

By the Committee on Commerce and Tourism; and Senators Bradley and Braynon

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1                                   A bill to be entitled  
2           An act relating to deferred presentment transactions;  
3           amending s. 560.402, F.S.; providing and revising  
4           definitions; amending s. 560.404, F.S.; specifying the  
5           maximum face amount of checks that may be taken for  
6           deferred presentment installment transactions,  
7           exclusive of fees; specifying the maximum rate and  
8           frequency of fees that deferred presentment providers  
9           or their affiliates may charge on deferred presentment  
10          installment transactions; specifying when fees are  
11          earned for certain deferred presentment transactions;  
12          specifying the calculation of fees earned for deferred  
13          presentment installment transactions; prohibiting  
14          prepayment penalties; specifying the minimum and  
15          maximum terms of a deferred presentment installment  
16          transaction; specifying dates that checks must bear;  
17          authorizing providers of deferred presentment  
18          installment transactions to accept additional checks  
19          subject to certain limitations; requiring the deferred  
20          presentment agreement to include the deferment period  
21          applicable to each check; correcting a reference to  
22          federal law; providing an exception to a prohibition  
23          against the acceptance or holding of undated checks or  
24          checks with certain dates by a deferred presentment  
25          provider or its affiliate; conforming a cross-  
26          reference; providing a verification process that may  
27          be relied upon under certain conditions; revising a  
28          notice in deferred presentment agreements; authorizing  
29          a drawer to inform a provider in writing that the

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30 drawer cannot redeem or pay in full the amount due and  
31 owing to the provider; providing an exception to a  
32 prohibition, under certain circumstances, against a  
33 deferred presentment provider's deposit or presentment  
34 of a drawer's check; requiring a provider of a  
35 deferred presentment installment transaction to allow  
36 a drawer to defer one scheduled payment under certain  
37 circumstances; providing requirements for the deferred  
38 payment; specifying the frequency a certain fee may be  
39 imposed by Financial Services Commission rule for data  
40 on certain transactions submitted by deferred  
41 presentment providers to a certain database; providing  
42 an exception to a limitation on a deferred presentment  
43 provider's acceptance of a certain check or  
44 authorization; specifying requirements for  
45 amortization, installment repayments, and the  
46 calculation of charges for deferred presentment  
47 installment transactions; conforming provisions to  
48 changes made by the act; amending s. 560.405, F.S.;  
49 providing an exception to a prohibition against a  
50 deferred presentment provider's or its affiliate's  
51 presentment of a drawer's check before the end of the  
52 deferment period; revising a condition under which a  
53 deferred presentment provider may allow the check to  
54 be redeemed in lieu of presentment; revising a  
55 prohibition against requiring a drawer to redeem his  
56 or her check before the agreed-upon date; reenacting  
57 s. 560.111(5), F.S., relating to prohibited acts, to  
58 incorporate the amendments made to ss. 560.404 and

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59           560.405, F.S., in references thereto; providing an  
60           effective date.

61

62 Be It Enacted by the Legislature of the State of Florida:

63

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

69           560.402 Definitions.—For the purposes of this part, the  
70           term:

71           (3) "Deferred presentment installment transaction" means a  
72           deferred presentment transaction that is repayable in  
73           installments.

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

78           (9)~~(7)~~ "Termination of a deferred presentment agreement"  
79           means that all checks ~~the check~~ that are ~~is~~ the basis for the  
80           agreement are ~~is~~ redeemed by the drawer by payment in full in  
81           cash, or are ~~is~~ deposited and the deferred presentment provider  
82           has evidence that such checks have ~~check has~~ cleared.  
83           Verification of sufficient funds in the drawer's account by the  
84           deferred presentment provider is not sufficient evidence to deem  
85           that the deferred presentment ~~deposit~~ transaction is terminated.

86           Section 2. Subsections (5), (6), (8), (12), (13), (14),  
87           (19), (20), (21), and (22) and present subsections (23) and (24)

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88 of section 560.404, Florida Statutes, are amended, and new  
89 subsection (23) and subsection (26) are added to that section,  
90 to read:

91 560.404 Requirements for deferred presentment  
92 transactions.—

93 (5) The face amount of a check taken for deferred  
94 presentment transactions not repayable in installments may not  
95 exceed \$500, exclusive of the fees allowed under this part. For  
96 a deferred presentment installment transaction, neither the face  
97 amount of a check nor the outstanding transaction balance may  
98 exceed \$1,000, exclusive of the fees allowed under this part.

99 (6) (a) A deferred presentment provider or its affiliate may  
100 not charge fees that exceed 10 percent of the currency or  
101 payment instrument provided for a deferred presentment  
102 transaction not repayable in installments. A deferred  
103 presentment provider or its affiliate may not charge fees on any  
104 deferred presentment installment transaction which exceed 8  
105 percent of the outstanding transaction balance on a biweekly  
106 basis.

107 (b) Notwithstanding paragraph (a) ~~However~~, a verification  
108 fee may be charged as provided in s. 560.309(8). The fees in  
109 paragraph (a) ~~The 10-percent fee~~ may not be applied to the  
110 verification fee.

111 (c) Fees are earned at the time of origination for a  
112 deferred presentment transaction scheduled to be paid off in 31  
113 days or less; however, fees for a deferred presentment  
114 installment transaction are earned using a simple interest  
115 calculation. A deferred presentment provider may charge only  
116 those fees specifically authorized in this section. Prepayment

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117 penalties are prohibited.

118 (8) A deferred presentment agreement may not be for a term  
119 longer than 31 days or fewer ~~less~~ than 7 days, except for a  
120 deferred presentment installment transaction, which may not be  
121 for a term longer than 90 days or fewer than 60 days.

122 (12) The deferred presentment agreement and the drawer's  
123 initial check must bear the same date, and the number of days of  
124 the deferment period must ~~shall~~ be calculated from that date.  
125 For deferred presentment installment transactions, the deferred  
126 presentment provider may accept additional checks, subject to  
127 the limitations in subsection (5), each bearing the date that  
128 the check was given to the provider, and the deferred  
129 presentment agreement must include the deferment period  
130 applicable to each check. The deferred presentment provider and  
131 the drawer may not alter or delete the date on any written  
132 agreement or check held by the deferred presentment provider.

133 (13) For each deferred presentment transaction, the  
134 deferred presentment provider must comply with the disclosure  
135 requirements of 12 C.F.R. part 226, relating to the federal  
136 Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer  
137 Financial Protection ~~Board of Governors of the Federal Reserve~~  
138 ~~Board~~. A copy of the disclosure must be provided to the drawer  
139 at the time the deferred presentment transaction is initiated.

140 (14) A deferred presentment provider or its affiliate may  
141 not accept or hold an undated check or a check dated on a date  
142 other than the date on which the deferred presentment provider  
143 agreed to hold the check and signed the deferred presentment  
144 transaction agreement, except when a customer provides a new  
145 payment instrument reflecting the new outstanding transaction

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146 balance and anticipated fees upon making a payment on a deferred  
147 presentment installment transaction.

148 (19) A deferred presentment provider may not enter into a  
149 deferred presentment transaction with a drawer who has an  
150 outstanding deferred presentment transaction with that provider  
151 or with any other deferred presentment provider, or with a  
152 person whose previous deferred presentment transaction with that  
153 provider or with any other provider has been terminated for less  
154 than 24 hours. The deferred presentment provider must verify  
155 such information as follows:

156 (a) The deferred presentment provider must ~~shall~~ maintain a  
157 common database and ~~shall~~ verify whether the provider or an  
158 affiliate has an outstanding deferred presentment transaction  
159 with a particular person or has terminated a transaction with  
160 that person within the previous 24 hours. If a provider has not  
161 established a database, the provider may rely upon the written  
162 verification of the drawer as provided in subsection (20).

163 (b) The deferred presentment provider must ~~shall~~ access the  
164 office's database established pursuant to subsection (24) ~~(23)~~  
165 and ~~shall~~ verify whether any other deferred presentment provider  
166 has an outstanding deferred presentment transaction with a  
167 particular person or has terminated a transaction with that  
168 person within the previous 24 hours. Before the office has  
169 implemented a database to include deferred presentment  
170 installment transactions ~~If a provider has not established a~~  
171 ~~database,~~ the deferred presentment provider must access the  
172 office's current database pursuant to this paragraph and may  
173 rely upon the written verification of the drawer as provided in  
174 subsection (20).

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175 (20) A deferred presentment provider must ~~shall~~ provide the  
176 following notice in a prominent place on each deferred  
177 presentment agreement in at least 14-point type in substantially  
178 the following form and ~~must~~ obtain the signature of the drawer  
179 where indicated:

181 NOTICE

182  
183 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE  
184 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE  
185 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED  
186 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER  
187 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT  
188 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE  
189 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

190  
191 YOU MUST SIGN THE FOLLOWING STATEMENT:

192  
193 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT  
194 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT  
195 THIS TIME. I HAVE NOT TERMINATED A DEFERRED  
196 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

197 (Signature of Drawer)

198  
199 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A  
200 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY  
201 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE  
202 PURSUED AGAINST YOU.

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204 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER  
205 (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR  
206 DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU  
207 CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE  
208 IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT  
209 OF YOUR CHECK FOR PAYMENT.

210  
211 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE  
212 IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON  
213 THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE  
214 AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,  
215 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF  
216 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE  
217 ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL  
218 CHARGE. THE DEFERRED PRESENTMENT PROVIDER MUST ~~SHALL~~  
219 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE  
220 GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING  
221 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL  
222 BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO  
223 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN  
224 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND  
225 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE  
226 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND  
227 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE  
228 THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

229  
230 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:  
231 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY  
232 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A

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233 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE  
234 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE  
235 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR  
236 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT  
237 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY  
238 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT  
239 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS  
240 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS  
241 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.

242

243 (21) The deferred presentment provider may not deposit or  
244 present the drawer's check if the drawer informs the provider in  
245 writing or in person that the drawer cannot redeem or pay in  
246 full in cash the amount due and owing the deferred presentment  
247 provider, unless the drawer fails to comply with subsection (22)  
248 or subsection (23), as applicable. No additional fees or  
249 penalties may be imposed on the drawer by virtue of any  
250 misrepresentation made by the drawer as to the sufficiency of  
251 funds in the drawer's account. Additional fees may not be added  
252 to the amounts due and owing to the deferred presentment  
253 provider.

254 (22) For deferred presentment transactions not repayable in  
255 installments, if, by the end of the deferment period, the drawer  
256 informs the deferred presentment provider in writing or in  
257 person that the drawer cannot redeem or pay in full in cash the  
258 amount due and owing the deferred presentment provider, the  
259 deferred presentment provider must ~~shall~~ provide a grace period  
260 extending the term of the agreement for an additional 60 days  
261 after the original termination date, without any additional

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262 charge.

263 (a) The provider must ~~shall~~ require, ~~that~~ as a condition of  
264 providing a grace period, that the drawer make an appointment  
265 with a consumer credit counseling agency within 7 days after the  
266 end of the deferment period and complete the counseling by the  
267 end of the grace period. The drawer may agree to, comply with,  
268 and adhere to a repayment plan approved by the counseling  
269 agency. If the drawer agrees to comply with and adhere to a  
270 repayment plan approved by the counseling agency, the provider  
271 must also comply with and adhere to that repayment plan. The  
272 deferred presentment provider may not deposit or present the  
273 drawer's check for payment before the end of the 60-day grace  
274 period unless the drawer fails to comply with such conditions or  
275 the drawer fails to notify the provider of such compliance.  
276 Before each deferred presentment transaction, the provider may  
277 verbally advise the drawer of the availability of the grace  
278 period consistent with the written notice in subsection (20),  
279 and may not discourage the drawer from using the grace period.

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

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

284 2. A list of approved consumer credit counseling agencies  
285 prepared by the office. The office list must ~~shall~~ include  
286 nonprofit consumer credit counseling agencies affiliated with  
287 the National Foundation for Credit Counseling which provide  
288 credit counseling services to state residents in person, by  
289 telephone, or through the Internet. The office list must include  
290 phone numbers for the agencies, the counties served by the

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291 agencies, and indicate the agencies that provide telephone  
292 counseling and those that provide Internet counseling. The  
293 office must ~~shall~~ update the list at least once each year.

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

296

297 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING  
298 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN  
299 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY  
300 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT  
301 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST  
302 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY  
303 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT  
304 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN  
305 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU  
306 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE  
307 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING  
308 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY  
309 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT  
310 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE  
311 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY  
312 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR  
313 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE  
314 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND  
315 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE  
316 THE DEBT.

317

318 (c) If a drawer completes an approved payment plan, the  
319 deferred presentment provider must ~~shall~~ pay one-half of the

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320 drawer's fee for the deferred presentment agreement to the  
321 consumer credit counseling agency.

322 (23) For deferred presentment installment transactions, if  
323 a drawer informs the deferred presentment provider in writing or  
324 in person by noon of the business day before a scheduled payment  
325 that the drawer cannot pay in full the scheduled payment amount  
326 due and owing the provider, the deferred presentment provider  
327 must provide the drawer the opportunity to defer the scheduled  
328 payment, at no additional fee or charge, until after the last  
329 scheduled payment. The phrase "by noon" means 12:00 p.m. of the  
330 same time zone in which the deferred presentment agreement was  
331 entered into. Only one deferred payment is permitted for each  
332 deferred presentment installment transaction. The deferred  
333 payment must be due at an interval after the last scheduled  
334 payment which is no shorter than the intervals between the  
335 originally scheduled payments.

336 (24) (a) ~~(23)~~ The office must ~~shall~~ implement a common  
337 database with real-time access through an Internet connection  
338 for deferred presentment providers, as provided in this  
339 subsection. The database must be accessible to the office and  
340 the deferred presentment providers in order to verify whether  
341 any deferred presentment transactions are outstanding for a  
342 particular person. Deferred presentment providers must ~~shall~~  
343 submit such data before entering into each deferred presentment  
344 transaction in such format as required by rule, including the  
345 drawer's name, social security number or employment  
346 authorization alien number, address, driver license number,  
347 amount of the transaction, date of transaction, the date that  
348 the transaction is closed, and such additional information as is

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349 required by rule.

350 (b) For data that must be submitted by a deferred  
351 presentment provider, the commission may by rule impose a fee of  
352 up to \$1 per transaction for deferred presentment transactions  
353 not repayable in installments, and the commission may impose a  
354 fee of up to \$1 for each full or partial 30-day period that a  
355 balance is scheduled to be outstanding for a deferred  
356 presentment installment transaction ~~for data that must be~~  
357 ~~submitted by a deferred presentment provider.~~

358 (c) A deferred presentment provider may rely on the  
359 information contained in the database as accurate and is not  
360 subject to any administrative penalty or civil liability due to  
361 relying on inaccurate information contained in the database.

362 (d) A deferred presentment provider must notify the office,  
363 in a manner as prescribed by rule, within 15 business days after  
364 ceasing operations or no longer holding a license under part II  
365 or part III of this chapter. Such notification must include a  
366 reconciliation of all open transactions. If the provider fails  
367 to provide notice, the office must ~~shall~~ take action to  
368 administratively release all open and pending transactions in  
369 the database after the office becomes aware of the closure.

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

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

376 (25) ~~(24)~~ A deferred presentment provider may not accept  
377 more than one check or authorization to initiate more than one

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378 automated clearinghouse transaction to collect on a deferred  
379 presentment transaction for a single deferred presentment  
380 transaction, except for deferred presentment installment  
381 transactions in which such checks or authorizations represent  
382 multiple scheduled payments.

383 (26) A deferred presentment installment transaction must be  
384 fully amortizing and repayable in consecutive installments as  
385 nearly equal as mathematically practicable according to a  
386 payment schedule agreed upon by the parties with no fewer than  
387 13 days and not more than 1 calendar month between payments,  
388 except that the first installment may be longer than the  
389 remaining installments by not more than 15 days, and the first  
390 installment payment may be larger than the remaining installment  
391 payments by the amount of charges applicable to the extra days.  
392 In calculating charges under this subsection, when the first  
393 installment is longer than the remaining installments, the  
394 amount of the charges applicable to the extra days may not  
395 exceed those that would accrue under a simple interest  
396 calculation based on the rate allowed under subsection (6).

397 Section 3. Subsections (1), (3), and (4) of section  
398 560.405, Florida Statutes, are amended to read:

399 560.405 Deposit; redemption.—

400 (1) The deferred presentment provider or its affiliate may  
401 not present the drawer's check before the end of the deferment  
402 period, except for a missed scheduled payment for a deferred  
403 presentment installment transaction that has not been otherwise  
404 deferred pursuant to s. 560.404(23), as reflected and described  
405 in the deferred presentment transaction agreement.

406 (3) Notwithstanding subsection (1), in lieu of presentment,

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407 a deferred presentment provider may allow the check to be  
408 redeemed at any time upon payment of the outstanding transaction  
409 balance and earned fees ~~face amount of the drawer's check~~.

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

414 (4) A drawer may not be required to redeem his or her check  
415 in full before the agreed-upon date; however, the drawer may  
416 choose to redeem the check before the agreed-upon presentment  
417 date.

418 Section 4. For the purpose of incorporating the amendments  
419 made by this act to sections 560.404 and 560.405, Florida  
420 Statutes, in references thereto, subsection (5) of section  
421 560.111, Florida Statutes, is reenacted to read:

422 560.111 Prohibited acts.—

423 (5) Any person who willfully violates any provision of s.  
424 560.403, s. 560.404, or s. 560.405 commits a felony of the third  
425 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
426 775.084.

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