

By Senator Campbell

33-355-00

1 A bill to be entitled
2 An act relating to the money transmitters'
3 code; amending s. 560.103, F.S.; redefining the
4 term "code"; creating s. 560.1051, F.S.;
5 authorizing electronic submission of forms or
6 fees; authorizing the Department of Banking and
7 Finance to accept certification of compliance;
8 amending s. 560.208, F.S.; requiring persons
9 registered to issue payment instruments or
10 engage in funds transmission to cash checks
11 within a specified period and deposit funds in
12 a specified manner; providing penalties;
13 creating s. 560.2081, F.S.; limiting fees that
14 may be charged by payment instrument sellers;
15 providing penalties; creating ss. 560.401,
16 560.402, 560.403, 560.404, 560.405, 560.406,
17 560.407, F.S.; creating the Deferred
18 Presentment Act; providing definitions;
19 requiring persons who engage in deferred
20 presentment transactions, as defined, to
21 register with the department and file a
22 declaration of intent to engage in that
23 business; prescribing guidelines for persons
24 engaging in the business of deferred
25 presentment transactions; prescribing
26 guidelines for such transactions; prohibiting
27 specified practices in connection with the
28 deferred presentment business; requiring
29 certain information to be disclosed to
30 customers of such a business; providing
31 penalties; providing an effective date.

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Subsection (4) of section 560.103, Florida
4 Statutes, is amended to read:

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

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

9 (a) Part I of this chapter, relating to money
10 transmitters generally.

11 (b) Part II of this chapter, relating to payment
12 instruments and funds transmission.

13 (c) Part III of this chapter, relating to check
14 cashing and foreign currency exchange.

15 (d) Part IV of this chapter, relating to deferred
16 presentment.

17 Section 2. Section 560.1051, Florida Statutes, is
18 created to read:

19 560.1051 Electronic submission of forms.--The
20 department may adopt rules to allow electronic submission of
21 any form or fee required by this chapter. The department may
22 also adopt rules to accept certification of compliance with
23 requirements of this chapter in lieu of requiring submission
24 of documents.

25 Section 3. Section 560.208, Florida Statutes, is
26 amended to read:

27 560.208 Conduct of business.--

28 (1) A registrant may conduct its business at one or
29 more locations within this state through branches or by means
30 of authorized vendors, as designated by the registrant.

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1 (2) A check casher shall deposit or present a
2 negotiable instrument received under this part within 96 hours
3 after the registrant's receipt thereof. All funds entrusted to
4 a registrant by anyone under this part shall be deposited into
5 a separate trust account in a federally insured financial
6 institution located in this state and shall be promptly
7 disbursed upon fulfillment of any contractual or legal
8 obligation. A person who violates this subsection commits a
9 felony of the third degree, punishable as provided in s.
10 775.082, s. 775.083, or s. 775.084.

11 Section 4. Section 560.2081, Florida Statutes, is
12 created to read:

13 560.2081 Fees charged by payment instrument sellers.--A
14 payment instrument seller may not charge any fee, cost, or
15 charge totaling more than 10 percent of the face value amount
16 of the payment instrument issued or sold or \$3, whichever is
17 greater. A person who violates this section commits a felony
18 of the third degree, punishable as provided in s. 775.082, s.
19 775.083, or s. 775.084.

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

24 560.401 Short title.--This part may be cited as the
25 "Deferred Presentment Act."

26 560.402 Definitions.--In addition to the definitions
27 provided in ss. 560.103, 560.202, and 560.301, for purposes of
28 this part the term:

29 (1) "Affiliated registrant" means a registrant that,
30 either directly or indirectly, is under common control with
31 another registrant under this part.

1 (2) "Business day" means the hours during a particular
2 day that a registrant is regularly open, and may not exceed 15
3 hours during that day.

4 (3) "Check" means a three-party negotiable instrument
5 drawn on a financial institution and payable in cash.

6 (4) "Customer" means a person who tenders or delivers
7 a payment instrument to a registrant for the purpose of
8 effecting a deferred presentment transaction.

9 (5) "Deferment period" means the number of days a
10 registrant agrees to defer depositing or presenting a payment
11 instrument.

12 (6) "Deferred presentment" means a transaction in
13 which a customer tenders a check in return for currency,
14 pursuant to a mutual agreement, in return for a fee and in
15 which the check is held by the registrant for an agreed period
16 of time.

17 (7) "Drawer" means any person who signs a personal
18 check.

19 (8) "Redeem" means to tender payment to a registrant
20 for the face amount of the payment instrument.

21 (9) "Registrant" means a person authorized by the
22 department to conduct a deferred presentment transaction
23 pursuant to this part.

24 (10) "Roll-over" means closing or continuing a
25 deferred presentment transaction by accepting payment of the
26 fee from funds acquired pursuant to a deferred presentment
27 transaction or another deferred presentment transaction with
28 the same or an affiliated registrant commenced before or
29 within 1 business day after the expiration date of the
30 existing deferred presentment transaction's deferment period.

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1 (11) "Service fee" means the fee authorized for the
2 deferral of the presentation of a check pursuant to this part.
3 This fee does not constitute interest for any purpose so long
4 as it does not exceed the maximum fee limitations set forth in
5 s. 560.403(5).

6 560.403 Requirement of registration and filing of a
7 declaration of intent.--

8 (1) A person may not engage in or attempt to engage
9 in, or in any manner advertise engagement in, the business of
10 deferred presentment transactions without first being
11 registered under part II or part III and having filed with the
12 department a declaration of intent to engage in the business
13 of deferred presentment transactions. In addition, any
14 registrant who intends to issue payment instruments must be
15 registered as a payment instrument issuer pursuant to part II.

16 (2) The declaration of intent shall be on such form as
17 the department prescribes by rule. The declaration of intent
18 shall be filed together with a nonrefundable filing fee
19 established by department rule; however, the filing fee may
20 not exceed \$1,000.

21 (3) A person who engages in deferred presentment
22 transactions under this part who furnishes a payment
23 instrument to another person, as part of a deferred
24 presentment transaction or otherwise, must be registered
25 pursuant to part II.

26 (4) A person who engages in deferred presentment
27 transactions is not exempt from registration and declaration
28 required by this part regardless of any exemptions set forth
29 elsewhere in this code.

30 (5) The maximum fee for a deferred presentment
31 transaction shall be no more than 10 percent of the total

1 amount given to the customer by the registrant, not to exceed
2 \$50. However, a verification fee may be charged in accordance
3 with s. 560.309(4) and the rules adopted pursuant to the code.

4 (6) A registration granted pursuant to this part shall
5 not be transferrable to any other person or entity.

6 (7) A registrant under this part shall not operate its
7 business under any other name or title except the name or
8 title registered with the department.

9 (8) The department may impose a fine not to exceed
10 \$10,000 per count for each violation of this section.

11 (9) A person who violates any provisions of this
12 section commits a felony of the third degree, punishable as
13 provided in s. 775.082, s. 775.083, or s. 775.084.

14 560.404 Use of authorized vendors prohibited.--A
15 deferred presentment provider may not use any authorized
16 vendor to engage in deferred presentment transactions.

17 560.405 Deferred presentment transactions.--

18 (1) In connection with a check cashing transaction, a
19 registrant may defer depositing or presenting a check provided
20 that:

21 (a) No fee other than the fee described in s.
22 560.403(5) is charged. This includes a fee or any other charge
23 for cashing payment instruments issued or directed to be
24 issued by the registrant to a customer;

25 (b) The deferment period is not less than 7, or more
26 than 31, calendar days from the inception date of the deferral
27 period;

28 (c) The deferred presentment transaction is evidenced
29 in writing and acknowledged by signature of the registrant and
30 the customer; and

31 (d) The registrant does not allow a roll-over.

1 (2) Notwithstanding paragraph (1)(b), a customer may
2 at any time before the expiration of a deferred presentment
3 period redeem his or her payment instrument without being
4 charged any fee or penalty.

5 (3) If a check is returned to a registrant from a
6 payer financial institution due to insufficient funds for a
7 closed account or stop payment order, the registrant may
8 pursue all legally available civil means to collect the check
9 as if it were a loan, including, without limitation, the
10 imposition of all charges imposed on the registrant by the
11 payer financial institution. Deferred presentment transactions
12 shall not be considered checks or drafts within the meaning of
13 chapter 832, but shall be considered loans for the purpose of
14 any criminal statute.

15 560.406 Deferred presentment transactions; prohibited
16 practices.--

17 (1) It is unlawful and a violation of the code for a
18 registrant, an affiliated registrant, or any other person
19 acting on behalf of a registrant or in relation to a deferred
20 presentment transaction to:

21 (a) Engage in a deferred presentment transaction for
22 compensation or gain or in the expectation of compensation or
23 gain in excess of the fee authorized by s. 560.403(5).

24 (b) Renew or extend a deferment period for
25 compensation or gain or in the expectation of compensation or
26 gain.

27 (c) Engage in more than one deferred presentment
28 transaction with the same customer at any one time.

29 (d) Deposit or present a payment instrument before
30 expiration of a deferment period.

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1 (e) Charge a customer a fee for redeeming a payment
2 instrument, other than the fee permitted by s. 560.403(5).

3 (f) Require a customer to redeem a payment instrument
4 before the expiration of a deferment period.

5 (g) Require of or accept from a customer any security
6 or guaranty for a deferred presentment transaction.

7 (h) Conduct a roll-over.

8 (i) Collect the fee authorized by s. 560.403(5) before
9 the customer's check is redeemed, presented, or deposited.

10 (j) Accept or hold an undated payment check or a check
11 that is dated with a date that is different from the date
12 recorded on the deferred presentment agreement.

13 (k) Give to a customer a payment instrument that is
14 issued by any other person other than the registrant.

15 (1) Engage in a deferred presentment transaction for a
16 principal amount in excess of \$500, exclusive of the fees
17 authorized by s. 560.403(5).

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

21 560.407 Deferred presentment agreements; disclosure
22 requirements and prohibitions.--

23 (1) A deferred presentment contract entered into
24 between a registrant and a customer shall, at a minimum,
25 contain the following:

26 (a) The name or trade name, address, and telephone
27 number of the registrant;

28 (b) The name and title of the person signing the
29 agreement on behalf of the registrant;

30 (c) The signatures of the registrant and the customer
31 along with the date of signature which shall be conclusive

1 evidence of the date that the deferred presentment transaction
2 was made;

3 (d) The face amount of the consumer's check, exclusive
4 of the fee authorized by s. 560.403(5);

5 (e) The total amount of the fee due at the end of the
6 deferment period;

7 (f) A statement printed in no less than 12-point type
8 in a prominent place containing the following information:

9 1. The annual percentage rate that the customer is
10 being charged as fees, excluding verification fee; and

11 2. The total amount that the customer is required to
12 pay at the end of the deferment period, including the
13 principal plus all fees and charges;

14 (g) The number of days of the deferment period and the
15 payment due date;

16 (h) The address and telephone number of the
17 department;

18 (i) A detailed description of the customer's payment
19 obligations under the deferred presentment transaction; and

20 (j) The following statements, displayed in 16-point
21 bold face type in a prominent place:

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23 YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK WRITTEN
24 UNDER THIS AGREEMENT TO BE HELD BY THE REGISTRANT, BUT A
25 REGISTRANT MAY PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO
26 ENFORCE THE DEBT.

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28 STATE LAW PROHIBITS A REGISTRANT FROM ALLOWING YOU TO
29 ROLL-OVER YOUR DEFERRED PRESENTMENT TRANSACTION WITH THE
30 REGISTRANT. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO
31 PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR

1 PRESENTMENT OF YOUR CHECK FOR PAYMENT. STATE LAW PROHIBITS
2 THIS REGISTRANT FROM ENTERING INTO ANOTHER DEFERRED
3 PRESENTMENT TRANSACTION WITH YOU UNTIL AT LEAST THE NEXT
4 BUSINESS DAY AFTER THE CLOSING OF THIS TRANSACTION. STATE LAW
5 FURTHER PROHIBITS A CHECK CASHER FROM ENGAGING IN MORE THAN
6 ONE DEFERRED PRESENTMENT TRANSACTIONS WITH YOU AT ANY ONE
7 TIME. IF YOU CHOOSE TO ENGAGE IN MORE THAN ONE DEFERRED
8 PRESENTMENT TRANSACTIONS AT ANY TIME, YOU MAY EXPERIENCE
9 ADVERSE LEGAL AND FINANCIAL CONSEQUENCES.

10 (2) A registrant may not include any of the following
11 provisions in any deferred presentment agreement:

12 (a) A hold harmless clause;

13 (b) A confession of judgment clause;

14 (c) Any assignment of or order for payment of wages or
15 other compensation for services;

16 (d) A provision in which the consumer agrees not to
17 assert any claim or defense arising out of the agreement; or

18 (e) A provision making arbitration or any other form
19 of dispute resolution mandatory.

20 (3) The registrant shall, at the same time of any
21 transaction, immediately provide the customer with an extra
22 copy of all documents signed by that customer and the
23 registrant including any addenda or attachments to such
24 documents.

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

28 Section 6. The Division of Statutory Revision is
29 requested to title part IV of chapter 560, Florida Statutes,
30 "Deferred Presentment."

31 Section 7. This act shall take effect October 1, 2000.

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SENATE SUMMARY

Creates the Deferred Presentment Act, in which the practice of accepting a check in return for currency pursuant to an agreement in which the payee agrees to defer the presentment of the check is subjected to regulation by the Department of Banking and Finance. Persons engaging in the business must be registrants with the department under another part of ch. 560, F.S., and must give notice of their intent to engage in deferred presentment transactions. Requirements and limitations are placed on that business, disclosure is required to customers wishing to enter such a transaction, and third-degree felony penalties are provided for violations.

The bill also authorizes the department to adopt rules for electronic submission of forms and fees and for accepting certification of compliance in lieu of submission of documents. It requires a check casher to present or deposit a negotiable instrument within 96 hours. It limits fees that may be charged by a seller of payment instruments.