

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 186

INTRODUCER: Judiciary Committee and Senator Taddeo

SUBJECT: Lease of Dogs or Cats

DATE: February 18, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

The bill takes effect July 1, 2020.

II. Present Situation:

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

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

¹ Section 828.29, F.S.

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

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

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

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

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

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

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

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

Florida Contract Law

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

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

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

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

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

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

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

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

⁴ Section 559.9233, F.S.

⁵ Section, 559.9235(1)(b), F.S.

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

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

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

Pet Lease Agreements

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

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

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

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

State Laws Prohibiting Pet Leasing

Several states restrict or prohibit the practice of pet leasing.

⁷ 15 U.S.C. ss. 1667-1667f.

⁸ *Id.*

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

New York¹⁰

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

California¹¹

In California, a contract is void if it:

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

New Jersey¹²

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

Washington¹³

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

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

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

Nevada¹⁴

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

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

¹¹ Cal. Civil Code s. 1670.10 (2018).

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

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

¹⁴ Nev. Rev. Stat. s. 597.997 (2017).

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

Indiana¹⁵

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

III. Effect of Proposed Changes:

The bill prohibits the following contracts:

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

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

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

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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

¹⁵ Ind. Code s. 24-4.5-2407.5 (2019).

¹⁶ FLA. CONST. art. 1 s. 10

¹⁷ U.S. CONST. art. I s. 10

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 828.32 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on January 28, 2020:

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

B. Amendments:

None.