

By Representative Barreiro

1 A bill to be entitled
2 An act relating to deferred presentments;
3 amending s. 560.103, F.S.; revising
4 definitions; amending s. 560.114, F.S.;
5 providing additional grounds for disciplinary
6 action; providing for continuation of certain
7 administrative proceedings under certain
8 circumstances; amending s. 560.129, F.S.;
9 deleting provisions providing public records
10 confidentiality for certain hearings,
11 proceedings, and emergency orders; amending s.
12 560.207, F.S.; revising time periods for
13 registration renewals; creating part IV, ch.
14 560, F.S., consisting of ss. 560.401, 560.402,
15 560.403, 560.404, 560.405, 560.406, and
16 560.407, F.S.; providing a short title;
17 providing definitions; providing registration
18 requirements for deferred presentment
19 transactions; providing limitations; specifying
20 requirements and limitations for engaging in
21 deferred presentment transactions; providing
22 prohibitions; providing for fees; providing
23 limitations; requiring certain notice;
24 specifying criteria and requirements for
25 deposit and redemption of a drawer's check;
26 providing procedures for recovering damages for
27 worthless checks; requiring maintenance of
28 records for a time certain; providing an
29 appropriation; providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Paragraph (d) is added to subsection (4) of
2 section 560.103, Florida Statutes, and subsection (10) of said
3 section is amended, to read:

4 560.103 Definitions.--As used in the code, unless the
5 context otherwise requires:

6 (4) "Code" means the "Money Transmitters' Code,"
7 consisting of:

8 (d) Part IV of this chapter, relating to deferred
9 presentments.

10 (10) "Money transmitter" means any person located in
11 or doing business in this state who acts as a payment
12 instrument seller, foreign currency exchanger, check casher,
13 ~~or~~ funds transmitter, or deferred presentment provider.

14 Section 2. Paragraphs (l) and (m) are added to
15 subsection (1) of section 560.114, Florida Statutes, paragraph
16 (d) of subsection (2) of said section is amended, and
17 subsection (4) is added to said section, to read:

18 560.114 Disciplinary actions.--

19 (1) The following actions by a money transmitter or
20 money transmitter-affiliated party are violations of the code
21 and constitute grounds for the issuance of a cease and desist
22 order, the issuance of a removal order, the denial of a
23 registration application or the suspension or revocation of
24 any registration previously issued pursuant to the code, or
25 the taking of any other action within the authority of the
26 department pursuant to the code:

27 (l) Failure to pay any fee, charge, or fine under the
28 code.

29 (m) Engaging or advertising engagement in the business
30 of a money transmitter without a registration, unless the
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1 person is exempted from the registration requirements of the
2 code.

3 (2) In addition to the acts specified in subsection
4 (1), the following acts are grounds for denial of registration
5 or for revocation, suspension, or restriction of registration
6 previously granted:

7 (d) Having been convicted of or found guilty of, or
8 having pleaded guilty or nolo contendere to, a crime involving
9 fraud ~~or dishonest dealing.~~

10 (4) If any registration expires while administrative
11 charges are still pending against the deferred presentment
12 provider, the proceedings against the registrant shall
13 continue as if the registration were still in effect.

14 Section 3. Section 560.129, Florida Statutes, is
15 amended to read:

16 560.129 Confidentiality.--

17 (1) For purposes of this section, the definitions
18 contained in s. 560.103, as created by chapter 94-238, Laws of
19 Florida, and chapter 94-354, Laws of Florida, apply.

20 (2) ~~RESTRICTED ACCESS TO CERTAIN HEARINGS,~~
21 ~~PROCEEDINGS, AND RELATED DOCUMENTS.--~~

22 ~~(a) The hearings and proceedings conducted under the~~
23 ~~code pursuant to this part shall be closed and exempt from the~~
24 ~~provisions of s. 286.011 and s. 24(b), Art. I of the State~~
25 ~~Constitution, and documents related to such hearings and~~
26 ~~proceedings shall be confidential and exempt from the~~
27 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
28 ~~Constitution.~~

29 ~~(b)~~ Orders of courts or of administrative law judges
30 for the production of confidential records or information
31 shall provide for inspection in camera by the court or the

1 administrative law judge and, after the court or
2 administrative law judge has made a determination that the
3 documents requested are relevant or would likely lead to the
4 discovery of admissible evidence, the documents shall be
5 subject to further orders by the court or the administrative
6 law judge to protect the confidentiality thereof. Any order
7 directing the release of information shall be immediately
8 reviewable, and a petition by the department for review of
9 such order shall automatically stay further proceedings in the
10 trial court or the administrative hearing until the
11 disposition of such petition by the reviewing court. If any
12 other party files such a petition for review, it will operate
13 as a stay of such proceedings only upon order of the reviewing
14 court.

15 ~~(3) Any emergency order entered under s. 560.112(6) is~~
16 ~~confidential and exempt from the provisions of s. 119.07(1)~~
17 ~~and s. 24(a), Art. I of the State Constitution, until the~~
18 ~~emergency order is made permanent, unless the department finds~~
19 ~~that such confidentiality will result in substantial risk of~~
20 ~~financial loss to the public.~~

21 (3)(4) Except for such portions of this section which
22 are otherwise public record, all records and information
23 relating to an investigation by the department under the code
24 are confidential and exempt from the provisions of s.
25 119.07(1) and s. 24(a), Art. I of the State Constitution,
26 until such investigation is completed or ceases to be active.
27 For purposes of this subsection, an investigation is
28 considered active while such investigation is being conducted
29 by the department with a reasonable, good faith belief that it
30 may lead to the filing of administrative, civil, or criminal
31 proceedings. An investigation does not cease to be active if

1 the department is proceeding with reasonable dispatch, and
2 there is a good faith belief that action may be initiated by
3 the department or other regulatory, administrative, or law
4 enforcement agency. After an investigation is completed or
5 ceases to be active, portions of such records relating to the
6 investigation shall be confidential and exempt from the
7 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
8 Constitution, to the extent that disclosure would:

9 (a) Jeopardize the integrity of another active
10 investigation;

11 (b) Impair the safety and soundness of a money
12 transmitter or authorized vendor;

13 (c) Reveal personal financial information;

14 (d) Reveal the identity of a confidential source;

15 (e) Defame or cause unwarranted damage to the good
16 name or reputation, or jeopardize the safety, of a person; or

17 (f) Reveal investigative techniques or procedures.

18 (4)~~(5)~~ Except as otherwise provided in s. 560.121, and
19 except for such portions that are public record, reports of
20 examinations, operations, or conditions, including working
21 papers, or portions thereof, prepared by, or for the use of,
22 the department or any appropriate regulatory agency are
23 confidential and exempt from the provisions of s. 119.07(1)
24 and s. 24(a), Art. I of the State Constitution. However, such
25 reports or papers or portions thereof may be released to:

26 (a) The money transmitter under examination;

27 (b) Proposed purchasers if necessary to protect the
28 continued financial viability of the money transmitter;
29 however, the department shall notify the money transmitter
30 prior to releasing such documents;

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1 (c) Persons proposing in good faith to acquire a
2 controlling interest in or to merge with the money
3 transmitter; however, the department shall obtain permission
4 from the money transmitter prior to releasing such documents;

5 (d) Any responsible person, officer, director,
6 employee, attorney, auditor, or independent auditor officially
7 connected with the money transmitter, proposed purchaser, or
8 person seeking to acquire a controlling interest in or merge
9 with the money transmitter; however, the department shall
10 obtain permission from the money transmitter prior to
11 releasing such documents; or

12 (e) A bonding company, upon approval of the money
13 transmitter.

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15 Any confidential information or records obtained from the
16 department pursuant to this subsection shall be maintained as
17 confidential and exempt from the provisions of s. 119.07(1)
18 and s. 24(a), Art. I of the State Constitution.

19 (5)~~(6)~~ This section shall not prevent or restrict:

20 (a) Furnishing records or information to any
21 appropriate regulatory agency provided that such agency
22 adheres to the confidentiality provisions of the code;

23 (b) Disclosing or publishing summaries of the
24 condition of money transmitters as well as general economic
25 and similar statistics or data, provided that the identity of
26 a particular money transmitter is not disclosed and may not be
27 ascertained; or

28 (c) Reporting any suspected criminal activity, with
29 supporting documents and information, to appropriate law
30 enforcement or prosecutorial agencies.

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1 Any confidential information or records obtained from the
2 department pursuant to this subsection shall be maintained as
3 confidential and exempt from the provisions of s. 119.07(1)
4 and s. 24(a), Art. I of the State Constitution.

5 (6)~~(7)~~ All reports and records filed with the
6 department pursuant to s. 560.123 are confidential and exempt
7 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
8 the State Constitution. However, the department shall provide
9 any report filed pursuant to such section, or information
10 contained therein, to federal, state, and local law
11 enforcement and prosecutorial agencies, and to any federal or
12 state agency responsible for the regulation or supervision of
13 money transmitters.

14 (7)~~(8)~~ Confidential records and information furnished
15 pursuant to a legislative subpoena shall be kept confidential
16 by the legislative body or committee that receives the records
17 or information, except in a case involving investigation of
18 charges against a public official subject to impeachment or
19 removal, and then disclosure of such information shall be only
20 to the extent determined to be necessary by the legislative
21 body or committee.

22 (8)~~(9)~~ Examination reports, investigatory records,
23 applications, and related information compiled by the
24 department, or photographic copies thereof, shall be retained
25 by the department for a period of at least 10 years.

26 (9)~~(10)~~ Any person who willfully discloses information
27 made confidential by this section commits a felony of the
28 third degree, punishable as provided in s. 775.082, s.
29 775.083, or s. 775.084.

30 (10)~~(11)~~ The exemptions created in this section,
31 ~~pursuant to subsections (1)-(11)~~ for purposes of the Money

1 Transmitters' Code ~~in this chapter~~, as created by chapter
2 94-238, Laws of Florida, and chapter 94-354, Laws of Florida,
3 are exempt from the provisions of ss. 119.07(1) and 286.011
4 and s. 24(a) and (b), Art. I of the State Constitution.

5 Section 4. Subsection (2) of section 560.207, Florida
6 Statutes, is amended to read:

7 560.207 Renewal of registration; registration fee.--

8 (2) All registration renewal applications shall be
9 accompanied by a renewal fee not to exceed \$1,000, unless such
10 fee is waived by the department. All renewal applications must
11 be filed on or after January 1 of the year in which the
12 existing registration expires, but no later than April 30
13 ~~before March 31~~. If the renewal application is filed prior to
14 the expiration date of an existing registration, no
15 investigation fee shall be paid in connection with such
16 renewal application. If the renewal application is filed after
17 April 30 the expiration date of an existing registration, the
18 renewal registration shall be considered untimely and then, in
19 addition to the \$1,000 renewal fee, the renewal application
20 shall be accompanied by a nonrefundable investigation fee
21 pursuant to s. 560.205(2).

22 Section 5. Part IV of chapter 560, Florida Statutes,
23 consisting of sections 560.401, 560.402, 560.403, 560.404,
24 560.405, 560.406, and 560.407, Florida Statutes, is created to
25 read:

26 PART IV

27 DEFERRED PRESENTMENT

28 560.401 Short title.--This part may be cited as the
29 "Deferred Presentment Act."

30 560.402 Definitions.--In addition to the definitions
31 provided in ss. 560.103, 560.202, and 560.302 and unless

1 otherwise clearly indicated by the context, for purposes of
2 this part:
3 (1) "Drawer" means any person who writes a personal
4 check and upon whose account the check is drawn.
5 (2) "Deferred presentment transaction" means providing
6 currency or a payment instrument in exchange for a person's
7 check and agreeing to hold that person's check for a period of
8 time prior to presentment, deposit, or redemption. A deferred
9 presentment transaction that complies with the provisions
10 contained in this part shall not be construed to be a loan
11 under state law.
12 (3) "Renewal" means the termination of an existing
13 deferred presentment agreement solely by the payment of fees
14 then due the deferred presentment provider and the
15 substitution of a new check drawn by the drawer pursuant to a
16 new deferred presentment agreement.
17 (4) "Deferred presentment provider" means a person who
18 engages in a deferred presentment transaction and is
19 registered under part II or part III of the code and has filed
20 a declaration of intent with the department.
21 (5) "Service fee" means the fee authorized for the
22 deferral of the presentation of a check pursuant to this part.
23 This fee shall not be deemed to be interest for any purpose.
24 (6) "Days" means calendar days.
25 560.403 Requirements of registration; declaration of
26 intent.--
27 (1) No person shall engage in a deferred presentment
28 transaction unless the person is registered under the
29 provisions of part II or part III and has on file with the
30 department a declaration of intent to engage in deferred
31 presentment transactions. The declaration of intent shall be

1 under oath and on such form as the department prescribes by
2 rule. Existing registrants shall have 60 days after this act
3 becomes a law to file a declaration of intent.

4 (2) No person shall be exempt from registration and
5 declaration if such person engages in deferred presentment
6 transactions, regardless of whether such person is currently
7 exempt from registration under any provision of this code.

8 (3) Every deferred presentment transaction shall be
9 documented in a written agreement signed by both the deferred
10 presentment provider and the drawer.

11 (4) The deferred presentment transaction agreement
12 shall be executed on the day the deferred presentment provider
13 furnishes currency or a payment instrument to the drawer.

14 (5) All written agreements shall contain:

15 (a) The name or trade name, address, and telephone
16 number of the deferred presentment provider, and the name and
17 title of the person who signs the agreement on behalf of the
18 deferred presentment provider.

19 (b) The date the deferred presentment transaction was
20 made.

21 (c) The amount of the drawer's check.

22 (d) The length of deferral period.

23 (e) The address and telephone number of the
24 department.

25 (f) A clear description of the drawer's payment
26 obligations under the deferred presentment transaction.

27 (6) Every deferred presentment provider shall furnish
28 to the drawer a copy of the deferred presentment transaction
29 agreement.

30 (7) No deferred presentment provider shall require a
31 person to provide any additional security for the deferred

1 presentment transaction or any extension or require a person
2 to provide any additional guaranty from another person.
3 (8) A deferred presentment provider shall not include
4 any of the following provisions in any written agreement:
5 (a) A hold harmless clause;
6 (b) A confession of judgment clause;
7 (c) Any assignment of or order for payment of wages or
8 other compensation for services;
9 (d) A provision in which the drawer agrees not to
10 assert any claim or defense arising out of the agreement; or
11 (e) A waiver of any provision of this part.
12 560.404 Rules.--A person may engage in deferred
13 presentment transactions, subject to the following:
14 (1) No deferred presentment provider shall charge
15 service fees in excess of 15 percent of the amount paid to the
16 drawer of the check whose presentment or negotiation is
17 deferred.
18 (2) Each deferred presentment provider shall
19 immediately provide the drawer with the full amount of any
20 check to be held, less only the fees permitted under this
21 section. However, no deferred presentment provider shall
22 provide a drawer with the face amount of the check to be held.
23 (3) The deferred presentment agreement and drawer's
24 check shall bear the same date, and the number of days shall
25 be calculated from this date. No deferred presentment provider
26 or person may alter or delete the date on any written
27 agreement or check held by the deferred presentment provider.
28 (4) No deferred presentment provider may accept or
29 hold an undated check or a check dated on a date other than
30 the date on which the deferred presentment provider agreed to
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1 hold the check and signed the deferred presentment transaction
2 agreement.

3 (5) In connection with a deferred presentment
4 transaction, a deferred presentment provider may not charge
5 the drawer a check-cashing fee or a verification fee pursuant
6 to part III.

7 (6) No deferred presentment agreement shall be for a
8 term in excess of 31 days.

9 (7) Every deferred presentment provider shall hold the
10 drawer's check for the agreed number of days, unless the
11 drawer chooses to redeem the check before the agreed
12 presentment date.

13 (8) The fees authorized by this subsection may not be
14 collected before the drawer's check is presented or redeemed.

15 (9) Proceeds in a deferred presentment transaction may
16 be made to the drawer in the form of the deferred presentment
17 provider's business check or money order if the deferred
18 presentment provider is licensed under s. 560.200; however, no
19 additional fee may be charged by a deferred presentment
20 provider for issuing or cashing the deferred presentment
21 provider's check.

22 (10) No deferred presentment provider may engage in
23 the renewal of any deferred presentment transaction. A
24 transaction is completed when a check is presented for
25 payment, is deposited, or is redeemed by the drawer by payment
26 in full in cash or a cash equivalent to the deferred
27 presentment provider. After the drawer has completed a
28 deferred presentment transaction with a deferred presentment
29 provider, he or she may enter into a new agreement for
30 deferred presentment services with the deferred presentment
31 provider. A deferred presentment provider shall not redeem,

1 extend, or otherwise consolidate a deferred presentment
2 transaction with the proceeds of another deferred presentment
3 transaction made by the same deferred presentment provider.

4 (11) The face amount of a check taken for deferred
5 presentment may not exceed \$500 exclusive of the fees allowed
6 by this part.

7 (12) No deferred presentment provider or person
8 related to the deferred presentment provider by common
9 ownership or control may have outstanding more than two checks
10 from any one drawer at any one time, nor may the aggregate
11 face value of all outstanding checks from any one drawer
12 payable to any deferred presentment provider exceed \$1,000,
13 exclusive of the fees allowed by this part. Each deferred
14 presentment provider may rely on a written representation of a
15 drawer regarding the existence of any outstanding checks for
16 deferred presentment. A deferred presentment provider shall
17 not use any device or agreement, including, but not limited
18 to, agreements with or referrals to other deferred presentment
19 providers, to obtain greater fees.

20 (13) A deferred presentment provider shall provide a
21 notice in a prominent place on each deferred presentment
22 agreement in at least 10-point type in substantially the
23 following form:

24
25 NOTICE

26 STATE LAW PROHIBITS YOU FROM HAVING MORE THAN 2 DEFERRED
27 PRESENTMENT TRANSACTIONS TOTALING MORE THAN \$1,000,
28 EXCLUSIVE OF FEES, OUTSTANDING AT ANY TIME.
29 FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL
30 HARDSHIP FOR YOU AND YOUR FAMILY.
31

1 (14) A deferred presentment provider shall charge only
2 those fees specifically authorized in this section.

3 560.405 Deposit; redemption.--

4 (1) The deferred presentment provider shall not
5 present the drawer's check prior to the agreed-upon date of
6 presentment, as reflected in the deferred presentment
7 transaction agreement.

8 (2) Before a deferred presentment provider presents
9 the drawer's check, the check shall be endorsed with the
10 actual name under which the deferred presentment provider is
11 doing business.

12 (3) Notwithstanding the provisions of subsection (1),
13 in lieu of presentment, a deferred presentment provider may
14 allow the check to be redeemed at any time upon payment to the
15 deferred presentment provider in the amount of the face amount
16 of the drawer's check. However, payment may not be made in the
17 form of a personal check. Upon redemption, the deferred
18 presentment provider shall return the drawer's check that was
19 being held and provide a signed, dated receipt showing that
20 the drawer's check has been redeemed.

21 (4) No drawer can be required to redeem his or her
22 check prior to the agreed-upon date, unless the drawer chooses
23 to redeem the check before the agreed-upon presentment date.

24 560.406 Worthless checks.--If a check is returned to a
25 deferred presentment provider from a payor financial
26 institution due to lack of funds, a closed account, or a
27 stop-payment order, the deferred presentment provider may seek
28 collection pursuant to s. 68.065, except a deferred
29 presentment provider shall not be entitled to collect treble
30 damages pursuant s. 68.065. The notice sent by a deferred
31 deposit provider pursuant to s. 68.065 shall not include any

1 references to treble damages and must clearly state that the
2 deferred presentment provider is not entitled to recover such
3 damages. Except as otherwise provided in this part, an
4 individual who issues a personal check to a deferred
5 presentment provider under a deferred presentment agreement is
6 not subject to criminal penalty. If a check is returned to a
7 deferred presentment provider from a payor financial
8 institution due to insufficient funds, a closed account, or a
9 stop-payment order, the deferred presentment provider may
10 pursue all legally available civil remedies to collect the
11 check, including, but not limited to, the imposition of all
12 charges imposed on the deferred presentment provider by any
13 financial institution.

14 560.407 Records of deferred presentment providers.--A
15 deferred presentment provider shall maintain all books,
16 accounts, records, agreements, contracts, and documents, as
17 prescribed by department rules. Such books, accounts, records,
18 and documents shall be retained for a period of at least 3
19 years.

20 Section 6. Effective July 1, 1999, the sum of \$150,000
21 is hereby appropriated from the Regulatory Trust Fund of the
22 Department of Banking and Finance to the department for fiscal
23 year 1999-2000 to fund three positions for the purpose of
24 administering the provisions of the Deferred Presentment Act.

25 Section 7. Except as otherwise provided herein, this
26 act shall take effect October 1, 1999.

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HOUSE SUMMARY

Creates part IV of chapter 560, Florida Statutes, as the "Deferred Presentment Act." Regulates transactions whereby a check is cashed by a person licensed to cash payment instruments or exchange foreign currency and, by mutual agreement between such person and the maker of the check, its presentment or negotiation is deferred for a limited period of time. Provides that a deferred presentment transaction is not a loan. Provides requirements, limitations, and proscriptions for registering as a deferred presentment provider and for engaging in deferred presentment transactions. See bill for details.