HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 343 Financial Services

SPONSOR(S): Carroll and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 818

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Financial Institutions	6 Y, 0 N	Holt/Bradford	Haug
2) Jobs & Entrepreneurship Council	16 Y, 0 N, As CS	Holt/Topp	Thorn
3) Policy & Budget Council			
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, for a fee, agrees to cancel or suspend the debt upon the occurrence of certain events. The risk of default due to events such as death, disability, or unemployment, shifts from the debtor to the financial institution. These debt products are not regulated by the Office of Insurance Regulation. Additionally, it appears that 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.

Also, the bill amends provisions relating to the capital requirements for new banks and trust companies. The capital requirement is increased to $8 million from the current requirement or either $4 million or $6 million depending upon certain criteria. 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 opening as approved” by the Office of Financial Regulation. Further, The bill clarifies that stock offerings used to raise capital for a new bank or trust company are subject to the same limitations/requirements as those followed by existing financial institutions.

The bill does not have a fiscal impact on state or local government. The impact to the private sector cannot be determined at this time.

This act takes effect October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Empower families: The bill provisions create an opportunity to enhance the financial stability for families in the event of unforeseen events.

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 in order to create a definition for the term “Guaranteed asset protection product” as follows:

> (7) "Guaranteed asset protection 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 waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral. Such a product is not insurance for purposes of the Florida Insurance Code. This subsection also applies to all guaranteed asset protection products issued before October 1, 2008.

Generally the term guaranteed asset protection (or GAP) is a supplemental coverage that provides protection from certain losses that are not covered by certain standard contractual agreements. For example, a GAP may be designed to cover the unpaid balance of an automobile loan in the event of a total loss of the vehicle. The GAP could cover the difference between the depreciated actual cash value and the outstanding loan balance on the vehicle.

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 a GAP, the bill requires that the above described entities must comply with the following:

> (a) The cost of any GAP shall not exceed the amount of the indebtedness.
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> (b) This section governs GAP contracts or agreements.
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> (c) A GAP is considered an obligation of any person that purchases or otherwise acquires the loan contract covering such product.
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> (d) Disclosure of the terms and conditions for a GAP must be detailed, easy to read, and readily understandable, including a plain description of its purchase being optional.
>
> (e) The entity bears the burden for proving an executed copy of a GAP contract or agreement is provided to the buyer.
>
> (f) No GAP conveys the right to unilaterally modify contract terms unless:
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> 1. The modification is favorable to the buyer without additional buyer charges; or

2. The buyer is notified of any proposed change and is provided a reasonable, no penalty cancellation option before the change goes into effect.

(g) If a GAP contract is terminated, the entity shall refund to the buyer, under certain conditions, any unearned paid fees, unless otherwise stipulated in the contract. Refund request are to be made within 90 days of the event terminating the contract.

Section 3 of the bill amends Part V, Chapter 624, F.S., Kinds of Insurance; Limits of Risk; Reinsurance

Section 3: 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 4-6 of the bill amend Chapter 627, Part V, Group Life Insurance Policies and Part IX, Credit Life and Disability Insurances

Sections 4-5: 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 6: Amends s. 627.681, F.S., the bill provides that credit disability insurance may be purchased for the entire term of the loan.

Sections 7-11 of the bill amend TITLE XXXVIII, Banks and Banking, Chapter 655, Financial Institutions Generally

Section 7: Amends s. 655.005 to clarify the definition of a financial institution includes 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 February 2006.

Section 8: 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 9: The bill creates 655.967, F.S., relating to state-funded endowments. Any state-mandated endowment funded through a general appropriations act prior to 1990 may be maintained in trusts accounts with national or state chartered banks.

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, subject to the rules and orders of the Financial Service Commission. Provisions in the bill further require that the permitted entities manage all risks in accordance with prudent safety and soundness principles. Additionally, these entities are to establish and maintain effective risk management and control processes over the products and programs. The Financial Service Commission is granted rulemaking authority to administer this section. For purposes of this section, an installment payment option is not required for the amount of the debt cancellation product.

Section 11: Amends 655.954, F.S., to reference the newly created s. 655.947, F.S., which authorizes the sale of debt cancellation products. The bill reiterates that a 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. 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 its physical location. 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 opening as approved” by the Office of Financial Regulation (Office). Currently the requirement is 25% of the bank's total capital accounts.

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

The bill clarifies that stock offerings used 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. Section 658.34, F.S., reads in part:

> 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.

The bill eliminates the range that a bank or trust company shall issue its capital stock to only read: "not less than $1 per share" The bill also eliminates Office approval to increase capital, but it requires advance notice as provided under s. 658.36.

The bill creates a new subsection (5) to codify existing Office practices. 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 create fairness for all shareholders. This provision also allows a financial institution flexibility to be structured as an S-corporation[1] or limited liability company and restricts stock transfers that would otherwise jeopardize that corporate structure.

Section 14: This provision correlates with amendments made in s. 658.34, F.S., and the elimination of the Office's approval relating to increasing capital requirements. In lieu of Office approval, the bill requires entities to provide the Office at least 15 days advance notice of intent to increase 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 of resolving disagreements between appraisers and moves this function to an appropriate court.

Section 16: This act shall take effect October 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends s. 520.02, F.S., to create a definition for the term "Guaranteed asset protection product"

Section 2: Amends s. 520.07, F.S., relating to requirements and prohibitions as to retail installment contracts.

Section 3: Amends s. 624.605, F.S. relating to kinds of insurance.

Section 4: Amends s. 627.553, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased.

Section 5: 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 6: Amends s. 627.681, F.S., the bill provides that credit disability insurance may be purchased for the entire term of the loan.

Section 7: Amends s. 655.005 to clarify the definition of financial institution. The bill adds a definition for debt cancellation products to the Financial Institutions Codes.

Section 8: Amends s. 655.79, F.S., to conform with Florida Supreme Court's recommendation relating to certain husband and wife accounts.

Section 9: Creates 655.967, F.S., relating to state-funded endowments

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.

[1] Generally, an S corporation is exempt from federal income tax other than tax on certain capital gains and passive income. On their tax returns, the S corporation's shareholders include their share of the corporation's separately stated items of income, deduction, loss, and credit, and their share of nonseparately stated income or loss. http://www.irs.gov/businesses/small/article/0,,id=98263,00.html

Section 13: Amends s. 658.34, F.S., eliminates Office approval to increase capital, but requires 15 day advance notice be provided to the Office under s. 658.36. The bill also creates a new subsection (5) to codify certain existing Office practices. This provision also allows flexibility relating to S-corporation or limited liability company structure.

Section 14: This provision correlates with amendments made in s. 658.34 and the elimination of Office approval relating to increasing capital. In lieu of Office approval, the bill requires at least 15 days advance notice of intent to increase 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: This act shall take effect October 1, 2008.

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:

Indeterminate.

D. FISCAL COMMENTS:

The impact to the private sector cannot be determined at this time.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 6, 2008, the Jobs & Entrepreneurship Council adopted a technical amendment which changed the used in the definitions for “Billing cycle” and “Interest” to reflect January 31, 2008 the most current amended version of the federal regulations.