

STORAGE NAME: h0661.fs

DATE: February 8, 2000

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

BILL #: HB 661

RELATING TO: Check Cashing

SPONSOR(S): Representative Starks

TIED BILL(S):

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

- (1) FINANCIAL SERVICES
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3) GOVERNMENTAL RULES & REGULATION
 - (4)
 - (5)
-

I. SUMMARY:

A check casher "lends" money by cashing a post-dated check or agreeing to delay deposit of a check cashed by the customer until the customer can reimburse the check casher. Normally, small consumer loans are governed by the Consumer Finance Act (Ch. 516, F.S.), however, these check cashing "loan" transactions are not subject to consumer loan laws because check cashers do not charge fees for delaying deposit. Instead, they charge only the fees for check cashing services authorized in the Check Cashing and Foreign Currency Exchange Act (Ch. 560, F.S.), thereby avoiding application of the Consumer Finance Act. Furthermore, regulations promulgated by the Department of Banking and Finance permit check cashers to accept post-dated checks. The bill would prohibit a check casher from: 1) holding a cashed check for a fee; 2) seeking criminal prosecution when a customer, after the date the check was cashed, has insufficient funds to cover the check; and 3) agreeing to advance money against a post-dated or otherwise not-deposited check unless the check casher complies with "the laws regulating the lending of money."

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A

The bill would prohibit the arguably lawful activity of check cashers advancing money against checks held for later deposit without adhering to the consumer loan laws.

- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Currently, under the Money Transmitters' Code, Florida law provides for licensure and regulation of certain check cashing operations by the Department of Banking and Finance (department), (Part III of Ch. 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" or "check casher") may charge up to 10% of the face amount of a personal check or money

order 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, a practice that has some characteristics of a loan.

One current practice of registered check cashers is to charge only the 10 percent (or less) fee for cashing a check or money order while still accepting a post-dated instrument or agreeing to delay presentment. This practice allows check cashers to avoid the requirements of Ch. 516, F.S. (Florida Consumer Finance Act)¹, and is expressly permitted under regulations promulgated by the Department of Banking and Finance. However, another common practice of check cashers is to "roll over" these deferred presentment loans by allowing customers to renew the loan with another held check, however, this practice is not sanctioned under the department's administration of Ch. 560, F.S.

It is the department's position that although this transaction is not expressly prohibited by the statute it is probable the drafters of the statute did not contemplate the practice. Furthermore, 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.

In order to charge a fee expressly for deferral, or to roll-over the transaction, the state maintains that the check casher would also need a consumer finance lender's license, and then could charge the interest or fees allowed by Ch. 516, F.S. In fact, this issue has been prosecuted by the department against a local business, Cash Cow, but it has not reached a final disposition².

C. EFFECT OF PROPOSED CHANGES:

Check cashers would be prohibited from agreeing to delay, for subsequent reimbursement, the deposit of checks cashed by their customers, without adhering to "the laws regulating the lending of money." The bill contains several provisions toward this end.

First, the bill would clarify the term "check cashing" as consisting solely of providing cash for checks pursuant to the definition of "cashing" in s. 560.302, F.S., which states:

¹The Florida Consumer Finance Act (at, s. 516.02, F.S.), states that a person must not engage in the business of making consumer finance loans unless authorized to do so under Ch. 516, F.S., or some other statute. A consumer finance loan means a loan in an amount under \$25,000 with an annual interest greater than 18 percent per annum. Section 516.01(2), F. S. Specific statutes authorizing consumer finance loans in excess of 18 percent are found in Ch. 516, F.S. (consumer loans), Ch. 520, F.S. (retail installment sales), Ch. 538, F.S. (title loans), Ch. 539, F.S. (pawns), and Ch. 655, F.S. (credit cards). Consequently, deferred deposit transactions, or any variation thereof, which do not strictly comport with the requirements of Ch. 516, 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. A violation of Ch. 687, F.S., which addresses usurious contracts, may result in a second degree misdemeanor conviction if the interest rate exceeds 25 percent but does not exceed 45 percent. If a usurious lender charges a per annum interest rate in excess of 45 percent the offense may be punished as a third degree felony. See, Sections 687.071(2) and (3), F.S.

² In April of 1997, the department filed an administrative action against a local business, 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*. On January 7, 1999, the state-wide prosecutor's office launched dual criminal and administrative actions against that same business and its principals. That prosecution effort is currently in the evidence-discovery phase.

“‘[c]ashing’ means providing currency for payment instruments, except for travelers checks and foreign-drawn payment instruments.”

Second, the bill would expressly prohibit a check casher from charging a customer for holding a cashed check, and would preclude the check casher from seeking criminal prosecution when the customer’s account is inadequately funded on a business day after the date the check is cashed. This provision eliminates a collection advantage check cashers have over other lenders by removing the threat of prosecution under Ch. 832, F.S. (Violations Involving Checks and Drafts), as a possible remedy.

Finally, if a check casher agrees either: 1) to be subsequently reimbursed by a customer for holding a cashed check, or 2) to be subsequently reimbursed by a customer for the amount of a check that is cashed, either directly or through the depositing of a held cashed check, that transaction would be a loan, and subject to the laws governing the lending of money. This provision would obviate the Department of Banking and Finance Rule allowing check cashers to accept post-dated checks subject to the fees established in s. 560.309 (4), F.S., and underscore the department’s position that certain deferred deposit loan practices are illegal unless they conform to consumer lending laws.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill would not impact revenues collected by state government.

2. Expenditures:

This bill would not impact the expenditures of state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill would not impact revenues collected by local governments.

2. Expenditures:

This bill would not impact the expenditures of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would require a check casher who continues in the business of providing deferred presentment services to register as a consumer finance lender, and pay any fees required by the Florida Consumer Finance Act. Additionally, the amount of interest check cashers may charge would be regulated by this act and the usury laws. Because check cashers are not currently subject to industry-wide reporting requirements, no data is available regarding

the volume or kind of transactions that occur. Therefore, any comparison between the amount of business in the industry resulting from check cashing and the amount of business resulting from deferred presentment loans is illusive.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill would not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill would not effect the authority of counties or municipalities to raise revenues.

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

This bill would not reduce the total aggregate percentage of state taxes shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not present any constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill would not effect the rule-making authority of state or local agencies.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

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