

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2522

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Insurance: Debt Cancellation Agreements

DATE: April 24, 2006

REVISED: 04/26/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/4 amendments</u>
3.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill authorizes insurers to sell debt cancellation and debt suspension agreement contractual liability insurance to creditors such as a bank or credit union. The product would serve to insure a financial institution from losses experienced pursuant to debt cancellation contracts or debt suspension agreements that the financial institution has executed with its customers.

The bill also eliminates the \$50,000 limit on insurance that may be procured on the life of a debtor under a debtor group contract or via credit life insurance. The change would allow the amount of insurance procured under a debtor group contract or credit life insurance on the life of a debtor to be up to the amount of his or her indebtedness to the creditor.

The bill allows for the term of credit disability insurance to extend for the term of the indebtedness, rather than the current 10-year limitation.

This bill substantially amends the following sections of the Florida Statutes: 624.605, 627.553, 627.679, and 627.681

II. Present Situation:

Debt Cancellation Products

Federal regulation defines a debt cancellation contract (DCC) or debt suspension agreement¹ (DSA) as a loan term or contractual agreement whereby a bank agrees to cancel or suspend all or part of a customer's obligation to repay an extension of credit upon the occurrence of a specified event.² Generally, a bank customer agrees to pay a fee³ to the bank in exchange for the DCC or DSA.⁴ For consumers, the arrangement provides a convenient method of extinguishing debt during times of financial or personal hardship. The fee provides compensation to the bank for potentially releasing borrowers from loan obligations. Additionally, the agreement allows the bank to avoid the time and expense of collecting the balance of a loan from a borrower's estate if the borrower should die, or upon other circumstances.

National banks and federally chartered credit unions are authorized by federal law and regulation to enter into a DCC or DSA with customers. The U.S. Office of Comptroller of Currency (OCC) and the National Credit Union Administration (NCUA) have each stated that such activities are incidental to the lending powers of the financial institutions.⁵ As such, they are exempt from state insurance regulation due to federal pre-emption of state law.

The Florida Statutes do not specifically define or reference debt cancellation products. However, the Office of Financial Regulation (OFR) issued an Order of General Application on February 1, 2006, to declare whether a Florida-chartered financial institution may authorize such products pursuant to their lending powers. The OFR stated that Florida-chartered institutions do have the authority to enter into such agreements with their customers, subject to various requirements. One such requirement is that the financial institution "establish and maintain an effective risk management program to ensure the financial institution's safety and soundness concerning Debt Cancellation Products, as is required for a national bank."⁶ Representatives from the OFR have indicated that an institution could meet this requirement either by maintaining sufficient reserves to cover anticipated losses from such products or purchasing insurance to cover such losses.⁷ However, Florida currently does not authorize the sale of such a product under the Florida Insurance Code.

Credit Life and Credit Disability Insurance

¹ A debt suspension agreement does not include loan payment deferral arrangements under which payments are deferred upon the borrower's unilateral election to defer repayment, or a bank's unilateral decision to allow a deferral.

² See 12 C.F.R. s. 37.2

³ The fee may be a lump sum payment due at the outset of a loan that is possibly financed over the loan's term, or the fee may be assessed via a monthly or other periodic charge.

⁴ See Part 37 final rules, 67 Fed. Reg. 58,962 (2003). Statement by the U.S. Office of the Comptroller of Currency which explains some of the purposes and benefits of DCC's and DSA's.

⁵ See 12 C.F.R. Part 37 (OCC rules); 12 C.F.R. Part 721 (NCUA rules).

⁶ Office of Financial Regulation, *In re: Debt Cancellation Products*, OFR No. 0255-B-11/0 (February 1, 2006).

⁷ Letter from the Office of Financial Regulation to the House Committee on Insurance dated March 30, 2006. The letter is on file with the Senate Banking and Insurance Committee.

Both credit life and credit disability insurance under part IX of ch. 627, F.S., are similar to DCCs and DSAs, respectively.⁸ Credit life insurance is insurance on the life of a debtor in connection with a loan or other credit transaction.⁹ Credit disability insurance protects a borrower of money or lessee of goods connected with a loan or credit transaction against loss of time resulting from accident or sickness.¹⁰ The primary difference is that the creditor/consumer is directly covered by an insurer, which pays the financial institution if needed. Additionally, under Florida law, the amount of insurance that may be procured upon the life of any particular debtor is \$50,000.¹¹

Credit life and credit disability insurance are so similar that representatives from the Office of Insurance Regulation have opined that debt cancellation contracts and debt suspension agreements meet the definition of insurance contained in s. 624.02, F.S. Because of this, the office has not authorized direct insurance of DCCs and DSAs, asserting that the proper insurance product to provide coverage to a financial institution that sells such services is reinsurance.¹²

III. Effect of Proposed Changes:

Section 1. Creates paragraph (1)(r) in s. 624.605, F.S., to include debt collection insurance within the definition of casualty insurance. The bill defines debt cancellation insurance as a form of casualty insurance a creditor may purchase “against the risk of financial loss from the use of debt cancellation products with consumer loans and leases.” By defining such agreements as a form of casualty insurance under the Florida Insurance Code, insurers will now be authorized to sell the product to creditors such as a bank or credit union in Florida. The product would serve to insure financial institutions for losses experienced pursuant to debt cancellation contracts or debt suspension agreements executed with their customers.

The section specifically states that debt cancellation products may be offered by Florida chartered financial institutions under the same terms and conditions that federally chartered financial institutions (depository institutions and federal credit unions) are permitted to offer such products. The bill specifically states that debt cancellation products are not to constitute insurance for purposes of the Florida Insurance Code.

Section 2. Amends s. 627.553(3), F.S., to eliminate the \$50,000 limit on insurance that may be procured on the life of a debtor under a debtor group contract. A debtor group contract insures the lives of a group of individuals who are debtors of a creditor, with the creditor as the beneficiary. The change would allow each individual in the group to be insured up to the amount of his or her indebtedness to the creditor.

Section 3. Amends paragraph (1)(b) of s. 627.679, F.S., to eliminate the \$50,000 limit of credit life insurance on the life of any particular debtor regarding loans covered in one or more insurance policy. The change would allow the total amount of credit life insurance on the life of a debtor to be up to the amount of his or her indebtedness to the creditor.

⁸ See ss. 627.676 - 627.6845, F.S.

⁹ Section 627.677(1), F.S.

¹⁰ Section 627.677(2), F.S.

¹¹ Section 627.679(1)(b), F.S.

¹² Letter from Steven Parton, General Counsel of the Office of Insurance Regulation, to Kenneth Levine (June 30, 2004), on file with the Senate Banking and Insurance Committee.

Section 4. Amends s. 627.681, F.S., to allow for the term of credit disability insurance to extend for the term of the indebtedness, rather than the current 10-year time limitation.

Section 5. Provides that the act takes effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The legislation would permit state chartered financial institutions to more readily sell debt cancellation contracts (DCCs) or debt suspension agreements (DSAs) to their customers, by including debt collection insurance among the products that may be offered to financial institutions under the Florida Insurance Code. While state chartered financial institutions that maintain sufficient reserves to cover anticipated losses from DCCs and DSAs can already offer these products, state chartered financial institutions that would prefer to insure such losses through insurance cannot purchase debt cancellation insurance in the state of Florida to cover the institutions' losses. Allowing for this insurance would authorize state chartered financial institutions to sell such agreements as readily as federally chartered institutions. Customers would benefit from being able to purchase a product that would, in certain circumstances, protect the borrower when he or she cannot meet incurred financial obligations. Additionally, insurers will benefit from being enabled to sell a new insurance product (debt cancellation insurance) to creditors.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 352102 by Judiciary:

Adds retail installment contracts to the list of products considered to be “debt cancellation products” and provides that these contracts are not considered insurance for purposes of the Florida Insurance Code. The amendment also corrects a scrivener’s error by changing “debt collection” to “debt cancellation.”

Barcode 941374 by Judiciary:

Provides an exception to the prohibition on “free insurance” in the Florida Insurance Code to allow a seller of a consumer product to pay for insurance where the seller has an ongoing economic interest in the product or where the product delivers the seller’s services after the product is sold. (WITH TITLE AMENDMENT)

Barcode 194704 by Judiciary:

Revises existing law relating to premium financing by an insurer or subsidiary to provide that a discount received by a person who pays the premium for an entire policy term at the beginning of the term is not a component of or related to premium financing so long as the discount is actuarially justified. (WITH TITLE AMENDMENT)

Barcode 584358 by Judiciary:

Revises provisions relating to security deposits by domestic insurers to conform Florida law to the model law and rules enacted by the National Association of Insurance Commissioners. (WITH TITLE AMENDMENT)