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LEGISLATIVE ACTION

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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



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11 read:

12 559.952 Definitions.—As used in this part, the term:

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

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

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

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

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

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

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

37 (b) A commercial tort claim as defined in s.  
38 679.1021(1)(m).

39 (c) Lending or financing arrangements between an attorney



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

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

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

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

49 559.953 Litigation financing contracts; terms.—The terms of  
50 a litigation financing contract must be set forth in a written  
51 contract that is completely filled in with no incomplete  
52 sections when the contract is presented to the consumer. The  
53 contract must contain all of the following:

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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98 claim.

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

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

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

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

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

117 (14) Provide litigation financing for a claim under chapter  
118 440.

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

121 559.955 Required disclosures.—

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

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



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

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

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

135       (e) The interest rate.

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

195 559.957 Interest, fees, charges, and penalties.-

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

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

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





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

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

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

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

228 559.958 Litigation financing contracts; discovery.—Except  
229 as otherwise ordered by the court, a party to any civil action  
230 or claim, without awaiting a discovery request, shall provide to  
231 the other parties any contract under which a litigation  
232 financier has a contingent right to receive compensation sourced  
233 from potential proceeds of the civil action or claim.

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

236 559.959 Effect of communication on privilege.—  
237 Communications between a consumer's attorney and a litigation  
238 financier as it pertains to a litigation financing contract do  
239 not limit, waive, or abrogate the scope or nature of any  
240 statutory or common-law privilege, including the work-product  
241 doctrine and the attorney-client privilege.

242 Section 10. Section 559.961, Florida Statutes, is created



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243 to read:

244 559.961 Violation; enforcement.—

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

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

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

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

255 And the title is amended as follows:

256 Delete everything before the enacting clause  
257 and insert:

258 A bill to be entitled

259 An act relating to litigation financing consumer  
260 protection; creating the Litigation Financing Consumer  
261 Protection Act; creating s. 559.952, F.S.; defining  
262 terms; creating s. 559.953, F.S.; specifying mandatory  
263 litigation financing contract terms; creating s.  
264 559.954, F.S.; prohibiting litigation financiers from  
265 engaging in specified conduct; creating s. 559.955,  
266 F.S.; requiring specified mandatory litigation  
267 financing contract disclosures; creating s. 559.956,  
268 F.S.; authorizing a consumer to assign his or her  
269 contingent right to proceeds from a civil action or  
270 claim; establishing the priority of liens against or  
271 rights to civil action or claim proceeds; creating s.



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272 559.957, F.S.; authorizing litigation financiers to  
273 charge interest up to a specified amount annually;  
274 requiring simple interest computations for purposes of  
275 interest rates; specifying computations for a maximum  
276 annual, monthly, and daily percentage rate; providing  
277 a maximum interest accrual period; requiring that the  
278 total interest must be calculated based on the actual  
279 number of days for which interest accrued; capping the  
280 fees and charges that litigation financiers may  
281 assess; prohibiting a litigation financier from  
282 assessing specified fees or charges; creating s.  
283 559.958 , F.S.; requiring litigation financing  
284 contract disclosure under specified circumstances;  
285 creating s. 559.959 , F.S.; providing that specified  
286 communications between attorneys and litigation  
287 financiers do not limit or waive statutory or common-  
288 law privilege; creating s. 559.961, F.S.; providing  
289 that a violation of this part is a violation of the  
290 Florida Deceptive and Unfair Trade Practices Act;  
291 providing that a contract that does not comply with  
292 the provisions of this part is void and unenforceable;  
293 providing an effective date.