

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1730

SPONSOR: Banking and Insurance Committee and Senator Campbell

SUBJECT: The Money Transmitters' Code

DATE: March 27, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill would create the “Deferred Presentment Act” as part IV of ch. 560, F.S. This would provide for authorization for and regulation of “deferred presentment transactions” in 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. The bill continues regulatory oversight of this industry by the Department of Banking and Finance (department), and provides the following:

- ◆ defines commonly used industry terms;
- ◆ specifies registration and renewal requirements for deferred-presentment providers, including a \$1,000 registration fee and a \$1,000 biennial, renewal fee;
- ◆ specifies disclosures for agreements;
- ◆ requires the deferral period to not be less than 7 days or more than 31 calendar days from the inception of the deferral period;
- ◆ caps fees to a maximum of 10 percent of the total amount paid to a consumer; not to exceed \$50 (however, verification charges provided in s. 560.309, F.S., are also authorized);
- ◆ prohibits roll-overs of agreements;
- ◆ places a \$500 limit for any one provider agreement (exclusive of fees);
- ◆ allows the customer to redeem their check prior to the presentation date;
- ◆ prohibits a registrant from engaging in more than one deferred presentment transaction with the same customer at any one time;
- ◆ requires a registrant to maintain and make available records to the department for a period of at least 3 years; and
- ◆ appropriates \$150,000 and three positions to administer the provisions for fiscal year 2000-01 from the Regulatory Trust Fund to the department and fund.

In addition, the bill provides the following changes relating to part I (Money Transmitters) and part II (Payment Instruments) of ch. 560, F.S.:

- ◆ limits the fee a payment instrument seller may charge to not more than 10 percent of the face value amount of the payment instrument issued or sold or \$3, whichever is greater;
- ◆ requires a check casher to deposit or present a negotiable instrument received under part I within 96 hours after the registrant's receipt; and
- ◆ authorizes the department to adopt rules to allow for the electronic submission of any form or fee required by ch. 560, F.S.

This bill amends the following sections of the Florida Statutes: 560.103 and 560.208. This bill creates the following sections of the Florida Statutes: 560.1051, 560.2081, 560.401, 560.402, 560.403, 560.404, 560.405, 560.406, 560.407, and 560.408.

II. 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 (i.e., check, draft, warrant, money order, travelers check) 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 percent 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. If a licensed check casher holds the check for a period of time the transaction has some characteristics of a loan, but it is the department's position that this transaction is not expressly prohibited by the statute.

It is the position of the department that licensed check cashers are not permitted to execute "roll-overs" of these transactions because a "roll-over" would clearly convert the transaction into a loan of a type not authorized by any Florida statute. Should a licensee engage in a "roll-over," it is the department's position that it would be both a regulatory violation which could result in civil penalties and a criminal violation of ch. 687, F.S., should the interest rate exceed 18 percent per annum.

A person must not engage in the business of making consumer finance loans unless authorized to do so under ch. 516, F.S., or other laws authorizing loans. Section 516.01(2), F.S., defines a consumer finance loan to mean a loan in an amount under \$25,000 with an annual interest greater than 18 percent per annum. Section 516.01(2), F.S., defines interest to be the costs of obtaining a consumer finance loan and includes any profit advantage of any kind whatsoever that the lender may charge, contract for, collect, receive or obtain. Section 516.031(3), F.S., provides that any charges, including interest, in excess of the combined total authorized by ch. 516, F.S., constitutes a violation of ch. 687, F.S., governing interest and usury. Chapter 687, F.S., caps the maximum interest rate at 18 percent, if the debt is less than \$500,000.

Other specific statutes authorizing consumer finance loans in excess of 18 percent are found in Chapter 520, F.S. (retail installment sales), Chapter 538, F.S. (title loans), Chapter 539, F.S. (pawns), and Chapter 655, F.S. (credit cards). Consequently, deferred deposit loans, or any variation thereof, which do not strictly comply with the requirements of Chapter 560, F.S., may be contrary to the law if the amount of the loan is under \$25,000 and the interest rate exceeds 18 percent per annum.

One local business, Cash Cow, was found by the department to have engaged in over 4,000 illegal transactions over the course of one year, collected fees to which it was not entitled, and on occasion threatened to prosecute customers who did not pay these illegal fees. In April of 1997, the department filed an administrative action against Cash Cow for statutory violations which resulted in a final order revoking the business' license, removal of the acting president, a cease and desist order, and a \$230,000 fine. The First District Court of Appeal affirmed that order *per curiam*. In approximately half its transactions, Cash Cow agreed to forego presentment of the checks with which its payment instruments were purchased. In each case, this was found to be a consumer finance loan, and Cash Cow was deemed to be financing the purchase of their payment instruments with consumer finance loans.

Part II of ch. 560, F.S., provides for the regulation of payment instruments and funds transmission. Prior to engaging in the selling or issuing of payment instruments or in the activity of a money transmitter, a person must obtain registration under the provisions of this part. Qualifications of applicants for registration include: 1) submit a \$500 nonrefundable investigation fee; 2) name and address of the applicant; 3) the history of the applicant's material litigation; 4) a description of the activities conducted by the applicant and the business activities in which the applicant seeks to engage in Florida; 5) and other information including financial reports.

Section 560.204, F.S., authorizes a person registered under part II to engage in check cashing and foreign exchange transactions authorized under part III. However, part II does not limit or address the fees an individual registered under part II may charge for cashing checks. Presently, the fees a person registered under part II for cashing checks is unregulated.

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.

III. Effect of Proposed Changes:

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 5 of this bill.

Section 2. Creates s. 560.1051, F.S., relating to electronic submission of forms, to authorize the department to adopt rules to allow for the electronic submission of any form or fee required by this chapter. The department is also authorized to adopt rules to accept certification of compliance with requirements of this chapter in lieu of requiring submission of documents.

Payment Instruments and Funds Transmission (Part II of chapter 560, F.S.)

Section 3. Amends s. 560.208, F.S., relating to conduct of business, to require a check casher to present a negotiable instrument within 96 hours after the registrant's receipt thereof. All funds entrusted to a registrant are required to be deposited into a separate trust account in a federally insured financial institution located in Florida and are required to be promptly disbursed upon the fulfillment of any contractual or legal obligation. A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. (This provision is in part II, applicable to persons registered to engage in payment instrument transactions. It is not included in part III, which is applicable to registered check cashers.)

Section 4. Creates s. 560.2081, F.S., relating to fees charged by payment instrument sellers, to prohibit a payment instrument seller from charging any fee, cost, or charge totaling more than 10 percent of the face value amount of the payment instrument issued or sold or \$3, whichever is greater. A person who violates of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Deferred Presentment (Part IV of chapter 560, F.S.)

Section 5 creates a new part IV of chapter 560 (ss. 560.401 - 560.408), F.S., to authorize and regulate deferred presentment agreements. The bill creates the following statutes:

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

Section 560.402, F.S., relating to definitions. The bill creates definitions for the following terms:

“Affiliated registrant” is defined to mean a registrant that, either directly or indirectly, is under common control with another registrant under this part.

“Business day” is defined to mean the hours during which a particular day that a registrant is regularly open, and may not exceed 15 hours during that day.

“Check” is defined to mean a three-party negotiable instrument drawn on a financial institution and payable in cash.

“Customer” is defined to mean a person who tenders or delivers a payment instrument to a registrant for the purpose of effecting a deferred presentment transaction.

“Deferred period” is defined to mean the number of days a registrant agrees to defer depositing or presenting a payment instrument.

“Deferred presentment transaction” is defined to mean means a transaction in which a customer tenders a check in return for currency, pursuant to a mutual agreement, in return for a fee and in which the check is held by the registrant for an agreed period of time.

“Drawer” means any person who signs a personal check.

“Redeem” is defined to mean to tender payment to a registrant for the face amount of the payment instrument.

“Roll-over” is defined to mean closing or continuing a deferred presentment transaction by accepting payment of the fee from funds acquired pursuant to a deferred presentment transaction or another deferred presentment transaction with the same or an affiliated registrant commenced before or within 1 business day after the expiration date of the existing deferred presentment transaction's deferment period.

“Service fee” means the fee authorized for the deferral of the presentation of a check pursuant to this part. This fee does not constitute interest for any purpose as long as it does not exceed the maximum fee limitation set forth in s. 560.403, F.S.

Section 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.) Any registrant who intends to issue payment instruments must also be registered as a payment instrument issuer pursuant to part II. Also, such persons must have on file with the department a declaration of intent to engage in deferred presentment transactions.

The section also requires a registrant to renew its intent to engage in deferred presentment transactions upon renewing its registration under parts II and III of ch. 560, F.S. A registrant is required to submit a nonrefundable, biennial renewal fee of \$1,000, in addition to any fees

required under parts II and III of ch. 560, F.S. If the renewal application is submitted within 60 days after the expiration of the current registration, the registrant is required to pay an additional \$500 late fee and will be reinstated. If a renewal application not submitted within 60 days, a declaration of intent must be submitted to the department, along with a \$1,000 application fee.

The declaration of intent must be submitted on a form as the department prescribes by rule. 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. The declaration of intent is required to be filed with a nonrefundable filing fee established by department rule; however, the filing fee may not exceed \$1,000.

A person who engages in deferred presentment transactions under this part who furnishes payment instrument to another person, as part of a deferred presentment transaction or otherwise, must be registered under part II. A person who engages in deferred presentment transactions is not exempt from registration and declaration required by this part regardless of any exemptions set forth elsewhere in the chapter.

The maximum fee for a deferred presentment transaction is limited to 10 percent of the total amount given to the customer by the registrant, not to exceed \$50. However, a verification fee of up to \$5 may be charged in accordance with s. 560.309(4), F.S., and the rules adopted pursuant to the code.

A registration granted pursuant to this part is not transferrable to any other person or entity. A registrant is prohibited from operating its business under any other name or title except the name or title registered with the department.

The department is authorized to impose a fine not to exceed \$10,000 per count for each violation of this section. A person who violates any provisions of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Section 560.404, F.S., prohibits a deferred presentment from using authorized vendors to engage in deferred presentment transactions.

In connection with a check cashing transaction, a registrant may defer depositing or presenting a check provided that: (a) no fee other than the fee described in s. 560.403(5) is charged; (b) the deferral period is not less than 7, or more than 31, calendar days from the inception date of the deferral period; (c) the deferred presentment transaction is evidenced in writing and acknowledged by signature of the registrant and the customer; and (d) the registrant does not allow a roll-over of the transaction.

A customer is permitted at any time before the expiration of a deferred presentment period redeem his or her payment instrument without being charged any fee or penalty. If a check is returned to a registrant from a payer financial institution due to insufficient funds for a closed account or stop payment order, the registrant is authorized to pursue all legally available civil means to collect the check, including, without limitation, the imposition of all charges imposed on the registrant by the payer financial institution. Deferred presentment transactions

would not be considered checks or drafts within the meaning of ch. 832, but would be considered loans for the purpose of any criminal statute.

Section 560.406, F.S., relating to deferred presentment transactions, prohibits a registrant, an affiliated registrant, or any other person acting on behalf of a registrant or in relation to a deferred presentment transaction to: (a) engage in a deferred presentment transaction for compensation or gain or in the expectation of compensation or gain in excess of the fee authorized by s. 560.403(5); (b) engage in more than one deferred presentment transaction with the same customer at any one time; (c) deposit the payment instrument before expiration of a deferment period; (d) charge a customer a fee for redeeming a payment instrument, other than the fee permitted by s. 560.403(5); (e) require of or accept from a customer any security or guaranty for a deferred presentment transaction; (f) conduct a roll-over; (g) collect the fee authorized by s. 560.403(5) before the customer's check is redeemed, presented, or deposited; or (h) engage in a deferred presentment transaction in an amount in excess of \$500, exclusive of the fees authorized by s. 560.403(5).

(2) A person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 560.407 relates to deferred presentment agreements; disclosure requirements and prohibitions. A deferred presentment contract entered into between a registrant and a customer must include certain disclosures, including the following:

- (a) the name or trade name, address, and telephone number of the registrant;
- (b) the face amount of the consumer's check, exclusive of the fee authorized by s. 560.403(5);
- (c) the total amount of the fee due at the end of the deferment period, the period of deferment and the due date;
- (d) a statement disclosing the annual percentage rate that the customer is being charged as fees, excluding verification fee; and the total amount that the customer is required to pay at the end of the deferment period, including the principal plus all fees and charges; and
- (e) a disclosure that indicates that a person cannot be prosecuted in criminal court for a deferred presentment agreement; but a registrant can pursue all legally available civil means to enforce the debt. The disclosure must also indicate that the agreement cannot be rolled over and another deferred presentment transaction cannot be entered into until at least the next business day after the closing of the current transaction. Also, a registrant cannot require or ask for additional fees to defer presentment of the check.

A registrant may not include any of the following provisions in any deferred presentment agreement: (a) a hold harmless clause; (b) a confession of judgment clause; (c) any assignment of or order for payment of wages or other compensation for services; (d) a provision in which the consumer agrees not to assert any claim or defense arising out of the agreement; or e) a provision making arbitration or any other form of dispute resolution mandatory.

A person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 560.408 F.S., is created to require registrants to maintain certain records and make the records available to the department for examination and investigation purposes for at least 3 years. A registrant is required to make such records available to the department within 7 days of after receipt of a written request.

Section 6. Effective July 1, 2000, the sum of \$150,000 and three positions are appropriated for FY 2000-01 from the Regulatory Trust Fund to the department for the purpose of implementing the deferred presentation provisions.

Section 7. The Division of Statutory Revision is requested to title part IV of ch. 560, F.S., "Deferred Presentment."

Section 8. Provides that this act takes effect October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Department of Banking and Finance has estimated that approximately 275 (or 50 percent) of the current registrants will seek to engage in deferred presentment transactions. The registrants will incur a \$1,000 application fee, as well as the \$1,000 biennial, renewal fee. Currently, application fees for registration for engaging in part II (payment instruments) transactions may not exceed \$500 and part III (check cashing) transactions may not exceed \$500.

B. Private Sector Impact:

The provisions of this bill will enhance the regulatory oversight of deferred presentment providers and provide greater consumer protections for customers using this service. Under current department interpretation, deferment is allowed, if there is no roll-over. Since the bill prohibits roll-overs, this is merely codifying current practices. Presently, consumers engaged in a deferred presentment transaction are subject to the 10 percent check cashing fee. Under the provisions of the bill, consumers would pay less for these transactions, since the deferred

presentment fee would be limited to 10 percent of the face amount of the check, not to exceed \$50.

C. Government Sector Impact:

For FY 2000-01, the bill appropriates \$150,000 from the Regulatory Trust Fund and three positions to the Department of Banking and Finance to implement the provisions relating to deferred presentment transactions (part IV, of ch. 560, F.S.). In addition to the initial, application fee of \$1,000, the department would also receive biennial, renewal fees in the amount of \$1,000 per registrant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
