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2008 Legislature

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 entirety; 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

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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

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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:

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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

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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. Insurance for debt
 131 cancellation products is not liability insurance but shall be
 132 considered credit insurance only for the purposes of s.
 133 631.52(4).

134 1. For purposes of this paragraph, the term "debt
 135 cancellation products" means loan, lease, or retail installment
 136 contract terms, or modifications to loan, lease, or retail
 137 installment contracts, under which a creditor agrees to cancel
 138 or suspend all or part of a customer's obligation to make
 139 payments upon the occurrence of specified events and includes,
 140 but is not limited to, debt cancellation contracts, debt

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141 suspension agreements, and guaranteed asset protection
 142 contracts. However, the term "debt cancellation products" does
 143 not include title insurance as defined in s. 624.608.

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

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

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

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

167 Section 5. Paragraph (b) of subsection (1) of section
 168 627.679, Florida Statutes, is amended to read:

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169 627.679 Amount of insurance; disclosure.--

170 (1)

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

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

181 627.681 Term and evidence of insurance.--

182 (2) The term of credit disability insurance on any debtor
 183 insured under this section shall not exceed the term of
 184 indebtedness ~~10 years, and for credit transactions that exceed~~
 185 ~~60 months, coverage shall not exceed 60 monthly indemnities.~~

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

189 655.005 Definitions.--

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

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

195 (h) "Financial institution" means a state or federal
 196 savings or thrift association, bank, savings bank, trust

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197 company, international bank agency, international banking
 198 organization, international branch, international representative
 199 office, ~~or~~ international administrative office, or credit union,
 200 or an agreement corporation operating pursuant to s. 25 of the
 201 Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act
 202 corporation organized pursuant to s. 25(a) of the Federal
 203 Reserve Act, 12 U.S.C. ss. 611 et seq.

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

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

218 655.79 Deposits and accounts in two or more names;
 219 presumption as to vesting on death.--

220 (1) Unless otherwise expressly provided in a contract,
 221 agreement, or signature card executed in connection with the
 222 opening or maintenance of an account, including a certificate of
 223 deposit, a deposit account in the names of two or more persons
 224 shall be presumed to have been intended by such persons to

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225 provide that, upon the death of any one of them, all rights,
 226 title, interest, and claim in, to, and in respect of such
 227 deposit account, less all proper setoffs and charges in favor of
 228 the institution, vest in the surviving person or persons. Any
 229 deposit or account made in the name of two persons who are
 230 husband and wife shall be considered a tenancy by the entirety
 231 unless otherwise specified in writing.

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

234 655.967 State-funded endowments.--A state-mandated
 235 endowment funded through a general appropriations act prior to
 236 1990 may be maintained in trust accounts in financial
 237 institutions as defined in s. 655.005.

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

240 655.947 Debt cancellation products.--

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

249 (2) A financial institution shall manage the risks
 250 associated with debt cancellation products in accordance with
 251 prudent safety and soundness principles. A financial institution
 252 shall establish and maintain effective risk management and

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253 control processes over its debt cancellation products and
 254 programs. Such processes shall include appropriate recognition
 255 and financial reporting of income, expenses, assets, and
 256 liabilities and appropriate treatment of all expected and
 257 unexpected losses associated with the products. Each financial
 258 institution shall also assess the adequacy of its internal
 259 control and risk mitigation activities in view of the nature and
 260 scope of its debt cancellation products and programs.

261 (3) The commission shall adopt rules pursuant to ss.
 262 120.536(1) and 120.54 to administer this section, which rules
 263 must be consistent with 12 C.F.R. part 37, as amended.

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

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

272 655.954 Financial institution loans; credit cards.--

273 (1) Notwithstanding any other provision of law, a
 274 financial institution shall have the power to make loans or
 275 extensions of credit to any person on a credit card or overdraft
 276 financing arrangement and to charge, in any billing cycle,
 277 interest on the outstanding amount at a rate that is specified
 278 in a written agreement, between the financial institution and
 279 borrower, governing the credit card account. Such credit card
 280 agreement may modify any terms or conditions of such credit card

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281 account upon prior written notice of such modification as
 282 specified by the terms of the agreement governing the credit
 283 card account or by the Truth in Lending Act, 15 U.S.C. ss. 1601
 284 et seq., as amended, and the rules and regulations adopted under
 285 such act. Any such notice provided by a financial institution
 286 shall specify that the borrower has the right to surrender the
 287 credit card whereupon the borrower shall have the right to
 288 continue to pay off the borrower's credit card account in the
 289 same manner and under the same terms and conditions as then in
 290 effect. The borrower's failure to surrender the credit card
 291 prior to the modifications becoming effective shall constitute a
 292 consent to the modifications.

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

302 ~~(3)(2)~~ For the purpose of this section, the term:

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

307 (b) "Interest" means those charges considered a finance
 308 charge under the federal Truth in Lending Act, 15 U.S.C. ss.

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309 1601 et seq., as amended, and the associated regulations which
 310 are in effect as of January 31, 2008 ~~June 30, 1992~~.

311 Section 12. Subsection (2) of section 658.21, Florida
 312 Statutes, is amended to read:

313 658.21 Approval of application; findings required.--The
 314 office shall approve the application if it finds that:

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

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

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

350 658.34 Shares of capital stock.--

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

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

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

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

364 (a) To provide for stock options and warrants as provided

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365 in s. 658.35.

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

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

371 (5) Stock of the same class may not be issued or sold by
 372 the financial institution that creates different rights,
 373 options, warrants, or benefits among the purchasers or
 374 stockholders of that class of stock. Such prohibition does not
 375 restrict the financial institution from creating uniform
 376 restrictions on the transfer of stock as permitted in s.
 377 607.0627.

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

380 658.36 Changes in capital.--

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

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

387 658.44 Approval by stockholders; rights of dissenters;
 388 preemptive rights.--

389 (2) Written notice of the meeting of, or proposed written
 390 consent action by, the stockholders of each constituent state
 391 bank or state trust company shall be given to each stockholder
 392 of record, whether or not entitled to vote, and whether the

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393 meeting is an annual or a special meeting or whether the vote is
 394 to be by written consent pursuant to s. 607.0704, and the notice
 395 shall state that the purpose or one of the purposes of the
 396 meeting, or of the proposed action by the stockholders without a
 397 meeting, is to consider the proposed plan of merger and merger
 398 agreement. Except to the extent provided otherwise with respect
 399 to stockholders of a resulting bank or trust company pursuant to
 400 subsection (7), the notice shall also state that dissenting
 401 stockholders, including stockholders not entitled to vote but
 402 dissenting under paragraph (c), will be entitled to payment in
 403 cash of the value of only those shares held by the stockholders:

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

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

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

418
 419 Hereinafter in this section, the term "dissenting shares" means
 420 and includes only those shares, which may be all or less than

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421 all the shares of any class owned by a stockholder, described in
 422 paragraphs (a), (b), and (c).

423 (5) The fair value, as defined in s. 607.1301(4), of
 424 dissenting shares of each constituent state bank or state trust
 425 company, the owners of which have not accepted an offer for such
 426 shares made pursuant to subsection (3), shall be determined
 427 pursuant to ss. 607.1326-607.1331 except as the procedures for
 428 notice and demand are otherwise provided in this section as of
 429 the effective date of the merger ~~by three appraisers, one to be~~
 430 ~~selected by the owners of at least two thirds of such dissenting~~
 431 ~~shares, one to be selected by the board of directors of the~~
 432 ~~resulting state bank, and the third to be selected by the two so~~
 433 ~~chosen. The value agreed upon by any two of the appraisers shall~~
 434 ~~control and be final and binding on all parties. If, within 90~~
 435 ~~days from the effective date of the merger, for any reason one~~
 436 ~~or more of the appraisers is not selected as herein provided, or~~
 437 ~~the appraisers fail to determine the value of such dissenting~~
 438 ~~shares, the office shall cause an appraisal of such dissenting~~
 439 ~~shares to be made which will be final and binding on all~~
 440 ~~parties. The expenses of appraisal shall be paid by the~~
 441 ~~resulting state bank or trust company.~~

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