

1 A bill to be entitled
2 An act relating to financial services; amending s. 520.02,
3 F.S.; defining the term "guaranteed asset protection
4 product"; amending s. 520.07, F.S.; authorizing certain
5 entities to offer optional guaranteed asset protection
6 products under certain circumstances; prohibiting such
7 entities from requiring purchase of such products as a
8 condition for certain financial transactions; providing
9 requirements for offering such products; providing
10 limitations; amending s. 520.35, F.S.; revising a fee
11 relating to certain revolving accounts; amending s.
12 624.605, F.S.; including debt cancellation products under
13 casualty insurance; providing a definition; authorizing
14 certain entities to offer debt cancellation products under
15 certain circumstances; specifying such products as not
16 constituting insurance; amending ss. 627.553 and 627.679,
17 F.S.; revising limitations on the amount of authorized
18 insurance for debtors; amending s. 627.681, F.S.; revising
19 a limitation on the term of credit disability insurance;
20 amending s. 655.005, F.S.; revising and providing
21 definitions; amending s. 655.79, F.S.; specifying certain
22 accounts as tenancies by the entireties; creating s.
23 655.967, F.S.; requiring that state-funded endowments be
24 maintained in trust accounts in certain state banks;
25 creating s. 655.947, F.S.; authorizing financial
26 institutions to offer debt cancellation products;
27 authorizing a fee; providing a definition; providing
28 requirements for financial institutions relating to debt

29 cancellation products; requiring the Financial Services
30 Commission to adopt rules; specifying that periodic
31 payment options are not required to be offered for certain
32 debt cancellation products; amending s. 655.954, F.S.;
33 authorizing certain institutions to offer optional debt
34 cancellation products with certain financial transactions;
35 prohibiting requiring such products as a condition of such
36 transactions; updating definitions; amending s. 658.21,
37 F.S.; revising ownership requirements for capital accounts
38 at opening for a bank or trust company; providing capital
39 investment requirements for owners of certain holding
40 companies; amending s. 658.34, F.S.; revising requirements
41 for shares of capital stock of banks and trust companies;
42 providing restrictions on issuance or sale of certain
43 stock under certain circumstances; amending s. 658.36,
44 F.S.; requiring a state bank or trust company to file a
45 written notice before increasing its capital stock;
46 amending s. 658.44, F.S.; revising certain notice
47 requirements relating to dissenting stockholders; revising
48 criteria for determining the value of dissenting shares of
49 certain entities; providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Subsections (7) through (19) of section 520.02,
54 Florida Statutes, are renumbered as subsections (8) through
55 (20), respectively, and new subsection (7) is added to that
56 section to read:

57 520.02 Definitions.--In this act, unless the context or
58 subject matter otherwise requires:

59 (7) "Guaranteed asset protection product" means a loan,
60 lease, or retail installment contract term, or modification or
61 addendum to a loan, lease, or retail installment contract, under
62 which a creditor agrees to waive a customer's liability for
63 payment of some or all of the amount by which the debt exceeds
64 the value of the collateral. Such a product is not insurance for
65 purposes of the Florida Insurance Code. This subsection also
66 applies to all guaranteed asset protection products issued before
67 October 1, 2007.

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

70 520.07 Requirements and prohibitions as to retail
71 installment contracts.--

72 (11) In conjunction with entering into any new retail
73 installment contract or contract for a loan, a motor vehicle
74 retail installment seller as defined in s. 520.02, a sales
75 finance company as defined in s. 520.02, or a retail lessor as
76 defined in s. 521.003, and any assignee of such an entity, may
77 offer, for a fee or otherwise, optional guaranteed asset
78 protection products in accordance with this chapter. The motor
79 vehicle retail installment seller, sales finance company, retail
80 lessor, or assignee may not require the purchase of a guaranteed
81 asset protection product as a condition for making the loan. In
82 order to offer any guaranteed asset protection product, a motor
83 vehicle retail installment seller, sales finance company, or
84 retail lessor, and any assignee of such an entity, shall comply

85 with the following:

86 (a) The cost of any guaranteed asset protection product,
87 with respect to any loan covered by the guaranteed asset
88 protection product, shall not exceed the amount of the
89 indebtedness.

90 (b) Any contract or agreement pertaining to a guaranteed
91 asset protection product shall be governed by this section.

92 (c) A guaranteed asset protection product is considered an
93 obligation of any person that purchases or otherwise acquires
94 the loan contract covering such product.

95 (d) An entity providing guaranteed asset protection
96 products shall provide readily understandable disclosures that
97 explain in detail eligibility requirements, conditions, refunds,
98 and exclusions. The disclosures must provide that the purchase
99 of the product is optional. The disclosures must be in plain
100 language and of a typeface and size that are easy to read.

101 (e) An entity must provide a copy of the executed
102 guaranteed asset protection product contract to the buyer. The
103 entity bears the burden of proving the contract was provided to
104 the buyer.

105 (f) An entity may not offer a contract for a guaranteed
106 asset protection products that contains terms giving the entity
107 the right to unilaterally modify the contract unless:

108 1. The modification is favorable to the buyer and is made
109 without additional charge to the buyer; or

110 2. The buyer is notified of any proposed change and is
111 provided a reasonable opportunity to cancel the contract without
112 penalty before the change goes in effect.

113 (g) If a contract for a guaranteed asset protection
 114 product is terminated, the entity shall refund to the buyer any
 115 unearned fees paid for the contract unless the contract provides
 116 otherwise. A refund is not due to a consumer who receives a
 117 benefit under such product. In order to receive a refund, the
 118 buyer must notify the entity of the event terminating the
 119 contract and request a refund within 90 days after the
 120 occurrence of the event terminating the contract. An entity may
 121 offer a buyer a contract that does not provide for a refund only
 122 if the entity also offers that buyer a bona fide option to
 123 purchase a comparable contract that provides for a refund.

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

126 520.35 Revolving accounts.--

127 (3) Notwithstanding the provisions of any other law, the
 128 seller under a revolving account may charge, receive, and
 129 collect a finance charge which may not exceed 15 cents per \$10
 130 per month, computed on all amounts unpaid under the revolving
 131 account from month to month (which need not be a calendar month)
 132 or other regular period, and a delinquency charge not to exceed
 133 \$25 ~~\$10~~ for each payment in default for a period of not less
 134 than 10 days, if the charge is agreed upon, in writing, between
 135 the parties before imposing any charge. If the amount of the
 136 finance charge so computed is less than \$1 for any such month, a
 137 finance charge of \$1 for any such month may be charged,
 138 received, and collected. If the regular period is other than
 139 such monthly period or if the unpaid amount is less than or
 140 greater than \$5, the permitted finance charge shall be computed

141 proportionately. Such finance charge may be computed for all
142 unpaid balances within a range of not in excess of \$10 on the
143 basis of the median amount within such range, if as so computed
144 such finance charge is applied to all unpaid balances within
145 such range.

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

148 624.605 "Casualty insurance" defined.--

149 (1) "Casualty insurance" includes:

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

154 1. For purposes of this paragraph, the term "debt
155 cancellation products" means loan, lease, or retail installment
156 contract terms, or modifications to loan, lease, or retail
157 installment contracts, under which a creditor agrees to cancel
158 or suspend all or part of a customer's obligation to make
159 payments upon the occurrence of specified events and includes,
160 but is not limited to, debt cancellation contracts, debt
161 suspension agreements, and guaranteed asset protection
162 contracts. However, the term "debt cancellation products" does
163 not include title insurance as defined in s. 624.608.

164 2. Debt cancellation products may be offered by financial
165 institutions, as defined in s. 655.005(1)(h), including insured
166 depository institutions as defined in 12 U.S.C. s. 1813(c), and
167 subsidiaries of such institutions, as provided in the financial
168 institution codes, or by other business entities as may be

169 specifically authorized by law, and such products shall not
 170 constitute insurance for purposes of the Florida Insurance Code.

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

173 627.553 Debtor groups.--The lives of a group of
 174 individuals may be insured under a policy issued to a creditor
 175 or its parent holding company, or to a trustee or trustees or
 176 agent designated by two or more creditors, which creditor,
 177 holding company, affiliate, trustee or trustees, or agent shall
 178 be deemed the policyholder, to insure debtors of the creditor or
 179 creditors, subject to the following requirements:

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

187 Section 6. Paragraph (b) of subsection (1) of section
 188 627.679, Florida Statutes, is amended to read:

189 627.679 Amount of insurance; disclosure.--

190 (1)

191 (b) The total amount of credit life insurance on the life
 192 of any debtor with respect to any loan or loans covered in one
 193 or more insurance policies shall at no time exceed the amount of
 194 the indebtedness ~~\$50,000 with any one creditor, except that~~
 195 ~~loans not exceeding 1 year's duration shall not be subject to~~
 196 ~~such limits, and on such loans not exceeding 1 year's duration,~~

197 ~~the limits of coverage shall not exceed \$50,000 with any one~~
 198 ~~insurer.~~

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

201 627.681 Term and evidence of insurance.--

202 (2) The term of credit disability insurance on any debtor
 203 insured under this section shall not exceed the term of
 204 indebtedness 10 years, ~~and for credit transactions that exceed~~
 205 ~~60 months, coverage shall not exceed 60 monthly indemnities.~~

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

209 655.005 Definitions.--

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

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

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

224 (t) "Debt cancellation products" means loan, lease, or

225 retail installment contract terms, or modifications or addenda
226 to loan, lease, or retail installment contracts, under which a
227 creditor agrees to cancel or suspend all or part of a customer's
228 obligation to make payments upon the occurrence of specified
229 events and includes, but is not limited to, debt cancellation
230 contracts, debt suspension agreements, and guaranteed asset
231 protection contracts offered by financial institutions, insured
232 depository institutions as defined in 12 U.S.C. s. 1813(c), and
233 subsidiaries of such institutions. However, the term "debt
234 cancellation products" does not include title insurance as
235 defined in s. 624.608.

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

238 655.79 Deposits and accounts in two or more names;
239 presumption as to vesting on death.--

240 (1) Unless otherwise expressly provided in a contract,
241 agreement, or signature card executed in connection with the
242 opening or maintenance of an account, including a certificate of
243 deposit, a deposit account in the names of two or more persons
244 shall be presumed to have been intended by such persons to
245 provide that, upon the death of any one of them, all rights,
246 title, interest, and claim in, to, and in respect of such
247 deposit account, less all proper setoffs and charges in favor of
248 the institution, vest in the surviving person or persons. Any
249 deposit or account made in the name of two persons who are
250 husband and wife shall be considered a tenancy by the entirety
251 unless otherwise specified in writing.

252 Section 10. Section 655.967, Florida Statutes, is created

253 to read:

254 655.967 State-funded endowments.--Notwithstanding any
255 other provision of law, state-funded endowments shall be
256 maintained in trust accounts in national or state-chartered
257 banks situated in the state.

258 Section 11. Section 655.947, Florida Statutes, is created
259 to read:

260 655.947 Debt cancellation products.--

261 (1) Debt cancellation products may be offered, and a fee
262 may be charged, by financial institutions and subsidiaries of
263 financial institutions subject to the provisions of this section
264 and the rules and orders of the commission or office. As used in
265 this section, the term "financial institutions" includes those
266 defined in s. 655.005(1)(h), insured depository institutions as
267 defined in 12 U.S.C. s. 1813, and subsidiaries of such
268 institutions.

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

281 (3) The commission shall adopt rules pursuant to ss.
282 120.536(1) and 120.54 to administer this section, which rules
283 must be consistent with 12 C.F.R. part 37, as amended.

284 (4) For the purposes of this section and any rules adopted
285 pursuant to this section, a periodic payment option is not
286 required to be offered for any debt cancellation product
287 designed to protect a customer against a deficiency between the
288 outstanding loan or lease amount and the value of the motor
289 vehicle that is used as collateral for the loan or lease.

290 Section 12. Section 655.954, Florida Statutes, is amended
291 to read:

292 655.954 Financial institution loans; credit cards.--

293 (1) Notwithstanding any other provision of law, a
294 financial institution shall have the power to make loans or
295 extensions of credit to any person on a credit card or overdraft
296 financing arrangement and to charge, in any billing cycle,
297 interest on the outstanding amount at a rate that is specified
298 in a written agreement, between the financial institution and
299 borrower, governing the credit card account. Such credit card
300 agreement may modify any terms or conditions of such credit card
301 account upon prior written notice of such modification as
302 specified by the terms of the agreement governing the credit
303 card account or by the Truth in Lending Act, 15 U.S.C. ss. 1601
304 et seq., as amended, and the rules and regulations adopted under
305 such act. Any such notice provided by a financial institution
306 shall specify that the borrower has the right to surrender the
307 credit card whereupon the borrower shall have the right to
308 continue to pay off the borrower's credit card account in the

309 same manner and under the same terms and conditions as then in
 310 effect. The borrower's failure to surrender the credit card
 311 prior to the modifications becoming effective shall constitute a
 312 consent to the modifications.

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

322 (3)~~(2)~~ For the purpose of this section, the term:

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

327 (b) "Interest" means those charges considered a finance
 328 charge under the federal Truth in Lending Act, 15 U.S.C. ss.
 329 1601 et seq., as amended, and the associated regulations which
 330 are in effect as of June 30, 2007 ~~1992~~.

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

333 658.21 Approval of application; findings required.--The
 334 office shall approve the application if it finds that:

335 (2) The proposed capitalization is in such amount as the
 336 office deems adequate, but in no case may the total capital

337 | accounts at opening for a bank be less than \$8 ~~\$6~~ million ~~if the~~
338 | ~~proposed bank is to be located in any county which is included~~
339 | ~~in a metropolitan statistical area, or \$4 million if the~~
340 | ~~proposed bank is to be located in any other county.~~ The total
341 | capital accounts at opening for a trust company may not be less
342 | than \$3 ~~\$2~~ million. The organizing directors of the proposed
343 | bank shall directly own or control at least the lesser of \$3
344 | million or 25 percent of the bank's total capital accounts
345 | proposed at opening as approved by the office. When the proposed
346 | bank will be owned by a single-bank holding company, the
347 | organizing directors of the proposed bank collectively shall
348 | directly own or control at least an amount of the single-bank
349 | holding company's capital accounts equal to the lesser of \$3
350 | million or 25 percent of the proposed bank's total capital
351 | accounts proposed at opening as approved by the office. When the
352 | proposed bank will be owned by an existing multi-bank holding
353 | company, the proposed directors shall have a substantial capital
354 | investment in the holding company, as determined by the office;
355 | however, such investment shall not be required to exceed the
356 | amount otherwise required for a single-bank holding company
357 | application. ~~Of total capital accounts at opening, as noted in~~
358 | ~~the application or amendments or changes to the application, at~~
359 | ~~least 25 percent of the capital shall be directly owned or~~
360 | ~~controlled by the organizing directors of the bank. Directors of~~
361 | ~~banks owned by single bank holding companies shall have direct~~
362 | ~~ownership or control of at least 25 percent of the bank holding~~
363 | ~~company's capital accounts.~~ The office may disallow illegally
364 | obtained currency, monetary instruments, funds, or other

365 financial resources from the capitalization requirements of this
366 section. The proposed stock offering must comply with the
367 requirements of ss. 658.23-658.25 and ss. 658.34-658.37.

368 Section 14. Section 658.34, Florida Statutes, is amended
369 to read:

370 658.34 Shares of capital stock.--

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

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

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

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

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

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

389 (c) To increase the capital of the bank or trust company~~7~~
390 ~~with the approval of the office.~~

391 (5) Stock of the same class may not be issued or sold by
392 the financial institution that creates different rights,

393 options, warrants, or benefits among the purchasers or
 394 stockholders of that class of stock. Such prohibition does not
 395 restrict the financial institution from creating uniform
 396 restrictions on the transfer of stock as permitted in s.
 397 607.0627.

398 Section 15. Subsection (2) of section 658.36, Florida
 399 Statutes, is amended to read:

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

404 Section 16. Subsections (2) and (5) of section 658.44,
 405 Florida Statutes, are amended to read:

406 658.44 Approval by stockholders; rights of dissenters;
 407 preemptive rights.--

408 (2) Written notice of the meeting of, or proposed written
 409 consent action by, the stockholders of each constituent state
 410 bank or state trust company shall be given to each stockholder
 411 of record, whether or not entitled to vote, and whether the
 412 meeting is an annual or a special meeting or whether the vote is
 413 to be by written consent pursuant to s. 607.0704, and the notice
 414 shall state that the purpose or one of the purposes of the
 415 meeting, or of the proposed action by the stockholders without a
 416 meeting, is to consider the proposed plan of merger and merger
 417 agreement. Except to the extent provided otherwise with respect
 418 to stockholders of a resulting bank or trust company pursuant to
 419 subsection (7), the notice shall also state that dissenting
 420 stockholders, including stockholders not entitled to vote but

421 dissenting under paragraph (c), will be entitled to payment in
 422 cash of the value of only those shares held by the stockholders:

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

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

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

437
 438 Hereinafter in this section, the term "dissenting shares" means
 439 and includes only those shares, which may be all or less than
 440 all the shares of any class owned by a stockholder, described in
 441 paragraphs (a), (b), and (c).

442 (5) The fair value, as defined in s. 607.1301(4), of
 443 dissenting shares of each constituent state bank or state trust
 444 company, the owners of which have not accepted an offer for such
 445 shares made pursuant to subsection (3), shall be determined
 446 pursuant to ss. 607.1326-607.1331 except as the procedures for
 447 notice and demand are otherwise provided in this section as of
 448 the effective date of the merger ~~by three appraisers, one to be~~

449 ~~selected by the owners of at least two thirds of such dissenting~~
450 ~~shares, one to be selected by the board of directors of the~~
451 ~~resulting state bank, and the third to be selected by the two so~~
452 ~~chosen. The value agreed upon by any two of the appraisers shall~~
453 ~~control and be final and binding on all parties. If, within 90~~
454 ~~days from the effective date of the merger, for any reason one~~
455 ~~or more of the appraisers is not selected as herein provided, or~~
456 ~~the appraisers fail to determine the value of such dissenting~~
457 ~~shares, the office shall cause an appraisal of such dissenting~~
458 ~~shares to be made which will be final and binding on all~~
459 ~~parties. The expenses of appraisal shall be paid by the~~
460 ~~resulting state bank or trust company.~~

461 Section 17. This act shall take effect October 1, 2007.