

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2294

SPONSOR: Banking and Insurance Committee and Senator Campbell

SUBJECT: Deferred Presentment Act

DATE: April 6, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 2294 would create the “Deferred Presentment Act.” as part IV of chapter 560, F.S. This would provide for authorization and regulation of “deferred presentment transactions” pursuant to which a person provides cash or currency in exchange for another person’s check and agrees to hold that person’s check for a period of time prior to depositing or redeeming the check. A deferred presentment transaction that complies with the provisions of the bill would not be construed to be a loan under state law.

Currently, a person may be registered under the Money Transmitters Code (chapter 560, F.S.) to be in the business of cashing checks and may charge up to 10% of the face amount of a personal check as a fee for this service. The registrant may accept a post-dated check or agree to wait a certain number of days to cash the check. However, the law does not permit a registrant to charge a fee for deferring the cashing of the check, which would be considered a loan under state law. In order to charge a fee, the check casher must also have consumer finance lender’s license and then could charge the interest or fees allowed by chapter 516, F.S.

The bill establishes the requirements for registration of a deferred presentment provider (“provider”) with the Department of Banking and Finance, and requires that a provider also be registered under part II or part III of the chapter.

A provider would be permitted to charge a fee that may not exceed 15 percent of the amount paid to the drawer of the check whose presentment or negotiation is deferred. A deferred presentment agreement could not be for a term in excess of 31 days, which could not be extended or renewed. The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of the fees allowed, and a provider could not hold more than two checks totaling \$1,000 for any one person at any one time.

The bill requires that all deferred presentment agreements contain certain information and disclosures, and prohibits certain acts and practices for a deferred presentment provider.

The bill also makes changes to the law related to money transmitters, generally, to add certain prohibited acts and to delete current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings conducted under this chapter and certain emergency orders.

This bill amends the following sections of the Florida Statutes: sections 560.103, 560.114, 560.125, 560.129, and 560.207. This bill creates the following sections of the Florida Statutes: Part IV of chapter 560, consisting of sections 560.400, 560.401, 560.402, and 560.403, 560.404, 560.405, 560.406, 560.407, and 560.408.

II. Present Situation:

Currently, under the Money Transmitters' Code, the Florida law provides for licensure and regulation of certain check cashing operations by the Department of Banking and Finance, (Part III of chapter 560, F.S., Check Cashing and Foreign Currency Exchange). No person may engage in the business of cashing checks or payment instruments or the exchange of foreign currency without first registering under the provisions of this part, which:

- Provides for registration, regulation, reports, examinations, for persons cashing checks or exchanging foreign currency.
- Provides an exemption from registration to persons engaged in cashing payment instruments or exchanging foreign currency for compensation if such activity for each location does not exceed 5 percent of the total gross income from the retail sale of goods or services during its most recently completed fiscal year.
- Requires an investigation fee of \$250. Provides for a renewal fee of \$500 every 2 years. Provides for a \$50 registration fee for each location not to exceed \$5,000.
- Provides limitations on all persons in the business of cashing payment instruments or exchanging foreign currency for the following fees:
 - 1) except as otherwise provided, no more than 5 percent of the face amount of a check, or 6 percent without identification, or \$5, whichever is greater;
 - 2) for state public assistance or federal social security benefit check payable to the bearer no more than 3 percent of the face amount of a check, or 4 percent without identification, or \$5, whichever is greater;
 - 3) for personal checks or money orders no more than 10 percent of the face amount, or \$5, whichever is greater.

A person registered under this part as being in the business of cashing checks ("registrant") may charge up to 10% of the face amount of a personal check as a fee for this service, as shown above. The registrant may accept a post-dated check or agree to wait a certain number of days to cash the check. However, the law does not permit a registrant to charge a fee for deferring the cashing of the check, which would be considered a loan under state law. In order the charge a fee, the check casher must also have consumer finance lender's license and then could charge the interest or fees allowed by chapter 516, F.S.

The department also administers the Money Laundering Program to deter money laundering through financial institutions operating in Florida. The more recent focus of money laundering activities has been on money transmitters (check cashers, foreign currency exchangers, money order issuers, and wire transmitters) which has been increasingly identified as a vehicle for money laundering.

Other aspects of the current law addressed by the bill are discussed in the section by section analysis, below.

III. Effect of Proposed Changes:

CS/SB 2294 would create the “Deferred Presentment Act.” as part IV of chapter 560, F.S. This would provide for authorization and regulation of “deferred presentment transactions” pursuant to which a person provides cash or currency in exchange for another person’s check and agrees to hold that person’s check for a period of time prior to depositing or redeeming the check. A deferred presentment transaction that complies with the provisions of the bill would not be construed to be a loan under state law. This new set of regulations are contained in Section 6 of the bill, as analyzed below. Sections 1 through 5 of the bill revise the current laws that apply to money transmitters, generally, also summarized below.

Sections 1 - 5 apply to Money Transmitters, Generally (Part I of chapter 560, F.S.)

Section 1 amends s. 560.103, F.S., (definitions), to add reference to new part IV of the chapter, relating to deferred presentment, as created by Section 6 of this bill.

Section 2 amends s. 560.114, F.S., relating to disciplinary action by the department for certain prohibited acts of any person who is registered under the chapter as a money transmitter (check casher, etc.), to add the following prohibited acts: the failure to pay any fee, charge, or fine imposed or assessed pursuant to the chapter; engaging in or advertising engagement in the business of a money transmitter without a registration, unless exempt; and pleading guilty or nolo contendere to a crime involving any act of moral turpitude (currently, the crime must related to fraud or dishonest dealing). The bill also strikes the word, “knowing” from the current prohibition against [knowing] failure to comply with any provision of the code, any rule or order adopted pursuant thereto, or any written agreement entered into with the department.

The bill also specifies that if any registration expires or is surrendered while administrative charges are pending, the proceeding shall continue.

Section 3 amends s. 560.125, F.S., which currently prohibits a person from engaging in the business of a money transmitter without being registered or exempt from registration. The bill further prohibits any person from advertising that he or she is engaging in such business without being registered or exempt.

Section 4 amends s. 560.129, F.S., relating to the confidentiality of certain proceedings and records. The bill deletes current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings conducted under this chapter. The bill also deletes the confidentiality provisions that currently apply to any emergency order

entered under s. 560.112 (6), F.S., which relates to conduct likely to cause substantial dissipation of assets or earnings of the money transmitter or insolvency or substantial prejudice to the customers. As amended by the bill, these hearings and proceedings and related records would no longer be confidential.

Section 5 amends s. 560.207, F.S., relating to renewal of a money transmitter's registration. The bill specifies that the current \$1,000 renewal fee is nonrefundable and extends the date for expiration of registration from March 31 to April 30.

Section 6 applies to Deferred Presentment

Section 6 creates new part IV of chapter 560 (ss. 560.400 - 560.408), F.S., to authorize and regulate deferred presentment agreements. The bill creates the following statutes, which provide as follows:

s. 560.400, F.S. Short Title.

The bill designates new part IV as the "Deferred Presentment Act."

s. 560.401, F.S. Definitions.

The bill creates definitions for the following terms: days, deferral period, deferred presentment agreement, deferred presentment provider, deferred presentment transaction, drawer, extension, renewal, and service fee.

The key definition of the practice that is regulated under this part is "deferred presentment transaction" which means "providing currency or a payment instrument in exchange for a person's check and agreeing to hold that person's check for a period of time prior to presentment, deposit of redemption. A deferred presentment transaction is not a loan under state law."

Other key terms include:

"Deferred presentment provider" or "provider" who is the person who, for compensation or gain, engages in a deferred presentment transaction. A provider must be registered under this part, as explained below.

"Drawer" means a person who signs a check to be held by a deferred presentment provider.

"Deferred presentment agreement" or "agreement" means the written agreement entered into between the drawer and the deferred presentment provider.

"Deferral period" means the period of time *not to exceed 31 days*, during which a provider agrees to hold a drawer's check prior to presenting, depositing, or redeeming it. The deferral period must commence on the date the deferred transaction agreement is executed and the drawer's check is signed.

"Service fee" means the fee a provider may charge in a deferred presentment transaction, which may not be deemed interest for any purpose. (See s. 560.406, F.S., in Section 6, below which limits the fee to 15% of the face amount of the check.)

s. 560.402, F.S. Requirement of registration; terms fees.

The bill establishes the requirements for registration of a deferred presentment provider, which includes a requirement that a person also be registered under part II or part III of the chapter, which currently regulates persons who sell or issue payment instruments (checks, money orders, etc.) or who transmits funds (part II) and persons who are in the business of cashing checks or other payment instruments or the exchanging of foreign currency (part III.) The bill requires that a separate application and \$500 fee be submitted to the department for registration as a deferred presentment provider, subject to a \$1,000 renewal fee (which, presumably, would be an *annual* renewal, but the bill does not specify the renewal period.). These are the same fees that registrants must currently pay under part II and part III, but the provider (under new part IV) would be required to pay separate, additional fees to those required under parts II and III.

A deferred presentment provider who fails to timely renew his or her registration must immediately cease to engage in the business of deferred presentment transactions.

s. 560.403, F.S. Deferred presentment transactions.

Each deferred presentment transaction must be evidenced by a written agreement, signed by the provider and the drawer. The agreement may not be for a term in excess of 31 days and the face amount of the drawer's check may not exceed \$500, exclusive of the service fee.

Upon receipt of the drawer's check, a deferred present provider must immediately provide the drawer with the face amount of the check, less the service fee if such a fee is included in the face amount of the check. The deferred presentment agreement must be executed on the same day the drawer's check is signed. The transaction is complete when the provider presents a drawer's check for payment or deposit, or the check is redeemed. Once a transaction is completed, the provider may enter into a new transaction with the drawer. However, the bill prohibits a provider from redeeming, extending, or otherwise consolidating a transaction with the proceeds of another transaction made by the same provider.

The bill specifies the types of currency that the deferred presentment provider may provide to the drawer of the check (which differs, depending on whether the provider is registered under part II or part III of the chapter). It further requires the deferred presentment provider to allow the drawer to cash any non-negotiable instrument issued by the provider with the provider without incurring any fees or costs.

s. 560.404, F.S. Disclosure requirements.

The bill requires that all deferred presentment agreements contain certain information, including the name or trade name, address, and telephone number of the provider, the name and title of the person signing the agreement on behalf of the provider, the transaction date, the amount of the check, the number of days of the deferral period, the address and telephone number of the department, and a clear description of the drawer's payment obligations.

The bill also requires two disclosure statements. The first disclosure statement provides, in summary, that "you" (the drawer) cannot be prosecuted in criminal court for a check written under this agreement unless the account was closed on the date of the transaction or is closed prior to the end of the deferral period. The second disclosure statement provides, in summary, that state law prohibits deferred presentment providers and affiliated providers from holding, at

any one time, more than two outstanding checks written by the drawer (“you”) and that state law prohibits providers from holding checks written by you which in the aggregate exceed \$1,000, exclusive of the service fee.

The bill prohibits a provider from including any of the following provision in any deferred transaction agreements: a hold harmless clause; a confession of judgement clause; any assignment of or order for payment of wages; a provision in which the drawer agrees not to assert any claim or defense arising out of the agreement; or a waiver of any provision of this part.

s. 560.405, F.S. Presentment; deposit and redemption of a drawer’s check.

The bill prohibits a deferred presentment provider from presenting or depositing a drawer’s check before the end of the deferral period, and requires the check to be endorsed with the actual name under with the deferred presentment provider is doing business. Allows a drawer of a check to elect to redeem his or her check at any time before the end of the deferral period.

The written agreement must authorize the registrant to defer presentment or negotiation of the check until after a specific date, not later than 31 days from the date the check is accepted by the registrant.

s. 560.406, F.S. Prohibited acts and practices.

The bill prohibits certain acts and practices for a deferred presentment provider, including charging a service fee in excess of 15 percent of the amount provided to the drawer. Other prohibited act include accepting or holding an undated check; altering or deleting the date on the check; collecting a service fee before the drawer’s check is presented, deposited, or redeemed; renewing or extending any deferred presentment transaction (beyond the 31 day limit); holding more than two outstanding checks from any one drawer at any one time; holding outstanding checks from any one drawer which in the aggregate exceed \$1,000; charging any fee other than the maximum 15% service fee, and certain other practices.

s. 560.407, F.S. Civil and criminal remedies.

Persons who write a check for a deferred presentment transaction on an account that was closed on the date of the transaction or that is closed before the agreed upon negotiation date of the deferred presentment, are subject to all civil and criminal penalties available at law.

A provider is allowed to seek collection on a bad check pursuant to s. 68.065, F.S., except that the provider is not entitled to the treble damages provided in that section.

s. 560.408, F.S. Books and records.

Deferred presentment providers would be required to maintain all books and records as prescribed by department rules, and be retained for at least 3 years.

Section 7 appropriates \$150,000 for fiscal year 1999-2000 from the Regulatory Trust Fund of the Department of Banking and Finance to the department to fund 3 positions to administer the provisions of the act created by this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 4 amends s. 560.129, F.S., to delete current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings conducted under this chapter and any emergency order entered under s. 560.112 (6), F.S., which relates to conduct likely to cause substantial dissipation of assets or earnings of the money transmitter or insolvency or substantial prejudice to the customers. As amended by the bill, these hearings and proceedings and related records would no longer be confidential. Since the bill does not create or expand an exemption from the public records law, the bill does not raise a constitutional issue of requiring a separate bill.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Registrants under the Deferred Presentment Act must be registered under either part II or part III of chapter 560. The bill requires that a separate application and \$500 fee be submitted to the department for registration as a deferred presentment provider, subject to a \$1,000 renewal fee (which, presumably, would be an *annual* renewal, but the bill does not specify the renewal period.). These are the same fees that registrants must currently pay under part II and part III, but the provider (under new part IV) would be required to pay separate, additional fees to those required under parts II and III.

B. Private Sector Impact:

Registrants under the Deferred Presentment Act would be subject to the fees specified above. They would be permitted to charge fees of up to 15 percent of the amount provided to the drawer of the check whose presentment is deferred. A deferred presentment agreement could not be for a term in excess of 31 days. A registrant may not renew any deferred presentment transaction. The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of the fees, so the fee could not exceed \$75 (15% of \$500). No more than two checks totaling \$1,000 may be held by a provider for any one drawer at any one time, so the total fees could not exceed \$150 (15% of \$1,000). However, there is no limit on the number of checks that a drawer can defer with any one provider over time, or any limit on the number of checks that a drawer can defer with two or more providers.

Persons who pay a service fee under a deferred presentment transaction may enjoy the immediate benefit of obtain funds, but must pay up to a 15% service fee for this advance of funds.

C. Government Sector Impact:

Section 7 appropriates \$150,000 for fiscal year 1999-2000 from the Regulatory Trust Fund of the Department of Banking and Finance to the department to fund 3 positions to administer the provisions of the act created by this bill. The department estimates that the bill will net a \$0 impact, based on an estimate of \$150,000 in additional revenues from licensure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
