A bill to be entitled

An act relating to financial services; amending s. 520.02, F.S.; defining the term "guaranteed asset protection product"; amending s. 520.07, F.S.; authorizing certain entities to offer optional guaranteed asset protection products under certain circumstances; prohibiting such entities from requiring purchase of such products as a condition for certain financial transactions; providing requirements for offering such products; providing limitations; amending s. 624.605, F.S.; including debt cancellation products under casualty insurance; providing a definition; authorizing certain entities to offer debt cancellation products under certain circumstances; specifying such products as not constituting insurance; amending ss. 627.553 and 627.679, F.S.; revising limitations on the amount of authorized insurance for debtors; amending s. 627.681, F.S.; revising a limitation on the term of credit disability insurance; amending s. 655.005, F.S.; revising and providing definitions; amending s. 655.79, F.S.; specifying certain accounts as tenancies by the entireties; creating s. 655.967, F.S.; authorizing a state-mandated endowment to be maintained in trust accounts in financial institutions; creating s. 655.947, F.S.; authorizing financial institutions to offer debt cancellation products; authorizing a fee; providing a definition; providing requirements for financial institutions relating to debt cancellation products; requiring the Financial Services Commission to adopt

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

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

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

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

subject matter otherwise requires:

(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.

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

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

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

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

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

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

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

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

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

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

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

(g) If a contract for a guaranteed asset protection

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

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

624.605 "Casualty insurance" defined.--

(1) "Casualty insurance" includes:

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

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

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

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

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

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

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

627.679 Amount of insurance; disclosure.--

(1)

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

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

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

627.681 Term and evidence of insurance.--

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

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

655.005 Definitions.--

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

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

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

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

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

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

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

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

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

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

655.967 State-funded endowments.--A state-mandated endowment funded through a general appropriations act prior to 1990 may be maintained in trust accounts in financial institutions as defined in s. 655.005.

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

655.947 Debt cancellation products.--

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

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

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

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

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

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

655.954 Financial institution loans; credit cards.--

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

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

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

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

(a) "Billing cycle" has the same meaning as ascribed to it under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended, and the associated regulations which are in effect as of January 31, 2008 ~~June 30, 1992~~.

(b) "Interest" means those charges considered a finance charge under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended, and the associated regulations which are in effect as of January 31, 2008 ~~June 30, 1992~~.

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

Statutes, is amended to read:

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

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

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

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

658.34 Shares of capital stock.--

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

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

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

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

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

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

and s. 658.37.

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

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

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

658.36 Changes in capital.--

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

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

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

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

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

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

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

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

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

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

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

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