

STORAGE NAME: h2127.fs

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 2127

RELATING TO: Deferred Presentment Act

SPONSOR(S): Representative Barreiro

COMPANION BILL(S): CS/SB 2294 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2) GENERAL GOVERNMENT APPROPRIATION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill would create the "Deferred Presentment Act." as part IV of chapter 560, F.S. This would provide for authorization and regulation of "deferred presentment transactions" pursuant to which a person provides cash or currency in exchange for another person's check and agrees to hold that person's check for a period of time prior to depositing or redeeming the check. A deferred presentment transaction that complies with the provisions of the bill would not be construed to be a loan under state law.

Fiscal impact: The bill appropriates \$150,000 for fiscal year 1999-2000 from the Regulatory Trust Fund of the Department of Banking and Finance to the department to fund 3 positions to administer the provisions of the act created by this bill. The department estimates that the bill will net a \$0 impact, based on an estimate of \$150,000 in additional revenues from licensure.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, under the Money Transmitters' Code, the Florida law provides for licensure and regulation of certain check cashing operations by the Department of Banking and Finance, (Part III of chapter 560, F.S., Check Cashing and Foreign Currency Exchange). No person may engage in the business of cashing checks or payment instruments or the exchange of foreign currency without first registering under the provisions of this part, which:

- Provides for registration, regulation, reports, examinations, for persons cashing checks or exchanging foreign currency.
- Provides an exemption from registration to persons engaged in cashing payment instruments or exchanging foreign currency for compensation if such activity for each location does not exceed 5 percent of the total gross income from the retail sale of goods or services during its most recently completed fiscal year.
- Requires an investigation fee of \$250. Provides for a renewal fee of \$500 every 2 years. Provides for a \$50 registration fee for each location not to exceed \$5,000.
- Provides limitations on all persons in the business of cashing payment instruments or exchanging foreign currency for the following fees:
 - 1) except as otherwise provided, no more than 5 percent of the face amount of a check, or 6 percent without identification, or \$5, whichever is greater;
 - 2) for state public assistance or federal social security benefit check payable to the bearer no more than 3 percent of the face amount of a check, or 4 percent without identification, or \$5, whichever is greater;
 - 3) for personal checks or money orders no more than 10 percent of the face amount, or \$5, whichever is greater.

A person registered under this part as being in the business of cashing checks ("registrant") may charge up to 10% of the face amount of a personal check as a fee for this service, as shown above. The registrant may accept a post-dated check or agree to wait a certain number of days to cash the check. However, the law does not permit a registrant to charge a fee for deferring the cashing of the check, which would be considered a loan under state law. In order to charge a fee, the check casher must also have consumer finance lender's license and then could charge the interest or fees allowed by chapter 516, F.S.

The department also administers the Money Laundering Program to deter money laundering through financial institutions operating in Florida. The more recent focus of money laundering activities has been on money transmitters (check cashers, foreign currency exchangers, money order issuers, and wire transmitters) which has been increasingly identified as a vehicle for money laundering.

B. EFFECT OF PROPOSED CHANGES:

The bill would create the "Deferred Presentment Act." as part IV of chapter 560, F.S. This would provide for authorization and regulation of "deferred presentment transactions" pursuant to which a person provides cash or currency in exchange for another person's check and agrees to hold that person's check for a period of time prior to depositing or redeeming the check. A deferred presentment transaction that complies with the provisions of the bill would not be construed to be a loan under state law. See Part E. SECTION-BY-SECTION ANALYSIS, for a more detailed explanation of the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. Deferred presentment providers would be required to maintain all books and records as prescribed by department rules, and be retained for at least 3 years.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill prohibits certain acts and practices for a deferred presentment provider, including charging a service fee in excess of 15 percent of the amount provided to the drawer. Other prohibited acts include accepting or holding an undated check; altering or deleting the date on the check; collecting a service fee before the drawer's check is presented, deposited, or redeemed; renewing or extending any deferred presentment transaction (beyond the 31 day limit); holding more than two outstanding checks from any one drawer at any one time; holding outstanding checks from any one drawer which in the aggregate exceed \$1,000; charging any fee other than the maximum 15% service fee, and certain other practices.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends 2. 560.103, s. 560.114, s. 560.129, s. 560.207, and creates s. 560.401, s. 560.402, s. 560.403, s. 560.404, s. 560.405, s. 560.406, and s. 560.407, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Sections 1 - 5 apply to Money Transmitters, Generally (Part I of chapter 560, F.S.)

Section 1 amends s. 560.103, F.S., (definitions), to add reference to new part IV of the chapter, relating to deferred presentment, as created by Section 6 of this bill.

Section 2 amends s. 560.114, F.S., relating to disciplinary action by the department for certain prohibited acts of any person who is registered under the chapter as a money transmitter (check casher, etc.), to add the following prohibited acts: the failure to pay any fee, charge, or fine imposed or assessed pursuant to the chapter; or engaging in or advertising engagement in the business of a money transmitter without a registration, unless exempt.

The bill also specifies that if any registration expires or is surrendered while administrative charges are pending, the proceeding shall continue.

Section 3 amends s. 560.129, F.S., relating to the confidentiality of certain proceedings and records. The bill deletes current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings conducted under this chapter. The bill also deletes the confidentiality provisions that currently apply to any emergency order entered under s. 560.112 (6), F.S., which relates to conduct likely to cause substantial dissipation of assets or earnings of the money transmitter or insolvency or substantial prejudice to the customers. As amended by the bill, these hearings and proceedings and related records would no longer be confidential.

Section 4 amends s. 560.207, F.S., relating to renewal of a money transmitter's registration. The bill extends the date for expiration of registration from March 31 to April 30.

Section 5 applies to Deferred Presentment

Section 5 creates new part IV of chapter 560 (ss. 560.401 - 560.407), F.S., to authorize and regulate deferred presentment agreements. The bill creates the following statutes, which provide as follows:

s. 560.401, F.S. Short Title. The bill designates new part IV as the "Deferred Presentment Act."

s. 560.401, F.S. Definitions. The bill creates definitions for the following terms: days, deferred presentment provider, deferred presentment transaction, drawer, renewal, and service fee.

The key definition of the practice that is regulated under this part is “deferred presentment transaction” which means “providing currency or a payment instrument in exchange for a person’s check and agreeing to hold that person’s check for a period of time prior to presentment, deposit or redemption. A deferred presentment transaction is not a loan under state law.”

Other key terms include:

“Drawer” means a person who writes a personal check and upon whose account the check is drawn.

“Renewal” means the termination of an existing agreement solely by the payment of fees due and the substitution of a new check drawn by the drawer pursuant to a new agreement.

“Deferred presentment provider” or “provider” who is the person who is registered under part II or part III of the Code, engages in a deferred presentment transaction, and has filed a declaration of intent with the department.

“Service fee” means the fee a provider may charge in a deferred presentment transaction, which may not be deemed interest for any purpose. (See s. 560.404, F.S., which limits the fee to 15% of the face amount of the check.)

“Days” means calendar days.

s. 560.403, F.S. Requirement of registration; declaration of intent. The bill establishes the requirements for registration of a deferred presentment provider, which includes a requirement that a person also be registered under part II or part III of the chapter, which currently regulates persons who sell or issue payment instruments (checks, money orders, etc.) or who transmits funds (part II) and persons who are in the business of cashing checks or other payment instruments or the exchanging of foreign currency (part III.) Such persons must have on file with the department a declaration of intent to engage in deferred presentment transactions. The declaration of intent must be under oath, in a form as prescribed by the department, and no person who engages in deferred presentment is exempt from this registration. Every deferred presentment transaction agreement must be written and signed by both the provider and the drawer and executed on the same day that the currency is provided.

Every transaction agreement must contain:

- The name, address, and telephone number of the provider, and the name and title of the person who signs the agreement on behalf of the provider;
- The date the transaction was made;
- The amount of the drawer’s check;
- The length of the deferral period;¹
- The address and telephone number of the department; and
- A clear description of the drawer’s payment obligations under the transaction.

No provider shall require any person to provide additional security for the transaction, or any extension, or require a person to provide any additional guaranty.

A transaction agreement may not contain:

- A hold harmless clause;
- A confession of judgment clause;
- Any assignment of wages or other compensation for services;
- Any statement that the drawer agrees not to assert any claim or defense arising out of the agreement; and,
- A waiver of any provision of this part.

¹This term is not currently defined in the Act.

s. 560.404, F.S. Rules. The bill prohibits certain acts and practices for a deferred presentment provider, including charging a service fee in excess of 15 percent of the amount provided to the drawer. Other prohibited acts include accepting or holding an undated check; altering or deleting the date on the check; collecting a service fee before the drawer's check is presented, deposited, or redeemed; renewing or extending any deferred presentment transaction (beyond the 31 day limit); holding more than two outstanding checks from any one drawer at any one time; holding outstanding checks from any one drawer which in the aggregate exceed \$1,000; charging any fee other than the maximum 15% service fee, and certain other practices. Other rules include:

- Upon receipt of the drawer's check, a deferred present provider must immediately provide the drawer with the face amount of the check, less the service fee permitted under this section;
- A provider may not charge the drawer a check cashing fee or a verification fee pursuant to part III;
- The bill specifies the types of currency that the deferred presentment provider may provide to the drawer of the check (which differs, depending on whether the provider is registered under part II or part III of the chapter). It further requires the deferred presentment provider to allow the drawer to cash any non-negotiable instrument issued by the provider with the provider without incurring any fees or costs;
- The bill prohibits a provider from redeeming, extending, or otherwise consolidating a transaction with the proceeds of another transaction made by the same provider;
- The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of fees as allowed by the bill;
- Providers are required to post a disclosure statement that provides, in summary, that state law prohibits deferred presentment providers and affiliated providers from holding, at any one time, more than two outstanding checks written by the drawer ("you") and that state law prohibits providers from holding checks written by you which in the aggregate exceed \$1,000, exclusive of the service fee.

s. 560.405, F.S. Deposit and redemption. The bill prohibits a deferred presentment provider from presenting or depositing a drawer's check before the end of the deferral period, and requires the check to be endorsed with the actual name under with the deferred presentment provider is doing business. Allows a drawer of a check to elect to redeem his or her check at any time before the end of the deferral period.

The written agreement must authorize the registrant to defer presentment or negotiation of the check until after a specific date, not later than 31 days from the date the check is accepted by the registrant.

s. 560.406, F.S. Worthless checks. Persons who write a check for a deferred presentment transaction on an account that was closed on the date of the transaction or that is closed before the agreed upon negotiation date of the deferred presentment, are subject to all civil and criminal penalties available at law. A provider is allowed to seek collection on a bad check pursuant to s. 68.065, F.S., except that the provider is not entitled to the treble damages provided in that section. The bill provides that a person who issues a check under a deferred presentment agreement is not subject to criminal penalty.

s. 560.407, F.S. Books and records. Deferred presentment providers would be required to maintain all books and records as prescribed by department rules, and be retained for at least 3 years.

Section 6 appropriates \$150,000 for fiscal year 1999-2000 from the Regulatory Trust Fund of the Department of Banking and Finance to the department to fund 3 positions to administer the provisions of the act created by this bill. This section is effective July 1, 1999.

Section 7 provides an effective date of October 1, 1999, except as otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

<u>Expenses</u>	<u>1999/00</u>	<u>2000/01</u>
Regulatory Trust Fund	(\$150,000)	(\$150,000)
<u>Revenues</u>		
Registration Fees	\$150,000	\$150,000

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The department estimates that the bill will net a \$0 impact, based on an estimate of \$150,000 in additional revenues from licensure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Registrants under the Deferred Presentment Act must be registered under either part II or part III of chapter 560. See, Part II.A. PRESENT SITUATION.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

Registrants under the Deferred Presentment Act would be permitted to charge fees of up to 15 percent of the amount provided to the drawer of the check whose presentment is deferred. A deferred presentment agreement could not be for a term in excess of 31 days. A registrant may not renew any deferred presentment transaction. The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of the fees, so the fee could not exceed \$75 (15% of \$500). No more than two checks totaling \$1,000 may be held by a provider for any one drawer at any one time, so the total fees could not exceed \$150 (15% of \$1,000). However, there is no

limit on the number of checks that a drawer can defer with any one provider over time, or any limit on the number of checks that a drawer can defer with two or more providers.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with counties and municipalities.

V. COMMENTS:

Section 4 amends s. 560.129, F.S., to delete current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings conducted under this chapter and any emergency order entered under s. 560.112 (6), F.S., which relates to conduct likely to cause substantial dissipation of assets or earnings of the money transmitter or insolvency or substantial prejudice to the customers. As amended by the bill, these hearings and proceedings and related records would no longer be confidential. Since the bill does not create or expand an exemption from the public records law, the bill does not raise a constitutional issue of requiring a separate bill.

A potential conflict exists within s. 560.404, F.S., as created by the bill. Section 560.404(2), F.S., states that the provider shall provide the drawer with the full amount of any check to be held, less only the fees permitted under this section. The next sentence of subsection (2) states that no provider shall provide a drawer with the face amount of the check to be held. Therefore, if a 15 percent service charge is assessed to a \$100 check, subsection (2) permits a provider to provide \$85 to the drawer. However, s. 560.404(1), F.S., states that a provider may not charge more than 15 percent of the amount paid to the drawer. Obviously, the full amount of the check, less fees (a 15 percent service charge), would be a different amount than 15 percent of the amount paid to the drawer. This provision may have been intended to refer to other fees allowable under the section such as fees due the provider for insufficient funds charges.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner

Susan F. Cutchins