

By the Committee on Banking and Insurance; and Senator
Campbell

311-1860-00

1 A bill to be entitled
2 An act relating to the money transmitters'
3 code; amending s. 560.103, F.S.; redefining the
4 term "code"; creating s. 560.1051, F.S.;
5 authorizing electronic submission of forms or
6 fees; authorizing the Department of Banking and
7 Finance to accept certification of compliance;
8 amending s. 560.208, F.S.; requiring persons
9 registered to issue payment instruments or
10 engage in funds transmission to cash checks
11 within a specified period and deposit funds in
12 a specified manner; providing penalties;
13 creating s. 560.2081, F.S.; limiting fees that
14 may be charged by payment instrument sellers;
15 providing penalties; creating ss. 560.401,
16 560.402, 560.403, 560.404, 560.405, 560.406,
17 560.407, 560.408, F.S.; creating the Deferred
18 Presentment Act; providing definitions;
19 requiring persons who engage in deferred
20 presentment transactions, as defined, to
21 register with the department and file a
22 declaration of intent to engage in that
23 business and allowing for renewal of deferred
24 presentment providers; prescribing guidelines
25 for persons engaging in the business of
26 deferred presentment transactions; prescribing
27 guidelines for such transactions; prohibiting
28 specified practices in connection with the
29 deferred presentment business; requiring
30 certain information to be disclosed to
31 customers of such a business; providing

1 penalties; requiring records to be maintained;
2 providing appropriations; providing an
3 effective date.

4
5 Be It Enacted by the Legislature of the State of Florida:

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7 Section 1. Subsection (4) of section 560.103, Florida
8 Statutes, is amended to read:

9 560.103 Definitions.--As used in the code, unless the
10 context otherwise requires:

11 (4) "Code" means the "Money Transmitters' Code,"
12 consisting of:

13 (a) Part I of this chapter, relating to money
14 transmitters generally.

15 (b) Part II of this chapter, relating to payment
16 instruments and funds transmission.

17 (c) Part III of this chapter, relating to check
18 cashing and foreign currency exchange.

19 (d) Part IV of this chapter, relating to deferred
20 presentment.

21 Section 2. Section 560.1051, Florida Statutes, is
22 created to read:

23 560.1051 Electronic submission of forms.--The
24 department may adopt rules to allow electronic submission of
25 any form or fee required by this chapter. The department may
26 also adopt rules to accept certification of compliance with
27 requirements of this chapter in lieu of requiring submission
28 of documents.

29 Section 3. Section 560.208, Florida Statutes, is
30 amended to read:

31 560.208 Conduct of business.--

1 (1) A registrant may conduct its business at one or
2 more locations within this state through branches or by means
3 of authorized vendors, as designated by the registrant.

4 (2) A check casher shall deposit or present a
5 negotiable instrument received under this part within 96 hours
6 after the registrant's receipt thereof. All funds entrusted to
7 a registrant by anyone under this part shall be deposited into
8 a separate trust account in a federally insured financial
9 institution located in this state and shall be promptly
10 disbursed upon fulfillment of any contractual or legal
11 obligation. A person who violates this subsection commits a
12 felony of the third degree, punishable as provided in s.
13 775.082, s. 775.083, or s. 775.084.

14 Section 4. Section 560.2081, Florida Statutes, is
15 created to read:

16 560.2081 Fees charged by payment instrument sellers.--A
17 payment instrument seller may not charge any fee, cost, or
18 charge totaling more than 10 percent of the face value amount
19 of the payment instrument issued or sold or \$3, whichever is
20 greater. A person who violates this section commits a felony
21 of the third degree, punishable as provided in s. 775.082, s.
22 775.083, or s. 775.084.

23 Section 5. Part IV of chapter 560, Florida Statutes,
24 consisting of sections 560.401, 560.402, 560.403, 560.404,
25 560.405, 560.406, 560.407, and 560.408, Florida Statutes, is
26 created to read:

27 560.401 Short title.--This part may be cited as the
28 "Deferred Presentment Act."

29 560.402 Definitions.--In addition to the definitions
30 provided in ss. 560.103, 560.202, and 560.301, for purposes of
31 this part, the term:

1 (1) "Affiliated registrant" means a registrant that,
2 either directly or indirectly, is under common control with
3 another registrant under this part.

4 (2) "Business day" means the hours during a particular
5 day that a registrant is regularly open, and may not exceed 15
6 hours during that day.

7 (3) "Check" means a three-party negotiable instrument
8 drawn on a financial institution and payable in cash.

9 (4) "Customer" means a person who tenders or delivers
10 a payment instrument to a registrant for the purpose of
11 effecting a deferred presentment transaction.

12 (5) "Deferment period" means the number of days a
13 registrant agrees to defer depositing or presenting a payment
14 instrument.

15 (6) "Deferred presentment" means a transaction in
16 which a customer tenders a check in return for currency,
17 pursuant to a mutual agreement, in return for a fee and in
18 which the check is held by the registrant for an agreed period
19 of time.

20 (7) "Drawer" means any person who signs a personal
21 check.

22 (8) "Redeem" means to tender payment to a registrant
23 for the face amount of the payment instrument.

24 (9) "Registrant" means a person authorized by the
25 department to conduct a deferred presentment transaction
26 pursuant to this part.

27 (10) "Roll-over" means closing or continuing a
28 deferred presentment transaction by accepting payment of the
29 fee from funds acquired pursuant to a deferred presentment
30 transaction or another deferred presentment transaction with
31 the same or an affiliated registrant commenced before or

1 within 1 business day after the expiration date of the
2 existing deferred presentment transaction's deferment period.

3 (11) "Service fee" means the fee authorized for the
4 deferral of the presentation of a check pursuant to this part.
5 This fee does not constitute interest for any purpose so long
6 as it does not exceed the maximum fee limitations set forth in
7 s. 560.403(5).

8 560.403 Requirement of registration and filing of a
9 declaration of intent.--

10 (1) A person may not engage in or attempt to engage
11 in, or in any manner advertise engagement in, the business of
12 deferred presentment transactions without first being
13 registered under part II or part III and having filed with the
14 department a declaration of intent to engage in the business
15 of deferred presentment transactions. In addition, any
16 registrant who intends to issue payment instruments must be
17 registered as a payment instrument issuer pursuant to part II.

18 (2) A registrant under this part shall renew his or
19 her intent to engage in the business of deferred presentment
20 transactions or to act as a deferred presentment provider upon
21 renewing his or her registration under part II or part III,
22 and shall do so by indicating his or her intent on the renewal
23 form and by submitting a nonrefundable deferred presentment
24 provider renewal fee of \$1,000, in addition to any fees
25 required for renewal of registration under part II or part
26 III.

27 (3) A registrant under this part who fails to timely
28 renew his or her intent to engage in the business of deferred
29 presentment transactions or to act as a deferred presentment
30 provider shall immediately cease to engage in the business of
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1 deferred presentment transactions or to act as a deferred
2 presentment provider.

3 (4) A registrant under this part who fails to timely
4 renew his or her intent to engage in the business of deferred
5 presentment transactions or to act as a deferred presentment
6 provider on or before the expiration date of the registration
7 period automatically expires. A renewal declaration of intent
8 and fee, and a late fee of \$500, must be filed within 60
9 calendar days after the expiration of an existing registration
10 in order for the declaration of intent to be reinstated. If
11 the registrant has not filed a renewal declaration of intent
12 within 60 days of the expiration date of an existing
13 registration, then a new declaration must be filed with the
14 department.

15 (5) The declaration of intent shall be on such form as
16 the department prescribes by rule. The declaration of intent
17 shall be filed together with a nonrefundable filing fee
18 established by department rule; however, the filing fee may
19 not exceed \$1,000.

20 (6) A person who engages in deferred presentment
21 transactions under this part who furnishes a payment
22 instrument to another person, as part of a deferred
23 presentment transaction or otherwise, must be registered
24 pursuant to part II.

25 (7) A person who engages in deferred presentment
26 transactions is not exempt from registration and declaration
27 required by this part regardless of any exemptions set forth
28 elsewhere in this code.

29 (8) The maximum fee for a deferred presentment
30 transaction shall be no more than 10 percent of the total
31 amount given to the customer by the registrant, not to exceed

1 \$50. However, a verification fee may be charged in accordance
2 with s. 560.309(4) and the rules adopted pursuant to the code.

3 (9) A registration granted pursuant to this part shall
4 not be transferrable to any other person or entity.

5 (10) A registrant under this part shall not operate
6 its business under any other name or title except the name or
7 title registered with the department.

8 (11) The department may impose a fine not to exceed
9 \$10,000 per count for each violation of this section.

10 (12) A person who violates any provisions of this
11 section commits a felony of the third degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084.

13 560.404 Use of authorized vendors prohibited.--A
14 deferred presentment provider may not use any authorized
15 vendor to engage in deferred presentment transactions.

16 560.405 Deferred presentment transactions.--

17 (1) In connection with a check cashing transaction, a
18 registrant may defer depositing or presenting a check provided
19 that:

20 (a) No fee other than the fee described in s.
21 560.403(5) is charged. This includes a fee or any other charge
22 for cashing payment instruments issued or directed to be
23 issued by the registrant to a customer;

24 (b) The deferment period is not less than 7, or more
25 than 31, calendar days from the inception date of the deferral
26 period;

27 (c) The deferred presentment transaction is evidenced
28 in writing and acknowledged by signature of the registrant and
29 the customer; and

30 (d) The registrant does not allow a roll-over.

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1 (2) Notwithstanding paragraph (1)(b), a customer may
2 at any time before the expiration of a deferred presentment
3 period redeem his or her payment instrument without being
4 charged any fee or penalty.

5 (3) If a check is returned to a registrant from a
6 payer financial institution due to insufficient funds for a
7 closed account or stop payment order, the registrant may
8 pursue all legally available civil means to collect the check
9 as if it were a loan, including, without limitation, the
10 imposition of all charges imposed on the registrant by the
11 payer financial institution. Deferred presentment transactions
12 shall not be considered checks or drafts within the meaning of
13 chapter 832, but shall be considered loans for the purpose of
14 any criminal statute.

15 560.406 Deferred presentment transactions; prohibited
16 practices.--

17 (1) It is unlawful and a violation of the code for a
18 registrant, an affiliated registrant, or any other person
19 acting on behalf of a registrant or in relation to a deferred
20 presentment transaction to:

21 (a) Engage in a deferred presentment transaction for
22 compensation or gain or in the expectation of compensation or
23 gain in excess of the fee authorized by s. 560.403(5).

24 (b) Renew or extend a deferment period for
25 compensation or gain or in the expectation of compensation or
26 gain.

27 (c) Engage in more than one deferred presentment
28 transaction with the same customer at any one time.

29 (d) Deposit or present a payment instrument before
30 expiration of a deferment period.

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1 (e) Charge a customer a fee for redeeming a payment
2 instrument, other than the fee permitted by s. 560.403(5).

3 (f) Require a customer to redeem a payment instrument
4 before the expiration of a deferment period.

5 (g) Require of or accept from a customer any security
6 or guaranty for a deferred presentment transaction.

7 (h) Conduct a roll-over.

8 (i) Collect the fee authorized by s. 560.403(5) before
9 the customer's check is redeemed, presented, or deposited.

10 (j) Accept or hold an undated payment check or a check
11 that is dated with a date that is different from the date
12 recorded on the deferred presentment agreement.

13 (k) Give to a customer a payment instrument that is
14 issued by any other person other than the registrant.

15 (l) Engage in a deferred presentment transaction for a
16 principal amount in excess of \$500, exclusive of the fees
17 authorized by s. 560.403(5).

18 (2) A person who violates any provision of this
19 section commits a felony of the third degree, punishable as
20 provided in s. 775.082, s. 775.083, or s. 775.084.

21 560.407 Deferred presentment agreements; disclosure
22 requirements and prohibitions.--

23 (1) A deferred presentment contract entered into
24 between a registrant and a customer shall, at a minimum,
25 contain the following:

26 (a) The name or trade name, address, and telephone
27 number of the registrant;

28 (b) The name and title of the person signing the
29 agreement on behalf of the registrant;

30 (c) The signatures of the registrant and the customer
31 along with the date of signature which shall be conclusive

1 evidence of the date that the deferred presentment transaction
2 was made;

3 (d) The face amount of the consumer's check, exclusive
4 of the fee authorized by s. 560.403(5);

5 (e) The total amount of the fee due at the end of the
6 deferment period;

7 (f) A statement printed in no less than 12-point type
8 in a prominent place containing the following information:

9 1. The annual percentage rate that the customer is
10 being charged as fees, excluding verification fee; and

11 2. The total amount that the customer is required to
12 pay at the end of the deferment period, including the
13 principal plus all fees and charges;

14 (g) The number of days of the deferment period and the
15 payment due date;

16 (h) The address and telephone number of the
17 department;

18 (i) A detailed description of the customer's payment
19 obligations under the deferred presentment transaction; and

20 (j) The following statements, displayed in 16-point
21 bold face type in a prominent place:

22
23 YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK WRITTEN
24 UNDER THIS AGREEMENT TO BE HELD BY THE REGISTRANT, BUT A
25 REGISTRANT MAY PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO
26 ENFORCE THE DEBT.

27
28 STATE LAW PROHIBITS A REGISTRANT FROM ALLOWING YOU TO
29 ROLL-OVER YOUR DEFERRED PRESENTMENT TRANSACTION WITH THE
30 REGISTRANT. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO
31 PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR

1 PRESENTMENT OF YOUR CHECK FOR PAYMENT. STATE LAW PROHIBITS
2 THIS REGISTRANT FROM ENTERING INTO ANOTHER DEFERRED
3 PRESENTMENT TRANSACTION WITH YOU UNTIL AT LEAST THE NEXT
4 BUSINESS DAY AFTER THE CLOSING OF THIS TRANSACTION. STATE LAW
5 FURTHER PROHIBITS A CHECK CASHER FROM ENGAGING IN MORE THAN
6 ONE DEFERRED PRESENTMENT TRANSACTION WITH YOU AT ANY ONE TIME.
7 IF YOU CHOOSE TO ENGAGE IN MORE THAN ONE DEFERRED PRESENTMENT
8 TRANSACTION AT ANY TIME, YOU MAY EXPERIENCE ADVERSE LEGAL AND
9 FINANCIAL CONSEQUENCES.

10 (2) A registrant may not include any of the following
11 provisions in any deferred presentment agreement:

12 (a) A hold harmless clause;

13 (b) A confession of judgment clause;

14 (c) Any assignment of or order for payment of wages or
15 other compensation for services;

16 (d) A provision in which the consumer agrees not to
17 assert any claim or defense arising out of the agreement; or

18 (e) A provision making arbitration or any other form
19 of dispute resolution mandatory.

20 (3) The registrant shall, at the same time of any
21 transaction, immediately provide the customer with an extra
22 copy of all documents signed by that customer and the
23 registrant, including any addenda or attachments to such
24 documents.

25 (4) A person who violates any provision of this
26 section commits a felony of the third degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084.

28 560.408 Records.--

29 (1) Each registrant under this part must maintain all
30 books, accounts, records, and documents necessary to determine
31 the registrant's compliance with the provisions of the code.

1 Such books, accounts, records, and documents shall be retained
2 for a period of at least 3 years unless a longer period is
3 expressly required by the department, the laws of this state,
4 or any federal law.

5 (2) The records required to be maintained by the code
6 or any rule adopted pursuant thereto may be maintained by the
7 registrant at any location within this state, provided that
8 the registrant notifies the department in writing of the
9 location of the records in its application or otherwise.

10 (3) A registrant shall make records available to the
11 department for examination and investigation in this state, as
12 permitted by the code, within 7 days after receipt of a
13 written request.

14 (4) The original of any record of a registrant
15 includes the data or other information comprising a record
16 stored or transmitted in or by means of any electronic,
17 computerized, mechanized, or other information storage,
18 retrieval, or transmission system or device that can upon
19 request generate, regenerate, or transmit the precise data or
20 other information comprising the record. An original also
21 includes the visible data or other information so generated,
22 regenerated, or transmitted if it is legible or can be made
23 legible by enlargement or other process.

24 Section 6. Effective July 1, 2000, the sum of \$150,000
25 is appropriated for the 2000-2001 Fiscal Year from the
26 Regulatory Trust Fund of the Department of Banking and Finance
27 to the Department of Banking and Finance to fund three
28 positions for the purpose of administering the provisions of
29 the Deferred Presentment Act.

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1 Section 7. The Division of Statutory Revision is
2 requested to title part IV of chapter 560, Florida Statutes,
3 "Deferred Presentment."

4 Section 8. This act shall take effect October 1, 2000.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 1730

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9 The committee substitute makes the following changes:

- 10 - Specifies registration renewal requirements for deferred
11 presentment providers, including a \$1,000 biennial,
renewal fee and a \$500 late fee;
- 12 - Requires a registrant to maintain and make available
13 records to the Department of Banking and Finance for a
period of at least 3 years; and
- 14 - Appropriates \$150,000 for the Department of Banking and
15 Finance Regulatory Trust Fund and three positions to the
16 Department of Banking and Finance to administer the
provisions of the Deferred Presentment Act for fiscal
year 2000-01.

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