

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. 624.605, F.S.; including debt
11 cancellation products under casualty insurance; providing
12 a definition; authorizing certain entities to offer debt
13 cancellation products under certain circumstances;
14 specifying such products as not constituting insurance;
15 amending ss. 627.553 and 627.679, F.S.; revising
16 limitations on the amount of authorized insurance for
17 debtors; amending s. 627.681, F.S.; revising a limitation
18 on the term of credit disability insurance; amending s.
19 655.005, F.S.; revising and providing definitions;
20 amending s. 655.79, F.S.; specifying certain accounts as
21 tenancies by the entireties; creating s. 655.967, F.S.;
22 authorizing a state-mandated endowment to be maintained in
23 trust accounts in financial institutions; creating s.
24 655.947, F.S.; authorizing financial institutions to offer
25 debt cancellation products; authorizing a fee; providing a
26 definition; providing requirements for financial
27 institutions relating to debt cancellation products;
28 requiring the Financial Services Commission to adopt

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

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Subsections (7) through (19) of section 520.02,
 53 Florida Statutes, are renumbered as subsections (8) through
 54 (20), respectively, and new subsection (7) is added to that
 55 section to read:

56 520.02 Definitions.--In this act, unless the context or

57 subject matter otherwise requires:

58 (7) "Guaranteed asset protection product" means a loan,
59 lease, or retail installment contract term, or modification or
60 addendum to a loan, lease, or retail installment contract, under
61 which a creditor agrees to waive a customer's liability for
62 payment of some or all of the amount by which the debt exceeds
63 the value of the collateral. Such a product is not insurance for
64 purposes of the Florida Insurance Code. This subsection also
65 applies to all guaranteed asset protection products issued
66 before October 1, 2008.

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

69 520.07 Requirements and prohibitions as to retail
70 installment contracts.--

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

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

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

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

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

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

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

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

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

112 (g) If a contract for a guaranteed asset protection

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

123 Section 3. Paragraph (r) is added to subsection (1) of
 124 section 624.605, Florida Statutes, to read:

125 624.605 "Casualty insurance" defined.--

126 (1) "Casualty insurance" includes:

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

131 1. For purposes of this paragraph, the term "debt
 132 cancellation products" means loan, lease, or retail installment
 133 contract terms, or modifications to loan, lease, or retail
 134 installment contracts, under which a creditor agrees to cancel
 135 or suspend all or part of a customer's obligation to make
 136 payments upon the occurrence of specified events and includes,
 137 but is not limited to, debt cancellation contracts, debt
 138 suspension agreements, and guaranteed asset protection
 139 contracts. However, the term "debt cancellation products" does
 140 not include title insurance as defined in s. 624.608.

141 2. Debt cancellation products may be offered by financial
 142 institutions, as defined in s. 655.005(1)(h), insured depository
 143 institutions as defined in 12 U.S.C. s. 1813(c), and
 144 subsidiaries of such institutions, as provided in the financial
 145 institution codes, or by other business entities as may be
 146 specifically authorized by law, and such products shall not
 147 constitute insurance for purposes of the Florida Insurance Code.

148 Section 4. Subsection (3) of section 627.553, Florida
 149 Statutes, is amended to read:

150 627.553 Debtor groups.--The lives of a group of
 151 individuals may be insured under a policy issued to a creditor
 152 or its parent holding company, or to a trustee or trustees or
 153 agent designated by two or more creditors, which creditor,
 154 holding company, affiliate, trustee or trustees, or agent shall
 155 be deemed the policyholder, to insure debtors of the creditor or
 156 creditors, subject to the following requirements:

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

164 Section 5. Paragraph (b) of subsection (1) of section
 165 627.679, Florida Statutes, is amended to read:

166 627.679 Amount of insurance; disclosure.--

167 (1)

168 (b) The total amount of credit life insurance on the life

HB 343

2008

169 of any debtor with respect to any loan or loans covered in one
 170 or more insurance policies shall at no time exceed the amount of
 171 the indebtedness \$50,000 with any one creditor, except that
 172 loans not exceeding 1 year's duration shall not be subject to
 173 such limits, and on such loans not exceeding 1 year's duration,
 174 the limits of coverage shall not exceed \$50,000 with any one
 175 insurer.

176 Section 6. Subsection (2) of section 627.681, Florida
 177 Statutes, is amended to read:

178 627.681 Term and evidence of insurance.--

179 (2) The term of credit disability insurance on any debtor
 180 insured under this section shall not exceed the term of
 181 indebtedness 10 years, and for credit transactions that exceed
 182 60 months, coverage shall not exceed 60 monthly indemnities.

183 Section 7. Paragraphs (g) and (h) of subsection (1) of
 184 section 655.005, Florida Statutes, are amended, and paragraph
 185 (t) is added to that subsection, to read:

186 655.005 Definitions.--

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

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

192 (h) "Financial institution" means a state or federal
 193 savings or thrift association, bank, savings bank, trust
 194 company, international bank agency, international banking
 195 organization, international branch, international representative
 196 office, ~~or~~ international administrative office, or credit union,

197 or an agreement corporation operating pursuant to s. 25 of the
 198 Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act
 199 corporation organized pursuant to s. 25(a) of the Federal
 200 Reserve Act, 12 U.S.C. ss. 611 et seq.

201 (t) "Debt cancellation products" means loan, lease, or
 202 retail installment contract terms, or modifications or addenda
 203 to loan, lease, or retail installment contracts, under which a
 204 creditor agrees to cancel or suspend all or part of a customer's
 205 obligation to make payments upon the occurrence of specified
 206 events and includes, but is not limited to, debt cancellation
 207 contracts, debt suspension agreements, and guaranteed asset
 208 protection contracts offered by financial institutions, insured
 209 depository institutions as defined in 12 U.S.C. s. 1813(c), and
 210 subsidiaries of such institutions. However, the term "debt
 211 cancellation products" does not include title insurance as
 212 defined in s. 624.608.

213 Section 8. Subsection (1) of section 655.79, Florida
 214 Statutes, is amended to read:

215 655.79 Deposits and accounts in two or more names;
 216 presumption as to vesting on death.--

217 (1) Unless otherwise expressly provided in a contract,
 218 agreement, or signature card executed in connection with the
 219 opening or maintenance of an account, including a certificate of
 220 deposit, a deposit account in the names of two or more persons
 221 shall be presumed to have been intended by such persons to
 222 provide that, upon the death of any one of them, all rights,
 223 title, interest, and claim in, to, and in respect of such
 224 deposit account, less all proper setoffs and charges in favor of

225 the institution, vest in the surviving person or persons. Any
 226 deposit or account made in the name of two persons who are
 227 husband and wife shall be considered a tenancy by the entirety
 228 unless otherwise specified in writing.

229 Section 9. Section 655.967, Florida Statutes, is created
 230 to read:

231 655.967 State-funded endowments.--Notwithstanding any
 232 other provision of law, a state-mandated endowment funded
 233 through a general appropriations act prior to 1990 may be
 234 maintained in trust accounts in financial institutions.

235 Section 10. Section 655.947, Florida Statutes, is created
 236 to read:

237 655.947 Debt cancellation products.--

238 (1) Debt cancellation products may be offered, and a fee
 239 may be charged, by financial institutions and subsidiaries of
 240 financial institutions subject to the provisions of this section
 241 and the rules and orders of the commission or office. As used in
 242 this section, the term "financial institutions" includes those
 243 defined in s. 655.005(1)(h), insured depository institutions as
 244 defined in 12 U.S.C. s. 1813, and subsidiaries of such
 245 institutions.

246 (2) A financial institution shall manage the risks
 247 associated with debt cancellation products in accordance with
 248 prudent safety and soundness principles. A financial institution
 249 shall establish and maintain effective risk management and
 250 control processes over its debt cancellation products and
 251 programs. Such processes shall include appropriate recognition
 252 and financial reporting of income, expenses, assets, and

HB 343

2008

253 liabilities and appropriate treatment of all expected and
254 unexpected losses associated with the products. Each financial
255 institution shall also assess the adequacy of its internal
256 control and risk mitigation activities in view of the nature and
257 scope of its debt cancellation products and programs.

258 (3) The commission shall adopt rules pursuant to ss.
259 120.536(1) and 120.54 to administer this section, which rules
260 must be consistent with 12 C.F.R. part 37, as amended.

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

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

269 655.954 Financial institution loans; credit cards.--

270 (1) Notwithstanding any other provision of law, a
271 financial institution shall have the power to make loans or
272 extensions of credit to any person on a credit card or overdraft
273 financing arrangement and to charge, in any billing cycle,
274 interest on the outstanding amount at a rate that is specified
275 in a written agreement, between the financial institution and
276 borrower, governing the credit card account. Such credit card
277 agreement may modify any terms or conditions of such credit card
278 account upon prior written notice of such modification as
279 specified by the terms of the agreement governing the credit
280 card account or by the Truth in Lending Act, 15 U.S.C. ss. 1601

HB 343

2008

281 et seq., as amended, and the rules and regulations adopted under
282 such act. Any such notice provided by a financial institution
283 shall specify that the borrower has the right to surrender the
284 credit card whereupon the borrower shall have the right to
285 continue to pay off the borrower's credit card account in the
286 same manner and under the same terms and conditions as then in
287 effect. The borrower's failure to surrender the credit card
288 prior to the modifications becoming effective shall constitute a
289 consent to the modifications.

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

299 (3)~~(2)~~ For the purpose of this section, the term:

300 (a) "Billing cycle" has the same meaning as ascribed to it
301 under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et
302 seq., as amended, and the associated regulations which are in
303 effect as of June 30, 2008 ~~1992~~.

304 (b) "Interest" means those charges considered a finance
305 charge under the federal Truth in Lending Act, 15 U.S.C. ss.
306 1601 et seq., as amended, and the associated regulations which
307 are in effect as of June 30, 2008 ~~1992~~.

308 Section 12. Subsection (2) of section 658.21, Florida

309 Statutes, is amended to read:

310 658.21 Approval of application; findings required.--The
 311 office shall approve the application if it finds that:

312 (2) The proposed capitalization is in such amount as the
 313 office deems adequate, but in no case may the total capital
 314 accounts at opening for a bank be less than \$8 ~~\$6~~ million ~~if the~~
 315 ~~proposed bank is to be located in any county which is included~~
 316 ~~in a metropolitan statistical area, or \$4 million if the~~
 317 ~~proposed bank is to be located in any other county.~~ The total
 318 capital accounts at opening for a trust company may not be less
 319 than \$3 ~~\$2~~ million. The organizing directors of the proposed
 320 bank shall directly own or control at least the lesser of \$3
 321 million or 25 percent of the bank's total capital accounts
 322 proposed at opening as approved by the office. When the proposed
 323 bank will be owned by a single-bank holding company, the
 324 organizing directors of the proposed bank collectively shall
 325 directly own or control at least an amount of the single-bank
 326 holding company's capital accounts equal to the lesser of \$3
 327 million or 25 percent of the proposed bank's total capital
 328 accounts proposed at opening as approved by the office. When the
 329 proposed bank will be owned by an existing multi-bank holding
 330 company, the proposed directors shall have a substantial capital
 331 investment in the holding company, as determined by the office;
 332 however, such investment shall not be required to exceed the
 333 amount otherwise required for a single-bank holding company
 334 application. Of total capital accounts at opening, as noted in
 335 ~~the application or amendments or changes to the application, at~~
 336 ~~least 25 percent of the capital shall be directly owned or~~

HB 343

2008

337 ~~controlled by the organizing directors of the bank. Directors of~~
338 ~~banks owned by single bank holding companies shall have direct~~
339 ~~ownership or control of at least 25 percent of the bank holding~~
340 ~~company's capital accounts.~~ The office may disallow illegally
341 obtained currency, monetary instruments, funds, or other
342 financial resources from the capitalization requirements of this
343 section. The proposed stock offering must comply with the
344 requirements of ss. 658.23-658.25 and ss. 658.34-658.37.

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

347 658.34 Shares of capital stock.--

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

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

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

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

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

363 (b) To declare or pay a stock dividend; however, any such
364 stock dividend must comply with the provisions of this section

365 and s. 658.37.

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

368 (5) Stock of the same class may not be issued or sold by
 369 the financial institution that creates different rights,
 370 options, warrants, or benefits among the purchasers or
 371 stockholders of that class of stock. Such prohibition does not
 372 restrict the financial institution from creating uniform
 373 restrictions on the transfer of stock as permitted in s.
 374 607.0627.

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

377 658.36 Changes in capital.--

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

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

384 658.44 Approval by stockholders; rights of dissenters;
 385 preemptive rights.--

386 (2) Written notice of the meeting of, or proposed written
 387 consent action by, the stockholders of each constituent state
 388 bank or state trust company shall be given to each stockholder
 389 of record, whether or not entitled to vote, and whether the
 390 meeting is an annual or a special meeting or whether the vote is
 391 to be by written consent pursuant to s. 607.0704, and the notice
 392 shall state that the purpose or one of the purposes of the

393 meeting, or of the proposed action by the stockholders without a
 394 meeting, is to consider the proposed plan of merger and merger
 395 agreement. Except to the extent provided otherwise with respect
 396 to stockholders of a resulting bank or trust company pursuant to
 397 subsection (7), the notice shall also state that dissenting
 398 stockholders, including stockholders not entitled to vote but
 399 dissenting under paragraph (c), will be entitled to payment in
 400 cash of the value of only those shares held by the stockholders:

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

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

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

415
 416 Hereinafter in this section, the term "dissenting shares" means
 417 and includes only those shares, which may be all or less than
 418 all the shares of any class owned by a stockholder, described in
 419 paragraphs (a), (b), and (c).

420 (5) The fair value, as defined in s. 607.1301(4), of

HB 343

2008

421 dissenting shares of each constituent state bank or state trust
422 company, the owners of which have not accepted an offer for such
423 shares made pursuant to subsection (3), shall be determined
424 pursuant to ss. 607.1326-607.1331 except as the procedures for
425 notice and demand are otherwise provided in this section as of
426 the effective date of the merger ~~by three appraisers, one to be~~
427 ~~selected by the owners of at least two thirds of such dissenting~~
428 ~~shares, one to be selected by the board of directors of the~~
429 ~~resulting state bank, and the third to be selected by the two so~~
430 ~~chosen. The value agreed upon by any two of the appraisers shall~~
431 ~~control and be final and binding on all parties. If, within 90~~
432 ~~days from the effective date of the merger, for any reason one~~
433 ~~or more of the appraisers is not selected as herein provided, or~~
434 ~~the appraisers fail to determine the value of such dissenting~~
435 ~~shares, the office shall cause an appraisal of such dissenting~~
436 ~~shares to be made which will be final and binding on all~~
437 ~~parties. The expenses of appraisal shall be paid by the~~
438 ~~resulting state bank or trust company.~~

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