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 920
INTRODUCER:	Senators Bradley and Braynon
SUBJECT:	Deferred Presentment Transactions
DATE:	January 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.			CM	
3.			RC	

I. Summary:

SB 920 authorizes deferred presentment installment transactions under Florida law. The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days. The bill retains current law in s. 560.404(19), F.S., that a provider may not enter into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

The maximum fees on a deferred presentment installment transaction that may be charged by a provider or its affiliate are 8 percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited.

A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in substantially equal and consecutive installments. The time between installment payments must be at least 13 days but not greater than 1 calendar month.

The provider must provide a grace period for payment of a scheduled installment if the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Deferred Presentment

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[1] The transactions are commonly referred to as "payday loans." These transactions are governed by part IV of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[2] and money services business licensed under part II[3] or part III[4] of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[5] Fees generally may not exceed 10 percent of payment provided to the drawer, except for an additional verification fee not to exceed $5 may also be charged.[6] The term of a deferred presentment agreement may not be less than 7 days or greater than 31 days. A deferred presentment provider may not enter into a deferred presentment transaction with a drawer (customer) who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[7] A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[8]

If the drawer, at the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[9] As a condition of receiving the grace period, the drawer must make an appointment with a consumer

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[1] See s. 560.402, F.S.

[2] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et Seq.

[3] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S.

[4] Licensure as a check casher. Section 655.005(6), F.S., defines a "check casher" to mean a person who sells currency in exchange for payment instruments received, except travelers checks.

[5] Section 560.404(5), F.S.

[6] Section 560.404(6), F.S.

[7] Section 560.404(19), F.S.

[8] Section 560.404(18), F.S.

[9] Section 560.404(22), F.S.

credit counseling agency within 7 days after the end of the deferment period and complete counseling by the end of the grace period.

The deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of part VI, ch. 560, F.S.[10] The deferred presentment provider must comply with state and federal disclosure requirements.[11] The loan loss rate is 1.8 percent of total transactions representing an advance amount of approximately $50.4 million. Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.[12] Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of $3.09 billion with total advance fees of $306 million. The average transaction from July 2016 to June 2017 was $400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of $3.09. Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in 1 to 3 transactions, 30.7 engaged in 4 to 9 transactions, and 37.6 percent engaged in 10 or more transactions.

Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

On October 5, 2017, the Bureau of Consumer Financial Protection (CFPB) finalized a rule governing certain consumer credit products.[13] The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.[14] The key provisions of the rule are as follows:[15]

The Lender Must Determine the Consumer's Ability to Repay

Makes it an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans,[16] including payday and vehicle title loans, without reasonably determining that consumer have the ability to repay the loans according to their terms. The ability to repay standard requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and

[10] Section 560.404(10), F.S.
[11] Section 560.404(13) and (20), F.S.
[12] Office of Financial Regulation, Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017 (June 2017)(On file with the Senate Committee on Banking and Insurance).
[13] 82 FR 54472.
[14] Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (October 5, 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps (last accessed January 12, 2018).
[15] The summary of key provisions of the CFPB rule is taken from 82 FR 54472 at pgs. 1-9, unless otherwise indicated.
[16] A balloon payment loan is a larger than usual one-time payment at the end of the loan term.

other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;
- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

The rule also prohibits lenders from making a covered loan to a consumer who has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, or for 30 days after the third loan is not outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than $500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

Payment Practices

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loans as the ability to repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alter the consumer to unusual payment attempts. The notice may be provided electronically with the consumer's consent.

Lender Reporting and Compliance Requirements

The rule requires lenders to furnish to registered information systems certain information concerning loans covered by the rule. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must also retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

The CFPB rule provides minimum consumer protections and allows State and local jurisdictions to adopt further regulatory measures to protect consumers. Lender compliance with the rule is required on August 19, 2019.

Many Florida deferred presentment transactions are affected by the rule because they are for 45 days or less and do not qualify for one of the rule's exceptions. Thus deferred presentment transaction providers will have to comply with the underwriting requirements of the rule or conform their business practices to meet the exception to underwriting. Deferred presentment transactions made pursuant to SB 920 would be exempt from the underwriting requirement of the CFPB rule because such loans would be for a term longer than 30 days, and would not be a longer-term balloon payment loan because the bill requires installment payment to be as equal as practicable.

III. Effect of Proposed Changes:

The bill authorizes deferred presentment installment transactions under Florida law. Deferred presentment transactions made pursuant to SB 920 would be exempt from the underwriting requirement of the CFPB rule because such loans would be for a term longer than 30 days, and would not be a longer-term balloon payment loan because the bill requires installment payment to be as equal as practicable. Provisions of the CFPB rule relating to payment practices, lender reporting, and compliance will apply to deferred presentment installment transaction lenders that provide loans with a term longer than 45 days, with a cost of credit exceeding 36 percent per annum, and that have a leveraged payment mechanism.

Section 1 amends s. 560.402, F.S., to define a "deferred presentment installment transaction" to mean "a deferred presentment transaction that is repayable in installments."

Section 2 amends s. 560.404, F.S., to authorize deferred presentment installment transactions under Florida law.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees.[17] The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days. The bill retains current law in s. 560.404(19), F.S., that a provider may not enter into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

The maximum fees on a deferred presentment installment transaction that may be charged by a provider or its affiliate are 8 percent of the outstanding transaction balance on a biweekly basis.[18] Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited.

A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in substantially equal and consecutive installments. The time between installment payments must be at least 13 days but not greater than 1 calendar month.

The provider must provide a grace period for payment of a scheduled installment if the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment. The grace period postpones the due date of an installment until after the last scheduled installment payment, at an interval which is no less than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments are due once every 2 weeks, the grace period must be at least 2 weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement.[19] The notice will now detail the availability of the single grace period for a deferred presentment installment transaction.

Section 3 amends s. 560.405, F.S., to allow a deferred presentment provider to present a check before the end of a deferment period if the check is for a missed scheduled payment for a deferred presentment installment transaction. A technical amendment is also made clarifying that the drawer (customer) may redeem the check used in the deferred presentment transaction by paying the outstanding transaction balance and earned fees.

Section 4 reenacts s. 560.111, F.S., for the purpose of incorporating the amendments made by the bill to ss. 560.404 and 560.405, F.S. Section 560.111, F.S., makes willful violations of those sections a third degree felony.

Section 5 provides an effective date of July 1, 2018.

[17] See s. 560.404(5), F.S.
[18] See s. 560.404(6), F.S.
[19] See s. 460.404(20), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows the deferred presentment transaction database fee to vary with the term of the loan, thus increasing the total possible database fee from $1 to $3.

B. Private Sector Impact:

The bill will generally raise the fees that customers must pay to engage in a deferred presentment transaction. The Office of Financial Regulation provided a comparison between a payday loan under SB 920 of $1,000 with a 60 day term and two current payday loan transactions totaling $1,000:[20]

Loan Comparison	Current Loan 1	Current Loan 2	Current Loan Total	SB 920 Loan
Loan Amount	$500.00	$500.00	$1,000.00	$1,000.00
Fees	$55.00	$55.00	$110.00	$214.68
Term (days)	30	30	60	60
Payments	1	1	2	4
Payment Amount	$555.00	$555.00	$555.00	$216.96
Total Payment	$555.00	$555.00	$1,110.00	$1,216.96

There are circumstances where the new loan would result in lower fees than a current payday loan. For instance, if the drawer (customer) redeems the check on a SB 920 loan after 14 days, only 8 percent fees would be owing and due, whereas a redemption after 14 days of a current payday loan would still require the payment of 10 percent in fees.

Many payday lenders assert that the CFPB rule imposes additional costs and administrative burdens that will result in reducing the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps.

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[20] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2017) (On file with the Senate Committee on Banking and Insurance).

C. Government Sector Impact:

Office of Financial Regulation[21]

The Office of Financial Regulation assesses each deferred present provider a $1 transaction fee for each deferred presentment transaction to maintain an Internet database that records all deferred presentment transactions in the state. Deferred presentment providers and the OFR use the database to verify whether any deferred presentment transactions are outstanding for a particular person. The database is required by s. 560.404(23), F.S. The OFR anticipates imposing a $2 fee for deferred presentment installment transactions with a 60-day term and a $3 fee for transactions with a 90-day term. Because the impact of the bill on the number of transactions is unknown, the impact of the bill on these revenues is indeterminate. The OFR received $7,657,486 in revenue related to the $1 transaction fee during fiscal year 2016-2017.

The OFR contracts with a third-party vendor that maintains a database that records all deferred presentment transactions in the state, the cost of which is directly related to the number of deferred presentment transactions and database fees collected. For fiscal year 2016-2017, the OFR paid its third-party vendor $2,656,269 for hosting, maintaining, and operating the database. The bill may increase or decrease this cost if the statutory authorization of deferred presentment installment transactions increases or decreases the number of deferred presentment transactions.

The bill would require modifications to the database, which the OFR would obtain through a procurement requiring a legislative budget appropriation and between 18 to 24 months to implement. The actual cost would not be known until bids are received from vendors pursuant to the procurement process.

The OFR believes that the provisions of the bill would require the office, through the Financial Services Commission, to amend a number of administrative rules. The cost incurred by the OFR for the rulemaking filings could be absorbed within the current budget of the Division of Consumer Finance.

VI. Technical Deficiencies:

Lines 191 through 200 should be amended to refer to subsection (22) and subsection (23).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.402, 560.404, 560.405, and 560.111.

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[21] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2017) (On file with the Senate Committee on Banking and Insurance).

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.

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