

By Senator Bennett

21-02442A-08

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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 products"; amending s. 520.07, F.S.; setting forth
5 requirements and prohibitions for selling guaranteed asset
6 protection products; amending s. 624.605, F.S.; including
7 debt-cancellation products under casualty insurance;
8 providing a definition; authorizing certain entities to
9 offer debt-cancellation products under certain
10 circumstances; specifying that such products are not
11 insurance; amending ss. 627.553 and 627.679, F.S.;
12 revising limitations on the amount of authorized insurance
13 for debtors; amending s. 627.681, F.S.; revising a
14 limitation on the term of credit disability insurance;
15 amending s. 655.005, F.S.; redefining the terms "federal
16 financial institution" and "financial institution";
17 defining the term "debt-cancellation products"; amending
18 s. 655.79, F.S.; providing that a deposit account by a
19 husband and wife is a tenancy by the entirety; creating s.
20 655.947, F.S.; providing a definition; authorizing
21 financial institutions to offer debt-cancellation
22 products; authorizing a fee; requiring the Financial
23 Services Commission to adopt rules; providing that a
24 periodic payment option is not required for certain debt-
25 cancellation products; amending s. 655.954, F.S.;
26 authorizing a financial institution to offer a debt-
27 cancellation product but not as a requirement of receiving
28 a loan; creating s. 655.967, F.S.; providing that state-
29 mandated endowments may be maintained in trust accounts in

21-02442A-08

2008818__

30 financial institutions; amending s. 658.21, F.S.; revising
31 an ownership of capital criterion for capital accounts at
32 financial institutions and one-bank holding companies;
33 amending s. 658.34, F.S.; prohibiting certain stock
34 issuance practices for banks; amending s. 658.36, F.S.;
35 requiring a state bank or trust company to file a written
36 notice before increasing its capital stock; amending s.
37 658.44, F.S.; revising criteria for determining the value
38 of dissenting shares of certain entities; providing an
39 effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Present subsections (7) through (19) of section
44 520.02, Florida Statutes, are redesignated as subsections (8)
45 through (20), respectively, and a new subsection (7) is added to
46 that section, to read:

47 520.02 Definitions.--In this act, unless the context or
48 subject matter otherwise requires:

49 (7) "Guaranteed asset protection products" means loan,
50 lease, or retail installment contract terms, or modifications or
51 addenda to loan, lease, or retail installment contracts, under
52 which a creditor agrees to waive a customer's liability for
53 payment of some or all of the amount by which the debt exceeds
54 the value of the collateral. This product is not insurance for
55 purposes of the Florida Insurance Code. This subsection also
56 applies to all such guaranteed asset protection products issued
57 before October 1, 2008.

58 Section 2. Subsection (11) is added to section 520.07,

21-02442A-08

2008818__

59 Florida Statutes, to read:

60 520.07 Requirements and prohibitions as to retail
61 installment contracts.--

62 (11) In conjunction with entering into a new retail
63 installment contract or contract for a loan, a motor vehicle
64 retail installment seller, as defined in s. 520.02(10), sales
65 finance company, as defined in s. 520.02(18), or retail lessors,
66 as defined in s. 521.003(8), and their assignees may offer, for a
67 fee or otherwise, optional guaranteed asset protection products
68 in accordance with this chapter. The motor vehicle retail
69 installment seller, sales finance company, or retail lessor may
70 not require the purchase of a guaranteed asset protection product
71 as a condition for making the loan. In order to offer any
72 guaranteed asset protection product, the motor vehicle retail
73 installment seller, sales finance company, or retail lessor, and
74 their assignees, must comply with the following:

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

78 (b) Any contract or agreement pertaining to a guaranteed
79 asset protection product is governed by this section.

80 (c) The guaranteed asset protection product is considered
81 an obligation of any person who purchases or otherwise acquires
82 the loan contract covering the product.

83 (d) Entities providing guaranteed asset protection products
84 shall provide readily understandable disclosures that detail
85 eligibility requirements, conditions, refunds, and exclusions.
86 The disclosures must state that the purchase of the product is
87 optional. The disclosures must be in plain language and of a type

21-02442A-08

2008818__

88 face and size that are easy to read.

89 (e) Entities must provide a copy of the executed guaranteed
90 asset protection product contract to the buyer. The entity bears
91 the burden of proving that the contract was provided to the
92 buyer.

93 (f) Entities may not offer a contract for a guaranteed
94 asset protection product which contains terms giving the entity
95 the right to unilaterally modify the contract unless:

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

98 2. The buyer is notified of any proposed change and is
99 provided a reasonable opportunity to cancel the contract without
100 penalty before the change takes effect.

101 (g) If a contract for a guaranteed asset protection product
102 is terminated, the entity must refund to the buyer any unearned
103 fees paid for the contract unless the contract provides
104 otherwise. A refund is not due to a consumer who receives a
105 benefit under such product. In order to receive a refund, the
106 buyer must notify the entity of the event terminating the
107 contract and request a refund within 90 days after the occurrence
108 of the event terminating the contract. Any entity may offer a
109 buyer a contract that does not provide for a refund only if the
110 entity also offers that buyer a bona fide option to purchase a
111 comparable contract that provides for a refund.

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

114 624.605 "Casualty insurance" defined.--

115 (1) "Casualty insurance" includes:

116 (r) Insurance for debt-cancellation products.--Insurance

21-02442A-08

2008818__

117 that a creditor may purchase against the risk of financial loss
118 from the use of debt-cancellation products with consumer loans,
119 leases, or retail installment contracts.

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

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

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

138 627.553 Debtor groups.--The lives of a group of individuals
139 may be insured under a policy issued to a creditor or its parent
140 holding company, or to a trustee or trustees or agent designated
141 by two or more creditors, which creditor, holding company,
142 affiliate, trustee or trustees, or agent shall be deemed the
143 policyholder, to insure debtors of the creditor or creditors,
144 subject to the following requirements:

145 (3) The amount of insurance on the life of any debtor shall

21-02442A-08

2008818__

146 at no time exceed the amount owed by the debtor ~~her or him~~ which
147 is repayable in installments to the creditor ~~or \$50,000,~~
148 ~~whichever is less, except that loans not exceeding 1 year's~~
149 ~~duration shall not be subject to such limits. However, on such~~
150 ~~loans not exceeding 1 year's duration, the limit of coverage~~
151 ~~shall not exceed \$50,000 with any one insurer.~~

152 Section 5. Paragraph (b) of subsection (1) of section
153 627.679, Florida Statutes, is amended to read:

154 627.679 Amount of insurance; disclosure.--

155 (1)

156 (b) The total amount of credit life insurance on the life
157 of any debtor with respect to any loan or loans covered in one or
158 more insurance policies shall at no time exceed the amount of
159 indebtedness ~~\$50,000 with any one creditor, except that loans not~~
160 ~~exceeding 1 year's duration shall not be subject to such limits,~~
161 ~~and on such loans not exceeding 1 year's duration, the limits of~~
162 ~~coverage shall not exceed \$50,000 with any one insurer.~~

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

165 627.681 Term and evidence of insurance.--

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

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

173 655.005 Definitions.--

174 (1) As used in the financial institutions codes, unless the

21-02442A-08

2008818__

175 context otherwise requires, the term:

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

179 (h) "Financial institution" means a state or federal
180 savings or thrift association, bank, savings bank, trust company,
181 international bank agency, international banking organization,
182 international branch, international representative office, ~~or~~
183 international administrative office, or credit union; an
184 agreement corporation operating under s. 25 of the Federal
185 Reserve Act, 12 U.S.C. ss. 601 et seq.; or an Edge Act
186 corporation organized under s. 25(a) of the Federal Reserve Act,
187 12 U.S.C. ss. 611 et seq.

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

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

201 655.79 Deposits and accounts in two or more names;
202 presumption as to vesting on death.--

203 (1) Unless otherwise expressly provided in a contract,

21-02442A-08

2008818__

204 agreement, or signature card executed in connection with the
205 opening or maintenance of an account, including a certificate of
206 deposit, a deposit account in the names of two or more persons
207 shall be presumed to have been intended by such persons to
208 provide that, upon the death of any one of them, all rights,
209 title, interest, and claim in, to, and in respect of such deposit
210 account, less all proper setoffs and charges in favor of the
211 institution, vest in the surviving person or persons. Any deposit
212 or account made in the name of two persons who are husband and
213 wife shall be considered a tenancy by the entirety unless
214 otherwise specified in writing.

215 Section 9. Section 655.947, Florida Statutes, is created to
216 read:

217 655.947 Debt-cancellation products.--

218 (1) Debt-cancellation products may be offered, and a fee
219 may be charged, by financial institutions and subsidiaries of
220 financial institutions subject to this section and the rules and
221 orders of the commission or office. As used in this section, the
222 term "financial institutions" includes those institutions defined
223 in s. 655.005(1), insured depository institutions, as defined in
224 12 U.S.C. s. 1813, and subsidiaries of these institutions.

225 (2) A financial institution must manage the risks
226 associated with debt-cancellation products in accordance with
227 prudent safety and soundness principles. A financial institution
228 must establish and maintain effective risk-management and control
229 processes over its debt-cancellation products and programs. These
230 processes must include appropriate recognition and financial
231 reporting of income, expenses, assets, and liabilities, and
232 appropriate treatment of all expected and unexpected losses

21-02442A-08

2008818__

233 associated with the products. Each financial institution should
234 also assess the adequacy of its internal control and risk-
235 mitigation activities in view of the nature and scope of its
236 debt-cancellation products and programs.

237 (3) The commission shall adopt rules pursuant to ss.
238 120.536(1) and 120.54 to administer this section, which rules
239 must be consistent with 12 C.F.R. part 37, as amended.

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

246 Section 10. Section 655.954, Florida Statutes, is amended
247 to read:

248 655.954 Financial institution loans; credit cards.--

249 (1) Notwithstanding any other provision of law, a financial
250 institution shall have the power to make loans or extensions of
251 credit to any person on a credit card or overdraft financing
252 arrangement and to charge, in any billing cycle, interest on the
253 outstanding amount at a rate that is specified in a written
254 agreement, between the financial institution and borrower,
255 governing the credit card account. Such credit card agreement
256 may modify any terms or conditions of such credit card account
257 upon prior written notice of such modification as specified by
258 the terms of the agreement governing the credit card account or
259 by the Truth in Lending Act, 15 U.S.C. ss. 1601 et seq as
260 amended, and the rules and regulations adopted thereunder. Any
261 such notice provided by a financial institution shall specify

21-02442A-08

2008818__

262 that the borrower has the right to surrender the credit card
263 whereupon the borrower shall have the right to continue to pay
264 off the borrower's credit card account in the same manner and
265 under the same terms and conditions as then in effect. The
266 borrower's failure to surrender the credit card prior to the
267 modifications becoming effective shall constitute a consent to
268 the modifications.

269 (2) In conjunction with entering into any contract or
270 agreement for a loan, line of credit, or loan extension, a
271 financial institution, an insured depository institution, as
272 defined in 12 U.S.C. s. 1813, and subsidiaries of these
273 institutions, may offer, for a fee or otherwise, optional debt-
274 cancellation products under s. 655.947 and the rules adopted
275 under that section. The financial institution may not require a
276 person to purchase a debt-cancellation product as a condition for
277 a loan, line of credit, or loan extension.

278 (3)~~(2)~~ For the purpose of this section, the term:

279 (a) "Billing cycle" has the same meaning as ascribed to it
280 under the federal Truth in Lending Act, as amended, 15 U.S.C. ss.
281 1601 et seq., and the associated regulations which are in effect
282 as of June 30, 2007 ~~1992~~.

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

287 Section 11. Section 655.967, Florida Statutes, is created
288 to read:

289 655.967 State-funded endowments.--Notwithstanding any other
290 provision of law, a state-mandated endowment funded through a

21-02442A-08

2008818__

291 General Appropriations Act prior to 1990 may be maintained in
292 trust accounts in financial institutions.

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

295 658.21 Approval of application; findings required.--The
296 office shall approve the application if it finds that:

297 (2) The proposed capitalization is in such amount as the
298 office deems adequate, but in no case may the total capital
299 accounts at opening for a bank be less than \$8 ~~\$6~~ million ~~if the~~
300 ~~proposed bank is to be located in any county which is included in~~
301 ~~a metropolitan statistical area, or \$4 million if the proposed~~
302 ~~bank is to be located in any other county.~~ The total capital
303 accounts at opening for a trust company may not be less than \$3
304 \$2 million. The organizing directors of the proposed bank must
305 directly own or control at least the lesser of \$3 million or 25
306 percent of the bank's total capital accounts proposed at opening,
307 as approved by the office. If the proposed bank will be owned by
308 a single-bank holding company, the organizing directors of the
309 proposed bank collectively must directly own or control at least
310 an amount of the single-bank holding company's capital accounts
311 equal to the lesser of \$3 million or 25 percent of the proposed
312 bank's total capital accounts proposed at opening, as approved by
313 the office. If the proposed bank will be owned by an existing
314 multibank holding company, the proposed directors must have a
315 substantial capital investment in the holding company, as
316 determined by the office. However, the investment is not required
317 to exceed the amount otherwise required for a single-bank holding
318 company application. ~~Of total capital accounts at opening, as~~
319 ~~noted in the application or amendments or changes to the~~

21-02442A-08

2008818__

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

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

331 658.34 Shares of capital stock.--

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

334 (2) A ~~No~~ bank or trust company may not ~~shall~~ issue any
335 shares of capital stock at a price less than par value, and prior
336 to issuance, any such shares must be fully paid in cash.

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

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

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

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

21-02442A-08

2008818__

349 and s. 658.37.

350 (c) To increase the capital of the bank or trust company~~7~~
351 ~~with the approval of the office.~~

352 (5) A financial institution may not issue or sell stock of
353 the same class which creates different rights, options, warrants,
354 or benefits among the purchasers or stockholders of that class of
355 stock. This subsection does not prohibit the financial
356 institution from creating uniform restrictions on the transfer of
357 stock as permitted in s. 607.0627.

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

360 658.36 Changes in capital.--

361 (2) A ~~Any~~ state bank or trust company may~~7~~ ~~with the~~
362 ~~approval of the office,~~ provide for an increase in its capital
363 stock only if the state bank or trust company files a written
364 notice 15 days before the increase.

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

367 658.44 Approval by stockholders; rights of dissenters;
368 preemptive rights.--

369 (2) Written notice of the meeting of, or proposed written
370 consent action by, the stockholders of each constituent state
371 bank or state trust company shall be given to each stockholder of
372 record, whether or not entitled to vote, and whether the meeting
373 is an annual or a special meeting or whether the vote is to be by
374 written consent pursuant to s. 607.0704, and the notice shall
375 state that the purpose or one of the purposes of the meeting, or
376 of the proposed action by the stockholders without a meeting, is
377 to consider the proposed plan of merger and merger agreement.

21-02442A-08

2008818__

378 Except to the extent provided otherwise with respect to
379 stockholders of a resulting bank or trust company pursuant to
380 subsection (7), the notice shall also state that dissenting
381 stockholders including those not entitled to vote but dissenting
382 as set forth in paragraph (c), will be entitled to payment in
383 cash of the value of only those shares held by the stockholders:

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

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

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

398
399 Hereinafter in this section, the term "dissenting shares" means
400 and includes only those shares, which may be all or less than all
401 the shares of any class owned by a stockholder, described in
402 paragraphs (a), (b), and (c).

403 (5) The fair value, as defined in s. 607.1301(4), of
404 dissenting shares of each constituent state bank or state trust
405 company, the owners of which have not accepted an offer for such
406 shares made pursuant to subsection (3), shall be determined as of

21-02442A-08

2008818__

407 the effective date of the merger under ss. 607.1326-607.1331,
408 except as the procedures for notice and demand are otherwise
409 provided in this section ~~by three appraisers, one to be selected~~
410 ~~by the owners of at least two-thirds of such dissenting shares,~~
411 ~~one to be selected by the board of directors of the resulting~~
412 ~~state bank, and the third to be selected by the two so chosen.~~
413 ~~The value agreed upon by any two of the appraisers shall control~~
414 ~~and be final and binding on all parties. If, within 90 days from~~
415 ~~the effective date of the merger, for any reason one or more of~~
416 ~~the appraisers is not selected as herein provided, or the~~
417 ~~appraisers fail to determine the value of such dissenting shares,~~
418 ~~the office shall cause an appraisal of such dissenting shares to~~
419 ~~be made which will be final and binding on all parties. The~~
420 ~~expenses of appraisal shall be paid by the resulting state bank~~
421 ~~or trust company.~~

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