

By the Committees on Rules; Appropriations; and 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 which 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 a 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:

NOTICE

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.

191 YOU MUST SIGN THE FOLLOWING STATEMENT:

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)

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 deferral 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.