

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB's 1526 & 314

SPONSOR: Banking and Insurance Committee and Senators Constantine and Campbell

SUBJECT: Money Transmitter's Code

DATE: March 21, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Favorable/CS
2.			CM	
3.			FT	
4.			AGG	
5.			APJ	
6.			AP	
7.			RC	

## I. Summary:

The bill would create the "Deferred Presentment Act" as part IV of chapter 560, F.S. This would provide 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.

The bill provides for regulation of this industry by the Department of Banking and Finance (the department), and further provides:

- Registration requirements for deferred presentment providers.
- A \$500 limit on the face amount of a check taken for deferred presentment, exclusive of allowable fees.
- A maximum fee of 10 percent of the amount paid to the consumer ("drawer"). In addition, a \$5 verification may be charged.
- Prohibits a deferred presentment agreement from being for a term in excess of 31 days or less than 7 days.
- Prohibits "roll-overs" which extend a deferred presentment agreement.
- Prohibits a provider from entering into an agreement if an individual has an outstanding agreement with any provider, or a previous transaction has been closed for less than 24 hours. The provider must access a centralized database that must be implemented by the department. Until such time as this database is implemented, the provider must obtain a signed statement from the individual that he or she does not have an outstanding agreement and have not terminated an agreement within the past 24 hours.
- Requires a 60-day grace period extension, without any additional charge, if an individual is unable to pay the amount due at the end of the deferment period, which may be

conditioned on requiring the individual to attend a consumer credit counseling service and comply with a payment plan approved by the service.

- Required provisions for deferred presentment agreements, including disclosures that must be made to the consumer.
- A one-check limitation which any one consumer may have outstanding to one provider at any one time.
- The ability of the consumer to redeem their check prior to the presentation date.
- The ability of the provider to seek collection of a returned check pursuant to s. 68.065, F.S. (but without the provision for treble damages).

The bill also amends ch. 560, F.S., the Money Transmitters' Code, which provides for the regulation of the money transmitter industry by the Department of Banking and Finance. This industry includes wire transmitters, check cashers, and foreign money exchangers. The bill would provide the following changes to ch. 560, F.S.:

- Deletes examination fees and uses registration fees to fund the regulatory program;
- Adds an initial \$50 application fee for each vendor or branch of a Part II (payment instruments and funds transmission) or Part III (check cashing and foreign currency) registrant;
- Authorizes the department to assess a registrant a \$500 late filing fee if the renewal application is submitted within 60 days after the expiration of the license;
- Increases the cap on renewal fees for registrants with multiple locations from \$5,000 to \$20,000; and
- Requires registrants to notify the department of any newly established locations within 60 days.

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.111, 560.114, 560.118, 560.119, 560.205, 560.206, 560.207, 560.208, 560.307, and 560.308. This bill creates the following sections of the Florida Statutes: 560.401, 560.402, 560.403, 560.404, 560.405, 560.406, 560.407 and 560.408.

## **II. Present Situation:**

The Money Transmitters' Code (Chapter 560, F.S.), 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, and examinations for persons cashing checks or exchanging foreign currency.
- Provides an exemption from registration for 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, and 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 (a “registrant”) may charge up to 10 percent of the face amount of a personal check as a fee for this service, as shown above. For a deferred presentment, the registrant accepts a post-dated check or agrees 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, and 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 this practice.

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. A “roll-over” occurs when the drafter of the check is unable to redeem the check and does not have sufficient funds in the bank to cover the check if presented, and so negotiates an extension by paying additional fees. It is the department’s position that a roll-over would be both a regulatory violation, which could result in civil penalties, and a criminal violation of chapter 687, F.S., should the interest rate exceed 18 percent per annum.

Section 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 Chapter 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. [s. 516.01(2), F.S.] Specific statutes authorizing consumer finance loans in excess of 18 percent are found in Chapter 516, F.S. (consumer loans), 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 comport 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. A violation of chapter 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, ss. 687.071(2) and (3), F.S.

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. 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.

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 have been increasingly identified as vehicles for money laundering.

Rep. John LaFalce of New York, senior Democrat on the House Banking Committee, introduced H.R. 3823 on March 2, 2000, which would prohibit all federally insured banks from making payday loans either directly or through an affiliate. Consumer groups and other critics of the industry maintain that some payday loan companies skirt the law in the 19 states that ban the loans by associating with out-of-state nationally chartered banks. The 19 states and two U.S. jurisdictions that ban payday loans are Alabama, Alaska, Arizona, Connecticut, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia, Puerto Rico and the U.S. Virgin Islands. The bill has been referred to a House subcommittee.

### **III. Effect of Proposed Changes:**

#### **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 references to the new Part IV of the chapter, relating to deferred presentment, as created by Section 6 of this bill.

**Section 2** amends s. 560.111, F.S., establishing a third degree felony sanction for violations by unlicensed persons who are not exempt from the chapter, and the same penalty for licensed entities who willfully violate the chapter.

**Section 3** 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 4** amends s. 560.118, F.S., removing the authority for the department to recover the costs and per diem expenses of a regular examination of a money transmitter or authorized vendor.

**Section 5** amends s. 560.119, F.S., removing a reference to examination fees and directing the deposit of fees and assessments to the department's Regulatory Trust Fund.

**Sections 6 – 9 relate to Payment Instrument Sellers and Money Transmitters (Part II of chapter 560)**

**Section 6** amends s. 560.205, F.S., specifying that the current \$500 investigation fee is the “application fee” and establishing a new \$50 application fee for each vendor or location in the state. (Current law imposes this \$50 fee only upon renewal. See Section 8, below.)

**Section 7** amends s. 560.206, F.S., increasing from 1 year to 2 years the duration of an applicant’s initial licensing period. This change would conform to the 2-year license renewal currently provided in s. 560.207, F.S.

**Section 8** amends s. 560.207, F.S., to establish a late fee of \$500 for registration renewals. If the renewal application is filed within 60 days of the registration's expiration, a late fee of \$500 is required, in addition to the \$1,000 renewal fee. If more than 60 days have passed, a new application for renewal is required. The bill also provides that the current \$50 renewal fee for each vendor or location of the registrant would be capped at \$20,000 rather than the \$5,000 cap under current law.

**Section 9** amends s. 560.208, F.S., requiring each registrant to identify each location or authorized vendor to the department within 60 days after the date of designation by the registrant, together with a \$50 fee and a financial statement demonstrating compliance with the net worth requirements of s. 560.209 (1), F.S., or a quarterly report filed in compliance with s. 560.118(2), F.S. The financial statement must be dated within 90 days of the date of designation of the location. The bill also requires a registrant to notify the department within 10 days after the date that the registrant closes a branch location or withdraws its authorization for a vendor to operate. This section would not apply to offices or vendors designated by the registrant prior to October 1, 2001.

**Sections 10 and 11 relate to Check Cashers and Foreign Currency Exchangers (Part III of chapter 560).**

**Section 10** amends s. 560.307, F.S., specifying that the current \$250 investigation fee is the “application fee” and establishing a new \$50 application fee for each vendor or location in the state. (Current law imposes this \$50 fee only upon renewal. See Section 11, below.) The bill requires each registrant to identify each location or authorized vendor to the department within 60 days after the date of designation by the registrant. The bill also requires a registrant to notify the department within 10 days after the date that the registrant closes a branch location or withdraws its authorization for a vendor to operate. This section would not apply to offices or vendors designated by the registrant prior to October 1, 2001.

**Section 11** amends s. 560.308, F.S., establishing a \$250 late fee that the registrant must file with the department within 60 days after the expiration of an existing registration in order to reinstate registration. If a renewal application is not filed within 60 days after expiration, a new application is required. The bill provides that the current \$50 biennial renewal fee for each vendor or branch office of the registrant would be capped at \$20,000 for all branch offices, rather than the \$5,000 cap under current law.

**Section 12 applies to Deferred Presentment (new part IV of chapter 560)**

**Section 12** creates new Part IV of chapter 560 (ss. 560.401-560.408), F.S., to authorize and regulate deferred presentment transactions. The bill creates the following statutes, which provide as follows:

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

Section 560.402, F.S. -- Definitions. This section creates definitions for the following terms: affiliate, amount financed, business day, days, deferment period, deferred presentment provider, deferred presentment transaction, drawer, rollover, fee, and termination of an existing deferred presentment agreement. Key definitions include:

“Deferred presentment transaction” 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.

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

“Rollover” means the termination of an existing deferred presentment agreement solely by the payment of fees then due the deferred presentment provider and the continued holding of the check or the substitution of a new check drawn by the drawer pursuant to a new deferred presentment agreement.

“Termination of an existing deferred presentment agreement” occurs when the drawer redeems the check that is the basis for the agreement by payment in full in cash or cash equivalent to the deferred presentment provider or the check is presented and the registrant has evidence that the presented check has cleared the bank.

Section 560.403, F.S. -- Requirement of registration; declaration of intent. This section 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 transmit 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 file with the department a declaration of intent to engage in deferred presentment transactions, accompanied by a \$1,000 filing fee. 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. The bill requires a biennial renewal fee of \$1,000 for the declaration of intent, in addition to the renewal fee for registration under part II or part III, and a late fee of \$500 that must be filed within 60 days after the expiration of an existing registration.

Section 560.404, F.S. -- Requirements for deferred presentment transactions. 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;
- The date the deferred presentment transaction is due;
- The address and telephone number of the department; and
- A clear description of the drawer's payment obligations under the transaction.

The bill establishes \$500 as the maximum face amount of a check taken for deferred presentment, exclusive of allowable fees. The maximum fee would be 10 percent of the currency or payment provided to the drawer. In addition, a \$5 verification fee may be charged (in accordance with s. 560.309(4), F.S., which allows the department to establish such a fee by rule, currently set at \$5). No additional security or guaranty may be required. Upon receipt of the drawer's check, a deferred present provider must immediately provide the drawer with the full amount of the check, less the allowable fee. The provider may not collect the fee before the drawer's check is presented or redeemed.

The deferred presentment agreement may not be for a term in excess of 31 days or less than 7 days. The deferred presentment provider would be prohibited from:

- accepting or holding an undated check;
- altering or deleting the date on the check;
- renewing or extending any deferred presentment transaction ("rollovers");
- holding more than one outstanding check from any one drawer at any one time.

A provider could not enter into a deferred presentment transaction with a person who has any outstanding transaction with that provider or with any other provider, or with a person whose previous transaction with any provider has been terminated for less than 24 hours. To verify such information, the provider must maintain its own database, including records of all affiliated providers, and access a database established by the department. The department would be required to establish the database by March 1, 2002, of all deferred presentment transactions in the state, with real time access through a toll-free connection for providers. Providers must submit data on each transaction as required by the department, subject to a fee not to exceed \$1 per transaction. Until such time as the department implements the database, the provider must obtain a signed statement from the drawer, on a form specified in the bill, that the drawer does not have an outstanding deferred presentment agreement with any provider and has not terminated an agreement within the past 24 hours.

The required disclosure statement specified in the bill also informs the drawer that he or she cannot be prosecuted in criminal court for a check written under the agreement, but that all legally available civil means to enforce the debt may be pursued. It also informs the drawer that the law prohibits the provider from allowing a "rollover" of the transaction meaning that the provider cannot require any additional fee to further delay the deposit of presentment of the

check. It also states that a 60-day grace period will be provided, without any additional charge, if the drawer does not have sufficient funds to cover the check or to pay in full the amount owed, but as a condition of obtaining the deferral, the provider may require that the drawer attend a consumer credit counseling service and comply with a repayment plan approved by that service (explained further, below.)

The deferred presentment agreement may not contain:

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

The deferred presentment provider must comply with, and provide the drawer with a copy of, the disclosure requirements of the federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve Board.

The payment to the drawer may be in the form of the deferred presentment provider's payment instrument, if the provider is registered under part II of the chapter, but no additional fee may be charged and the provider is prohibited from requiring the drawer to accept a payment instrument in lieu of currency.

If the drawer cannot redeem the check at the end of the deferment period or represents to the provider that the checking account has insufficient funds to cover the check, the provider must provide a 60-day grace period to the drawer at no extra cost. But, as a condition of obtaining the grace period, the provider may require the drawer to attend a consumer credit counseling service and comply with any repayment plan approved by the counseling service. The provider must give the drawer a list of approved consumer credit counseling services prepared by the department. The department must list those services that are nonprofit, affiliated with the National Foundation for Consumer Credit, provide debt management counseling services free of charge or on a sliding-fee scale based on income, and agree to provide services in accordance with this section. The provider may require the drawer to make an appointment with one of the services within 7 days, complete the counseling within 60 days, and comply with any repayment plan approved by the service, as specified in a disclosure statement required by the bill. Failure to do any of these would allow the provider to deposit or present the drawer's check for payment. If the drawer completes the counseling service, the provider must pay one-half of the drawer's fee for the deferred presentment agreement to the counseling service.

Section 560.405, F.S. -- Deposit and redemption. This section prohibits a deferred presentment provider or affiliate 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 which the deferred presentment provider is doing business. A drawer may redeem his or her check at any time before the end of the deferral period.

Section 560.406, F.S. -- Worthless checks. If a check is returned to a provider from a financial institution due to lack of funds, a closed account, or a stop-payment order, the provider is



allowed to seek collection on the 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. In its collection practices, providers are required to adhere to state and federal acts relating to deceptive and unfair trade practices and debt collection.

Section 560.407, F.S. -- Books and records. Deferred presentment providers would be required to maintain all books and records as prescribed by department rules, which must be retained for at least 3 years. A registrant may keep all records at one central location in the state. The registrant must notify the state of the locale of the records, which must be made available to the department within 7 days of a written request for production. This section acknowledges that an "original" document may include electronic data.

Section 560.408, F.S. -- Legislative intent; report. This section provides legislative intent language and requires the Comptroller to submit a report to the Speaker of the House of Representatives and the Senate President on or before January 1, 2003, and January 1, 2004, that contains findings and conclusions concerning the effectiveness of this act in meeting its regulatory goals and any legislative recommendations. The Comptroller is directed to consult with the Attorney General prior to filing the report for the purpose of including recommendations or concerns of the Attorney General regarding this matter.

**Section 13** provides an effective date of October 1, 2001, except as otherwise provided.

#### **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:**

For persons registered under chapter 560, F.S., the Money Transmitter's Code (wire transmitters, check cashers, and foreign money exchangers), the bill deletes examination fees; imposes an initial \$50 application fee for each vendor or location (currently paid only on renewal); imposes a \$500 late filing fee if the renewal application is submitted within 60 days after the expiration of the license; and increases the cap on renewal fees for registrants with multiple locations from \$5,000 to \$20,000. (Estimated revenues, below.)

Registrants under the chapter that engage in deferred presentment transactions must pay a \$1,000 filing fee, renewed every two years, in addition to the regular application and renewal fees that apply to their registration under part II or III of chapter 560, F.S. (Estimated revenues, below.).

**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. The bill caps all service fees on deferred presentment agreements at 10 percent of the amount financed to the drawer (plus a \$5 verification fee), limits the amount of the check to \$500, exclusive of fees, and prohibits rollovers of deferred presentment agreements. These requirements may have the effect of decreasing the profit margin of those providing these services currently.

By revising the fee structure for entities regulated under ch. 560, F.S., as summarized in Fees and Taxes, above, other businesses regulated by the Department of Banking and Finance would no longer be subsidizing the cost of ch. 560, F.S., licensees. In addition, the bill provides financial penalties for violations of the act.

**C. Government Sector Impact:**

Registrants would no longer be assessed examination fees. Instead, registration and renewal fees would be used to fund the regulation of entities licensed under the Money Transmitter Code. The implementation of this change in funding would be consistent with the administration of other financial services programs regulated by the department.

According to the department, originally eight positions were appropriated to regulate the money transmitter industry. However, due to a shortfall in anticipated revenues, the department was not able to fund more than three positions (two in licensing and one in examinations). The department has indicated that the lack of adequate staffing has impacted its ability to effectively regulate the industry. The additional revenues generated by the fees authorized in this bill (not including the additional revenues generated by deferred presentment transactions ) are anticipated to provide sufficient revenues to adequately fund the remaining five positions authorized for this program.

The department estimates the bill would have the following impact. However, these figures do not include the additional expense to the department to implement a statewide database of all outstanding deferred presentment transactions, accessible by all deferred transaction providers, which has not yet been estimated. But, it is anticipated that the allowance for the department to charge a provider up to a \$1 fee for each transaction entered is more than adequate to cover such costs.

<b><u>DBF Regulatory Trust Fund</u></b>	<b><u>FY01-02</u></b>	<b><u>FY02-03</u></b>	<b><u>FY03-04</u></b>
Non-recurring effects:			
Revenue:	0	0	0
Expense:	0	0	0
Recurring Effects:			
Revenue			
Money Transmitters	254,525	254,525	254,525
Deferred Presentment	284,000	142,000	142,000
Expense:	(404,525)	(404,525)	(404,525)
Net Income (Loss)	134,000	(8,000)	(8,000)
Total Revenues and Expenditures	134,000	(8,000)	(8,000)

**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.

---