

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.; authorizing certain state-funded endowments
24 to be maintained in trust accounts in Financial
25 Institutions; creating s. 655.947, F.S.; authorizing
26 financial institutions to offer debt cancellation
27 products; authorizing a fee; providing a definition;
28 providing requirements for financial institutions relating

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

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

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

57 section to read:

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

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

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

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

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

85 retail lessor, and any assignee of such an entity, shall comply
86 with the following:

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

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

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

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

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

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

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

111 2. The buyer is notified of any proposed change and is
112 provided a reasonable opportunity to cancel the contract without

113 penalty before the change goes in effect.

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

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

127 520.35 Revolving accounts.--

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

141 greater than \$5, the permitted finance charge shall be computed
142 proportionately. Such finance charge may be computed for all
143 unpaid balances within a range of not in excess of \$10 on the
144 basis of the median amount within such range, if as so computed
145 such finance charge is applied to all unpaid balances within
146 such range.

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

149 624.605 "Casualty insurance" defined.--

150 (1) "Casualty insurance" includes:

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

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

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

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

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

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

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

188 Section 6. Paragraph (b) of subsection (1) of section
 189 627.679, Florida Statutes, is amended to read:

190 627.679 Amount of insurance; disclosure.--

191 (1)

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

197 ~~such limits, and on such loans not exceeding 1 year's duration,~~
 198 ~~the limits of coverage shall not exceed \$50,000 with any one~~
 199 ~~insurer.~~

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

202 627.681 Term and evidence of insurance.--

203 (2) The term of credit disability insurance on any debtor
 204 insured under this section shall not exceed the term of
 205 indebtedness 10 years, ~~and for credit transactions that exceed~~
 206 ~~60 months, coverage shall not exceed 60 monthly indemnities.~~

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

210 655.005 Definitions.--

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

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

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

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

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

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

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

253 Section 10. Section 655.967, Florida Statutes, is created
 254 to read:

255 655.967 State-funded endowments.--Notwithstanding any
 256 other provision of law, state-mandated endowments funded through
 257 a state appropriations act may be maintained in trust accounts
 258 in Financial Institutions.

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

261 655.947 Debt cancellation products.--

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

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

281 scope of its debt cancellation products and programs.

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

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

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

293 655.954 Financial institution loans; credit cards.--

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

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

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

323 (3)~~(2)~~ For the purpose of this section, the term:

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

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

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

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

336 (2) The proposed capitalization is in such amount as the

337 office deems adequate, but in no case may the total capital
338 accounts at opening for a bank be less than \$8 ~~\$6~~ million ~~if the~~
339 ~~proposed bank is to be located in any county which is included~~
340 ~~in a metropolitan statistical area, or \$4 million if the~~
341 ~~proposed bank is to be located in any other county.~~ The total
342 capital accounts at opening for a trust company may not be less
343 than \$3 ~~\$2~~ million. The organizing directors of the proposed
344 bank shall directly own or control at least the lesser of \$3
345 million or 25 percent of the bank's total capital accounts
346 proposed at opening as approved by the office. When the proposed
347 bank will be owned by a single-bank holding company, the
348 organizing directors of the proposed bank collectively shall
349 directly own or control at least an amount of the single-bank
350 holding company's capital accounts equal to the lesser of \$3
351 million or 25 percent of the proposed bank's total capital
352 accounts proposed at opening as approved by the office. When the
353 proposed bank will be owned by an existing multi-bank holding
354 company, the proposed directors shall have a substantial capital
355 investment in the holding company, as determined by the office;
356 however, such investment shall not be required to exceed the
357 amount otherwise required for a single-bank holding company
358 application. Of total capital accounts at opening, as noted in
359 ~~the application or amendments or changes to the application, at~~
360 ~~least 25 percent of the capital shall be directly owned or~~
361 ~~controlled by the organizing directors of the bank. Directors of~~
362 ~~banks owned by single bank holding companies shall have direct~~
363 ~~ownership or control of at least 25 percent of the bank holding~~
364 ~~company's capital accounts.~~ The office may disallow illegally

365 obtained currency, monetary instruments, funds, or other
 366 financial resources from the capitalization requirements of this
 367 section. The proposed stock offering must comply with the
 368 requirements of ss. 658.23-658.25 and ss. 658.34-658.37.

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

371 658.34 Shares of capital stock.--

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

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

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

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

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

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

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

392 (5) Stock of the same class may not be issued or sold by

393 the financial institution that creates different rights,
 394 options, warrants, or benefits among the purchasers or
 395 stockholders of that class of stock. Such prohibition does not
 396 restrict the financial institution from creating uniform
 397 restrictions on the transfer of stock as permitted in s.
 398 607.0627.

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

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

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

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

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

421 stockholders, including stockholders not entitled to vote but
 422 dissenting under paragraph (c), will be entitled to payment in
 423 cash of the value of only those shares held by the stockholders:

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

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

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

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

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

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

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