

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Grant, J. offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

12 560.402 Definitions.—For the purposes of this part, the
 13 term:

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

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

21 (9)(7) "Termination of a deferred presentment agreement"
22 means that all checks ~~the check~~ that are ~~is~~ the basis for the
23 agreement are ~~is~~ redeemed by the drawer by payment in full in
24 cash, or are ~~is~~ deposited and the deferred presentment provider
25 has evidence that such checks have ~~check has~~ cleared.

26 Verification of sufficient funds in the drawer's account by the
27 deferred presentment provider is not sufficient evidence to deem
28 that the deferred presentment ~~deposit~~ transaction is terminated.

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

34 560.404 Requirements for deferred presentment
35 transactions.—

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

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

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

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

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

65 (12) The deferred presentment agreement and the drawer's
66 initial check must bear the same date, and the number of days of

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67 the deferment period must ~~shall~~ be calculated from that date.
68 For deferred presentment installment transactions, the deferred
69 presentment provider may accept additional checks, subject to
70 the limitations in subsection (5), each bearing the date that
71 the check was given to the provider, and the deferred
72 presentment agreement must include the deferment period
73 applicable to each check. The deferred presentment provider and
74 the drawer may not alter or delete the date on any written
75 agreement or check held by the deferred presentment provider.

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

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

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

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

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

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116 | and may rely upon the written verification of the drawer as
117 | provided in subsection (20).

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

123 |
124 | NOTICE

125 |
126 | 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
127 | DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
128 | LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
129 | PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
130 | TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
131 | AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
132 | SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

133 |
134 | YOU MUST SIGN THE FOLLOWING STATEMENT:

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

140 | (Signature of Drawer)

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141
142 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
143 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
144 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE
145 PURSUED AGAINST YOU.
146

147 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT
148 PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL
149 OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS
150 MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN
151 ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT
152 OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.
153

154 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT
155 REPAYABLE IN INSTALLMENTS: IF YOU INFORM THE PROVIDER
156 IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN
157 FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS
158 AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING
159 THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS
160 AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY
161 ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER
162 MUST ~~SHALL~~ REQUIRE THAT YOU, AS A CONDITION OF
163 OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT
164 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
165 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY

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166 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
167 PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY
168 WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT
169 AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR
170 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS
171 TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE
172 PERIOD.

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

186
187 (21) The deferred presentment provider may not deposit or
188 present the drawer's check if the drawer informs the provider in
189 writing or in person that the drawer cannot redeem or pay in
190 full in cash the amount due and owing the deferred presentment

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191 provider, unless the drawer fails to comply with subsection (22)
192 or subsection (23), as applicable. No additional fees or
193 penalties may be imposed on the drawer by virtue of any
194 misrepresentation made by the drawer as to the sufficiency of
195 funds in the drawer's account. Additional fees may not be added
196 to the amounts due and owing to the deferred presentment
197 provider.

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

207 (a) The provider must ~~shall~~ require, ~~that~~ as a condition
208 of providing a grace period, that the drawer make an appointment
209 with a consumer credit counseling agency within 7 days after the
210 end of the deferment period and complete the counseling by the
211 end of the grace period. The drawer may agree to, comply with,
212 and adhere to a repayment plan approved by the counseling
213 agency. If the drawer agrees to comply with and adhere to a
214 repayment plan approved by the counseling agency, the provider
215 must also comply with and adhere to that repayment plan. The

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216 deferred presentment provider may not deposit or present the
217 drawer's check for payment before the end of the 60-day grace
218 period unless the drawer fails to comply with such conditions or
219 the drawer fails to notify the provider of such compliance.

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

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

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

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

238 3. The following notice in at least 14-point type in
239 substantially the following form:
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241 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
242 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
243 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
244 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
245 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
246 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
247 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
248 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
249 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
250 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
251 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
252 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
253 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
254 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
255 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
256 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
257 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
258 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
259 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
260 THE DEBT.

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

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266 (23) For deferred presentment installment transactions, if
267 a drawer informs the deferred presentment provider in writing or
268 in person by noon of the business day before a scheduled payment
269 that the drawer cannot pay in full the scheduled payment amount
270 due and owing the provider, the deferred presentment provider
271 must provide the drawer the opportunity to defer the scheduled
272 payment, at no additional fee or charge, until after the last
273 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
274 same time zone in which the deferred presentment agreement was
275 entered into. Only one deferred payment is permitted for each
276 deferred presentment installment transaction. The deferred
277 payment must be due at an interval after the last scheduled
278 payment which is no shorter than the intervals between the
279 originally scheduled payments.

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

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291 amount of the transaction, date of transaction, the date that
292 the transaction is closed, and such additional information as is
293 required by rule.

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

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

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

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

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

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

328 (26) A deferred presentment installment transaction must
329 be fully amortizing and repayable in consecutive installment
330 periods as nearly equal as mathematically practicable according
331 to a payment schedule agreed upon by the parties with no fewer
332 than 13 days and not more than 1 calendar month between
333 payments, except that the first installment period may be longer
334 than the remaining installment periods by not more than 15 days,
335 and the first installment payment may be larger than the
336 remaining installment payments by the amount of charges
337 applicable to the extra days. In calculating charges under this
338 subsection, when the first installment period is longer than the
339 remaining installment periods, the amount of the charges

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340 applicable to the extra days may not exceed those that would
341 accrue under a simple interest calculation based on the rate
342 allowed under subsection (6).

343 Section 3. Subsections (1), (3), and (4) of section
344 560.405, Florida Statutes, are amended to read:

345 560.405 Deposit; redemption.—

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

352 (3) Notwithstanding subsection (1), in lieu of
353 presentment, a deferred presentment provider may allow the check
354 to be redeemed at any time upon payment of the outstanding
355 transaction balance and earned fees ~~face amount of the drawer's~~
356 ~~check~~. However, payment may not be made in the form of a
357 personal check. Upon redemption, the deferred presentment
358 provider must ~~shall~~ return the drawer's check and provide a
359 signed, dated receipt showing that the drawer's check has been
360 redeemed.

361 (4) A drawer may not be required to redeem his or her
362 check in full before the agreed-upon date; however, the drawer
363 may choose to redeem the check before the agreed-upon
364 presentment date.

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365 Section 4. For the purpose of incorporating the amendments
366 made by this act to sections 560.404 and 560.405, Florida
367 Statutes, in references thereto, subsection (5) of section
368 560.111, Florida Statutes, is reenacted to read:

369 560.111 Prohibited acts.—

370 (5) Any person who willfully violates any provision of s.
371 560.403, s. 560.404, or s. 560.405 commits a felony of the third
372 degree, punishable as provided in s. 775.082, s. 775.083, or s.
373 775.084.

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

375

376

377 **T I T L E A M E N D M E N T**

378 Remove everything before the enacting clause and insert:

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

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

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415 payment; specifying the frequency a certain fee may be
416 imposed by Financial Services Commission rule for data
417 on certain transactions submitted by deferred
418 presentment providers to a certain database; providing
419 an exception to a limitation on a deferred presentment
420 provider's acceptance of a certain check or
421 authorization; specifying requirements for
422 amortization, installment repayments, and calculation
423 of charges for deferred presentment installment
424 transactions; conforming provisions to changes made by
425 the act; amending s. 560.405, F.S.; providing an
426 exception to a prohibition against a deferred
427 presentment provider's or its affiliate's presentment
428 of a drawer's check before the end of the deferment
429 period; revising a condition under which a deferred
430 presentment provider may allow the check to be
431 redeemed in lieu of presentment; revising a
432 prohibition against requiring a drawer to redeem his
433 or her check before the agreed-upon date; reenacting
434 s. 560.111(5), F.S., relating to prohibited acts, to
435 incorporate the amendments made to ss. 560.404 and
436 560.405, F.S., in references thereto; providing an
437 effective date.