount and with a par value as approved by the office.

(4) With the approval of the office, a bank or trust company may issue less than all the number of shares of any of

its capital stock authorized by its articles of incorporation. Such authorized but unissued shares may be issued only for the following purposes:

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

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

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

(5) Stock of the same class may not be issued or sold by the financial institution that creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. Such prohibition does not restrict the financial institution from creating uniform restrictions on the transfer of stock as permitted in s. 607.0627.

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

658.36 Changes in capital.--

(2) Any state bank or trust company may~~, with the approval of the office,~~ provide for an increase in its capital stock after filing a written notice at least 15 days prior to making such increase.

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

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

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

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

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

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

paragraph (a) or paragraph (b).

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

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

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