STORAGE NAME: h1561.ba
DATE: February 8, 2002

HOUSE OF REPRESENTATIVES
COMMITTEE ON
BANKING
ANALYSIS

BILL #: HB 1561

RELATING TO: The Deferred Presentment Act

SPONSOR(S): Representative Lacasa

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) BANKING
(2) COUNCIL FOR COMPETITIVE COMMERCE
(3)
(4)
(5)

I. SUMMARY:

This bill amends two sections of part IV of the Money Transmitters' Code (The Deferred Presentment Act). Deferred presentments, commonly known as "payday loans," occur when the licensed check casher, instead of cashing the check, holds the check for a period of time, deferring presentment to the drawer's bank until the drawer redeems the check or the check casher presents the instrument to the drawer's bank.

This bill removes the requirement that a deferred presentment provider have evidence that a drawer's check has cleared the drawer's bank account before the agreement is officially terminated, which starts the required 24 hour period before which the drawer may enter into a new agreement with the same provider or its affiliate. Therefore, an agreement is considered terminated when the check is either redeemed by the drawer, or deposited by the provider.

In addition, the bill repeals a section prohibiting a provider from requiring the drawer to accept the provider's payment instrument in lieu of cash.

There does not appear to be any fiscal impact to the General Revenue Fund. The bill provides an effective date upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [] N/A [x]

2. Lower Taxes Yes [] No [] N/A x]

3. Individual Freedom Yes [] No [x] N/A []

The bill removes the option of receiving cash from a payday lender if the lender prefers to proffer its own payment instrument. In addition, the bill removes the requirement that the lender have evidence that the borrower's check has cleared his/her bank account, which may increase to opportunities for the lender to engage in a rollover of the transaction.

4. Personal Responsibility Yes [] No [x] N/A []

See reason above.

5. Family Empowerment Yes [] No [] N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

General Historical

The Money Transmitters' Code (Chapter 560, F.S.), provides for licensure and regulation of certain money transmission and check cashing operations by the Department of Banking and Finance (the department). Part I of the Code provides requirements general to the whole of the chapter, the department regulates payment instruments and funds transmission under Part II, and check cashing and foreign currency exchange under Part III. A check casher, licensed under Part III of Chapter 560, F.S., is permitted to charge up to 10 percent of the face amount of a personal check as a fee for this service. Over the years an industry has evolved from the check cashing operations, called a "payday loan" or a "deferred presentment" whereby the licensed check casher, instead of cashing the check, holds the check for a period of time, deferring presentment to the drawer's bank until the drawer redeems the check or the check casher presents the instrument to the drawer's bank. The department's position is that although this transaction was not expressly prohibited by the statute it was probable the drafters of the statute did not contemplate this practice.

It remains 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. A "roll-over" occurs when the drafter of the check is unable to redeem the check and does not have sufficient funds in the bank to cover the check if presented, and so negotiates an extension by paying additional fees. It is the department's position that a roll-over would be both a regulatory violation which could result in civil penalties and a criminal violation of Chapter 687, F.S., should the interest rate exceed 18 percent per annum.

The Florida Legislature worked for several years to pass legislation regulating the deferred presentment industry, and finally succeeded during the 2001 Regular Session. The result is Part IV

of Chapter 560, F.S., which provides authorization for and regulation of deferred presentment activities (payday loans) by the department. The law provides:

- Definitions for commonly used industry terms.
- Registration requirements for deferred-presentment providers.
- Specific content for provider agreements.
- A cap on service fees not to exceed 10 percent of the amount paid to a consumer.
- A prohibition on provider agreement "roll-over."
- A $500 limit for any one provider agreement (exclusive of fees).
- A one-check limitation which any one consumer may have outstanding to one provider at any one time.
- The ability of the consumer to redeem their check prior to the presentation date.
- The ability of the provider to seek collection of a returned check pursuant to s. 68.065, F.S. (but without the provision for treble damages).
- A 60 day grace period if the customer is unable to pay, contingent upon the customer initiating and following through with consumer credit counseling.

The Termination of an Agreement

In order to limit the possibility of roll-overs, the law limits to one, the number of outstanding contracts a consumer may have with any one provider or the provider's affiliate(s) and provides a 24-hour waiting period after the agreement terminates before a drawer may execute a new deferred presentment agreement with the provider. Section 560.404(19), F.S. The termination of the agreement may occur at either redemption by the drawer or presentment (deposit) by the provider, however, the provider must have evidence that the check has cleared, and verification of sufficient funds in the drawer's account does not constitute sufficient evidence. Providers have complained that the 24-hour waiting period is spurious due to the time lag between depositing the check and receiving confirmation that the check has cleared.

Provider Payment Instruments

According to industry representatives, in order to reduce the amount of cash that is needed on premises to cover a high volume of business, and to discourage robbery of deferred presentment provider offices and/or clients, certain providers offer their own payment instruments (checks to be cashed at a bank) or value cards that are loaded with the agreed amount. Florida law, however, prohibits deferred presentment providers from requiring drawers to accept their own payment instruments in lieu of cash. Section 560.404(17), F.S.

C. EFFECT OF PROPOSED CHANGES:

The Termination of an Agreement

This bill removes the requirement that a deferred presentment provider have evidence that a drawer's check has cleared the drawer's bank account before the agreement is officially terminated, which starts the 24 hour period before the drawer may enter into a new agreement with the same provider or its affiliate. Therefore, an agreement is considered terminated when the check is either redeemed by the drawer, or deposited by the provider.

Without evidence that the check has cleared the borrower's account, there exists a possibility that the lender may engage in a rollover of the agreement if, after depositing the check (thus triggering

the 24 hour waiting period) in an account that does not have sufficient funds, the borrower may be required to engage in another transaction just to cover the deposited check or incur INSF fees.

Provider Payment Instruments

In addition, the bill repeals a section prohibiting a provider from requiring the drawer to accept the provider's payment instrument in lieu of cash. Therefore, if a lender does not want to carry cash, a borrower is required to accept a lender check or value card.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 560.402, F.S., removing the requirement that the deferred presentment provider have evidence that a check (that is the basis for an agreement) has cleared the borrower's bank account, signaling the termination of an existing agreement.

Section 2 repeals subsection (17) of s. 560.404, F.S., which prohibits a deferred presentment provider to require a drawer to accept the provider's payment instrument in lieu of currency.

Section 3 provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the department, this bill does not appear to have a fiscal impact.

2. Expenditures:

See, Part III.D. FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will ease certain requirements on vendors regarding value cards and payment instruments, as well as no longer requiring the vendor to have evidence the check cleared the borrower's bank account before officially terminating the agreement. This may likely result in an indeterminate cost savings to the deferred presentment providers.

D. FISCAL COMMENTS:

While this bill does not appear to have a fiscal impact per se, the amendments to the Deferred Presentment Act will effectively undo many month's amount of work in rulemaking hearings and

workshops. The amendments will require the department to promulgate new rules on the issue of the termination of an agreement incurring indeterminate expenses in that process.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None apparent

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is granted to the department.

C. OTHER COMMENTS:

Nineteen states and two U.S. jurisdictions ban payday loans: Alabama, Alaska, Arizona, Connecticut, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia, Puerto Rico and the U.S. Virgin Islands. Since other states have filed strict payday loan regulations, payday lenders have partnered with banks to make loans in states where the laws against payday lending are stricter.

In January 2002, the Office of the Comptroller of the Currency ordered Eagle National Bank of Upper Darby, Pennsylvania, to end a payday lending relationship with the payday lender Dollar Financial Group of Berwyn, Pa., by June 15, 2002. OCC officials said that Eagle's concentration of payday loans was too high -- the business accounts for nearly half of its revenues -- and that it had failed to maintain proper oversight of Dollar, which has been using the bank's charter to make loans in Eagle's name without its knowledge. Critics of this practice, including several states' regulators, say the bank is not actually making loans, because the payday lender originates and services the loans and ultimately buys them from the bank's portfolio. They say banks are in effect simply renting out their charters to allow payday lenders to get around local laws and not taking any risk.[1]

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

---

[1]From AMERICAN BANKER - Payday Mayday? Weighing the Impact, January 7, 2002

VII. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:	Staff Director:
Michael A. Kliner	Susan F. Cutchins