The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 920
INTRODUCER:	Appropriations Committee; Commerce and Tourism Committee; and Senators Bradley and Braynon
SUBJECT:	Consumer Finance
DATE:	February 19, 2018 REVISED: 2/20/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Little	McKay	CM	**Fav/CS**
3.	Sanders	Hansen	AP	**Fav/CS**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 920 authorizes deferred presentment installment transactions under Florida law. A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive installments, which must be as equal as mathematically practicable. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days and the time between installment payments must be at least 13 days but not greater than one calendar month.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The maximum fees that may be charged on a deferred presentment installment transaction are eight percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited. The bill retains current law in s. 560.404(19), F.S., prohibiting a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

If the drawer[1] timely informs the provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing, the provider must provide a grace period for payment of a scheduled installment.

The bill amends the Florida Consumer Collection Practices Act to allow assignees of consumer debt to immediately begin collecting on a debt. Current law requires the assignee to provide to the debtor written notice of the assignment as soon as practical and prohibits an assignee from taking any action to collect a debt until at least 30 days after notice is given. The bill amends the 30-day waiting period to apply only to a legal action to collect on the debt.

The impact to state revenues and expenditures is indeterminate. The Office of Financial Regulation (OFR) indicates the bill may impact collected revenues that are assessed for deferred presentation transactions. Currently, $1 is assessed for each deferred presentment transaction. The OFR indicates that there may need to be rule modification to require $1 per month for each outstanding deferred presentment installment transaction, $2 for each 60-day term, and $3 for each 90-day term. According to the OFR, $7,657,486 was collected in Fiscal Year 2016-2017 for the current $1 transaction fee. It is unknown how many deferred presentment installment transactions will result from the bill's passage, what the length of their terms will be, and what the decline will be in the number of current deferred presentment transactions.[2]

The OFR currently contracts with a vendor to host and maintain the existing deferred presentment provider transaction database. The OFR paid the vendor $2,656,269 in Fiscal Year 2016-2017 for the database. Based on modifications of the loan product proposed in the bill, the OFR indicates that it would likely need to procure a new contract. An increased appropriation may be required if current funding is insufficient to pay for a new contract. It is unknown how much a newly procured contract would cost.[3]

The bill takes effect July 1, 2019.

II. Present Situation:

Consumer Debt Collection

Consumer debt covers personal debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is "charged-off" corporate records.[4] Typically, the charged-off debt is

[1] "Drawer" means a customer who writes a personal check and upon whose account the check is drawn. *See* s. 560.402(4), F.S.

[2] Office of Financial Regulation, *Senate Bill 920 Legislative Analysis* (Jan. 10, 2018) (on file with the Senate Appropriations Subcommittee on General Government).

[3] Id.

[4] The Uniform Retail Credit Classification and Account Management Policy, set forth by the Federal Financial Institutions Examination Council, established uniform guidelines for issuers of retail credit regarding the charge-off timeframes for open-end and closed-end credit. 65 Fed. Reg. 36903 (June 12, 2000). It should be noted that a "charge-off" does not mean the debtor is discharged from repaying the loan; in fact, a charge-off is reported as an adverse event to credit reporting agencies. https://www.gpo.gov/fdsys/pkg/FR-2000-06-12/pdf/00-14704.pdf (last visited February 15, 2018).

either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which can in turn use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

State and Federal Debt Collection Regulations

State and federal debt collection laws provide consumer protections against certain abusive, harassing, and intrusive collection practices that may occur before the debtor is sued, as well as during the litigation process. Both federal and Florida law define "debt collector" as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.[5] The definition of "debt collector" under both federal and Florida law excludes persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt.[6]

Since September 2013, debt collection has been the top consumer complaint at the federal Consumer Financial Protection Bureau (CFPB), the primary federal agency that enforces the federal Fair Debt Collection Practices Act.[7] Among the CFPB's data on consumer complaints regarding debt collection, the most common type of debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed (40 percent), followed by communications tactics, particularly phone calls (18 percent). Consumers also complained of disclosure verification of debt (15 percent), taking or threatening an illegal action (11 percent) and false statements or representation (nine percent). One of the least common complaints received by the CFPB relates to consumers reporting that they are contacted directly, instead of the debt collector contacting their attorney (seven percent).[8]

Federal Regulation of Debt Collection

Fair Debt Collection Practices Act

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA)[9] to "eliminate abusive debt collection practices…to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[10] The FDCPA is primarily enforced by the CFPB, in coordination with the Federal Trade Commission. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal

[5] Section 559.55(6), F.S., and 15 U.S.C. § 1692a(6).
[6] 15 U.S.C. 1692a § 803(6). For exclusions to term "debt collector". https://www.ftc.gov/system/files/documents/plain-language/fair-debt-collection-practices-act.pdf (last visited February 16, 2018).
[7] See footnote 2, *supra*.
[8] CONSUMER FINANCIAL PROTECTION BUREAU, *Fair Debt Collection Practices Act Annual Report* (2016) (pp. 17-18), at https://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf (last visited February 15, 2018).
[9] 15 U.S.C. 1692(e). The FDCPA is codified at 15 U.S.C. §§ 1692-1692p.
[10] 15 U.S.C. 1692(e). The FDCPA is codified at 15 U.S.C. §§ 1692-1692p.

laws, such as financial institutions (e.g., banks, savings associations, and credit unions).[11] As a result of the federal Dodd-Frank Wall Street Reform Act of 2010[12], the CFPB was given rulemaking authority to define and supervise "larger participants" of certain nonbank consumer financial product and service markets, including debt collection. The CFPB test to define these "larger participants" means the covered person's annual receipts resulting from consumer debt collection exceed $10 million.

The FDCPA covers personal, family, credit card, automobile loans, medical bills and mortgages. The FDCPA does not include business debts. The FDCPA prohibits third-party debt collectors, which includes contingency agencies, collection law firms, and debt buyers, from engaging in certain types of abusive, harassing, unfair, or deceptive conduct in collecting or attempting to collect a debt. However, the FDCPA does not apply to original creditors.

Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173, commonly referred to as "Dodd-Frank") was signed into law. It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent "to focus directly on consumers, rather than on bank safety and soundness or on monetary policy."[13] Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System.

Dodd-Frank also granted enforcement and rulemaking authority to the CFPB to protect consumers from unfair, deceptive, or abusive acts or practices (UDAAP) committed by "covered persons or service providers"[14] which include both third-party debt collectors and original creditors collecting debt related to certain consumer financial products or services. In July 2013, the CFPB issued a bulletin regarding UDAAP in the collection of consumer debts to give guidance regarding the applicable UDAAP standards.[15]

Civil Remedies

Each violation of the FDCPA carries a penalty equal to the sum of the actual damage sustained as a result of the failure to comply with the terms of the FDCPA plus additional damages as the court may allow but not to exceeding $1,000 per violation. Damages awarded in class action suits are also covered under the provisions of the FDCPA.[16]

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[11] Pub. L. 111-201, 124 Stat. 1376.
[12] Pub. L. 111-203, H.R. 4173, https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm (last visited February 16, 2018).
[13] Consumer Financial Protection Bureau, *Creating the Consumer Bureau*, at https://www.consumerfinance.gov/about-us/the-bureau/creatingthebureau/ (last visited February 15, 2018).
[14] 12 U.S.C. §5531.
[15] Consumer Financial Protection Bureau, *CFPB Bulletin 2013-07: Prohibition of Unfair, Deceptive, or Abusive Practices in the Collection of Consumer Debts https://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf* (last visited February 15, 2018).
[16] U.S.C. 1692k § 813(a)

State Regulation of Debt Collection

Florida Consumer Collection Practices Act

In 1972, Florida enacted the Florida Consumer Collection Practices Act (FCCPA), codified in part VI of ch. 559, F.S.[17] The FCCPA gives primary regulatory authority to the Florida Office of Financial Regulation (OFR), and some enforcement authority to the Office of the Attorney General over out-of-state consumer debt collectors.[18] The FCCPA defines "*consumer collection agency*" (CCA) as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts. CCAs must register with the OFR, unless expressly exempted by the Act.[19]

The OFR may also examine and investigate potential violations of the Act, and may impose administrative fines of up to $10,000 for each count or offense and up to $1,000 per day of unregistered activity; may deny, suspend, or revoke CCA registration; may impose reprimand, cease and desist orders, and emergency suspension orders.[20]

The FCCPA prohibits many of the same debt collection practices prohibited by the FCCPA, such as the use or threat to use force or violence, impersonating law enforcement or attorneys, communicating between 9:00 p.m. and 8:00 a.m. without the debtor's consent, and the disclosure of the debtor's debt except for legitimate purposes such as credit reporting agencies. However, Florida law does not specifically prohibit false, deceptive, or unfair practices the way the federal Act does.[21]

While the FDCPA only applies to third-party debt collectors, Florida law provides that "no person shall" engage in the prohibited acts.[22] As such, while the Florida act may exempt original creditors from registration with the OFR, original creditors may still be held liable (civilly and administratively) under Florida law for engaging in certain prohibited acts.

In terms of the FDCPA's relation to Florida law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA.[23] The FCCPA also provides that, in the event of an inconsistency with the federal law, the provision that is more protective of the consumer or debtor shall prevail.[24] Finally, the FCCPA provides that in construing its provisions, "due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act."[25] The FCCPA also does not preclude any person from pursuing remedies under the FDCPA for any violation.[26]

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[17] Ch. 72-81, Laws of Fla.
[18] Section 559.563, F.S.
[19] Sections 559.55(3) and 559.553, F.S.
[20] Sections 559.5541, 559.727, and 559.730, F.S.
[21] *See* 15 U.S.C. §§ 1692e and1692f.
[22] Section 559.72, F.S.
[23] 15 U.S.C. § 1692n
[24] Section 559.552, F.S.
[25] Section 559.77(5), F.S.
[26] Section 559.730(8), F.S.

Notification of Assignment of Consumer Debt

Assignees of consumer debt must provide notice to the debtor of the assignment of debt as soon as practical and are prohibited from taking any action to collect on the debt until a minimum of 30 days have passed since notice has been given. The assignee is considered a real party in interest and may bring an action to collect an assigned defaulted debt.[27]

Civil Remedies

The FDCPA provides private civil remedies to debtors that are identical to those available under its federal counterpart.[28] Any person who violates the prohibited practices statute, s. 559.72, F.S., is liable to the consumer for actual and additional statutory damages up to $1,000 and reasonable attorney's fees and costs. In determining whether any additional statutory damages should be awarded to the debtor, the court may consider the nature of the defendant's noncompliance with s. 559.72, F.S., the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional. The FDCPA also permits class action suits and punitive damages in certain instances. An action must be brought within two years after the date of occurrence of the alleged violation.[29]

However, if the court finds that the debtor-plaintiff's suit fails to raise a justiciable issue of law or fact, the debtor-plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant.[30]

Also, both acts provide a safe harbor for "bona fide errors[31]," in that a person may not be held liable in any civil action under the acts if the person shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (pt. II, ch. 501, F.S.) is intended to protect consumers and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce, consistent with established policies of federal law relating to consumer protection.[32] It is enforced by the Department of Legal Affairs of the Office of the Attorney General, which may seek an action for damages as well as declaratory and injunctive relief.[33] In addition, Florida Deceptive and Unfair Trade Practices Act allows any aggrieved persons to seek civil penalties of up to $10,000 for each willful violation, and also provides for attorney's fees to be awarded to the prevailing party in any civil litigation under this part.[34]

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[27] Section 559.715, F.S.
[28] 15 U.S.C. §1692k.
[29] Section 559.77, F.S.
[30] Section 559.77, F.S. and 15 U.S.C. § 1692k.
[31] BLACK'S LAW DICTIONARY (Online Dictionary 2nd Ed.) Bona Fide Error is defined as "[a]n honest mistake that when rectified quickly requires no punishment. https://thelawdictionary.org/bona-fide-error/ (last visited February 16, 2018).
[32] Section 501.201, F.S.
[33] Section 501.207, F.S.
[34] Sections 501.2075 and 501.2105, F.S.

However, the Florida Deceptive and Unfair Trade Practices Act does not apply to certain entities, including state and federally chartered financial institutions and insurance companies and other entities regulated by the Office of Insurance Regulation.[35]

Deferred Presentment

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's check and agreeing to hold the check for a number of days before depositing, presenting, or redeeming the payment instrument.[36] The transactions are commonly referred to as "payday loans." These transactions are governed by part IV of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[37] and money services businesses licensed under part II[38] or part III[39] of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[40] Fees generally may not exceed 10 percent of payment provided to the drawer, except that an additional verification fee not to exceed $5 may also be charged.[41] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[42] A deferred presentment provider may not enter into a deferred presentment transaction with a drawer (customer) who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[43] A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[44]

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[35] Section 501.212, F.S.
[36] *See* s. 560.402, F.S.
[37] Section 655.005(1)(i), F.S., defines a "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et Seq.
[38] A "money transmitter" is licensed under part II of ch. 560, F.S., and is defined as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S. *See* s. 560.103(23), F.S.,
[39] A "check casher" is licensed under part III of ch. 560, F.S. and is defined as a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.1030, F.S.
[40] Section 560.404(5), F.S.
[41] Section 560.404(6), F.S.
[42] Section 560.404(8), F.S.
[43] Section 560.404(19), F.S.
[44] Section 560.404(18), F.S.

If the drawer, at the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days. As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[45]

The deferred presentment agreement may not include a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of part IV, ch. 560, F.S.[46] The deferred presentment provider must comply with state and federal disclosure requirements.[47]

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.[48] Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of $3.09 billion with total advance fees of $306 million. The average transaction from July 2016 to June 2017 was $400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of $3.09. Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in one to three transactions, 30.7 engaged in 4 to 9 transactions, and 37.6 percent engaged in 10 or more transactions. The loan loss rate is 1.8 percent of total transactions representing an advance amount of approximately $50.4 million. Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.

Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

On October 5, 2017, the Bureau of Consumer Financial Protection (CFPB) finalized a rule governing certain consumer credit products.[49] The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.[50] The key provisions of the rule are as follows:[51]

The Lender Must Determine the Consumer's Ability to Repay

It is an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans,[52] including payday and vehicle title loans, without reasonably

[45] Section 560.404(22), F.S.
[46] Section 560.404(10), F.S.
[47] Section 560.404(13) and (20), F.S.
[48] Office of Financial Regulation, Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017 (June 2017) (On file with the Senate Committee on Banking and Insurance).
[49] 82 FR 54472.
[50] Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (October 5, 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps (last accessed February 7, 2018).
[51] The summary of key provisions of the CFPB rule is taken from 82 FR 54472 at pgs. 1-9, unless otherwise indicated.
[52] A balloon payment loan is a larger than usual one-time payment at the end of the loan term.

determining that consumers have the ability to repay the loans according to their terms. The ability-to-repay standard requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;
- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

The rule also prohibits lenders from making a covered loan to a consumer who has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, for 30 days after the third loan is no longer outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than $500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period, or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

Payment Practices

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loans as the ability-to-repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alert the consumer to unusual payment attempts. The notice may be provided electronically with the consumer's consent.

Lender Reporting and Compliance Requirements

Lenders are required to furnish registered information systems with certain information concerning loans covered by the rule. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

Implementation of the Rule

The CFPB rule provides minimum consumer protections and allows state and local jurisdictions to adopt further regulatory measures to protect consumers. Lender compliance with the rule is required on August 19, 2019. Many Florida deferred presentment transactions are affected by the rule because they are for 45 days or less and do not qualify for one of the rule's exceptions. Thus deferred presentment transaction providers are required to comply with the underwriting requirements of the rule or conform their business practices to meet the exception to underwriting.

Reconsideration of the Rule

On January 16, 2018, the Consumer Financial Protection Bureau (CFPB) declared its intent to engage in a rulemaking process to reconsider the rule.[53]

III. Effect of Proposed Changes:

The bill authorizes deferred presentment installment transactions under Florida law. Deferred presentment transactions will be exempt from the underwriting requirement of the Bureau of Consumer Financial Protection (CFPB) rule because such loans will be for a term longer than 30 days, and will not be a longer-term balloon payment loan because the bill requires installment payment to be as equal as mathematically practicable. Provisions of the CFPB rule relating to payment practices, lender reporting, and compliance will apply to deferred presentment installment transaction lenders that provide loans with a term longer than 45 days, with a cost of credit exceeding 36 percent per annum, and that have a leveraged payment mechanism.

[53] Bureau of Consumer Financial Protection, *CFPB Statement on Payday Rule*, (Jan 16, 2018). https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/ (last accessed Feb. 16, 2018).

Section 1 amends s. 559, 715, F.S., to allow assignees of a consumer debt to immediately begin the process of collecting on a debt. Under current law, an assignee may not take action to collect a consumer debt until 30 days after giving the notice to the debtor of the assignment. The bill revises the waiting period to instead prohibit any *legal* action until 30 days after providing notice of the assignment, which will allow assignees to immediately use other methods of collecting the debt if notice is provided as soon as practical after the assignment is made.

Section 2 amends s. 560.402, F.S., to define a "deferred presentment installment transaction" to mean "a deferred presentment transaction that is repayable in installments" and an "outstanding transaction balance" to mean "the amount received by the drawer from the deferred presentment provider that is due and owing, exclusive of the fees allowed under this party, in a deferred presentment transaction."

Section 3 amends s. 560.404, F.S., to authorize deferred presentment installment transactions under Florida law.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days. The bill retains current law in s. 560.404(19), F.S., which prohibits a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

The maximum fees that may be charged by a provider or its affiliate on a deferred presentment installment transaction are eight percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited.

A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive and as equal as mathematically practicable installments. The time between installment payments must be at least 13 days but not greater than one calendar month. The provider of a deferred presentment installment transaction may accept additional checks bearing the date that the check is given to the provider if the deferred presentment agreement includes the deferment period applicable to each check.[54]

The provider must provide a grace period for payment of a scheduled installment if the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment. The bill clarifies that "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into. The grace period postpones the due date of an installment until after the last scheduled installment payment, at an interval that is no less than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments

[54] The bill subjects these checks to the limitations in subsection 560.404(5), F.S., of the bill, which provides that neither the face value of a check nor the outstanding transaction balance may exceed $1,000, exclusive of the fees.

are due once every two weeks, the grace period must be at least two weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement. The bill requires the notice to detail the availability of the single grace period for a deferred presentment installment transaction.

The bill authorizes the Financial Services Commission to impose a fee of up to $1 for each full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction.

Section 4 amends s. 560.405, F.S., to allow a deferred presentment provider to present a check before the end of a deferment transaction if the check is for a missed scheduled payment for a deferred presentment installment transaction. The bill also makes a technical change to clarify that the drawer may redeem the check used in the deferred presentment transaction by paying the outstanding transaction balance and earned fees.

Section 5 reenacts s. 560.111, F.S., for the purpose of incorporating the amendments made by the bill to ss. 560.404 and 560.405, F.S. Section 560.111, F.S., makes willful violations of those sections a third degree felony.

Section 6 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows the Office of Financial Regulation (OFR) to increase the deferred presentment transaction database fee to vary with the term of the loan, thus increasing the total possible database fee from $1 to $3.

B. Private Sector Impact:

The impact to the private sector is indeterminate.

Many payday lenders assert that the Bureau of Consumer Financial Protection (CFPB) rule imposes additional costs and administrative burdens that will result in reducing the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps.

There are many circumstances where a new loan under this bill would result in lower fees than a current payday loan. For instance, below is an example using the standard payoff average of 14 days[55] under current law for a $500 loan and a $500 deferred presentment installment loan under CS/CS/SB 920 that an individual pays off early (the same standard payoff average of 14 days).

Loan Comparison	Current Loan	CS/CS/SB 920 Loan
Loan Amount	$500.00	$500.00
Fees (interest and $5 Verification fee)	$55.00	$45.00
Payoff Period (days)	14	14
Payments	1	1
Payment Amount	$555.00	$545.00
Fees per day	$3.93	$3.21
APR	286.79%[56]	234.64%[57]

Below is a comparison between how a payday loan works under CS/CS/SB 920 for $500 with 60-day and 90-day terms with a current maximum $500 payday loan transaction with the maximum payoff period of 31 days. The examples below assume a payday lender collects the maximum allowable verification fee of $5.

Loan Comparison	Current Law Loans	60-day Loan under CS/CS/SB 920	90-day Loan under CS/CS/SB 920
Loan Amount	$500.00	$500.00	$500.00
Fees (interest and $5 Verification fee)	$55.00	$122.21	$175.56
Term (days)	31	60	90
Payments	1	4	6
Payment Amount	$555.00	$155.55	$112.59
Total Payment	555.00	$622.21	$675.56
Fees per day	$1.77	$2.04	$1.95
APR	129.52%[58]	148.69%[59]	142.40%[60]

[55] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2018) (On file with the Senate Committee on Banking and Insurance).
[56] $55 / $500 x 365 days / 14 days x 100 = 286.79%
[57] $45 / $500 x 365 days / 14 days x 100 = 234.64%
[58] $55 / $500 x 365 days / 31 days x 100 = 129.52%
[59] $122.21 / $500 x 365 days / 60 days x 100 = 148.69%
[60] $175.56 / $500 x 365 days / 90 days x 100 = 142.40%

C. Government Sector Impact:

Office of Financial Regulation[61]

The Office of Financial Regulation (OFR) assesses each deferred presentment provider a $1 transaction fee for each deferred presentment transaction to maintain an Internet database that records all deferred presentment transactions in the state. Deferred presentment providers and the OFR use the database to verify whether any deferred presentment transactions are outstanding for a particular person. The database is required by s. 560.404(23), F.S. The impact of the bill on the number of transactions is unknown and the impact of the bill on these revenues is indeterminate. The OFR received $7,657,486 in revenue related to the $1 transaction fee during Fiscal Year 2016-2017, which could be reduced with the longer transaction terms. If the OFR imposes a $2 fee for deferred presentment installment transactions with a 60-day term and a $3 fee for transactions with a 90-day term as permitted in this bill, the reduction in revenue may be offset.

The OFR contracts with a third-party vendor that maintains a database that records all deferred presentment transactions in the state, the cost of which is directly related to the number of deferred presentment transactions and database fees collected. For Fiscal Year 2016-2017, the OFR paid its third-party vendor $2,656,269 for hosting, maintaining, and operating the database. The bill may increase or decrease this cost if the statutory authorization of deferred presentment installment transactions increases or decreases the number of deferred presentment transactions.

The bill would require modifications to the database, which the OFR would obtain through a procurement requiring a legislative budget appropriation and between 18 to 24 months to implement. The actual cost would not be known until bids are received from vendors pursuant to the procurement process.

The OFR believes that the provisions of the bill would require the OFR, through the Financial Services Commission, to amend a number of administrative rules. The cost incurred by the OFR for the rulemaking filings can be absorbed within the current budget of the Division of Consumer Finance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[61] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2017) (On file with the Senate Committee on Banking and Insurance).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.715, 560.402, 560.404, 560.405, and 560.111.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 15, 2018:

The committee substitute:

- Allows the assignees of a consumer debt to immediately begin the process of collecting on a debt; and
- Retains the 30 day waiting period after notice of the assignment is given before any legal actions can be taken to collect on the debt.

CS by Commerce and Tourism on January 29, 2018:

The bill is amended to:

- Define "outstanding transaction balance" as the amount received by the drawer from the deferred presentment provider that is due and owing in a deferred presentment transaction, exclusive of allowable fees;
- Provide that the deferred presentment provider for a deferred presentment installment transaction may accept additional checks bearing the date that the check was given to the provider if the deferred presentment agreement includes the deferment period applicable to each check;
- Require the deferred presentment provider to access the current database until the OFR is able to implement a database that includes deferred presentment installment contracts;
- Allow the drawer to inform the deferred presentment provider in writing or in person if the drawer cannot redeem or pay in full in cash;
- Clarify that the term "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment installment transaction agreement was entered into;
- Provide that the Financial Services Commission may impose a fee of up to $1 per full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction, rather than $1 per transaction;
- Provide that the bill takes effect on July 1, 2019; and
- Make additional technical and conforming changes throughout the bill.

B. Amendments:

None.