

Tab 1 SB 566 by Perry; (Similar to H 00365) Motor Vehicle Rentals						
254770	D	S	RCS	BI, Perry	Delete everything after	03/24 12:17 PM
103668	AA	S	UNFAV	BI, Rouson	Delete L.276 - 283:	03/24 12:17 PM
584970	AA	S	UNFAV	BI, Rouson	Delete L.377 - 381:	03/24 12:17 PM
536256	A	S		BI, Rouson	Delete L.294 - 301:	03/15 08:21 AM
580820	A	S		BI, Rouson	Delete L.393 - 397:	03/15 08:22 AM

Tab 2 SB 786 by Cruz (CO-INTRODUCERS) Berman, Stewart; (Identical to H 00109) Prescription Insulin Drugs						
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Tab 3 SB 1750 by Broxson; (Similar to H 01293) Litigation Financing Consumer Protection						
287784	A	S		BI, Broxson	Delete L.96 - 355:	03/23 08:23 AM
968410	AA	S		BI, Rouson	Delete L.104 - 105.	03/23 02:13 PM
567790	AA	S		BI, Rouson	Delete L.228 - 235.	03/23 02:15 PM
104902	AA	S		BI, Thurston	Delete L.198 - 227.	03/23 05:17 PM
305824	AA	S		BI, Thurston	Delete L.26:	03/23 05:17 PM
567974	A	S		BI, Thurston	Delete L.43:	03/23 08:24 AM
646616	A	S		BI, Thurston	Delete L.118:	03/23 08:23 AM
688212	A	S		BI, Rouson	Delete L.43:	03/23 08:24 AM
771578	A	S		BI, Rouson	Delete L.201 - 202.	03/23 08:24 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Wednesday, March 24, 2021

TIME: 8:30—11:00 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Boyd, Chair; Senator Broxson, Vice Chair; Senators Brandes, Burgess, Gruters, Passidomo, Rodrigues, Rouson, Stargel, Stewart, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 566 Perry (Similar H 365, Compare H 785, S 708)	Motor Vehicle Rentals; Specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; 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 insurance requirements for shared vehicle owners and shared vehicle drivers under peer-to-peer car-sharing programs; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners, etc. BI 03/16/2021 Temporarily Postponed BI 03/24/2021 Fav/CS TR AP	Fav/CS Yeas 11 Nays 1
2	SB 786 Cruz (Identical H 109)	Prescription Insulin Drugs; Defining the term "prescription insulin drug"; requiring individual and group health insurance policies, respectively, to cap an insured's monthly cost-sharing obligation for covered prescription insulin drugs at a specified amount; providing that coverage for prescription insulin drugs may not be subject to a deductible, etc. BI 03/24/2021 Favorable AHS AP	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, March 24, 2021, 8:30—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1750 Broxson (Similar H 1293)	Litigation Financing Consumer Protection; Creating part XIII of ch. 559, F.S., entitled "Litigation Financing Consumer Protection Act"; requiring litigation financiers to register with the Department of State before engaging in litigation financing; providing requirements for litigation financing contracts; authorizing litigation financiers to assess specified interest, fees, and charges; providing that specified communications between attorneys and litigation financiers do not affect statutory or common-law privilege, etc. BI 03/24/2021 Temporarily Postponed JU RC	Temporarily Postponed

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 566

INTRODUCER: Banking and Insurance Committee and Senator Perry

SUBJECT: Motor Vehicle Rentals

DATE: March 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Fav/CS
2.			TR	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 566 establishes insurance and operational requirements for peer-to-peer car-sharing programs (programs). Under the bill, peer-to-peer car-sharing is the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program that connects motor vehicle owners with drivers for financial consideration.

The bill applies to peer-to-peer car-sharing programs the existing 6 percent tax that applies to lease or rental of motor vehicles. The bill exempts a motor vehicle rental or lease with a duration of less than 24 hours and a peer-to-peer car-sharing program agreement from the existing rental car surcharge of \$2 per day. The bill imposes a reduced surcharge of \$1 per day on a motor vehicle rental or lease with a duration of less than 24 hours and on a peer-to-peer car-sharing program agreement.

The bill requires that the program ensure that during the car-sharing period, the shared vehicle owner (owner) and shared vehicle driver (driver) are insured to at least the minimum statutory requirements for property damage liability, bodily injury liability, personal injury protection, and uninsured motorists coverage. The program must assume liability for damages that may occur during the car-sharing period in amounts that may not be less than the minimum statutory coverage requirements for BI, PD, PIP, and UM, with exceptions. The bill provides that programs and owners are exempt from vicarious liability consistent with federal law.

The bill also requires a program to:

- Keep and retain specified records;
- Provide notice to owners and drivers of the rates of the program contract, the programs' right to seek indemnification and make defenses, the fact that a shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle, conditions under which the shared vehicle driver must maintain insurance, and an emergency telephone number for roadside assistance and customer service inquiries;
- Require that drivers have a current, valid driver license or be otherwise authorized to drive;
- Have sole responsibility for equipment put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction; and
- Verify shared vehicles have been repaired pursuant to any safety recalls, provide notice the owner of recalls, and remove vehicles from the program that have not been repaired.

The bill takes effect January 1, 2022.

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.

Peer-to-Peer Car-sharing

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer car-sharing program's website.¹ Car-sharing programs require photos of the car and help the owner

¹ Turo, Getaround, and Drift are examples of car-sharing programs.

determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Hosts typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.²

Guests also register with the car-sharing site. The car-sharing program will conduct a background check and review the guests' driving records before approving them. The process involves choosing an available car, reserving a pick-up date and time, and providing credit card information if it is not already on file. At the end of the sharing period, the guest replaces any consumed fuel before returning the car to its pickup location.³

One car-sharing website reports that its program has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to \$1 million in liability insurance.⁴ In Florida, the same car-sharing program has over 611,000 residents signed up as guests and 23,000 hosts (of which 95 percent share two or fewer cars).⁵ The average trip duration is 4.4 days and the average host earns \$300 per month.⁶

Car-Sharing Service

“Car-sharing service” is a membership-based organization or business that 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, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- 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.

Minimum Insurance Requirements for Motor Vehicles

Florida's Financial Responsibility Law of 1955⁷ provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.⁸ In combination with the Florida

² Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car-sharing*, Autotrader, (February 2015), available at <https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961> (last visited March 12, 2021).

³ *Id.*

⁴ Turo, *About Turo*, available at <https://turo.com/about> (last visited March 12, 2021).

⁵ Florida House of Representatives Subcommittee on Transportation and Infrastructure, *HB 377 Staff Analysis* (February 5, 2020), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0377a.TIS.DOCX&DocumentType=Analysis&BillNumber=0377&Session=2020> (last visited March 12, 2021).

⁶ *Id.*

⁷ Chapter 624, F.S.

⁸ Section 324.011, F.S.

Motor Vehicle No-Fault Law,⁹ operators of motor vehicles with four or more wheels are required to purchase minimum insurance coverages for property damage liability¹⁰ and personal injury protection.¹¹ Proof of such coverage is required only after an accident.¹²

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently requires minimum PD coverage limits in the amount of \$10,000, or \$30,000 for a combined PD and bodily injury liability policy.¹³

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of \$10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,¹⁴ which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.¹⁵ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a \$5,000 death benefit.¹⁶

Liability for Motor Vehicle Lessors

Florida's Financial Responsibility Law of 1955 also provides liability limits applicable to rented and leased vehicles. Under a motor vehicle rental or lease agreement with a term of less than one year, the lessor is deemed the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith up to \$100,000 per person and \$300,000 per incident for bodily injury.¹⁷ The lessor is liable for property damage up to \$50,000.¹⁸

However, if the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined PD and BI, the lessor is liable up to an additional \$500,000 in economic damages arising from the operation of the motor vehicle.¹⁹ This additional specified liability of the lessor for economic damages is reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.²⁰

⁹ Sections 627.730 – 627.7405, F.S.

¹⁰ Section 324.022, F.S.

¹¹ Section 627.733, F.S.

¹² Section 324.011, F.S.

¹³ Section 324.022(1), F.S.

¹⁴ Section 627.736(1), F.S.

¹⁵ Section 627.736(1)(a)(4), F.S.

¹⁶ Section 627.736(1)(c), F.S.

¹⁷ Section 324.021(9)(b)1, F.S.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

Additional Optional Insurance Coverages for Motor Vehicles

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of \$10,000 because of bodily injury to, or death of, one person in any one crash, and \$20,000 for bodily injury to, or death of, two or more persons in any one crash.²¹ Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage.²²

Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.²³

Florida Sales and Use Tax and Motor Vehicle Rental Surcharges

The lease or rental of tangible personal property, including vehicles, is taxable.²⁴ 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 percent²⁵ of the gross proceeds derived from the lease or rental.²⁶ 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.²⁷ 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.²⁸

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 surcharge²⁹ of \$2.00 per day, or any part of a day, upon the lease or rental of a "motor vehicle licensed for hire"³⁰ and designed to carry less than nine passengers,

²¹ Chapter 324.022, F.S.

²² Section 627.727(1), F.S.

²³ Section 627.727(2), F.S.

²⁴ Section 212.05(1), F.S.

²⁵ Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. *See* s. 212.054, F.S.

²⁶ Section 212.05(1)(c), F.S.

²⁷ Section 212.02(10)(g), F.S.

²⁸ Rule 12A-1.007(13)(a)1, F.A.C.

²⁹ 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.

³⁰ 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,

regardless of whether such motor vehicle is licensed in Florida.³¹ The surcharge applies to the first 30 days of the term of any lease or rental.³² 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....”³³ 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.”³⁴

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.³⁵ 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.³⁶ 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.³⁷

III. Effect of Proposed Changes:

Section 1 amends s. 212.05, F.S., to subject the lease or rental of a motor vehicle by a peer-to-peer car-sharing program to the 6 percent sales tax on of the gross proceeds derived from the lease or rental of a motor vehicle.

Section 2 amends s. 212.0606, F.S., to exempt a motor vehicle rental or lease with a duration of less than 24 hours and a peer-to-peer car-sharing program agreement from the existing rental car surcharge of \$2 per day.

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.

³¹ Section 212.0606(1), F.S.

³² *Id.*

³³ Section 212.02(12), F.S.

³⁴ Section 212.02(2), F.S.

³⁵ Rule 12A-16.002(3), F.A.C.

³⁶ Section 212.0606(2), F.S.

³⁷ *Id.*

The bill moves the existing definition for “car-sharing service” to the definitions subsection and provides the following definitions.

- “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.
- “Peer-to-peer car-sharing program” has the same meaning as in s. 627.7483(1), F.S.

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

The bill requires a peer-to-peer car-sharing-program to report to the Department of Revenue surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.

Section 3 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:

- “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.
- “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.
- “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.
- “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, which alternatively agreed-upon location must be incorporated into the peer-to-peer car-sharing program agreement; or
 - The time the shared vehicle owner takes possession and control of the shared vehicle.
- “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. The term does not include the use of a for-hire vehicle as defined in s. 320.01(15), 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 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), F.S., a taxicab association, the owner of a for-hire

vehicle as defined in s. 320.01(15), F.S., or a service provider that is solely providing hardware or software as a service to a person or an entity that is not effectuating payment of financial consideration for use of a shared vehicle.

- “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. 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), F.S., or for a car-sharing service as defined in s. 212.0606(1), F.S.
- “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), F.S., or a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., for carpool as defined in s. 450.28(3), F.S., or for car-sharing service as defined in s. 212.0606(1), 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 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.
- “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), F.S.

Insurance Requirements, Liability

Insurance Coverage Requirements

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

- 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 \$10,000³⁸ 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.

³⁸ 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.

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:

- 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 a claim occurs during the car-sharing period in another state with higher minimum financial responsibility limits requiring under ch. 324, F.S., the minimum insurance requirements under the peer-to-peer car-sharing program satisfy the difference in minimum coverage amounts up to the applicable policy limits.

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.

The insurer, insurers, or 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; or
- A dispute exists over whether the shared vehicle was returned to the alternatively agreed-upon location as required in the peer-to-peer car-sharing program agreement.

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.

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.

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. This provision also does not invalidate, limit, or restrict an insurer from underwriting, canceling, or nonrenewing an insurance policy as available under existing law.

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 and excluded under the terms of its policy.

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 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 valid driver license 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

The bill provides that 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.

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 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:
 - A shared vehicle may not be made available on the peer-to-peer car-sharing program if the vehicle is subject to a safety recall and the required repairs have not been made.
 - If the shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, the owner must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible so that the owner may address the safety recall repair.

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.

Section 4 provides an effective date of January 1, 2022.

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 sales tax under s. 212.05, F.S., and 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.”³⁹ 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 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.”⁴⁰ 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 state sales tax and rental car surcharges, neither imposes a fee on an industry not currently subject to state sales tax or rental car surcharges under the section nor raises a fee on an industry currently subject to state sales tax or 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.⁴¹

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill applies the existing 6 percent sales tax on motor vehicle rentals under s. 212.05, F.S., to a peer-to-peer car-sharing program agreement.

The bill exempts a motor vehicle rental or lease with a duration of less than 24 hours and a peer-to-peer car-sharing program agreement from the existing rental car surcharge of \$2 per day under s. 212.0606, F.S.

The bill imposes a reduced surcharge of \$1 per day under s. 212.0606, F.S., on a motor vehicle rental or lease with a duration of less than 24 hours and on a peer-to-peer car-sharing program agreement.

B. Private Sector Impact:

Peer-to-peer car-sharing programs will be responsible for collecting and remitting the 6 percent sales tax on motor vehicle rentals under s. 212.05, F.S., and collecting the \$1 per day rental car surcharge under s. 212.0606, F.S.

Motor vehicle rental companies will be responsible for collecting the \$1 per day rental car surcharge on rentals and leases with a duration of less than 24 hours.

³⁹ Fla. Const. art. VII, s. 19(d)(1) (2019).

⁴⁰ Fla. Const. art. VII, s. 19(d)(2) (2019).

⁴¹ See Fla. Const. art. VII, s. 19(a),(b) (2019).

Peer-to-peer car-sharing programs will be responsible for reporting surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.

C. Government Sector Impact:

The revenue impact of the bill has not yet been estimated by the Revenue Estimating Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.05 and 212.0606.

This bill creates section 627.7483 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance on March 24, 2021:

The committee substitute makes the following changes to the underlying bill:

- Exempts all peer-to-peer car-sharing programs and those motor vehicle leases and rentals with a duration of less than 24 hours from the existing \$2 per day surcharge;
- Imposes a reduced \$1 per day surcharge on all peer-to-peer car-sharing programs and those motor vehicle leases and rentals with a duration of less than 24 hours;
- Requires that the peer-to-peer car-sharing program report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time;
- Requires the alternatively agreed-upon location for returning the vehicle to be incorporated into the peer-to-peer car-sharing agreement;
- Provides that Florida's minimum insurance requirements for peer-to-peer car-sharing programs satisfy the difference in coverage requirements in another state with higher minimum insurance requirements;
- Requires the insurer, insurers, or peer-to-peer car-sharing program that satisfies the minimum insurance requirements to assuming primary liability for the claim under certain conditions;
- Preserves an insurer's authority to underwrite, cancel, or nonrenew an insurance policy under current law;

- Removes applicable fees as a requirements disclosure items in a peer-to-peer car-sharing program agreement; and
- Additional technical and conforming changes.

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	.	
03/24/2021	.	
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	.	
	.	

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 and to peer-to-peer car-sharing programs:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or through 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.

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 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.



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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;

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

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

6. Without a separate fee for minimum financial



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responsibility liability insurance; and

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

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

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

(2) Except as provided in subsections (3), (4), and (5) subsection (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 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 and 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. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) A surcharge of \$1 per day or any part of a day is imposed upon each peer-to-peer car-sharing program agreement involving a shared vehicle that is registered in this state and designed to carry fewer than nine passengers for financial consideration and without transfer of the title of the shared vehicle. If the duration of the car-sharing period for a peer-to-peer car-sharing program agreement subject to the surcharge established pursuant to this section is less than 24 hours, the



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applicable surcharge will be \$1 per usage. The surcharge applies to the first 30 days only of a car-sharing period for any peer-to-peer car-sharing program agreement to which the surcharge applies and must be collected by the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(4) A surcharge of \$1 per usage is imposed upon the lease or rental for less than 24 hours by a motor vehicle rental company 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 and 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 is subject to all applicable taxes imposed by this chapter.

~~(5)(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 application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing~~



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~~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.

(6) (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 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



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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.

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

(b) ~~(a)~~ The department shall require a dealer or peer-to-peer car-sharing program ~~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 in which ~~where~~ the rental agreement was entered into, except that, for peer-to-peer car-sharing, the surcharge shall be attributable to the county corresponding to the location of the motor vehicle at the car-sharing start time.

(c) ~~(b)~~ A dealer or peer-to-peer car-sharing program that collects a ~~Dealers who collect the rental car~~ surcharge pursuant to this section 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; except that, in the case of peer-to-peer car-sharing, the peer-to-peer car-sharing program shall report the applicable surcharge revenue attributed to the county corresponding to the location of the motor vehicle at the car



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sharing start time. 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.

~~(8)-(5)~~ The surcharge imposed by this section does not apply to a motor vehicle or a shared 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:



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1. The expiration of the agreed-upon period of time 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, which alternatively agreed-upon location must be incorporated into the peer-to-peer car-sharing program agreement; or

3. The time the shared vehicle owner 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), 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(2).

(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(2), a taxicab association, the owner of a for-hire vehicle as defined in s. 320.01(15), or a service provider that



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is solely providing hardware or software as a service to a person or an entity that is not effectuating payment of financial consideration for use of a shared vehicle.

(g) "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. 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(2).

(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 a carpool as defined in s. 450.28(3), or for a car-sharing service as defined in s. 212.0606(2).

(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.—



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(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 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. If a claim occurs during



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the car-sharing period in another state with minimum financial responsibility limits higher than those limits required under chapter 324, the coverage maintained under paragraph (a) satisfies the difference in minimum coverage amounts up to the applicable policy limits.

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), 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



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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
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:



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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. The insurer, insurers, or peer-to-peer car-sharing program providing coverage under paragraph (2)(a) shall assume primary liability for a claim when:

a. A dispute exists over 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 information required under subsection (5); or

b. A dispute exists over whether the shared vehicle was returned to the alternatively agreed-upon location as required under subparagraph (1)(d)2.

(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 coverage and the duty to defend or indemnify for any claim under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property



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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.

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. This paragraph does not invalidate, limit, or restrict an insurer's ability under existing law to underwrite, cancel, or nonrenew any insurance policy.

(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 recovery 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



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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 shared vehicle, including, but not limited to, the times used, car-sharing period pick up and drop off locations, 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; and

(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, settlement, negotiation, or litigation.

(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.



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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 insurance coverage.

4. The daily rate 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



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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 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 driver license number 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.



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(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 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



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any act or omission of the peer-to-peer car-sharing program
which results in the bodily injury of 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 January 1, 2022.

===== 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; amending s. 212.0606, F.S.; defining terms;
specifying the applicable 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 specified surcharges; creating s.
627.7483, F.S.; defining terms; specifying motor
vehicle insurance requirements for peer-to-peer car-
sharing programs; providing that peer-to-peer car-



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sharing programs have an insurable interest in shared vehicles during specified periods; providing construction; 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; providing for the assumption of primary liability for claims when certain disputes exist; requiring shared vehicle owners' insurers to indemnify peer-to-peer car-sharing programs under certain circumstances; providing exemptions from vicarious liabilities for peer-to-peer car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude specified coverages under certain circumstances; providing construction related to exclusions; authorizing specified insurers to seek recovery against motor vehicle insurers of peer-to-peer car-sharing programs under certain circumstances; requiring peer-to-peer car-sharing programs to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping, record retention, and record-sharing requirements for peer-to-peer car-sharing programs; specifying disclosure requirements for peer-to-peer car-sharing program agreements; specifying 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



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591 indemnification regarding such equipment; specifying
592 requirements for peer-to-peer car-sharing programs
593 relating to safety recalls on a shared vehicle;
594 providing construction; providing an effective date.



103668

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/24/2021	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (254770)

Delete lines 276 - 283
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 s. 627.736.

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



584970

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/24/2021	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (254770) (with title amendment)

Delete lines 377 - 381
and insert:

(b) Vicarious liability.—Section 324.021(9)(b)3. does not limit the liability of a shared vehicle owner for any loss or injury that occurs during the car-sharing period and arises out of the ownership, maintenance, or use of the shared vehicle.



584970

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 572 - 574

14 and insert:

15 circumstances; providing construction; authorizing
16 motor vehicle



536256

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 294 - 301
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 s. 627.736.

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



580820

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 393 - 397

and insert:

(b) Vicarious liability.—Section 324.021(9)(b)3. does not limit the liability of a shared vehicle owner for any loss or injury that occurs during the car-sharing period and arises out of the ownership, maintenance, or use of the shared vehicle.

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



580820

11 And the title is amended as follows:
12 Delete lines 29 - 30
13 and insert:
14 construction;

By Senator Perry

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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; providing construction; 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 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

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30 car-sharing programs and shared vehicle owners;
31 authorizing motor vehicle insurers to exclude
32 coverages and a duty to defend or indemnify claims
33 under a shared vehicle owner's policy; providing
34 construction relating to exclusions; providing a right
35 of contribution to a shared vehicle owner's insurer
36 for certain claims; requiring peer-to-peer car-sharing
37 programs to provide certain information to shared
38 vehicle owners regarding liens; specifying
39 recordkeeping, record retention, and record-sharing
40 requirements for peer-to-peer car-sharing programs;
41 specifying disclosure requirements for peer-to-peer
42 car-sharing program agreements; specifying driver
43 license verification and data retention requirements
44 for peer-to-peer car-sharing programs; providing that
45 peer-to-peer car-sharing programs have sole
46 responsibility for certain equipment in or on a shared
47 vehicle; providing for indemnification regarding such
48 equipment; specifying requirements for peer-to-peer
49 car-sharing programs relating to safety recalls on a
50 shared vehicle; providing construction; providing an
51 effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Paragraph (c) of subsection (1) of section
56 212.05, Florida Statutes, is amended to read:

57 212.05 Sales, storage, use tax.—It is hereby declared to be
58 the legislative intent that every person is exercising a taxable

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59 privilege who engages in the business of selling tangible
60 personal property at retail in this state, including the
61 business of making mail order sales, or who rents or furnishes
62 any of the things or services taxable under this chapter, or who
63 stores for use or consumption in this state any item or article
64 of tangible personal property as defined herein and who leases
65 or rents such property within the state.

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

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

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

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

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

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

86 2. Except as provided in subparagraph 3., for the lease or
87 rental of a motor vehicle for a period of not less than 12

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months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no 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;

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

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

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

121 6. Without a separate fee for minimum financial
122 responsibility liability insurance; and

123 7. Owned or controlled by the car-sharing service or its
124 affiliates.

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

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

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

144 (3)~~(2)~~ A member of a car-sharing service who uses a motor
145 vehicle as described in subsection (2) ~~(1)~~ for less than 24

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

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

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

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

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

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

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

167 ~~(g) Owned or controlled by the car-sharing service or its~~
168 ~~affiliates.~~

169
170 The surcharge imposed under this subsection does not apply to
171 the lease, rental, or use of a motor vehicle from a location
172 owned, operated, or leased by or for the benefit of an airport
173 or airport authority.

174 (4) (a) ~~(3) (a)~~ Notwithstanding s. 212.20, and less the costs

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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 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

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204 surcharge shall report to the department all surcharge revenues
205 attributed to the county where the rental agreement was entered
206 into on a timely filed return for each required reporting
207 period. The provisions of this chapter which apply to interest
208 and penalties on delinquent taxes apply to the surcharge. The
209 surcharge shall not be included in the calculation of estimated
210 taxes pursuant to s. 212.11. The dealer's credit provided in s.
211 212.12 does not apply to any amount collected under this
212 section.

213 ~~(6)(5)~~ The surcharge imposed by this section does not apply
214 to a motor vehicle provided at no charge to a person whose motor
215 vehicle is being repaired, adjusted, or serviced by the entity
216 providing the replacement motor vehicle.

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

219 627.7483 Peer-to-peer car sharing; insurance requirements.-

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

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

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

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

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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 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.

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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 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,

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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 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

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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),
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

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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 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-

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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:

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;

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3. Uninsured and underinsured motorist coverage;
4. Medical payments coverage;
5. Comprehensive physical damage coverage; and
6. Collision physical damage coverage.

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

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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 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

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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
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

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

496 c. Is otherwise specifically authorized by the Department
497 of Highway Safety and Motor Vehicles to drive vehicles of the
498 class of the shared vehicle.

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

501 a. The name and address of the shared vehicle driver;
502 b. The number of the driver license of the shared vehicle
503 driver and each other person, if any, who will operate the
504 shared vehicle; and

505 c. The place of issuance of the driver license.

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

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

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

526 2. Notify the shared vehicle owner that if the shared
527 vehicle owner:

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

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

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

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

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

549 (b) The ability of a peer-to-peer car-sharing program to
550 seek, by contract, indemnification from the shared vehicle owner
551 or the shared vehicle driver for economic loss resulting from a

8-00637-21

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552 breach of the terms and conditions of the peer-to-peer car-
553 sharing program agreement.

554 Section 4. This act shall take effect January 1, 2022.

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 566

Bill Number (if applicable)

103668

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name William Cotterall

Job Title General Counsel

Address 218 S. Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-224-9403

Email wcotterall@myfja.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice 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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

103668

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name George Feijoo

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Phone 3057207099

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Email grfeijoo@flapartners.com

City

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Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Avail

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/24/21

Meeting Date

566

Bill Number (if applicable)

Am 103668

Amendment Barcode (if applicable)

Topic Peer to Peer Car Sharing

Name Leslie Dughi

Job Title Director

Address 101 F. College Avenue
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Phone _____

City

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Zip

Email ldughi@gtlaw.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Enterprise Holdings

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

584970

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.

Phone 3057207099

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Email grfeijoo@flapartners.com

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Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Avail

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 566

Bill Number (if applicable)

584970

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name William Cotterall

Job Title General Counsel

Address 218 S. Monroe Street

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Phone 850-224-9403

Email wcotterall@myfja.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/24/21

Meeting Date

506

Bill Number (if applicable)

Am 534 970

Amendment Barcode (if applicable)

Topic _____

Name Leslie Dughi

Job Title _____

Address 101 E College Ave
Street

Phone _____

City

State

Zip

Email ldughi@gtlaw.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Enterprise Holdings

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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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

254770

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name Beth A. Vecchioli (pronounced Vetch-ee-o-lee)

Job Title Senior Policy Advisor, Holland & Knight

Address 315 S. Calhoun Street, Suite 600

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Tallahassee, FL 32301

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Phone 850-425-5623

Email beth.vecchioli@hklaw.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/11

Meeting Date

File

Bill Number (if applicable)

A 254770

Amendment Barcode (if applicable)

Topic _____

Name Leslie Dughi

Job Title Director

Address 101 E College Ave
Street

Phone _____

City

State

Zip

Email dughi.l@gflaw.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Enterprise Holdings

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

254770

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.

Phone 3057207099

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Email grfeijoo@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Avail

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name Beth A. Vecchioli (pronounced Vetch-ee-o-lee)

Job Title Senior Policy Advisor, Holland & Knight

Address 315 S. Calhoun Street, Suite 600

Phone 850-425-5623

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Email beth.vecchioli@hklaw.com

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

Topic Peer to peer car sharing

Amendment Barcode (if applicable)

Name Leslie Dughi

Job Title Director

Address 101 East College Avenue

Phone 850 519 3903

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Tallahassee

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Email dughil@gtlaw.com

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Enterprise Holdings

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

SB 566

Bill Number (if applicable)

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

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Email bbevis@aif.com

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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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 566

Bill Number (if applicable)

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name William Cotterall

Job Title General Counsel

Address 218 S. Monroe Street

Phone 850-224-9403

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Email wcotterall@myfja.org

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Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.

Phone 3057207099

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Email grfeijoo@flapartners.com

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Avail

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name Robert Stuart

Job Title Government Consultant

Address 301 S Bronough Street, Suite 600

Phone 850-577-9090

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Email robert.stuart@gray-robinson.com

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Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Hillsborough County Aviation Authority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24

Meeting Date

566

Bill Number (if applicable)

Topic Motor Vehicle Rentals / Peer to Peer

Amendment Barcode (if applicable)

Name Jim Daughton

Job Title _____

Address 119 S. Monroe Street

Phone (850) 205-9000

Street

Tallahassee

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FL

State

Zip

Email jim.daughton@mhdfirm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Turo

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

536256

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.

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Email grfeijoo@flapartners.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Avail

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

566

Bill Number (if applicable)

580820

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.

Phone 3057207099

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City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Avail

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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: SB 786

INTRODUCER: Senators Cruz and Berman

SUBJECT: Prescription Insulin Drugs

DATE: March 23, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Favorable
2. _____	_____	AHS	_____
3. _____	_____	AP	_____

I. Summary:

SB 786 requires individual and group health insurance policies and health maintenance organization (HMO) contracts that provide coverage for prescription insulin drugs for the treatment of diabetes to cap the cost-sharing obligation of an insured or subscriber for a 30-day supply of such drugs at an amount not to exceed \$100.

Diabetes is a chronic disease caused by the body's inability to create enough insulin or properly use the insulin it produces to break down glucose (blood sugar) to use as energy for the body.¹ When the body cannot respond to insulin or does not make enough insulin, insulin is taken by injection or other means.²

Recent studies have found that the average list price of insulin nearly tripled between 2002 and 2013³ and that cost-sharing or out-of-pocket costs per prescription doubled over the past 10 years.⁴ The out-of-pocket costs of prescription insulin drugs for insureds or subscribers can vary due to different benefit designs and cost sharing requirements, including copayment, coinsurance, and deductible requirements. Due to significant increases in the cost of insulin, many patients with diabetes go without insulin or ration their doses, which may place an individual at risk for serious health complications. Diabetes is the seventh leading cause of death in the United States.⁵

¹ See Centers for Disease Control and Prevention, *Diabetes Glossary*, available at <https://www.cdc.gov/diabetes/pdfs/library/socialmedia/diabetes-infographic.pdf> (last viewed Mar. 16, 2021).

² *Id.*

³ *Diabetes Care* 2018;41:1299.

⁴ *JAMA Intern Med.* 2019 Jan; 179(1): 112-114.

⁵ Centers for Disease Control and Prevention, *What is diabetes?* available at <https://www.cdc.gov/media/presskits/aahd/diabetes.pdf> (last viewed Mar. 16, 2021).

The Department of Management Services estimates that implementation of the bill will result in a negative fiscal impact of approximately \$21,000 annually on the State Group Insurance program.

The bill may have an indeterminate negative fiscal impact on local governments if health premiums increase as a result of the bill.

II. Present Situation:

Diabetes is a condition resulting from the body's inability to use blood glucose for energy.⁶ In Florida, approximately 13.1 percent of the adult population, or 2.4 million people, have diabetes.⁷ Every year, an estimated 105,000 people in Florida are diagnosed with diabetes.⁸

Type 1 and Type 2 diabetes are the two main types of diabetes.⁹ Type 1 diabetes occurs when an individual does not produce enough insulin to enable blood sugar to enter cells for energy. Type 1 diabetes develops most often in young people, but can appear in adults. About 5 percent of the people who have diabetes have Type 1. Type 2 diabetes is characterized by high blood glucose levels caused by either a lack of insulin or the body's inability to use insulin efficiently. Type 2 diabetes develops most often in middle-aged and older adults, but can appear in children, teens, and young people. About 90 percent of people with diabetes have Type 2.

Access to adequate and affordable health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have diabetes or other chronic conditions with the potential to cause death, disability, or serious side effects, unless treated with the most appropriate medical care in a timely manner. In recent years, the federal government has approved many innovative treatments for chronic conditions that affect large populations. Some of the benefits of these innovative drugs include fewer side effects, convenience, and greater efficacy.¹⁰ However, the financial burden resulting from out-of-pocket drug costs can lead patients with chronic illnesses to forgo or ration prescribed drugs, ultimately affecting their health. People who have diabetes are at higher risk of serious health complications, such as death, blindness, kidney failure, heart disease, stroke, or loss of toes, feet, or legs.¹¹

⁶ Centers for Disease Control and Prevention, *Diabetes Glossary*, available at <https://www.cdc.gov/diabetes/library/glossary.html#t> (last viewed Dec. 2, 2019).

⁷ American Diabetes Association, *The Burden of Diabetes in Florida*, <http://main.diabetes.org/dorg/PDFs/Advocacy/burden-of-diabetes/all-states.pdf> (last viewed Mar. 17, 2021).

⁸ *Id.*

⁹ See *About Diabetes, Types of Diabetes*, Centers for Disease Control, available at <https://www.cdc.gov/diabetes/basics/index.html>.

(last viewed Dec. 2, 2019). In addition, to Type 1 and Type 2 Diabetes, gestational diabetes may develop in pregnant women who have never had diabetes. Gestational diabetes usually goes away after childbirth, but increases the mother's risk for Type 2 diabetes later in life.

¹⁰ See HEALTH AFFAIRS 35, No. 9 (2016):1595-1603.

¹¹ See *supra* note 3 at 1299 and 1306. An example was provided of an individual with Type 1 diabetes who required four vials of insulin at a monthly out-of-pocket cost of \$1,948 until the family meets the health plan's deductible. The individual began skipping insulin doses due to the high monthly cost, and suffered health complications.

Trends in National Health Care Expenditures

In 2019, total US health care spending increased 4.6 percent from the prior year to reach \$2.8 trillion or \$11,482 per person.¹² Over the past 20 years, US drug spending has increased by 330 percent compared with a 208 percent increase in total US health expenditures.¹³

Cost of Insulin

Recent reports note the significant increase in the cost of insulin. One study found that the average list price of insulin has nearly tripled between 2002 and 2013.¹⁴ Another study, which looked at Type 1 diabetes, noted a rapid increase in total health care spending, driven primarily by gross spending on insulin that doubled over the period.¹⁵ During that time, insulin use only rose modestly. While the composition of insulin use shifted, the price of all types of insulin and insulin products increased, with point-of-sale prices roughly doubling on average between 2012 and 2016.¹⁶ The study concluded that increases in insulin spending were driven primarily by increases in insulin prices, and to a lesser extent, a shift towards use of more expensive products.¹⁷

According to a recent workgroup of the American Diabetes Association, reasons for this price increase “...are not entirely clear but are due to the complexity of drug pricing and of insulin pricing in particular.” The workgroup noted that many stakeholders (drug manufacturers, drug wholesalers, pharmacy services administrative organizations, pharmacy benefit managers, health plans, employers, and consumers) are involved in multiple payment and distribution transactions within the supply chain for insulin. Currently, Eli Lilly, Novo Nordisk, and Sanofi are the three insulin drug manufacturers serving the United States.¹⁸

Federal Patient Protection and Affordable Care Act

The Federal Patient Protection and Affordable Care Act (PPACA)¹⁹ requires health insurers and HMOs to make specified coverage available to all individuals, without exclusions for preexisting

¹² Centers for Medicare and Medicaid Services, *National Health Expenditure 2019 Highlights*, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical> (last visited Mar. 16, 2021).

¹³ Kirzinger, A., et. al., for the Kaiser Family Foundation. *US Public's Perspective on Prescription Drug Costs*. *JAMA*. 2019;322(15):1440. doi:10.1001/jama.2019.15547, available at <https://jamanetwork.com/journals/jama/fullarticle/2752910> (last visited Mar. 16, 2021).

¹⁴ See *supra* note 3, at 1299.

¹⁵ Health Care Cost Institute, *Insulin Prices Were the Primary Drive of Rapid Increases in Spending on Type 1 Diabetes* (2019), available at <https://healthcostinstitute.org/research/publications/entry/spending-on-individuals-with-type-1-diabetes-and-the-role-of-rapidly-increasing-insulin-prices> (last viewed Mar. 16, 2021). The report did not have information on manufacturer rebates or coupons for insulin, because this information is proprietary and not publicly available. The report measured gross spending using the point-of-sale prices that are reported on a claim for a prescription drug. The report notes that rebates and coupons result in lower net spending (for both payers and patients).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *supra* note 3, at 1300.

¹⁹ The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on Mar. 30, 2010.

conditions, and mandates coverage of ten essential health benefits,²⁰ including prescription drugs, for qualified health plans offered to individuals and small groups.

The PPACA prescribes maximum out-of-pocket limits for cost sharing by insureds or subscribers who purchase qualified health plans.²¹ The minimum annual deductible is the amount that an individual must pay for medical expenses before the plan will pay any medical costs. The maximum out of pocket cost is the total amount (deductibles, copayments, and coinsurance) an individual must pay for covered services during a plan year. A high-deductible health plan (HDHP) has a higher annual deductible than typical health plans offered by insurers or HMOs, and a maximum limit on the sum of the annual deductible and out-of-pocket medical expenses that an insured or subscriber must pay for covered expenses.²²

Insulin Copayment Cap Laws in Other States

On May 22, 2019, the governor of Colorado signed legislation that requires an insurer or HMO that provides coverage for prescription insulin drugs to cap the maximum amount that an insured or subscriber must pay at \$100 per 30-day supply of insulin.²³ This cap applies regardless of the amount or type of insulin needed to fill the prescription.

In 2020, Illinois enacted similar legislation.²⁴ The act requires an insurer or HMO that provides coverage for prescription insulin drugs to limit the total amount an insured is required to pay for a covered prescription insulin drug to \$100 per 30-day supply of insulin regardless of the type and amount of insulin needed by the insured. The act also provides an annual cost adjustment increase to this cap based on the percentage change from the preceding year in the medical care component of the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor.²⁵

The Florida Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of life, health, property, and casualty insurers, health maintenance organizations (HMOs), and other risk-bearing entities.²⁶

²⁰ 42 U.S.C. s. 18022.

²¹ For the 2021 plan year, the out-of-pocket limit for a Marketplace plan or qualified health plan is \$8,550 for an individual plan and \$17,100 for a family plan. See Health.gov, Glossary, available at <https://www.healthcare.gov/glossary/out-of-pocket-maximum-limit/> (last visited Mar. 16, 2021).

²² For 2021, a high deductible health plan (HDHP) is defined as any plan with a deductible of at least \$1,400 for an individual or \$2,800 for a family. An HDHP's total yearly out-of-pocket expenses (including deductibles, copayments, and coinsurance) may not exceed \$7,000 for an individual or \$14,000 for a family. See Health.gov, *High Deductible Plan*, available at <https://www.healthcare.gov/high-deductible-health-plan/> (last visited Mar. 16, 2021).

²³ House Bill 19-1216, Session Law Ch. 248, available at https://leg.colorado.gov/sites/default/files/2019a_1216_signed.pdf (last visited Mar. 16, 2021).

²⁴ Public Act 101-0625.

²⁵ The medical care index is one of eight major groups in the Consumer Price Index (CPI). See Bureau of Labor Statistics of the U.S. Department of Labor *Measuring Price Change in the CPI: Medical Care*, available at <https://www.bls.gov/cpi/factsheets/medical-care.htm> (last visited Mar. 16, 2021).

²⁶ Section 20.121(3), F.S. The Office of Insurance Regulation is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.

State Group Health Insurance Program

The Department of Management Services (Department), Division of State Group Insurance (DSGI) administers the state group health insurance program under a cafeteria plan consistent with s. 125 of the Internal Revenue Code.²⁷ As part of the State Group Insurance Program, the Department contracts third party administrators for self-insured health plan, fully insured HMOs, and a pharmacy benefits manager (PBM), CaremarkPCS Health, L.L.C. (CVS Caremark), for the state employees' Self-insured Prescription Drug Plan.²⁸

The Employee Prescription Drug Program covers all federal legend drugs (open formulary) for covered medical conditions and employs very limited utilization review and clinical review for traditional or specialty prescription drugs.²⁹ Specialty drugs, as defined by the PBM, are dispensed by the PBM's specialty pharmacies, pursuant to the state contract and plan benefit documents.³⁰

The Prescription Drug Program provides the following four dispensing options: participating 30-day retail pharmacies, participating 90-day retail pharmacies, the PBM's mail-order pharmacies, and the PBM's specialty pharmacies.³¹ Copayments (and coinsurance for high deductible plans) for each drug tier are the same for all members, as described below. Member out-of-pocket cost share would be higher than those listed below, if a generic drug is available, and the member, not the prescriber, requests the brand name drug.³²

Standard Plans

Drug Tier	Retail – Up to 30-Day Supply	Retail and Mail – Up to 90-Day Supply and Specialty Medications
Generic	\$7	\$14
Preferred Brand	\$30	\$60
Non-Preferred Brand	\$50	\$100

High Deductible Health Plans

Drug Tier	Retail – Up to 30-Day Supply	Retail and Mail – Up to 90-Day Supply and Specialty Medications
Generic	30%	30%
Preferred Brand	30%	30%
Non-Preferred Brand	50%	50%

The State Group Insurance Program typically makes benefits changes on a plan year basis, which is January 1 through December 31. Benefit changes are subject to approval by the Legislature.³³

²⁷ Section 110.123, F.S.

²⁸ Section 110.123(5), F.S.

²⁹ Department of Management Services, SB 786 Legislative Analysis (Feb. 18, 2021).

³⁰ Section 110.12315(2), F.S.

³¹ Section 110.12315(8), F.S. Department of Management Services, Division of State Group Insurance, *2021 Benefits State Employees' Prescription Drug Plan*, available at https://www.mybenefits.myflorida.com/content/download/150426/1002145/2021_CVS_Caremark_Brochure.pdf (last visited Mar. 10, 2021).

³² Section 110.12315(2) and (8), F.S.

³³ Section 110.123(3), F.S.

III. Effect of Proposed Changes:

Sections 1 and 2 create ss. 627.64085, F.S., and s. 627.65746, F.S., respectively, to require an individual or group health insurance policy that provides coverage for prescription insulin drugs to cap the total amount of cost sharing that an insured is required to pay for such drugs at an amount not to exceed \$100 per 30-day supply, regardless of the amount or type of insulin needed to fill the prescription. The sections define the term, “prescription insulin drug.”

The bill authorizes the Financial Services Commission to adopt rules to implement provisions of the bill. The sections also define the term, “prescription insulin drug.”

Section 3 amends s. 627.6699, F.S., to require that the provisions of Section 2, relating to group policies, apply to small group policies.

Section 4 amends s. 641.31, F.S., to require an HMO contract that provides coverage for prescription insulin drugs, to cap the total amount of cost sharing that a subscriber is required to pay for covered insulin drugs at an amount not to exceed \$100 per 30-day supply, regardless of the amount or type of insulin needed to fill the prescription. The sections define the term, “prescription insulin drug.”

The bill authorizes the Financial Services Commission to adopt rules to implement provisions of the bill. The section also defines the term, “prescription insulin drug.”

Section 5 provides the bill takes effect January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest, and the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature.”

The bill requires group employer plans that provide coverage for prescription insulin drugs for the treatment of diabetes, to cap the cost sharing of a 30-day supply of such drugs at an amount not to exceed \$100. The fiscal impact of this mandate is indeterminate.

The bill does not provide that it fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

F. Tax/Fee Issues:

None.

G. Private Sector Impact:

The implementation of a cap on cost sharing for prescription insulin drugs will reduce the financial burden for some insureds and subscribers that have higher cost-sharing requirements for insulin drugs. Access to more affordable insulin drugs may prevent or mitigate future illnesses and complications associated with diabetes.

Access to more affordable insulin may result in greater adherence and better outcomes for patients, thereby reducing overall medical and drug expenses associated with diabetes. In 2019, Cigna and Express Scripts introduced their Patient Assurance Program, which caps out-of-pocket costs of insulin at \$25 for a 30-day supply for eligible individuals enrolled in participating non-government funded pharmacy plans managed by Express Scripts, including Cigna and other plans.³⁴

The impact of the bill on insurers and HMOs is indeterminate.

A cost-sharing cap may have the effect of increasing the prescribing of brand name products, higher-cost products, and higher-cost delivery methods over generics, lower-cost products, and lower-cost delivery methods. However, pharmacy benefit managers may change formularies to substitute lower cost insulins for higher cost insulins or imposing additional step therapy requirements on higher cost insulins may offset this.³⁵

A 2017 study by Milliman evaluated potential approaches to reduce patient cost sharing on insulins through insurance benefit design changes.³⁶ The study analyzed the impact of

³⁴ Cigna and Express Scripts. *News Release*, available at <https://www.cigna.com/newsroom/news-releases/2019/cigna-and-express-scripts-introduce-patient-assurance-program-to-cap-out-of-pocket-costs-at-25-per-30-day-insulin-prescription> (last viewed Dec. 4, 2019).

³⁵ Office of Insurance Regulation, *2021 Legislative Session, SB 786*, (Feb. 19, 2021).

³⁶ Milliman, *Mitigating out-of-pocket costs for prescription drugs: Supplement brief on exempting insulin from the deductible* (May 30, 2019), available at <https://milliman-cdn.azureedge.net/-/media/milliman/importedfiles/ektron/mitigating-costs-insulin-users.ashx> (last visited Mar. 17, 2021).

exempting insulin from cost sharing for patients in high deductible health plans only. According to the report, providing out-of-pocket cost relief to members who use insulin increases the total cost to the high deductible health plan. The analysis found that the increase in cost would be approximately \$5.12 per member per year.

H. Government Sector Impact:

Impact on Local Governments

The bill's coverage requirements may increase costs incurred by local governments by an indeterminate amount.

Division of State Group Insurance of the Department of Management Services.³⁷

The Department of Management Services (Department) notes that implementation of the bill may affect members enrolled in the health maintenance organization and preferred provider organization high-deductible health plans (HDHP) covered by the prescription drug program. In a HDHP, a member's out-of-pocket cost is 30 percent for generic drugs, 30 percent for preferred brand drugs, and 50 percent for non-preferred brand drugs. The third-party administrator for the prescription drug program projects a negative fiscal impact of \$21,000 for the plan year, as described in the following analysis, below, provided by the Department.

The language currently included as "insulin drug at an amount not to exceed \$100 per 30-day supply" is impactful due to a 30-day supply being a very subjective metric. Insulin utilization will fluctuate widely from person to person and will even vary month to month for the same individual depending on how well controlled the individual's diabetes is.

Because of this variance, looking at a 30-day supply claim can be impactful, and the Department estimated below the cost assumptions of how this might affect the Division of State Group Insurance program. Whether as a result of the deductible or the 30 percent coinsurance, there are several insulin claims within January-December 2020 that are above \$100 per 30 days. Any costs over the member maximum would move to the plan cost; therefore, the total cost to the DSGI plan would be approximately \$21,000.

- PPO Standard and PPO HDHP impact = \$15,000.
- HMO Standard and HMO HDHP impact = \$6,000.

V. Technical Deficiencies:

None.

VI. Related Issues:

Lines 41-43, 61-63, and 88-91 provide that the sections do not preclude an insurer or HMO from reducing an insured's cost-sharing obligation by an amount greater than the amount specified in

³⁷ *Supra* Note 29.

the bill. The OIR suggests clarifying these sections by specifying that the sections do not prohibit the insurer from capping the cost sharing obligation at a lower dollar amount, rather than referring to a reduction in the insured's or subscriber's cost sharing obligation.³⁸

The bill authorizes the Financial Services Commission to adopt rules. The Office of Insurance indicates that rules would not be necessary to implement the bill.³⁹

VII. Statutes Affected:

This bill substantially amends sections 627.6699 and 641.31 of the Florida Statutes.

This bill creates sections 627.64085 and 627.65746 of the Florida Statutes.

VIII. 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.

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

³⁸ *Supra* note 33.

³⁹ *Id.*

By Senator Cruz

18-00356A-21

2021786__

A bill to be entitled
An act relating to prescription insulin drugs;
creating ss. 627.64085 and 627.65746, F.S.; defining
the term "prescription insulin drug"; requiring
individual and group health insurance policies,
respectively, to cap an insured's monthly cost-sharing
obligation for covered prescription insulin drugs at a
specified amount; providing that coverage for
prescription insulin drugs may not be subject to a
deductible; providing construction; authorizing the
Financial Services Commission to adopt rules; amending
s. 627.6699, F.S.; requiring health benefit plans
covering small employers to comply with such
requirement; amending s. 641.31, F.S.; defining the
term "prescription insulin drug"; requiring health
maintenance contracts to cap a subscriber's monthly
cost-sharing obligation for covered prescription
insulin drugs at a specified amount; providing that
coverage for prescription insulin drugs may not be
subject to a deductible; providing construction;
authorizing the commission to adopt rules; providing
an effective date.

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

Section 1. Section 627.64085, Florida Statutes, is created
to read:

627.64085 Cost sharing for prescription insulin drugs;
limits.-

18-00356A-21

2021786__

(1) As used in this section, the term "prescription insulin drug" means a prescription drug that contains insulin, is used to treat diabetes, and has been prescribed as medically necessary by the treating physician.

(2) A health insurance policy that provides coverage for prescription insulin drugs must cap the total amount of cost sharing required of an insured for covered prescription insulin drugs at an amount that does not exceed \$100 for each 30-day supply, regardless of the amount or type of insulin needed to fill the insured's prescription or prescriptions. Coverage for prescription insulin drugs may not be subject to a deductible.

(3) This section does not preclude an insurer from reducing an insured's cost-sharing obligation by an amount greater than the amount specified in subsection (2).

(4) The commission may adopt rules to administer this section.

Section 2. Section 627.65746, Florida Statutes, is created to read:

627.65746 Cost sharing for prescription insulin drugs; limits.—

(1) As used in this section, the term "prescription insulin drug" means a prescription drug that contains insulin, is used to treat diabetes, and has been prescribed as medically necessary by the treating physician.

(2) A group health insurance policy that provides coverage for prescription insulin drugs must cap the total amount of cost sharing required of an insured for covered prescription insulin drugs at an amount that does not exceed \$100 for each 30-day supply, regardless of the amount or type of insulin needed to

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2021786__

fill the insured's prescription or prescriptions. Coverage for
prescription insulin drugs may not be subject to a deductible.

(3) This section does not preclude an insurer from reducing
an insured's cost-sharing obligation by an amount greater than
the amount specified in subsection (2).

(4) The commission may adopt rules to administer this
section.

Section 3. Paragraph (h) is added to subsection (5) of
section 627.6699, Florida Statutes, to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(h) A health benefit plan covering small employers which is
issued or renewed on or after January 1, 2022, must comply with
s. 627.65746.

Section 4. Subsection (48) is added to section 641.31,
Florida Statutes, to read:

641.31 Health maintenance contracts.—

(48) (a) As used in this subsection, the term "prescription
insulin drug" means a prescription drug that contains insulin,
is used to treat diabetes, and has been prescribed as medically
necessary by the treating physician.

(b) A health maintenance contract that provides coverage
for prescription insulin drugs must cap the total amount of cost
sharing required of a subscriber for covered prescription
insulin drugs at an amount that does not exceed \$100 for each
30-day supply, regardless of the amount or type of insulin
needed to fill the subscriber's prescription or prescriptions.
Coverage for prescription insulin drugs may not be subject to a
deductible.

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88 (c) This subsection does not preclude a health maintenance
89 organization from reducing a subscriber's cost-sharing
90 obligation by an amount greater than the amount specified in
91 paragraph (b).

92 (d) The commission may adopt rules to administer this
93 subsection.

94 Section 5. This act shall take effect January 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: February 5, 2021

I respectfully request that **Senate Bill #786**, relating to Prescription Insulin Drugs, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in blue ink, appearing to read "Janet Cruz", is written over a horizontal line.

Senator Janet Cruz
Florida Senate, District 18

CC: James Knudson, Staff Director
Gabriela Borja, Administrative Assistant

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-24-21

Meeting Date

SB786

Bill Number (if applicable)

Topic Insulin Capay

Amendment Barcode (if applicable)

Name Joy Ryan

Job Title Shareholder

Address 300 S. Duval St, Suite 410

Phone 425-4000

Street

City

Tally 32303

State

Zip

Email joy@moanlawfirm.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Insurance Council

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

3-24-21

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

786

Bill Number (if applicable)

Topic Insulin Copay

Amendment Barcode (if applicable)

Name Joy Ryan

Job Title Attorney

Address 300 S. Duval St, 410

Phone 425-4000

Street

Tally 32301

City

State

Zip

Email joyryan@tally.comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Prime Therapeutics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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APPEARANCE RECORD

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3/24/21

Meeting Date

786

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Karl Rasmussen

Job Title Lobbyist

Address 300 S Duval

Phone 850 425-4000

Street

Tallahassee

FL

32302

City

State

Zip

Email Karl@meena-lawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing America's Health Insurance Plans - AHIP

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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(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/24/21

Meeting Date

786

Bill Number (if applicable)

Topic Prescription Insulin Bugs

Amendment Barcode (if applicable)

Name Theodas Baker

Job Title Illustrious Potentate - Ahmed #37

Address P.O. Box 6553

Phone (850) 284-5848

Street

Th

FL

32314

City

State

Zip

Email bakerman71@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Desert of Fla. A.E.A.O.N.M.S.

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)

3-24-21

Meeting Date

786

Bill Number (if applicable)

Topic SB 786 - Insulin

Amendment Barcode (if applicable)

Name DAWN SPRINGS

Job Title DIRECTOR, TALLAHASSEE MEMORIAL METABOLIC CENTER

Address 2633 CENTENNIAL BLVD Phone 800-431-4753

Street

TALLAHASSEE

City

FL

State

32308

Zip

Email dawn.springs@tmh.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ASSOCIATION OF DIABETES CARE + EDUCATION SPECIALISTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Wed 8:30 B&I

THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

SB 786

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Street

Phone 224-7173

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

786

Meeting Date

Bill Number (if applicable)

Topic Insulin Costs

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 9114 Seafair Lane

Phone 850 567-1202

Street

City

Tallahassee

State

FL

Zip

32317

Email Watson.Stratigier@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Renal Coalition

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)

3/24/2020
Meeting Date

SB 786
Bill Number (if applicable)

Topic PERSCRIPTION DRUGS

Amendment Barcode (if applicable)

Name CHARIS CHARK

Job Title COACH

Address 7113 E 7th Ave Phone _____

Street

Tally FL 32303 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

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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: SB 1750

INTRODUCER: Senator Broxson

SUBJECT: Litigation Financing Consumer Protection

DATE: March 23, 2021

REVISED: _____

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

I. Summary:

SB 1750 creates the Litigation Financing Consumer Protection Act, which requires the registration of litigation financiers with the Department of State (Department) and provides consumer protections relating to such transactions. In a litigation financing 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, mortgages, or other expenses.

The bill requires such litigation financiers (financiers) to register with Department and file a \$250,000 surety bond that must be payable to the Department for the payment of damages awarded to a consumer under part II of ch. 501, F.S. The Department may revoke the registration of a financier if the financier does not comply with the registration requirements.

The bill caps the interest rate on litigation financing contracts (contracts) at 10 percent of the funded amount per year. A financier may impose fees up to a combined total of \$500 with regard to a single civil claim, regardless of the number of contracts the consumer enters into with the financier respecting the civil action or claim. Further, the bill requires specified terms, conditions, and disclosures for a contract, including a right of rescission of the contract by the consumer within 5 business days after execution of the contract or the consumer's receipt of the funds, without penalty, interest, charges, fees, or other obligation.

The bill provides that a financier may not:

- Pay, offer to pay, or accept a commission, a referral fee, or other consideration for referring a consumer to a litigation financier;
- Advertise false or misleading information about its products or services;
- Refer a consumer to a specific attorney, law firm, or health care practitioner with exception;

- Fail to provide a copy of all complete litigation financing contracts promptly to the consumer;
- Attempt to effect arbitration or waiver of a consumer's right to a jury trial in the subject's civil action or claim;
- Offer or provide legal advice to the consumer regarding the contract or the subject civil action or claim;
- Assign a litigation-financing contract in whole or in part;
- Enter into a contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract; and
- 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.

A violation of this act is considered an unfair and deceptive trade practice actionable under part II of ch. 501, F.S.

The provisions of the bill do not apply to legal services provided to a consumer on a contingency fee basis or advanced legal costs where such services or costs are provided by an attorney representing the consumer in accordance with Florida Rules of Professional Conduct; commercial tort claims; workers' compensation claims; lending or financing arrangements between an attorney or a law firm and lending institution; or a consumer finance loan.

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 a litigation-financing contract.

The fiscal impact of the bill on the Department is indeterminate at this time. The bill does not provide fees or other funding for the registration program.

II. Present Situation:

Third party litigation financing typically refers to financing provided by entities other than the plaintiffs, defendants, or their lawyers. In regards to individuals, litigation financing typically involves a nonrecourse loan or cash advance made to a consumer, 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; however, the consumer is obligated to repay no more than his or her 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

¹ Neil Rickman, and et. al., *Innovations in the Provision of Legal Services in the United States, An Overview for Policymakers*, (2011) Rand Corp. available at https://www.rand.org/content/dam/rand/pubs/occasional_papers/2011/RAND_OP354.pdf (last visited Feb. 20, 2021).

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 loans.⁴ Further, some researchers suggest 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 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.⁷ 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.⁸

Discovery Issues Related to Consumer Litigation Financing

Prior to executing a litigation finance contract for a cash finance, the litigation financier 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.⁹ 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.

² Alliance for Responsible Consumer Legal Funding, *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) available at https://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP306.pdf (last visited Jan. 2, 2021).

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 Feb. 21, 2021).

⁷ 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 visited Feb. 20, 2021).

⁸ *Id.*

⁹ See *Supra* note 2.

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

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 relating to litigation financing, 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 comments¹⁸ regarding litigation financing:

The Florida Bar discourages the use of non-recourse 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, as discussed in Opinion 92-6, 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. This Committee can conceive of only limited circumstances under which it would be in a client's best interests for an attorney to provide clients with information about funding companies that offer non-recourse advance funding or other financial assistance to clients in exchange for an assignment of an interest in the case. Under these limited circumstances, an attorney may advise a client that such companies exist only if the attorney also discusses with the client whether the costs of the transaction outweigh the benefits of receiving the funds immediately and the other potential problems that can arise. Only after this discussion may a lawyer provide the names of advance funding companies to clients.

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/> (visited Feb. 21, 2021).

Oversight of Consumer Litigation Financing Transactions in Other States¹⁹

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.²⁰ Some states, such as Ohio, do not require registration, and instead mandate terms and disclosures in the contract.²¹

Five states have enacted laws relating to interest rates or fees.²² For example, Nevada licenses and regulates consumer litigation financing and requires that the funded amount plus charges and fees of each transaction must not exceed a rate of 40 percent of the funded amount annually.²³ 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.²⁴ 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.²⁵ West Virginia caps interest on such transactions at 18 percent.²⁶ 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.²⁷

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.²⁸ 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.²⁹ In South Carolina, the Department of

¹⁹ Litigation financing can involve commercial or consumer financing. See National Association of Mutual Insurance Companies, *curbing a Questionable Practice: A Survey of Public Policy Measures to Address Concerns Surrounding Litigation Financing* (2018), available at https://www.namic.org/pdf/publicpolicy/190128_LitigationLendingUpdate.pdf (last visited Feb. 28, 2021).

²⁰ 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.

²¹ Ohio Rev. Code s. 1349.55(A)(1).

²² Arkansas (A.C.A. s. 4-57-109), Indiana (Ind. Code 24-4.5-3-110), Nevada (NRS 604C.310), Tennessee, and West Virginia.

²³ 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) (last visited Feb. 21, 2021).

²⁴ T.C.A. s. 47-16-110(b).

²⁵ T.C.A. s. 47-16-110(c) (2014).

²⁶ W. Va. Code s. 46A-6N-9.

²⁷ IC 24-4.5-3-202 and IC 24-12.

²⁸ *Oasis Legal. Finance Group v. Coffman*, (Nov. 16, 2015), 2015 CO 63, at <https://www.scribd.com/document/289971303/Lawcash-Colo-Opinion> (last visited Feb. 20, 2021).

²⁹ Fisher, Daniel, *Lawsuit Finance Contracts are Loans Colorado Supreme Court Rules*, Forbes, Nov. 16, 2015, at <https://www.forbes.com/sites/danielfisher/2015/11/16/lawsuit-finance-contracts-are-loans-colorado-supreme-court-rules/#52fab63b182a> (last visited Feb. 21, 2021).

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.³⁰

Communication Privileges

Vermont³¹ and Indiana³² 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.

Disclosure of Financing Agreements

West Virginia³³ and Wisconsin³⁴ require disclosure of litigation financing contracts in civil actions or claims.

Department of State

The Secretary of State is the head of the Department of State (DOS). The Secretary is responsible for performing functions conferred by the State Constitution upon the custodian of state records. There are six divisions within the Department, including the Division of Corporations.³⁵

The Division of Corporations (Division) serves as the state's central repository for a number of commercial activities. The Division formalizes the legal standing of a business or activity by accepting and indexing the filing or registration and (2) supplies information and certification regarding the filings and activities of record.³⁶

Pursuant to state law, the Division's duty to file documents is ministerial and does not create a presumption that the information contained in the documents submitted by business entities and individuals is valid or correct.³⁷ The Division utilizes the Corporate Filing System to store and report business information and makes the information available on the Division's Web site, Sunbiz.org.³⁸

Florida law requires a corporation, limited liability company ("LLC"), or partnership to register with the Department and meet other requirements. Each business entity authorized to transact business in the state is required to deliver to the Department for filing a sworn annual report

³⁰ South Carolina, Department of Consumer Affairs, Administrative Interpretation: Legal/Litigation Funding Transactions, (Nov. 14, 2014), Administrative Interpretation 3.104, 106-1403, <https://consumer.sc.gov/sites/default/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/Chapter%203/3.104%2C106-1403%20Litigation%20FundingTransactions.pdf> (last visited Mar. 15, 2021).

³¹ 8 V.S.A. s. 2255.

³² IC 24-12.

³³ Section 46A-6N.

³⁴ Wisc. Stat. s. 804.01(2).

³⁵ Section 20.10, F.S.

³⁶ Florida Department of State, Division of Corporations Overview, <https://dos.myflorida.com/sunbiz/about-us/division-overview/> (last visited Mar. 15, 2021).

³⁷ Section 607.0125(4), F.S.

³⁸ Department of State, Sunbiz, <https://dos.myflorida.com/sunbiz/> (last visited Mar. 15, 2021).

between January 1st and May 1st each year.³⁹ In addition, a business entity is to remit to the Department an annual report fee and, as applicable, a supplemental corporate fee,⁴⁰ when filing the annual report.

Department of Legal Affairs

The Division of Consumer Protection of the Department of Legal Affairs⁴¹ is the civil enforcement authority for violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).⁴² FDUTPA 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.⁴³

The enforcing authority is the office of the state attorney if a violation of this act occurs in or affects the judicial circuit under the office's jurisdiction. If a violation occurs or affects more than one judicial circuit or if the office of the state attorney defers to the Department of Legal Affairs, the enforcing authority is the Department of Legal Affairs.⁴⁴ Remedies for practices prohibited by the act may include an action to enjoin a person from committing such acts,⁴⁵ 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.⁴⁶ Actions can be brought by a state attorney, the Department of Legal Affairs,⁴⁷ or by a consumer.⁴⁸

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. 559.953, F.S., and provides definitions of the following terms: consumer, enforcing authority, funded amount, health care practitioner, interest, litigation financier, litigation financing, and net proceeds. The term, "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 the consumer's civil action or claim. The definition of 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.

³⁹ Sections 605.0212, 607.1622, 617.1622, and 622.1210, F.S.

⁴⁰ Section 607.193, F.S., imposes the supplemental corporate fee on limited liability companies, for-profit corporations, and partnerships. For other fees, See <https://dos.myflorida.com/sunbiz/forms/fees/> (last visited Mar. 15, 2021).

⁴¹ 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).

⁴² Part II of ch. 501, F.S.

⁴³ Sections 501.202 and 501.204, F.S.

⁴⁴ Section 501.203(2), F.S.

⁴⁵ Section 501.207, F.S.

⁴⁶ Section 501.211(2), F.S.

⁴⁷ Section 501.203(2), F.S.

⁴⁸ Section 501.211(1), F.S.

- A commercial tort claim as defined in s. 679.1021(1)(m), F.S.
- A claim under the Workers' Compensation Law, ch. 440, F.S.
- A consumer finance loan, as defined in s. 516.01, F.S.
- Lending or financing arrangements between an attorney or law firm and a lending institution to fund litigation costs in the ordinary course of business.

Section 3 creates s. 559.954, F.S., to establish registration requirements for litigation financiers under the Department of State (Department). Each financier must file with the Department a \$250,000 surety bond, issued by a surety company, and payable to the Department for the payment of damages awarded to a consumer under part II, ch. 501, F.S. The surety bond must remain in place so long as the DOS designates a litigation financier as such or a litigation-financing contract with the litigation financier is effective.

Corporate, Limited Liability Company, and Partnership Registration

Each litigation financier that is a corporation, limited liability company (LLC), or partnership is considered registered if it has:

- Met the surety bond requirement; and
- A status of active and in good standing as reflected in department records; and filed articles of incorporation, a certificated of limited partnership or another organizational document.

A litigation financier that is a corporation, LLC, or partnership must amend its registration within 30 days after the information contained in the registration changes or becomes inaccurate by updating its organizational document or certificate of authority application in the manner already prescribed by the Department for updating such documents.

Sole Proprietorship Registration

Florida law does not require sole proprietorships to register with the Department, and thus the bill creates a unique registration process for sole proprietorships who want to engage in litigation financing. Under the bill, a sole proprietorship is registered as a litigation financier in the state if it:

- Meets the bond requirements; and
- Files a litigation financier registration application with the Department containing:
 - The applicant's full legal name and fictitious name, if any;
 - The applicant's physical and mailing addresses and telephone number;
 - A statement that the applicant is a litigation financier; and
 - Any other information the Department requires.

A litigation financier that is a sole proprietorship must amend its registration within 30 days after the information contained in the registration changes or becomes inaccurate by filing an amendment on a form prescribed by the Department.

Registration Revocation

The bill provides the Department with authority to revoke a registration for noncompliance with the registration requirements, registration amendment, and bond requirements. If the Department determines that a financier violated any of these requirements, the Department must serve the

financier notice of its intent to revoke the litigation financier's registration. Such notice must specifically list all revocation grounds and may be sent by electronic mail if the litigation financier gave the Department an electronic mail address. A financier has 60 days from the date the Department sends such notice to correct each revocation ground or to show there were no such violations. Otherwise, the Department must revoke the financier's registration, after which the financier may not continue to offer litigation financing in the state.

Contract Terms and Disclosures

Section 4 creates s. 559.955, F.S., to establish mandatory terms within a litigation-financing contract. These terms include a right of rescission within 5 business days after execution of the contract or receipt of funds by the consumer, whichever is later; an acknowledgment regarding whether the 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. A litigation financier may not charge, contract for, or receive any interest, charges, or fees for rescission or cancellation of a contract.

Section 6 creates s. 559.957, F.S., to establish mandatory disclosures within a litigation-financing contract. The disclosures are:

- Notice of the right to a completely filled 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 interest rate;
- 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 described in the disclosures;
- 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; and
- Notice that the consumer has the right to cancel and should exercise due diligence before signing the contract.
-

Section 8 creates s. 559.959, F.S., relating to interest rate, fees, charges, and penalties applicable to the contract. The bill:

- Caps the interest rate of such contracts at 10 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.
- Prohibits a litigation financier from charging, contracting for, or receiving 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.

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

Prohibited Acts

Section 5 creates s. 559.956, F.S., to provide prohibited acts of litigation financiers. The litigation finance may not:

- Pay or accept a referral fee to or from any person, including an attorney, law firm, or health care practitioner;
- Engage in false advertising;
- Refer consumers to a specific attorney, law firm, or health care practitioner;
- Fail to promptly supply a copy of any complete contract to the consumer;
- Obtain a waiver of remedies the consumer may have in the civil action or claim;
- Attempt to effect arbitration or a waiver to the right to a jury trial;
- Offer or provide legal advice regarding the contract or subject claim;
- Assign the contract;
- Report to a consumer credit reporting agency if the net proceeds of the civil action are insufficient to repay the litigation financier;
- Direct or make any decision with respect to the course of the subject civil action, claim or any settlement;
- Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract;
- Enter into a contemporaneous financing arrangement without the consumer's written consent; and
- Report 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.

Section 7 creates s. 559.958, 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.

Section 9 creates s. 559.961, 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. This gives a defendant notice of a plaintiff's obligation to a litigation financier.

Section 10 creates s. 559.962, 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. This means that an attorney may discuss a litigation-financing contract with a litigation financier within the bounds of any applicable Florida Bar rules without waiving these privileges.

Section 11 creates s. 559.963, 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 the bill is effective July 1, 2021.

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 10 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.

There are no registration filing fees imposed on litigation financiers.

C. Government Sector Impact:

The bill does not provide the Department with funding or the authority to collect registration fees. The Department will incur staffing and system costs associated with the development of a new type of registration system, administrative costs associated with revoking such registration for specified violations after notice and opportunity to cure, administration of held surety bonds, and request payments for damages from surety insurers, if necessary. It is unknown how many litigation financiers currently operate in Florida.⁴⁹ The fiscal impact is indeterminate at this time.

Since the bill creates a FDUTPA violation, the bill may cause an indeterminate fiscal and workload increase on the Department of Legal Affairs and the Offices of State Attorneys for each judicial circuit, as both are currently charged with prosecuting such violations.

VI. Technical Deficiencies:

Section 3 provides a registration process for individuals and entities. It is unclear what the registration period is and if it is subject to renewal. For business entities, it is unclear how the Department could determine an entity was in “good standing” without some type of mandatory background check for owners, officers, etc. The term, “good standing,” is undefined. The bill does not require the department to prescribe forms a litigation financier must use for registration and notification of changes in registration information. The bill does not authorize the Department to impose penalties against litigation financier that do comply with the registration requirements.

The bill allows the Department to serve notice of its intent to revoke the registration of a litigation financier by electronic mail. However, s. 120.60(5), F.S., provides that no revocation of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint, which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57, F.S.

Section 4 of the bill requires a litigation financier to file with the Department of State a \$250,000 surety bond, which is issued by a *surety company* and payable to the DOS for the payment of damages awarded to a consumer under part II, ch. 501, F.S. This surety bond must be effective so long as the DOS designates the financier as such or the litigation-financing contract is in effective. In Florida, a *surety insurer* must be authorized by the Office of Insurance Regulation to issue surety bonds. It is unclear how the DOS would enforce the continuation of the surety bond of the financier until all contracts were effective. Litigation relating to such contracts could continue beyond the contract period or the registration of the litigation financier.

Section 5 of the bill prohibits a financier from failing to promptly supply a copy of any complete contract to the consumer. It may provide greater to specify the number of business days a financier has to provide a copy of the executed, signed contract to the consumer.

⁴⁹ A bill analysis was not received from the Department of State.

Section 6 of the bill requires a litigation-financing contract to contain a notice of the consumer's right to a completely filled in contract. It may provide greater clarity to specify that the disclosure contain a notice of the consumer's right to an executed, signed contract within a certain number of business days after the execution of the contract.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 559.953, 559.954, 559.955, 559.956, 559.957, 559.958, 559.959, 559.961, 559.962, and 559.963.

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.



287784

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 96 - 355

and insert:

2. Filed a litigation financier registration form with the department on a form prescribed by the department; 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 department.



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11 (b) A litigation financier who is not a corporation,
12 limited liability company, or partnership shall be considered
13 registered under this section if he or she has:
14 1. Met the bond requirements of subsection (2); and
15 2. Filed a litigation financier registration form with the
16 department on a form prescribed by the department containing, at
17 a minimum:
18 a. The applicant's full legal name and fictitious name, if
19 any;
20 b. The applicant's physical address, mailing address, and
21 telephone number;
22 c. A statement that the applicant is a litigation
23 financier; and
24 d. Any other information the department deems necessary.
25 (2) Each litigation financier must file with the department
26 a \$250,000 surety bond issued by a surety insurer authorized to
27 do business in this state and payable to the department for the
28 payment of damages awarded to a consumer under part II of
29 chapter 501. The surety bond must be effective beginning on the
30 date the department designates a litigation financier as such.
31 The surety bond must remain in effect thereafter, including
32 while any litigation financing contract with the litigation
33 financier is effective, until the right to bring a civil action
34 related to any litigation financing agreement entered into by
35 the litigation financier expires pursuant to s. 95.11.
36 (3) A litigation financier must notify the department, on a
37 form prescribed by the department, within 30 days after the date
38 the information contained in its registration changes or becomes
39 inaccurate in any respect. A litigation financier who is not a



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corporation, limited liability company, or partnership may amend his or her registration information by notifying the department, on a form prescribed by the department, within 30 days after the changes occur or the information becomes inaccurate.

(4) If the department determines that a litigation financier has not complied with the requirements of this section, the department may revoke the litigation financier's registration; however, the department first must provide to the litigation financier notice pursuant to s. 120.60(5) and an opportunity to be heard pursuant to chapter 120.

(5) The department may adopt rules to implement this section.

Section 4. Section 559.955, Florida Statutes, is created to read:

559.955 Litigation financing contracts; terms.—The litigation financing terms must be set forth in a written contract and must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, fees, charges, or further obligation if, within 5 business days after execution of a signed contract or receipt of funds by the consumer, whichever is later, the consumer:

(a) Provides a written rescission notice; and

(b) Returns any funds already provided under the contract to the litigation financier. The postmark date on funds returned by regular United States mail, or the date of the certified mail receipt if mailed by certified mail, is considered the date of return of the funds.

(2) The consumer's written acknowledgement as to whether an



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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.

Section 5. Section 559.956, Florida Statutes, is created to read:

559.956 Prohibited conduct.—A litigation financier may not do any of the following:

(1) Pay or offer to pay a commission, referral fee, or other consideration to any person for referring a consumer to a litigation financier.

(2) Accept a commission, referral fee, rebate, or other consideration from any person.

(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 any executed, signed litigation financing contract to the consumer within 2 business days.

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



287784

98 action or claim.

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

101 (8) Offer or provide legal advice to the consumer regarding
102 the litigation financing contract or the subject civil action or
103 claim.

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

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

109 (11) Direct or make any decisions with respect to the
110 course of the subject civil action or claim or any settlement
111 thereof.

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

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

122 Section 6. Section 559.957, Florida Statutes, is created to
123 read:

124 559.957 Required disclosures.—

125 (1) A litigation financing contract must contain the
126 following disclosures on the front page of the contract in at



287784

least 12-point boldfaced type:

(a) Notice of the consumer's right to an executed, signed contract within 2 business days;

(b) A statement that the litigation financier does not have the right, and may not make any decisions or attempt, to influence the consumer or his or her attorney about the conduct of the civil action or claim that is the subject of 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 fees and charges 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 interest, fees, and charges;

(g) A statement that the consumer will owe no fees or charges 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; and

(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 fees and charges owed, which sum may not exceed the net proceeds less proceeds



287784

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 CONTRACT WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIPT OF 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 PROFESSIONAL, OR AN ACCOUNTANT.

Section 7. Section 559.958, Florida Statutes, is created to read:

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



287784

(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 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:

(a) Attorney, insurance carrier, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim; and

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

Section 8. Section 559.959, Florida Statutes, is created to read:

559.959 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 10 percent of the funded amount per annum simple interest.

(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 that is the subject of the litigation financing contract, whichever is earlier, but interest may not accrue for



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a period exceeding 3 years from the date the consumer receives the funds from the litigation financier. The total interest 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 fees or charges 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 with respect to the civil action or claim.

(5) A litigation financier may not directly or indirectly charge, contract for, or receive any interest, fees, or charges for rescission or cancellation of a litigation financing contract under s. 559.955(1).

Section 9. Section 559.961, Florida Statutes, is created to read:

559.961 Litigation financing contracts; discovery.—Except as otherwise ordered by the court, a party to any civil action or claim must, without awaiting a discovery request, 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. Section 559.962, Florida Statutes, is created to read:

559.962 Effect of communication on privilege.—Communication between a consumer's attorney and a litigation financier regarding a litigation financing contract does not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-



287784

client privilege.

Section 11. Section 559.963, Florida Statutes, is created to read:

559.963 Violation; enforcement.—

(1) A violation of this part is considered an unfair and deceptive trade practice actionable under part II of chapter 501.

(2) This section does not limit:

(a) The enforcing authority's exercise of powers or performance of duties which the enforcing authority is otherwise legally authorized or required to exercise or perform; or

(b) The rights and remedies available to the state or a person under any other law.

Section 12. This act shall take effect January 1, 2022.

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

And the title is amended as follows:

Delete lines 12 - 13

and insert:

such financiers; authorizing the department to revoke such registrations for noncompliance under certain circumstances; authorizing the department to



567974

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 43

and insert:

559.957, 559.958, 559.961, 559.962, and 559.963, is

Delete lines 294 - 326.

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

And the title is amended as follows:



567974

11 Delete lines 24 - 28
12 and insert:
13 creating s.



646616

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 118
and insert:
a \$50,000 surety bond that must be all of the following:



688212

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete line 43

and insert:

559.957, 559.958, 559.959, 559.962, and 559.963, is

Delete lines 327 - 334.

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

And the title is amended as follows:



688212

11 Delete lines 29 - 31
12 and insert:
13 559.962, F.S.; providing that specified



771578

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 201 - 202.



968410

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (287784)

Delete lines 104 - 105.



567790

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (287784) (with title amendment)

Delete lines 228 - 235.

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

And the title is amended as follows:

Delete lines 260 - 264

and insert:

Delete lines 12 - 30



567790

and insert:

such financiers; authorizing the department to revoke
such registrations for noncompliance under certain
circumstances; authorizing the department to adopt
rules; creating s. 559.955, F.S.; providing
requirements for litigation financing contracts;
creating s. 559.956, F.S.; prohibiting litigation
financiers from engaging in specified conduct;
creating s. 559.957, F.S.; providing disclosure
requirements for litigation financing contracts;
creating s. 559.958, F.S.; providing for the
assignment of contingent rights to civil action or
claim proceeds; specifying the priority of liens
against or rights to civil action or claim proceeds;
creating s. 559.959, F.S.; authorizing litigation
financiers to assess specified interest, fees, and
charges; providing requirements for such interest,
fees, and charges; prohibiting a litigation financier
from assessing certain fees or charges;



104902

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (287784) (with title amendment)

Delete lines 198 - 227.

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

And the title is amended as follows:

Delete lines 260 - 264

and insert:

Delete lines 12-28



104902

and insert:

such financiers; authorizing the department to revoke
such registrations for noncompliance under certain
circumstances; authorizing the department to adopt
rules; creating s. 559.955, F.S.; providing
requirements for litigation financing contracts;
creating s. 559.956, F.S.; prohibiting litigation
financiers from engaging in specified conduct;
creating s. 559.957, F.S.; providing disclosure
requirements for litigation financing contracts;
creating s. 559.958, F.S.; providing for the
assignment of contingent rights to civil action or
claim proceeds; specifying the priority of liens
against or rights to civil action or claim proceeds;
creating s.



305824

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (287784)

Delete line 26
and insert:
a \$50,000 surety bond issued by a surety insurer authorized to

By Senator Broxson

1-01544A-21

20211750__

A bill to be entitled
An act relating to litigation financing consumer protection; creating part XIII of ch. 559, F.S., entitled "Litigation Financing Consumer Protection Act"; creating s. 559.953, F.S.; defining terms; creating s. 559.954, F.S.; requiring litigation financiers to register with the Department of State before engaging in litigation financing; providing registration requirements; requiring litigation financiers to file a surety bond meeting specified requirements; requiring the department serve notice to such financiers and to revoke such registrations for certain noncompliance; authorizing the department to adopt rules; creating s. 559.955, F.S.; providing requirements for litigation financing contracts; creating s. 559.956, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 559.957, F.S.; providing disclosure requirements for litigation financing contracts; creating s. 559.958, F.S.; providing for the assignment of contingent rights to civil action or claim proceeds; specifying the priority of liens against or rights to civil action or claim proceeds; creating s. 559.959, F.S.; authorizing litigation financiers to assess specified interest, fees, and charges; providing requirements for such interest, fees, and charges; prohibiting a litigation financier from assessing certain fees or charges; creating s. 559.961, F.S.; requiring the disclosure of litigation

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financing contracts under specified circumstances;
creating s. 559.962, F.S.; providing that specified
communications between attorneys and litigation
financiers do not affect statutory or common-law
privilege; creating s. 559.963, F.S.; providing that
violations of the act constitute deceptive and unfair
trade practices; providing construction; providing an
effective date.

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

Section 1. Part XIII of chapter 559, Florida Statutes,
consisting of sections 559.953, 559.954, 559.955, 559.956,
559.957, 559.958, 559.959, 559.961, 559.962, and 559.963, is
created and entitled "Litigation Financing Consumer Protection
Act."

Section 2. Section 559.953, Florida Statutes, is created to
read:

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

(1) "Consumer" means any individual.

(2) "Department" means the Department of State.

(3) "Enforcing authority" has the same meaning as in s.
501.203(2).

(4) "Funded amount" means the funds actually received and
retained by a consumer under a litigation financing contract.

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

(6) "Interest" means the cost of obtaining litigation
financing and includes any profit or advantage of any kind

1-01544A-21

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59 whatsoever that a litigation financier may charge, contract for,
60 collect, receive, or in any way obtain as a condition for a
61 litigation financing contract. Charges and fees specifically
62 authorized by this part are not interest.

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

65 (8) "Litigation financing" means a nonrecourse transaction
66 in which a litigation financier provides funds to a consumer in
67 exchange for an assignment of the consumer's contingent right to
68 receive an amount of the potential proceeds of the consumer's
69 civil action or claim. The term does not include:

70 (a) Legal services provided to a consumer on a contingency
71 fee basis or advanced legal costs where such services or costs
72 are provided by an attorney representing the consumer in
73 accordance with the Florida Rules of Professional Conduct;

74 (b) A commercial tort claim as defined in s.
75 679.1021(1) (m);

76 (c) A worker's compensation claim under chapter 440;

77 (d) Lending or financing arrangements between an attorney
78 or law firm and a lending institution to fund litigation costs
79 in the ordinary course of business; or

80 (e) A consumer finance loan, as defined in s. 516.01(2).

81 (9) "Net proceeds" means the portion of the proceeds of a
82 civil action or claim remaining after satisfaction of all liens
83 with a higher priority than that of the litigation financier as
84 specified in s. 559.958(2).

85 Section 3. Section 559.954, Florida Statutes, is created to
86 read:

87 559.954 Litigation financier registration; registration

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88 revocation.—

89 (1) A litigation financier may not engage in litigation
90 financing in this state before registering as a litigation
91 financier under this section.

92 (a) A litigation financier that is a corporation, limited
93 liability company, or partnership shall be considered registered
94 under this section if it has:

95 1. Met the bond requirements of subsection (2);
96 2. A status of active and in good standing as reflected in
97 department records; and

98 3. Filed articles of organization or incorporation, a
99 certificate of limited partnership, or another organizational
100 document or, if a foreign entity, an application for a
101 certificate of authority with the department stating therein
102 that it is a litigation financier.

103 (b) A litigation financier who is not a corporation,
104 limited liability company, or partnership shall be considered
105 registered under this section if he or she has:

106 1. Met the bond requirements of subsection (2); and
107 2. Filed a litigation financier registration application
108 with the department on a form prescribed by the department
109 containing, at a minimum:

110 a. The applicant's full legal name and fictitious name, if
111 any;

112 b. The applicant's physical address, mailing address, and
113 telephone number;

114 c. A statement that the applicant is a litigation
115 financier; and

116 d. Any other information the department deems necessary.

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117 (2) Each litigation financier must file with the department
118 a \$250,000 surety bond that must be all of the following:

119 (a) Issued by a surety company authorized to do business in
120 this state.

121 (b) Payable to the department for the payment of damages
122 awarded to a consumer under part II of chapter 501.

123 (c) Effective so long as the department's records designate
124 a litigation financier as such or a litigation financing
125 contract with the litigation financier is effective.

126 (3) A litigation financier must amend its registration
127 within 30 days after the date the information contained therein
128 changes or becomes inaccurate in any respect. A litigation
129 financier who is not a corporation, limited liability company,
130 or partnership may amend his or her registration by filing with
131 the department an amendment on a form prescribed by the
132 department.

133 (4) If the department determines that a litigation
134 financier has not complied with the requirements of this
135 section, the department shall serve the litigation financier
136 notice in a record of its intent to revoke the litigation
137 financier's registration. Such notice:

138 (a) Must specifically state all grounds for revocation; and

139 (b) May be sent by electronic mail to a litigation
140 financier that provided the department with an electronic mail
141 address.

142 (5) A litigation financier has 60 days from the date the
143 department sends the notice required by subsection (4) to
144 correct the grounds for revocation or demonstrate to the
145 reasonable satisfaction of the department that each ground

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determined by the department does not exist. The department shall revoke the registration of any litigation financier that fails to comply with the requirements of this section.

(6) The department has the authority reasonably necessary to enable it to administer this section efficiently, to perform duties imposed upon it, and to adopt rules to implement this section.

Section 4. Section 559.955, Florida Statutes, is created to read:

559.955 Litigation financing contracts; terms.—The litigation financing terms must be set forth in a written contract containing:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, fees, charges, or further obligation if, within 5 business days after execution of a contract or receipt of funds 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 acknowledgement of whether an attorney represents him or her in the civil action or claim that is the subject of the contract; and

(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.

Section 5. Section 559.956, Florida Statutes, is created to read:

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175 559.956 Prohibited conduct.—A litigation financier may not:

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

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

183 (3) Advertise false or misleading information about its
184 products or services;

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

190 (5) Fail to promptly supply a copy of any complete
191 litigation financing contract to the consumer;

192 (6) Attempt to obtain a waiver of any remedy, including,
193 but not limited to, compensatory, statutory, or punitive damages
194 that the consumer might otherwise have in the subject civil
195 action or claim;

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

198 (8) Offer or provide legal advice to the consumer regarding
199 the litigation financing contract or the subject civil action or
200 claim;

201 (9) Assign a litigation financing contract in whole or in
202 part;

203 (10) Report to a consumer credit reporting agency if

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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
course 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; or

(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 fees and charges owed under the
existing contract, unless the consumer consents to a
contemporaneous financing arrangement in writing.

Section 6. Section 559.957, Florida Statutes, is created to
read:

559.957 Required disclosures.—

(1) A litigation financing contract must contain 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 completely filled
in contract;

(b) A statement that the litigation financier does not have
the right to, and may not make any decisions or attempt to,
influence the consumer or his or her attorney about the conduct
of the civil action or claim that is the subject of the contract
and that the right to make such decisions remains solely with
the consumer;

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233 (c) The total funded amount provided to the consumer;

234 (d) An itemized list of all fees and charges payable by the
235 consumer;

236 (e) The interest rate;

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

240 (g) A statement that the consumer will owe no fees or
241 charges other than those described in the disclosures;

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

245 (i) Notice that if the consumer recovers nothing from the
246 subject civil action or claim, he or she will owe the litigation
247 financier nothing; and

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

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

257
258 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT
259 WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION
260 WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR
261 RECEIPT OF FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER],

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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 PROFESSIONAL, OR AN
ACCOUNTANT.

Section 7. Section 559.958, Florida Statutes, is created to
read:

559.958 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
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:

(a) Attorney, insurance carrier, or healthcare practitioner
liens or liens based upon subrogation interests or reimbursement

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rights related to the subject civil action or claim; and

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

Section 8. Section 559.959, Florida Statutes, is created to read:

559.959 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 10 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 computations.

(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 that is the subject of the litigation financing contract, whichever is earlier, but interest may not accrue for a period exceeding 3 years from the date the consumer receives the funds from the litigation financier. The total interest 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 fees or charges the combined total of which exceeds \$500 with regard to a single

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civil action or claim, regardless of the number of litigation
financing contracts the consumer enters into with the litigation
financier with respect to the civil action or claim.

(5) A litigation financier may not directly or indirectly
charge, contract for, or receive any interest, fees, or charges,
for rescission or cancellation of a litigation financing
contract under s. 559.955(1).

Section 9. Section 559.961, Florida Statutes, is created to
read:

559.961 Litigation financing contracts; discovery.—Except
as otherwise ordered by the court, a party to any civil action
or claim must, without awaiting a discovery request, 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. Section 559.962, Florida Statutes, is created
to read:

559.962 Effect of communication on privilege.—Communication
between a consumer's attorney and a litigation financier
regarding a litigation financing contract does 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. Section 559.963, Florida Statutes, is created
to read:

559.963 Violation; enforcement.—

(1) A violation of this part is considered an unfair and
deceptive trade practice actionable under part II of chapter
501.

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(2) This section does not limit:

(a) The enforcing authority's exercise of powers or performance of duties that the enforcing authority is otherwise legally authorized or required to exercise or perform; or

(b) The rights and remedies available to the state or a person under any other law.

Section 12. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

1750

Bill Number (if applicable)

Topic Litigation Financing Consumer Protection

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida 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.

This is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

Topic Litigation Finance

Amendment Barcode (if applicable)

Name Eric Schuller

Job Title President

Address 712 H Street NE Suite 1007

Phone 815-341-9564

Street

Washington

DC

20002

City

State

Zip

Email eschuller@arclegalfunding.org

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

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

3/24/21

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1750

Bill Number (if applicable)

Topic Litigation financing consumer protection

Amendment Barcode (if applicable)

Name ALIX MILLER

Job Title Senior Vice President

Address 350 E College Ave

Phone 850-222-9980

Tallahassee FL 32301

Street

City

State

Zip

Email alix@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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21

Meeting Date

SB 1750

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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

~~2887784~~

Amendment Barcode (if applicable)

287784

Topic Litigation Finance

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 eschuller@arclegalfunding.org

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

SG7790

Amendment Barcode (if applicable)

Topic Litigation Finance

Name Eric Schuller

Job Title President

Address 712 H Street NE Suite 1007

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Washington

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Zip

Phone 815-341-9564

Email eschuller@arclegalfunding.org

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

688212

Amendment Barcode (if applicable)

Topic Litigation Finance

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 eschuller@arclegalfunding.org

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

~~771578~~

Amendment Barcode (if applicable)

771578

Topic Litigation Finance

Name Eric Schuller

Job Title President

Address 712 H Street NE Suite 1007

Street

Washington

City

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State

20002

Zip

Phone 815-341-9564

Email eschuller@arclegalfunding.org

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

646616
Amendment Barcode (if applicable)

Topic Litigation Finance

Name Eric Schuller

Job Title President

Address 712 H Street NE Suite 1007

Street

Washington

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State

20002

Zip

Phone 815-341-9564

Email eschuller@arclegalfunding.org

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

567974

Amendment Barcode (if applicable)

Topic Litigation Finance

Name Eric Schuller

Job Title President

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Phone 815-341-9564

Email eschuller@arclegalfunding.org

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

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021

Meeting Date

SB 1750

Bill Number (if applicable)

968410

Amendment Barcode (if applicable)

Topic Litigation Finance

Name Eric Schuller

Job Title President

Address 712 H Street NE Suite 1007

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City

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20002

Zip

Phone 815-341-9564

Email eschuller@arclegalfunding.org

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

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)

CourtSmart Tag Report

Room: KB 412
Caption: Senate Committee on Banking and Insurance

Case No.: -

Type:
Judge:

Started: 3/24/2021 8:30:11 AM

Ends: 3/24/2021 9:35:07 AM

Length: 01:04:57

8:30:10 AM Meeting is called to order by Senator Boyd
8:30:15 AM Roll call
8:30:40 AM Quorum is present
8:30:49 AM Chair Boyd gives Covid instructions to the public, at the civic center
8:31:28 AM Tab 1- SB 566, Motor Vehicle Rentals, by Senator Perry is taken up
8:31:42 AM Delete-all amendment barcode #254770 is taken up first
8:31:55 AM Senator Perry presents the amendment
8:32:24 AM Questions on the amendment
8:32:35 AM Question from Senator Stewart
8:33:07 AM Senator Perry responds
8:33:16 AM Chair Boyd confirms the barcode of the delete-all being processed is 254770
8:33:30 AM There are 2 amendments to the delete-all
8:33:39 AM Amendment barcode #103668 by Senator Rouson is taken up
8:33:54 AM No questions on the amendment to the delete-all amendment
8:34:33 AM Public Testimony
8:34:46 AM William Cotterall, General Counsel for Florida Justice Association, speaking in support
8:36:20 AM George Feijoo, Consultant for Avail, speaking in opposition
8:38:50 AM Senator Thurston with question to George Feijoo
8:39:34 AM Mr. George Feijoo responds
8:40:20 AM Senator Thurston with follow up
8:40:44 AM George Feijoo responds
8:41:04 AM Senator Thurston with another question
8:41:29 AM George Feijoo responds
8:42:41 AM Leslie Dughi, Director of Enterprise Holdings, speaking against
8:43:41 AM Senator Perry with debate
8:44:11 AM Senator Rouson closes on amendment
8:45:02 AM Amendment barcode #103668 fails
8:45:10 AM Amendment barcode #584970 by Senator Rouson is taken up
8:46:10 AM No questions
8:46:11 AM Public Testimony
8:46:15 AM George Feijoo, Consultant for Avail, speaking in opposition
8:48:37 AM William Cotterall, General Counsel for Florida Justice Association, speaking in support
8:50:21 AM Leslie Dughi, Director of Enterprise Holdings, speaking against
8:51:40 AM Senator Perry in debate
8:52:19 AM Senator Rouson closes on his amendment
8:52:42 AM Amendment barcode #584970 failed
8:52:52 AM Back on the delete-all amendment, barcode #254770, by Senator Perry
8:52:53 AM No questions
8:53:02 AM Public Testimony
8:53:07 AM Beth A. Vecchioli, representing National Association of Mutual Insurance Companies, speaking in support
8:54:29 AM Leslie Dughi, Director of Enterprise Holdings, speaking in support
8:54:39 AM George Feijoo, Consultant for Avail, speaking in support
8:54:52 AM No debate on the delete-all amendment
8:55:17 AM Senator Perry waives close
8:55:20 AM Amendment barcode #254770 is adopted
8:55:35 AM Back on the bill as amended
8:55:40 AM Member questions
8:55:46 AM Senator Thurston asks a question
8:56:01 AM Senator Perry responds
8:56:08 AM Senator Thurston with follow up
8:56:28 AM Senator Perry responds
8:56:36 AM Public Testimony

8:56:40 AM Beth A. Vecchioli, representing National Association of Mutual Insurance Companies, waiving in support
8:56:49 AM Leslie Dughi, Director of Enterprise Holdings, waiving in support
8:56:56 AM Brewster Bevis, Sr. VP for Associated Industries of Florida, waives in support
8:57:00 AM William Cotterall, General Counsel for Florida Justice Association, speaking against
8:58:19 AM Robert Stuart, representing Hillsborough County Aviation Authority, speaking against
8:59:26 AM Senator Thurston with a question for Robert Stuart
8:59:47 AM Mr. Stuart responds
9:01:04 AM George Feijoo, Consultant for Avail, speaking in support
9:01:04 AM Jim Doughton, representing Toro, waiving in support
9:01:22 AM Debate on the bill as amended
9:01:29 AM Senator Thurston has questions
9:01:47 AM Senator Perry acknowledges Senator Thurston's concerns
9:02:17 AM Chair Boyd thanks Senator Perry and Senator Brandes on the bill
9:02:37 AM Senator Perry closes on the bill
9:03:15 AM Roll call
9:03:40 AM CS/SB 566 is reported favorably
9:04:08 AM Tab 2- SB 786, Prescription Insulin Drugs, by Senator Cruz is taken up
9:04:11 AM Senator Berman presents for Senator Cruz
9:05:02 AM Senator Broxson with a question
9:05:24 AM Senator Berman responds
9:05:45 AM Senator Rodrigues with a question
9:06:07 AM Senator Berman responds
9:06:29 AM Senator Rodrigues continues with line of questioning
9:06:36 AM Senator Berman answers
9:06:53 AM Senator Rodrigues with follow up
9:07:03 AM Senator Berman responds
9:07:15 AM Senator Rodrigues has another question
9:07:21 AM Senator Berman answers
9:07:37 AM Senator Rodrigues with follow up
9:07:48 AM Senator Berman responds
9:08:31 AM Public Testimony
9:08:37 AM Joy Ryan, representing Florida Insurance Council, waives in opposition
9:08:42 AM Karl Rasmussen, representing America's Health Insurance Plans (AHIP), waives against
9:08:57 AM Theodus Baker, Desert of Florida AEONMS, speaking in support
9:11:37 AM Senator Thurston with question to Mr. Baker
9:12:11 AM Mr. Baker responds
9:12:44 AM Dawn Springs, representing Association of Diabetes Care & Education Specialist, speaking in support
9:17:03 AM Brewster Bevis, Sr. VP for Associated Industries of Florida, waives against
9:17:13 AM Ron Watson, representing Florida Renal Coalition, waives in support
9:17:35 AM Chris Clark speaking in support of the bill
9:20:42 AM Senator Thurston requests to Chair Boyd that those who waived in opposition explain their reasons why
9:21:11 AM Senator Broxson states that debate will explain why there is opposition
9:21:34 AM In debate
9:22:11 AM Senator Broxson discusses the cost burden on the insurers
9:22:57 AM Senator Broxson furthers the discussion on the role of insulin manufacturers in the issue
9:24:53 AM Senator Thurston comments on the effects of diabetes in communities
9:27:42 AM Senator Berman closes on the bill
9:28:35 AM Roll call
9:28:50 AM SB 786 is reported favorably
9:29:21 AM Gavel is turned over to Rules Chair Passidomo to finish the meeting
9:29:37 AM Tab 3- SB 1750, Litigation Financing Consumer Protection, by Senator Broxson is taken up
9:30:01 AM The bill is explained
9:31:09 AM Senator Broxson motions to TP the bill at this time
9:32:08 AM Chair Passidomo instructs to show the bill temporarily postponed
9:32:14 AM Chair gives opportunity for Senators wishing to show their vote on the record
9:32:17 AM Senator Gruters moves to show voting in affirmative on Tab 1- CS/SB 566
9:33:00 AM Senator Thurston comments on possible meeting to focus on banking relationships within communities
9:33:53 AM Senator Passidomo suggests further discussing with Chair Boyd the possibility of a workshop
9:34:26 AM Senator Rodrigues moves to show voting in affirmative on Tab 2- SB 786
9:34:29 AM Senator Thurston moves the meeting be adjourned
9:34:30 AM The meeting is adjourned