By the Committee on Banking and Insurance; and Senator Bennett

597-04448-08 2008818c1

A bill to be entitled

An act relating to financial services; amending s. 520.02, F.S.; defining the term "guaranteed asset protection products"; amending s. 520.07, F.S.; setting forth requirements and prohibitions for selling guaranteed asset protection products; 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 that such products are not 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.; redefining the terms "federal financial institution" and "financial institution"; defining the term "debt-cancellation products"; amending s. 655.79, F.S.; providing that a deposit account by a husband and wife is a tenancy by the entirety; creating s. 655.947, F.S.; providing a definition; authorizing financial institutions to offer debt-cancellation products; authorizing a fee; requiring the Financial Services Commission to adopt rules; providing that a periodic payment option is not required for certain debt-cancellation products; amending s. 655.954, F.S.; authorizing a financial institution to offer a debt-cancellation product but not as a requirement of receiving a loan; creating s. 655.967, F.S.; providing that state-mandated endowments may be maintained in trust accounts in

financial institutions; amending s. 658.21, F.S.; revising an ownership of capital criterion for capital accounts at financial institutions and one-bank holding companies; amending s. 658.34, F.S.; prohibiting certain stock issuance practices for banks; 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 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. Present subsections (7) through (19) of section 520.02, Florida Statutes, are redesignated as subsections (8) through (20), respectively, and a 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 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 waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral. This product is not insurance for purposes of the Florida Insurance Code. This subsection also applies to all such 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 a new retail installment contract or contract for a loan, a motor vehicle retail installment seller, as defined in s. 520.02(10), sales finance company, as defined in s. 520.02(18), or retail lessors, as defined in s. 521.003(8), and their assignees may offer, for a fee or otherwise, optional guaranteed asset protection products in accordance with this chapter. The motor vehicle retail installment seller, sales finance company, or retail lessor 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, the motor vehicle retail installment seller, sales finance company, or retail lessor, and their assignees, must comply with the following:

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

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

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

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

face and size that are easy to read.

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

(f) Entities may not offer a contract for a guaranteed asset protection product which 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 an 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 takes effect.

(g) If a contract for a guaranteed asset protection product is terminated, the entity must 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. Any 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, leases, or retail installment contracts.

1. For purposes of this paragraph, the term "debt-cancellation product" 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. The term 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 are not 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 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; an agreement corporation operating under s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq.; or an Edge Act corporation organized under 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. The term 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 655.947, 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 this section and the rules and orders of the commission or office. As used in this section, the term "financial institutions" includes those institutions defined in s. 655.005(1), insured depository institutions, as defined in 12 U.S.C. s. 1813, and subsidiaries of these institutions.

(2) A financial institution must manage the risks associated with debt-cancellation products in accordance with prudent safety and soundness principles. A financial institution must establish and maintain effective risk-management and control processes over its debt-cancellation products and programs. These processes must 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 should 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 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 10. 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 thereunder. 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, an insured depository institution, as defined in 12 U.S.C. s. 1813, and subsidiaries of these institutions, may offer, for a fee or otherwise, optional debt-cancellation products under s. 655.947 and the rules adopted under that section. The financial institution may not require a person to purchase a debt-cancellation product as a condition for a 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, as amended, 15 U.S.C. ss. 1601 et seq., 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, as amended, 15 U.S.C. ss. 1601 et seq., and the associated regulations which are in effect as of January 31, 2008 ~~June 30, 1992~~.

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

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

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

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 must 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. If the proposed bank will be owned by a single-bank holding company, the organizing directors of the proposed bank collectively must 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. If the proposed bank will be owned by an existing multibank holding company, the proposed directors must have a substantial capital investment in the holding company, as determined by the office. However, the investment is not 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 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) A ~~No~~ bank or trust company may not ~~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) A financial institution may not issue or sell stock of the same class which creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. This subsection does not prohibit 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) A ~~Any~~ state bank or trust company may~~, with the approval of the office,~~ provide for an increase in its capital stock only if the state bank or trust company files a written notice 15 days before the 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 <u>including those not entitled to vote but dissenting as set forth in paragraph (c),</u> 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<u>, and which shares are not voted for approval of the plan or written consent given under paragraph (a) or paragraph (b)</u>.

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 <u>fair</u> value<u>, as defined in s. 607.1301(4),</u> 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 as of

the effective date of the merger under ss. 607.1326-607.1331, except as the procedures for notice and demand are otherwise provided in this section ~~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.