A bill to be entitled

An act relating to cybersecurity standards and liability; amending s. 282.3185, F.S.; authorizing local governments to only adopt specified cybersecurity standards; prohibiting the Department of Management Services from delegating the authority to set such standards to local governments; requiring vendors to comply with specified cybersecurity standards; defining the term "vendor"; providing for preemption; creating s. 768.401, F.S.; providing definitions; providing that a local government, a covered entity, or a third-party agent that complies with certain requirements is not liable in connection with a cybersecurity incident under certain circumstances; requiring covered entities and third-party agents to implement revised frameworks, standards, laws, or regulations within a specified time period; providing that a private cause of action is not established; providing that the fact that a specified defendant could have obtained a liability shield or a presumption against liability is not admissible as evidence of negligence, does not constitute negligence per se, and may not be used as evidence of fault; specifying that the defendant in certain actions has a certain burden of proof;

providing applicability; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (4) of section 282.3185, Florida Statutes, is amended to read:

282.3185 Local government cybersecurity.—

(4) CYBERSECURITY STANDARDS.—

(a)1. A local government may only adopt cybersecurity standards ~~Each local government shall adopt cybersecurity standards that safeguard its data, information technology, and information technology resources to ensure availability, confidentiality, and integrity. The cybersecurity standards must be~~ consistent with the standards and processes established by the department through the Florida Digital Service pursuant to s. 282.318 ~~generally accepted best practices for cybersecurity, including the National Institute of Standards and Technology Cybersecurity Framework~~. The department may not delegate the authority to set cybersecurity standards to a local government.

2. Unless otherwise required by state or federal laws or regulations, a vendor shall comply with cybersecurity standards consistent with the standards and processes established by The National Institute of Standards and Technology (NIST) Cybersecurity Framework 2.0. For purposes of this subparagraph,

"vendor" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity.

(b) This subsection preempts any prior cybersecurity standards or processes adopted by a local government that are inconsistent with this subsection ~~Each county with a population of 75,000 or more must adopt the cybersecurity standards required by this subsection by January 1, 2024. Each county with a population of less than 75,000 must adopt the cybersecurity standards required by this subsection by January 1, 2025~~.

~~(c) Each municipality with a population of 25,000 or more must adopt the cybersecurity standards required by this subsection by January 1, 2024. Each municipality with a population of less than 25,000 must adopt the cybersecurity standards required by this subsection by January 1, 2025.~~

~~(d) Each local government shall notify the Florida Digital Service of its compliance with this subsection as soon as possible.~~

Section 2. Section 768.401, Florida Statutes, is created to read:

768.401 Limitation on liability for cybersecurity incidents.—

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

(a) "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative,

association, or other commercial entity.

(b) "Cybersecurity standards or frameworks" means one or more of the following:

1. The National Institute of Standards and Technology (NIST) Cybersecurity Framework 2.0;

2. NIST special publication 800-171;

3. NIST special publications 800-53 and 800-53A;

4. The Federal Risk and Authorization Management Program security assessment framework;

5. The Center for Internet Security (CIS) Critical Security Controls;

6. The International Organization for Standardization/International Electrotechnical Commission 27000 series (ISO/IEC 27000) family of standards;

7. HITRUST Common Security Framework (CSF);

8. Service Organization Control Type 2 Framework (SOC 2);

9. Secure Controls Framework; or

10. Other similar industry frameworks or standards.

(c) "Disaster recovery" has the same meaning as in s. 282.0041.

(d) "Local government" means a county, municipality, or other political subdivision of this state.

(e) "Personal information" has the same meaning as in s. 501.171(1).

(f) "Third-party agent" means an entity that has been

contracted to maintain, store, or process personal information on behalf of a covered entity.

(2) A local government is not liable in connection with a cybersecurity incident if the local government has implemented one or more policies that substantially comply with cybersecurity standards or align with cybersecurity frameworks, disaster recovery plans for cybersecurity incidents, and multi-factor authentication.

(3) A covered entity or third-party agent that acquires, maintains, stores, processes, or uses personal information has a presumption against liability in a class action resulting from a cybersecurity incident if the covered entity or third-party agent has a cybersecurity program that does all of the following, as applicable:

(a) Substantially complies with s. 501.171(3)-(6), as applicable.

(b) Has implemented:

1. One or more policies that substantially comply with cybersecurity standards or align with cybersecurity frameworks, a disaster recovery plan for cybersecurity incidents, and multi-factor authentication; or

2. If regulated by the state or Federal Government, or both, or if otherwise subject to the requirements of any of the following laws and regulations, a cybersecurity program that substantially complies with the current version of such laws and

regulations, as applicable:

a. The Health Insurance Portability and Accountability Act of 1996 security requirements in 45 C.F.R. part 160 and part 164 subparts A and C.

b. Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended, and its implementing regulations.

c. The Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283.

d. The Health Information Technology for Economic and Clinical Health Act requirements in 45 C.F.R. parts 160 and 164.

e. The Criminal Justice Information Services (CJIS) Security Policy.

f. Other similar requirements mandated by state or federal laws or regulations.

(4) A covered entity's or third-party agent's cybersecurity program's compliance with paragraph (3)(b) may be demonstrated by providing documentation or other evidence of an assessment, conducted internally or by a third-party, reflecting that the covered entity's or third-party agent's cybersecurity program has implemented the requirements of that paragraph.

(5) Any covered entity or third-party agent must update its cybersecurity program to incorporate any revisions of relevant frameworks or standards or of applicable state or federal laws or regulations within 1 year after the latest publication date stated in any such revisions in order to retain

protection from liability.

(6) This section does not establish a private cause of action.

(7) If a civil action is filed against a local government, covered entity, or third-party agent that failed to implement a cybersecurity program in compliance with this section, the fact that such defendant could have obtained a liability shield or presumption against liability upon compliance is not admissible as evidence of negligence, does not constitute negligence per se, and may not be used as evidence of fault under any other theory of liability.

(8) In a civil action relating to a cybersecurity incident, if the defendant is a local government covered by subsection (2) or a covered entity or third-party agent covered by subsection (3), the defendant has the burden of proof to establish substantial compliance with this section.

(9) This section applies to any putative class action filed before, on, or after the effective date of this act.

Section 3. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. This act shall take effect upon becoming a law.