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LEGISLATIVE ACTION

Senate

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House

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

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

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

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

54 559.955 Litigation financing contracts; terms.—The  
55 litigation financing terms must be set forth in a written  
56 contract and must contain all of the following:

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

62 (a) Provides a written rescission notice; and

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

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



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69 attorney represents him or her in the civil action or claim that  
70 is the subject of the contract.

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

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

78 559.956 Prohibited conduct.—A litigation financier may not  
79 do any of the following:

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

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

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

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

92 (5) Fail to supply a copy of any executed, signed  
93 litigation financing contract to the consumer within 2 business  
94 days.

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



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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



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127 least 12-point boldfaced type:

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

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

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

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

139 (e) The interest rate;

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

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

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

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

151 (j) Notice that if the net proceeds of the subject civil  
152 action or claim are insufficient to fully repay the litigation  
153 financier, the litigation financier will accept a reduced sum as  
154 full payment of the funded amount and all fees and charges owed,  
155 which sum may not exceed the net proceeds less proceeds



156 specifically awarded for future medical expenses.

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

160  
161 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT  
162 WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION  
163 WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR  
164 RECEIPT OF FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER],  
165 WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION  
166 AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION  
167 FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON  
168 FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN  
169 RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE  
170 CONSIDERED THE DATE OF RETURN OF THE FUNDS.

171  
172 (3) A litigation financing contract must contain the  
173 following disclosure immediately above the consumer's signature  
174 line in 18-point uppercase and boldfaced type:

175  
176 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE  
177 CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU  
178 SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO  
179 WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN  
180 ACCOUNTANT.

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

183 559.958 Contingent right to proceeds assignable; priority  
184 of lien or right to proceeds.-



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

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

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

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

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

200 559.959 Interest, fees, charges, and penalties.-

201 (1) A litigation financier may not directly or indirectly  
202 charge, contract for, or receive an interest rate of greater  
203 than 10 percent of the funded amount per annum simple interest.

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

208 The maximum daily rate must be computed on the basis of the  
209 maximum monthly rate divided by the number of days in the month.

210 (3) Interest may only accrue until a court enters a final  
211 order or a settlement agreement is executed in the civil action  
212 or claim that is the subject of the litigation financing  
213 contract, whichever is earlier, but interest may not accrue for





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214 a period exceeding 3 years from the date the consumer receives  
215 the funds from the litigation financier. The total interest  
216 assessed must be calculated based on the actual number of days  
217 for which interest accrued.

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

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

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

230 559.961 Litigation financing contracts; discovery.—Except  
231 as otherwise ordered by the court, a party to any civil action  
232 or claim must, without awaiting a discovery request, provide to  
233 the other parties any contract under which a litigation  
234 financier has a contingent right to receive compensation sourced  
235 from potential proceeds of the civil action or claim.

236 Section 10. Section 559.962, Florida Statutes, is created  
237 to read:

238 559.962 Effect of communication on privilege.—Communication  
239 between a consumer's attorney and a litigation financier  
240 regarding a litigation financing contract does not limit, waive,  
241 or abrogate the scope or nature of any statutory or common-law  
242 privilege, including the work-product doctrine and the attorney-



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243 client privilege.

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

246 559.963 Violation; enforcement.-

247 (1) A violation of this part is considered an unfair and  
248 deceptive trade practice actionable under part II of chapter  
249 501.

250 (2) This section does not limit:

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

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

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

257

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

259 And the title is amended as follows:

260 Delete lines 12 - 13

261 and insert:

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