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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (3) through (5) and (6) of
section 560.402, Florida Statutes, are renumbered as subsections
(4) through (6) and (8), respectively, present subsection (7) is
amended, and new subsections (3) and (7) are added to that
section, to read:

560.402 Definitions.—For the purposes of this part, the



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11 term:

12 (3) "Deferred presentment installment transaction" means a
13 deferred presentment transaction that is repayable in
14 installments.

15 (7) "Outstanding transaction balance" means the amount
16 received by the drawer from the deferred presentment provider
17 that is due and owing, exclusive of the fees allowed under this
18 part, in a deferred presentment transaction.

19 (9) ~~(7)~~ "Termination of a deferred presentment agreement"
20 means that all checks ~~the check~~ that are ~~is~~ the basis for the
21 agreement are ~~is~~ redeemed by the drawer by payment in full in
22 cash, or are ~~is~~ deposited and the deferred presentment provider
23 has evidence that such checks have ~~check has~~ cleared.
24 Verification of sufficient funds in the drawer's account by the
25 deferred presentment provider is not sufficient evidence to deem
26 that the deferred presentment ~~deposit~~ transaction is terminated.

27 Section 2. Subsections (5), (6), (8), (12), (13), (14),
28 (19), (20), (21), and (22) and present subsections (23) and (24)
29 of section 560.404, Florida Statutes, are amended, and new
30 subsection (23) and subsection (26) are added to that section,
31 to read:

32 560.404 Requirements for deferred presentment
33 transactions.—

34 (5) The face amount of a check taken for deferred
35 presentment transactions not repayable in installments may not
36 exceed \$500, exclusive of the fees allowed under this part. For
37 a deferred presentment installment transaction, neither the face
38 amount of a check nor the outstanding transaction balance may
39 exceed \$1,000, exclusive of the fees allowed under this part.



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40 (6) (a) A deferred presentment provider or its affiliate may
41 not charge fees that exceed 10 percent of the currency or
42 payment instrument provided for a deferred presentment
43 transaction not repayable in installments. A deferred
44 presentment provider or its affiliate may not charge fees on any
45 deferred presentment installment transaction which exceed 8
46 percent of the outstanding transaction balance on a biweekly
47 basis.

48 (b) Notwithstanding paragraph (a) ~~However~~, a verification
49 fee may be charged as provided in s. 560.309(8). The fees in
50 paragraph (a) ~~The 10-percent fee~~ may not be applied to the
51 verification fee.

52 (c) Fees are earned at the time of origination for a
53 deferred presentment transaction scheduled to be paid off in 31
54 days or less; however, fees for a deferred presentment
55 installment transaction are earned using a simple interest
56 calculation. A deferred presentment provider may charge only
57 those fees specifically authorized in this section. Prepayment
58 penalties are prohibited.

59 (8) A deferred presentment agreement may not be for a term
60 longer than 31 days or fewer less than 7 days, except for a
61 deferred presentment installment transaction, which may not be
62 for a term longer than 90 days or fewer than 60 days.

63 (12) The deferred presentment agreement and the drawer's
64 initial check must bear the same date, and the number of days of
65 the deferment period must shall be calculated from that date.
66 For deferred presentment installment transactions, the deferred
67 presentment provider may accept additional checks, subject to
68 the limitations in subsection (5), each bearing the date that



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69 the check was given to the provider, and the deferred
70 presentment agreement must include the deferment period
71 applicable to each check. The deferred presentment provider and
72 the drawer may not alter or delete the date on any written
73 agreement or check held by the deferred presentment provider.

74 (13) For each deferred presentment transaction, the
75 deferred presentment provider must comply with the disclosure
76 requirements of 12 C.F.R. part 226, relating to the federal
77 Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer
78 Financial Protection Board of Governors of the Federal Reserve
79 Board. A copy of the disclosure must be provided to the drawer
80 at the time the deferred presentment transaction is initiated.

81 (14) A deferred presentment provider or its affiliate may
82 not accept or hold an undated check or a check dated on a date
83 other than the date on which the deferred presentment provider
84 agreed to hold the check and signed the deferred presentment
85 transaction agreement, except when a customer provides a new
86 payment instrument reflecting the new outstanding transaction
87 balance and anticipated fees upon making a payment on a deferred
88 presentment installment transaction.

89 (19) A deferred presentment provider may not enter into a
90 deferred presentment transaction with a drawer who has an
91 outstanding deferred presentment transaction with that provider
92 or with any other deferred presentment provider, or with a
93 person whose previous deferred presentment transaction with that
94 provider or with any other provider has been terminated for less
95 than 24 hours. The deferred presentment provider must verify
96 such information as follows:

97 (a) The deferred presentment provider must ~~shall~~ maintain a



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98 common database and ~~shall~~ verify whether the provider or an
99 affiliate has an outstanding deferred presentment transaction
100 with a particular person or has terminated a transaction with
101 that person within the previous 24 hours. If a provider has not
102 established a database, the provider may rely upon the written
103 verification of the drawer as provided in subsection (20).

104 (b) The deferred presentment provider must ~~shall~~ access the
105 office's database established pursuant to subsection (24) ~~(23)~~
106 and ~~shall~~ verify whether any other deferred presentment provider
107 has an outstanding deferred presentment transaction with a
108 particular person or has terminated a transaction with that
109 person within the previous 24 hours. Before the office has
110 implemented a database to include deferred presentment
111 installment transactions ~~If a provider has not established a~~
112 ~~database,~~ the deferred presentment provider must access the
113 office's current database pursuant to this paragraph and may
114 rely upon the written verification of the drawer as provided in
115 subsection (20).

116 (20) A deferred presentment provider must ~~shall~~ provide the
117 following notice in a prominent place on each deferred
118 presentment agreement in at least 14-point type in substantially
119 the following form and ~~must~~ obtain the signature of the drawer
120 where indicated:

121
122 NOTICE

123
124 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
125 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
126 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED



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127 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
128 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
129 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
130 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.
131

132 YOU MUST SIGN THE FOLLOWING STATEMENT:
133

134 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
135 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
136 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
137 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

138 (Signature of Drawer)
139

140 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
141 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
142 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE
143 PURSUED AGAINST YOU.
144

145 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER
146 (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR
147 DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU
148 CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE
149 IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT
150 OF YOUR CHECK FOR PAYMENT.
151

152 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE
153 IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON
154 THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE
155 AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,



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156 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF
157 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE
158 ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL
159 CHARGE. THE DEFERRED PRESENTMENT PROVIDER MUST ~~SHALL~~
160 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE
161 GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING
162 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL
163 BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
164 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN
165 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND
166 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE
167 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
168 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
169 THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

170
171 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
172 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY
173 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A
174 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE
175 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE
176 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
177 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
178 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
179 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
180 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
181 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS
182 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.

183
184 (21) The deferred presentment provider may not deposit or



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185 present the drawer's check if the drawer informs the provider in
186 writing or in person that the drawer cannot redeem or pay in
187 full in cash the amount due and owing the deferred presentment
188 provider, unless the drawer fails to comply with subsection (22)
189 or subsection (23), as applicable. No additional fees or
190 penalties may be imposed on the drawer by virtue of any
191 misrepresentation made by the drawer as to the sufficiency of
192 funds in the drawer's account. Additional fees may not be added
193 to the amounts due and owing to the deferred presentment
194 provider.

195 (22) For deferred presentment transactions not repayable in
196 installments, if, by the end of the deferment period, the drawer
197 informs the deferred presentment provider in writing or in
198 person that the drawer cannot redeem or pay in full in cash the
199 amount due and owing the deferred presentment provider, the
200 deferred presentment provider must ~~shall~~ provide a grace period
201 extending the term of the agreement for an additional 60 days
202 after the original termination date, without any additional
203 charge.

204 (a) The provider must ~~shall~~ require, ~~that~~ as a condition of
205 providing a grace period, that the drawer make an appointment
206 with a consumer credit counseling agency within 7 days after the
207 end of the deferment period and complete the counseling by the
208 end of the grace period. The drawer may agree to, comply with,
209 and adhere to a repayment plan approved by the counseling
210 agency. If the drawer agrees to comply with and adhere to a
211 repayment plan approved by the counseling agency, the provider
212 must also comply with and adhere to that repayment plan. The
213 deferred presentment provider may not deposit or present the



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214 drawer's check for payment before the end of the 60-day grace
215 period unless the drawer fails to comply with such conditions or
216 the drawer fails to notify the provider of such compliance.

217 Before each deferred presentment transaction, the provider may
218 verbally advise the drawer of the availability of the grace
219 period consistent with the written notice in subsection (20),
220 and may not discourage the drawer from using the grace period.

221 (b) At the commencement of the grace period, the deferred
222 presentment provider must ~~shall~~ provide the drawer:

223 1. Verbal notice of the availability of the grace period
224 consistent with the written notice in subsection (20).

225 2. A list of approved consumer credit counseling agencies
226 prepared by the office. The office list must ~~shall~~ include
227 nonprofit consumer credit counseling agencies affiliated with
228 the National Foundation for Credit Counseling which provide
229 credit counseling services to state residents in person, by
230 telephone, or through the Internet. The office list must include
231 phone numbers for the agencies, the counties served by the
232 agencies, and indicate the agencies that provide telephone
233 counseling and those that provide Internet counseling. The
234 office must ~~shall~~ update the list at least once each year.

235 3. The following notice in at least 14-point type in
236 substantially the following form:

237
238 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
239 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
240 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
241 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
242 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST



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243 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
244 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
245 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
246 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
247 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
248 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
249 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
250 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
251 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
252 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
253 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
254 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
255 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
256 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
257 THE DEBT.

258
259 (c) If a drawer completes an approved payment plan, the
260 deferred presentment provider must ~~shall~~ pay one-half of the
261 drawer's fee for the deferred presentment agreement to the
262 consumer credit counseling agency.

263 (23) For deferred presentment installment transactions, if
264 a drawer informs the deferred presentment provider in writing or
265 in person by noon of the business day before a scheduled payment
266 that the drawer cannot pay in full the scheduled payment amount
267 due and owing the provider, the deferred presentment provider
268 must provide the drawer the opportunity to defer the scheduled
269 payment, at no additional fee or charge, until after the last
270 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
271 same time zone in which the deferred presentment agreement was



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272 entered into. Only one deferred payment is permitted for each
273 deferred presentment installment transaction. The deferred
274 payment must be due at an interval after the last scheduled
275 payment which is no shorter than the intervals between the
276 originally scheduled payments.

277 (24) (a) ~~(23)~~ The office must ~~shall~~ implement a common
278 database with real-time access through an Internet connection
279 for deferred presentment providers, as provided in this
280 subsection. The database must be accessible to the office and
281 the deferred presentment providers in order to verify whether
282 any deferred presentment transactions are outstanding for a
283 particular person. Deferred presentment providers must ~~shall~~
284 submit such data before entering into each deferred presentment
285 transaction in such format as required by rule, including the
286 drawer's name, social security number or employment
287 authorization alien number, address, driver license number,
288 amount of the transaction, date of transaction, the date that
289 the transaction is closed, and such additional information as is
290 required by rule.

291 (b) For data that must be submitted by a deferred
292 presentment provider, the commission may by rule impose a fee of
293 up to \$1 per transaction for deferred presentment transactions
294 not repayable in installments, and the commission may impose a
295 fee of up to \$1 for each full or partial 30-day period that a
296 balance is scheduled to be outstanding for a deferred
297 presentment installment transaction ~~for data that must be~~
298 ~~submitted by a deferred presentment provider.~~

299 (c) A deferred presentment provider may rely on the
300 information contained in the database as accurate and is not



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301 subject to any administrative penalty or civil liability due to
302 relying on inaccurate information contained in the database.

303 (d) A deferred presentment provider must notify the office,
304 in a manner as prescribed by rule, within 15 business days after
305 ceasing operations or no longer holding a license under part II
306 or part III of this chapter. Such notification must include a
307 reconciliation of all open transactions. If the provider fails
308 to provide notice, the office must ~~shall~~ take action to
309 administratively release all open and pending transactions in
310 the database after the office becomes aware of the closure.

311 (e) This section does not affect the rights of the provider
312 to enforce the contractual provisions of the deferred
313 presentment agreements through any civil action allowed by law.

314 (f) The commission may adopt rules to administer this
315 subsection and to ensure that the database is used by deferred
316 presentment providers in accordance with this section.

317 (25)-(24) A deferred presentment provider may not accept
318 more than one check or authorization to initiate more than one
319 automated clearinghouse transaction to collect on a deferred
320 presentment transaction for a single deferred presentment
321 transaction, except for deferred presentment installment
322 transactions in which such checks or authorizations represent
323 multiple scheduled payments.

324 (26) A deferred presentment installment transaction must be
325 fully amortizing and repayable in consecutive installments as
326 nearly equal as mathematically practicable according to a
327 payment schedule agreed upon by the parties with no fewer than
328 13 days and not more than 1 calendar month between payments,
329 except that the first installment may be longer than the



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330 remaining installments by not more than 15 days, and the first
331 installment payment may be larger than the remaining installment
332 payments by the amount of charges applicable to the extra days.
333 In calculating charges under this subsection, when the first
334 installment is longer than the remaining installments, the
335 amount of the charges applicable to the extra days may not
336 exceed those that would accrue under a simple interest
337 calculation based on the rate allowed under subsection (6).

338 Section 3. Subsections (1), (3), and (4) of section
339 560.405, Florida Statutes, are amended to read:

340 560.405 Deposit; redemption.—

341 (1) The deferred presentment provider or its affiliate may
342 not present the drawer's check before the end of the deferment
343 period, except for a missed scheduled payment for a deferred
344 presentment installment transaction that has not been otherwise
345 deferred pursuant to s. 560.404(23), as reflected and described
346 in the deferred presentment transaction agreement.

347 (3) Notwithstanding subsection (1), in lieu of presentment,
348 a deferred presentment provider may allow the check to be
349 redeemed at any time upon payment of the outstanding transaction
350 balance and earned fees ~~face amount of the drawer's check.~~

351 However, payment may not be made in the form of a personal
352 check. Upon redemption, the deferred presentment provider must
353 ~~shall~~ return the drawer's check and provide a signed, dated
354 receipt showing that the drawer's check has been redeemed.

355 (4) A drawer may not be required to redeem his or her check
356 in full before the agreed-upon date; however, the drawer may
357 choose to redeem the check before the agreed-upon presentment
358 date.



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359 Section 4. For the purpose of incorporating the amendments
360 made by this act to sections 560.404 and 560.405, Florida
361 Statutes, in references thereto, subsection (5) of section
362 560.111, Florida Statutes, is reenacted to read:

363 560.111 Prohibited acts.—

364 (5) Any person who willfully violates any provision of s.
365 560.403, s. 560.404, or s. 560.405 commits a felony of the third
366 degree, punishable as provided in s. 775.082, s. 775.083, or s.
367 775.084.

368 Section 5. This act shall take effect July 1, 2019.

369

370 ===== T I T L E A M E N D M E N T =====

371 And the title is amended as follows:

372 Delete everything before the enacting clause
373 and insert:

374 A bill to be entitled
375 An act relating to deferred presentment transactions;
376 amending s. 560.402, F.S.; providing and revising
377 definitions; amending s. 560.404, F.S.; specifying the
378 maximum face amount of checks that may be taken for
379 deferred presentment installment transactions,
380 exclusive of fees; specifying the maximum rate and
381 frequency of fees that deferred presentment providers
382 or their affiliates may charge on deferred presentment
383 installment transactions; specifying when fees are
384 earned for certain deferred presentment transactions;
385 specifying the calculation of fees earned for deferred
386 presentment installment transactions; prohibiting
387 prepayment penalties; specifying the minimum and



388 maximum terms of a deferred presentment installment
389 transaction; specifying dates that checks must bear;
390 authorizing providers of deferred presentment
391 installment transactions to accept additional checks
392 subject to certain limitations; requiring the deferred
393 presentment agreement to include the deferment period
394 applicable to each check; correcting a reference to
395 federal law; providing an exception to a prohibition
396 against the acceptance or holding of undated checks or
397 checks with certain dates by a deferred presentment
398 provider or its affiliate; conforming a cross-
399 reference; providing a verification process that may
400 be relied upon under certain conditions; revising a
401 notice in deferred presentment agreements; authorizing
402 a drawer to inform a provider in writing that the
403 drawer cannot redeem or pay in full the amount due and
404 owing to the provider; providing an exception to a
405 prohibition, under certain circumstances, against a
406 deferred presentment provider's deposit or presentment
407 of a drawer's check; requiring a provider of a
408 deferred presentment installment transaction to allow
409 a drawer to defer one scheduled payment under certain
410 circumstances; providing requirements for the deferred
411 payment; specifying the frequency a certain fee may be
412 imposed by Financial Services Commission rule for data
413 on certain transactions submitted by deferred
414 presentment providers to a certain database; providing
415 an exception to a limitation on a deferred presentment
416 provider's acceptance of a certain check or



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417 authorization; specifying requirements for
418 amortization, installment repayments, and the
419 calculation of charges for deferred presentment
420 installment transactions; conforming provisions to
421 changes made by the act; amending s. 560.405, F.S.;
422 providing an exception to a prohibition against a
423 deferred presentment provider's or its affiliate's
424 presentment of a drawer's check before the end of the
425 deferment period; revising a condition under which a
426 deferred presentment provider may allow the check to
427 be redeemed in lieu of presentment; revising a
428 prohibition against requiring a drawer to redeem his
429 or her check before the agreed-upon date; reenacting
430 s. 560.111(5), F.S., relating to prohibited acts, to
431 incorporate the amendments made to ss. 560.404 and
432 560.405, F.S., in references thereto; providing an
433 effective date.