

Tab 1	CS/SB 186 by JU, Taddeo; (Similar to H 00363) Lease of Dogs and Cats					
Tab 2	CS/SB 478 by IT, Perry; (Compare to CS/CS/H 00377) Motor Vehicle Rentals					
493334	D	S		BI, Perry	Delete everything after	02/04 08:13 AM
520364	AA	S		BI, Rouson	Delete L.242 - 248:	02/07 01:10 PM
834662	AA	S		BI, Rouson	Delete L.341 - 345:	02/10 04:00 PM
272308	A	S		BI, Rouson	Delete L.216 - 222:	02/03 12:12 PM
Tab 3	CS/SB 1366 by JU, Gruters; (Identical to CS/H 01089) Trusts					
Tab 4	CS/CS/SB 1668 by HP, JU, Simmons; (Compare to CS/H 00009) Damages					
Tab 5	SB 1828 by Broxson; (Similar to H 07041) Litigation Financing Consumer Protection					
793752	D	S	PEND	BI, Broxson	Delete everything after	02/19 04:11 PM
469258	AA	S	FAV	BI, Thurston	Delete L.7:	02/19 04:11 PM
481944	AA	S	UNFAV	BI, Thurston	Delete L.7:	02/19 04:11 PM
504878	AA	S	UNFAV	BI, Thurston	Delete L.99 - 117:	02/19 04:11 PM
327102	SD	S	UNFAV	BI, Thurston	Delete everything after	02/19 04:11 PM
339220	SD	S	UNFAV	BI, Thurston	Delete everything after	02/19 04:11 PM
638636	D	S		BI, Thurston	Delete everything after	02/18 07:48 AM
491882	D	S		BI, Thurston	Delete everything after	02/18 07:48 AM
750626	A	S		BI, Thurston	Delete L.44:	02/17 02:35 PM
622032	A	S		BI, Thurston	Delete L.204 - 216:	02/17 02:35 PM
885912	A	S		BI, Thurston	Delete L.331 - 338.	02/17 02:34 PM
Tab 6	CS/SB 1870 by IT, Hutson; (Compare to CS/CS/H 01391) Technology Innovation					
142964	D	S	L RCS	BI, Hutson	Delete everything after	02/19 04:11 PM
286532	AA	S	UNFAV	BI, Rouson	Delete L.471:	02/19 04:11 PM
381930	AA	S	UNFAV	BI, Rouson	Delete L.539:	02/19 04:11 PM
625642	AA	S	WD	BI, Rouson	Delete L.539:	02/19 04:11 PM
731702	AA	S	WD	BI, Rouson	Delete L.845 - 848:	02/19 04:11 PM
868886	AA	S	UNFAV	BI, Rouson	Delete L.957:	02/19 04:11 PM
775314	AA	S	L UNFAV	BI, Taddeo	Delete L.82 - 577:	02/19 04:11 PM
Tab 7	CS/SB 1872 by GO, Hutson; (Similar to CS/H 01393) Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications					
816768	A	S	L RS	BI, Hutson	Delete L.18 - 82:	02/19 04:11 PM
568540	SA	S	L RCS	BI, Hutson	Delete L.18 - 82:	02/19 04:11 PM
Tab 8	CS/SB 1874 by GO, Hutson; (Identical to CS/H 01395) Fees/Office of Financial Regulation/Financial Technology Sandbox Applications					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Broxson, Chair
Senator Rouson, Vice Chair

MEETING DATE: Wednesday, February 19, 2020

TIME: 1:30—3:30 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 186 Judiciary / Taddeo (Similar H 363)	Lease of Dogs and Cats; Prohibiting the transfer of possession of dogs and cats under specified circumstances; prohibiting the lease of dogs and cats under certain circumstances, etc. JU 01/28/2020 Fav/CS BI 02/19/2020 Temporarily Postponed RC	Temporarily Postponed
2	CS/SB 478 Innovation, Industry, and Technology / Perry (Compare CS/CS/H 377, CS/H 723)	Motor Vehicle Rentals; Revising the applicability of the rental car surcharge; imposing the surcharge on certain motor vehicle leases or rentals by a peer-to-peer car-sharing program; specifying motor vehicle insurance requirements for shared vehicles on a peer-to-peer car-sharing program; requiring a peer-to-peer car-sharing program to assume specified liability of a shared vehicle owner; requiring a shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances, etc. IT 01/27/2020 Fav/CS BI 02/04/2020 Temporarily Postponed BI 02/11/2020 Temporarily Postponed BI 02/19/2020 Temporarily Postponed AP	Temporarily Postponed
3	CS/SB 1366 Judiciary / Gruters (Identical CS/H 1089)	Trusts; Authorizing trustees of certain trusts to reimburse persons being treated as the owner of the trust for specified amounts and in a specified manner; prohibiting certain policies, values, and proceeds from being used for such reimbursement; requiring that specified powers be granted to certain persons if the terms of the trust require a trustee to act at the direction or with the consent of such persons or that specified decisions be made directly by such persons, etc. JU 02/11/2020 Fav/CS BI 02/19/2020 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, February 19, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 1668 Health Policy / Judiciary / Simmons (Compare CS/H 9)	Damages; Requiring that certain medical expenses in personal injury claims be based on certain usual and charges; specifying what charges are admissible as evidence; prohibiting certain charges from being included as usual and customary charges, etc. JU 01/28/2020 Fav/CS HP 02/11/2020 Fav/CS BI 02/19/2020 Temporarily Postponed RC	Temporarily Postponed
5	SB 1828 Broxson (Similar H 7041)	Litigation Financing Consumer Protection; Creating the Litigation Financing Consumer Protection Act; requiring litigation financiers to register with the Office of Financial Regulation; prohibiting litigation financiers from engaging in specified conduct; providing for a contingent right to civil action proceeds assignability; providing that specified communications between attorneys and litigation financiers do not limit or waive statutory or common-law privilege, etc. BI 02/11/2020 Not Considered BI 02/19/2020 Temporarily Postponed JU RC	Temporarily Postponed
6	CS/SB 1870 Innovation, Industry, and Technology / Hutson (Compare CS/CS/H 1391, CS/H 1393, CS/H 1395, Linked CS/S 1872, CS/S 1874)	Technology Innovation; Renaming the Division of State Technology within the Department of Management Services as the Division of Telecommunications; establishing the Florida Digital Service within the department; establishing the Enterprise Architecture Advisory Council; creating the Financial Technology Sandbox within the Office of Financial Regulation, etc. IT 02/10/2020 Fav/CS BI 02/19/2020 Fav/CS AP	Fav/CS Yeas 4 Nays 3
7	CS/SB 1872 Governmental Oversight and Accountability / Hutson (Similar CS/H 1393, Compare CS/CS/H 1391, Linked CS/S 1870)	Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications; Providing exemptions from public records requirements for certain information submitted to the Office of Financial Regulation in Financial Technology Sandbox applications, certain records maintained by specified providers of innovative financial products or services, and information relating to certain consultations; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. GO 02/10/2020 Fav/CS BI 02/19/2020 Fav/CS RC	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, February 19, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 1874 Governmental Oversight and Accountability / Hutson (Identical CS/H 1395, Compare CS/CS/H 1391, Linked CS/S 1870)	Fees/Office of Financial Regulation/Financial Technology Sandbox Applications; Prohibiting the Office of Financial Regulation from waiving or modifying fees for the Financial Technology Sandbox except as specified, etc. GO 02/10/2020 Fav/CS BI 02/19/2020 Favorable AP	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 186

INTRODUCER: Judiciary Committee and Senator Taddeo

SUBJECT: Lease of Dogs or Cats

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Green/Knudson</u>	<u>Knudson</u>	<u>BI</u>	Pre-meeting
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 186 prohibits contracts that allow for the repossession of a dog or cat for failure to make required payments under the contract. Similarly, the bill prohibits lease agreements that provide for the ownership of a dog or cat to be transferred at the end of the lease term. If a contract violates the provisions of the bill, the contract is effectively void, and the consumer is entitled to the return of all amounts paid under the contract and ownership of the dog or cat.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida law considers pets as personal property that may be bought, sold, or given away at will by an owner. There are certain consumer protections and health requirements for pets transported into the state or offered for sale within the state.¹ Generally, each dog must receive vaccines and anthelmintics against a variety of diseases and internal parasites.

If the dog is under 4 months of age, the tests, vaccines and anthelmintic must be administered no more than 21 days before the sale. If the dog is being transported from out of state, the tests must be administered no more than 30 days and no less than 14 days before the dog's entry.

¹ Section 828.29, F.S.

Cats transported into the state or offered for sale must go through a similar process. Each cat must receive vaccines and anthelmintics against diseases and internal parasites.

If the cat is under 4 months of age, the tests, vaccines, and anthelmintics must be administered no more than 21 days before sale within the state. If the cat is being transported from out of state the tests must be administered no more than 30 days and no less than 14 days before the cat's entry into the state.

The tests must be administered by or under the direction of a licensed veterinarian who issues the official certificate of veterinary inspection.

If a cat or dog was from a pet dealer,² Florida law gives consumers 14 days to return or exchange the dog or cat for equal value if a licensed veterinarian certifies that the animal was unfit for purchase at the time of sale. An animal can be unfit due to:

- illness,
- disease,
- presence of symptoms of a contagious or infectious disease, or
- the presence of internal or external parasites, excluding fleas and ticks.

However, if a licensed veterinarian certifies within a year of the sale that the animal was unfit for purchase due to a congenital or hereditary disorder, or the breed, sex, or health is found to have been misrepresented to the consumer, the consumer has the right to choose one of the following options:

- Return the animal and receive a refund of the purchase price and reimbursement for reasonable veterinary costs related to the certification.
- Return the animal and receive an exchange dog or cat of the consumer's choice of equivalent value, and reimbursement for reasonable veterinary costs related to the certification.
- Retain the animal and receive reimbursement for reasonable veterinary costs for necessary services and treatment related to the attempt to cure the dog or cat.

A consumer may waive the right to return the dog or cat for congenial or hereditary disorders, and may instead have the animal examined with 48 hours of the sale. However, even if a veterinarian verified the dog or cat was unfit for purchase due to a congenital or hereditary disorder, the consumer only has a right to return or exchange the animal for equal value, and is not entitled to any refund of any related veterinarian costs.

Florida Contract Law

A contract is an agreement, made with consideration, to do or not to do a particular thing.³ Consideration generally means something of value. For a contract for the transfer of ownership of a dog, for example, the bargain for consideration is typically the dog in exchange for a specific amount of money. For some contracts, such as contracts to purchase property through a

² *Id.* A pet dealer is “any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale of more than two litters, or 20 dogs or cats, per year, whichever is greater, to the public.” This includes direct to consumer sales.

³ See BLACK'S LAW DICTIONARY (2nd ed.), <https://thelawdictionary.org/contract/> (last visited Jan. 24, 2020).

mortgage, the availability of financing may be an essential element. If the buyer is unable to find financing to obtain the mortgage, then the contract may be voided and the parties may go their separate ways.

If an individual does not have the money on hand, and is unable to obtain financing for a mortgage, some consumers may pursue a rental-purchase agreement as an alternative. Under Florida law, a rental purchase agreement occurs when an individual leases a property with the option to eventually buy or mortgage the property at a certain term in the lease. However, the rental-purchase agreement must conform to certain statutory standards.⁴ Under these standards, the agreement must include:

- The total amount of any initial payment, including any advance payment, delivery charge, or any trade-in allowance to be paid by the lessee at or before completion of the rental-purchase agreement.
- The amount and timing of rental payments.
- The amount of all other charges, individually itemized, payable by the lessee to the lessor which are not included in the rental payments.
- A statement of the total cost of the rental-purchase agreement expressed as the total of the initial payment, all rental payments, and all other charges necessary to acquire ownership of the rental property.
- The lessee's right to reinstate the rental-purchase agreement and the amount, or method of determining the amount, of any penalty or other charge for reinstatement.
- If a lessee fails to make a timely payment, the lessee still has the right to reinstate the original provision without losing any rights or options previously acquired so long as the lessee promptly surrenders the rental property upon request and the lessee tenders reinstatement fees within 60 days.⁵
- The party responsible for maintaining or servicing the rental property and a brief description of the responsibility.
- A statement that the lessee has the option to purchase the rental property during the term of the rental-purchase agreement and the price, formula, or method by which the purchase price is to be determined.
- The cash price of the rental property that is the subject of the rental-purchase agreement.

All the required information must be stated in a clear and coherent manner in writing and must be delivered to the consumer. Failure to include all the above requirements, in addition to several others, may make the rental-purchase agreement unenforceable.

The requirements for rental-purchase agreements under Florida law were created to give the consumer a more equal bargaining position relative to the person leasing the property. Adhesion contracts, where one party has significantly more bargaining power than the other party, are generally held to a higher level of scrutiny in court because consumers often feel they have no other choice but to agree to the terms of the contract.⁶ The rental-purchase agreement

⁴ Section 559.9233, F.S.

⁵ Section, 559.9235(1)(b), F.S.

⁶ Legal Information Institute, *Adhesion Contract*, see [https://www.law.cornell.edu/wex/adhesion_contract_\(contract_of_adhesion\)](https://www.law.cornell.edu/wex/adhesion_contract_(contract_of_adhesion)).

requirements are meant to mitigate these concerns by providing notice and certain privileges to the consumer.

The federal Consumer Leasing Act (Act) regulates personal property leases that exceed 4 months in duration and that are made to consumers for personal, family, or household purposes. The Act requires that certain lease costs and terms be disclosed, imposes limitations on the size of penalties for delinquency or default and on the size of residual liabilities, and requires certain disclosures in lease advertising.⁷ Prior to signing a lease, the consumer must receive a dated written statement that clearly details the terms of the lease agreement.⁸

Pet Lease Agreements

Pet leasing is an alternative financial mechanism to purchasing a pet with cash or credit. It relies on a financial product, a consumer-lease, commonly associated with cars and furniture. According to the Federal Trade Commission, pet leasing is a relatively new industry and as a result, people considering buying a pet are not expecting to be handed a lease and pet sellers may not be prepared to explain a lease's terms. Some financial service companies have partnered with pet sellers to offer such leases. Lease terms vary, typically 1 to 3 years. During the lease period, customers are required to make monthly payments that can total more than the list price of the pet, sometimes much more. When the lease is over, the customer does not own the pet. To purchase the pet, the customer usually must pay an additional amount. If they can't buy the pet, they must surrender it, and if the customer misses a monthly payment, the leasing company can repossess it.⁹

In Florida, the Department of Agriculture and Consumer Services, Division of Consumer Services, has received complaints regarding pet leasing. According to research, some of the complaints allege that retailers are overly persuasive, and that appropriate lease disclosures have not been made when the contract is signed. A sample of complaints and other articles on this issue appears to show that certain consumers in Florida are:

- Entering into financial agreements they cannot afford;
- Not aware of all of the costs involved at the point of sale;
- Not reading the "fine print" in the agreements at the point of sale; or
- Being led into financial agreements with predatory payment plans.

Due to complaints in Miami-Dade County, the Board of County Commissioners passed a measure aimed at protecting pet owners. The legislation prohibits the predatory lending practice of pet leasing.

State Laws Prohibiting Pet Leasing

Several states restrict or prohibit the practice of pet leasing.

⁷ 15 U.S.C. ss. 1667-1667f.

⁸ *Id.*

⁹ Federal Trade Commission, A lease on a leash? Pet stores are leasing pets, <https://www.ftc.gov/news-events/blogs/business-blog/2018/07/lease-leash-pet-stores-are-leasing-pets> (last visited February 14, 2020).

New York¹⁰

New York Law prohibits a contract for buying or financing a dog or cat that includes any provisions that authorize using the dog or cat as security and allow the lender or seller to repossess the animal if the buyer fails to make payments under the contract. The law does not prohibit buying a dog or cat through an unsecured personal loan.

California¹¹

In California, a contract is void if it:

- Transfers ownership of a dog or cat contingent on the buyer making periodic payments after taking possession of the animal, other than making payments to repay an unsecured loan to buy the animal, or
- Provides for the lease of a dog or cat with the option to buy the animal at the end of the lease term. The consumer taking possession of the dog or cat under such a contract is deemed the animal's owner and is entitled to a refund of all amounts paid under the contract.

New Jersey¹²

In New Jersey, it is an unlawful practice and a violation for a pet dealer to enter into a contract for a cat or dog in which the transfer of ownership of the animal is contingent on the making of payments over a period of time subsequent to the transfer of possession of the animal, unless these payments are on an unsecured loan for the purchase of the animal; or a lease agreement that provides for or offers the option of transferring ownership of a cat or dog at the end of the lease term.

Washington¹³

In Washington, the following contracts are void and unenforceable that were offered or entered into on or after July 28, 2019:

- a contract that is contingent upon making payments over a period of time subsequent to the transfer of possession of a dog or cat;
- a contract that provides or offers the option of transferring ownership of the dog or cat at the end of the lease term; or
- a contract that includes a provision naming the dog or cat as a security interest.

If a consumer enters into a contract, the consumer shall be deemed to be the owner of the dog or cat and is entitled to the return of all amounts the consumer paid under the contract. The bill does not apply to contracts for payments to repay an unsecured loan for the purchase of a dog or cat.

Nevada¹⁴

Nevada law, enacted in 2017, prohibits a person from offering a lease on living animals for personal or household use, if the living animal is expected to have not more than a de minimis

¹⁰ N.Y. General Business Law s. 753-e (2019).

¹¹ Cal. Civil Code s. 1670.10 (2018).

¹² N.J. Stat. Ann. s. 56:8-211 (2019).

¹³ Wash. Rev. Code S. 63.10.070 (2019)

¹⁴ Nev. Rev. Stat. s. 597.997 (2017).

residual financial value at the end of the term of the lease or contract. The failure of a person to comply with this section constitutes a deceptive trade practice.

Indiana¹⁵

Prohibits leasing of, and rental purchase agreements involving, live domestic animals.

III. Effect of Proposed Changes:

The bill prohibits the following contracts:

- Contracts for pets where a dog or cat is used as collateral or is subject to repossession upon default of the contract.
- Contracts for the lease of a dog or cat if the contract provides an option to transfer ownership at the end of the lease term.

If a contract for the sale or lease of a dog or cat contains a prohibited provision, the consumer who received the dog or cat under that contract is entitled to claim ownership of the dog or cat in addition to any money paid toward the contract.

The bill does not prohibit contracts for pets based on an unsecured loan.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Both the state¹⁶ and federal¹⁷ constitutions prohibit laws impairing the obligations of contracts. To the extent that the law may impact contracts that were implemented prior to the effective date, the remedies provided to the consumer such as the ability to render the

¹⁵ Ind. Code s. 24-4.5-2407.5 (2019).

¹⁶ FLA. CONST. art. 1 s. 10

¹⁷ U.S. CONST. art. I s. 10

contract unenforceable and retain ownership of the pet while reclaiming any money paid toward the pet may not be enforceable. To minimize confusion regarding the application of the bill, the Legislature may wish to revise the bill to provide that it applies to contracts executed on or after the bill's effective date.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will outlaw pet leases and contracts where a pet is used as collateral.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 828.32 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 28, 2020:

The committee substitute limits the contracts regulated by the bill to contracts for the transfer of ownership of cats and dogs and not all pets as in the original bill. The potential for the imposition of a fine for a noncriminal infraction, which was included in the original bill, is not included in the committee substitute.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Taddeo

590-02760-20

2020186c1

A bill to be entitled

An act relating to the lease of dogs and cats;
creating s. 828.32, F.S.; prohibiting the transfer of
possession of dogs and cats under specified
circumstances; prohibiting the lease of dogs and cats
under certain circumstances; providing remedies for
noncompliance; providing an effective date.

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

Section 1. Section 828.32, Florida Statutes, is created to
read:

828.32 Lease of dogs or cats prohibited.—

(1) A person may not do any of the following:

(a) Transfer possession of a dog or cat, if the dog or cat
is used as collateral for the transfer agreement or is subject
to repossession in any manner upon default of the agreement.

(b) Lease a dog or cat, if the lease terms provide for or
offer the option of transferring ownership of the dog or cat at
the end of the lease period.

(2) In addition to any other remedies provided by law, the
consumer taking possession of a dog or cat in a transfer
prohibited by this section is the owner of the dog or cat and is
entitled to the return of all amounts the consumer paid under
such lease.

Section 2. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 478

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Perry

SUBJECT: Motor Vehicle Rentals

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.	Arnold	Knudson	BI	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 478 amends s. 212.0606, F.S., which subjects the lease or rental of a motor vehicle to a rental car surcharge. The bill defines a motor vehicle rental company and a peer-to-peer car-sharing program, in part, as an entity or a business platform and requires them to collect the rental car surcharge.

The bill creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car-sharing programs. This includes establishing definitions and requirements for: insurance coverage requirements, insurable interest, liability, exclusions from liability, contribution against indemnification, construction, notification of implications of a lien, recordkeeping, and consumer protections including disclosures, driver license verification and retention, responsibility for equipment, and automobile safety recalls.

II. Present Situation:

Motor Vehicle Rentals

Section 322.38, F.S., provides driver license-related requirements for renting a motor vehicle to another person. A person may not rent a motor vehicle to any other person unless the other person is duly licensed in Florida or, if a nonresident, is licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not

require that an operator be licensed. Prior to the rental, the rentee must inspect the driver license of the person to whom the vehicle is to be rented and verify that the driver license is unexpired.

Every person renting a motor vehicle to another is required to keep a record of the registration number of the motor vehicle, the name and address of the person to whom the vehicle is rented, the number of the license of the renter, and the place where the license was issued. The record must be open to inspection by any police officer, or officer or employee of the department.

If a rental car company rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if the renter does not execute a rental contract at the time he or she takes possession of the vehicle, the rental car company is deemed to have met the above obligations when the rental car company, at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company's services, or any time thereafter, requires the renter to verify that he or she is duly licensed and that the license is unexpired.

Minimum Insurance Requirements for Motor Vehicle Rentals

Section 324.021, F.S., provides minimum insurance requirements, including requirements applicable to rental vehicles. The lessor under an agreement to rent or lease a motor vehicle for a period of less than 1 year is deemed to be the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator only up to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property damage and bodily injury liability, the lessor is liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages is to be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.

Motor Vehicle Rental Surcharges

The lease or rental of tangible personal property, including vehicles, is taxable.¹ When a motor vehicle is leased or rented in Florida for a period of less than 12 months, the entire amount of such rental is taxable at the rate of 6 percent² of the gross proceeds derived from the lease or rental.³ A "lease or rental" is defined as the leasing or renting of tangible personal property and the possession or use of property by the lessee or renter for a consideration, without transfer of title.⁴ The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges from the lessee.⁵

¹ Section 212.05(1), F.S.

² Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. *See* s. 212.054, F.S.

³ Section 212.05(1)(c), F.S.

⁴ Section 212.02(10)(g), F.S.

⁵ Rule 12A-1.007(13)(a)1, F.A.C.

Rule 12A-16.002(7), F.A.C., provides in pertinent part that “any person who has leased or rented a for hire passenger motor vehicle under the terms of a lease or rental agreement...and cannot prove that the rental car surcharge has been paid to the lessor or other person will be directly liable to the state for any surcharge, interest, or penalty due on such transaction.” The lessee, therefore, is also liable for payment of the rental car surcharge if the lessor fails to collect.

Florida law imposes a surcharge⁶ of \$2.00 per day, or any part of a day, upon the lease or rental of a “motor vehicle licensed for hire”⁷ and designed to carry less than nine passengers, regardless of whether such motor vehicle is licensed in Florida.⁸ The surcharge applies to the first 30 days of the term of any lease or rental.⁹ Pursuant to Rule 12A-16.002(1)(b), F.A.C., “[e]ach person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement.” The term “person” includes “any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit....”¹⁰ The term “business” is defined to mean “any activity engaged in by any person, or caused to be engaged in by him or her, with the object or public gain, benefit, or advantage, either direct or indirect.”¹¹

The \$2.00 surcharge does not apply to rentals by a member of a car-sharing service when the motor vehicle is used for less than 24 hours.¹² Members of a car-sharing service who use a motor vehicle for less than 24 hours (pursuant to an agreement with the service) are required to pay a \$1.00 surcharge, per usage.¹³ The term “car-sharing service” means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, 7 days per week;
- Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;
- On an hourly basis or for a shorter increment of time;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.¹⁴

⁶ The rental car surcharge is subject to sales and use tax. *See* s. 212.0606(1), F.S. and Rule 12A-16.002(6)(c), F.A.C.

⁷ The term “for hire passenger motor vehicle” means any automobile designed to carry fewer than nine (9) passengers let or rented to another for consideration; offered for lease or rent as a means of transportation for compensation; advertised; or generally held out as being for lease or rent. The term “for hire passenger motor vehicle” does not include any motorcycle, moped, truck, truck trailer, travel trailer, camping trailer, recreational vehicle with living facilities, or van conversion. *See* Rule 12A-16.002(2)(c), F.A.C.

⁸ Section 212.0606(1), F.S.

⁹ *Id.*

¹⁰ Section 212.02(12), F.S.

¹¹ Section 212.02(2), F.S.

¹² Rule 12A-16.002(3), F.A.C.

¹³ Section 212.0606(2), F.S.

¹⁴ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 212.0606, F.S., which subjects the lease or rental of a motor vehicle to a rental car surcharge of \$2 per day.

The bill defines:

“Motor vehicle rental company” to mean an entity that is in the business of providing motor vehicles to the public under a rental agreement for financial consideration.

“Peer-to-peer car-sharing program” to mean a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1), F.S.

These entities or business platforms are required to collect the rental car surcharge.

Section 2 creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car sharing programs.

Definitions

The bill provides the following definitions:

- “Peer-to-peer car sharing” means the authorized use of a motor vehicle by an individual other than the vehicle’s owner through a peer-to-peer car-sharing program. The term does not include ridesharing as defined in s. 341.031(9), F.S., a carpool as defined in s. 450.28(3), F.S., or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1), F.S.
- “Peer-to-peer car-sharing delivery period” means the period during which a shared vehicle is delivered to the location of the peer-to-peer car-sharing start time, if applicable, as documented by the governing peer-to-peer car sharing program agreement.
- “Peer-to-peer car-sharing period” means the period beginning either at the peer-to-peer car-sharing delivery period, or, if there is no peer-to-peer car-sharing delivery period, at the peer-to-peer car-sharing start time, and ending at the peer-to-peer car-sharing termination time.
- “Peer-to-peer car-sharing program” means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1), F.S.
- “Peer-to-peer car-sharing program agreement” means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program.
- “Peer-to-peer car-sharing start time” means the time when the shared vehicle is under the control of the shared vehicle driver, which occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the peer-to-peer car-sharing program agreement.
- “Peer-to-peer car-sharing termination time” means the earliest of the following:

- The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car sharing program agreement;
- The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car sharing program; or
- The time the shared vehicle owner takes possession and control of the shared vehicle.
- “Shared vehicle” means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. The term does not include a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., or a motor vehicle used for a carpool as defined in s. 450.28(3), F.S.
- “Shared vehicle driver” means an individual who is authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.
- “Shared vehicle owner” means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program.

Insurance Requirements, Liability

Insurance Coverage Requirements, Insurable Interest,

A peer-to-peer car-sharing program must have a motor vehicle insurance policy that provides the shared vehicle owner and the shared vehicle driver during each peer-to-peer car-sharing period all of the following:

- Property damage liability coverage in the amount of at least \$10,000 as required under s. 324.022, F.S.;
- Bodily injury liability coverage in the amount of at least \$10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least \$20,000 for bodily injury to, or death of, two or more persons in any one crash as specified in s. 324.021(7)(a) and (b), F.S.;
- Personal injury protection benefits in the amount of at least \$10,000¹⁵ for medical and disability benefits and in the amount of at least \$5,000 for death benefits required under s. 627.736, F.S.; and
- Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits as required under s. 627.727, F.S.

The peer-to-peer car-sharing program must also ensure that the motor vehicle insurance policy:

- Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; and
- Does not exclude the use of a shared vehicle by a shared vehicle driver.

These insurance requirements may be satisfied by a motor vehicle insurance policy maintained by:

¹⁵ Personal injury protection reimbursement medical benefits are limited to \$2,500 if specified medical providers determine the injured person did not have an emergency medical condition.

- A shared vehicle owner;
- A shared vehicle driver;
- A peer-to-peer car-sharing program; or
- A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

A motor vehicle insurance policy maintained by a shared vehicle owner, shared vehicle driver, peer-to-peer car-sharing program, or a combination of a shared vehicle owner, shared vehicle driver, and peer-to-peer car-sharing program, is primary during each peer-to-peer car-sharing period.

If insurance maintained by a shared vehicle owner or shared vehicle driver lapses or does not provide the required coverage, the insurance maintained by the peer-to-peer car-sharing program must provide the required coverage beginning with the first dollar of a claim and must defend such claim, with the exceptions discussed below. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program may not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

Notwithstanding any other law to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the peer-to-peer car-sharing period. This interest does not create liability for a network for maintaining the required coverage.

A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

- Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;
- Liability of the shared vehicle owner;
- Liability of the shared vehicle driver;
- Damage or loss to the shared motor vehicle; or
- Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

When the required insurance is maintained by a peer-to-peer car-sharing program, the motor vehicle insurance policy may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. A peer-to-peer car-sharing program is not transacting in insurance when it maintains this insurance.

Liability

A peer-to-peer car-sharing program assumes liability, with stated exclusions, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the peer-to-peer car-sharing period in

amounts stated in the peer-to-peer car-sharing program agreement. Such amounts may not be less than those set forth in:

- s. 324.021(7)(a) and (b), F.S.: Bodily injury liability coverage in the amount of at least \$10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least \$20,000 for bodily injury to, or death of, two or more persons in any one crash;
- s. 324.022, F.S.: Property damage liability coverage in the amount of at least \$10,000;
- s. 627.727, F.S.: Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits; and
- s. 627.736, F.S.: Personal injury protection benefits in the amount of at least \$10,000 for medical and disability benefits and in the amount of at least \$5,000 for death benefits.

This assumption of liability does not apply if a shared vehicle owner:

- Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the peer-to-peer car-sharing period in which the loss occurs; or
- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

A peer-to-peer car-sharing program assumes primary liability for a claim when it is providing, in whole or in part, the minimal insurance discussed above and:

- A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and
- The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the required rental information.

The shared vehicle owner's insurer must indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy, if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

Exclusions

An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

This provision does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, hire, or for any business use.

Contribution Against Indemnification

A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program, if the claim is made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the peer-to-peer car-sharing period.

Construction

The bill does not limit:

- The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or
- The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Operational Requirements

Notification of Implications of a Lien

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Recordkeeping

A peer-to-peer car-sharing program must:

- Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.
- Retain these records for a period of not less than the applicable personal injury statute of limitations.
- Provide the information contained in the records upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

Consumer Protections

Disclosures

Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

- Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement;

- That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program;
- That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;
- That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

Driver License Verification and Retention

A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

- Holds a driver license issued under ch. 322, F.S., which authorizes the driver to drive vehicles of the class of the shared vehicle;
- Is a nonresident who:
 - Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and
 - Is at least the same age as that required of a resident to drive; or
- Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

A peer-to-peer car-sharing program must keep a record of:

- The name and address of the shared vehicle driver;
- The driver license number of the shared vehicle driver and of any other person who will operate the shared vehicle; and
- The place of issuance of the driver license.

Responsibility for Equipment

A peer-to-peer car sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program must indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the peer-to-peer car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs outside of the peer-to-peer car-sharing period.

Automobile Safety Recalls

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

- Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and
- Notify the shared vehicle owner that if the shared vehicle owner:
 - Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made;
 - Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she must remove the shared vehicle's availability on the peer-to-peer car-sharing program as soon as practicable after receiving the notice of the safety recall and until the safety recall repair has been made; or
 - Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall so that he or she may address the safety recall repair.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not appear to impose or raise a state tax or fee in violation of Article VII, section 19 of the Florida Constitution, as leases or rented motor vehicles licensed for hire are currently subject to a rental car surcharge under s. 212.0606, F.S. The Florida Constitution defines the term “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”¹⁶ The Florida Constitution defines the term “raise” to mean “to increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis; to

¹⁶ Fla. Const. art. VII, s. 19(d)(1) (2019).

increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or to decrease or eliminate a state tax or fee exemption or credit.”¹⁷ The bill’s inclusion of motor vehicle rental companies and peer-to-peer car-sharing programs as subcategories of motor vehicle lease or rental arrangements currently subject to rental car surcharges, neither imposes a fee on an industry not currently subject to rental car surcharges under the section nor raises a fee on an industry currently subject to rental car surcharges under the section. Accordingly, the bill does not appear to trigger the requirement for a separate bill for the consideration of the rental surcharge provision subject to a 2/3 vote by each chamber of the Legislature.¹⁸

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference analyzed HB 377, which is similar to CS/SB 478, and determined that the bill would increase receipts to the General Revenue Fund and revenues to local governments by an indeterminate amount.¹⁹

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.0606 of the Florida Statutes.

This bill creates section 627.7483 of the Florida Statutes.

¹⁷ Fla. Const. art. VII, s. 19(d)(2) (2019).

¹⁸ See Fla. Const. art. VII, s. 19(a),(b) (2019).

¹⁹ http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page13-15.pdf

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Innovation, Industry, and Technology on January 27, 2020:

The committee substitute:

- Revises the provisions relating to the car rental surcharge;
- Provides that the car-sharing service shall collect the surcharge; and
- Revises and deletes several definitions including revising the definition of peer-to-peer car sharing program.

The committee substitute also revises the insurance coverage requirements. As filed, the bill required the program to insure third parties, vehicle owners, and drivers in the minimum amounts in s. 324.021(7), F.S., which are: in the amount of \$10,000 because of bodily injury to, or death of, one person in one crash; in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in one crash; and in the amount of \$10,000 because of injury to, or destruction of, property of others in any one crash. The committee substitute replaces these requirements with:

- Property damage liability coverage in the minimum coverage amounts in s. 324.022, F.S., which are:
 - At least \$10,000 in one accident; or
 - At least \$30,000 for combined property and bodily injury liability for one crash;
- Bodily injury liability coverage limits under s. 324.021(7)(a) and (b), F.S., which are:
 - In the amount of \$10,000 for bodily injury to, or death of, one person in any one crash; and
 - In the amount of \$20,000 for bodily injury to, or death of, two or more persons in any one crash;
- Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736, F.S., which are a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits resulting from bodily injury, sickness, disease, or death; and
- Uninsured and underinsured vehicle coverage under s. 627.727, F.S., which is not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company as may be selected by the named insured.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (1) of section
212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be
the legislative intent that every person is exercising a taxable
privilege who engages in the business of selling tangible
personal property at retail in this state, including the



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business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or a peer-to-peer car-sharing program, as those terms are defined in s. 212.0606(1), for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

c. If the motor vehicle is rented by a peer-to-peer car-sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax due in connection with the rental.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no



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tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(1) As used in this section, the term:

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;



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69 4. On an hourly basis or for a shorter increment of time;
70 5. Without a separate fee for refueling the motor vehicle;
71 6. Without a separate fee for minimum financial
72 responsibility liability insurance; and
73 7. Owned or controlled by the car-sharing service or its
74 affiliates.

75 (b) "Motor vehicle rental company" means an entity that is
76 in the business of providing, for financial consideration, motor
77 vehicles to the public under a rental agreement.

78 (c) "Peer-to-peer car-sharing program" has the same meaning
79 as in s. 627.7483(1).

80 (2) Except as provided in subsection (3) ~~(2)~~, a surcharge
81 of \$2 per day or any part of a day is imposed upon the lease or
82 rental by a motor vehicle rental company or a peer-to-peer car-
83 sharing program of a motor vehicle that is licensed for hire and
84 designed to carry fewer than nine passengers, regardless of
85 whether the motor vehicle is licensed in this state, for
86 financial consideration and without transfer of the title of the
87 motor vehicle. The surcharge is imposed regardless of whether
88 the lease or rental occurs in person or through digital means.
89 The surcharge applies to only the first 30 days of the term of a
90 lease or rental and must be collected by the motor vehicle
91 rental company or the peer-to-peer car-sharing program. The
92 surcharge is subject to all applicable taxes imposed by this
93 chapter.

94 (3) ~~(2)~~ A member of a car-sharing service who uses a motor
95 vehicle as described in subsection (2) ~~(1)~~ for less than 24
96 hours pursuant to an agreement with the car-sharing service
97 shall pay a surcharge of \$1 per usage. A member of a car-sharing



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service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of \$2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates.~~ The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(4) (a) ~~(3) (a)~~ Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and



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4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5) (a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest



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and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6)~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 3. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time



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established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15).

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing



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program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(1).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for carpool as defined in s. 450.28(3), or for car-sharing service as defined in s. 212.0606(1).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the



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minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a),



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beginning with the first dollar of a claim, and must defend such
claim, except under circumstances as set forth in subparagraph
(3) (a) 2.

b. Coverage under a motor vehicle insurance policy
maintained by the peer-to-peer car-sharing program must not be
dependent on another motor vehicle insurer first denying a
claim, and another motor vehicle insurance policy is not
required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or
regulation to the contrary, a peer-to-peer car-sharing program
has an insurable interest in a shared vehicle during the car-
sharing period. This sub-subparagraph does not create liability
for a peer-to-peer car-sharing program for maintaining the
coverage required under paragraph (a) and under this paragraph,
if applicable.

d. A peer-to-peer car-sharing program may own and maintain
as the named insured one or more policies of motor vehicle
insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing
program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to
satisfy the personal injury protection and uninsured and
underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained
by a peer-to-peer car-sharing program, may be provided by an
insurer authorized to do business in this state which is a



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member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) Liability.—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs;
or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. A peer-to-peer car-sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under paragraph (2)(a) and:



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a. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

b. The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5).

The shared vehicle owner's insurer shall indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

(b) Vicarious liability.—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) Exclusions in motor vehicle insurance policies.—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.



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This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

(d) Contribution against indemnification.—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a



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shared vehicle, including, but not limited to, the times used,
fees paid by the shared vehicle driver, and revenues received by
the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period
not less than the applicable personal injury statute of
limitations.

(c) Provide the information contained in the records in
paragraph (a) upon request to the shared vehicle owner, the
shared vehicle owner's insurer, or the shared vehicle driver's
insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program
agreement made in this state must disclose to the shared vehicle
owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to
seek indemnification from the shared vehicle owner or the shared
vehicle driver for economic loss resulting from a breach of the
terms and conditions of the peer-to-peer car-sharing program
agreement.

2. That a motor vehicle insurance policy issued to the
shared vehicle owner for the shared vehicle or to the shared
vehicle driver does not provide a defense or indemnification for
any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance
coverage on the shared vehicle owner and the shared vehicle
driver is in effect only during each car-sharing period and
that, for any use of the shared vehicle by the shared vehicle
driver after the car-sharing termination time, the shared
vehicle driver and the shared vehicle owner may not have



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insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the



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class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) Responsibility for equipment.—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) Motor vehicle safety recalls.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared



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vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4. This act shall take effect March 1, 2021.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to motor vehicle rentals; amending s.
212.05, F.S.; specifying the applicable sales tax rate
on motor vehicle leases and rentals by motor vehicle
rental companies and peer-to-peer car-sharing
programs; requiring peer-to-peer car-sharing programs
to collect and remit the applicable sales tax;
amending s. 212.0606, F.S.; defining terms; specifying
the applicable rental car surcharge on motor vehicle
leases and rentals by motor vehicle rental companies
and peer-to-peer car-sharing programs; specifying
applicability of the surcharge; requiring motor
vehicle rental companies and peer-to-peer car-sharing
programs to collect the surcharge; requiring car-
sharing services to collect a certain surcharge;
making technical changes; creating s. 627.7483, F.S.;
defining terms; specifying insurance requirements for
shared vehicle owners and shared vehicle drivers under
peer-to-peer car-sharing programs; providing that a
peer-to-peer car-sharing program has an insurable
interest in a shared vehicle during certain periods;
authorizing peer-to-peer car-sharing programs to own
and maintain certain motor vehicle insurance policies;
requiring peer-to-peer car-sharing programs to assume
certain liability; providing exceptions; requiring a



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shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude coverages and a duty to defend or indemnify claims under a shared vehicle owner's policy; providing construction relating to exclusions; providing a right of contribution to a shared vehicle owner's insurer for certain claims; requiring a peer-to-peer car-sharing program to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping and record sharing, disclosure, and driver license verification and data retention requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have sole responsibility for certain equipment in or on a shared vehicle; providing for indemnification; specifying requirements for peer-to-peer car-sharing programs relating to safety recalls on a shared vehicle; providing construction; providing an effective date.



520364

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (493334)

Delete lines 242 - 248

and insert:

a. Primary motor vehicle liability coverage of at least \$1 million for death, bodily injury, and property damage.

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.

c. Uninsured and underinsured vehicle coverage as required



834662

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (493334) (with title amendment)

Delete lines 341 - 345
and insert:

(b) Vicarious liability.—A shared vehicle owner is limited in vicarious liability pursuant to s. 324.021(9)(b)3. This paragraph may not be construed to affect the liability of the shared vehicle owner for his or her own negligence.



834662

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete lines 535 - 537

14 and insert:

15 circumstances; specifying a limitation on vicarious
16 liability of a shared vehicle owner; providing
17 construction relating to liability; authorizing motor
18 vehicle



272308

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment

Delete lines 216 - 222
and insert:

a. Primary motor vehicle liability coverage of at least \$1 million for death, bodily injury, and property damage.

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.

c. Uninsured and underinsured vehicle coverage as required

By the Committee on Innovation, Industry, and Technology; and
Senator Perry

580-02633-20

2020478c1

1 A bill to be entitled
2 An act relating to motor vehicle rentals; amending s.
3 212.0606, F.S.; defining the terms "motor vehicle
4 rental company" and "peer-to-peer car-sharing
5 program"; revising the applicability of the rental car
6 surcharge; imposing the surcharge on certain motor
7 vehicle leases or rentals by a peer-to-peer car-
8 sharing program; specifying who must collect the
9 surcharge; making technical changes; creating s.
10 627.7483, F.S.; defining terms; specifying motor
11 vehicle insurance requirements for shared vehicles on
12 a peer-to-peer car-sharing program; providing
13 construction relating to such insurance; requiring a
14 peer-to-peer car-sharing program to assume specified
15 liability of a shared vehicle owner; providing
16 exceptions; requiring a shared vehicle owner's insurer
17 to indemnify the peer-to-peer car-sharing program
18 under certain circumstances; authorizing a shared
19 vehicle owner's motor vehicle insurer to exclude
20 certain coverages and the duty to defend or indemnify
21 certain claims; authorizing such insurer to seek
22 contribution against the peer-to-peer car-sharing
23 program's insurer under certain circumstances;
24 requiring a peer-to-peer car-sharing program to notify
25 the shared vehicle owner of certain lien information;
26 specifying recordkeeping and record disclosure
27 requirements for peer-to-peer car-sharing programs;
28 specifying disclosure requirements for peer-to-peer
29 car-sharing program agreements; specifying shared

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 vehicle driver license requirements; specifying
31 liability for damage to certain equipment in or on a
32 shared vehicle; specifying requirements for peer-to-
33 peer car-sharing programs relating to safety recalls
34 on shared vehicles; providing construction; providing
35 an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

39 Section 1. Section 212.0606, Florida Statutes, is amended
40 to read:

41 212.0606 Rental car surcharge.—

42 (1) As used in this section, the term:

43 (a) "Car-sharing service" means a membership-based
44 organization or business, or division thereof, which requires
45 the payment of an application fee or a membership fee and
46 provides member access to motor vehicles;

47 1. Only at locations that are not staffed by car-sharing
48 service personnel employed solely for the purpose of interacting
49 with car-sharing service members;

50 2. Twenty-four hours per day, 7 days per week;

51 3. Only through automated means, including, but not limited
52 to, a smartphone application or an electronic membership card;

53 4. On an hourly basis or for a shorter increment of time;

54 5. Without a separate fee for refueling the motor vehicle;

55 6. Without a separate fee for minimum financial
56 responsibility liability insurance; and

57 7. Owned or controlled by the car-sharing service or its
58 affiliates.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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(b) "Motor vehicle rental company" means an entity that is in the business of providing motor vehicles to the public under a rental agreement for financial consideration.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsection (3) ~~(2)~~, a surcharge of \$2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company or a peer-to-peer car-sharing program of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company or the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

~~(3)(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of \$1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of \$2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an~~

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~~application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial~~

~~responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates.~~ The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

~~(4)(3)~~(a) Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department

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shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5) (a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6) ~~(5)~~ The surcharge imposed by this section does not apply

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to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 2. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Peer-to-peer car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. The term does not include ridesharing as defined in s. 341.031(9), a carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(b) "Peer-to-peer car-sharing delivery period" means the period during which a shared vehicle is delivered to the location of the peer-to-peer car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(c) "Peer-to-peer car-sharing period" means the period beginning either at the peer-to-peer car-sharing delivery period, or, if there is no peer-to-peer car-sharing delivery period, at the peer-to-peer car-sharing start time, and ending at the peer-to-peer car-sharing termination time.

(d) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1).

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(e) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program.

(f) "Peer-to-peer car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the peer-to-peer car-sharing program agreement.

(g) "Peer-to-peer car-sharing termination time" means the earliest of the following:

1. The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner takes possession and control of the shared vehicle.

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. The term does not include a motor vehicle used for ridesharing as defined in s. 341.031(9) or a motor vehicle used for a carpool as defined in s. 450.28(3).

(i) "Shared vehicle driver" means an individual who is

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authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program.

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure during each peer-to-peer car-sharing period that the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as specified in s. 324.021(7) (a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; and

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance requirements under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

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233 a. A shared vehicle owner;
 234 b. A shared vehicle driver;
 235 c. A peer-to-peer car-sharing program; or
 236 d. A combination of a shared vehicle owner, a shared
 237 vehicle driver, and a peer-to-peer car-sharing program.
 238 2. The insurance policy maintained in subparagraph 1. which
 239 satisfies the insurance requirements under paragraph (a) is
 240 primary during each peer-to-peer car-sharing period.
 241 3.a. If the insurance maintained by a shared vehicle owner
 242 or shared vehicle driver in accordance with subparagraph 1.
 243 lapses or does not provide the coverage required under paragraph
 244 (a), the insurance maintained by the peer-to-peer car-sharing
 245 program must provide the coverage required under paragraph (a)
 246 beginning with the first dollar of a claim and must defend such
 247 claim, except under circumstances as set forth in subparagraph
 248 (3)(a)2.
 249 b. Coverage under a motor vehicle insurance policy
 250 maintained by the peer-to-peer car-sharing program may not be
 251 dependent on another motor vehicle insurer first denying a
 252 claim, and another motor vehicle insurance policy is not
 253 required to first deny a claim.
 254 c. Notwithstanding any other law to the contrary, a peer-
 255 to-peer car-sharing program has an insurable interest in a
 256 shared vehicle during the peer-to-peer car-sharing period. This
 257 sub-subparagraph does not create liability for a network for
 258 maintaining the coverage required under paragraph (a) and under
 259 this paragraph, if applicable.
 260 d. A peer-to-peer car-sharing program may own and maintain
 261 as the named insured one or more policies of motor vehicle

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262 insurance which provide coverage for:
 263 (I) Liabilities assumed by the peer-to-peer car-sharing
 264 program under a peer-to-peer car-sharing program agreement;
 265 (II) Liability of the shared vehicle owner;
 266 (III) Liability of the shared vehicle driver;
 267 (IV) Damage or loss to the shared motor vehicle; or
 268 (V) Damage, loss, or injury to persons or property to
 269 satisfy the personal injury protection and uninsured and
 270 underinsured motorist coverage requirements of this section.
 271 e. Insurance required under paragraph (a), when maintained
 272 by a peer-to-peer car-sharing program, may be provided by an
 273 insurer authorized to do business in this state which is a
 274 member of the Florida Insurance Guaranty Association or by an
 275 eligible surplus lines insurer that has a superior, excellent,
 276 exceptional, or equivalent financial strength rating by a rating
 277 agency acceptable to the office. A peer-to-peer car-sharing
 278 program is not transacting in insurance when it maintains the
 279 insurance required under this section.
 280 (3) LIABILITIES AND INSURANCE EXCLUSIONS.-
 281 (a) Liability.-
 282 1. A peer-to-peer car-sharing program shall assume
 283 liability, except as provided in subparagraph 2., of a shared
 284 vehicle owner for bodily injury or property damage to third
 285 parties or uninsured and underinsured motorist or personal
 286 injury protection losses during the peer-to-peer car-sharing
 287 period in amounts stated in the peer-to-peer car-sharing program
 288 agreement. Such amounts may not be less than those set forth in
 289 ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736,
 290 respectively.

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291 2. The assumption of liability under subparagraph 1. does
 292 not apply if a shared vehicle owner:
 293 a. Makes an intentional or fraudulent material
 294 misrepresentation or omission to the peer-to-peer car-sharing
 295 program before the peer-to-peer car-sharing period in which the
 296 loss occurs; or
 297 b. Acts in concert with a shared vehicle driver who fails
 298 to return the shared vehicle pursuant to the terms of the peer-
 299 to-peer car-sharing program agreement.
 300 3. A peer-to-peer car-sharing program shall assume primary
 301 liability for a claim when it is providing, in whole or in part,
 302 the insurance required under paragraph (2) (a) and:
 303 a. A dispute exists as to who was in control of the shared
 304 motor vehicle at the time of the loss; and
 305 b. The peer-to-peer car-sharing program does not have
 306 available, did not retain, or fails to provide the information
 307 required under subsection (5).
 308
 309 The shared vehicle owner's insurer shall indemnify the peer-to-
 310 peer car-sharing program to the extent of the insurer's
 311 obligation, if any, under the applicable insurance policy if it
 312 is determined that the shared vehicle owner was in control of
 313 the shared motor vehicle at the time of the loss.
 314 (b) Exclusions in motor vehicle insurance policies.—An
 315 authorized insurer that writes motor vehicle liability insurance
 316 in this state may exclude any coverage and the duty to defend or
 317 indemnify for any claim afforded under a shared vehicle owner's
 318 motor vehicle insurance policy, including, but not limited to:
 319 1. Liability coverage for bodily injury and property

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320 damage;
 321 2. Personal injury protection coverage;
 322 3. Uninsured and underinsured motorist coverage;
 323 4. Medical payments coverage;
 324 5. Comprehensive physical damage coverage; and
 325 6. Collision physical damage coverage.
 326
 327 This paragraph does not invalidate or limit any exclusion
 328 contained in a motor vehicle insurance policy, including any
 329 insurance policy in use or approved for use which excludes
 330 coverage for motor vehicles made available for rent, sharing, or
 331 hire or for any business use.
 332 (c) Contribution against indemnification.—A shared vehicle
 333 owner's motor vehicle insurer that defends or indemnifies a
 334 claim against a shared vehicle which is excluded under the terms
 335 of its policy has the right to seek contribution against the
 336 motor vehicle insurer of the peer-to-peer car-sharing program if
 337 the claim is made against the shared vehicle owner or the shared
 338 vehicle driver for loss or injury that occurs during the peer-
 339 to-peer car-sharing period.
 340 (4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a
 341 motor vehicle owner registers as a shared vehicle owner on a
 342 peer-to-peer car-sharing program and before the shared vehicle
 343 owner may make a shared vehicle available for peer-to-peer car
 344 sharing on the peer-to-peer car-sharing program, the peer-to-
 345 peer car-sharing program must notify the shared vehicle owner
 346 that, if the shared vehicle has a lien against it, the use of
 347 the shared vehicle through a peer-to-peer car-sharing program,
 348 including the use without physical damage coverage, may violate

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the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a period of not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records under paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing

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period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a

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407 resident to drive; or

408 c. Is otherwise specifically authorized by the Department
 409 of Highway Safety and Motor Vehicles to drive vehicles of the
 410 class of the shared vehicle.

411 2. A peer-to-peer car-sharing program shall keep a record
 412 of:

413 a. The name and address of the shared vehicle driver;
 414 b. The driver license number of the shared vehicle driver
 415 and of any other person who will operate the shared vehicle; and
 416 c. The place of issuance of the driver license.

417 (c) Responsibility for equipment.—A peer-to-peer car-
 418 sharing program has sole responsibility for any equipment that
 419 is put in or on the shared vehicle to monitor or facilitate the
 420 peer-to-peer car-sharing transaction, including a GPS system.
 421 The peer-to-peer car-sharing program shall indemnify and hold
 422 harmless the shared vehicle owner for any damage to or theft of
 423 such equipment during the peer-to-peer car-sharing period which
 424 is not caused by the shared vehicle owner. The peer-to-peer car-
 425 sharing program may seek indemnity from the shared vehicle
 426 driver for any damage to or loss of such equipment which occurs
 427 outside of the peer-to-peer car-sharing period.

428 (d) Motor vehicle safety recalls.—At the time a motor
 429 vehicle owner registers as a shared vehicle owner on a peer-to-
 430 peer car-sharing program and before the shared vehicle owner may
 431 make a shared vehicle available for peer-to-peer car sharing on
 432 the peer-to-peer car-sharing program, the peer-to-peer car-
 433 sharing program must:

434 1. Verify that the shared vehicle does not have any safety
 435 recalls on the vehicle for which the repairs have not been made;

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436 and

437 2. Notify the shared vehicle owner that if the shared
 438 vehicle owner:

439 a. Has received an actual notice of a safety recall on the
 440 vehicle, he or she may not make a vehicle available as a shared
 441 vehicle on the peer-to-peer car-sharing program until the safety
 442 recall repair has been made.

443 b. Receives an actual notice of a safety recall on a shared
 444 vehicle while the shared vehicle is made available on the peer-
 445 to-peer car-sharing program, he or she must remove the shared
 446 vehicle's availability on the peer-to-peer car-sharing program
 447 as soon as practicable after receiving the notice of the safety
 448 recall and until the safety recall repair has been made.

449 c. Receives an actual notice of a safety recall while the
 450 shared vehicle is in the possession of a shared vehicle driver,
 451 he or she must notify the peer-to-peer car-sharing program about
 452 the safety recall as soon as practicably possible after
 453 receiving the notice of the safety recall so that he or she may
 454 address the safety recall repair.

455 (7) CONSTRUCTION.—This section does not limit:

456 (a) The liability of a peer-to-peer car-sharing program for
 457 any act or omission of the peer-to-peer car-sharing program
 458 which results in the bodily injury to a person as a result of
 459 the use of a shared vehicle through peer-to-peer car sharing; or

460 (b) The ability of a peer-to-peer car-sharing program to
 461 seek by contract indemnification from the shared vehicle owner
 462 or the shared vehicle driver for economic loss resulting from a
 463 breach of the terms and conditions of the peer-to-peer car-
 464 sharing program agreement.

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465

Section 3. This act shall take effect October 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1366

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Trusts

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1366 permits, but does not require, a trustee of certain trusts to use trust assets to pay directly on behalf of, or to reimburse, the person considered the owner of the trust for taxes attributable to the trust, subject to certain limitations.

The bill is applicable only to grantor trusts, a trust in which the grantor retains certain rights or powers over the trust such that federal tax law treats the grantor and the trust as one entity, thus making the grantor tax-liable for trust income. Under the bill, the trustee is authorized to make such a payment out of the trust assets unless the trust instrument prohibits such payment, or the trustee is:

- A qualified beneficiary of the trust.
- Treated as the owner of part or all of the trust under federal or state tax law.
- A “related or subordinate party” with respect to:
 - A person treated as the owner of all or part of the trust under federal or state tax law; or
 - A qualified beneficiary of the trust.

The bill expressly applies retroactively to trusts created before or after the effective date unless:

- The trustee gives the grantor and all others who may remove the trustee 60 days’ notice that the trustee intends to irrevocably opt out of the bill’s application to the trust; or
- Applying the bill would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit.

Life insurance policies held in the trust, the policy's cash value, or a loan secured by such policy may not be utilized to cover the grantor/settlor's tax liability.

The bill takes effect July 1, 2020.

II. Present Situation:

Trusts

Chapter 736, F.S., the Florida Trust Code, governs express trusts, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.¹ The common law of trusts and other principles of equity supplement the trust code, except to the extent modified by the trust code or another law of Florida.² An express trust arises from the express intent of the owner of property to create a trust, i.e., a fiduciary relationship in which one or more trustees is called upon to manage, protect, and invest certain property for the benefit of one or more beneficiaries.³

The settlor, who creates and contributes property to the trust,⁴ may keep the trust revocable,⁵ which allows the settlor to terminate or amend the trust at any time, or elect to make it irrevocable. Unless expressly stated in the trust instrument, a trust is presumed to be revocable.⁶ While a trust is revocable, the duties of the trustee are owed exclusively to the settlor.⁷ The property of a revocable trust is subject to the claims of a settlor's creditors during the settlor's lifetime to the extent the property is not otherwise exempted from such claims. However, the property of an irrevocable trust is only subject to the claims of a creditor or assignee of the settlor to the extent the property may be distributed for the settlor's benefit. Any discretionary power granted to the trustee to pay directly, or to reimburse the settlor for any tax on trust income or principal payable to the settlor does not further subject the assets of an irrevocable trust to claims of a settlor's creditors.⁸

Taxation of Grantor Trusts

Federal tax law calls the settlor a "grantor." Sections 671-678 of the Internal Revenue Code ("IRC"), known as the grantor trust rules, provide that, if certain conditions are met, the grantor and the trust are treated as one entity, thus requiring the settlor to pay income tax on income generated by the trust, even if the grantor has no beneficial interest in the trust and cannot access its income.⁹

¹ Section 736.0102, F.S. Chapter 736, F.S., does not apply to resulting or constructive trusts.

² Section 736.0106, F.S.

³ "Beneficiary" means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee. Section 736.0103(4), F.S.

⁴ Section 736.0103(18), F.S.

⁵ "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. Section 736.0103(17), F.S.

⁶ Section 736.0602, F.S.

⁷ Section 736.0603, F.S.

⁸ Section 736.0505, F.S.

⁹ 26 U.S.C. s. 671.

Under the IRC, a grantor will be treated as the owner of a trust if the settlor retains certain rights to or powers over the trust, including:

- The “power to revoke,” that is, the power to revest title to trust property in the grantor;¹⁰
- A revisionary interest that exceeded 5 percent of the value of the income or corpus at the trust’s inception;¹¹
- The “power to control beneficial enjoyment” of the corpus or income without the approval of an “adverse party,” which is a person, such as a beneficiary, whose substantial interest in the trust will be adversely affected by the exercise of power;¹²
- Certain “administrative powers,” such as the power to borrow from the corpus at low or no interest, or to sell the trust assets for below market value, without the approval of an adverse party;¹³ or
- The right to income for the grantor or spouse without approval of an adverse party.¹⁴

Revenue Ruling 2004-64

Until 2004, it was unclear whether federal gift and estate tax consequences would result from an independent trustee holding a discretionary power under a trust to reimburse the grantor for taxes paid attributable to trust income. The Internal Revenue Service resolved these uncertainties with Revenue Ruling 2004-64, when it held that when an independent trustee holds a discretionary power under a trust to reimburse the grantor for taxes paid attributable to trust income, the exercise of such power does not result in a taxable gift from the trust beneficiaries to the grantor, and the existence of such power does not by itself cause the value of the trust assets to be includable in the grantor’s gross estate for federal estate tax purposes. The ruling suggests that outcomes may vary where there is a pre-arranged understanding between the grantor and trustee regarding how the trustee would exercise the trustee’s discretion to reimburse the grantor for income taxes, the grantor could remove the trustee and name himself or herself as trustee, or local law would cause the trust assets to be subject to claims of the grantor’s creditors.

Following Revenue Ruling 2004-64, several states, including Florida, amended their laws to provide that the existence of a power in a trust document authorizing the trustee to reimburse the grantor for income taxes attributable to trust income does not subject the assets of the trust to claims of the grantor’s creditors.¹⁵

Legislation in Other States

Several states, including Colorado,¹⁶ Delaware,¹⁷ New Hampshire,¹⁸ and New York,¹⁹ permit a trustee to pay a settlor’s taxes on trust income unless the trust instrument expressly prohibits it.

¹⁰ 26 U.S.C. s. 676.

¹¹ 26 U.S.C. s. 673.

¹² 26 U.S.C. s. 674.

¹³ 26 U.S.C. s. 675.

¹⁴ 26 U.S.C. s. 677.

¹⁵ See ch. 2006-217, s. 5, Laws of Florida; s. 736.0505(1)(c), F.S.

¹⁶ Colo. Rev. Stat. s. 15-5-818 (2019).

¹⁷ Del. Code 12 s. 3344 (2019).

¹⁸ N.H. Rev. Stat s. 564-B:8-816(c) (2019).

¹⁹ N.Y. Est. Powers and Trusts Law s. 7-1.11(a) (2019).

III. Effect of Proposed Changes:

The bill permits a trustee to, in its sole discretion, to utilize trust assets, with certain exceptions, to reimburse the person being treated as owner of the trust under the Internal Revenue Code or similar law for income tax liability attributable to the trust, or to pay such amount directly to the appropriate taxing authority. Life insurance policies held in the trust, the cash value of any such policy, or the proceeds of any loan secured by an interest in such policy may not be utilized for such reimbursement or payment.

The bill applies to trusts created before or after the effective date of the bill unless:

- The trustee provides written notification to the grantor and all others who may remove the trustee at least 60 days' notice that the trustee intends to irrevocably opt out of the bill's application to the trust; or
- Application would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit that was originally claimed or could have been claimed for the contribution, including:
 - An exclusion under s. 2503(b) or s. 2504(c) of the IRC;
 - A marital deduction under s. 2056, s. 2056A, or s. 2523 of the IRC;
 - A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the IRC; or
 - Skip direct treatment under s. 2642(c) of the IRC.

Trustees may not exercise or participate in the exercise of reimbursing the grantor or paying the taxing authority on the grantor's behalf if the trustee is treated as the owner of the trust, is the beneficiary of such trust, or is a related or subordinate party.

In the event that the terms of the trust require the trustee to act at the direction or with the consent of a trust advisor, a protector, or any other person, or that the decision to reimburse the grantor or pay the taxing authority directly be made directly by such person, the powers granted to a trustee under the bill extend to such trust advisor, protector, or other person.

The bill does not create a beneficiary status for any person, including for the purposes of determining an elective estate.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may attract more trust business to Florida, and will have an indeterminate impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 736.08145 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary Committee on February 11, 2020:

The committee substitute:

- Prohibits a trustee from choosing to pay the grantor's trust-income taxes if the trustee is a beneficiary or is a related or subordinate party to a beneficiary;
- Provides that if a trust advisor, protector, or other person is authorized to act in place of a trustee by the trust's terms, that person may also choose to pay the grantor's trust-income taxes; and
- Provides that the bill does not, of itself, make anyone a beneficiary of a trust, including for the purposes of determining the elective estate.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Gruters

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A bill to be entitled

An act relating to trusts; creating s. 736.08145, F.S.; authorizing trustees of certain trusts to reimburse persons being treated as the owner of the trust for specified amounts and in a specified manner; prohibiting certain policies, values, and proceeds from being used for such reimbursement; providing applicability; prohibiting certain trustees from taking specified actions relating to trusts; requiring that specified powers be granted to certain persons if the terms of the trust require a trustee to act at the direction or with the consent of such persons or that specified decisions be made directly by such persons; providing construction; providing an effective date.

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

Section 1. Section 736.08145, Florida Statutes, is created to read:

736.08145 Grantor trust reimbursement.—

(1) (a) Except as otherwise provided under the terms of a trust, if all or any portion of the trust is treated as being owned by a person under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee's sole discretion, reimburse the person being treated as the owner for any amount of the person's personal federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's

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taxable income. In the trustee's sole discretion, the trustee may pay such tax reimbursement amount, determined without regard to any other distribution or payment made from trust assets, to the person directly or to the appropriate taxing authority.

(b) A life insurance policy held in the trust, the cash value of any such policy, or the proceeds of any loan secured by an interest in the policy may not be used for such reimbursement or such payment if the person is an insured.

(2) This section applies to all trusts, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

1. An exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code; or

4. Direct skip treatment under s. 2642(c) of the Internal

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Revenue Code.

(3) A trustee may not exercise, or participate in the exercise of, the powers granted by this section with respect to any trust if any of the following applies:

(a) The trustee is treated as the owner of all or part of such trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law.

(b) The trustee is a beneficiary of such trust.

(c) The trustee is a related or subordinate party, as defined in s. 672(c) of the Internal Revenue Code, with respect to a person treated as the owner of all or part of such trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law or with respect to a beneficiary of such trust.

(4) If the terms of a trust require the trustee to act at the direction or with the consent of a trust advisor, a protector, or any other person, or that the decisions addressed in this section be made directly by a trust advisor, a protector, or any other person, the powers granted by this section to the trustee must instead or also be granted, as applicable under the terms of the trust, to the advisor, protector, or other person subject to the limitations set forth in subsection (3), which must be applied as if the advisor, protector, or other person were a trustee.

(5) A person may not be considered a beneficiary of a trust solely by reason of the application of this section, including for purposes of determining the elective estate.

Section 2. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/CS/SB 1668

INTRODUCER: Health Policy Committee; Judiciary Committee; and Senator Simmons

SUBJECT: Damages

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Kibbey</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
3.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1668 requires evidence of medical expenses in personal injury claims to be based on the usual and customary charges in the community where the expenses are incurred. Under the bill, these usual and customary charges may not include increased or additional charges based on the outcome of litigation. The bill establishes that the charges from an independent, nonprofit, statistically reliable benchmarking database that has been in existence for the last 5 years and that qualifies for nonprofit status under s. 501(c)(3) of the U.S. Internal Revenue Code are admissible as evidence of the usual and customary medical charges in the consideration of past and present medical expenses.

Evidence of the reasonableness of future medical expenses may be considered along with other relevant evidence.

The bill provides an effective date of July 1, 2020.

II. Present Situation:

“Florida law permits the recovery of ‘the reasonable value or expense of hospitalization and medical and nursing care and treatment necessarily or reasonably obtained by [a] (claimant) in the past or to be so obtained in the future.’”¹

“‘In proving special [past] medical damages for personal injuries, proof should be offered: (1) that the medical services were rendered, (2) what the reasonable charges are therefor, (3) that the services for which they were rendered were necessary, and (4) that they were related to the trauma suffered in the accident.’”²

“Awards [of medical expenses] exceeding ... a definite and ascertainable amount [in evidence] are readily vacated and remanded.”³ Jury awards for medical expenses can be reversed if they are “excessive and not supported by the undisputed evidence,”⁴ or “contrary to the manifest weight of the evidence.”⁵

“[T]he plaintiff has the burden at trial to prove the reasonableness and necessity of medical expenses and ... Florida requires more than just evidence of the amount of the bill to establish that reasonableness.”⁶ “[E]xpert medical testimony is not required in order to admit medical bills into evidence.”⁷ “When a plaintiff testifies as to the amount of his or her medical bills and introduces them into evidence, it becomes ‘a question for the jury to decide, under proper instructions, whether these bills represented reasonable and necessary medical expenses.’”⁸

Florida law restricts recovery of future medical expenses to those expenses “reasonably certain” to be incurred.⁹ Therefore, “it follows that a recovery of future medical expenses cannot be grounded on the mere ‘possibility’ that certain treatment ‘might’ be obtained in the future.”¹⁰ Further, there must also be an evidentiary basis upon which the jury can, with reasonable certainty, determine the amount of those expenses.¹¹ It is a plaintiff’s burden to establish, through competent, substantial evidence, that future medical expenses will more probably than not be incurred.¹²

¹ *Auto Club Ins. Co. of Florida v. Babin*, 204 So. 3d 561, 562 (Fla. 5th DCA 2016) (quoting *Volusia Cty. v. Joynt*, 179 So.3d 448, 452 (Fla. 5th DCA 2015) (internal alterations removed)).

² *Crowe v. Overland Hauling, Inc.*, 245 So. 2d 654, 656 (Fla. 4th DCA 1971) (quoting *Ratay v. Yu Chen Liu*, 260 A.2d 484, 486 (Pa. Superior 1969)).

³ *Aircraft Service Intern., Inc. v. Jackson*, 768 So. 2d 1094, 1096 (Fla. 3d DCA 1995).

⁴ *Burger King Corp. v. Lastre-Torres*, 202 So. 3d 872, 873 (Fla. 3d DCA 2016).

⁵ *Ludwig v. Ladner*, 637 So. 2d 308, 310 (Fla. 2d DCA 1994).

⁶ *East West Karate Ass’n, Inc. v. Riquelme*, 638 So. 2d 604, 605 (Fla. 4th DCA 1994).

⁷ *Albertson’s, Inc. v. Brady*, 475 So. 2d 986, 988 (Fla. 2d DCA 1985) (citing *Garrett v. Morris Kirschman & Co.*, 336 So. 2d 566 (Fla.1976)).

⁸ *Irwin v. Blake*, 589 So. 2d 973 (Fla. 4th DCA 1992) (quoting *Garrett v. Morris Kirschman & Co., Inc.*, 336 So. 2d 566 (Fla.1976)).

⁹ *Loftin v. Wilson*, 67 So. 2d 185, 188 (Fla.1953).

¹⁰ *White v. Westlund*, 624 So.2d 1148, 1150 (Fla. 4th DCA 1993) (citing 2 *Damages in Tort Actions* s. 9.55(1), at 9–45 (1986)).

¹¹ *Joynt*, 179 So.3d at 452.

¹² See *Fasani v. Kowalski*, 43 So. 3d 805, 812 (Fla. 3d DCA 2010).

The Collateral Source Rule

Trial courts must reduce jury awards for medical damages “by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources....”¹³ That is, if a claimant’s medical expenses were covered by insurance, an award for medical damages must be reduced by the amount paid by the insurer. “This statutory modification was intended to reduce insurance costs and prevent plaintiffs from receiving windfalls.”¹⁴ While awards must be set off by the amount the claimant received from insurance, “[a]s an evidentiary rule, payments from collateral source benefits are not admissible because such evidence may confuse the jury with respect to both liability and damages.”¹⁵ Section 768.76, F.S., “does not allow reductions for *future* medical expenses.”¹⁶ Benefits received under Medicare or other federal programs providing for a Federal Government lien on or right of reimbursement from a plaintiff’s recovery are not considered collateral sources.¹⁷

“[C]ontractual discounts fit within the statutory definition of collateral sources.”¹⁸ Thus, in cases in which a medical provider bills for services at one amount but negotiates with an insurer for the payment of a decreased amount, the negotiated decreased amount is the amount used for setoff.¹⁹ In *Goble*, the hospital billed the claimant \$574,554.31 for medical treatment, but due to preexisting fees schedules in contracts between the medical providers and Aetna U.S., the claimant’s insurer, Aetna paid and the medical providers accepted \$145,970.76 for the services rendered.²⁰ The differences in the amount billed and the amounts accepted in *Goble*, also demonstrate that medical bills are not always related to the amount a healthcare provider typically expects to receive in payment or accepts for payment in full for medical care.²¹

Letters of Protection

A letter of protection is a document sent by an attorney on a client’s behalf to a health-care provider when the client needs medical treatment but does not have insurance. Generally, such a letter states that the client is involved in a court case and seeks an agreement from the medical provider to treat the client in exchange for deferred payment of the provider’s bill from the proceeds of a settlement or award. Typically if the client does not obtain a favorable recovery, the client is still liable to pay the providers’ bills.²²

¹³ Section 768.76(1), F.S.

¹⁴ *Joerg v. State Farm Mut. Auto Ins. Co.*, 176 So. 3d 1247, 1249 (Fla. 2015).

¹⁵ *Id.* (citing *Sheffield v. Superior Ins. Co.*, 800 So.2d 197, 203 (Fla.2001)).

¹⁶ *Id.*

¹⁷ Section 768.76(2)(b), F.S.

¹⁸ *Goble v. Frohman*, 901 So. 2d 830, 833 (Fla. 2005).

¹⁹ *Id.*

²⁰ *Id.*

²¹ For more discussion on how billing practices may differ significantly from the reasonable value of medical services, see George A. Nation III, *Determining the Fair and Reasonable Value of Medical Services: The Affordable Care Act, Government Insurers, Private Insurers and Uninsured Patients*, 65 BAYLOR L. REV. 425 (Spring 2013).

²² Caroline C. Pace, *Tort Recovery for Medicare Beneficiaries: Procedures, Pitfalls and Potential Values*, 49 Hous. Law. 24, 27 (2012).

Section 768.76(2)(a), F.S., defines collateral sources as “payments made to the claimant,” and therefore under letters of protection, which defer payment until after a judgment, the amount negotiated in a letter of protection is not a “collateral source.”

“[T]he question of whether a plaintiff’s attorney referred him or her to a doctor for treatment is protected by the attorney-client privilege,” and thus evidence of letters of protection are inadmissible to prove bias.²³ “Even in cases where a plaintiff’s medical bills appear to be inflated for the purposes of litigation,” the Supreme Court stated that “we do not believe that engaging in costly and time-consuming discovery to uncover a ‘cozy agreement’ between the law firm and a treating physician is the appropriate response.”²⁴

Insurance Reimbursement of Usual and Customary Charges

Usual and customary charges are used to determine reimbursement of medical providers under Personal Injury Protection (PIP) motor vehicle insurance, out-of-network hospitals pursuant to health maintenance organization (HMO) contracts, and various health care providers under the Workers’ Compensation Law. In the context of provider reimbursement under PIP and Workers’ Compensation, a health care provider’s usual and customary charges are considered in conjunction with other facts to reach a determination regarding the proper reimbursement of the medical provider. Usual and customary charges are used differently to determine reimbursement of out-of-network hospitals under an HMO contract, as reimbursement will be the lowest of usual and customary charges, the provider’s charges, or the in-network rate.

PIP and the Florida Motor Vehicle No-fault Law

The Florida Statutes limit, in certain circumstances, what amounts may be considered “reasonable medical expenses.” Section 627.736(1)(a), F.S., requires a motor vehicle insurer writing PIP coverage to reimburse the medical services provider 80 percent of all reasonable expenses for medically necessary²⁵ medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care within 14 days after the motor vehicle accident.

The Florida Motor Vehicle No-Fault Law provides two ways of determining whether expenses are “reasonable” for purposes of insurer reimbursements. The first is a fact-dependent methodology that takes into account the service provider’s usual and customary charges, community-specific reimbursement levels, federal and state medical fee schedules, and other relevant information. This is the default methodology for calculating PIP reimbursements, which also apparently results in higher reimbursements than the second methodology.²⁶ The second methodology, introduced by the Legislature in 2008, allows reimbursements for medical services to be limited via the use of fee schedules identified in s. 627.736(5)(a)2, F.S.²⁷

²³ *Worley v. Central Florida Young Men’s Christian Ass’n, Inc.*, 228 So. 3d 18, 25 (Fla. 2017).

²⁴ *Id.*

²⁵ Section 627.732(2), F.S., defines “medically necessary” as referring to a medical service or supply that a prudent physician would provide for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom in a manner that is in accordance with generally accepted standards of medical practice; clinically appropriate in terms of type, frequency, extent, site, and duration; and not primarily for the convenience of the patient, physician, or other health care provider.

²⁶ *Stand-UP MRI*, 188 So 3d at 2.

²⁷ See *Geico Gen Ins. Co. v. Virtual Imaging Servs. Inc.*, 141 So. 3d 147,156 (Fla. 2013).

Health Maintenance Organizations

“Usual and customary” charges also factor into reimbursements to hospitals by health maintenance organizations (HMOs).

Reimbursement to hospitals providing emergency medical services to patients who subscribe to an HMO that does not have a contract with the hospital is determined according to s. 641.513(5), F.S., which provides that reimbursement for emergency services and care provided by a provider that does not have a contract with the health maintenance organization must be the lesser of:

- The provider’s charges;
- The usual and customary provider charges for similar services in the community where the services were provided; or
- The charge mutually agreed to by the health maintenance organization and the provider within 60 days of the submittal of the claim.

The First District Court of Appeals determined that in the context of this section of statute, it is clear that paragraph (b) refers to the fair market value of the services provided. Fair market value is the price that a willing buyer will pay and a willing seller will accept in an arm’s-length transaction.²⁸

Workers’ Compensation Maximum Reimbursement Allowances

The Department of Financial Services (DFS), Division of Workers’ Compensation, provides regulatory oversight of Florida’s workers’ compensation system. Florida’s Workers’ Compensation Law provides medically necessary treatment and care for injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).

A three-member panel (panel) consisting of the CFO or CFO’s designee and two Governor’s appointees sets the MRAs.²⁹ The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;³⁰ the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;³¹ the financial impact of the MRAs on healthcare providers and facilities;³² and the Health Care Board’s most recent maximum allowable rate of increase for hospitals.³³ Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers’ compensation system’s healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.³⁴

²⁸ *Baker Cty. Med. Servs., Inc. v. Aetna Health Mgmt, LLC*, 31 So. 3d 842, 844 (Fla. 1st DCA 2010).

²⁹ Section 440.13(12)(a), F.S.

³⁰ Section 440.13(12)(d)1., F.S.

³¹ Section 440.13(12)(d)2., F.S.

³² Section 440.13(12)(d)3., F.S.

³³ Section 440.13(12)(d)4., F.S.

³⁴ Section 440.13(12)(d)3., F.S.

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,³⁵ while reimbursement for surgical procedures is limited to 140 percent of Medicare.³⁶ The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,³⁷ while other outpatient services are limited to 75 percent of usual and customary charges.³⁸ Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.³⁹ The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries.

III. Effect of Proposed Changes:

Section 1 amends s. 768.042, F.S., to require in any claim for damages of personal injury to a claimant, that evidence of past, present, or future medical expenses be based on the usual and customary charges in the community where medical expenses are incurred or are reasonably probable to be incurred. As the methodology in the bill is still a “fact-dependent methodology” it requires evidence of typical charges in the community.⁴⁰ Similarly, current court precedent indicates that the courts would presumably construe the “usual and customary” community standard to mean the fair market value that a willing buyer would likely pay in an arm’s-length transaction.⁴¹

This alters the current methodology for proving damages, which involves presenting medical bills as evidence of past expenses and testimony of reasonably certain needed procedures as evidence of future expenses. Notably, under this bill, the amount of an award of past medical damages would be determined with no consideration of evidence of the billed costs of any medical services actually rendered for a claimant.

The methodology proposed in the bill is consistent with the current methodology for calculating PIP reimbursements. Section 627.736(5)(a)1, F.S., relating to PIP reimbursements, also requires a determination of costs based on usual and customary charges in a community.

The bill establishes that the charges from an independent, nonprofit, statistically reliable benchmarking database that has been in existence for the last 5 years and that qualifies for nonprofit status under s. 501(c)(3) of the U.S. Internal Revenue Code are admissible as evidence of the usual and customary medical charges in the consideration of past and present medical expenses.

The bill prohibits evidence of usual and customary charges from including evidence of increased or additional charges based on the outcome of litigation. This prevents the evidence of “inflated”

³⁵ Section 440.13(12)(b)4., F.S.

³⁶ Section 440.13(12)(b)5., F.S.

³⁷ Section 440.13(12)(b)3., F.S.

³⁸ Section 440.13(12)(a), F.S.

³⁹ *Id.*

⁴⁰ Section 627.736(5)(a), F.S.

⁴¹ *See Baker* at fn. 29.

costs from being used in hopes of securing a jury award that is larger than the amount insurers typically pay and larger than the amount healthcare providers typically accept. By requiring evidence of medical costs to be based on usual and customary charges in the community claimants should not be able to present evidence of “inflated” costs through the use of letters of protection.

The bill provides that evidence of the reasonableness of future medical expenses may be considered along with other relevant evidence.

Section 2 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 1668 requires evidence of medical expenses in personal injury claims to be based on the usual and customary charges in the community. This requirement may make awards of damages for medical costs more predictable, resulting in an interminable effect on the private sector.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Regarding the bill's provision relating to a statistically reliable benchmarking database, the bill does not specify that the charges are to be held, cataloged, or stored in a database that is maintained by a nonprofit organization. Rather the bill suggests that the database must be nonprofit and independent in nature and must qualify for nonprofit status under s. 501(c)(3) of the U.S. Internal Revenue Code. If the intent is for charges to be held, cataloged, or stored in a database that is maintained by a nonprofit organization that meets the bill's criteria, the bill's language in this regard should be rewritten to provide clarity.

Further, under the bill, the database must have been in existence for "the last 5 years," but the bill does not specify if the database must have been in existence for the last 5 years from the time that evidence is introduced, from the time that damages are alleged to have occurred, or from the date that the bill takes effect as law. The bill's intent for this provision is unclear.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.042 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on February 11, 2020:

The committee substitute:

- Establishes that the charges from an independent, nonprofit, statistically reliable benchmarking database that has been in existence for the last 5 years and that qualifies for nonprofit status under s. 501(c)(3) of the U.S. Internal Revenue Code are admissible as evidence of the usual and customary medical charges in the consideration of past and present medical expenses.
- Removes a provision from the underlying bill that allowed evidence of the availability of private or public health insurance to be used to prove damages for future medical expenses.
- Removes a provision from the underlying bill that established that amounts paid to or made payable to claimants under private or public health insurance coverage are presumed to be the usual and customary charges, unless a claimant shows that the amounts were inadequate.
- Provides that evidence of the reasonableness of future medical expenses may be considered along with other relevant evidence.

CS by Judiciary on January 28, 2020:

The committee substitute differs from the underlying bill by:

- Establishing that parties to a personal injury lawsuit may introduce evidence of the availability of public or private health insurance, with respect to damages for future medical expenses.
- Rebutting the presumption that the amounts paid or payable under the insurance or governmental health coverage are the usual and customary medical charges if the claimant shows that such amounts are inadequate under the circumstances.

B. Amendments:

None.

By the Committees on Health Policy; and Judiciary; and Senator
Simmons

588-03477A-20

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A bill to be entitled

An act relating to damages; amending s. 768.042, F.S.;
requiring that certain medical expenses in personal
injury claims be based on certain usual and charges;
specifying what charges are admissible as evidence;
prohibiting certain charges from being included as
usual and customary charges; deleting an obsolete
provision; providing an effective date.

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

Section 1. Section 768.042, Florida Statutes, is amended to
read:

768.042 Damages.—

(1) In any action brought in the circuit court to recover
damages for personal injury or wrongful death, the amount of
general damages shall not be stated in the complaint, but the
amount of special damages, if any, may be specifically pleaded
and the requisite jurisdictional amount established for filing
in any court of competent jurisdiction.

(2) In any claim for damages relating to personal injury to
a claimant, evidence regarding the past, present, or future
medical expenses must be based on the usual and customary
charges in the community where the medical expenses are, or are
reasonably probable to be, incurred. With respect to past and
present medical expenses, if the claimant is entitled to be
reimbursed through any public or private health insurance or
governmental health coverage, the charges from an independent,
nonprofit, statistically reliable benchmarking database that has

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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been in existence for the last 5 years and that qualifies for
nonprofit status under s. 501(c)(3) of the United States
Internal Revenue Code are admissible as evidence of the usual
and customary medical charges. With respect to damages for
future medical expenses, evidence of the reasonableness of any
such medical expenses may be considered along with other
relevant evidence. Usual and customary charges may not include
increased or additional charges based on the outcome of the
litigation ~~The provisions of this section shall not apply to any
complaint filed prior to May 20, 1975.~~

Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1828

INTRODUCER: Senator Broxson

SUBJECT: Litigation Financing Consumer Protection

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1828 creates the Litigation Financing Consumer Protection Act, which establishes oversight and consumer protections relating to such transactions within the Office of Financial Regulation (OFR). In such a transaction, a third party (financier) provides a nonrecourse cash advance to a consumer in exchange for an assignment of the consumer's contingent right to receive a portion of the potential proceeds of his or her civil action or claim. If the consumer loses the lawsuit, the financing firm generally does not receive a payment. For individuals involved in personal injury litigation, the cash advance may be used to pay medical expenses or mortgages, or other expenses.

The bill caps the interest rate on such litigation financing contracts (contracts) at 30 percent of the funded amount per year. A financier may impose a fee of up to \$500 with regard to a single civil claim, regardless of the number of financing contracts the consumer enters into with the litigation financier respecting the civil action or claim.

The bill requires such entities to register with OFR. Further, the bill requires the specified terms, conditions, and disclosures for a contract, which includes a right of rescission of the contract by the consumer within 5 business days after execution of the contract or receipt of the funds. This provision allows a consumer to cancel the contract without penalty, interest, charges, fees, or other obligation.

The bill prohibits a litigation financier from engaging in the following activities:

- Paying or offering to pay or accepting a commission, referral fee, or other consideration to any person for referring a consumer to a litigation financier.
- Advertising false or misleading information about its products or services.
- Referring a consumer to a specific attorney, law firm, or health care practitioner with exception.

- Failing to provide a copy of all complete litigation financing contracts to the consumer in a timely manner.
- Attempting to effect arbitration or waiver of a consumer's right to a jury trial.
- Offering or providing legal advice to the consumer regarding the contract or the subject civil action or claim.
- Reporting to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the civil action or claim to repay the litigation financier.
- Entering into a contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract.
- Knowingly entering into a litigation-financing contract with a consumer, who already has a contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer provides written consent for such an arrangement.

The provisions of the bill would not apply to commercial tort claims, workers' compensation claims, or lending or financing arrangements between an attorney or a law firm and lending institution.

The bill requires disclosure of such contracts in a civil action and protects communications between a consumer's attorney and a litigation financier about a litigation-financing contract.

The fiscal impact on the Office of Financial Regulation is indeterminate at this time.

II. Present Situation:

Third party litigation financing typically refers to financing provided by entities other than the plaintiffs, defendants, or their lawyers. Litigation financing involves a nonrecourse loan or cash advance made to an individual, who is represented by an attorney, in personal injury lawsuits.¹ The financing company (financier) contracts with the consumer, who agrees to repay the company the amount financed plus any financing fees or charges out of proceeds of the litigation at the conclusion of the action.

A funding is typically 5-10 percent of the expected value of a claim. The financier provides the financing agreement to the consumer and his or her attorney for review and approval. Both the consumer and the attorney must sign the agreement.² After providing the final approval, the financier disburses the funds to the consumer.

The typical amount of such agreements varies; one source noted that it is around \$2,000.³ Another source noted that the average size of these consumer transactions ranges from \$2,500 to \$7,500, with monthly financing fees that can be considerably higher than the monthly interest rates on credit card balances or consumer bank loans.⁴ Further, the study suggest that many

¹ Litigation financing can involve commercial or consumer financing. See https://www.namic.org/pdf/publicpolicy/190128_LitigationLendingUpdate.pdf.

² Schuller, Eric, *Consumer Legal Funding 101*, on file with Banking and Insurance Committee.

³ *Id.*

⁴ Zakara, Laura, Overview of Alternative Litigation Financing in the United States, Research Brief, RAND Institute of Civil Justice (2010) at www.rand.org (last viewed Jan. 2, 2020).

consumers who accept this type of funding have exhausted more common sources of financing and are attracted to it because they need to meet pressing financial obligations or because a non-recourse loan may guarantee them some recovery from their lawsuits.⁵

In some states, concerns have been raised that some cash advance arrangements may exploit consumers due to the complex nature of the transaction and potentially significant financing fees that may substantially reduce the proceeds from the litigation.⁶ According to one consumer advocate,

The designation as a nonrecourse loan should not alone allow the lender to evade the protections afforded borrowers of loans. Many loans that are collateralized are nonrecourse-certain car title and real property loans-but still are deemed loans providing the consumer protections such as usury limits. The nonrecourse nature of consumer litigation loans is the argument used to allow for a predatory rate of interest. Similar to payday loans, however, the data available on performance of these loans shows the default rate to be low. These loans are closely underwritten to protect the lender.⁷

Advocates of litigation financing contend that such financing levels the playing field and reduces the risks for firms and their clients to settle for less than what their cases are valued.⁸ Critics of litigation financing contend that the financing disrupts the legal process by involving outside parties that can potentially exert control, encourages the filing of frivolous claims, and gives plaintiff's attorney an unfair advantage in settlement negotiations.⁹

Discovery Issues Related to Consumer Finance Litigation

Prior to executing a litigation finance contract for a cash finance, the financing entity and the consumer seeking the funds must discuss the potential transactions, which involves due diligence and an analysis of the merits of the litigation to be funded. These communications may involve a litigant's attorney. Based on a review of a case, a financier determines the potential value of the claim with the consumer's attorney. A financier and a litigant may enter nondisclosure or confidentiality agreements, and the opposing party may not know about the role of the financier.¹⁰ There is concern that these communications and materials may be subject to discovery.

⁵ *Id.*

⁶ *Personal injury cash advance firms say yes to reforms*, (Feb. 28, 2005), Claims Journal, at <https://www.claimsjournal.com/news/east/2005/02/28/51995.htm> (last viewed Jan. 20, 2020).

⁷ Florida Alliance for Consumer Protection, *White Paper: Litigation Financing Consumer Protection*, on file with Banking and Insurance Committee.

⁸ Egan, Mary Ellen, *Other People's Money: Rise of litigation finance companies raises legal and ethical concerns* (Dec. 1, 2018) ABA Journal (Dec. 2018) at http://www.abajournal.com/magazine/article/litigation_finance_legal_ethical_concerns (last viewed Jan. 20, 2020).

⁹ *Id.*

¹⁰ Gersham, Jacob, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, The Wall Street Journal, Mar. 21, 2018.

Oversight of Litigation Financing in Florida

In Florida, interest rates and usury are governed under ch. 687, F.S., generally.¹¹ Any charges, including interest, in excess of the combined total of all charges of a consumer loan exceed the statutory limits under the Florida Consumer Finance Act, constitute a violation of ch. 687, F.S.¹² In a 2005 case, the Court noted that there are no laws regulating such agreements in Florida and this method of funding may warrant regulation in Florida.¹³ In another case, a Florida resident sought relief under Florida's Unfair Trade Practices Act,¹⁴ Florida's Consumer Finance Act,¹⁵ and Florida's Interest, Usury, and Lending Practices Act.¹⁶ The funding agreement in this complaint alleged that the financier charged him 51 percent interest, a \$600 processing fee, and a \$345 origination fee, which was charged every 6 months.¹⁷

In a 2002 opinion, the Florida Bar provided the following comments regarding litigation financing:

The Florida Bar discourages the use of nonrecourse advance funding companies. The terms of the funding agreements offered to clients may not serve the client's best interests in many instances. The Committee continues to have concerns...of the problems that can arise when a client obtains financial assistance from a party, such as the client's lack of incentive to cooperate.¹⁸

Oversight of Consumer Litigation Financing Transactions in Other States

Registration or Licensure; Interest Rate Caps

Committee staff conducted a limited survey relating to the state regulation of litigation financing. Eight states require registration or licensure of these entities.¹⁹ Some states, such as Ohio, do not require registration, and instead mandate terms and disclosures in the contract.²⁰

Five states have enacted laws relating to interest rates or fees.²¹ For example, Nevada licenses and regulates consumer litigation financing and requires that the funded amount plus charges and

¹¹In Florida, a usurious contract is a loan with an interest rate higher than 18 percent per year for a loan up to \$500,000 or a loan exceeding \$500,000 with an interest rate greater than 25 percent, with some exceptions, as provided in ss. 687.071 and 687.02, F.S.

¹² Section 516.031(1) and (3), F.S. The maximum interest rate is 30 percent per annum, computed on the first \$3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$3,000 and up to \$4,000; and 18 percent per annum on that part of the principal amount exceeding \$4,000 and up to \$25,000.

¹³ *Fausone v. U.S. Claims, Inc.*, 915 So.2d 626 (2005).

¹⁴ Part II, ch. 501, F.S.

¹⁵ Ch. 516, F.S.

¹⁶ Ch. 687, F.S.

¹⁷ *Taylor v. Certified Legal Funding, Inc.* 2018 WL 3860243 (M.D. FL 2018). On October 30, 2018, a stipulated final judgment was entered in favor of Certified Legal Funding, Inc. against Ronald Taylor.

¹⁸ 00-3 Fla. Ethics Op. Fla. Bar (Mar. 15, 2002) at <https://www.floridabar.org/etopinions/etopinion-00-3/> (viewed Jan. 20, 2020).

¹⁹ Indiana (IC 24-12), Maine (ME Rev. Stat. Ann. 9-A, s. 12), Nebraska (Neb. Rev. St. s. 25-3301, et. seq.), Nevada (NRS 604C.320), Oklahoma (Okla. Stat. s. 14A-3-801(6)), Tennessee (Tenn. Code Ann. s. 47-16-101, et. seq.), Vermont (8 V.S.A. s. 2252), and West Virginia.

²⁰ Ohio Rev. Code s. 1349.55(A)(1).

²¹ Arkansas (A.C.A. s. 4-57-109), Indiana (Ind. Code 24-4.5-3-110), Nevada (NRS 604C.310), Tennessee, and West Virginia.

fees of each transaction must not exceed a rate of 40 percent of the funded amount annually.²² Tennessee authorizes two types of fees for such loans. A financier may impose a fee of up to 10 percent of the original amount provided to the consumer.²³ In addition, a financier may impose a maximum annual fee of \$360 per year for each \$1,000 of the unpaid principal of the funds advanced to the consumer for up to a maximum of 3 years.²⁴ West Virginia caps interest on such transactions at 18 percent.²⁵ Indiana authorizes a litigation financier to impose an annual fee of 36 percent of the funded amount and an annual servicing charge of up to 7 percent of the funded amount, as well as a onetime document charge.²⁶

In Colorado, the Supreme Court held that a litigation finance company that agrees to advance money to tort plaintiffs in exchange for future litigation proceeds is making a loan subject to regulation under Colorado's Uniform Consumer Credit Code even if the plaintiff does not have an obligation to repay any deficiency if the litigation proceeds are ultimately less than the amount due.²⁷ In this particular case, the Court noted that the amount of the loan is usually less than \$1,500, and the interest rates on some of these loans approached triple digits. One sample agreement provided \$1,234 to the consumer, with a payoff of \$1,851 after 6 months and \$4,010.50 after 2 years, for a 60 percent annual return.²⁸ In South Carolina, the Department of Consumer Affairs ruled that entities that fund litigation in exchange for a portion of the recovery are providing loans that must comply with state laws governing lending.²⁹

Communication Privileges

Vermont³⁰ and Indiana³¹ have enacted legislation that provides the communication between a consumer's attorney and the financing company may not be discoverable or limit the scope of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

²² State of Nevada, Department of Business and Industry Financial Institutions Division, *FID Guidance S.B. 432, Consumer Litigation Funding* (Sep. 30, 2019) at [http://fid.nv.gov/uploadedFiles/fid.nv.gov/content/Licensing/Installment_Loan_Company\(1\)/SB432_Consumer%20Litigation%20Funding%20Guidance%2009.30.2019.pdf](http://fid.nv.gov/uploadedFiles/fid.nv.gov/content/Licensing/Installment_Loan_Company(1)/SB432_Consumer%20Litigation%20Funding%20Guidance%2009.30.2019.pdf) (viewed Jan. 20, 2020).

²³ T.C.A. s. 47-16-110(b).

²⁴ T.C.A. s. 47-16-110(c) (2014).

²⁵ W. Va. Code s. 46A-6N-9.

²⁶ IC 24-4.5-3-202 and IC 24-12.

²⁷ *Oasis Legal. Finance Group v. Coffman*, (Nov. 16, 2015), 2015 CO 63, at <https://www.scribd.com/document/289971303/Lawcash-Colo-Opinion> (last viewed Jan. 20, 2020).

²⁸ Fisher, Daniel, *Lawsuit Finance Contracts are Loans Colorado Supreme Court Rules*, *Forbes*, Nov. 165, 2015, at <https://www.forbes.com/sites/danielfisher/2015/11/16/lawsuit-finance-contracts-are-loans-colorado-supreme-court-rules/#52fab63b182a> (last viewed Jan. 20, 2020).

²⁹ O'Brien, John, *South Carolina agency rules lawsuit loans subject to state law*, (Nov. 17, 2014) at <https://legalnewsline.com/stories/510628059-south-carolina-agency-rules-lawsuit-loans-are-traditional-loans-subject-to-state-law> (viewed Jan. 20, 2020).

³⁰ 8 V.S.A. s. 2255.

³¹ IC 24-12.

Disclosure of Financing Agreements

West Virginia³² and Wisconsin³³ require disclosure of litigation financing contracts in civil actions or claims.

Office of Financial Regulation

The Office of Financial Regulation (OFR) is established under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.³⁴ Commission members serve as the agency head of the Financial Services Commission.³⁵ The OFR regulates state-chartered financial institutions, finance companies, and the securities industry.³⁶

Department of Legal Affairs

The Consumer Protection Division of the Department of Legal Affairs³⁷ is the civil enforcement authority for violations of the Florida Deceptive and Unfair Trade Practices Act.³⁸ The Division protects consumers by pursuing individuals and entities that engage in unfair methods of competition or unconscionable, deceptive and unfair practices in trade or commerce. The Attorney General also collaborates with other state attorneys general as well as state and federal agencies in joint enforcement efforts.

The Florida Deceptive and Unfair Trade Practices Act, provides remedies and penalties for unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.³⁹ Violations of this part include any violation of this act and rules adopted pursuant to the Federal Trade Commission Act⁴⁰ (FTC Act), which would include the standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts. Willful violations of the act occur when the person knew or should have known that the conduct was unfair, deceptive, or prohibited by rule. Remedies for practices prohibited by the act may include an action to enjoin a person from committing such acts,⁴¹ an action to recover actual damages caused by the violation, as well as the imposition of a civil penalty of generally not more than \$10,000 for each willful violation. Actions can be brought by a state attorney, the Department of Legal Affairs,⁴² or by a consumer.⁴³

³² Section 46A-6N.

³³ Wisc. Stat. s. 804.01(2)(bg).

³⁴ Section 20.121(3), F.S.

³⁵ *Id.*

³⁶ Section 20.121(3)(a)2., F.S.

³⁷ Florida Office of the Attorney General, Division of Consumer Protection of the Department of Legal Affairs at <http://www.myfloridalegal.com/pages.nsf/Main/18A7753257FE439085256CC9004EC4F7> (last viewed Feb. 5, 2020).

³⁸ Part II of ch. 501, F.S.

³⁹ Section 501.204, F.S.

⁴⁰ 15 U.S.C. ss. 41-58.

⁴¹ Section 501.207, F.S.

⁴² Section 501.203(2), F.S.

⁴³ Section 501.211(1), F.S.

Mandatory Disclosure of Certain Insurance Information in Florida

Section 627.4137, F.S., requires a liability insurer⁴⁴ to provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The required statement must be under oath by a corporate officer or the insurer's claims manager or superintendent. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement. A review of insurance information required under s. 627.4137, F.S., allows a claimant to evaluate the damages that could be paid by the tortfeasor. Florida courts have explained that the purpose of the disclosure requirements in s. 627.4137, F.S., is to allow a claimant to make an informed decision whether to settle a case.⁴⁵

III. Effect of Proposed Changes:

Section 1 creates part XIII of ch. 559, F.S., and provides that it may be cited as the "Litigation Financing Consumer Protection Act."

Section 2 creates s. 559.952, F.S., and provides definitions for the following terms: consumer, enforcing authority, funded amount, health care practitioner, interest, litigation financier, litigation financing, net proceeds, and office. The term, "litigation financing," does not include:

- Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct provides such services.
- A commercial tort claim as defined in s. 679.1021(1)(l), F.S.
- A claim under the Workers' Compensation Law.
- A consumer finance loan, as defined in s. 516.01, F.S.

Section 3 creates s. 559.953, F.S., to establish registration requirements for litigation financiers under the Office of Financial Regulation (OFR). Provides the OFR with authority to revoke a registration if certain conditions are met.

Section 4 creates s. 559.954, F.S., to establish mandatory terms within a litigation-financing contract. These terms include a right of rescission, an acknowledgment regarding whether the

⁴⁴ Section 627.4137, F.S., does not apply to personal injury protection insurance. *See Progressive American Ins. Co. v. Rural/Metro Corp. of Florida*, 994 So.2d 1202 (Fla. 5th DCA 2008).

⁴⁵ *See Cheverie v. Geisser*, 783 So.2d 1115 (Fla. 4th DCA 2001)(rejecting the argument that compliance with s. 627.4137, F.S., is a technicality and explaining the Legislature recognized the importance to claimants of access to the information required by statute in making settlement decisions); *Gira v. Wolfe*, 115 So.3d 414, 417 (Fla. 2^d DCA 2013)(explaining that "the legislature has recognized the importance of a claimant's access to the type of insurance information covered in the statute in order for a claimant to make settlement decisions").

consumer is represented by an attorney, and a provision requiring notice to a settlement fund or trust regarding any outstanding financial obligations from the contract.

Section 5 creates s. 559.955, F.S., to provide prohibited acts of litigation financiers. The prohibited acts are:

- Paying or accepting a referral fee to or from an attorney, law firm, or health care practitioner;
- False advertising;
- Referring consumers to a specific attorney, law firm, or health care practitioner;
- Failing to promptly supply a copy of the contract to the consumer;
- Obtaining a waiver of remedies the consumer may have in the civil action or claim;
- Attempting to effect arbitration or a waiver to the right to a jury trial;
- Offering or providing legal advice regarding the contract or subject claim;
- Assigning the contract;
- Reporting to a consumer credit reporting agency if the net proceeds of the civil action are insufficient to repay the litigation financier;
- Entering into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract; and
- Entering into a contemporaneous financing arrangement without the consumer's written consent.

Section 6 creates s. 559.956, F.S., to establish mandatory disclosures within a litigation-financing contract. The disclosures are:

- Notice of the right to a completed contract;
- A statement that the litigation financier will not and has no right to make decisions or influence the consumer or his attorney regarding the civil action or claim;
- The total funded amount provided to the consumer;
- An itemized list of all fees and charges;
- The annual percentage rate of return;
- The total amount due from the consumer in 6-month intervals for 3 years;
- A statement that the consumer will owe no charges or fees other than those disclosed;
- The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment after contract execution;
- Notice that if the consumer owes the litigation financier nothing if there is no recovery in the civil action or claim;
- Notice that the litigation financier will accept a reduced sum not exceeding the net proceeds of the civil action or claim if the net proceeds are insufficient to make a full repayment;
- Notice of the right of rescission; and
- Notice that the consumer should exercise due diligence before signing the contract.

Section 7 creates s. 559.957, F.S., to authorize a consumer to assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim. Further, the section establishes a priority of liens with exceptions.

Section 8 creates s. 559.958, F.S., relating to interest rate, fees, charges, and penalties applicable to the contract. The bill caps the interest rate of such contracts at 30 percent of the funded

amount per year, calculated using simple interest. Interest may only accrue until a court enters a final order or a settlement agreement is executed in the civil action or claim subject to the contract, whichever is earlier, but no longer, than 3 years from the date the consumer receives the funds from the litigation financier. A litigation financier may not charge, contract for, or receive any charges or fees the combined total of which exceeds \$500 with regard to a single civil action or claim, regardless of the number of litigation financing contracts the consumer enters into with the litigation financier.

A litigation financier may not charge, contract for, or receive any interest, charges, or fees for rescission or cancellation of a contract.

Section 9 creates s. 559.959, F.S., to require a party to any civil action must provide to the other parties any contract under which a litigation financier has a contingent right to receive compensation sourced from potential proceeds of the civil action or claim.

Section 10 creates s. 559.961, F.S., to provide that communications between a consumer's attorney and a litigation financier as it pertains to a litigation financing contract do not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work product doctrine and the attorney-client privilege.

Section 11 creates s. 559.962, F.S., to provide that a violation of part XIII, ch. 559, F.S., is an unfair or deceptive trade act or practice under part II of ch. 501, F.S.

Section 12 provides this bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill caps the annual interest rate on litigation funding contracts at 30 percent per year. A financier may impose a fee of up to \$500 with regard to a single civil claim, regardless of the number of financing contracts the consumer enters into with the litigation financier respecting the civil action or claim.

The bill requires disclosure of litigation financing contracts in a civil action and protects communications between a consumer's attorney and a litigation financier about such contracts.

C. Government Sector Impact:

The bill would require the OFR to process registration applications. It is unknown how many litigation financiers currently operate in Florida. The bill would require the OFR to provide modifications to the Regulatory Enforcement and Licensing system. The fiscal impact is indeterminate at this time.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 559.952, 559.953, 559.954, 559.955, 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

⁴⁶ Office of Financial Regulation, *2020 Agency Legislative Bill Analysis of SB 1828* (Jan. 27, 2020).

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Part XIII of chapter 559, Florida Statutes,
consisting of sections 559.952, 559.953, 559.954, 559.955,
559.956, 559.957, 559.958, 559.959, and 559.961, is created and
may be cited as the "Litigation Financing Consumer Protection
Act."

Section 2. Section 559.952, Florida Statutes, is created to



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read:

559.952 Definitions.—As used in this part, the term:

(1) "Consumer" means any individual residing, physically present, or domiciled in this state.

(2) "Funded amount" means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) "Health care practitioner" has the same meaning as in s. 456.001.

(4) "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) "Litigation financier" means a person engaged in the business of litigation financing.

(6) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) Lending or financing arrangements between an attorney



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or a law firm and a lending institution to fund litigation costs.

(d)A consumer finance loan, as defined in s. 516.01.

(7) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier.

(2) The consumer's written acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.



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69 (4) The consumer's initials on each page of the contract
70 and the signature of the consumer on the executed contract.

71 Section 4. Section 559.954, Florida Statutes, is created to
72 read:

73 559.954 Prohibited acts.—A litigation financier may not:

74 (1) Pay or offer to pay a commission, a referral fee, or
75 other consideration to any person, including an attorney, a law
76 firm, or a health care practitioner, for referring a consumer to
77 a litigation financier.

78 (2) Accept a commission, a referral fee, a rebate, or other
79 consideration from any person, including an attorney, a law
80 firm, or a health care practitioner.

81 (3) Advertise false or misleading information about its
82 products or services.

83 (4) Refer a consumer to a specific attorney, law firm, or
84 health care practitioner, except that, if a consumer lacks legal
85 representation, the litigation financier may refer the consumer
86 to an attorney referral service operated by a county or state
87 bar association.

88 (5) Fail to supply a copy of an executed litigation
89 financing contract to the consumer upon execution of a contract.

90 (6) Attempt to obtain a waiver of any remedy, including,
91 but not limited to, compensatory, statutory, or punitive
92 damages, which the consumer might otherwise have in the subject
93 civil action or claim.

94 (7) Attempt to effect arbitration or waiver of a consumer's
95 right to a jury trial in the subject civil action or claim.

96 (8) Offer or provide legal advice to the consumer regarding
97 the litigation financing contract or the subject civil action or



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claim.

(9) Assign a litigation financing contract in whole or in part.

(10) Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil action or claim to repay the litigation financier.

(11) Direct, or make any decisions with respect to, the conduct of the subject civil action or claim or any settlement thereof.

(12) Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing litigation financing contract.

(13) Knowingly enter into a litigation financing contract with a consumer already under a litigation financing contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer consents to a contemporaneous financing arrangement in writing.

(14) Provide litigation financing for a claim under chapter 440.

Section 5. Section 559.955, Florida Statutes, is created to read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of the following disclosures on the front page of the contract in at least 12-point boldfaced type:

(a) Notice of the consumer's right to a copy of the fully executed contract upon execution of the contract.



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(b) A statement that the litigation financier has no right to and will not make any decisions or attempt to influence the consumer or his or her attorney about the conduct of the civil action or claim subject to the contract and that the right to make such decisions remains solely with the consumer.

(c) The total funded amount provided to the consumer.

(d) An itemized list of all charges and fees payable by the consumer.

(e) The interest rate.

(f) The total amount due from the consumer in 6-month intervals for 3 years, including all charges, fees, and interest.

(g) A statement that the consumer will owe no charges, fees, or interest other than those described in the disclosures.

(h) The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment any time after contract execution.

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation financier nothing.

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all charges, fees, and interest owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the following disclosure on the front page of the contract in at least 18-point uppercase and boldfaced type:



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CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the following disclosure immediately above the consumer's signature line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR, OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to read:

559.956 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds



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of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation financier's lien, except for any of the following:

(a) Attorney, insurer, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 7. Section 559.957, Florida Statutes, is created to read:

559.957 Interest, fees, charges, and penalties.—

(1) A litigation financier may not directly or indirectly charge, contract for, or receive an interest rate of greater than 30 percent of the funded amount per annum. In determining compliance with the statutory maximum interest rate, the computations used must be simple interest and not add-on interest or any other computation.

(2) The maximum interest rate that may be contracted for and received by a litigation financier is 12 times the maximum monthly rate, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month. The maximum daily rate must be computed on the basis of the maximum monthly rate divided by the number of days in the month.

(3) Interest may only accrue until a court enters a final order or a settlement agreement is executed in the civil action or claim subject to the litigation financing contract, whichever is earlier, but in no case may interest accrue for a period exceeding 3 years from the date the consumer receives the funds from the litigation financier. The total interest amount



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assessed must be calculated based on the actual number of days
for which interest accrued.

(4) A litigation financier may not directly or indirectly
charge, contract for, or receive any charges or fees the
combined total of which exceeds \$500 with regard to a single
civil action or claim, regardless of the number of litigation
financing contracts the consumer enters into with the litigation
financier respecting the civil action or claim.

(5) A litigation financier may not directly or indirectly
charge, contract for, or receive any interest, charges, or fees
for rescission or cancellation of a litigation financing
contract under s. 559.953(1).

Section 8. Section 559.958, Florida Statutes, is created to
read:

559.958 Litigation financing contracts; discovery.—Except
as otherwise ordered by the court, a party to any civil action
or claim, without awaiting a discovery request, shall provide to
the other parties any contract under which a litigation
financier has a contingent right to receive compensation sourced
from potential proceeds of the civil action or claim.

Section 9. Section 559.959, Florida Statutes, is created to
read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation
financier as it pertains to a litigation financing contract do
not limit, waive, or abrogate the scope or nature of any
statutory or common-law privilege, including the work-product
doctrine and the attorney-client privilege.

Section 10. Section 559.961, Florida Statutes, is created



793752

to read:

559.961 Violation; enforcement.—

(1) A violation of this part is an unfair or deceptive trade act or practice under part II of chapter 501.

(2) A litigation financing transaction that does not comply with the provisions of this part is void and unenforceable, and the litigation financier has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 11. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to litigation financing consumer protection; creating the Litigation Financing Consumer Protection Act; creating s. 559.952, F.S.; defining terms; creating s. 559.953, F.S.; specifying mandatory litigation financing contract terms; creating s. 559.954, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 559.955, F.S.; requiring specified mandatory litigation financing contract disclosures; creating s. 559.956, F.S.; authorizing a consumer to assign his or her contingent right to proceeds from a civil action or claim; establishing the priority of liens against or rights to civil action or claim proceeds; creating s.



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559.957, F.S.; authorizing litigation financiers to charge interest up to a specified amount annually; requiring simple interest computations for purposes of interest rates; specifying computations for a maximum annual, monthly, and daily percentage rate; providing a maximum interest accrual period; requiring that the total interest must be calculated based on the actual number of days for which interest accrued; capping the fees and charges that litigation financiers may assess; prohibiting a litigation financier from assessing specified fees or charges; creating s. 559.958 , F.S.; requiring litigation financing contract disclosure under specified circumstances; creating s. 559.959 , F.S.; providing that specified communications between attorneys and litigation financiers do not limit or waive statutory or common-law privilege; creating s. 559.961, F.S.; providing that a violation of this part is a violation of the Florida Deceptive and Unfair Trade Practices Act; providing that a contract that does not comply with the provisions of this part is void and unenforceable; providing an effective date.



469258

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment to Amendment (793752) (with title amendment)

Delete line 7
and insert:
559.956, 559.957, 559.959, and 559.961, is created and

Delete lines 226 - 233.

===== T I T L E A M E N D M E N T =====



469258

11 And the title is amended as follows:
12 Delete lines 282 - 284
13 and insert:
14 assessing specified fees or charges;



481944

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment to Amendment (793752) (with title amendment)

Delete line 7
and insert:
559.956, 559.958, 559.959, and 559.961, is created and

Delete lines 193 - 225.

===== T I T L E A M E N D M E N T =====



481944

11 And the title is amended as follows:
12 Delete lines 272 - 282.



504878

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment to Amendment (793752)

Delete lines 99 - 117
and insert:

(9) Report to a consumer credit reporting agency if
insufficient funds remain from the net proceeds of the subject
civil action or claim to repay the litigation financier.

(10) Direct, or make any decisions with respect to, the
conduct of the subject civil action or claim or any settlement
thereof.



504878

11 (11) Enter into a litigation financing contract with a
12 consumer incorporating the consumer's obligations to the
13 litigation financier under an existing litigation financing
14 contract.

15 (12) Knowingly enter into a litigation financing contract
16 with a consumer already under a litigation financing contract
17 with another litigation financier without first paying the
18 entire funded amount and all charges owed under the existing
19 contract, unless the consumer consents to a contemporaneous
20 financing arrangement in writing.

21 (13) Provide litigation financing for a claim under chapter



327102

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Substitute for Amendment (793752) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.952, 559.953, 559.954, 559.955, 559.956, 559.959, and 559.961, is created and may be cited as the "Litigation Financing Consumer Protection Act."

Section 2. Section 559.952, Florida Statutes, is created to



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read:

559.952 Definitions.—As used in this part, the term:

(1) "Consumer" means any individual residing, physically present, or domiciled in this state.

(2) "Funded amount" means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) "Health care practitioner" has the same meaning as in s. 456.001.

(4) "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) "Litigation financier" means a person engaged in the business of litigation financing.

(6) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) Lending or financing arrangements between an attorney



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or a law firm and a lending institution to fund litigation costs.

(d) A consumer finance loan as defined in s. 516.01.

(7) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier.

(2) The consumer's written acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.



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69 (4) The consumer's initials on each page of the contract
70 and the signature of the consumer on the executed contract.

71 Section 4. Section 559.954, Florida Statutes, is created to
72 read:

73 559.954 Prohibited acts.—A litigation financier may not:

74 (1) Pay or offer to pay a commission, a referral fee, or
75 other consideration to any person, including an attorney, a law
76 firm, or a health care practitioner, for referring a consumer to
77 a litigation financier.

78 (2) Accept a commission, a referral fee, a rebate, or other
79 consideration from any person, including an attorney, a law
80 firm, or a health care practitioner.

81 (3) Advertise false or misleading information about its
82 products or services.

83 (4) Refer a consumer to a specific attorney, law firm, or
84 health care practitioner, except that, if a consumer lacks legal
85 representation, the litigation financier may refer the consumer
86 to an attorney referral service operated by a county or state
87 bar association.

88 (5) Fail to supply a copy of an executed litigation
89 financing contract to the consumer upon execution of a contract.

90 (6) Attempt to obtain a waiver of any remedy, including,
91 but not limited to, compensatory, statutory, or punitive
92 damages, which the consumer might otherwise have in the subject
93 civil action or claim.

94 (7) Attempt to effect arbitration or waiver of a consumer's
95 right to a jury trial in the subject civil action or claim.

96 (8) Offer or provide legal advice to the consumer regarding
97 the litigation financing contract or the subject civil action or



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claim.

(9) Report to a consumer credit reporting agency if
insufficient funds remain from the net proceeds of the subject
civil action or claim to repay the litigation financier.

(10) Direct, or make any decisions with respect to, the
conduct of the subject civil action or claim or any settlement
thereof.

(11) Enter into a litigation financing contract with a
consumer incorporating the consumer's obligations to the
litigation financier under an existing litigation financing
contract.

(12) Knowingly enter into a litigation financing contract
with a consumer already under a litigation financing contract
with another litigation financier without first paying the
entire funded amount and all charges owed under the existing
contract, unless the consumer consents to a contemporaneous
financing arrangement in writing.

(13) Provide litigation financing for a claim under chapter
440.

Section 5. Section 559.955, Florida Statutes, is created to
read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of the
following disclosures on the front page of the contract in at
least 12-point boldfaced type:

(a) Notice of the consumer's right to a copy of the fully
executed contract upon execution of the contract.

(b) A statement that the litigation financier has no right
to and will not make any decisions or attempt to influence the



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consumer or his or her attorney about the conduct of the civil
action or claim subject to the contract and that the right to
make such decisions remains solely with the consumer.

(c) The total funded amount provided to the consumer.

(d) An itemized list of all charges and fees payable by the
consumer.

(e) The interest rate.

(f) The total amount due from the consumer in 6-month
intervals for 3 years, including all charges, fees, and
interest.

(g) A statement that the consumer will owe no charges,
fees, or interest other than those described in the disclosures.

(h) The cumulative amount due from the consumer for all
litigation financing contracts if the consumer seeks multiple
contracts and makes repayment any time after contract execution.

(i) Notice that if the consumer recovers nothing from the
subject civil action or claim, he or she will owe the litigation
financier nothing.

(j) Notice that if the net proceeds of the subject civil
action or claim are insufficient to fully repay the litigation
financier, the litigation financier will accept a reduced sum as
full payment of the funded amount and all charges, fees, and
interest owed, which sum may not exceed the net proceeds less
proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the
following disclosure on the front page of the contract in at
least 18-point uppercase and boldfaced type:

CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS



327102

CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER
OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT
EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION
FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE
CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE
LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE
POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE
DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED
MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the
following disclosure immediately above the consumer's signature
line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.
BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR,
OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to
read:

559.956 Contingent right to proceeds assignable; priority
of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to an
amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds
of a civil action or claim has priority over liens that attach
to such proceeds subsequent to the attachment of the litigation
financier's lien, except for any of the following:



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(a) Attorney, insurer, or health care practitioner liens or
liens based upon subrogation interests or reimbursement rights
related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or
governmental lien.

Section 7. Section 559.959, Florida Statutes, is created to
read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation
financier as it pertains to a litigation financing contract do
not limit, waive, or abrogate the scope or nature of any
statutory or common-law privilege, including the work-product
doctrine and the attorney-client privilege.

Section 8. Section 559.961, Florida Statutes, is created to
read:

559.961 Violation; enforcement.—
(1) A violation of this part is an unfair or deceptive
trade act or practice under part II of chapter 501.
(2) A litigation financing transaction that does not comply
with the provisions of this part is void and unenforceable, and
the litigation financier has no right to collect, receive, or
retain any principal, interest, or charges relating to such
transaction.

Section 9. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:



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214 A bill to be entitled
215 An act relating to litigation financing consumer
216 protection; creating the Litigation Financing Consumer
217 Protection Act; creating s. 559.952, F.S.; defining
218 terms; creating s. 559.953, F.S.; specifying mandatory
219 litigation financing contract terms; creating s.
220 559.954, F.S.; prohibiting litigation financiers from
221 engaging in specified conduct; creating s. 559.955,
222 F.S.; requiring specified mandatory litigation
223 financing contract disclosures; creating s. 559.956,
224 F.S.; authorizing a consumer to assign his or her
225 contingent right to proceeds from a civil action or
226 claim; establishing the priority of liens against or
227 rights to civil action or claim proceeds; creating s.
228 559.959 , F.S.; providing that specified
229 communications between attorneys and litigation
230 financiers do not limit or waive statutory or common-
231 law privilege; creating s. 559.961, F.S.; providing
232 that a violation of this part is a violation of the
233 Florida Deceptive and Unfair Trade Practices Act;
234 providing that a contract that does not comply with
235 the provisions of this part is void and unenforceable;
236 providing an effective date.



339220

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Substitute for Amendment (793752) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.952, 559.953, 559.954, 559.955, 559.956, 559.959, and 559.961, is created and may be cited as the "Litigation Financing Consumer Protection Act."

Section 2. Section 559.952, Florida Statutes, is created to



339220

read:

559.952 Definitions.—As used in this part, the term:

(1) "Consumer" means any individual residing, physically present, or domiciled in this state.

(2) "Funded amount" means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) "Health care practitioner" has the same meaning as in s. 456.001.

(4) "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) "Litigation financier" means a person engaged in the business of litigation financing.

(6) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) Lending or financing arrangements between an attorney



339220

or a law firm and a lending institution to fund litigation costs.

(d) A consumer finance loan as defined in s. 516.01.

(7) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier.

(2) The consumer's written acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.



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(4) The consumer's initials on each page of the contract and the signature of the consumer on the executed contract.

Section 4. Section 559.954, Florida Statutes, is created to read:

559.954 Prohibited acts.—A litigation financier may not:

(1) Pay or offer to pay a commission, a referral fee, or other consideration to any person, including an attorney, a law firm, or a health care practitioner, for referring a consumer to a litigation financier.

(2) Accept a commission, a referral fee, a rebate, or other consideration from any person, including an attorney, a law firm, or a health care practitioner.

(3) Advertise false or misleading information about its products or services.

(4) Refer a consumer to a specific attorney, law firm, or health care practitioner, except that, if a consumer lacks legal representation, the litigation financier may refer the consumer to an attorney referral service operated by a county or state bar association.

(5) Fail to supply a copy of an executed litigation financing contract to the consumer upon execution of a contract.

(6) Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, which the consumer might otherwise have in the subject civil action or claim.

(7) Attempt to effect arbitration or waiver of a consumer's right to a jury trial in the subject civil action or claim.

(8) Offer or provide legal advice to the consumer regarding the litigation financing contract or the subject civil action or



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claim.

(9) Assign a litigation financing contract in whole or in part.

(10) Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil action or claim to repay the litigation financier.

(11) Direct, or make any decisions with respect to, the conduct of the subject civil action or claim or any settlement thereof.

(12) Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing litigation financing contract.

(13) Knowingly enter into a litigation financing contract with a consumer already under a litigation financing contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer consents to a contemporaneous financing arrangement in writing.

(14) Provide litigation financing for a claim under chapter 440.

Section 5. Section 559.955, Florida Statutes, is created to read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of the following disclosures on the front page of the contract in at least 12-point boldfaced type:

(a) Notice of the consumer's right to a copy of the fully executed contract upon execution of the contract.



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(b) A statement that the litigation financier has no right to and will not make any decisions or attempt to influence the consumer or his or her attorney about the conduct of the civil action or claim subject to the contract and that the right to make such decisions remains solely with the consumer.

(c) The total funded amount provided to the consumer.

(d) An itemized list of all charges and fees payable by the consumer.

(e) The interest rate.

(f) The total amount due from the consumer in 6-month intervals for 3 years, including all charges, fees, and interest.

(g) A statement that the consumer will owe no charges, fees, or interest other than those described in the disclosures.

(h) The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment any time after contract execution.

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation financier nothing.

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all charges, fees, and interest owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the following disclosure on the front page of the contract in at least 18-point uppercase and boldfaced type:



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CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the following disclosure immediately above the consumer's signature line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR, OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to read:

559.956 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds of a civil action or claim has priority over liens that attach



339220

to such proceeds subsequent to the attachment of the litigation financier's lien, except for any of the following:

(a) Attorney, insurer, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 7. Section 559.959, Florida Statutes, is created to read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation financier as it pertains to a litigation financing contract do not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Section 8. Section 559.961, Florida Statutes, is created to read:

559.961 Violation; enforcement.—
(1) A violation of this part is an unfair or deceptive trade act or practice under part II of chapter 501.
(2) A litigation financing transaction that does not comply with the provisions of this part is void and unenforceable, and the litigation financier has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 9. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:



339220

214 Delete everything before the enacting clause
215 and insert:

216 A bill to be entitled
217 An act relating to litigation financing consumer
218 protection; creating the Litigation Financing Consumer
219 Protection Act; creating s. 559.952, F.S.; defining
220 terms; creating s. 559.953, F.S.; specifying mandatory
221 litigation financing contract terms; creating s.
222 559.954, F.S.; prohibiting litigation financiers from
223 engaging in specified conduct; creating s. 559.955,
224 F.S.; requiring specified mandatory litigation
225 financing contract disclosures; creating s. 559.956,
226 F.S.; authorizing a consumer to assign his or her
227 contingent right to proceeds from a civil action or
228 claim; establishing the priority of liens against or
229 rights to civil action or claim proceeds; creating s.
230 559.959 , F.S.; providing that specified
231 communications between attorneys and litigation
232 financiers do not limit or waive statutory or common-
233 law privilege; creating s. 559.961, F.S.; providing
234 that a violation of this part is a violation of the
235 Florida Deceptive and Unfair Trade Practices Act;
236 providing that a contract that does not comply with
237 the provisions of this part is void and unenforceable;
238 providing an effective date.



638636

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Part XIII of chapter 559, Florida Statutes,
consisting of sections 559.952, 559.953, 559.954, 559.955,
559.956, 559.959, and 559.961, is created and may be cited as
the "Litigation Financing Consumer Protection Act."

Section 2. Section 559.952, Florida Statutes, is created to
read:



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559.952 Definitions.—As used in this part, the term:

(1) “Consumer” means any individual residing, physically present, or domiciled in this state.

(2) “Funded amount” means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) “Health care practitioner” has the same meaning as in s. 456.001.

(4) “Interest” means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) “Litigation financier” means a person engaged in the business of litigation financing.

(6) “Litigation financing” means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer’s contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) Lending or financing arrangements between an attorney or a law firm and a lending institution to fund litigation



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costs.

(d) A consumer finance loan as defined in s. 516.01.

(7) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier.

(2) The consumer's written acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.

(4) The consumer's initials on each page of the contract



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and the signature of the consumer on the executed contract.

Section 4. Section 559.954, Florida Statutes, is created to read:

559.954 Prohibited acts.—A litigation financier may not:

(1) Pay or offer to pay a commission, a referral fee, or other consideration to any person, including an attorney, a law firm, or a health care practitioner, for referring a consumer to a litigation financier.

(2) Accept a commission, a referral fee, a rebate, or other consideration from any person, including an attorney, a law firm, or a health care practitioner.

(3) Advertise false or misleading information about its products or services.

(4) Refer a consumer to a specific attorney, law firm, or health care practitioner, except that, if a consumer lacks legal representation, the litigation financier may refer the consumer to an attorney referral service operated by a county or state bar association.

(5) Fail to supply a copy of an executed litigation financing contract to the consumer upon execution of a contract.

(6) Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, which the consumer might otherwise have in the subject civil action or claim.

(7) Attempt to effect arbitration or waiver of a consumer's right to a jury trial in the subject civil action or claim.

(8) Offer or provide legal advice to the consumer regarding the litigation financing contract or the subject civil action or claim.



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(9) Assign a litigation financing contract in whole or in part.

(10) Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil action or claim to repay the litigation financier.

(11) Direct, or make any decisions with respect to, the conduct of the subject civil action or claim or any settlement thereof.

(12) Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing litigation financing contract.

(13) Knowingly enter into a litigation financing contract with a consumer already under a litigation financing contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer consents to a contemporaneous financing arrangement in writing.

(14) Provide litigation financing for a claim under chapter 440.

Section 5. Section 559.955, Florida Statutes, is created to read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of the following disclosures on the front page of the contract in at least 12-point boldfaced type:

(a) Notice of the consumer's right to a copy of the fully executed contract upon execution of the contract.

(b) A statement that the litigation financier has no right



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to and will not make any decisions or attempt to influence the consumer or his or her attorney about the conduct of the civil action or claim subject to the contract and that the right to make such decisions remains solely with the consumer.

(c) The total funded amount provided to the consumer.

(d) An itemized list of all charges and fees payable by the consumer.

(e) The interest rate.

(f) The total amount due from the consumer in 6-month intervals for 3 years, including all charges, fees, and interest.

(g) A statement that the consumer will owe no charges, fees, or interest other than those described in the disclosures.

(h) The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment any time after contract execution.

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation financier nothing.

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all charges, fees, and interest owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the following disclosure on the front page of the contract in at least 18-point uppercase and boldfaced type:



638636

CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the following disclosure immediately above the consumer's signature line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR, OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to read:

559.956 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation



638636

financier's lien, except for any of the following:

(a) Attorney, insurer, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 7. Section 559.959, Florida Statutes, is created to read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation financier as it pertains to a litigation financing contract do not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Section 8. Section 559.961, Florida Statutes, is created to read:

559.961 Violation; enforcement.—

(1) A violation of this part is an unfair or deceptive trade act or practice under part II of chapter 501.

(2) A litigation financing transaction that does not comply with the provisions of this part is void and unenforceable, and the litigation financier has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 9. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause



638636

and insert:

A bill to be entitled
An act relating to litigation financing consumer
protection; creating the Litigation Financing Consumer
Protection Act; creating s. 559.952, F.S.; defining
terms; creating s. 559.953, F.S.; specifying mandatory
litigation financing contract terms; creating s.
559.954, F.S.; prohibiting litigation financiers from
engaging in specified conduct; creating s. 559.955,
F.S.; requiring specified mandatory litigation
financing contract disclosures; creating s. 559.956,
F.S.; authorizing a consumer to assign his or her
contingent right to proceeds from a civil action or
claim; establishing the priority of liens against or
rights to civil action or claim proceeds; creating s.
559.959 , F.S.; providing that specified
communications between attorneys and litigation
financiers do not limit or waive statutory or common-
law privilege; creating s. 559.961, F.S.; providing
that a violation of this part is a violation of the
Florida Deceptive and Unfair Trade Practices Act;
providing that a contract that does not comply with
the provisions of this part is void and unenforceable;
providing an effective date.



491882

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Part XIII of chapter 559, Florida Statutes,
consisting of sections 559.952, 559.953, 559.954, 559.955,
559.956, 559.959, and 559.961, is created and may be cited as
the "Litigation Financing Consumer Protection Act."

Section 2. Section 559.952, Florida Statutes, is created to
read:



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559.952 Definitions.—As used in this part, the term:

(1) “Consumer” means any individual residing, physically present, or domiciled in this state.

(2) “Funded amount” means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) “Health care practitioner” has the same meaning as in s. 456.001.

(4) “Interest” means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) “Litigation financier” means a person engaged in the business of litigation financing.

(6) “Litigation financing” means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer’s contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) Lending or financing arrangements between an attorney or a law firm and a lending institution to fund litigation



491882

costs.

(d) A consumer finance loan as defined in s. 516.01.

(7) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier.

(2) The consumer's written acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.

(4) The consumer's initials on each page of the contract



491882

and the signature of the consumer on the executed contract.

Section 4. Section 559.954, Florida Statutes, is created to read:

559.954 Prohibited acts.—A litigation financier may not:

(1) Pay or offer to pay a commission, a referral fee, or other consideration to any person, including an attorney, a law firm, or a health care practitioner, for referring a consumer to a litigation financier.

(2) Accept a commission, a referral fee, a rebate, or other consideration from any person, including an attorney, a law firm, or a health care practitioner.

(3) Advertise false or misleading information about its products or services.

(4) Refer a consumer to a specific attorney, law firm, or health care practitioner, except that, if a consumer lacks legal representation, the litigation financier may refer the consumer to an attorney referral service operated by a county or state bar association.

(5) Fail to supply a copy of an executed litigation financing contract to the consumer upon execution of a contract.

(6) Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, which the consumer might otherwise have in the subject civil action or claim.

(7) Attempt to effect arbitration or waiver of a consumer's right to a jury trial in the subject civil action or claim.

(8) Offer or provide legal advice to the consumer regarding the litigation financing contract or the subject civil action or claim.



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(9) Report to a consumer credit reporting agency if
insufficient funds remain from the net proceeds of the subject
civil action or claim to repay the litigation financier.

(10) Direct, or make any decisions with respect to, the
conduct of the subject civil action or claim or any settlement
thereof.

(11) Enter into a litigation financing contract with a
consumer incorporating the consumer's obligations to the
litigation financier under an existing litigation financing
contract.

(12) Knowingly enter into a litigation financing contract
with a consumer already under a litigation financing contract
with another litigation financier without first paying the
entire funded amount and all charges owed under the existing
contract, unless the consumer consents to a contemporaneous
financing arrangement in writing.

(13) Provide litigation financing for a claim under chapter
440.

Section 5. Section 559.955, Florida Statutes, is created to
read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of the
following disclosures on the front page of the contract in at
least 12-point boldfaced type:

(a) Notice of the consumer's right to a copy of the fully
executed contract upon execution of the contract.

(b) A statement that the litigation financier has no right
to and will not make any decisions or attempt to influence the
consumer or his or her attorney about the conduct of the civil



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127 action or claim subject to the contract and that the right to
128 make such decisions remains solely with the consumer.

129 (c) The total funded amount provided to the consumer.

130 (d) An itemized list of all charges and fees payable by the
131 consumer.

132 (e) The interest rate.

133 (f) The total amount due from the consumer in 6-month
134 intervals for 3 years, including all charges, fees, and
135 interest.

136 (g) A statement that the consumer will owe no charges,
137 fees, or interest other than those described in the disclosures.

138 (h) The cumulative amount due from the consumer for all
139 litigation financing contracts if the consumer seeks multiple
140 contracts and makes repayment any time after contract execution.

141 (i) Notice that if the consumer recovers nothing from the
142 subject civil action or claim, he or she will owe the litigation
143 financier nothing.

144 (j) Notice that if the net proceeds of the subject civil
145 action or claim are insufficient to fully repay the litigation
146 financier, the litigation financier will accept a reduced sum as
147 full payment of the funded amount and all charges, fees, and
148 interest owed, which sum may not exceed the net proceeds less
149 proceeds specifically awarded for future medical expenses.

150 (2) A litigation financing contract must also contain the
151 following disclosure on the front page of the contract in at
152 least 18-point uppercase and boldfaced type:

153
154 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS
155 CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER



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OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT
EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION
FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE
CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE
LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE
POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE
DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED
MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the
following disclosure immediately above the consumer's signature
line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.
BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR,
OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to
read:

559.956 Contingent right to proceeds assignable; priority
of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to an
amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds
of a civil action or claim has priority over liens that attach
to such proceeds subsequent to the attachment of the litigation
financier's lien, except for any of the following:

(a) Attorney, insurer, or health care practitioner liens or



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liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 7. Section 559.959, Florida Statutes, is created to read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation financier as it pertains to a litigation financing contract do not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Section 8. Section 559.961, Florida Statutes, is created to read:

559.961 Violation; enforcement.—

(1) A violation of this part is an unfair or deceptive trade act or practice under part II of chapter 501.

(2) A litigation financing transaction that does not comply with the provisions of this part is void and unenforceable, and the litigation financier has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 9. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled



491882

An act relating to litigation financing consumer protection; creating the Litigation Financing Consumer Protection Act; creating s. 559.952, F.S.; defining terms; creating s. 559.953, F.S.; specifying mandatory litigation financing contract terms; creating s. 559.954, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 559.955, F.S.; requiring specified mandatory litigation financing contract disclosures; creating s. 559.956, F.S.; authorizing a consumer to assign his or her contingent right to proceeds from a civil action or claim; establishing the priority of liens against or rights to civil action or claim proceeds; creating s. 559.959, F.S.; providing that specified communications between attorneys and litigation financiers do not limit or waive statutory or common-law privilege; creating s. 559.961, F.S.; providing that a violation of this part is a violation of the Florida Deceptive and Unfair Trade Practices Act; providing that a contract that does not comply with the provisions of this part is void and unenforceable; providing an effective date.



750626

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete line 44

and insert:

559.956, 559.957, 559.959, 559.961, and 559.962, is

Delete lines 297 - 330.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



750626

11 Delete lines 17 - 27
12 and insert:
13 proceeds; creating s. 559.959, F.S.;



622032

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment

Delete lines 204 - 216

and insert:

(9) Report to a consumer credit reporting agency if
insufficient funds remain from the net proceeds of the subject
civil action or claim to repay the litigation financier.

(10) Direct, or make any decisions with respect to, the
conduct of the subject civil action or claim or any settlement
thereof.



622032

(11) Enter into a litigation financing contract with a
consumer incorporating the consumer's obligations to the
litigation financier under an existing litigation financing
contract.

(12) Knowingly enter into a litigation financing contract



885912

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 331 - 338.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 27 - 29

and insert:

specified fees or charges; creating s. 559.961,

By Senator Broxson

1-01010C-20

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1 A bill to be entitled
 2 An act relating to litigation financing consumer
 3 protection; creating the Litigation Financing Consumer
 4 Protection Act; creating s. 559.952, F.S.; defining
 5 terms; creating s. 559.953, F.S.; requiring litigation
 6 financiers to register with the Office of Financial
 7 Regulation; providing registration requirements;
 8 creating s. 559.954, F.S.; providing mandatory
 9 litigation financing contract terms; creating s.
 10 559.955, F.S.; prohibiting litigation financiers from
 11 engaging in specified conduct; creating s. 559.956,
 12 F.S.; providing for mandatory litigation financing
 13 contract disclosures; creating s. 559.957, F.S.;
 14 providing for a contingent right to civil action
 15 proceeds assignability; establishing the priority of
 16 liens against or rights to civil action or claim
 17 proceeds; creating s. 559.958, F.S.; authorizing
 18 litigation financiers to charge interest up to a
 19 specified amount annually; providing for simple
 20 compounding; providing for a maximum annual, monthly,
 21 and daily percentage rate; providing a maximum
 22 interest accrual period; providing that total interest
 23 must be calculated based on the actual number of days
 24 for which interest accrued; capping the fees and
 25 charges that litigation financiers may assess;
 26 prohibiting a litigation financier from assessing
 27 specified fees or charges; creating s. 559.959, F.S.;
 28 requiring litigation financing contract disclosure
 29 under specified circumstances; creating s. 559.961,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 F.S.; providing that specified communications between
 31 attorneys and litigation financiers do not limit or
 32 waive statutory or common-law privilege; creating s.
 33 559.962, F.S.; providing that a violation of this part
 34 is a violation of the Florida Deceptive and Unfair
 35 Trade Practices Act; providing that this act does not
 36 limit the powers, duties, and rights of specified
 37 persons created under other law; providing an
 38 effective date.

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

41
 42 Section 1. Part XIII of chapter 559, Florida Statutes,
 43 consisting of sections 559.952, 559.953, 559.954, 559.955,
 44 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962, is
 45 created and may be cited as the "Litigation Financing Consumer
 46 Protection Act."

47 Section 2. Section 559.952, Florida Statutes, is created to
 48 read:

49 559.952 Definitions.—As used in this part, the term:

50 (1) "Consumer" means any natural person residing,
 51 physically present, or domiciled in this state.

52 (2) "Enforcing authority" has the same meaning as in s.
 53 501.203.

54 (3) "Funded amount" means the funds actually received and
 55 retained by a consumer under a litigation financing contract.

56 (4) "Health care practitioner" has the same meaning as in
 57 s. 456.001.

58 (5) "Interest" means the cost of obtaining litigation

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(6) "Litigation financier" means a person, an entity, or a partnership engaged in the business of litigation financing.

(7) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) A claim under the Workers' Compensation Law.

(d) Normal business lending or financing arrangements between an attorney or a law firm and a lending institution to fund litigation costs.

(e) A consumer finance loan, as defined in s. 516.01.

(8) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.956(2).

(9) "Office" means the Office of Financial Regulation.

Section 3. Section 559.953, Florida Statutes, is created to

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read:

559.953 Litigation financier registration; registration revocation.—

(1) A litigation financier may not engage in litigation financing in this state before registering as a litigation financier under this section.

(a) A litigation financier that is a corporation, limited liability company, or partnership is registered under this section if it has:

1. Met the bond requirements of subsection (2);

2. A status of active and in good standing as reflected in the office's records; and

3. Filed articles of organization or incorporation, a certificate of limited partnership, or another organizational document, or, if a foreign entity, an application for a certificate of authority with the office stating therein that it is a litigation financier.

(b) A litigation financier that is not a corporation, limited liability company, or partnership is registered under this section if it has:

1. Met the bond requirements of subsection (2); and

2. Filed a litigation financier registration application with the office on a form prescribed by the office which contains, at a minimum:

a. The applicant's full legal name and any fictitious name used by the applicant;

b. The applicant's physical address, mailing address, and telephone number;

c. A statement that the applicant is a litigation

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117 financier; and

118 d. Any other information the office deems necessary.

119 (2) Each litigation financier must file with the office a
 120 \$250,000 surety bond, which must meet all of the following
 121 requirements:

122 (a) Be issued by a surety company authorized to do business
 123 in this state.

124 (b) Be payable to the office for the payment of damages
 125 awarded to a consumer under part II of this chapter.

126 (c) Be effective so long as the office's records designate
 127 a litigation financier as such or a litigation financing
 128 contract with the litigation financier is effective.

129 (3) A litigation financier must amend its registration
 130 within 30 days after the information contained therein changes
 131 or becomes inaccurate in any respect. A litigation financier
 132 that is not a corporation, limited liability company, or
 133 partnership may amend its registration by filing with the office
 134 an amendment on a form prescribed by the commission.

135 (4) If the office determines that a litigation financier
 136 has not complied with the requirements of this section, the
 137 office must serve the litigation financier notice in a record of
 138 its intent to revoke the litigation financier's registration.
 139 Such notice:

140 (a) Must specifically state all grounds for revocation.

141 (b) May be sent by electronic mail to a litigation
 142 financier that provided the office with an electronic mail
 143 address.

144 (5) A litigation financier has 60 days from the date the
 145 office sends the notice required by subsection (4) to correct

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146 each ground for revocation or demonstrate to the reasonable
 147 satisfaction of the office that each ground determined by the
 148 office does not exist. The office must revoke the litigation
 149 financier registration of any litigation financier who fails to
 150 comply with the requirements of this subsection.

151 (6) The office has the authority reasonably necessary to
 152 enable it to administer this section efficiently, to perform
 153 duties imposed upon it, and to adopt rules to implement this
 154 section.

155 Section 4. Section 559.954, Florida Statutes, is created to
 156 read:

157 559.954 Litigation financing contracts; terms.—The
 158 litigation financing terms must be set forth in a written
 159 contract containing all of the following:

160 (1) A right of rescission allowing the consumer to cancel
 161 the contract without penalty, interest, charges, fees, or
 162 further obligation if, within 5 business days after contract
 163 execution or funds receipt by the consumer, whichever is later,
 164 the consumer provides written rescission notice and returns any
 165 funds already provided under the contract to the litigation
 166 financier.

167 (2) The consumer's written acknowledgement of whether an
 168 attorney represents him or her in the civil action or claim that
 169 is the subject of the contract.

170 (3) A statement indicating that, in the event the proceeds
 171 of the subject civil action or claim are paid into a settlement
 172 fund or trust, the litigation financier must notify the fund or
 173 trust administrator of any outstanding financial obligations
 174 arising from the contract.

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20201828__

175 Section 5. Section 559.955, Florida Statutes, is created to
176 read:

177 559.955 Prohibited conduct.—A litigation financier may not
178 do any of the following:

179 (1) Pay or offer to pay a commission, a referral fee, or
180 other consideration to any person or entity, including an
181 attorney, a law firm, or a health care practitioner, for
182 referring a consumer to a litigation financier.

183 (2) Accept a commission, a referral fee, a rebate, or other
184 consideration from any person or entity, including an attorney,
185 a law firm, or a health care practitioner.

186 (3) Advertise false or misleading information about its
187 products or services.

188 (4) Refer a consumer to a specific attorney, law firm, or
189 health care practitioner, except that, if a consumer lacks legal
190 representation, the litigation financier may refer the consumer
191 to an attorney referral service operated by a county or state
192 bar association.

193 (5) Fail to promptly supply a copy of all complete
194 litigation financing contracts to the consumer.

195 (6) Attempt to obtain a waiver of any remedy, including,
196 but not limited to, compensatory, statutory, or punitive
197 damages, which the consumer might otherwise have in the subject
198 civil action or claim.

199 (7) Attempt to effect arbitration or waiver of a consumer's
200 right to a jury trial in the subject civil action or claim.

201 (8) Offer or provide legal advice to the consumer regarding
202 the litigation financing contract or the subject civil action or
203 claim.

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20201828__

204 (9) Assign a litigation financing contract in whole or in
205 part.

206 (10) Report to a consumer credit reporting agency if
207 insufficient funds remain from the net proceeds of the subject
208 civil action or claim to repay the litigation financier.

209 (11) Direct, or make any decisions with respect to, the
210 conduct of the subject civil action or claim or any settlement
211 thereof.

212 (12) Enter into a litigation financing contract with a
213 consumer incorporating the consumer's obligations to the
214 litigation financier under an existing litigation financing
215 contract.

216 (13) Knowingly enter into a litigation financing contract
217 with a consumer already under a litigation financing contract
218 with another litigation financier without first paying the
219 entire funded amount and all charges owed under the existing
220 contract, unless the consumer consents to a contemporaneous
221 financing arrangement in writing.

222 Section 6. Section 559.956, Florida Statutes, is created to
223 read:

224 559.956 Required disclosures.—

225 (1) A litigation financing contract must contain all of the
226 following disclosures on the front page of the contract in at
227 least 12-point boldfaced type:

228 (a) Notice of the consumer's right to a completely filled
229 in contract.

230 (b) A statement that the litigation financier has no right
231 to and will not make any decisions or attempt to influence the
232 consumer or his or her attorney about the conduct of the civil

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233 action or claim subject to the contract and that the right to
 234 make such decisions remains solely with the consumer.
 235 (c) The total funded amount provided to the consumer.
 236 (d) An itemized list of all fees and charges payable by the
 237 consumer.
 238 (e) The annual percentage rate of return.
 239 (f) The total amount due from the consumer in 6-month
 240 intervals for 3 years, including all charges and fees.
 241 (g) A statement that the consumer will owe no charges or
 242 fees other than those described in the disclosures.
 243 (h) The cumulative amount due from the consumer for all
 244 litigation financing contracts if the consumer seeks multiple
 245 contracts and makes repayment any time after contract execution.
 246 (i) Notice that if the consumer recovers nothing from the
 247 subject civil action or claim, he or she will owe the litigation
 248 financier nothing.
 249 (j) Notice that if the net proceeds of the subject civil
 250 action or claim are insufficient to fully repay the litigation
 251 financier, the litigation financier will accept a reduced sum as
 252 full payment of the funded amount and all fees and charges owed,
 253 which sum may not exceed the net proceeds less proceeds
 254 specifically awarded for future medical expenses.
 255 (2) A litigation financing contract must also contain the
 256 following disclosure on the front page of the contract in at
 257 least 18-point uppercase and boldfaced type:
 258
 259 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS
 260 CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER
 261 OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT

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262 EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION
 263 FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE
 264 CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE
 265 LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE
 266 POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE
 267 DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED
 268 MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.
 269
 270 (3) A litigation financing contract must contain the
 271 following disclosure immediately above the consumer's signature
 272 line in 18-point uppercase and boldfaced type:
 273
 274 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
 275 IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.
 276 BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
 277 YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL
 278 PROFESSIONAL, OR AN ACCOUNTANT.
 279
 280 Section 7. Section 559.957, Florida Statutes, is created to
 281 read:
 282 559.957 Contingent right to proceeds assignable; priority
 283 of lien or right to proceeds.-
 284 (1) A consumer may assign his or her contingent right to
 285 receive an amount of the potential proceeds of a civil action or
 286 claim.
 287 (2) A litigation financier's lien on the potential proceeds
 288 of a civil action or claim has priority over liens that attach
 289 to such proceeds subsequent to the attachment of the litigation
 290 financier's lien, except for any of the following:

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20201828__

291 (a) Attorney, insurance carrier, or health care
 292 practitioner liens or liens based upon subrogation interests or
 293 reimbursement rights related to the subject civil action or
 294 claim.
 295 (b) Child support, Medicare, tax, or any other statutory or
 296 governmental lien.
 297 Section 8. Section 559.958, Florida Statutes, is created to
 298 read:
 299 559.958 Interest, fees, charges, and penalties.—
 300 (1) A litigation financier may not directly or indirectly
 301 charge, contract for, or receive an interest rate of greater
 302 than 30 percent of the funded amount per annum. In determining
 303 compliance with the statutory maximum interest rate, the
 304 computations used must be simple interest and not add-on
 305 interest or any other computation.
 306 (2) The maximum annual percentage rate of finance charge
 307 which may be contracted for and received by a litigation
 308 financier is 12 times the maximum monthly rate, and the maximum
 309 monthly rate must be computed on the basis of one-twelfth of the
 310 annual rate for each full month. The maximum daily rate must be
 311 computed on the basis of the maximum monthly rate divided by the
 312 number of days in the month.
 313 (3) Interest may only accrue until a court enters a final
 314 order or a settlement agreement is executed in the civil action
 315 or claim subject to the litigation financing contract, whichever
 316 is earlier, but in no case may interest accrue for a period
 317 exceeding 3 years from the date the consumer receives the funds
 318 from the litigation financier. The total interest amount
 319 assessed must be calculated based on the actual number of days

Page 11 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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320 for which interest accrued.
 321 (4) A litigation financier may not directly or indirectly
 322 charge, contract for, or receive any charges or fees the
 323 combined total of which exceeds \$500 with regard to a single
 324 civil action or claim, regardless of the number of litigation
 325 financing contracts the consumer enters into with the litigation
 326 financier respecting the civil action or claim.
 327 (5) A litigation financier may not directly or indirectly
 328 charge, contract for, or receive any interest, charges, or fees
 329 for rescission or cancellation of a litigation financing
 330 contract under s. 559.954(1).
 331 Section 9. Section 559.959, Florida Statutes, is created to
 332 read:
 333 559.959 Litigation financing contracts; discovery.—Except
 334 as otherwise ordered by the court, a party to any civil action
 335 or claim, without awaiting a discovery request, shall provide to
 336 the other parties any contract under which a litigation
 337 financier has a contingent right to receive compensation sourced
 338 from potential proceeds of the civil action or claim.
 339 Section 10. Section 559.961, Florida Statutes, is created
 340 to read:
 341 559.961 Effect of communication on privilege.—
 342 Communications between a consumer's attorney and a litigation
 343 financier as it pertains to a litigation financing contract do
 344 not limit, waive, or abrogate the scope or nature of any
 345 statutory or common-law privilege, including the work-product
 346 doctrine and the attorney-client privilege.
 347 Section 11. Section 559.962, Florida Statutes, is created
 348 to read:

Page 12 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1-01010C-20

20201828__

349 559.962 Violation; enforcement.-

350 (1) A violation of this part is an unfair or deceptive
351 trade act or practice under part II of chapter 501.

352 (2) This section may not be construed to limit:

353 (a) The enforcing authority's exercise of powers or
354 performance of duties that the enforcing authority is otherwise
355 legally authorized or required to exercise or perform.

356 (b) The rights and remedies available to the state or a
357 person under any other law.

358 Section 12. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Bill Number (if applicable) _____

469258

Amendment Barcode (if applicable) _____

Topic _____

Name Tim Nungesser Nungesser

Job Title Legislative Director

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

469258

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

469258

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title

Address 818 Connecticut Avenue NW Suite 1180

Street

Washington

City

DC

State

20006

Zip

Phone

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

327102

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007
Street

Phone 815-341-9564

washington DC 20002
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC legal funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

327102

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100 Phone _____
Street

Washington DC 20006 Email _____
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1828

Bill Number (if applicable)

339220

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email _____

Speaking: ☒ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/20
Meeting Date

Bill Number (if applicable)

327103

Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St
Street

Phone 445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@fla.gov

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

Bill Number (if applicable)

339220

Amendment Barcode (if applicable)

Topic

Name Tim Nunger

Job Title Legislative Director

Address 110 E. Jefferson St.

Street

Phone 445-5362

Tallahassee

City

FL

State

32301

Zip

Email tim.nunger@fl.senate.gov

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFJB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

Bill Number (if applicable)

504 878

Amendment Barcode (if applicable)

Topic

Name Tim Nungesser

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

*Meeting Date**Bill Number (if applicable)*

504 878

Amendment Barcode (if applicable)

Topic _____

Name Tim NungesserJob Title Legislative DirectorAddress 110 East Jefferson StreetPhone 850-445-5367*Street*TallahasseeFL32301Email Tim.nungesser@nfib.org*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing National Federation of Independent BusinessAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

339220

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

2/19/20

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1828

*Meeting Date**Bill Number (if applicable)*Topic Litigation Financing Consumer Protection*Amendment Barcode (if applicable)*Name Cory GuzzoJob Title LobbyistAddress 108 S Monroe StreetPhone 850-681-0024*Street*TallahasseeFL32301*City**State**Zip*Email cory@flapartners.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Insurance CouncilAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1828

Bill Number (if applicable)

Topic Litigation Financing Consumer Protection

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02.19.20

Meeting Date

1828

Bill Number (if applicable)

Topic Litigation Financing Consumer Protection

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

1828

Bill Number (if applicable)

Topic Litigation Financing

Amendment Barcode (if applicable)

Name George Ferjoo ("Fay-Jew")

Job Title Consultant - Floridian Partners.

Address 108 S. Monroe St.
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Institute for Legal Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/19/2020
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1828
Bill Number (if applicable)

Topic Litigation Financing Consumer Protection

Amendment Barcode (if applicable)

Name ALIX MILLER

Job Title VICE PRESIDENT

Address 350 E. College Ave
Street

Phone 850-222-9900

Tallahassee FL 32301
City State Zip

Email alyx@fltrucking.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA TRUCKING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

Topic Litigation Funding

Amendment Barcode (if applicable)

Name JACK Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Phone _____

Street

Washington

City

DC

State

20006

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1828

Bill Number (if applicable)

Topic Litigation Funding

Amendment Barcode (if applicable)

Name Eric Schueller

Job Title President

Address 712 H Street NE, Suite 1007

Phone 815-341-9564

Street

Washington

DC

State

20002

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

1828

Bill Number (if applicable)

Topic Lawsuit Lending

Amendment Barcode (if applicable)

Name Cardyn Johnson

Job Title Policy Director

Address 136 S Brough St
Street

Phone _____

Tallahassee
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

2/19/20

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1828

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim NungesserJob Title Legislative DirectorAddress 110 East Jefferson StreetPhone 850-445-5367

Street

TallahasseeFL32301Email Tim.nungesser@nfib.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing National Federation of Independent BusinessAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2020

Meeting Date

1828

Bill Number (if applicable)

Topic Legal Funding

Amendment Barcode (if applicable)

Name Janelle Carey

Job Title President

Address 628 Bypass Dr

Phone _____

Street

Cleander

FL

33162

Email _____

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Client legal funding

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2020

Meeting Date

1828

Bill Number (if applicable)

Topic Legal Funding

Amendment Barcode (if applicable)

Name THOMAS CAREY

Job Title CEO

Address 628 Bypass Dr
Street

Phone

CLEARWATER FL 33767
City State Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CLIENT LEGAL FUNDING

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1828

Bill Number (if applicable)

885912

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

885912

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20
Meeting Date

885 912
Bill Number (if applicable)
Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip 32301

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

622032

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

622032

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington DC 20002

City

State

Zip

Phone 815-341-9564

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Reset Form

2/19/20

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

622 032

Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

Email Tim.nungesser@nfib.org

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

750626

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

Bill Number (if applicable)

750 626

Amendment Barcode (if applicable)

Topic

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-445-5367

Email Tim.nungesser@nfib.org

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1828

Bill Number (if applicable)

750626

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

Topic

Litigation Funding

Name

Jack Kelly

Job Title

Address

818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

ALFA

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1828

Bill Number (if applicable)

491882

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

Bill Number (if applicable)

491802

Amendment Barcode (if applicable)

Topic

Name Tim Nungesser

Job Title L.D.

Address 110 E. Jefferson St.

Street

Phone 445-5361

Tallahassee

FL

32301

City

State

Zip

Email t.nungesser@nfib.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

Topic Litigation Funding

Name Jack Kelly

638636

Amendment Barcode (if applicable)

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ALFA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

638636

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email _____

Speaking: ☒ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20
Meeting Date

638636
Bill Number (if applicable)
Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St
Street

Phone 445-5361

City

State

Zip

Email tim.nungesser

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

504878

Amendment Barcode (if applicable)

Topic Litigation FundingName Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20006

Zip

Phone _____

Email _____

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

ALFA

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

504878

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC Legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

1828

Bill Number (if applicable)

793752

Amendment Barcode (if applicable)

Topic Litigation Financing

Name George Feijoo ("Fay-Jew")

Job Title Consultant - Floridian Partners

Address 108 S. Monroe St.
Street

Phone 305 720 7099

Tallahassee FL 32361
City State Zip

Email gfeijoo@floridianpartners.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Institute for Legal Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1828

Bill Number (if applicable)

793752

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Jack Kelly

Job Title _____

Address 818 Connecticut Avenue NW Suite 1100 Phone _____

Street

Washington

City

DC

State

20006

Zip

Email _____

Speaking: ☒ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Legal Finance Association (ALFA)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

5B 182P

Bill Number (if applicable)

793752

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, Suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone ~~800~~ 815-341-9564

Email _____

Speaking: ☒ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Alliance for Responsible Consumer Legal Funding (ARC)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

1828

Bill Number (if applicable)

793752

Amendment Barcode (if applicable)

Topic

Name Tim Nungesser

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NFIB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

481944

Amendment Barcode (if applicable)

Topic

Litigation ~~Local~~ Funding

Name

JACK Kelly ✓

Job Title

Address

818 Connecticut Avenue NW Suite 1100

Street

Washington

City

DC

State

20004

Zip

Phone

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

ALFA

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1828

Bill Number (if applicable)

481944

Amendment Barcode (if applicable)

Topic Litigation Funding

Name Eric Schuller

Job Title President

Address 712 H Street NE, suite 1007

Street

Washington

City

DC

State

20002

Zip

Phone 815-341-9564

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ARC legal Funding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

Bill Number (if applicable)

481944

Amendment Barcode (if applicable)

Topic

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-445-5367

Email Tim.nungesser@nfib.org

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

1828

Bill Number (if applicable)

481944

Amendment Barcode (if applicable)

Topic _____

Name Janette Carey

Job Title President

Address 622 Bypass Drive

Street

Phone 813-389-6973

Clearwater

City

FL

State

33764

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Client Legal Funding

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

1828
Bill Number (if applicable)

Topic To the Chair

601944 564878
Amendment Barcode (if applicable)

Name Tom Corey

Job Title _____

Address 6022 Bypass Dr.
Street

Phone _____

Clearwater FL 33764
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Client Legal Rounding

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/CS/SB 1870

INTRODUCER: Banking and Insurance Committee; Innovation, Industry, and Technology Committee;
and Senators Hutson and Cruz

SUBJECT: Technological Development

DATE: February 21, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle/Baird	Imhof	IT	Fav/CS
2.	Johnson	Knudson	BI	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1870 abolishes the Division of State Technology within the Department of Management Services (DMS), and replaces it with the Florida Digital Service, which is charged with creating innovative solutions that securely modernize state government, achieving value through digital transformation and interoperability, and supporting the cloud-first policy. The bill requires the Florida Digital Service to develop a comprehensive enterprise architecture and addresses how information technology infrastructure may be modernized to achieve cloud-first objectives. “Enterprise” means state agencies, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

The bill provides, that if a Cabinet agency adopts alternative standards in lieu of the enterprise architecture standards, the agency must affirmatively opt-out and notify the Governor, the President of the Senate, and the Speaker of the House of Representatives in writing before adoption of the alternative standards and annually thereafter, until such agency adopts the enterprise architecture standards in s. 282.0051, F.S. The notice must include the following:

- A detailed plan of how such agency will comply with the interoperability requirements.
- The estimated cost and time difference between adhering to the enterprise architecture or choosing alternative standards.
- A detailed security risk assessment of adopting alternative standards versus adopting the enterprise architecture.

Further, the bill creates the Financial Technology Sandbox, within the Office of Financial Regulation (OFR), to license financial technology innovators to test new products and services within the areas of a regulatory sandbox using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions in the consumer finance, payment instruments sellers, and money transmitter programs.

The bill appropriates \$50,000 in nonrecurring funds for FY 2020-2021 from the Administrative Trust Fund to the OFR to implement the provisions of s. 559.592, F.S., the Financial Technology Sandbox.

The fiscal impact on the Department of Management Services is indeterminate at this time.

Except as otherwise provided (the sandbox provisions), the bill takes effect July 1, 2020.

II. Present Situation:

Department of Management Services (DMS)

Information Technology (IT) Management

The DMS¹ oversees IT² governance and security for the executive branch of state government. The Division of State Technology (DST), within the DMS, implements duties and policies of the DMS in this area.³ The head of DST is appointed by the Secretary of Management Services⁴ and serves as the state chief information officer (CIO).⁵ The CIO must have at least 10 years of executive level experience in the public or private sector.⁶ The DST “provides the State with guidance and strategic direction on a variety of transformational technologies, such as cybersecurity and data analytics, while also providing the following critical services: voice, data, software, and much more.”⁷ The duties of DMS and DST include:

- Developing IT policy for the management of the state’s IT resources;
- Establishing IT architecture standards and assisting state agencies⁸ in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects;

¹ Section 20.22, F.S.

² The term “information technology” means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. s. 282.0041(14), F.S.

³ Section 20.22(2)(a), F.S.

⁴ The Secretary of Management Services serves as the head of DMS. The Secretary is appointed by the Governor, subject to confirmation by the Senate. s. 20.22(1), F.S.

⁵ Section 20.22(2)(b), F.S.

⁶ *Id.*

⁷ *State Technology*, FLORIDA DEPARTMENT OF MANAGEMENT SERVICES, https://www.dms.myflorida.com/business_operations/state_technology (last visited Jan. 27, 2020).

⁸ See s. 282.0041(27), F.S.

- Performing project oversight of all state agency IT projects that have a total cost of \$10 million or more, as well as cabinet agency IT projects that have a total cost of \$25 million or more, and are funded in the General Appropriations Act or any other law;
- Recommending potential methods for standardizing data across state agencies;
- Recommending open data⁹ technical standards and terminologies for use by state agencies;
- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services; and
- Establishing a policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.¹⁰

State Data Center and the Cloud-First Policy

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,¹¹ and required consolidation of agency data centers into the primary data centers by 2019,¹² which was completed in FY 2013-14. In 2014, the two primary data centers were merged to create the SDC within then-existing Agency for State Technology.¹³ The SDC is established within the DMS and the DMS is required to provide operational management and oversight of the SDC.¹⁴

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located at the Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is required to do the following:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;¹⁵
- Maintain performance of the state data center by ensuring proper data backup, data backup recovery, disaster recovery, and appropriate security, power, cooling, fire suppression, and capacity;
- Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan;
- Enter into a service-level agreement with each customer entity to provide the required type and level of service or services;
- Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the SDC;
- Show preference, in its procurement process, for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of SDC infrastructure, and that meet the

⁹ The term “open data” means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution. Section 282.0041(18), F.S.

¹⁰ Section 282.0051, F.S.

¹¹ The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).

¹² Ch. 2008-116, L.O.F.

¹³ Ch. 2014-221, L.O.F.

¹⁴ Section 282.201, F.S.

¹⁵ A “customer entity” means an entity that obtains services from DMS. s. 282.0041(7), F.S.

needs of customer agencies, reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for IT security; and

- Assist customer entities in transitioning from state data center services to third-party cloud-computing services procured by a customer entity.

A state agency is prohibited, unless exempted¹⁶ elsewhere in law, from:

- Creating a new agency computing facility or data center;
- Expanding the capability to support additional computer equipment in an existing agency computing facility or data center; or
- Terminating services with the SDC without giving written notice of intent to terminate 180 days before termination.¹⁷

Cloud computing is “a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.”¹⁸ In 2019, the Legislature mandated that each agency adopt a cloud-first policy that first considers cloud computing solutions in its technology sourcing strategy for technology initiatives or upgrades whenever possible or feasible.¹⁹ Each agency must, just like the SDC, show a preference for cloud-computing solutions in its procurement process and adopt formal procedures for the evaluation of cloud-computing options for existing applications, technology initiatives, or upgrades.²⁰

IT Security

The IT Security Act²¹ establishes requirements for the security of state data and IT resources. The DMS must designate a state chief information security officer (CISO) to oversee state IT security.²² The CISO must have expertise in security and risk management for communications and IT resources.²³ The DMS is charged with the following duties regarding IT security:

- Establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity;
- Adopting rules that safeguard an agency’s data, information, and IT resources to ensure availability, confidentiality, and integrity and to mitigate risks;

¹⁶ The following entities are exempt from the use of the SDC: the Department of Law Enforcement, the Department of the Lottery’s Gaming Systems Design and Development in the Office of Policy and Budget, regional traffic management centers, the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation. S. 282.201(2), F.S.

¹⁷ Section 282.201(3), F.S.

¹⁸ *Special Publication 800-145*, National Institute of Standards and Technology, <https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf> (last visited Jan. 27, 2020). The term “cloud computing” has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology (NIST). s. 282.0041(5), F.S.

¹⁹ Section 282.206(1), F.S.

²⁰ Section 282.206(2) and (3), F.S.

²¹ Section 282.318, F.S., is cited as the “Information Technology Security Act.”

²² Section 282.318(3), F.S.

²³ *Id.*

- Developing, and annually updating, a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, incident management, and disaster recovery planning.²⁴

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.²⁵ In part, the heads of state agencies are also required to annually submit to DMS the state agency's strategic and operational IT security plans; conduct, and update every 3 years, a comprehensive risk assessment; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.²⁶

Enhanced 911 (E911) System

The DST, which oversees the E911 system in Florida, is required to develop, maintain, and implement the statewide emergency communications E911 system plan, including schedules related to public agencies implementation and coordination of the plan.²⁷ The plan must provide for:

- The public agency emergency communications requirements for each entity of local government²⁸ in the state.
- A system to meet specific local government requirements, which must include law enforcement, firefighting, and emergency medical services, and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost to implement the E911 system.

Agency Procurements

The DMS is responsible for procuring state term contracts for commodities and contractual services from which state agencies must make purchases.²⁹ Agency³⁰ procurement of commodities or contractual services exceeding \$35,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,³¹ unless otherwise authorized by law:³²

- Invitation to bid (ITB). An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when

²⁴ Section 282.318(3), F.S.

²⁵ Section 282.318(4)(a), F.S.

²⁶ Section 282.318(4), F.S.

²⁷ Section 365.171(4), F.S.

²⁸ "Local government" means any city, county, or political subdivision of the state and its agencies. s. 365.171(3)(b), F.S.

²⁹ Sections 287.042(2)(a) and 287.056(1), F.S.

³⁰ Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

³¹ Section 287.012(6), F.S., defines "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

³² See s. 287.057, F.S.

the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.³³

- Request for proposals (RFP). An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.³⁴
- Invitation to negotiate (ITN). An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.³⁵

Digital Driver License

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license.³⁶ Further, the DHSMV may contract with one or more private entities to develop a digital proof of driver license system.³⁷ The digital proof of driver license developed by the DHSMV, or by an entity contracted by the DHSMV, must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.³⁸ A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.³⁹

Current law also establishes penalties for a person who manufactures or possesses a false digital proof of driver license.⁴⁰ Specifically, a person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to 5 years in prison⁴¹ and a fine not to exceed \$5,000,⁴² or punishable under the habitual felony offender statute.⁴³
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison⁴⁴ and a fine not to exceed \$500.⁴⁵

Financial Technology

Financial technology, often referred to as “FinTech,” encompasses a wide array of innovation in the financial services industry. FinTech is technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated

³³ Section 287.057(1)(a), F.S.

³⁴ Section 287.057(1)(b), F.S.

³⁵ Section 287.057(1)(c), F.S.

³⁶ Section 322.032(1), F.S.

³⁷ Section 322.032(2), F.S.

³⁸ *Id.*

³⁹ Section 322.032(3), F.S.

⁴⁰ Section 322.032(4), F.S.

⁴¹ Section 775.082, F.S.

⁴² Section 775.083(1)(c), F.S.

⁴³ Section 775.084, F.S.

⁴⁴ Section 775.082, F.S.

⁴⁵ Section 775.083(1)(e), F.S.

material effect on the provision of financial services.⁴⁶ Technological innovation holds great promise for the provision of financial services, with the potential to increase market access, the range of product offerings, and convenience while also lowering costs to clients.⁴⁷ Greater competition and diversity in lending, payments, insurance, trading, and other areas of financial services can create a more efficient and resilient financial system.⁴⁸ Catalysts of FinTech innovations include technology, regulation, and evolving consumer preferences, including customization.⁴⁹

FinTech innovation is often thought to be synonymous with disruption of the traditional financial services market structure and its providers, such as financial institutions. However, to date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.⁵⁰ FinTech firms have generally not had sufficient access to the low-cost funding or the customer base necessary to pose a serious competitive threat to established financial institutions in mature financial market segments.⁵¹ Partnering allows FinTech firms to operate while still being relatively small and, depending on the jurisdiction and the business model, unburdened by some financial regulation while still benefitting from access to incumbents' client base.⁵² At the same time, incumbents benefit from access to innovative technologies that provide a competitive edge.⁵³ Yet there are exceptions to this trend, as some FinTech firms have established inroads in credit provision and payments.⁵⁴

Regulatory Sandboxes

Rapid Fintech development has brought with it regulatory uncertainty. Some suggest that regulatory relief and testing can be important when it comes to bringing innovative products to market.⁵⁵ A well-designed and executed sandbox can facilitate innovation, protect consumers, and safeguard the financial systems.⁵⁶ When approving pilots or issuing regulatory relief, some have suggested agencies adopt a data-driven approach, which incorporates information sharing and the ability to monitor experiments, to ensure the regulators can draw lessons from the sandbox.⁵⁷ Further, regulatory sandboxes can provide a Fintech business with valuable market

⁴⁶ Financial Stability Board, *FinTech and market structure in financial services: Market developments and potential financial stability implications* (Feb. 14, 2019), <https://www.fsb.org/2019/02/fintech-and-market-structure-in-financial-services-market-developments-and-potential-financial-stability-implications/> (last visited Feb. 14, 2020).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Quan, Dan, *A Few Thoughts on Regulatory Sandboxes*, Center for Monetary and Financial Alternatives, Cato Institute, at <https://pacscenter.stanford.edu/a-few-thoughts-on-regulatory-sandboxes/> (last viewed Feb. 14, 2020).

⁵⁶ *Id.*

⁵⁷ *Id.*

insights while maintaining compliance, as well as greater knowledge of the laws surrounding its product or service, and the opportunity to begin building a relationship with a regulator.⁵⁸

Arizona Regulatory Sandbox

Arizona was the first state to enact⁵⁹ and launch a regulatory sandbox (sandbox) program.⁶⁰ The program is established under the Attorney General's Office to foster innovation by enabling a business to obtain limited access to the Arizona market to test innovative financial products or services.⁶¹ Some of the products or services approved for Arizona's sandbox include:

- A financial services “club” using money transmission services in connection with the sale of digital assets aimed at providing a cash management solution for licensed medical marijuana providers.
- A business model for income-sharing agreements that provide qualified consumers with a fixed amount of money in exchange for a percentage of the consumer's future income over a scheduled period of time, subject to contingencies involving periods of unemployment or lowered income.
- A consumer-lending platform that enables small business partners to provide lending options at the point of sale for consumers seeking to finance household related projects.⁶²

Office of Financial Regulation

The Office of Financial Regulation (OFR) regulates financial institutions, finance companies, money services businesses, and the securities industry.⁶³ The Financial Services Commission (commission), composed of the Governor, Chief Financial Officer, Attorney General, and the Commissioner of Agriculture and Consumer Services, serves as the agency head of the OFR for purposes of rulemaking under ss. [120.536-120.565](#), F.S..⁶⁴

Money Services Businesses

Money services businesses include payment instrument sellers, money transmitters, check cashers, foreign currency exchangers, and deferred presentment providers, pursuant to ch. 560, F.S., the Money Services Business Act. Money services businesses (MSBs) are regulated under two license categories.⁶⁵ Money transmitters and payment instrument issuers⁶⁶ are regulated

⁵⁸ Virtual Currency Report, *Fintech Regulatory Sandboxes: Update on Arizona's Sandbox and Other Developments*, (Feb. 11, 2019), JDSUPRA, at <https://www.jdsupra.com/legalnews/fintech-regulatory-sandboxes-update-on-85915/> (last viewed Feb. 14, 2020).

⁵⁹ House Bill 2434, 2018 Second Regular Session, approved by the Governor March 22, 2018.

⁶⁰ Press, Daniel, *Arizona Becomes First State to Establish FinTech Sandbox* (Mar. 24, 2018) at <https://cei.org/blog/arizona-becomes-first-state-establish-fintech-sandbox> (last viewed Feb. 15, 2020).

⁶¹ Arizona Attorney General, Mark Brnovich, *Arizona's Fintech Sandbox*, Frequently Asked Questions at <https://www.azag.gov/fintech/faq> (last viewed Feb. 10, 2020).

⁶² Arizona Attorney General, Mark Brnovich, *Sandbox participants* at <https://www.azag.gov/fintech/participants> (last viewed Feb. 15, 2020).

⁶³ Section 20.121(3)(a)2., F.S.

⁶⁴ *Id.*

⁶⁵ Section 560.104, F.S., provides that banks, credit unions, trust companies, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S.

⁶⁶ A person licensed as a money transmitter or payment instrument seller may also engage in the activities authorized for check cashers and foreign currency exchangers without paying additional licensing fees. See s. 560.204(2), F.S.

under part II of ch. 560, F.S., while check cashers⁶⁷ and foreign currency exchangers⁶⁸ are regulated under part III. An applicant for licensure as a money services business must:

- Demonstrate the character and general fitness to command the confidence of the public and warrant the belief that the money services business shall operate lawfully and fairly;
- Be legally authorized to do business in this state;
- Be registered as a money services business with the federal Financial Crimes Enforcement Network;⁶⁹ and,
- Have an anti-money laundering program, which meets the requirements of 31 C.F.R. 1022.210.⁷⁰

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, a MSB must maintain certain records of each transaction involving currency or payments instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.⁷¹ A MSB must keep records of each transaction occurring in this state which it knows to involve currency or other payment instruments having a greater value than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.⁷² The OFR may take administrative action against a MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.⁷³ The OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.⁷⁴

A money transmitter “receives currency,⁷⁵ monetary value,⁷⁶ or payment instruments⁷⁷ for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.”⁷⁸ A payment instrument

⁶⁷ “Check casher” means a person who sells currency in exchange for payment instruments received, except for travelers checks. Section 560.103(6), F.S.

⁶⁸ “Foreign currency exchanger” means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. s. 560.103(17), F.S.

⁶⁹ See 31 C.F.R. 1010.100 and 31 C.F.R. 1022.380. These provisions define money service businesses subject to registration with the Financial Crimes Enforcement Network (FinCEN)..

⁷⁰ Section 560.1401, F.S.

⁷¹ Section 560.123, F.S.

⁷² *Id.*

⁷³ Section 560.114, F.S.

⁷⁴ *Id.*

⁷⁵ “Currency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes. Section 560.103(11), F.S.

⁷⁶ “Monetary value” means a medium of exchange, whether or not redeemable in currency. s. 560.103(21), F.S.

⁷⁷ “Payment instrument” means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. s. 560.103(29), F.S.

⁷⁸ Section 560.103(23), F.S.

seller sells, issues, provides, or delivers a payment instrument.⁷⁹ A money transmitter or payment instrument seller must:

- Have a net worth of at least \$100,000 and an additional net worth of \$10,000 per location in this state, up to a maximum of \$2 million.⁸⁰
- Have a corporate surety bond in an amount between \$50,000 and \$2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.⁸¹ In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.⁸²
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States with exceptions.⁸³
- Maintain specified records for at least 5 years.⁸⁴

An applicant for licensure under part II, of ch. 560, F.S., must submit a nonrefundable fee of \$375 with the application form.⁸⁵ Applicants are subject to a background check and other specified requirements.⁸⁶

Federal Regulation. The Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN) is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes.⁸⁷ To that end, the FinCEN administers the Bank Secrecy Act (BSA).⁸⁸ The BSA regulations requires financial institutions, which includes money services businesses, to establish an anti-money laundering program, verify customer identity, maintain certain records, and file suspicious activity reports and currency transaction reports that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.⁸⁹ Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than \$1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange.⁹⁰ However, if a

⁷⁹ Section 560.103(30) and (34).

⁸⁰ Section 560.209, F.S.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Section 560.210, F.S.

⁸⁴ Sections 560.1105 and 560.211, F.S.

⁸⁵ Section 560.143, F.S.

⁸⁶ Sections 560.114, 560.141, and part II, ch. 560, F.S.

⁸⁷ FinCEN, *What We Do*, <https://www.fincen.gov/what-we-do> (last visited Jan. 31, 2020).

⁸⁸ The Currency and Foreign Transactions Reporting Act of 1970 (which legislative framework is commonly referred to as the "Bank Secrecy Act" or "BSA." These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311-5314 and 5316-5332 and notes thereto.

⁸⁹ 31 C.F.R. ss. 1010.100 and 1022.380.

⁹⁰ *Id.*

business provides money transfer services in any amount, the business is required to be registered.⁹¹

Consumer Finance Loans

The Florida Consumer Finance Act (act)⁹² authorizes licensed lenders to make secured or unsecured consumer loans of money, credit, goods, or choses in action⁹³ in an amount or to a value of \$25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first \$3,000,
- 24 percent on principal above \$3,000 and up to \$4,000, and
- 18 percent on principal above \$4,000 and up to \$25,000.⁹⁴

An applicant for licensure must pay a nonrefundable biennial license fee of \$625, meet liquid asset standards, and other eligibility requirements.⁹⁵ Licenses granted under the act are for a single place of business and must be renewed every 2 years. The act provides grounds for disciplinary action by the OFR against an applicant or a licensee.⁹⁶

III. Effect of Proposed Changes:

Florida Digital Service

Section 1 amends s. 20.22, F.S., to abolish the Division of State Technology and create the Division of Telecommunications and the Florida Digital Service.

Section 2 amends s. 282.0041, F.S., to create the following definitions:

- “Credential service provider” means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities;
- “Data-call” means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data;
- “Electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- “Electronic credential” means a digital asset which verifies the identity of a person, organization, application, or device;
- “Enterprise” means the collection of state agencies. The term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services;

⁹¹ *Id.*

⁹² Ch. 516, F.S.

⁹³ Chose in action” is defined as “1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit.” Black’s Law Dictionary 101 (3d ed. 1996).

⁹⁴ Section 516.031 (1), F.S. In addition, consumer finance lenders are permitted to charge other fees, as provided in s. 516.031(3), F.S.

⁹⁵ Section 516.03(1), F.S.

⁹⁶ Section 516.07, F.S.

- “Enterprise architecture” means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government;
- “Interoperability” means the technical ability to share and use data across and throughout the enterprise; and
- “Qualified entity” means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

Section 3 amends s. 282.0051, F.S., to provide the powers and duties of the Florida Digital Service. The Florida Digital Service is created within the DMS to create solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206, F.S.

The bill revises provisions, which currently give DMS oversight and management authority over agency information technology projects, and instead gives the Florida Digital Service this authority over agency projects that have an information technology component. The Florida Digital Service will perform project oversight on all state agency information technology projects that have an information technology component with a total project cost of \$10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service is required to establish a process for state agencies to apply for an exception to these requirements. Further, notwithstanding any other law, the Florida Digital Service must provide project oversight on any project with an information technology component of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of \$25 million or more and which affects one or more other agencies. The Florida Digital Service is required to establish a process for these departments to apply for an exception for a specific project with an information technology component. The Secretary of the DMS is required to designate a state chief information officer to head the Florida Digital Service, and the state chief information officer must designate a chief data officer.

The Florida Digital Service must develop a comprehensive enterprise architecture for all state departments and agencies that:

- Acknowledges the unique needs of those included within the enterprise, resulting in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability;
- Supports the cloud-first policy as specified in s. 282.206, F.S.; and
- Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

The Florida Digital Service, pursuant to legislative appropriation must:

- Create and maintain a comprehensive indexed data catalog that lists what data elements are housed within the enterprise and in which legacy system or application these data elements are located;
- Develop and publish, in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog;

- Review and document use cases across the enterprise architecture;
- Develop and publish standards that support the creation and deployment of application programming interfaces to facilitate integration throughout the enterprise;
- Publish standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access enterprise's data under the terms of the agreements with the department; and
- Publish standards that facilitate the deployment of applications or solutions to existing enterprise obligations in a controlled and phased approach.

Pursuant to legislative authorization and subject to appropriation, the DMS may procure a credential service provider through a competitive process pursuant to s. 287.057, F.S. The terms of the contracts developed from such procurement must be based on the per-data-call or subscription charges and without cost to the enterprise or law enforcement for using the services provided by the credential service provider. The bill authorizes the DMS to enter into agreements with qualified entities that have technological capabilities necessary to integrate with the credential service provider and agree to terms, privacy policies, and uniform remittance terms relating to the consumption of enterprise data. However, the bill provides that enterprise data do not include data that are restricted from public disclosure based on federal or state privacy, confidentiality, or security laws. The bill provides that a credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

All revenues generated from the agreements with the credential service provider and qualified entities must be remitted to the DMS, and the DMS must deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation, and DMS agreements with the credential service provider and qualified entities. Upon adoption of the enterprise architecture, the Florida Digital Service may develop a process to:

- Receive written notice from the enterprise of procurement of an information technology project that is subject to governance by the enterprise architecture; and
- Participate in the development of specifications and recommend modifications of any procurement by state agencies that the procurement complies with the enterprise architecture.

Section 4 amends s. 282.00515, F.S., to revise the current process which requires the Cabinet agencies to either adopt the IT architecture standards established in s. 282.0051, F.S., or adopt alternative standards based on best practices and industry standards. The bill provides that, if a Cabinet agency adopts an alternative standards in lieu of the enterprise architecture standards, such agency must affirmatively opt-out and notify the Governor, the President of the Senate, and the Speaker of the House of Representatives in writing before adoption of the alternative standards and annually thereafter, until such agency adopts the enterprise architecture standards in s. 282.0051, F.S. The notice must include the following:

- A detailed plan of how such agency will comply with the interoperability requirements.
- The estimated cost and time difference between adhering to the enterprise architecture or choosing alternative standards.
- A detailed security risk assessment of adopting alternative standards versus adopting the enterprise architecture.

Section 5 amends s. 282.318, F.S., to require the state chief information officer to report to the state chief information security officer of the Florida Digital Service.

Sections 6, 7, 8, 9, and 10 amend ss. 287.0591, 365.171, 365.172, 365.173, and 943.0415, F.S., respectively, to make technical, conforming changes.

Financial Technology Sandbox

Section 11 creates s. 559.952, F.S., the “Financial Technology Sandbox” (“sandbox”) effective January 1, 2021, within the Office of Financial Regulation (OFR). Subsection (2) provides that the intent of the sandbox is to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox, using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions. Subsection (3) creates definitions of terms, including the following, as summarized below:

- “Consumer” means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.
- “Control person,” is defined to have the same meaning as provided in s. 516.01, F.S.
- “Financial product or service” means a product or service related to a consumer finance loan, as defined in s. 516.01, F.S., or as a money transmitter or payment instrument seller, as defined in s. 560.103, F.S., including mediums of exchange that are in electronic or digital form, , which is subject to general law or corresponding rule requirements in the sections enumerated in paragraph (4)(a) and to general law or corresponding rule requirements in the sections enumerated in paragraph (4)(a) and which is under the jurisdiction of the office.
- “Financial Technology Sandbox” means the program which allows a licensee to make an innovative financial product or service available to consumers as a person who makes and collects consumer finance loans, as defined in s. 516.01, F.S., or as a money transmitter or payment instrument seller, as defined in s. 560.103, F.S., during a sandbox period through an exception to general laws or a waiver of rule requirements, or portions thereof, as specified in this section.
- “Innovative” means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public and which is not known to have a comparable offering in this state outside of the Financial Technology Sandbox.
- “Sandbox period” means the period, initially not longer than 24 months, in which the office has:
 - Authorized an innovative financial product or service to be made available to consumers; and
 - Granted the person who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that authorization is possible.

Sandbox Application; Standards for Approval (Subsection 5)

Before filing an application to enter the sandbox, a substantially affected person may seek a declaratory statement regarding the applicability of a statute, rule, or agency order to the

petitioner's particular set of circumstances.

Before making an innovative financial product or service available to consumers in the sandbox, a person must file an application for licensure with the OFR. A business entity filing an application must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state. Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

In the application, the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain:

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox;
- The potential risk to consumers, and the methods that will be used to protect consumers and resolve complaints during the sandbox period;
- The business plan proposed by the applicant;
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service;
- If any control person involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing, the application to the sandbox will be denied. A plea of no contest, a conviction, or a finding of guilt must be reported regardless of adjudication;
- A copy of the disclosures that will be provided to consumers;
- The financial responsibility of any control person ; and
- Any other factor that the office determines to be relevant.

The OFR may not approve an application if the applicant had a prior sandbox application that was approved and that related to a substantially similar financial product or service or if any control person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved with another sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

The OFR must approve or deny in writing a sandbox application within 60 days after receipt of the completed application. The OFR and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the OFR may impose conditions on any approval.

Upon approval of an application, the OFR must specify the general law or rule requirements, or portions thereof, for which an exception or rule waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The OFR must post on its website notice of the approval of the application, a summary of the innovative financial product

or service, and the contact information of the licensee making the financial product or service available.

Exceptions of General Law and Waivers of Rules (Subsection 4)

Notwithstanding any other law, upon approval of a sandbox, the OFR must grant an applicant a license and a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the following conditions are met:

- The general law or corresponding law currently prevents the innovative product or service from being made available to consumers.;
- The exceptions or rule waivers are not broader than necessary to accomplish the purposes specified in this section.
- No provision relating to the liability of an incorporator, a director, or an officer of the applicant is eligible for a waiver.
- The other requirements of this section are met.

If the applicant is approved for a person who otherwise would be subject to ch. 516 or 560, F.S., the following provisions are not applicable to the licensee:

- Section 516.03, F.S., except for the license fee, investigation fee, evidence of liquid assets of at least \$25,000, and the OFR's authority to investigate an applicant. The OFR may prorate the license renewal fees for an extension granted.
- Section 516.05, F.S., except for s. 516.05(4), (5), and (7)-(9), F.S.
- Section 560.109, F.S., to the extent that it requires the OFR to examine a licensee at least once every 5 years;
- Section 560.118, F.S., except for s. 560.118 (1), F.S.;
- Section 560.125, F.S., except for s. 560.125(1), F.S., to the extent that subsection would prohibit a licensee from engaging in the business of a money services business during the sandbox period; and s. 560.125(2), F.S., to the extent that subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period;
- Section 560.128, F.S.;
- Section 560.141, F.S., except for s. 560.141(1)(a) 3., 8., 9., and 10., and (1)(b), (c), and (d), F.S.;
- Section 560.142, F.S., except that the OFR may prorate, but not entirely waive, the license renewal fees provided in ss. 560.142 and 560.143, F.S., for an extension granted;
- Section 560.143(2), F.S., to the extent necessary for proration of the renewal fee;
- Section 560.204(1), F.S., to the extent that subsection would prohibit a licensee from engaging in, or advertising it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period;
- Section 560.205, F.S., except for s. 560.205(1) , (3), and (4) F.S.;
- Section 560.208, F.S., except for s. 560.208(3)-(6), F.S.; or
- Section 560.209, F.S., except that the OFR may modify, but not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts required under this section. The modified amounts must be in such lower amounts that the OFR determines to be commensurate with the considerations under paragraph (5)(d) and the maximum number of consumers authorized to receive the financial product or service under this section.

Sandbox Operation (Subsection 6)

A licensee may make an innovative financial product or service available to consumers during the sandbox period. The OFR may, on a case-by-case basis and after consultation with the licensee, specify the maximum number of consumers authorized to receive an innovative financial product or service. The OFR may not authorize more than 15,000 consumers to receive the financial product or service until the licensee has filed the first required biennial report. After the filing of the first report, if the licensee demonstrates adequate financial capitalization, risk management process, and management oversight, the OFR may authorize up to 25,000 consumers to receive the financial product or service.

Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the sandbox, the licensee must provide a written statement to the consumer that includes the following disclosures:

- The name and contact information of the person making the financial product or service available to consumers;
- That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state;
- That this state does not endorse the financial product or service;
- That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk;
- That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service;
- The expected end date of the sandbox period;
- The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office; and
- Any other statements or disclosures required by rule of the commission.

The written statement must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the licensee making the financial product or service available.

The OFR may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons who make an innovative financial product or service available in this state through the sandbox to make their products or services available in other jurisdictions.

The OFR may examine the records of a sandbox licensee at any time, with or without notice.

Sandbox Period Extension and Conclusion (Subsection 7)

A licensee may apply for an extension of the initial sandbox period for up to 12 additional months. A complete application for an extension must be filed with the OFR at least 90 days before the conclusion of the initial sandbox period. The OFR must approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the

office must at least consider the status of the factors previously considered in deciding to approve or deny an application to enter the sandbox. An application for an extension must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

- Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently; or
- An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the OFR, and approval is pending.

At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a licensee must provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension, and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person who makes the innovative financial product or service available may:

- Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension;
- Take necessary legal action; and
- Take other actions authorized by commission rule, which are not inconsistent with this subsection.

Reporting (Subsection 8)

A person authorized to make an innovative financial product or service available to consumers must submit a report to the office twice a year, as prescribed by commission rule. The report must include financial reports and the number of consumers who have received the financial product or service.

Construction (Subsection 9)

A person whose sandbox application is approved is deemed licensed under the applicable exceptions to general law or waiver of the rule requirements, specified under paragraph (4)(a), unless the person's authorization to make the financial product or service available to consumers under this section has been revoked or suspended.

Violations and Penalties (Subsection 10)

A licensee who makes an innovative financial product or service available to consumers in the sandbox is not immune from civil damages for acts and omissions relating to this section and is subject to all criminal statutes and any other statute not specifically excepted. The OFR may, by order, revoke or suspend authorization granted to a person to make an innovative financial product or service available to consumers if:

- The licensee has violated or refused to comply with this section, a rule of the commission, an order of the OFR, or a condition placed by the office on the approval of the person's sandbox application;
- A fact or condition exists that, if it had existed or become known at the time that the sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;
- A material error, false statement, misrepresentation, or material omission was made in the sandbox application; or
- After consultation with the licensee, continued testing of the innovative financial product or service would:
 - Be likely to harm consumers; or
 - No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

Written notice of a revocation or suspension order must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension. The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions. If service of process on a person making an innovative financial product or service available to consumers in the sandbox is not feasible, service on the OFR is deemed service on such person.

Rules and Orders (Subsection 11)

The commission must adopt rules to administer this section. The OFR may issue all necessary orders to enforce this section and may enforce the orders in accordance with ch. 120, F.S., or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers because of an innovative financial product or service.

Appropriation for the Sandbox

Section 12 provides an appropriation of \$50,000 in nonrecurring funds from the Administrative Trust Fund to the Office of Financial Regulation to implement s. 559.952, F.S., as created by this act.

Effective Date

Section 13 provides that, except as otherwise expressly provided, the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:**Application of General Laws**

The bill *may* be interpreted to authorize executive branch employees, not the Legislature, to determine the application of general law, without guidance or limitation. See VII Related Issues. The cornerstone of American democracy known as separation of powers recognizes three separate branches of government—the executive, the legislative, and the judicial—each with its own powers and responsibilities. Florida courts have traditionally applied a strict separation of powers doctrine, stating that no branch may encroach on the powers of another and that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260, 264 (Fla.1991). This prohibition, known as the nondelegation doctrine, requires that “fundamental and primary policy decisions ... be made by members of the legislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.” *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978). In other words, statutes granting power to the executive branch “must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.” *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55–56 (Fla.1976).

Entering into Reciprocal Agreements with Other States, Federal Agencies, or Foreign Regulatory Agencies

Statutory authorization to enter reciprocal agreements with other states may potentially implicate the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires that “primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines....”⁹⁷

⁹⁷ *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."⁹⁸ However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."⁹⁹ Further, the nondelegation doctrine precludes the Legislature from delegating its powers "absent ascertainable minimal standards and guidelines."¹⁰⁰ When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide in the execution of the powers delegated."¹⁰¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Sections 1-10 of the Bill:

The bill will have an indeterminate impact on state government revenues.

The bill will have an indeterminate fiscal impact on state government expenditures.

Sections 11 and 12 of the Bill:

Office of Financial Regulation

The OFR estimates that they will need \$50,000 in nonrecurring funds to make changes to their information technology infrastructure in order to administer the Financial Technology Sandbox program.¹⁰²

VI. Technical Deficiencies:

None.

⁹⁸ *Microtel v. Fla. Pub. Serv. Comm'n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)).

⁹⁹ *Sims v. State*, 754 So.2d 657, 668 (Fla. 2000).

¹⁰⁰ *Dep't of Bus. Reg., Div. of Alcoholic Beverages and Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

¹⁰¹ *Martin*, 916 So.2d at 770.

¹⁰² Email from Office of Financial Regulation, CS/SB 1870 Fiscal Impact (Feb. 14, 2020). On file with the Banking and Insurance Committee.

VII. Related Issues:

There is some uncertainty as to how some of the sandbox provisions on exceptions to general law will be interpreted and applied. The bill provides the following provisions.

- In the application [to enter the sandbox], the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers.” (Lines 874-878)
- “If the application [to enter the sandbox] is approved for a person who otherwise would be subject to the provisions of chs. 516 or 560, the following provisions shall not be applicable to the approved sandbox participant” (Lines 804-807); and
- “During a sandbox period, the exceptions granted in paragraph (a) are applicable if all of the following conditions are met:

The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers.

The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office.” (Lines 847-857)

The exceptions to general law provisions appear to except application of *all* general laws listed to every sandbox participant, which would negate the provisions for specification of specific general law for which an exception is sought and for approval of an application and application of the exceptions only if *the* general law prevents making the product or service available and the exceptions are not broader than necessary to accomplish the purposes and standards. If, on the other hand, the latter provisions are given effect, in essence reading something like an “as appropriate, on a case by case basis” standard into the exception provision, this raises an unlawful delegation of legislative authority issue as the employee making the determinations of applicability and lack of overbreadth would be determining which statutes apply, not the Legislature. See IV E. Other Constitutional Issues.

The bill requires a person making a financial product or service available through the Financial Technology Sandbox to provide consumers a written notice containing a statement that the licensee making the product or service available “is not immune from civil liability for any losses or damages caused by the financial product or service.” (Lines 973-976) It also provides that a licensee who makes an innovative product or service available in the sandbox is not immune from civil damages for acts and omissions relating to this section and is subject to all criminal statutes. (Lines 1054-1055) This seems to suggest an intent that the person retain the same level of liability for losses or damages as if they were operating outside the sandbox. Given the bill’s provisions on exceptions of requirements imposed by general law or waiver of the corresponding rule requirements (797-861), however, this may not be the case as some potential liability and criminal acts may be based, at least in part, on these requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.22, 282.0051, 282.00515, 282.318, 287.0591, 365.171, 365.172, 365.173, and 943.0415.

This bill creates section 559.952 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Banking and Insurance on February 19, 2020:

The CS:

- Eliminates the Enterprise Architecture Advisory Council.
- Revises powers and duties of the Florida Digital Services.
- Revises the definition of the term, “enterprise,” to exclude the judicial branch.
- Provides that a credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.
- Provides technical, conforming changes.
- Revises the Financial Regulatory Sandbox program to limit the scope to products or services relating to a consumer finance loan or a money transmitter and payment instrument seller.
- Creates additional definitions relating to the Financial Regulatory Sandbox program.
- Eliminates the authority of the Office of Financial Regulation to enter into reciprocity agreements with other states, federal agencies, or foreign regulatory agencies to allow persons operating in sandboxes in other jurisdictions to operate in this state.
- Revises requirements for the application for licensure under the Financial Regulatory Sandbox program.
- Removes additional recordkeeping requirements for sandbox licensees.
- Appropriates \$50,000 in nonrecurring funds from the Administrative Trust Fund to the Office of Financial Regulation to implement the provisions of s. 559.952, F.S.

CS by Innovation, Industry, and Technology on February 10, 2020:

The committee substitute:

- Creates the definitions relating to the Florida Digital Service in s. 282.0041, F.S., instead of s. 282.0051, F.S.;
- Provides new definitions for “credential service provider,” “data call,” “electronic,” “electronic credential,” and “electronic credential provider”;
- Changes the definition of “enterprise” for purposes of the provisions on the Florida Digital Service’s enterprise architecture to include all entities within the executive branch of state government, plus the Justice Administrative Commission and the Public Service Commission, and Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch;
- Expands the Florida Digital Service’s oversight of and involvement in projects that have an information technology component and provides for exceptions;
- Deletes all qualifications for the state chief information officer, the state chief data officer, and the state chief information security officer;

- Deletes the provisions on the Florida Digital Service enforcing the enterprise architecture by intervening in any procurement of information technology and delaying the procurement until it complies with the enterprise architecture;
- Deletes the requirement that the enterprise architecture's comprehensive account for all of the needs and responsibilities of a department;
- Requires the terms of the contract with a credential service provider pay for that service on a per-data call or subscription basis, with the revenues from these charges deposited into DMS's operating trust fund for distribution, with DMS to recover all costs for implementing and administering the electronic credential solution;
- Authorizes the Florida Digital Service to "report to the legislative branch on any project within the judicial branch which does not comply with the enterprise architecture, while understanding the separation of powers";
- Creates the Enterprise Architecture Advisory Council to meet semiannually to discuss implementation, management, and coordination of the enterprise architecture; identify potential issues and threats with specific use cases; and develop proactive solutions;
- Creates the Financial Technology Sandbox Act effective January 1, 2021;
- Provides authority for exceptions rather than waivers of certain statutory requirements;
- Deletes banking products and services from the definition of financial product or service and deletes references to blockchain technology;
- Deletes from the definition of "innovative" the requirement that the technology "has no substantially comparable, widely available analog in this state";
- Authorizes the Office of Financial Regulation, not the Commissioner of the Office of Financial Regulation to waive a requirement or a portion thereof which is imposed by a general law or rule, and lists individual statutes which may be waived instead of entire chapters;
- Provides for declaratory statement on applicability of statutes, rules, or orders;
- Provides that the Financial Services Commission is to prescribe by rule the form and manner of the application to enter the Financial Technology Sandbox, not the Commissioner of the Office of Financial Regulation;
- Deletes a requirement that the applicant submit fingerprints for each individual filing an application and each individual who is substantially involved in the development, operation, or management of the innovative financial product or service, together with all the provisions relating to this requirement;
- Deletes a requirement that a person whose Financial Technology Sandbox application is approved post a consumer protection bond with the commissioner as security for potential losses suffered by consumers;
- Adds a limitation of 15,000 consumers to receive the financial product or service prior to filing the first activity report, with the limit increased after such filing to 25,000; and
- Adds a requirement that these reports, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 20.22, Florida
Statutes, is amended to read:

20.22 Department of Management Services.—There is created a
Department of Management Services.

(2) The ~~following divisions and programs within the~~
Department of Management Services shall consist of the following



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are established:

(a) The Facilities Program.

(b) The Division of Telecommunications ~~State Technology,~~
~~the director of which is appointed by the secretary of the~~
~~department and shall serve as the state chief information~~
~~officer. The state chief information officer must be a proven,~~
~~effective administrator who must have at least 10 years of~~
~~executive-level experience in the public or private sector,~~
~~preferably with experience in the development of information~~
~~technology strategic planning and the development and~~
~~implementation of fiscal and substantive information technology~~
~~policy and standards.~~

(c) The Workforce Program.

(d)1. The Support Program.

2. The Federal Property Assistance Program.

(e) The Administration Program.

(f) The Division of Administrative Hearings.

(g) The Division of Retirement.

(h) The Division of State Group Insurance.

(i) The Florida Digital Service.

Section 2. Section 282.0041, Florida Statutes, is amended
to read:

282.0041 Definitions.—As used in this chapter, the term:

(1) "Agency assessment" means the amount each customer
entity must pay annually for services from the Department of
Management Services and includes administrative and data center
services costs.

(2) "Agency data center" means agency space containing 10
or more physical or logical servers.



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(3) "Breach" has the same meaning as provided in s.
501.171.

(4) "Business continuity plan" means a collection of
procedures and information designed to keep an agency's critical
operations running during a period of displacement or
interruption of normal operations.

(5) "Cloud computing" has the same meaning as provided in
Special Publication 800-145 issued by the National Institute of
Standards and Technology.

(6) "Computing facility" or "agency computing facility"
means agency space containing fewer than a total of 10 physical
or logical servers, but excluding single, logical-server
installations that exclusively perform a utility function such
as file and print servers.

(7) "Credential service provider" means a provider
competitively procured by the department to supply secure
identity management and verification services based on open
standards to qualified entities.

(8) "Customer entity" means an entity that obtains services
from the Department of Management Services.

~~(9)-(8)~~ "Data" means a subset of structured information in a
format that allows such information to be electronically
retrieved and transmitted.

(10) "Data-call" means an electronic transaction with the
credential service provider that verifies the authenticity of a
digital identity by querying enterprise data.

~~(11)-(9)~~ "Department" means the Department of Management
Services.

(12)-(10) "Disaster recovery" means the process, policies,



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69 procedures, and infrastructure related to preparing for and
70 implementing recovery or continuation of an agency's vital
71 technology infrastructure after a natural or human-induced
72 disaster.

73 (13) "Electronic" means technology having electrical,
74 digital, magnetic, wireless, optical, electromagnetic, or
75 similar capabilities.

76 (14) "Electronic credential" means an electronic
77 representation of the identity of a person, an organization, an
78 application, or a device.

79 (15) "Enterprise" means the collection of state agencies as
80 defined in subsection (35). The term includes the Department of
81 Legal Affairs, the Department of Agriculture and Consumer
82 Services, and the Department of Financial Services.

83 (16) "Enterprise architecture" means a comprehensive
84 operational framework that contemplates the needs and assets of
85 the enterprise to support interoperability across state
86 government.

87 (17) ~~(11)~~ "Enterprise information technology service" means
88 an information technology service that is used in all agencies
89 or a subset of agencies and is established in law to be
90 designed, delivered, and managed at the enterprise level.

91 (18) ~~(12)~~ "Event" means an observable occurrence in a system
92 or network.

93 (19) ~~(13)~~ "Incident" means a violation or imminent threat of
94 violation, whether such violation is accidental or deliberate,
95 of information technology resources, security, policies, or
96 practices. An imminent threat of violation refers to a situation
97 in which the state agency has a factual basis for believing that



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a specific incident is about to occur.

(20)~~(14)~~ "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

(21)~~(15)~~ "Information technology policy" means a definite course or method of action selected from among one or more alternatives that guide and determine present and future decisions.

(22)~~(16)~~ "Information technology resources" has the same meaning as provided in s. 119.011.

(23)~~(17)~~ "Information technology security" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.

(24) "Interoperability" means the technical ability to share and use data across and throughout the enterprise.

(25)~~(18)~~ "Open data" means data collected or created by a state agency, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services, and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public disclosure ~~distribution~~ based on federal or state



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127 privacy, confidentiality, and security laws and regulations or
128 data for which a state agency is statutorily authorized to
129 assess a fee for its distribution.

130 (26)~~(19)~~ "Performance metrics" means the measures of an
131 organization's activities and performance.

132 (27)~~(20)~~ "Project" means an endeavor that has a defined
133 start and end point; is undertaken to create or modify a unique
134 product, service, or result; and has specific objectives that,
135 when attained, signify completion.

136 (28)~~(21)~~ "Project oversight" means an independent review
137 and analysis of an information technology project that provides
138 information on the project's scope, completion timeframes, and
139 budget and that identifies and quantifies issues or risks
140 affecting the successful and timely completion of the project.

141 (29) "Qualified entity" means a public or private entity or
142 individual that enters into a binding agreement with the
143 department, meets usage criteria, agrees to terms and
144 conditions, and is subsequently and prescriptively authorized by
145 the department to access data under the terms of that agreement
146 as specified in s. 282.0051.

147 (30)~~(22)~~ "Risk assessment" means the process of identifying
148 security risks, determining their magnitude, and identifying
149 areas needing safeguards.

150 (31)~~(23)~~ "Service level" means the key performance
151 indicators (KPI) of an organization or service which must be
152 regularly performed, monitored, and achieved.

153 (32)~~(24)~~ "Service-level agreement" means a written contract
154 between the Department of Management Services and a customer
155 entity which specifies the scope of services provided, service



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level, the duration of the agreement, the responsible parties, and service costs. A service-level agreement is not a rule pursuant to chapter 120.

(33)~~(25)~~ "Stakeholder" means a person, group, organization, or state agency involved in or affected by a course of action.

(34)~~(26)~~ "Standards" means required practices, controls, components, or configurations established by an authority.

(35)~~(27)~~ "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of this chapter, except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services.

(36)~~(28)~~ "SUNCOM Network" means the state enterprise telecommunications system that provides all methods of electronic or optical telecommunications beyond a single building or contiguous building complex and used by entities authorized as network users under this part.

(37)~~(29)~~ "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

(38)~~(30)~~ "Threat" means any circumstance or event that has the potential to adversely impact a state agency's operations or assets through an information system via unauthorized access, destruction, disclosure, or modification of information or denial of service.



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(39)(31) "Variance" means a calculated value that illustrates how far positive or negative a projection has deviated when measured against documented estimates within a project plan.

Section 3. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service ~~Department of Management Services; powers, duties, and functions.~~ There is established the Florida Digital Service within the department to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206.

(1) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions:

(a)(1) Develop and publish information technology policy for the management of the state's information technology resources.

(b)(2) Develop an enterprise architecture that:

1. Acknowledges the unique needs of those included within the enterprise, resulting in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability;

2. Supports the cloud-first policy as specified in s. 282.206; and

3. Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives ~~Establish and publish information technology architecture standards to provide for the most efficient use of the state's information technology~~



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~~resources and to ensure compatibility and alignment with the
needs of state agencies. The department shall assist state
agencies in complying with the standards.~~

(c)~~(3)~~ Establish project management and oversight standards
with which state agencies must comply when implementing projects
that have an information technology component ~~projects~~. The
Florida Digital Service ~~department~~ shall provide training
opportunities to state agencies to assist in the adoption of the
project management and oversight standards. To support data-
driven decisionmaking, the standards must include, but are not
limited to:

1.~~(a)~~ Performance measurements and metrics that objectively
reflect the status of a project with an information technology
component ~~project~~ based on a defined and documented project
scope, cost, and schedule.

2.~~(b)~~ Methodologies for calculating acceptable variances in
the projected versus actual scope, schedule, or cost of a
project with an information technology component ~~project~~.

3.~~(c)~~ Reporting requirements, including requirements
designed to alert all defined stakeholders that a project with
an information technology component ~~project~~ has exceeded
acceptable variances defined and documented in a project plan.

4.~~(d)~~ Content, format, and frequency of project updates.

(d)~~(4)~~ Perform project oversight on all state agency
~~information technology~~ projects that have an information
technology component with a total project cost ~~costs~~ of \$10
million or more and that are funded in the General
Appropriations Act or any other law. The Florida Digital Service
~~department~~ shall report at least quarterly to the Executive



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Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project. The Florida Digital Service shall establish a process for state agencies to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

(e) ~~(5)~~ Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy as specified in s. 282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service ~~department~~ shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) ~~(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) ~~(7)~~ Develop standards for information technology reports



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and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h)~~(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i)~~(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service ~~department~~ and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(j)~~(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1.~~(a)~~ Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

2.~~(b)~~ Developing and implementing cost-recovery or other payment mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery or other payment mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity.

3.~~(c)~~ Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and



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procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

~~a.1.~~ Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

~~b.2.~~ Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

~~c.3.~~ Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

~~d.4.~~ Requiring customer entities to validate that sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

~~e.5.~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

~~f.6.~~ Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a



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reason other than a customer entity's request made pursuant to
sub-subparagraph d. subparagraph 4. Such a plan is required only
if the service cost increase results in a net increase to a
customer entity for that fiscal year.

g.7. Standardizing and consolidating procurement and
contracting practices.

4.(d) In collaboration with the Department of Law
Enforcement, developing and implementing a process for
detecting, reporting, and responding to information technology
security incidents, breaches, and threats.

5.(e) Adopting rules relating to the operation of the state
data center, including, but not limited to, budgeting and
accounting procedures, cost-recovery or other payment
methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine
whether the state's approach to the provision of data center
services is the most effective and cost-efficient manner by
which its customer entities can acquire such services, based on
federal, state, and local government trends; best practices in
service provision; and the acquisition of new and emerging
technologies. The results of the market analysis shall assist
the state data center in making adjustments to its data center
service offerings.~~

(k) ~~(11)~~ Recommend other information technology services
that should be designed, delivered, and managed as enterprise
information technology services. Recommendations must include
the identification of existing information technology resources
associated with the services, if existing services must be
transferred as a result of being delivered and managed as



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enterprise information technology services.

(1)~~(12)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m) 1.~~(13) (a)~~ Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of \$25 million or more and which impacts one or more other agencies. Such projects with an information technology component ~~projects~~ must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service ~~department~~. The Florida Digital Service shall establish a process for the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

2.~~(b)~~ When performing the project oversight function specified in subparagraph 1. ~~paragraph (a)~~, report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated



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with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n)~~(14)~~ If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o)~~(15)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service ~~department~~ shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)~~1.~~~~(16)~~ ~~(a)~~ Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:



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417 ~~a.1.~~ Identification of the information technology product
418 and service categories to be included in state term contracts.

419 ~~b.2.~~ Requirements to be included in solicitations for state
420 term contracts.

421 ~~c.3.~~ Evaluation criteria for the award of information
422 technology-related state term contracts.

423 ~~d.4.~~ The term of each information technology-related state
424 term contract.

425 ~~e.5.~~ The maximum number of vendors authorized on each state
426 term contract.

427 ~~2.(b)~~ Evaluate vendor responses for information technology-
428 related state term contract solicitations and invitations to
429 negotiate.

430 ~~3.(e)~~ Answer vendor questions on information technology-
431 related state term contract solicitations.

432 ~~4.(d)~~ Ensure that the information technology policy
433 established pursuant to subparagraph 1. ~~paragraph (a)~~ is
434 included in all solicitations and contracts that are
435 administratively executed by the department.

436 ~~(q)(17)~~ Recommend potential methods for standardizing data
437 across state agencies which will promote interoperability and
438 reduce the collection of duplicative data.

439 ~~(r)(18)~~ Recommend open data technical standards and
440 terminologies for use by the enterprise ~~state agencies~~.

441 (2) (a) The Secretary of Management Services shall designate
442 a state chief information officer, who shall administer the
443 Florida Digital Service and is included in the Senior Management
444 Service.

445 (b) The state chief information officer shall designate a



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chief data officer, who shall report to the state chief
information officer and is included in the Senior Management
Service.

(3) The Florida Digital Service shall, pursuant to
legislative appropriation:

(a) Create and maintain a comprehensive indexed data
catalog that lists what data elements are housed within the
enterprise and in which legacy system or application these data
elements are located.

(b) Develop and publish, in collaboration with the
enterprise, a data dictionary for each agency which reflects the
nomenclature in the comprehensive indexed data catalog.

(c) Review and document use cases across the enterprise
architecture.

(d) Develop and publish standards that support the creation
and deployment of application programming interfaces to
facilitate integration throughout the enterprise.

(e) Publish standards necessary to facilitate a secure
ecosystem of data interoperability which is compliant with the
enterprise architecture and allows for a qualified entity to
access the enterprise's data under the terms of the agreements
with the department. However, enterprise data do not include
data that are restricted from public distribution based on
federal or state privacy, confidentiality, or security laws and
regulations.

(f) Publish standards that facilitate the deployment of
applications or solutions to existing enterprise obligations in
a controlled and phased approach, including, but not limited to:

1. Electronic credentials, including digital proofs of a



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driver license as specified in s. 322.032.

2. Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service.

3. The criminal justice database.

4. Motor vehicle insurance cancellation integration between insurers and the Department of Highway Safety and Motor Vehicles.

5. Interoperability solutions between agencies, including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

6. Interoperability solutions to support military members, veterans, and their families.

(4) Pursuant to legislative authorization and subject to appropriation:

(a) The department may procure a credential service provider through a competitive process pursuant to s. 287.057. The terms of the contract developed from such procurement must pay for the value on a per-data-call or subscription basis, and there shall be no cost to the enterprise or law enforcement for using the services provided by the credential service provider.

(b) The department may enter into agreements with qualified entities that have the technological capabilities necessary to integrate with the credential service provider; ensure secure validation and authentication of data; meet usage criteria; and agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of enterprise data.



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Enterprise data do not include data that are restricted from public disclosure based on federal or state privacy, confidentiality, or security laws and regulations. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(c) The terms of the agreements between the department and the credential service provider and between the department and the qualified entities must be based on the per-data-call or subscription charges to validate and authenticate an electronic credential and allow the department to recover any state costs for implementing and administering an electronic credential solution. Credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

(d) All revenues generated from the agreements with the credential service provider and qualified entities shall be remitted to the department, and the department shall deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation and department agreements with the credential service provider and qualified entities.

(e) Upon the signing of the agreement and the enterprise architecture terms of service and privacy policies with a qualified entity, the department shall facilitate authorized integrations between the qualified entity and the credential service provider.

(5) Upon the adoption of the enterprise architecture, the Florida Digital Service may develop a process to:



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(a) Receive written notice from the enterprise of any procurement of an information technology project that is subject to enterprise architecture standards.

(b) Participate in the development of specifications and recommend modifications of any procurement by state agencies so that the procurement complies with the enterprise architecture.

(6) ~~(19)~~ The Florida Digital Service may adopt rules to administer this section.

Section 4. Section 282.00515, Florida Statutes, is amended to read:

282.00515 Duties of Cabinet agencies.—

(1) The Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(1)(b), (c), (g), (r), and (3)(e) ~~s. 282.0051(2), (3), and (7)~~ or adopt alternative standards based on best practices and industry standards that allow for the interoperability of open data within the enterprise.

(2) If the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services adopts alternative standards in lieu of the enterprise architecture standards in s. 282.0051, such agency shall notify the Governor, the President of the Senate, and Speaker of the House of Representatives in writing before the adoption of the alternative standards and annually thereafter, until such agency adopts the enterprise architecture standards in s. 282.0051. The notification must include the following:

(a) A detailed plan of how such agency will comply with the interoperability requirements referenced in this chapter.



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(b) An estimated cost and time difference between adhering to the enterprise architecture or choosing alternative standards.

(c) A detailed security risk assessment of adopting alternative standards versus adopting the enterprise architecture.

(d) Certification by the agency head or the agency head's designated representative that the agency's strategic and operational information technology security plans as required by s. 282.318(4) include provisions related to interoperability.

(3) The Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services may contract with the department to provide or perform any of the services and functions described in s. 282.0051.

(4)(a) This section or s. 282.0051 does not require the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services to integrate with any information technology outside its own department or contract with a credential service provider.

(b) The Florida Digital Service may not retrieve or publish data without a data sharing agreement in place between the Florida Digital Service and the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services, and may contract with the department to provide or perform any of the services and functions described in s. 282.0051 for the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services.



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Section 5. Paragraph (a) of subsection (3) of section 282.318, Florida Statutes, is amended to read:

282.318 Security of data and information technology.—

(3) The department is responsible for establishing standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer who shall report to the state chief information officer of the Florida Digital Service and is in the Senior Management Service. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources.

Section 6. Subsection (4) of section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service ~~Division of State Technology~~ within the department shall participate in such solicitations.

Section 7. Paragraph (a) of subsection (3) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Office" means the Division of Telecommunications ~~State~~



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~~Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 8. Paragraph (s) of subsection (3) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(s) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 9. Paragraph (a) of subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Communications Number E911 System Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Division of Telecommunications ~~State Technology~~, or other office as designated by the Secretary of Management Services.

Section 10. Subsection (5) of section 943.0415, Florida Statutes, is amended to read:

943.0415 Cybercrime Office.—There is created within the Department of Law Enforcement the Cybercrime Office. The office may:

(5) Consult with the Florida Digital Service ~~Division of State Technology~~ within the Department of Management Services in the adoption of rules relating to the information technology



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security provisions in s. 282.318.

Section 11. Effective January 1, 2021, section 559.952, Florida Statutes, is created to read:

559.952 Financial Technology Sandbox.—

(1) SHORT TITLE.—This section may be cited as the “Financial Technology Sandbox.”

(2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

(3) DEFINITIONS.—As used in this section, the term:

(a) “Business entity” means a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(b) “Commission” means the Financial Services Commission.

(c) “Consumer” means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(d) “Control person” means an individual, a partnership, a corporation, a trust, or other organization that possesses the power, directly or indirectly, to direct the management or



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policies of a company, whether through ownership of securities,
by contract, or through other means. A person is presumed to
control a company if, with respect to a particular company, that
person:

1. Is a director, a general partner, or an officer
exercising executive responsibility or having similar status or
functions;

2. Directly or indirectly may vote 10 percent or more of a
class of a voting security or sell or direct the sale of 10
percent or more of a class of voting securities; or

3. In the case of a partnership, may receive upon
dissolution or has contributed 10 percent or more of the
capital.

(e) "Financial product or service" means a product or
service related to a consumer finance loan, as defined in s.
516.01, or a money transmitter and payment instrument seller, as
defined in s. 560.103, including mediums of exchange that are in
electronic or digital form, which is subject to general law or
corresponding rule requirements in the sections enumerated in
paragraph (4) (a) and which is under the jurisdiction of the
office.

(f) "Financial Technology Sandbox" means the program
created in this section which allows a licensee to make an
innovative financial product or service available to consumers
as a person who makes and collects consumer finance loans, as
defined in s. 516.01, or as a money transmitter or payment
instrument seller, as defined in s. 560.103, during a sandbox
period through an exception to general laws or a waiver of rule
requirements, or portions thereof, as specified in this section.



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(g) "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public and which is not known to have a comparable offering in this state outside the Financial Technology Sandbox.

(h) "Licensee" means a person who has been approved by the office to participate in the Financial Technology Sandbox.

(i) "Office" means, unless the context clearly indicates otherwise, the Office of Financial Regulation.

(j) "Sandbox period" means the period, initially not longer than 24 months, in which the office has:

1. Authorized an innovative financial product or service to be made available to consumers.

2. Granted the licensee who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that the authorization under subparagraph 1. is possible.

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the office shall grant an applicant a license and a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the conditions in paragraph (b) are met. If the application is approved for a person who otherwise would be subject to chapter 516 or chapter 560, the following provisions are not applicable to the licensee:



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736 1. Section 516.03, except for the application fee for a
737 license, the investigation fee, evidence of liquid assets of at
738 least \$25,000, and the office's authority to make an
739 investigation of the facts concerning the applicant's background
740 as provided in s. 516.03(1). The office may prorate the license
741 renewal fees for an extension granted under subsection (7).

742 2. Section 516.05, except for s. 516.05(4), (5), and (7)-
743 (9).

744 3. Section 560.109, to the extent that it requires the
745 office to examine a licensee at least once every 5 years.

746 4. Section 560.118, except for s. 560.118(1).

747 5. Section 560.125(1), to the extent that subsection would
748 prohibit a licensee from engaging in the business of a money
749 services business during the sandbox period; and s. 560.125(2),
750 to the extent that subsection would prohibit a licensee from
751 appointing an authorized vendor during the sandbox period.

752 6. Section 560.128.

753 7. Section 560.141, except for s. 560.141(1)(a)3., 8., 9.,
754 and 10. and (1)(b), (c), and (d).

755 8. Section 560.142, except that the office may prorate, but
756 may not entirely waive, the license renewal fees provided in ss.
757 560.142 and 560.143 for an extension granted under subsection
758 (7).

759 9. Section 560.143(2), to the extent necessary for
760 proration of the renewal fee under subparagraph 8.

761 10. Section 560.204(1), to the extent that subsection would
762 prohibit a licensee from engaging in, or advertising it engages
763 in, the selling or issuing of payment instruments or in the
764 activity of a money transmitter during the sandbox period.



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11. Section 560.205, except for s. 560.205(1), (3), and (4).

12. Section 560.208, except for s. 560.208(3)-(6).

13. Section 560.209, except that the office may modify, but may not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (5)(d) and the maximum number of consumers authorized to receive the financial product or service under this section.

(b) The office may grant, during a sandbox period, an exception of a requirement, or a portion thereof, imposed by a general law or waiver of a corresponding rule in any section enumerated in paragraph (a) to a licensee, if all of the following conditions are met:

1. The general law or corresponding rule currently prevents the innovative financial product or service from being made available to consumers.

2. The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office.

3. No provision relating to the liability of an incorporator, a director, or an officer of the applicant is eligible for a waiver.

4. The other requirements of this section are met.

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(a) Before filing an application for licensure under this section, a substantially affected person may seek a declaratory



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statement pursuant to s. 120.565 regarding the applicability of
a statute, a rule, or an agency order to the petitioner's
particular set of circumstances.

(b) Before making an innovative financial product or
service available to consumers in the Financial Technology
Sandbox, a person must file an application for licensure with
the office. The commission shall, by rule, prescribe the form
and manner of the application.

1. In the application, the person must specify the general
law or rule requirements for which an exception or waiver is
sought and the reasons why these requirements prevent the
innovative financial product or service from being made
available to consumers.

2. The application also must contain the information
specified in paragraph (d).

(c)1. A business entity may file an application for
licensure.

2. Before a person applies on behalf of a business entity
intending to make an innovative financial product or service
available to consumers, the person must obtain the consent of
the business entity.

(d) The office shall approve or deny in writing a Financial
Technology Sandbox application within 60 days after receiving
the completed application. The office and the applicant may
jointly agree to extend the time beyond 60 days. Consistent with
this section, the office may impose conditions on any approval.
In deciding whether to approve or deny an application for
licensure, the office must consider each of the following:

1. The nature of the innovative financial product or



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service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

3. The business plan proposed by the applicant, including company information, market analysis, and financial projections or pro forma financial statements.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

5. If any control person of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing, the application to the Financial Technology Sandbox must be denied. A plea of no contest, a conviction, or a finding of guilt must be reported under this subparagraph regardless of adjudication.

6. A copy of the disclosures that will be provided to consumers under paragraph (6) (c).

7. The financial responsibility of any control person.

8. Any other factor that the office determines to be relevant.

(e) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox



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application that was approved and that related to a
substantially similar financial product or service; or

2. Any control person substantially involved in the
development, operation, or management of the applicant's
innovative financial product or service was substantially
involved in such with another Financial Technology Sandbox
applicant whose application was approved and whose application
related to a substantially similar financial product or service.

(f) Upon approval of an application, the office shall
specify the general law or rule requirements, or portions
thereof, for which an exception or a waiver is granted during
the sandbox period and the length of the initial sandbox period,
not to exceed 24 months. The office shall post on its website
notice of the approval of the application, a summary of the
innovative financial product or service, and the contact
information of the person making the financial product or
service available.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A licensee under this section may make an innovative
financial product or service available to consumers during the
sandbox period.

(b) The office, on a case-by-case basis, may specify the
maximum number of consumers authorized to receive an innovative
financial product or service, after consultation with the person
who makes the financial product or service available to
consumers. The office may not authorize more than 15,000
consumers to receive the financial product or service until the
licensee who makes the financial product or service available to
consumers has filed the first report required under subsection



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(8). After the filing of that report, if the licensee demonstrates adequate financial capitalization, risk management processes, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

(c)1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the licensee making the financial product or service available must provide a written statement of all of the following to the consumer:

a. The name and contact information of the person making the financial product or service available to consumers.

b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.

c. That the state does not endorse the financial product or service.

d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.

e. That the licensee making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.

f. The expected end date of the sandbox period.

g. The contact information for the office and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.



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h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement must contain an acknowledgement from the consumer, which must be retained for the duration of the sandbox period by the licensee making the financial product or service available.

(d) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons who make an innovative financial product or service available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions. The commission shall adopt rules to implement this paragraph.

(e) The office may examine the records of a licensee at any time, with or without prior notice.

(7) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—

(a) A licensee may apply for an extension of the initial sandbox period for up to 12 additional months for a purpose specified in subparagraph (b)1. or subparagraph (b)2. A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office shall approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the office must, at a minimum, consider the current status of the factors previously considered under paragraph (5) (d).

(b) An application for an extension under paragraph (a) must cite one of the following reasons as the basis for the



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application and must provide all relevant supporting information
that:

1. Amendments to general law or rules are necessary to
offer the innovative financial product or service in this state
permanently.

2. An application for a license that is required in order
to offer the innovative financial product or service in this
state permanently has been filed with the office, and approval
is pending.

(c) At least 30 days before the conclusion of the initial
sandbox period or the extension, whichever is later, a licensee
shall provide written notification to consumers regarding the
conclusion of the initial sandbox period or the extension and
may not make the financial product or service available to any
new consumers after the conclusion of the initial sandbox period
or the extension, whichever is later, until legal authority
outside of the Financial Technology Sandbox exists for the
licensee to make the financial product or service available to
consumers. After the conclusion of the sandbox period or the
extension, whichever is later, the licensee may:

1. Collect and receive money owed to the person or pay
money owed by the person, based on agreements with consumers
made before the conclusion of the sandbox period or the
extension.

2. Take necessary legal action.

3. Take other actions authorized by commission rule which
are not inconsistent with this subsection.

(8) REPORT.—A licensee shall submit a report to the office
twice a year as prescribed by commission rule. The report must,



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at a minimum, include financial reports and the number of consumers who have received the financial product or service.

(9) CONSTRUCTION.—A person whose Financial Technology Sandbox application is approved is deemed licensed under this section and is subject to chapter 516 or chapter 560 with the applicable exceptions to general law or waiver of the rule requirements of chapter 516 or chapter 560 specified under paragraph (4) (a), unless the person's license has been revoked or suspended. Notwithstanding s. 560.204(2), a licensee may not engage in activities authorized under part III of chapter 560.

(10) VIOLATIONS AND PENALTIES.—

(a) A licensee who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox is:

1. Not immune from civil damages for acts and omissions relating to this section.

2. Subject to all criminal and any other statute not specifically excepted under paragraph (4) (a).

(b)1. The office may, by order, revoke or suspend a license of a person to make an innovative financial product or service available to consumers if:

a. The person has violated or refused to comply with this section, a rule of the commission, an order of the office, or a condition placed by the office on the approval of the person's Financial Technology Sandbox application;

b. A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;



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c. A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or

d. After consultation with the licensee, the office determines that continued testing of the innovative financial product or service would:

(I) Be likely to harm consumers; or

(II) No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

2. Written notice of a revocation or suspension order made under subparagraph 1. must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension.

(c) The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement action.

(d) If service of process on a person making an innovative financial product or service available to consumers in the Financial Technology Sandbox is not feasible, service on the office is deemed service on such person.

(11) RULES AND ORDERS.—

(a) The commission shall adopt rules to administer this section.

(b) The office may issue all necessary orders to enforce this section and may enforce these orders in accordance with chapter 120 or in any court of competent jurisdiction. These



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orders include, but are not limited to, orders for payment of
restitution for harm suffered by consumers as a result of an
innovative financial product or service.

Section 12. For the 2020-2021 fiscal year, the sum of
\$50,000 in nonrecurring funds is appropriated from the
Administrative Trust Fund to the Office of Financial Regulation
to implement s. 559.952, Florida Statutes, as created by this
act.

Section 13. Except as otherwise expressly provided in this
act, this act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to technology innovation; amending s.
20.22, F.S.; renaming the Division of State Technology
within the Department of Management Services as the
Division of Telecommunications; deleting provisions
relating to the appointment of the Division of State
Technology's director and qualifications for the state
chief information officer; adding the Florida Digital
Service to the department; amending s. 282.0041, F.S.;
defining terms; revising the definition of the term
"open data"; amending s. 282.0051, F.S.; establishing
the Florida Digital Service within the department;
transferring specified powers, duties, and functions
of the department to the Florida Digital Service and



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1055 revising such powers, duties, and functions; providing
1056 for designations of a state chief information officer
1057 and a chief data officer and specifying their duties;
1058 specifying duties of, and authorized actions by, the
1059 Florida Digital Service pursuant to legislative
1060 appropriation; providing duties of, and authorized
1061 actions by, the department, subject to legislative
1062 authorization and appropriation; authorizing the
1063 Florida Digital Service to adopt rules; amending s.
1064 282.00515, F.S.; revising standards that the
1065 Department of Legal Affairs, the Department of
1066 Financial Services, and the Department of Agriculture
1067 and Consumer Services must adopt; specifying
1068 notification requirements to the Governor and the
1069 Legislature if such an agency adopts alternative
1070 standards; providing construction; prohibiting the
1071 Florida Digital Service from retrieving or publishing
1072 data without a data sharing agreement with such an
1073 agency; amending ss. 282.318, 287.0591, 365.171,
1074 365.172, 365.173, and 943.0415, F.S.; conforming
1075 provisions to changes made by the act; creating s.
1076 559.952, F.S.; providing a short title; creating the
1077 Financial Technology Sandbox within the Office of
1078 Financial Regulation; defining terms; requiring the
1079 office, if certain conditions are met, to grant a
1080 license to a Financial Technology Sandbox applicant,
1081 grant exceptions to specified provisions of general
1082 law relating to consumer finance loans and money
1083 services businesses, and grant waivers of certain



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1084 rules; authorizing a substantially affected person to
1085 seek a declaratory statement before applying to the
1086 Financial Technology Sandbox; specifying application
1087 requirements and procedures; specifying requirements,
1088 restrictions, and procedures for the office in
1089 reviewing and approving or denying applications;
1090 requiring the office to post on its website certain
1091 information relating to approved applications;
1092 specifying authorized actions of, limitations on, and
1093 requirements for licensees operating in the Financial
1094 Technology Sandbox; specifying disclosure requirements
1095 for licensees to consumers; authorizing the office to
1096 enter into certain agreements with other regulatory
1097 agencies; authorizing the office to examine licensee
1098 records; authorizing a licensee to apply for an
1099 extension of an initial sandbox period for a certain
1100 timeframe; specifying requirements and procedures for
1101 applying for an extension; specifying requirements and
1102 procedures for, and authorized actions of, licensees
1103 when concluding a sandbox period or extension;
1104 requiring licensees to submit certain reports to the
1105 office at specified intervals; providing construction;
1106 specifying the liability of a licensee; authorizing
1107 the office to take certain disciplinary actions
1108 against a licensee under certain circumstances;
1109 providing construction relating to service of process;
1110 specifying the rulemaking authority of the Financial
1111 Services Commission; providing the office authority to
1112 issue orders and enforce the orders; providing an



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appropriation; providing effective dates.



286532

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (142964)

Delete line 471

and insert:

(f) Publish standards for protecting the privacy of consumer personal information, such as social security numbers, driver license numbers, and usernames, e-mail addresses, or passwords used to access online accounts.

(g) Publish standards for protecting the privacy of consumer financial data, such as financial account numbers,



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11 credit or debit card numbers, and security codes, access codes,
12 or passwords necessary to access an individual's financial
13 account.

14 (h) Publish standards that facilitate the deployment of



381930

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (142964) (with title amendment)

Delete line 539
and insert:

(6) The Florida Digital Service and the enterprise, as defined in s. 282.0041, shall take necessary steps to protect any personal identifying information under their control. A person who knowingly obtains, discloses, or uses personal identifying information under the control of the Florida Digital



381930

Service or the enterprise is liable to the individual to whom
the information pertains, who may bring a civil action. The
court may award actual damages, but not less than liquidated
damages in the amount of \$2,500.

(7)(19) The Florida Digital Service may adopt rules to

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 1062

and insert:

authorization and appropriation; requiring the Florida
Digital Service and specified state agencies to take
necessary steps to protect any personal identifying
information under their control; providing a private
cause of action against a person who knowingly
obtains, discloses, or uses such information;
specifying damages a court may award; authorizing the



625642

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (142964) (with title amendment)

Delete line 539
and insert:

(6) The Attorney General may investigate any alleged unauthorized release of a consumer's personal identifying information or financial data under the control of the Florida Digital Service and may bring an action on behalf of any private person. The Attorney General has full power and authority to



625642

petition for an injunction when he or she determines that the health, safety, and public welfare is threatened by continued operation of the Florida Digital Service. In any action for injunction, the Attorney General may seek a civil penalty of up to \$50,000 per incident, plus attorney fees and costs. Moneys received by the Attorney General pursuant to this subsection must be equally distributed to the General Revenue Fund and to the claimant on behalf of whom an action is brought.

(7) ~~(19)~~ The Florida Digital Service may adopt rules to

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Between lines 1062 and 1063
insert:

Attorney General to investigate any alleged
unauthorized release of certain consumer data and to
bring an action on behalf of any private person;
authorizing the Attorney General to petition for an
injunction under certain circumstances; authorizing
the award of a specified civil penalty, attorney fees,
and costs; specifying the distribution of the award;
authorizing the



731702

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (142964) (with title amendment)

Delete lines 845 - 848
and insert:

6. Any control person of the applicant must submit fingerprints for processing. The office shall deny any application if any person subject to the state and federal criminal history background checks required under this subparagraph has been arrested for and is awaiting final



731702

disposition of, has been found guilty of, regardless of
adjudication, or has entered a plea of nolo contendere or guilty
to, or has been adjudicated delinquent and the record has not
been sealed or expunged for, any offense prohibited under any of
the following provisions of state law or similar law of another
jurisdiction:

a. Section 415.111, relating to adult abuse, neglect, or
exploitation of aged persons or disabled adults.

b. Section 777.04, relating to attempts, solicitation, and
conspiracy to commit an offense listed in this subparagraph.

c. Section 782.04, relating to murder.

d. Section 782.07, relating to manslaughter, aggravated
manslaughter of an elderly person or disabled adult, or
aggravated manslaughter of a child.

e. Section 782.071, relating to vehicular homicide.

f. Section 782.09, relating to killing of an unborn child
by injury to the mother.

g. Chapter 784, relating to assault, battery, and culpable
negligence, if the offense was a felony.

h. Section 784.011, relating to assault, if the victim of
the offense was a minor.

i. Section 784.03, relating to battery, if the victim of
the offense was a minor.

j. Section 787.01, relating to kidnapping.

k. Section 787.02, relating to false imprisonment.

l. Section 787.025, relating to luring or enticing a child.

m. Section 787.04(2), relating to taking, enticing, or
removing a child beyond the state limits with criminal intent
pending custody proceedings.



731702

n. Section 787.04(3), relating to carrying a minor beyond the state lines with criminal intent to avoid producing a minor at a custody hearing or delivering the minor to the designated person.

o. Section 810.02, relating to burglary.

p. Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

q. Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.

r. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

s. Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.

t. Section 826.04, relating to incest.

u. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

v. Section 827.04, relating to contributing to the delinquency or dependency of a child.

w. Former s. 827.05, relating to negligent treatment of children.

x. Section 827.071, relating to sexual performance by a child.

y. Section 843.01, relating to resisting arrest with violence.

z. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.

aa. Section 843.12, relating to aiding in an escape.

bb. Section 843.13, relating to aiding in the escape of



731702

juvenile inmates in correctional institutions.

cc. Chapter 847, relating to obscene literature.

dd. Section 874.05, relating to encouraging or recruiting
another to join a criminal gang.

ee. Chapter 893, relating to drug abuse prevention and
control, only if the offense was a felony or if any other person
involved in the offense was a minor.

ff. Section 944.35(3), relating to inflicting cruel or
inhuman treatment on an inmate resulting in great bodily harm.

gg. Section 944.40, relating to escape.

hh. Section 944.46, relating to harboring, concealing, or
aiding an escaped prisoner.

ii. Section 944.47, relating to introduction of contraband
into a correctional facility.

jj. Section 985.701, relating to sexual misconduct in
juvenile justice programs.

kk. Section 985.711, relating to contraband introduced into
detention facilities.

7. A copy of the disclosures that will be provided to
consumers under paragraph (6)(c).

8. The financial responsibility of any control person.

9. Any other factor that the office determines to be

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 1087

and insert:

requirements and procedures; specifying fingerprinting

requirements and criminal disqualifications;



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specifying requirements,



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (142964)

Delete line 957
and insert:
consumers. Upon conclusion of the initial sandbox period, a
licensee shall, upon request by the consumer, transfer all
personal records maintained by the licensee to the financial
institution of the consumer's choice. After the conclusion of
the sandbox period or the



775314

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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The Committee on Banking and Insurance (Taddeo) recommended the following:

Senate Amendment to Amendment (142964) (with title amendment)

Delete lines 82 - 577
and insert:

Services, and the Department of Financial Services, upon their writing to the Secretary of Management Services that they have elected to participate in the enterprise architecture.

(16) "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of



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the enterprise to support interoperability across state
government.

~~(17)(11)~~ "Enterprise information technology service" means
an information technology service that is used in all agencies
or a subset of agencies and is established in law to be
designed, delivered, and managed at the enterprise level.

~~(18)(12)~~ "Event" means an observable occurrence in a system
or network.

~~(19)(13)~~ "Incident" means a violation or imminent threat of
violation, whether such violation is accidental or deliberate,
of information technology resources, security, policies, or
practices. An imminent threat of violation refers to a situation
in which the state agency has a factual basis for believing that
a specific incident is about to occur.

~~(20)(14)~~ "Information technology" means equipment,
hardware, software, firmware, programs, systems, networks,
infrastructure, media, and related material used to
automatically, electronically, and wirelessly collect, receive,
access, transmit, display, store, record, retrieve, analyze,
evaluate, process, classify, manipulate, manage, assimilate,
control, communicate, exchange, convert, converge, interface,
switch, or disseminate information of any kind or form.

~~(21)(15)~~ "Information technology policy" means a definite
course or method of action selected from among one or more
alternatives that guide and determine present and future
decisions.

~~(22)(16)~~ "Information technology resources" has the same
meaning as provided in s. 119.011.

~~(23)(17)~~ "Information technology security" means the



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protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.

(24) "Interoperability" means the technical ability to share and use data across and throughout the enterprise.

(25) ~~(18)~~ "Open data" means data collected or created by a state agency, which includes, upon their election to participate, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services, and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public disclosure distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution.

(26) ~~(19)~~ "Performance metrics" means the measures of an organization's activities and performance.

(27) ~~(20)~~ "Project" means an endeavor that has a defined start and end point; is undertaken to create or modify a unique product, service, or result; and has specific objectives that, when attained, signify completion.

(28) ~~(21)~~ "Project oversight" means an independent review and analysis of an information technology project that provides information on the project's scope, completion timeframes, and budget and that identifies and quantifies issues or risks affecting the successful and timely completion of the project.

(29) "Qualified entity" means a public or private entity or



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individual that enters into a binding agreement with the
department, meets usage criteria, agrees to terms and
conditions, and is subsequently and prescriptively authorized by
the department to access data under the terms of that agreement
as specified in s. 282.0051.

(30)~~(22)~~ "Risk assessment" means the process of identifying
security risks, determining their magnitude, and identifying
areas needing safeguards.

(31)~~(23)~~ "Service level" means the key performance
indicators (KPI) of an organization or service which must be
regularly performed, monitored, and achieved.

(32)~~(24)~~ "Service-level agreement" means a written contract
between the Department of Management Services and a customer
entity which specifies the scope of services provided, service
level, the duration of the agreement, the responsible parties,
and service costs. A service-level agreement is not a rule
pursuant to chapter 120.

(33)~~(25)~~ "Stakeholder" means a person, group, organization,
or state agency involved in or affected by a course of action.

(34)~~(26)~~ "Standards" means required practices, controls,
components, or configurations established by an authority.

(35)~~(27)~~ "State agency" means any official, officer,
commission, board, authority, council, committee, or department
of the executive branch of state government; the Justice
Administrative Commission; and the Public Service Commission.
The term does not include university boards of trustees or state
universities. As used in part I of this chapter, except as
otherwise specifically provided, the term does not include the
Department of Legal Affairs, the Department of Agriculture and



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Consumer Services, or the Department of Financial Services.

~~(36)(28)~~ "SUNCOM Network" means the state enterprise telecommunications system that provides all methods of electronic or optical telecommunications beyond a single building or contiguous building complex and used by entities authorized as network users under this part.

~~(37)(29)~~ "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

~~(38)(30)~~ "Threat" means any circumstance or event that has the potential to adversely impact a state agency's operations or assets through an information system via unauthorized access, destruction, disclosure, or modification of information or denial of service.

~~(39)(31)~~ "Variance" means a calculated value that illustrates how far positive or negative a projection has deviated when measured against documented estimates within a project plan.

Section 3. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service ~~Department of Management Services; powers, duties, and functions.~~ There is established the Florida Digital Service within the department to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206.

(1) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions:



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127 (a)~~(1)~~ Develop and publish information technology policy
128 for the management of the state's information technology
129 resources.

130 (b)~~(2)~~ Develop an enterprise architecture that:

131 1. Acknowledges the unique needs of those included within
132 the enterprise, resulting in the publication of standards,
133 terminologies, and procurement guidelines to facilitate digital
134 interoperability;

135 2. Supports the cloud-first policy as specified in s.
136 282.206; and

137 3. Addresses how information technology infrastructure may
138 be modernized to achieve cloud-first objectives ~~Establish and~~
139 ~~publish information technology architecture standards to provide~~
140 ~~for the most efficient use of the state's information technology~~
141 ~~resources and to ensure compatibility and alignment with the~~
142 ~~needs of state agencies. The department shall assist state~~
143 ~~agencies in complying with the standards.~~

144 (c)~~(3)~~ Establish project management and oversight standards
145 with which state agencies must comply when implementing projects
146 that have an information technology component ~~projects~~. The
147 Florida Digital Service department shall provide training
148 opportunities to state agencies to assist in the adoption of the
149 project management and oversight standards. To support data-
150 driven decisionmaking, the standards must include, but are not
151 limited to:

152 1.~~(a)~~ Performance measurements and metrics that objectively
153 reflect the status of a project with an information technology
154 component ~~project~~ based on a defined and documented project
155 scope, cost, and schedule.



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156 2.~~(b)~~ Methodologies for calculating acceptable variances in
157 the projected versus actual scope, schedule, or cost of a
158 project with an information technology component ~~project~~.

159 3.~~(c)~~ Reporting requirements, including requirements
160 designed to alert all defined stakeholders that a project with
161 an information technology component ~~project~~ has exceeded
162 acceptable variances defined and documented in a project plan.

163 4.~~(d)~~ Content, format, and frequency of project updates.

164 (d)~~(4)~~ Perform project oversight on all state agency
165 ~~information technology~~ projects that have an information
166 technology component with a total project cost ~~costs~~ of \$10
167 million or more and that are funded in the General
168 Appropriations Act or any other law. The Florida Digital Service
169 ~~department~~ shall report at least quarterly to the Executive
170 Office of the Governor, the President of the Senate, and the
171 Speaker of the House of Representatives on any project with an
172 information technology component ~~project~~ that the Florida
173 Digital Service ~~department~~ identifies as high-risk due to the
174 project exceeding acceptable variance ranges defined and
175 documented in a project plan. The report must include a risk
176 assessment, including fiscal risks, associated with proceeding
177 to the next stage of the project, and a recommendation for
178 corrective actions required, including suspension or termination
179 of the project. The Florida Digital Service shall establish a
180 process for state agencies to apply for an exception to the
181 requirements of this paragraph for a specific project with an
182 information technology component.

183 (e)~~(5)~~ Identify opportunities for standardization and
184 consolidation of information technology services that support



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interoperability and the cloud-first policy as specified in s. 282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service ~~department~~ shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) ~~(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) ~~(7)~~ Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) ~~(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) ~~(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service ~~department~~ and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(j) ~~(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:



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214 1.~~(a)~~ Implementing industry standards and best practices
215 for the state data center's facilities, operations, maintenance,
216 planning, and management processes.

217 2.~~(b)~~ Developing and implementing cost-recovery or other
218 payment mechanisms that recover the full direct and indirect
219 cost of services through charges to applicable customer
220 entities. Such cost-recovery or other payment mechanisms must
221 comply with applicable state and federal regulations concerning
222 distribution and use of funds and must ensure that, for any
223 fiscal year, no service or customer entity subsidizes another
224 service or customer entity.

225 3.~~(c)~~ Developing and implementing appropriate operating
226 guidelines and procedures necessary for the state data center to
227 perform its duties pursuant to s. 282.201. The guidelines and
228 procedures must comply with applicable state and federal laws,
229 regulations, and policies and conform to generally accepted
230 governmental accounting and auditing standards. The guidelines
231 and procedures must include, but need not be limited to:

232 a.~~1.~~ Implementing a consolidated administrative support
233 structure responsible for providing financial management,
234 procurement, transactions involving real or personal property,
235 human resources, and operational support.

236 b.~~2.~~ Implementing an annual reconciliation process to
237 ensure that each customer entity is paying for the full direct
238 and indirect cost of each service as determined by the customer
239 entity's use of each service.

240 c.~~3.~~ Providing rebates that may be credited against future
241 billings to customer entities when revenues exceed costs.

242 d.~~4.~~ Requiring customer entities to validate that



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sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

~~e.5.~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

~~f.6.~~ Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

~~g.7.~~ Standardizing and consolidating procurement and contracting practices.

~~4.(d)~~ In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to information technology security incidents, breaches, and threats.

~~5.(e)~~ Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery or other payment methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine~~



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~~whether the state's approach to the provision of data center services is the most effective and cost-efficient manner by which its customer entities can acquire such services, based on federal, state, and local government trends; best practices in service provision; and the acquisition of new and emerging technologies. The results of the market analysis shall assist the state data center in making adjustments to its data center service offerings.~~

(k) ~~(11)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l) ~~(12)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m) 1. ~~(13) (a)~~ Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of \$25 million or more and which impacts one or more other agencies. Such projects with an information technology component ~~projects~~ must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service ~~department~~.



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The Florida Digital Service shall establish a process for the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

~~2.(b)~~ When performing the project oversight function specified in subparagraph 1. ~~paragraph (a)~~, report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

~~(n)(14)~~ If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

~~(o)(15)~~ If adherence to standards or policies adopted by or



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established pursuant to this section causes conflict with federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service department shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1.(16)(a) Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a.1. Identification of the information technology product and service categories to be included in state term contracts.

b.2. Requirements to be included in solicitations for state term contracts.

c.3. Evaluation criteria for the award of information technology-related state term contracts.

d.4. The term of each information technology-related state term contract.

e.5. The maximum number of vendors authorized on each state term contract.

2.(b) Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3.(e) Answer vendor questions on information technology-related state term contract solicitations.



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359 4.~~(d)~~ Ensure that the information technology policy
360 established pursuant to subparagraph 1. ~~paragraph (a)~~ is
361 included in all solicitations and contracts that are
362 administratively executed by the department.

363 (q)~~(17)~~ Recommend potential methods for standardizing data
364 across state agencies which will promote interoperability and
365 reduce the collection of duplicative data.

366 (r)~~(18)~~ Recommend open data technical standards and
367 terminologies for use by the enterprise ~~state agencies~~.

368 (2) (a) The Secretary of Management Services shall designate
369 a state chief information officer, who shall administer the
370 Florida Digital Service and is included in the Senior Management
371 Service.

372 (b) The state chief information officer shall designate a
373 chief data officer, who shall report to the state chief
374 information officer and is included in the Senior Management
375 Service.

376 (3) The Florida Digital Service shall, pursuant to
377 legislative appropriation:

378 (a) Create and maintain a comprehensive indexed data
379 catalog that lists what data elements are housed within the
380 enterprise and in which legacy system or application these data
381 elements are located.

382 (b) Develop and publish, in collaboration with the
383 enterprise, a data dictionary for each agency which reflects the
384 nomenclature in the comprehensive indexed data catalog.

385 (c) Review and document use cases across the enterprise
386 architecture.

387 (d) Develop and publish standards that support the creation



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and deployment of application programming interfaces to
facilitate integration throughout the enterprise.

(e) Publish standards necessary to facilitate a secure ecosystem of data interoperability which is compliant with the enterprise architecture and allows for a qualified entity to access the enterprise's data under the terms of the agreements with the department. However, enterprise data do not include data that are restricted from public distribution based on federal or state privacy, confidentiality, or security laws and regulations.

(f) Publish standards that facilitate the deployment of applications or solutions to existing enterprise obligations in a controlled and phased approach, including, but not limited to:

1. Electronic credentials, including digital proofs of a driver license as specified in s. 322.032.

2. Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service.

3. The criminal justice database.

4. Motor vehicle insurance cancellation integration between insurers and the Department of Highway Safety and Motor Vehicles.

5. Interoperability solutions between agencies, including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

6. Interoperability solutions to support military members, veterans, and their families.



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(4) Pursuant to legislative authorization and subject to appropriation:

(a) The department may procure a credential service provider through a competitive process pursuant to s. 287.057. The terms of the contract developed from such procurement must pay for the value on a per-data-call or subscription basis, and there shall be no cost to the enterprise or law enforcement for using the services provided by the credential service provider.

(b) The department may enter into agreements with qualified entities that have the technological capabilities necessary to integrate with the credential service provider; ensure secure validation and authentication of data; meet usage criteria; and agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of enterprise data. Enterprise data do not include data that are restricted from public disclosure based on federal or state privacy, confidentiality, or security laws and regulations. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(c) The terms of the agreements between the department and the credential service provider and between the department and the qualified entities must be based on the per-data-call or subscription charges to validate and authenticate an electronic credential and allow the department to recover any state costs for implementing and administering an electronic credential solution. Credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.



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(d) All revenues generated from the agreements with the credential service provider and qualified entities shall be remitted to the department, and the department shall deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation and department agreements with the credential service provider and qualified entities.

(e) Upon the signing of the agreement and the enterprise architecture terms of service and privacy policies with a qualified entity, the department shall facilitate authorized integrations between the qualified entity and the credential service provider.

(5) Upon the adoption of the enterprise architecture, the Florida Digital Service may develop a process to:

(a) Receive written notice from the enterprise of any procurement of an information technology project that is subject to enterprise architecture standards.

(b) Participate in the development of specifications and recommend modifications of any procurement by state agencies so that the procurement complies with the enterprise architecture.

(6) ~~(19)~~ The Florida Digital Service may adopt rules to administer this section.

Section 4. Section 282.00515, Florida Statutes, is amended to read:

282.00515 Duties of Cabinet agencies.—

(1) The Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(1)(b), (c), (g), (r), and (3)(e) ~~s. 282.0051(2), (3),~~



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~~and (7)~~ or adopt alternative standards based on best practices
and industry standards that allow for the interoperability of
open data within the enterprise.

(2) The Department of Legal Affairs, the Department of
Financial Services, or the Department of Agriculture and
Consumer Services may contract with the department to provide or
perform any of the services and functions described in s.
282.0051.

(3) (a) This section or s. 282.0051 does not require the

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 1067 - 1070

and insert:

and Consumer Services must adopt; providing
construction; prohibiting the

By the Committee on Innovation, Industry, and Technology; and
Senator Hutson

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1 A bill to be entitled
2 An act relating to technology innovation; amending s.
3 20.22, F.S.; renaming the Division of State Technology
4 within the Department of Management Services as the
5 Division of Telecommunications; deleting provisions
6 relating to the appointment of the Division of State
7 Technology's director and qualifications for the state
8 chief information officer; adding the Florida Digital
9 Service to the department; amending s. 282.0041, F.S.;
10 defining terms; amending s. 282.0051, F.S.;
11 establishing the Florida Digital Service within the
12 department; transferring specified powers, duties, and
13 functions of the department to the Florida Digital
14 Service and revising such powers, duties, and
15 functions; providing for appointments of a state chief
16 information officer and a chief data officer and
17 specifying their duties; requiring the Florida Digital
18 Service to develop a comprehensive enterprise
19 architecture; providing requirements for the
20 enterprise architecture; specifying duties of, and
21 authorized actions by, the Florida Digital Service;
22 providing duties of, and authorized actions by, the
23 department; authorizing the Florida Digital Service to
24 adopt rules; amending s. 282.00515, F.S.; establishing
25 the Enterprise Architecture Advisory Council;
26 requiring the council to comply with specified
27 requirements; specifying the composition of the
28 council; providing membership and meeting requirements
29 and duties of the council; deleting provisions

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30 relating to specified duties and powers of the
31 Department of Legal Affairs, the Department of
32 Financial Services, and the Department of Agriculture
33 and Consumer Services; amending ss. 282.318, 287.0591,
34 365.171, 365.172, 365.173, and 943.0415, F.S.;
35 conforming provisions to changes made by the act;
36 creating s. 559.952, F.S.; providing a short title;
37 creating the Financial Technology Sandbox within the
38 Office of Financial Regulation; defining terms;
39 authorizing the office to grant waivers of specified
40 financial regulatory requirements to certain
41 applicants offering certain financial products or
42 services during a sandbox period; authorizing certain
43 persons to seek a declaratory statement before filing
44 an application for the Financial Technology Sandbox;
45 specifying requirements and procedures for an
46 application to enter the Financial Technology Sandbox;
47 specifying requirements and procedures for the office
48 in reviewing applications; specifying authorized
49 actions of, limitations on, and disclosure
50 requirements for persons making financial products or
51 services available during a sandbox period;
52 authorizing the office to enter into agreement with
53 certain regulatory agencies for specified purposes;
54 providing recordkeeping requirements; authorizing the
55 office to examine specified records; providing
56 requirements and procedures for applying for
57 extensions and concluding sandbox periods; requiring
58 written notification to consumers at the end of an

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extension or conclusion of the sandbox period; providing acts that persons who make innovative financial products or services available to consumers may and may not engage in at the end of an extension or conclusion of the sandbox period; specifying state financial regulatory laws that the office may grant exceptions to; specifying reporting requirements to the office; providing construction; providing that such persons are not immune from civil damages and are subject to certain laws; providing penalties; providing for service of process; requiring the Financial Services Commission to adopt rules; authorizing the office to issue orders and enforce them through administrative or judicial process; authorizing the office to issue and enforce orders for payment of restitution; providing effective dates.

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

Section 1. Subsection (2) of section 20.22, Florida Statutes, is amended to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The ~~following divisions and programs within the~~ Department of Management Services shall consist of the following ~~are established:~~

(a) The Facilities Program.

(b) The Division of Telecommunications State Technology, ~~the director of which is appointed by the secretary of the~~

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~~department and shall serve as the state chief information officer. The state chief information officer must be a proven, effective administrator who must have at least 10 years of executive-level experience in the public or private sector, preferably with experience in the development of information technology strategic planning and the development and implementation of fiscal and substantive information technology policy and standards.~~

(c) The Workforce Program.

(d) 1. The Support Program.

2. The Federal Property Assistance Program.

(e) The Administration Program.

(f) The Division of Administrative Hearings.

(g) The Division of Retirement.

(h) The Division of State Group Insurance.

(i) The Florida Digital Service.

Section 2. Section 282.0041, Florida Statutes, is amended to read:

282.0041 Definitions.—As used in this chapter, the term:

(1) "Agency assessment" means the amount each customer entity must pay annually for services from the Department of Management Services and includes administrative and data center services costs.

(2) "Agency data center" means agency space containing 10 or more physical or logical servers.

(3) "Breach" has the same meaning as provided in s. 501.171.

(4) "Business continuity plan" means a collection of procedures and information designed to keep an agency's critical

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operations running during a period of displacement or interruption of normal operations.

(5) "Cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology.

(6) "Computing facility" or "agency computing facility" means agency space containing fewer than a total of 10 physical or logical servers, but excluding single, logical-server installations that exclusively perform a utility function such as file and print servers.

(7) "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities.

(8) "Customer entity" means an entity that obtains services from the Department of Management Services.

(9)~~(8)~~ "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted.

(10) "Data-call" means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data.

(11)~~(9)~~ "Department" means the Department of Management Services.

(12)~~(10)~~ "Disaster recovery" means the process, policies, procedures, and infrastructure related to preparing for and implementing recovery or continuation of an agency's vital technology infrastructure after a natural or human-induced disaster.

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(13) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(14) "Electronic credential" means a digital asset that verifies the identity of a person, organization, application, or device.

(15) "Enterprise" means the collection of state agencies. The term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch.

(16) "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

(17)~~(11)~~ "Enterprise information technology service" means an information technology service that is used in all agencies or a subset of agencies and is established in law to be designed, delivered, and managed at the enterprise level.

(18)~~(12)~~ "Event" means an observable occurrence in a system or network.

(19)~~(13)~~ "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.

(20)~~(14)~~ "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to

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175 automatically, electronically, and wirelessly collect, receive,
 176 access, transmit, display, store, record, retrieve, analyze,
 177 evaluate, process, classify, manipulate, manage, assimilate,
 178 control, communicate, exchange, convert, converge, interface,
 179 switch, or disseminate information of any kind or form.

180 (21)-(15) "Information technology policy" means a definite
 181 course or method of action selected from among one or more
 182 alternatives that guide and determine present and future
 183 decisions.

184 (22)-(16) "Information technology resources" has the same
 185 meaning as provided in s. 119.011.

186 (23)-(17) "Information technology security" means the
 187 protection afforded to an automated information system in order
 188 to attain the applicable objectives of preserving the integrity,
 189 availability, and confidentiality of data, information, and
 190 information technology resources.

191 (24) "Interoperability" means the technical ability to
 192 share and use data across and throughout the enterprise.

193 (25)-(18) "Open data" means data collected or created by a
 194 state agency and structured in a way that enables the data to be
 195 fully discoverable and usable by the public. The term does not
 196 include data that are restricted from public distribution based
 197 on federal or state privacy, confidentiality, and security laws
 198 and regulations or data for which a state agency is statutorily
 199 authorized to assess a fee for its distribution.

200 (26)-(19) "Performance metrics" means the measures of an
 201 organization's activities and performance.

202 (27)-(20) "Project" means an endeavor that has a defined
 203 start and end point; is undertaken to create or modify a unique

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204 product, service, or result; and has specific objectives that,
 205 when attained, signify completion.

206 (28)-(21) "Project oversight" means an independent review
 207 and analysis of an information technology project that provides
 208 information on the project's scope, completion timeframes, and
 209 budget and that identifies and quantifies issues or risks
 210 affecting the successful and timely completion of the project.

211 (29) "Qualified entity" means a public or private entity or
 212 individual that enters into a binding agreement with the
 213 department, meets usage criteria, agrees to terms and
 214 conditions, and is subsequently and prescriptively authorized by
 215 the department to access data under the terms of that agreement.

216 (30)-(22) "Risk assessment" means the process of identifying
 217 security risks, determining their magnitude, and identifying
 218 areas needing safeguards.

219 (31)-(23) "Service level" means the key performance
 220 indicators (KPI) of an organization or service which must be
 221 regularly performed, monitored, and achieved.

222 (32)-(24) "Service-level agreement" means a written contract
 223 between the Department of Management Services and a customer
 224 entity which specifies the scope of services provided, service
 225 level, the duration of the agreement, the responsible parties,
 226 and service costs. A service-level agreement is not a rule
 227 pursuant to chapter 120.

228 (33)-(25) "Stakeholder" means a person, group, organization,
 229 or state agency involved in or affected by a course of action.

230 (34)-(26) "Standards" means required practices, controls,
 231 components, or configurations established by an authority.

232 (35)-(27) "State agency" means any official, officer,

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commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of this chapter, except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services.

(36)~~(28)~~ "SUNCOM Network" means the state enterprise telecommunications system that provides all methods of electronic or optical telecommunications beyond a single building or contiguous building complex and used by entities authorized as network users under this part.

(37)~~(29)~~ "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

(38)~~(30)~~ "Threat" means any circumstance or event that has the potential to adversely impact a state agency's operations or assets through an information system via unauthorized access, destruction, disclosure, or modification of information or denial of service.

(39)~~(31)~~ "Variance" means a calculated value that illustrates how far positive or negative a projection has deviated when measured against documented estimates within a project plan.

Section 3. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service Department of Management Services; powers, duties, and functions.~~There is established~~

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the Florida Digital Service within the department to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206.

(1) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions:

(a)~~(1)~~ Develop and publish information technology policy for the management of the state's information technology resources.

(b)~~(2)~~ Establish and publish information technology architecture standards to provide for the most efficient use of ~~the state's~~ information technology resources and to ensure compatibility and alignment with the needs of state agencies. The Florida Digital Service ~~department~~ shall assist state agencies in complying with the standards.

(c)~~(3)~~ Establish project management and oversight standards with which state agencies must comply when implementing projects that have an information technology component ~~projects~~. The Florida Digital Service ~~department~~ shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1.~~(a)~~ Performance measurements and metrics that objectively reflect the status of a project with an information technology component ~~project~~ based on a defined and documented project scope, cost, and schedule.

2.~~(b)~~ Methodologies for calculating acceptable variances in

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the projected versus actual scope, schedule, or cost of a project with an information technology component project.

~~3.(e)~~ Reporting requirements, including requirements designed to alert all defined stakeholders that a project with an information technology component project has exceeded acceptable variances defined and documented in a project plan.

~~4.(d)~~ Content, format, and frequency of project updates.

~~(d)(4)~~ Perform project oversight on all state agency ~~information technology~~ projects that have an information technology component with a total project cost costs of \$10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service department shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component project that the Florida Digital Service department identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project. The Florida Digital Service shall establish a process for state agencies to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

~~(e)(5)~~ Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy as specified in s.

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282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service department shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

~~(f)(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

~~(g)(7)~~ Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

~~(h)(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

~~(i)(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service department and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

~~(j)(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1.(a) Implementing industry standards and best practices

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for the state data center's facilities, operations, maintenance, planning, and management processes.

~~2.(b)~~ Developing and implementing cost-recovery or other payment mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery or other payment mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity.

~~3.(e)~~ Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a.1- Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

b.2- Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c.3- Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d.4- Requiring customer entities to validate that sufficient funds exist in the appropriate data processing

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appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

~~e.5-~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f.6- Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. ~~subparagraph 4-~~ Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g.7- Standardizing and consolidating procurement and contracting practices.

~~4.(d)~~ In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to information technology security incidents, breaches, and threats.

~~5.(e)~~ Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery or other payment methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine whether the state's approach to the provision of data center~~

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services is the most effective and cost-efficient manner by which its customer entities can acquire such services, based on federal, state, and local government trends, best practices in service provision, and the acquisition of new and emerging technologies. The results of the market analysis shall assist the state data center in making adjustments to its data center service offerings.

(k)(11) Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l)(12) In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1.(13)(a) Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of \$25 million or more and which impacts one or more other agencies. Such projects with an information technology component ~~projects~~ must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service department. The Florida Digital Service shall establish a process for the

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Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

~~2.(b)~~ When performing the project oversight function specified in subparagraph 1. paragraph (a), report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service department identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n)(14) If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o)(15) If adherence to standards or policies adopted by or established pursuant to this section causes conflict with

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federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service ~~department~~ shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p) 1. (16) (a) Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. 1- Identification of the information technology product and service categories to be included in state term contracts.

b. 2- Requirements to be included in solicitations for state term contracts.

c. 3- Evaluation criteria for the award of information technology-related state term contracts.

d. 4- The term of each information technology-related state term contract.

e. 5- The maximum number of vendors authorized on each state term contract.

2. (b) Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3. (e) Answer vendor questions on information technology-related state term contract solicitations.

4. (d) Ensure that the information technology policy

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established pursuant to subparagraph 1. paragraph (a) is included in all solicitations and contracts that are administratively executed by the department.

(q) (17) Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(r) (18) Recommend open data technical standards and terminologies for use by state agencies.

(2) (a) The Secretary of Management Services shall appoint a state chief information officer, who shall administer the Florida Digital Service and is included in the Senior Management Service.

(b) The state chief information officer shall appoint a chief data officer, who shall report to the state chief information officer and is included in the Senior Management Service.

(3) The Florida Digital Service shall develop a comprehensive enterprise architecture that:

(a) Recognizes the unique needs of those included within the enterprise that results in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability.

(b) Supports the cloud-first policy as specified in s. 282.206.

(c) Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(4) The Florida Digital Service shall, pursuant to legislative appropriation:

(a) Create and maintain a comprehensive indexed data

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523 catalog that lists what data elements are housed within the
 524 enterprise and in which legacy system or application these data
 525 elements are located.

526 (b) Develop and publish, in collaboration with the
 527 enterprise, a data dictionary for each agency that reflects the
 528 nomenclature in the comprehensive indexed data catalog.

529 (c) Review and document use cases across the enterprise
 530 architecture.

531 (d) Develop and publish standards that support the creation
 532 and deployment of application programming interfaces to
 533 facilitate integration throughout the enterprise.

534 (e) Facilitate collaborative analysis of enterprise
 535 architecture data to improve service delivery.

536 (f) Develop plans to provide a testing environment in which
 537 any newly developed solution can be tested for compliance within
 538 the enterprise architecture and for functionality assurance
 539 before deployment.

540 (g) Publish standards necessary to facilitate a secure
 541 ecosystem of data interoperability that is compliant with the
 542 enterprise architecture and allows for a qualified entity to
 543 access the enterprise's data under the terms of the agreements
 544 with the department.

545 (h) Publish standards that facilitate the deployment of
 546 applications or solutions to existing enterprise obligations in
 547 a controlled and phased approach, including, but not limited to:

548 1. Electronic credentials, including digital licenses as
 549 referenced in s. 322.032.

550 2. Interoperability that enables supervisors of elections
 551 to authenticate voter eligibility in real time at the point of

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552 service.

553 3. The criminal justice database.

554 4. Motor vehicle insurance cancellation integration between
 555 insurers and the Department of Highway Safety and Motor
 556 Vehicles.

557 5. Interoperability solutions between agencies, including,
 558 but not limited to, the Department of Health, the Agency for
 559 Health Care Administration, the Agency for Persons with
 560 Disabilities, the Department of Education, the Department of
 561 Elderly Affairs, and the Department of Children and Families.

562 6. Interoperability solutions to support military members,
 563 veterans, and their families.

564 (5) Pursuant to legislative authorization and subject to
 565 appropriation:

566 (a) The department may procure a credential service
 567 provider through a competitive process pursuant to s. 287.057.
 568 The terms of the contract developed from such procurement must
 569 pay for the value on a per-data-call or subscription basis, and
 570 there shall be no cost to the enterprise or law enforcement for
 571 using the services provided by the credential service provider.

572 (b) The department may enter into agreements with qualified
 573 entities that have the technological capabilities necessary to
 574 integrate with the credential service provider; ensure secure
 575 validation and authentication of data; meet usage criteria; and
 576 agree to terms and conditions, privacy policies, and uniform
 577 remittance terms relating to the consumption of enterprise data.
 578 These agreements must include clear, enforceable, and
 579 significant penalties for violations of the agreements.

580 (c) The department may enter into agreements with qualified

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entities that meet usage criteria and agree to the enterprise architecture terms of service and privacy policies. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(d) The terms of the agreements between the department, the credential service provider, and the qualified entities shall be based on the per-data-call or subscription charges to validate and authenticate and allow the department to recover any state costs for implementing and administering a solution. Credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

(e) All revenues generated from the agreements with the credential service provider and qualified entities shall be remitted to the department, and the department shall deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation and department agreements with the credential service provider and qualified entities.

(f) Upon the signing of the agreement and the enterprise architecture terms of service and privacy policies with a qualified entity, the department shall provide to the qualified entity, as applicable, appropriate access to enterprise data to facilitate authorized integrations to collaboratively solve enterprise use cases.

(6) The Florida Digital Service may develop a process to:

(a) Receive written notice from the state agencies within the enterprise of any planned or existing procurement of an

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information technology project that is subject to governance by the enterprise architecture.

(b) Intervene in any planned procurement by a state agency so that the procurement complies with the enterprise architecture.

(c) Report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project within the judicial branch that does not comply with the enterprise architecture.

(7)(19) The Florida Digital Service may adopt rules to administer this section.

Section 4. Section 282.00515, Florida Statutes, is amended to read:

282.00515 Enterprise Architecture Advisory Council ~~Duties of Cabinet agencies.~~

(1) (a) The Enterprise Architecture Advisory Council, an advisory council as defined in s. 20.03(7), is established within the Department of Management Services. The council shall comply with the requirements of s. 20.052 except as otherwise provided in this section.

(b) The council shall consist of the following members:

1. Four members appointed by the Governor.

2. One member appointed by the President of the Senate.

3. One member appointed by the Speaker of the House of Representatives.

4. One member appointed by the Chief Justice of the Supreme Court.

5. The director of the Office of Policy and Budget in the Executive Office of the Governor, or the person acting in the

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639 director's capacity should the position be vacant.

640 6. The Secretary of Management Services, or the person
 641 acting in the secretary's capacity should the position be
 642 vacant.

643 7. The state chief information officer, or the person
 644 acting in the state chief information officer's capacity should
 645 the position be vacant.

646 8. The chief information officer of the Department of
 647 Financial Services, or the person acting in the chief
 648 information officer's capacity should the position be vacant.

649 9. The chief information officer of the Department of Legal
 650 Affairs, or the person acting in the chief information officer's
 651 capacity should the position be vacant.

652 10. The chief information officer of the Department of
 653 Agriculture and Consumer Services, or the person acting in the
 654 chief information officer's capacity should the position be
 655 vacant.

656 (2) (a) The appointments made by the Governor, the President
 657 of the Senate, the Speaker of the House of Representatives, and
 658 the Chief Justice of the Supreme Court are for terms of 4 years.
 659 However, for the purpose of providing staggered terms:

660 1. The appointments made by the Governor, the President of
 661 the Senate, and the Speaker of the House of Representatives are
 662 for initial terms of 2 years.

663 2. The appointment made by the Chief Justice is for an
 664 initial term of 3 years.

665 (b) A vacancy on the council among members appointed under
 666 subparagraph (1) (b) 1., subparagraph (1) (b) 2., subparagraph
 667 (1) (b) 3., or subparagraph (1) (b) 4. shall be filled in the same

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668 manner as the original appointment for the remainder of the
 669 unexpired term.

670 (c) The council shall elect a chair from among its members.

671 (d) The council shall meet at least semiannually, beginning
 672 October 1, 2020, to discuss implementation, management, and
 673 coordination of the enterprise architecture as defined in s.
 674 282.0041; identify potential issues and threats with specific
 675 use cases; and recommend proactive solutions. The council may
 676 conduct its meetings through teleconferences or other similar
 677 means ~~The Department of Legal Affairs, the Department of~~
 678 ~~Financial Services, and the Department of Agriculture and~~
 679 ~~Consumer Services shall adopt the standards established in s.~~
 680 ~~282.0051(2), (3), and (7) or adopt alternative standards based~~
 681 ~~on best practices and industry standards, and may contract with~~
 682 ~~the department to provide or perform any of the services and~~
 683 ~~functions described in s. 282.0051 for the Department of Legal~~
 684 ~~Affairs, the Department of Financial Services, or the Department~~
 685 ~~of Agriculture and Consumer Services.~~

686 Section 5. Paragraph (a) of subsection (3) of section
 687 282.318, Florida Statutes, is amended to read:

688 282.318 Security of data and information technology.—

689 (3) The department is responsible for establishing
 690 standards and processes consistent with generally accepted best
 691 practices for information technology security, to include
 692 cybersecurity, and adopting rules that safeguard an agency's
 693 data, information, and information technology resources to
 694 ensure availability, confidentiality, and integrity and to
 695 mitigate risks. The department shall also:

696 (a) Designate a state chief information security officer

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who shall be appointed by and report to the state chief information officer of the Florida Digital Service and is in the Senior Management Service. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources.

Section 6. Subsection (4) of section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service ~~Division of State Technology~~ within the department shall participate in such solicitations.

Section 7. Paragraph (a) of subsection (3) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Office" means the Division of Telecommunications State Technology within the Department of Management Services, as designated by the secretary of the department.

Section 8. Paragraph (s) of subsection (3) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(s) "Office" means the Division of Telecommunications State Technology within the Department of Management Services, as designated by the secretary of the department.

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Section 9. Paragraph (a) of subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Communications Number E911 System Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Division of Telecommunications State Technology, or other office as designated by the Secretary of Management Services.

Section 10. Subsection (5) of section 943.0415, Florida Statutes, is amended to read:

943.0415 Cybercrime Office.—There is created within the Department of Law Enforcement the Cybercrime Office. The office may:

(5) Consult with the Florida Digital Service ~~Division of State Technology~~ within the Department of Management Services in the adoption of rules relating to the information technology security provisions in s. 282.318.

Section 11. Effective January 1, 2021, section 559.952, Florida Statutes, is created to read:

559.952 Financial Technology Sandbox.—

(1) SHORT TITLE.—This section may be cited as the "Financial Technology Sandbox."

(2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible

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regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Commission" means the Financial Services Commission.

(b) "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(c) "Financial product or service" means a product or service related to finance, including securities, consumer credit, or money transmission, which is traditionally subject to general law or rule requirements in the provisions enumerated in paragraph (7) (a) and which is under the jurisdiction of the office.

(d) "Financial Technology Sandbox" means the program created in this section which allows a person to make an innovative financial product or service available to consumers through the provisions enumerated in paragraph (7) (a) during a sandbox period through an exception to general laws or a waiver of rule requirements, or portions thereof, as specified in this section.

(e) "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public.

(f) "Office" means, unless the context clearly indicates

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otherwise, the Office of Financial Regulation.

(g) "Sandbox period" means the period, initially not longer than 24 months, in which the office has:

1. Authorized an innovative financial product or service to be made available to consumers.

2. Granted the person who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that the authorization under subparagraph 1. is possible.

(4) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(a) Before filing an application to enter the Financial Technology Sandbox, a substantially affected person may seek a declaratory statement pursuant to s. 120.565 regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

(b) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the office. The commission shall prescribe by rule the form and manner of the application.

1. In the application, the person must specify the general law or rule requirements for which an exception or a waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers.

2. The application must also contain the information specified in paragraph (e).

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(c) A business entity filing an application under this section must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(d) Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

(e) The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the office may impose conditions on any approval. In deciding to approve or deny an application, the office must consider each of the following:

1. The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

3. The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

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5. If any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing, their application to the Financial Technology Sandbox will be denied. A plea of no contest, a conviction, or a finding of guilt must be reported under this subparagraph regardless of adjudication.

6. A copy of the disclosures that will be provided to consumers under paragraph (6) (c).

7. The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.

8. Any other factor that the office determines to be relevant.

(f) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox application that was approved and that related to a substantially similar financial product or service; or

2. Any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

(g) Upon approval of an application, the office shall specify the general law or rule requirements, or portions

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thereof, for which an exception or rule waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The office shall post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

(5) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A person whose Financial Technology Sandbox application is approved may make an innovative financial product or service available to consumers during the sandbox period.

(b) The office may, on a case-by-case basis and after consultation with the person who makes the financial product or service available to consumers, specify the maximum number of consumers authorized to receive an innovative financial product or service. The office may not authorize more than 15,000 consumers to receive the financial product or service until the person who makes the financial product or service available to consumers has filed the first report required under subsection (8). After the filing of the report, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

(c) 1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the person making the financial product or service available must provide a written statement of all of the following to the consumer:

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a. The name and contact information of the person making the financial product or service available to consumers.

b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.

c. That this state does not endorse the financial product or service.

d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.

e. That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.

f. The expected end date of the sandbox period.

g. The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.

h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the person making the financial product or service available.

(d) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons:

1. Who make an innovative financial product or service

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929 available in this state through the Financial Technology Sandbox
 930 to make their products or services available in other
 931 jurisdictions.

932 2. Who operate in similar financial technology sandboxes in
 933 other jurisdictions to make innovative financial products and
 934 services available in this state under the standards of this
 935 section.

936 (e)1. A person whose Financial Technology Sandbox
 937 application is approved by the office shall maintain
 938 comprehensive records relating to the innovative financial
 939 product or service. The person shall keep these records for at
 940 least 5 years after the conclusion of the sandbox period. The
 941 commission may specify by rule additional records requirements.

942 2. The office may examine the records maintained under
 943 subparagraph 1. at any time, with or without notice.

944 (6) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—

945 (a) A person who is authorized to make an innovative
 946 financial product or service available to consumers may apply
 947 for an extension of the initial sandbox period for up to 12
 948 additional months for a purpose specified in subparagraph (b)1.
 949 or subparagraph (b)2. A complete application for an extension
 950 must be filed with the office at least 90 days before the
 951 conclusion of the initial sandbox period. The office shall
 952 approve or deny the application for extension in writing at
 953 least 35 days before the conclusion of the initial sandbox
 954 period. In deciding to approve or deny an application for
 955 extension of the sandbox period, the office must, at a minimum,
 956 consider the current status of the factors previously considered
 957 under paragraph (4) (e).

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958 (b) An application for an extension under paragraph (a)
 959 must cite one of the following reasons as the basis for the
 960 application and must provide all relevant supporting information
 961 that:

962 1. Amendments to general law or rules are necessary to
 963 offer the innovative financial product or service in this state
 964 permanently.

965 2. An application for a license that is required in order
 966 to offer the innovative financial product or service in this
 967 state permanently has been filed with the office, and approval
 968 is pending.

969 (c) At least 30 days before the conclusion of the initial
 970 sandbox period or the extension, whichever is later, a person
 971 who makes an innovative financial product or service available
 972 shall provide written notification to consumers regarding the
 973 conclusion of the initial sandbox period or the extension and
 974 may not make the financial product or service available to any
 975 new consumers after the conclusion of the initial sandbox period
 976 or the extension, whichever is later, until legal authority
 977 outside of the Financial Technology Sandbox exists to make the
 978 financial product or service available to consumers. After the
 979 conclusion of the sandbox period or the extension, whichever is
 980 later, the person who makes the innovative financial product or
 981 service available may:

982 1. Collect and receive money owed to the person or pay
 983 money owed by the person, based on agreements with consumers
 984 made before the conclusion of the sandbox period or the
 985 extension.

986 2. Take necessary legal action.

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3. Take other actions authorized by commission rule which are not inconsistent with this subsection.

(7) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other provision of law, upon approval of a Financial Technology Sandbox application, the office may grant an applicant a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the conditions in paragraph (b) are met. If the application is approved for a person who otherwise would be subject to the provisions of chapter 560, chapter 516, chapter 517, chapter 520, or chapter 537, the following provisions shall not be applicable to the approved sandbox participant:

1. Section 560.1105.

2. Section 560.118.

3. Section 560.125, except for s. 560.125(2).

4. Section 560.128.

5. Section 560.1401, except for s. 560.1401(2)-(4).

6. Section 560.141, except for s. 560.141(1)(b)-(d).

7. Section 560.142, except that the office may prorate the license renewal fees provided in ss. 560.142 and 560.143 for an extension granted under subsection (6).

8. Section 560.143(2), to the extent necessary for proration of the renewal fee under subparagraph 7.

9. Section 560.205, except for s. 560.205(1) and (3).

10. Section 560.208, except for s. 560.208(3)-(6).

11. Section 560.209, except that the office may modify the net worth, corporate surety bond, and collateral deposit amounts

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required under s. 560.209. The modified amounts must be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (4)(e) and the maximum number of consumers authorized to receive the financial product or service under this section.

12. Section 516.03, except for the license and investigation fee. The office may prorate the license renewal fees for an extension granted under subsection (6). The office may not waive the evidence of liquid assets of at least \$25,000.

13. Section 516.05, except that the office may make an investigation of the facts concerning the applicant's background.

14. Section 516.12.

15. Section 516.19.

16. Section 517.07.

17. Section 517.12.

18. Section 517.121.

19. Section 520.03, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

20. Section 520.12.

21. Section 520.25.

22. Section 520.32, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

23. Section 520.39.

24. Section 520.52, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

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1045 25. Section 520.57.
 1046 26. Section 520.63, except for the application fee. The
 1047 office may prorate the license renewal fees for an extension
 1048 granted under subsection (6).
 1049 27. Section 520.997.
 1050 28. Section 520.98.
 1051 29. Section 537.004, except for s. 537.004(2) and (5). The
 1052 office may prorate the license renewal fees for an extension
 1053 granted under subsection (6).
 1054 30. Section 537.005, except that the office may modify the
 1055 corporate surety bond amount required by s. 537.005. The
 1056 modified amount must be in such lower amount that the office
 1057 determines to be commensurate with the considerations under
 1058 paragraph (4)(e) and the maximum number of consumers authorized
 1059 to receive the product or service under this section.
 1060 31. Section 537.007.
 1061 32. Section 537.009.
 1062 33. Section 537.015.
 1063 (b) During a sandbox period, the exceptions granted in
 1064 paragraph (a) are applicable if all of the following conditions
 1065 are met:
 1066 1. The general law or corresponding rule currently prevents
 1067 the innovative financial product or service to be made available
 1068 to consumers.
 1069 2. The exceptions or rule waivers are not broader than
 1070 necessary to accomplish the purposes and standards specified in
 1071 this section, as determined by the office.
 1072 3. No provision relating to the liability of an
 1073 incorporator, director, or officer of the applicant is eligible

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1074 for a waiver.
 1075 4. The other requirements of this section are met.
 1076 (8) REPORT.—A person authorized to make an innovative
 1077 financial product or service available to consumers under this
 1078 section shall submit a report to the office twice a year as
 1079 prescribed by commission rule. The report must, at a minimum,
 1080 include financial reports and the number of consumers who have
 1081 received the financial product or service.
 1082 (9) CONSTRUCTION.—A person whose Financial Technology
 1083 Sandbox application is approved shall be deemed licensed under
 1084 the applicable exceptions to general law or waiver of the rule
 1085 requirements specified under subsection (7), unless the person's
 1086 authorization to make the financial product or service available
 1087 to consumers under this section has been revoked or suspended.
 1088 (10) VIOLATIONS AND PENALTIES.—
 1089 (a) A person who makes an innovative financial product or
 1090 service available to consumers in the Financial Technology
 1091 Sandbox is:
 1092 1. Not immune from civil damages for acts and omissions
 1093 relating to this section.
 1094 2. Subject to all criminal statutes and any other statute
 1095 not specifically excepted under subsection (7).
 1096 (b)1. The office may, by order, revoke or suspend
 1097 authorization granted to a person to make an innovative
 1098 financial product or service available to consumers if:
 1099 a. The person has violated or refused to comply with this
 1100 section, a rule of the commission, an order of the office, or a
 1101 condition placed by the office on the approval of the person's
 1102 Financial Technology Sandbox application;

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1103 b. A fact or condition exists that, if it had existed or
 1104 become known at the time that the Financial Technology Sandbox
 1105 application was pending, would have warranted denial of the
 1106 application or the imposition of material conditions;
 1107 c. A material error, false statement, misrepresentation, or
 1108 material omission was made in the Financial Technology Sandbox
 1109 application; or
 1110 d. After consultation with the person, continued testing of
 1111 the innovative financial product or service would:
 1112 (I) Be likely to harm consumers; or
 1113 (II) No longer serve the purposes of this section because
 1114 of the financial or operational failure of the financial product
 1115 or service.
 1116 2. Written notice of a revocation or suspension order made
 1117 under subparagraph 1. must be served using any means authorized
 1118 by law. If the notice relates to a suspension, the notice must
 1119 include any condition or remedial action that the person must
 1120 complete before the office lifts the suspension.
 1121 (c) The office may refer any suspected violation of law to
 1122 an appropriate state or federal agency for investigation,
 1123 prosecution, civil penalties, and other appropriate enforcement
 1124 actions.
 1125 (d) If service of process on a person making an innovative
 1126 financial product or service available to consumers in the
 1127 Financial Technology Sandbox is not feasible, service on the
 1128 office shall be deemed service on such person.
 1129 (11) RULES AND ORDERS.—
 1130 (a) The commission shall adopt rules to administer this
 1131 section.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1132 (b) The office may issue all necessary orders to enforce
 1133 this section and may enforce the orders in accordance with
 1134 chapter 120 or in any court of competent jurisdiction. These
 1135 orders include, but are not limited to, orders for payment of
 1136 restitution for harm suffered by consumers as a result of an
 1137 innovative financial product or service.
 1138 Section 12. Except as otherwise expressly provided in this
 1139 act, this act shall take effect July 1, 2020.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20
Meeting Date

1870
Bill Number (if applicable)

Topic Technology

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

1911 Alhassie FL 32303
City State Zip

Email alicevickers@flacp.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/19/20

Meeting Date

1870

Bill Number (if applicable)

Topic Data Sharing

Amendment Barcode (if applicable)

Name Spence Purcell

Job Title Policy Analyst

Address _____

Phone _____

Street

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Reason Foundation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19

Meeting Date

1870

Bill Number (if applicable)

Topic Technological Development

Amendment Barcode (if applicable)

Name Alex Anderson

Job Title Director of Governmental Relations

Address 101 Gaines St

Phone 410-9661

Street

TLH

FL

32599

City

State

Zip

Email Alex.Anderson@flor.gov

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-19-20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1870

Bill Number (if applicable)

Topic FinTech

Amendment Barcode (if applicable)

Name Meredith Stantfield

Job Title Director, Legislative & Cabinet Affairs

Address PL 11

Phone 850-413-2890

Street

Tallahassee

State

FL

Zip

32399

Email meredith.stantfield@myfloridacp.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

1870

Bill Number (if applicable)

Topic Technological Development

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-19-20

Meeting Date

1870

Bill Number (if applicable)

Topic Technology

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-322-9941

Email snuzzo@jamesmadison.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/19/20

Meeting Date

1870

Bill Number (if applicable)

Topic

ASB 1870

Amendment Barcode (if applicable)

Name

Samuel Armes

Job Title

President of the Florida Blockchain Business Association

Address

Street

Phone

Sam @ 904.1.0

Email

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1870

Bill Number (if applicable)

Topic FinTech / Digital Service

Amendment Barcode (if applicable)

Name Cody Ferrill

Job Title Deputy Chief of Staff

Address 4050 Esplanade Way

Street

Phone 850 487 7001

Tallahassee

FL

32308

City

State

Zip

Email cody.ferrill@dms.myfloridacur.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Department of Management Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1870

Bill Number (if applicable)

286532

Amendment Barcode (if applicable)

Topic Consumer Data ProtectionName John Yanchunis

Job Title _____

Address 201 North Franklin Street

Street

Tampa

City

FL

State

33602

Zip

Phone 813-275-5272

Email _____

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Self

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/20

Meeting Date

SB 1870

Bill Number (if applicable)

381930

Amendment Barcode (if applicable)

Topic Consumer Data Protection

Name John Panchunis

Job Title

Address 201 North Franklin Street

Street

Tampa

City

FL

State

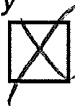
33602

Zip

Phone 813-275-5272

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

SELF

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1870

Bill Number (if applicable)

625642

Amendment Barcode (if applicable)

Topic Consumer Data ProtectionName John Yanchunis

Job Title _____

Address 201 North Franklin Street

Street

Tampa

City

FL

State

33602

Zip

Phone 813-275-5272

Email _____

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1870

Bill Number (if applicable)

731702

Amendment Barcode (if applicable)

Topic Consumer Data Protection

Name John Yanchunis

Job Title

Address 201 North Franklin Street

Street

Tampa

City

FL

State

33602

Zip

Phone 813-275-5272

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1870

Bill Number (if applicable)

Topic Consumer Data Protection

868886

Amendment Barcode (if applicable)

Name John Yanchunis

Job Title

Address 201 North Franklin Street

Street

Tampa

City

FL

State

33602

Zip

Phone 813-275-5272

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SP1F

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/CS/SB 1872

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hutson

SUBJECT: Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications

DATE: February 19, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.	Arnold	Knudson	BI	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1872 creates public record exemptions for certain records containing proprietary business information related to the Financial Technology Sandbox. Specifically, the bill makes confidential and exempt from public disclosure the following records:

- The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Certain information submitted to the Office of Financial Regulation to consider in deciding whether to approve an application for the Financial Technology Sandbox; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

Government agencies will incur costs related to the redaction of records in responding to public records requests.

This bill will take effect on the same date that CS/CS/SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, CS/CS/SB 1870 takes effect July 1, 2020.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Financial Technology Sandbox

CS/CS/SB 1870 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation (OFR). The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

III. Effect of Proposed Changes:

CS/CS/SB 1872 makes confidential and exempt from public inspection and copying the following records relating to the Financial Technology Sandbox because they will contain proprietary business information:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants.
- Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the office, and this lack of cooperation would impair the effective and efficient administration of governmental functions.
- Disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.
- Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment.
- Any proprietary business information in the Financial Technology Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and specified discussions with the office on their financial products or services must be held confidential and exempt from disclosure.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill exempts from public inspection and copying certain information used by the Office of Financial Regulation to decide whether to approve an application for the Financial Technology Sandbox. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains statements of public necessity for justifying the exemption for proprietary business information.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to encourage innovative financial products or services to be made available to Florida consumers. This bill exempts proprietary information of the business entity developing a new product or service. The exemption does not appear to be more broad than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Government agencies will incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.952 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Banking and Insurance on February 19, 2020:**

- Updates statutory references to conform to CS/CS/SB 1870.

CS by Governmental Oversight and Accountability on February 10, 2020:

- Shifts the protected records from those “made available to the commissioner” to those “submitted to the office” of Financial Regulation.
- Narrows the public records exemption (consistent with the public necessity statement) to make confidential and exempt only proprietary business information submitted to the office.

B. Amendments:

None.



816768

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/19/2020	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 82
and insert:

Section 1. Paragraph (g) is added to subsection (5) and paragraph (f) is added to subsection (6) of section 559.952, Florida Statutes, as created by SB 1870, 2020 Regular Session, to read:

559.952 Financial Technology Sandbox.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR



816768

11 APPROVAL.—

12 (g)1. The following information submitted to the office in
13 a Financial Technology Sandbox application under this subsection
14 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
15 I of the State Constitution:

16 a. The reasons why the general law or rule requirements for
17 which an exception or waiver is sought prevent the innovative
18 financial product or service from being made available to
19 consumers.

20 b. The information specified in subparagraphs (d)1.-4. and
21 (d)8.

22
23 However, such information may be released to appropriate state
24 and federal agencies for purposes of investigation.

25 2. This paragraph is subject to the Open Government Sunset
26 Review Act in accordance with s. 119.15 and shall stand repealed
27 on October 2, 2025, unless reviewed and saved from repeal
28 through reenactment by the Legislature.

29 (6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

30 (f)1. Any information relating to the consultation
31 described in paragraph (b) is confidential and exempt from s.
32 119.07(1) and s. 24(a), Art. I of the State Constitution.
33 However, such information may be released to appropriate state
34 and federal agencies for the purposes of investigation.

35 2. This paragraph is subject to the Open Government Sunset
36 Review Act in accordance with s. 119.15 and shall stand repealed
37 on October 2, 2025, unless reviewed and saved from repeal
38 through reenactment by the Legislature.

39 Section 2. The Legislature finds that it is a public



816768

necessity that proprietary business information in the
innovative Financial Technology Sandbox be expressly made
confidential and exempt from public records requirements. The
disclosure of the proprietary business information relating to
the innovative financial technology products and services could
adversely affect the business interests of the Financial
Technology Sandbox applicants. Those entities and individuals
who would otherwise disclose proprietary business information in
their applications to the Office of Financial Regulation to
start a business in this state would hesitate to cooperate with
the office, and this lack of cooperation would impair the
effective and efficient administration of governmental
functions. Further, disclosure of such information would impair
competition in the financial technology industry because
competitors could use the information to impede full and fair
competition in the financial technology industry to the
disadvantage of consumers. Without the exemption from public
records requirements which would protect their proprietary
business information, financial technology innovators might
elect to establish their business in another state with a more
secure business environment. Therefore, the Legislature finds
that any proprietary business information in Financial
Technology Sandbox applications and information relating to
specified consultations between Financial Technology Sandbox
applicants and the office on the applicants' financial products
or services must be held

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



816768

69 Delete lines 6 - 8
70 and insert:
71 Technology Sandbox applications and information



568540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hutson) recommended the following:

Senate Substitute for Amendment (816768) (with title amendment)

Delete lines 18 - 82
and insert:

Section 1. Paragraph (g) is added to subsection (5) and paragraph (f) is added to subsection (6) of section 559.952, Florida Statutes, as created by SB 1870, 2020 Regular Session, to read:

559.952 Financial Technology Sandbox.—



568540

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(g)1. The following information submitted to the office in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers.

b. The information specified in subparagraphs (d)1.-4. and (d)7.

However, such information may be released to appropriate state and federal agencies for purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(f)1. Any information relating to the consultation described in paragraph (b) is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

However, such information may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.



568540

Section 2. The Legislature finds that it is a public necessity that proprietary business information in the innovative Financial Technology Sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the Financial Technology Sandbox applicants. Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state would hesitate to cooperate with the office, and this lack of cooperation would impair the effective and efficient administration of governmental functions. Further, disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers. Without the exemption from public records requirements which would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment. Therefore, the Legislature finds that any proprietary business information in Financial Technology Sandbox applications and information relating to specified consultations between Financial Technology Sandbox applicants and the office on the applicants' financial products or services must be held

===== T I T L E A M E N D M E N T =====



568540

69 And the title is amended as follows:
70 Delete lines 6 - 8
71 and insert:
72 Technology Sandbox applications and information

By the Committee on Governmental Oversight and Accountability;
and Senator Hutson

585-03386-20

20201872c1

A bill to be entitled

An act relating to public records; amending s. 559.952, F.S.; providing exemptions from public records requirements for certain information submitted to the Office of Financial Regulation in Financial Technology Sandbox applications, certain records maintained by specified providers of innovative financial products or services, and information relating to certain consultations; authorizing the office to disclose the information to state and federal agencies for certain purposes; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (h) is added to subsection (4) and paragraph (f) is added to subsection (5) of section 559.952, Florida Statutes, as created by SB 1870, 2020 Regular Session, to read:

559.952 Financial Technology Sandbox.—

(4) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(h)1. The following information submitted to the office in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The reasons why the general law or rule requirements for

585-03386-20

20201872c1

which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers.

b. The information specified in subparagraphs (e)1.-4. and (e)7.

However, such information may be released to appropriate state and federal agencies for purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(f)1. The comprehensive records relating to the innovative financial product or service maintained under paragraph (e) and any information relating to the consultation described in paragraph (b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records and information may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information in the innovative Financial Technology Sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to

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59 the innovative financial technology products and services could
 60 adversely affect the business interests of the Financial
 61 Technology Sandbox applicants. Those entities and individuals
 62 who would otherwise disclose proprietary business information in
 63 their applications to the Office of Financial Regulation to
 64 start a business in this state or who would maintain records
 65 relating to their innovative financial products or services were
 66 they already established here would hesitate to cooperate with
 67 the office, and this lack of cooperation would impair the
 68 effective and efficient administration of governmental
 69 functions. Further, disclosure of such information would impair
 70 competition in the financial technology industry because
 71 competitors could use the information to impede full and fair
 72 competition in the financial technology industry to the
 73 disadvantage of consumers. Without the exemption from public
 74 records requirements which would protect their proprietary
 75 business information, financial technology innovators might
 76 elect to establish their business in another state with a more
 77 secure business environment. Therefore, the Legislature finds
 78 that any proprietary business information in the Financial
 79 Technology Sandbox applications, any records maintained by
 80 financial technology innovators relating to their financial
 81 products or services, and specified discussions with the office
 82 on their financial products or services must be held
 83 confidential and exempt from disclosure under s. 119.07(1),
 84 Florida Statutes, and s. 24(a), Article I of the State
 85 Constitution.

86 Section 3. This act shall take effect on the same date that
 87 SB 1870 or similar legislation takes effect, if such legislation

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20201872c1

88 is adopted in the same legislative session or an extension
 89 thereof and becomes a law.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1874

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hutson

SUBJECT: Fees/Office of Financial Regulation/Financial Technology Sandbox Applications

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.	Arnold	Knudson	BI	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1874 prohibits the Office of Financial Regulation from waiving or modifying a fee provided in ch. 559, F.S., except as otherwise authorized for the Financial Technology Sandbox.

SB 1870 (2020), which is linked to this bill, creates the Financial Technology Sandbox within the Office of Financial Regulation. The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

This bill has no fiscal impact on state government or local governments.

This bill takes effect on the same date that CS/SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

At this point, CS/SB 1870 takes effect July 1, 2020.

II. Present Situation:

The Florida Constitution provides that no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each

house of the Legislature.¹ For purposes of this requirement, a “fee” is any charge or payment required by law, including any fee or charge for services and fees or costs for licenses and to “raise” a fee or tax means to:²

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.³

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.⁴

CS/SB 1870 (2020), which is linked to this bill, creates the Financial Technology Sandbox within the Office of Financial Regulation. The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

III. Effect of Proposed Changes:

The bill prohibits the Office of Financial Regulation from waiving or modifying a fee provided in ch. 559, F.S., except as otherwise authorized for the Financial Technology Sandbox.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹ Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.

² Fla. Const. art. VII, s. 19(d).

³ Fla. Const. art. VII, s. 19(e).

⁴ Fla. Const. art. VII s. 19(c).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill is not expected to impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.952 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 10, 2020:

The CS removes the application fee for the Financial Technology Sandbox and the fees associated with fingerprint processing and retention. While the companion bill, SB 1870, allows certain statutory fees to be waived, the CS prohibits the waiver or modification of any fees provided in ch. 559, F.S., except as otherwise provided in SB 1870.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Hutson

585-03385-20

20201874c1

1 A bill to be entitled
2 An act relating to fees; amending s. 559.952, F.S.;
3 prohibiting the Office of Financial Regulation from
4 waiving or modifying fees for the Financial Technology
5 Sandbox except as specified; providing a contingent
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (12) is added to section 559.952,
11 Florida Statutes, as created by SB 1870, 2020 Regular Session,
12 to read:

13 559.952 Financial Technology Sandbox.—

14 (12) FEES.—The office may not waive or modify any fee
15 provided under this chapter except as authorized under this
16 section.

17 Section 2. This act shall take effect on the same date that
18 SB 1870 or similar legislation takes effect, if such legislation
19 is adopted in the same legislative session or an extension
20 thereof and becomes a law.

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Banking & Insurance

Judge:

Started: 2/19/2020 1:34:19 PM

Ends: 2/19/2020 3:30:46 PM

Length: 01:56:28

1:34:21 PM Meeting called to order by Chair Broxson
1:34:35 PM Roll call - quorum present
1:37:55 PM Comments by Sen. Broxson on staff
1:38:12 PM Sen. Rouson with comments on staff.
1:39:10 PM Sen. Taddeo with comments on CS/S 186
1:39:32 PM Motion to tp bill.
1:39:46 PM TAB 4 CS/CS s 1668 - tp'd
1:40:38 PM TAB 3 - CS/SB 1366 by Sen Gruters
1:41:11 PM Explanation of bill by Sen. Gruters
1:41:21 PM Roll call vote on CS s 1366 - Favorable
1:43:03 PM Tab 8 -CS/S 1874 by Hutson - Ofc. of Financial Regulation
1:44:03 PM Explanation of bill by Sen. Hutson
1:44:17 PM Roll call vote - Favorable
1:44:49 PM TAB 6 CS/SB 1870 - IT, Hutson - Technology Innovation
1:45:25 PM Sen. Hutson recognized to explain delete all amend (142964)
1:47:42 PM Sen. Hutson recognized to further explain the bill.
1:53:08 PM Question on bill by Sen. Lee
1:54:24 PM Follow up question posed by Sen. Lee
2:00:05 PM Amd. 286532 by Sen. Rouson
2:00:17 PM Explanation of Amendment by Sen. Rouson
2:01:14 PM John Yanchunis
2:03:40 PM Sen. Hutson recognized to comment on amd. 286532.
2:04:02 PM Sen. Rouson recognized to close on amendment
2:04:57 PM
2:04:59 PM Voice Vote on Amend. - failed
2:05:34 PM Amd. 381930 by Sen. Rouson
2:05:46 PM Explanation of Amendment by Sen. Rouson
2:06:23 PM John Yanchunis
2:08:30 PM Senator Hutson with comments on amendment
2:08:51 PM Senator Lee in debate on amendment
2:09:35 PM Senator Rouson to close on amendment
2:10:07 PM Voice Vote - failed
2:10:24 PM Amd. 625642 by Sen. Rouson
2:10:37 PM Sen. Rouson recognized to explain the amend.
2:11:40 PM John Yanchunis
2:12:22 PM Sen. moves Amd. 625642 - withdrawn
2:12:58 PM Amd. 731702 - explanation of amd. by Sen. Rouson
2:13:39 PM John Yanchunis
2:15:00 PM Amd. withdrawn (731702)
2:15:28 PM Sen. Rouson recognized to explain Amd. 868886
2:16:00 PM John Yanchunis
2:17:12 PM Question by Sen. Lee
2:17:17 PM Sen. Hutson with comments
2:18:09 PM Sen. Rouson to close on amd.
2:18:53 PM Roll call vote on Amd. 868886 -Fails
2:19:27 PM Late filed amd. (775314 by Sen. Taddeo)
2:19:42 PM Sen. Taddeo recognized to explain the amd. to amd.
2:20:46 PM Sen. Hutson with comments on amd. to amd.
2:21:24 PM Sen. Taddeo to close on amd. to amd. (775314)
2:22:23 PM Voice Vote - Fails
2:22:40 PM Back on Delete All Amd. (142964)
2:23:03 PM Sen. Lee in debate on delete all amend.

2:23:47 PM Sen. Hutson with comments.
 2:23:53 PM Sen. Lee with question of Sen. Hutson
 2:25:34 PM DMS presentation--Cody Farrill, Deputy of Chief of Staff
 2:26:51 PM Sen. Lee with question of speaker
 2:28:54 PM Voice Vote on Amd. (adopted)
 2:29:03 PM Back on bill as amended.
 2:29:18 PM Alice Vickers, FL Alliance for Consumer Protection
 2:31:51 PM Spence Purnell - Reason Foundation
 2:33:50 PM Alex Anderson OFR
 2:34:06 PM Sen. Lee with question of speaker.
 2:35:34 PM Sen. Thurston with question.
 2:37:33 PM Meredith Stanfield-DFS
 2:38:20 PM Sen. Lee recognized for question.
 2:40:00 PM Sen. Hutson recognized to comment on bill.
 2:42:35 PM Sen Lee recognized for question.
 2:44:18 PM Sen. Thurston recognized for question and comments
 2:45:19 PM Sen. Rouson recognized for comments
 2:48:00 PM Roll call vote on CS/CS/S 1870 - Passed
 2:48:58 PM TAB 7 by GO, Hutson - Public Records
 2:49:16 PM Senator Hutson recognized to present the sub amd.
 2:49:41 PM Explanation of Sub. Amd by Sen. Hutson (568540)
 2:50:06 PM Voice Vote on amd. - Fav.
 2:50:16 PM Back on bill as amended.
 2:50:23 PM Roll call vote: Favorable
 2:51:11 PM Sen. Broxson passes chair to V. Chair Rouson
 2:51:41 PM TAB 5 S 1828 by Broxson - Litigation Financing Consumer Protection
 2:52:08 PM Explanation of bill by Sen. Broxson
 2:52:30 PM Delete all amd. (793752)
 2:52:57 PM Sen. Broxson recognized to explain delete all amendment.
 2:53:44 PM Amd. to Delete all - (469258) Sen. Thurston
 2:54:28 PM Sen. Thurston recognized to explain the amd.
 2:56:16 PM Jack Kelly- ALFA
 3:01:26 PM Tim Numgesse - NFIB
 3:02:26 PM Eric Schuller - ARC Legal Funding
 3:03:56 PM Sen. Thurston recognized to close on Amd.
 3:04:07 PM Voice Vote - Favorable
 3:04:35 PM Amd. 481944 by Sen. Thurston
 3:04:51 PM Sen. Thurston recognized to explain amd.
 3:06:59 PM Sen. Lee with question on amd.
 3:08:34 PM Sen. Thurston responds
 3:09:11 PM
 3:09:14 PM Jack Kelly Litigation funding in support
 3:11:25 PM Sen. Perry with Motion for time certain vote at 3:25
 3:11:57 PM Voice Vote on Motion -
 3:12:13 PM Roll call vote on Motion for time certain vote - Motion fails
 3:13:06 PM Eric Schuller - ARC Legal Funding
 3:14:35 PM Tim Nungesser - NFIB
 3:15:10 PM Sen. Broxson (opposes amd.)
 3:16:02 PM Voice Vote on Amd. (fails)
 3:16:30 PM Amd. 504878 by Sen. Thurston
 3:16:42 PM Sen. Thurston recognized to explain the amd.
 3:17:52 PM Tom Carey - Client Legal Funding
 3:19:31 PM Sen. Lee recognized for question of speaker
 3:20:23 PM Jack Kelly - ALFA
 3:21:42 PM Eric Schuller - ARC Legal Funding
 3:22:45 PM Sen. Lee in debate on amendment.
 3:23:07 PM Sen. Thurston recognized to close on amendment.
 3:23:41 PM Voice Vote on amd.
 3:23:48 PM Roll call vote on Amd. -Fails
 3:24:46 PM Sen. Thurston recognized to explain sub amed. (327102)
 3:26:12 PM Voice Vote on Amd. - Fails
 3:26:40 PM Sen. Thurston recognized to explain Amd. (339220)

3:27:40 PM	Sen. Lee with question to Sen. Thurston on amendment.
3:28:48 PM	Sen. Broxson opposes amd.
3:28:55 PM	Voice Vote - Fails
3:29:03 PM	Back on delete amd.
3:29:30 PM	Sen. Lee with question to Sponsor.
3:30:19 PM	Sen. Broxson with comment.
3:30:33 PM	Meeting adjourned.