

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 2278

SPONSOR: Governmental Oversight and Productivity Committee and Senator Meek

SUBJECT: Check Cashing

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Wilson	GO	Favorable/CS
2.			BI	
3.			AG	
4.				
5.				

I. Summary:

The bill would create the “Deferred Presentment Act” as Part IV of ch. 560, F.S. This act would provide for authorization for, and regulation of, “deferred presentment transactions” in 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. The bill continues regulatory oversight of this industry by the Department of Banking and Finance (hereinafter “department”), and provides the following:

- ◆ defines commonly used industry terms;
- ◆ specifies registration and renewal requirements for deferred-presentment providers, including a \$1,000 registration fee and a \$1,000 biennial, renewal fee;
- ◆ specifies disclosures for agreements;
- ◆ requires the deferment period to be no more than 21 days, except that a local government may modify this term by ordinance if it provides for a deferment period of at least 14, but no more than 31 days;
- ◆ caps fees to a maximum of 10 percent of the amount financed (however, verification charges provided in s. 560.309, F.S., are also authorized);
- ◆ prohibits roll-overs of agreements;
- ◆ places a \$500 limit for any one provider agreement (exclusive of fees);
- ◆ allows the customer to redeem their check prior to the presentation date;
- ◆ prohibits a deferred presentment provider (hereinafter “provider”) or affiliate from engaging in more than one deferred presentment transaction with the same customer at any one time;
- ◆ requires a provider to maintain and make available records to the department for a period of at least 3 years;
- ◆ provides that counties and municipalities are not prohibited from enacting ordinances which are more restrictive than the act; and

- ◆ appropriates \$150,000 and three positions to administer the provisions for fiscal year 2000-01 from the Regulatory Trust Fund to the department.

In addition, the bill provides the following changes relating to Part I (Money Transmitters), Part II (Payment Instruments), and Part III (Check Cashing and Foreign Currency Exchange) of ch. 560, F.S.:

- ◆ Adds that failure to pay statutory fees or fines, and engaging in the money transmitter business without a registration constitute violations of the code.
- ◆ Adds an initial \$50 application for registration fee for each vendor or branch of a Part II or Part III registrant, and increases the maximum fee which may be paid for vendor and branch locations from \$5,000 to \$20,000.
- ◆ Provides late fees for registration renewals under the code.

This bill amends the following sections of the Florida Statutes: 560.103, 560.114, 560.118, 560.119, 560.205, 560.206, 560.207, 560.208, 560.307, and 560.308. The bill creates the following sections of the Florida Statutes: 560.401, 560.402, 560.403, 560.404, 560.405, 560.406, 560.407, and 560.408.

II. Present Situation:

Currently, under the Money Transmitters' Code, 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 (i.e., check, draft, warrant, money order, travelers check) or in 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.
- ◆ Requires an initial investigation fee for registration which may not exceed \$250. Provides for a renewal fee of \$500 every 2 years, and a \$50 registration renewal fee for each location not to exceed \$5,000.
- ◆ 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.
- ◆ 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 percent 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. If a licensed check casher holds the check for a period of time, the transaction has some characteristics of a loan, but it is the department’s position that this transaction is not expressly prohibited by the statute.

It is the position of the department that licensed check cashers are not permitted to execute “roll-overs” of these transactions because a “roll-over” would clearly convert the transaction into a loan of a type not authorized by any Florida statute. Should a licensee engage in a “roll-over,” it is the department’s position that it would be both a regulatory violation which could result in civil penalties and a criminal violation of ch. 687, F.S., should the interest rate exceed 18 percent per annum.

A person must not engage in the business of making consumer finance loans unless authorized to do so under ch. 516, F.S., or other laws authorizing loans. Section 516.01(2), F.S., defines a consumer finance loan to mean a loan in an amount under \$25,000 with an annual interest greater than 18 percent per annum. Section 516.01(2), F.S., defines the term “interest” to be the costs of obtaining a consumer finance loan and includes any profit advantage of any kind whatsoever that the lender may charge, contract for, collect, receive or obtain. Section 516.031(3), F.S., provides that any charges, including interest, in excess of the combined total authorized by ch. 516, F.S., constitutes a violation of ch. 687, F.S., which governs interest and usury. Chapter 687, F.S., caps the maximum interest rate at 18 percent, if the debt is less than \$500,000.

Other specific statutes authorizing consumer finance loans in excess of 18 percent are found in Chapter 520, F.S. (retail installment sales), Chapter 538, F.S. (title loans), Chapter 539, F.S. (pawns), and Chapter 655, F.S. (credit cards). Consequently, deferred deposit loans, or any variation thereof, which do not strictly comply with the requirements of Chapter 560, F.S., may be contrary to the law if the amount of the loan is under \$25,000 and the interest rate exceeds 18 percent per annum.

One Tallahassee business, Cash Cow, was found by the department to have engaged in over 4,000 illegal transactions over the course of one year, collected fees to which it was not entitled, and on occasion threatened to prosecute customers who did not pay these illegal fees. In April of 1997, the department filed an administrative action against Cash Cow for statutory violations which resulted in a final order revoking the business’ license, removal of the acting president, a cease and desist order, and a \$230,000 fine. The First District Court of Appeal affirmed that order *per curiam*. In approximately half its transactions, Cash Cow agreed to forego presentment of the checks with which its payment instruments were purchased. In each case, this was found to be a consumer finance loan, and Cash Cow was deemed to be financing the purchase of their payment instruments with consumer finance loans.

Part II of ch. 560, F.S., provides for the regulation of payment instruments and funds transmission. Prior to engaging in the sale or issuance of payment instruments or in the activity of a money transmitter, a person must obtain registration under the provisions of this part. Requirements for applicants for registration include: (1) submission of a \$500 nonrefundable investigation fee; (2) name and address of the applicant; (3) the history of the applicant's material litigation; (4) a description of the activities conducted by the applicant and the business activities in which the applicant seeks to engage in Florida; and (5) other information including financial reports.

Part II registration must be renewed on April 30 of the year following issuance of the registration. A registration may be renewed for a 24-month period by paying a \$1,000 fee, along with a \$50 fee for each of the registrant's locations, not to exceed \$5,000 for all locations.

Section 560.204, F.S., authorizes a person registered under part II to engage in check cashing and foreign exchange transactions authorized under part III. However, part II does not limit or address the fees an individual registered under part II may charge for cashing checks. Presently, the fees charged by a person registered under part II for cashing checks is unregulated.

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.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 560.103, F.S., to provide that the newly created Part IV of the chapter relating to deferred presentments is included within the meaning of "Money Transmitters' Code."

Section 2. The bill amends s. 560.114, F.S., to provide that the following actions by a money transmitter are violations of the code: (a) failure to pay any fee, charge, or fine under the code; and (b) engaging or advertising engagement in the business of a money transmitter without a registration.

Furthermore, the bill provides that if a registration expires while administrative charges are pending against the deferred presentment provider that proceedings against the registrant shall continue as if the registration were still in effect.

Section 3. The bill deletes the provisions in s. 560.118, F.S., which provide that the department may recover costs of examining and supervising money transmitters from the money transmitters. Rather than requiring these statutory costs, the bill increases registration and renewal fees required by the act to fund the department's enforcement of the act.

Section 4. The bill amends s. 560.119, F.S., to delete references to examination fees.

Section 5. The bill continues the requirement in s. 560.205, F.S., for an application fee of up to \$500 for payment instrument sellers or funds transmitters, and adds a \$50 application fee for each authorized vendor or branch of the seller or transmitter.

Section 6. The bill amends s. 560.206, F.S., to provide that a registration issued under Part II expires on April 30 of the second year following the registration's issuance, rather than April 30 of the following year as currently provided in the statute.

Section 7. The bill amends s. 560.207, F.S., to provide late fees of \$500 for Part II registration renewals. Under the bill, if the renewal application is filed within 60 days of the registration's expiration, a late fee of \$500 is required along with the \$1,000 renewal fee. If more than 60 days have passed, a new application for renewal is required. Furthermore, the bill provides, as does current law, that each renewal must be accompanied for by a \$50 fee, up to \$20,000, for each vendor or branch of the registrant.

Section 8. The bill amends s. 560.208, F.S., to add that Part II registrants must notify the department of all authorized vendor or branch locations within 60 days of designating such a location, and must submit a financial statement indicating compliance with s. 560.209(1), F.S., (requires certain net worths) and s. 560.118(2), F.S., (requires quarterly reports). Furthermore, the bill provides that registrants must submit a \$50 fee for each of these locations.

Section 9. The bill continues the requirement in s. 560.307, F.S., of a fee of up to \$250 for Part III registrants (check cashers or currency exchangers), and adds a \$50 application fee for each authorized vendor or branch of the registrant. Furthermore, it amends the section to require Part III registrants to notify the department of all authorized vendor or branch locations within 60 days of designating such a location, and requires a \$50 fee for each location.

Section 10. The bill amends s. 560.308, F.S., by increasing the maximum fee that may be paid by Part III registrants to renew the registration for all vendor and branch locations from \$5,000 to \$20,000. It also provides for a late fee of \$250 for registration renewals within 60 days of the expiration of an existing registration.

Section 11. The bill creates the "Deferred Presentment Act" in Part IV of ch. 560, F.S. The act provides definitions for the following terms or phrases: "affiliate"; "amount financed"; "business day"; "days"; "deferral period"; "deferred presentment provider"; "deferred presentment transaction"; "drawer"; "rollover"; "fee"; and "termination of an existing deferred presentment agreement." A "deferred presentment transaction" 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, or redemption.

In s. 560.403, F.S., the bill provides that a person who wishes to engage in deferred presentment transactions must be a Part II or Part III registrant, file a declaration of intent to engage in deferred presentment transactions, and pay a filing fee of \$1,000. The declaration of intent must be renewed by paying a \$1,000 fee at the time the registrant's Part II or Part III registration is renewed. If the declaration of intent is not timely renewed before or on its expiration date, it may be renewed within 60 days thereafter by paying a late fee of \$500 in addition to the \$1,000 fee. If more than 60 days have passed, a new declaration must be filed with the department. No person

who engages in deferred presentment transactions may be exempted from registration, even if the person is otherwise exempt from registration under any other provision of the code.

The bill provides that a written agreement must be executed for each deferred presentment transaction. The agreement must contain: the name, address, and phone number of the deferred presentment provider, and the name of the employee who signs the agreement; the date of the transaction; the amount of the drawer's check; the length of the deferral period; and a clear description of the drawer's payment obligations. The agreement must also have a notice in at least 16-point type that states:

State law prohibits you from having more than 1 deferred presentment agreement with this deferred presentment provider or an affiliate totaling more than \$500, exclusive of fees, outstanding at any time. Failure to obey this law could create severe financial hardship for you and your family.

Furthermore, the bill provides that the agreement may not contain the following: a hold harmless clause; a confession of judgment clause; any assignment or order for payment of wages or other compensation for services; nor a waiver clause. A copy of this agreement must be provided to the drawer.

In s. 560.404, F.S., the bill provides the following procedures for and limitations on deferred presentment transactions:

- ▶ no fee may be charged which is greater than 10 percent of the amount financed, except that a verification fee established by department rule may also be charged (currently is \$5);
- ▶ no more than \$500, exclusive of fees, may be financed by the drawer;
- ▶ the drawer's check must be dated, and the deferred presentment agreement must bear this same date;
- ▶ the deferred presentment transaction must comply with enumerated federal lending laws;
- ▶ the deferred presentment holding period may not exceed 21 days, except that a county or municipality may modify this term by ordinance to require a holding period of at least 14 days, but no more than 31 days;
- ▶ if the drawer does not redeem the amount due the provider at the end of the deferral period and if the drawer represents that there are insufficient funds in his or her account to redeem the check, the provider may not deposit the drawer's check until 60 days after the date of the deferred presentment agreement;
- ▶ proceeds of the drawer's check may be made in cash, or if the registrant is licensed under Part II, the proceeds may also be made in the form of a business check or money order;
- ▶ no deferred presentment transaction may be rolled over, i.e., no transaction may be terminated solely by paying the fees then due and the holding of the check or the substitution of a new check drawn by the drawer pursuant to a new deferred presentment agreement;
- ▶ a drawer may only have one check outstanding at any one time with any provider or affiliate;
- ▶ the drawer may not enter a new deferred presentment agreement until two business days after the termination of a prior deferred presentment agreement; and
- ▶ a provider must maintain a common database for the purpose of verifying that the provider or affiliate has no more than one check from a drawer outstanding at any one time.

In s. 560.405, F.S., the bill states that the provider shall not present the drawer's check prior to the presentment date reflected in the agreement. Before presenting the drawer's check, the check must be endorsed with the provider's actual business name. The provider may allow the drawer to redeem the face amount of the check at any time, but this payment may not be in the form of a personal check.

In s. 560.406, F.S., the bill provides that a provider may pursue the civil collection remedies in s. 68.065, F.S., except for treble damages, if a check is returned by the bank. The bill specifically provides that a drawer is not subject to criminal penalty. Furthermore, the provider is required to comply with state and federal statutory debt collection practices when pursuing civil remedies.

In s. 560.407, F.S., the bill requires Part IV registrants to maintain records necessary to determine the registrant's compliance with the act for at least 3 years, unless the department or statute requires a longer period. The registrant must make the records available to the department within seven days of a written request from the department.

In s. 560.408, F.S., the bill provides that nothing in Part IV precludes a county or municipality from adopting ordinances which are more restrictive than the part.

Section 12. The bill appropriates the sum of \$150,000 from the Regulatory Trust Fund to the department to fund three positions created to administered the act.

Section 13. The bill provides that the act takes effect on October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill permits counties and municipalities to enact ordinances which are more restrictive than the act. Concerning the length of the deferment period, the bill provides that a county or municipality may modify this period if it provides for a holding period of at least 14 days, but no more than 31 days.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The Department of Banking and Finance has estimated that approximately 275 (or 50 percent) of the current registrants will seek to engage in deferred presentment transactions. The registrants will incur a \$1,000 application fee, as well as a \$1,000 biennial renewal fee.

B. Private Sector Impact:

The provisions of this bill will enhance the regulatory oversight of deferred presentment providers and provide greater consumer protections for customers using this service. Under current department interpretation, deferment is allowed, if there is no roll-over. Since the bill prohibits roll-overs, this is merely codifying current practices. Presently, consumers engaged in a deferred presentment transaction are subject to the 10 percent check cashing fee. Under the provisions of the bill, consumers would pay less for these transactions, since the deferred presentment fee would be limited to 10 percent of the face amount of the check.

C. Government Sector Impact:

For FY 2000-01, the bill appropriates \$150,000 from the Regulatory Trust Fund and three positions to the Department of Banking and Finance to implement the provisions relating to deferred presentment transactions (part IV, of ch. 560, F.S.). In addition to the initial, application fee of \$1,000 per registrant, the department would also receive biennial renewal fees in the amount of \$1,000 per registrant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In addition to this bill, two other bills that are pending address the topic of deferred check presentment by persons licensed under part III of ch. 560, F.S:

- ▶ CS for SB 1834 amends s. 560.309(1), F.S., to provide that if a Part III registrant (check casher) does not deposit a payment instrument within two business days, excluding weekends, that the transaction is a consumer finance loan subject to ch. 516, F.S.
- ▶ CS for SB 1730 is the same as this bill, except that it does not provide a local option to enact ordinances more restrictive than the act.

VIII. Amendments:

None.

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