

By the Committee on Banking and Insurance; and Senators
Constantine and Campbell

311-1564-01

1 A bill to be entitled
2 An act relating to the Money Transmitter's
3 Code; amending s. 560.103, F.S.; revising
4 definitions; amending s. 560.111, F.S.;
5 providing penalties for specified violations of
6 the deferred presentment act; amending s.
7 560.114, F.S.; providing additional grounds for
8 disciplinary action; providing for continuation
9 of certain administrative proceedings under
10 certain circumstances; amending s. 560.118,
11 F.S.; eliminating the authority to assess
12 examination fees; amending s. 560.119, F.S.;
13 revising the deposit of fees and assessments;
14 amending s. 560.205, F.S.; adding a fee for
15 authorized vendor or branch locations; amending
16 s. 560.206, F.S.; amending the registration
17 period; amending s. 560.207, F.S.; conforming
18 and clarifying the fee for late renewals;
19 amending the renewal application fee; amending
20 s. 560.208, F.S.; requiring notification of
21 vendor or branch locations; requiring a
22 nonrefundable fee and financial statement;
23 amending s. 560.307, F.S.; applying the
24 application fee to check cashers and foreign
25 currency exchanges and adding a fee for
26 authorized vendors or branch locations;
27 requiring notification of vendor or branch
28 locations; amending s. 560.308, F.S.;
29 increasing the registration and renewal fee for
30 each registrant; clarifying the fee to be
31 charged for late renewal; creating part IV, ch.

1 560, F.S., consisting of ss. 560.401, 560.402,
2 560.403, 560.404, 560.405, 560.406, 560.407,
3 and 560.408, F.S.; providing a short title;
4 providing definitions; providing registration
5 requirements for deferred presentment
6 transactions; providing for filing fees;
7 providing limitations; specifying requirements
8 and limitations for engaging in deferred
9 presentment transactions; providing
10 prohibitions; providing for fees; providing
11 limitations; requiring certain notice;
12 specifying criteria and requirements for
13 deposit and redemption of a drawer's check;
14 providing procedures for recovering damages for
15 worthless checks; requiring maintenance of
16 records for a time certain; providing
17 legislative intent; requiring the Comptroller
18 to submit a report to the President of the
19 Senate and the Speaker of the House of
20 Representatives concerning the effectiveness of
21 this act; providing effective dates.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (d) is added to subsection (4) of
26 section 560.103, Florida Statutes, and subsection (10) of that
27 section is amended, to read:

28 560.103 Definitions.--As used in the code, unless the
29 context otherwise requires:

30 (4) "Code" means the "Money Transmitters' Code,"
31 consisting of:

1 (d) Part IV of this chapter, relating to deferred
2 presentments.

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

7 Section 2. Subsection (4) is added to section 560.111,
8 Florida Statutes, to read:

9 560.111 Prohibited acts and practices.--

10 (4) Any person who is not a registered money
11 transmitter and is not otherwise exempt from this code and who
12 violates, or any registered money transmitter who willfully
13 violates, any provision of s. 560.403, s. 560.404, s. 560.405,
14 or s. 560.407 commits a felony of the third degree, punishable
15 as provided in s. 775.082, s. 775.083, or s. 775.084.

16 Section 3. Paragraphs (w) and (x) are added to
17 subsection (1) of section 560.114, Florida Statutes, and
18 subsection (5) is added to that section, to read:

19 560.114 Disciplinary actions.--

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

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

30 (x) Engaging or advertising engagement in the business
31 of a money transmitter without a registration, unless the

1 person is exempted from the registration requirements of the
2 code.

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

7 Section 4. Subsection (1) of section 560.118, Florida
8 Statutes, is amended to read:

9 560.118 Examinations, reports, and internal audits;
10 penalty.--

11 (1)(a) The department may conduct an examination of a
12 money transmitter or authorized vendor by providing not less
13 than 15 days' advance notice to the money transmitter or
14 authorized vendor. However, if the department suspects that
15 the money transmitter or authorized vendor has violated any
16 provisions of this code or any criminal laws of this state or
17 of the United States or is engaging in an unsafe and unsound
18 practice, the department may, at any time without advance
19 notice, conduct an examination of all affairs, activities,
20 transactions, accounts, business records, and assets of any
21 money transmitter or any money transmitter-affiliated party
22 for the protection of the public. For the purpose of
23 examinations, the department may administer oaths and examine
24 a money transmitter or any of its affiliated parties
25 concerning their operations and business activities and
26 affairs. The department may accept an audit or examination
27 from any appropriate regulatory agency or from an independent
28 third party with respect to the operations of a money
29 transmitter or an authorized vendor. The department may also
30 make a joint or concurrent examination with any state or
31 federal regulatory agency. The department may furnish a copy

1 of all examinations made of such money transmitter or
2 authorized vendor to the money transmitter and any appropriate
3 regulatory agency provided that such agency agrees to abide by
4 the confidentiality provisions as set forth in chapter 119.

5 (b) Persons subject to this chapter who are examined
6 shall make available to the department or its examiners the
7 accounts, records, documents, files, information, assets, and
8 matters which are in their immediate possession or control and
9 which relate to the subject of the examination. Those
10 accounts, records, documents, files, information, assets, and
11 matters not in their immediate possession shall be made
12 available to the department or the department's examiners
13 within 10 days after actual notice is served on such persons.

14 (c) The audit of a money transmitter required under
15 this section may be performed by an independent third party
16 that has been approved by the department or by a certified
17 public accountant authorized to do business in the United
18 States. The examination of a money transmitter or authorized
19 vendor required under this section may be performed by an
20 independent third party that has been approved by the
21 department or by a certified public accountant authorized to
22 do business in the United States. The cost of such an
23 independent examination or audit shall be directly borne by
24 the money transmitter or authorized vendor.

25 ~~(d) The department may recover the costs of a regular~~
26 ~~examination and supervision of a money transmitter or~~
27 ~~authorized vendor; however, the department may not recover the~~
28 ~~costs of more than one examination in any 12-month period~~
29 ~~unless the department has determined that the money~~
30 ~~transmitter or authorized vendor is operating in an unsafe or~~
31 ~~unsound or unlawful manner.~~

1 ~~(e) The department may, by rule, set a maximum per-day~~
2 ~~examination cost for a regular examination. Such per-day cost~~
3 ~~may be less than that required to fully compensate the~~
4 ~~department for costs associated with the examination. For the~~
5 ~~purposes of this section, "costs" means the salary and travel~~
6 ~~expenses directly attributable to the field staff examining~~
7 ~~the money transmitter or authorized vendor, and the travel~~
8 ~~expenses of any supervisory staff required as a result of~~
9 ~~examination findings. Reimbursement for such costs incurred~~
10 ~~under this subsection must be postmarked no later than 30 days~~
11 ~~after the date of receipt of a notice stating that such costs~~
12 ~~are due. The department may levy a late payment penalty of up~~
13 ~~to \$100 per day or part thereof that a payment is overdue,~~
14 ~~unless the late payment penalty is excused for good cause. In~~
15 ~~excusing any such late payment penalty, the department may~~
16 ~~consider the prior payment history of the money transmitter or~~
17 ~~authorized vendor.~~

18 Section 5. Section 560.119, Florida Statutes, is
19 amended to read:

20 560.119 Deposit of fees and assessments.--The
21 application fees, registration renewal fees, ~~examination fees,~~
22 late payment penalties, civil penalties, administrative fines,
23 and other fees or penalties provided for in the code shall, in
24 all cases, be paid directly to the department, which shall
25 deposit such proceeds into the ~~Financial Institutions'~~
26 Regulatory Trust Fund. Each year, the Legislature shall
27 appropriate from the trust fund to the department sufficient
28 moneys to pay the department's costs for administration of the
29 code. The ~~Financial Institutions'~~Regulatory Trust Fund is
30 subject to the service charge imposed pursuant to chapter 215.

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1 Section 6. Subsection (2) of section 560.205, Florida
2 Statutes, is amended to read:

3 560.205 Qualifications of applicant for registration;
4 contents.--

5 (2) Each application for registration must be
6 submitted under oath to the department on such forms as the
7 department prescribes by rule and must be accompanied by a
8 nonrefundable application ~~investigation~~ fee. Such fee may not
9 exceed \$500 for each payment instrument seller or funds
10 transmitter and \$50 for each authorized vendor or location
11 operating within this state ~~and may be waived by the~~
12 ~~department for just cause~~. The application forms shall set
13 forth such information as the department reasonably requires,
14 including, but not limited to:

15 (a) The name and address of the applicant, including
16 any fictitious or trade names used by the applicant in the
17 conduct of its business.

18 (b) The history of the applicant's material
19 litigation, criminal convictions, pleas of nolo contendere,
20 and cases of adjudication withheld.

21 (c) A description of the activities conducted by the
22 applicant, the applicant's history of operations, and the
23 business activities in which the applicant seeks to engage in
24 this state.

25 (d) A list identifying the applicant's proposed
26 authorized vendors in this state, including the location or
27 locations in this state at which the applicant and its
28 authorized vendors propose to conduct registered activities.

29 (e) A sample authorized vendor contract, if
30 applicable.

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1 (f) A sample form of payment instrument, if
2 applicable.

3 (g) The name and address of the clearing financial
4 institution or financial institutions through which the
5 applicant's payment instruments will be drawn or through which
6 such payment instruments will be payable.

7 (h) Documents revealing that the net worth and bonding
8 requirements specified in s. 560.209 have been or will be
9 fulfilled.

10 Section 7. Section 560.206, Florida Statutes, is
11 amended to read:

12 560.206 Investigation of applicants.--Upon the filing
13 of a properly completed application, accompanied by the
14 nonrefundable application fee and other required documents,
15 the department shall investigate to ascertain whether the
16 qualifications and requirements prescribed by this part have
17 been met. If the department finds that the applicant meets
18 such qualifications and requirements, the department shall
19 issue the applicant a registration to engage in the business
20 of selling payment instruments and transmitting funds in this
21 state. Any registration issued under this part shall remain
22 effective through April 30 of the second year following the
23 date of issuance of the registration, not to exceed 24 months,
24 unless during such period the registration is in effect
25 through April 30 next following its date of issuance unless
26 otherwise specified by the department or earlier surrendered,
27 suspended, or revoked.

28 Section 8. Section 560.207, Florida Statutes, is
29 amended to read:

30 560.207 Renewal of registration; registration fee.--
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1 (1) Registration may be renewed for a 24-month period
2 or the remainder of any such period without proration
3 following the date of its expiration, upon the filing with the
4 department of an application and other statements and
5 documents as may reasonably be required of registrants by the
6 department. However, the registrant must remain qualified for
7 such registration under the provisions of this part.

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 before the expiration date
13 of April 30 ~~March 31~~. If the renewal application is filed
14 prior to the expiration date of an existing registration, no
15 late investigation fee shall be paid in connection with such
16 renewal application. If the renewal application is filed
17 within 60 calendar days after the expiration date of an
18 existing registration, then, in addition to the \$1,000 renewal
19 fee, the renewal application shall be accompanied by a
20 nonrefundable late fee of \$500 ~~investigation fee pursuant to~~
21 ~~s. 560.205(2).~~ If the registrant has not filed a renewal
22 application within 60 calendar days after the expiration date
23 of an existing registration, a new application shall be filed
24 with the department pursuant to s. 560.205.

25 (3) Every registration renewal application shall also
26 include a 2-year registration renewal fee of \$50 for each
27 authorized vendor or location operating within this state or,
28 at the option of the registrant, a total 2-year renewal fee of
29 ~~\$20,000~~ \$5,000 may be paid to renew the registration of
30 register all such locations currently registered at the time
31 of renewal ~~operating within this state.~~

1 Section 9. Section 560.208, Florida Statutes, is
2 amended to read:

3 560.208 Conduct of business.--

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

7 (2) Within 60 days after the date a registrant either
8 opens a location within this state or authorizes an authorized
9 vendor to operate on the registrant's behalf within this
10 state, the registrant shall notify the department on a form
11 prescribed by the department by rule. The notification shall
12 be accompanied by a nonrefundable \$50 fee for each authorized
13 vendor or location. Each notification shall also be
14 accompanied by a financial statement demonstrating compliance
15 with s. 560.209(1), unless compliance has been demonstrated by
16 a financial statement filed with the registrant's quarterly
17 report in compliance with s. 560.118(2). The financial
18 statement must be dated within 90 days of the date of
19 designation of the authorized vendor or location. This
20 subsection shall not apply to any authorized vendor or
21 location that has been designated by the registrant before
22 October 1, 2001.

23 (3) Within 10 days after the date a registrant closes
24 a location within this state or withdraws authorization for an
25 authorized vendor to operate on the registrant's behalf within
26 this state, the registrant shall notify the department on a
27 form prescribed by the department by rule.

28 Section 10. Section 560.307, Florida Statutes, is
29 amended to read:

30 560.307 Fees.--

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1 (1) The application shall be filed together with a
2 nonrefundable application investigation fee of that shall be
3 established by department rule; however, the investigation fee
4 may not exceed \$250 for each check casher or foreign currency
5 exchanger and \$50 for each authorized vendor or location
6 operating within this state. Such investigation fee shall
7 satisfy the fee requirement for the first year of registration
8 or the remaining part thereof.

9 (2) Within 60 days after the date a registrant either
10 opens a location within this state or authorizes an authorized
11 vendor to operate on the registrant's behalf within this
12 state, the registrant shall notify the department on a form
13 prescribed by the department by rule. The notification shall
14 be accompanied by a nonrefundable \$50 fee for each authorized
15 vendor or location. This subsection shall not apply to any
16 authorized vendor or location that has been designated by the
17 registrant before October 1, 2001.

18 (3) Within 10 days after the date a registrant closes
19 a location within this state or withdraws authorization for an
20 authorized vendor to operate on the registrant's behalf within
21 this state, the registrant shall notify the department on a
22 form prescribed by the department by rule.

23 Section 11. Section 560.308, Florida Statutes, is
24 amended to read:

25 560.308 Registration terms; renewal; renewal fees.--

26 (1) Registration pursuant to this part shall remain
27 effective through the remainder of the second calendar year
28 following its date of issuance unless during such calendar
29 year the registration is surrendered, suspended, or revoked.

30 (2) The department shall renew registration upon
31 receipt of a completed renewal form and payment of a

1 nonrefundable renewal fee, ~~as provided by rule,~~ not to exceed
2 \$500. The completed renewal form and payment of the renewal
3 fee shall occur on or after June 1 of the year in which the
4 existing registration expires.

5 (3) In addition to the renewal fee required by
6 subsection (2), each registrant must ~~register and~~ pay a 2-year
7 ~~\$50~~ registration renewal fee of \$50 for each authorized vendor
8 or location, including any authorized vendors, operating
9 within this state or, at the option of the registrant, a total
10 2-year renewal fee of \$20,000 ~~\$5,000~~ may be paid to renew the
11 registration of register all such ~~operating~~ locations
12 currently registered at the time of renewal within this state.

13 (4) Registration that is not renewed on or before the
14 expiration date of the registration period automatically
15 expires. A renewal application and fee, and a late fee of \$250
16 ~~an investigation fee pursuant to s. 560.307,~~ must be filed
17 within 60 calendar days after the expiration of an existing
18 registration in order for the registration to before
19 registration may be reinstated. If the registrant has not
20 filed a renewal application within 60 days after the
21 expiration date of an existing registration, a new application
22 must be filed with the department pursuant to s. 560.307.

23 Section 12. Part IV of chapter 560, Florida Statutes,
24 consisting of sections 560.401, 560.402, 560.403, 560.404,
25 560.405, 560.406, 560.407, and 560.408, Florida Statutes, is
26 created to read:

27 PART IV

28 DEFERRED PRESENTMENT

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

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1 560.402 Definitions.--In addition to the definitions
2 provided in ss. 560.103, 560.202, and 560.302 and unless
3 otherwise clearly indicated by the context, for purposes of
4 this part:

5 (1) "Affiliate" means a person who directly or
6 indirectly through one or more intermediaries controls or is
7 controlled by, or is under common control with, a deferred
8 presentment provider.

9 (2) "Business day" means the hours during a particular
10 day during which a deferred presentment provider customarily
11 conducts business, not to exceed 15 consecutive hours during
12 that day.

13 (3) "Days" means calendar days.

14 (4) "Deferment period" means the number of days a
15 deferred presentment provider agrees to defer depositing or
16 presenting a payment instrument.

17 (5) "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 (6) "Deferred presentment transaction" means providing
22 currency or a payment instrument in exchange for a person's
23 check and agreeing to hold that person's check for a period of
24 time prior to presentment, deposit, or redemption.

25 (7) "Drawer" means any person who writes a personal
26 check and upon whose account the check is drawn.

27 (8) "Rollover" means the termination or extension of
28 an existing deferred presentment agreement by the payment of
29 any additional fee and the continued holding of the check, or
30 the substitution of a new check drawn by the drawer pursuant
31 to a new deferred presentment agreement.

1 (9) "Fee" means the fee authorized for the deferral of
2 the presentation of a check pursuant to this part.

3 (10) "Termination of an existing deferred presentment
4 agreement" means that the check that is the basis for an
5 agreement is redeemed by the drawer by payment in full in
6 cash, or is deposited and the deferred presentment provider
7 has evidence that such check has cleared. A verification of
8 sufficient funds in the drawer's account by the deferred
9 presentment provider shall not be sufficient evidence to deem
10 the existing deferred deposit transaction to be terminated.

11 (11) "Extension of an existing deferred presentment
12 agreement" means that a deferred presentment transaction is
13 continued by the drawer paying any additional fees and the
14 deferred presentment provider continues to hold the check for
15 another period of time prior to deposit, presentment, or
16 redemption.

17 560.403 Requirements of registration; declaration of
18 intent.--

19 (1) No person shall engage in a deferred presentment
20 transaction unless the person is registered under the
21 provisions of part II or part III and has on file with the
22 department a declaration of intent to engage in deferred
23 presentment transactions. The declaration of intent shall be
24 under oath and on such form as the department prescribes by
25 rule. The declaration of intent shall be filed together with
26 a nonrefundable filing fee of \$1,000. Any person who is
27 registered under part II or part III on the effective date of
28 this act and intends to engage in deferred presentment
29 transactions shall have 60 days after the effective date of
30 this act to file a declaration of intent.

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1 (2) A registrant under this part shall renew his or
2 her intent to engage in the business of deferred presentment
3 transactions or to act as a deferred presentment provider upon
4 renewing his or her registration under part II or part III and
5 shall do so by indicating his or her intent on the renewal
6 form and by submitting a nonrefundable deferred presentment
7 provider renewal fee of \$1,000, in addition to any fees
8 required for renewal of registration under part II or part
9 III.

10 (3) A registrant under this part who fails to timely
11 renew his or her intent to engage in the business of deferred
12 presentment transactions or to act as a deferred presentment
13 provider shall immediately cease to engage in the business of
14 deferred presentment transactions or to act as a deferred
15 presentment provider.

16 (4) The license of a registrant under this part who
17 fails to timely renew his or her intent to engage in the
18 business of deferred presentment transactions or to act as a
19 deferred presentment provider on or before the expiration date
20 of the registration period automatically expires. A renewal
21 declaration of intent and fee, and a late fee of \$500, must be
22 filed within 60 calendar days after the expiration of an
23 existing registration in order for the declaration of intent
24 to be reinstated. If the registrant has not filed a renewal
25 declaration of intent within 60 days after the expiration date
26 of an existing registration, a new declaration must be filed
27 with the department.

28 (5) No person shall be exempt from registration and
29 declaration if such person engages in deferred presentment
30 transactions, regardless of whether such person is currently
31 exempt from registration under any provision of this code.

1 560.104 Requirements for deferred presentment
2 transactions.--
3 (1) Every deferred presentment transaction shall be
4 documented in a written agreement signed by both the deferred
5 presentment provider and the drawer.
6 (2) The deferred presentment transaction agreement
7 shall be executed on the day the deferred presentment provider
8 furnishes currency or a payment instrument to the drawer.
9 (3) Each written agreement shall contain:
10 (a) The name or trade name, address, and telephone
11 number of the deferred presentment provider and the name and
12 title of the person who signs the agreement on behalf of the
13 deferred presentment provider.
14 (b) The date the deferred presentment transaction was
15 made.
16 (c) The amount of the drawer's check.
17 (d) The length of deferral period.
18 (e) The date the deferred presentment transaction is
19 due.
20 (f) The address and telephone number of the
21 department.
22 (g) A clear description of the drawer's payment
23 obligations under the deferred presentment transaction.
24 (4) Every deferred presentment provider shall furnish
25 to the drawer a copy of the deferred presentment transaction
26 agreement.
27 (5) The face amount of a check taken for deferred
28 presentment may not exceed \$500 exclusive of the fees allowed
29 by this part.
30 (6) No deferred presentment provider or its affiliate
31 shall charge fees in excess of 10 percent of the currency or

1 payment provided. However, a verification fee may be charged
2 in accordance with s. 560.309(4) and the rules adopted
3 pursuant to the code. The 10-percent fee may not be applied to
4 the verification fee. A deferred presentment provider may
5 charge only those fees specifically authorized in this
6 section.

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

9 (8) No deferred presentment agreement shall be for a
10 term in excess of 31 days or less than 7 days.

11 (9) No deferred presentment provider shall require a
12 person to provide any additional security for the deferred
13 presentment transaction or any extension or require a person
14 to provide any additional guaranty from another person.

15 (10) A deferred presentment provider shall not include
16 any of the following provisions in any written agreement:

17 (a) A hold harmless clause;

18 (b) A confession of judgment clause;

19 (c) Any assignment of or order for payment of wages or
20 other compensation for services;

21 (d) A provision in which the drawer agrees not to
22 assert any claim or defense arising out of the agreement; or

23 (e) A waiver of any provision of this part.

24 (11) Each deferred presentment provider shall
25 immediately provide the drawer with the full amount of any
26 check to be held, less only the fees permitted under this
27 section.

28 (12) The deferred presentment agreement and drawer's
29 check shall bear the same date, and the number of days shall
30 be calculated from this date. No deferred presentment provider

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1 or person may alter or delete the date on any written
2 agreement or check held by the deferred presentment provider.

3 (13) For each deferred presentment transaction, the
4 deferred presentment provider must comply with the disclosure
5 requirements of 12 C.F.R., Part 226, the federal
6 Truth-in-Lending Act, and Regulation Z of the Board of
7 Governors of the Federal Reserve Board. A copy of the
8 disclosure must be provided to the drawer at the time the
9 deferred presentment transaction is initiated.

10 (14) No deferred presentment provider or its affiliate
11 may accept or hold an undated check or a check dated on a date
12 other than the date on which the deferred presentment provider
13 agreed to hold the check and signed the deferred presentment
14 transaction agreement.

15 (15) Every deferred presentment provider shall hold
16 the drawer's check for the agreed number of days, unless the
17 drawer chooses to redeem the check before the agreed
18 presentment date.

19 (16) Proceeds in a deferred presentment transaction
20 may be made to the drawer in the form of the deferred
21 presentment provider's payment instrument if the deferred
22 presentment provider is registered under part II; however, no
23 additional fee may be charged by a deferred presentment
24 provider or its affiliate for issuing or cashing the deferred
25 presentment provider's payment instrument.

26 (17) No deferred presentment provider may require the
27 drawer to accept its payment instrument in lieu of currency.

28 (18) No deferred presentment provider or its affiliate
29 may engage in the rollover of any deferred presentment
30 agreement. A deferred presentment provider shall not redeem,
31 extend, or otherwise consolidate a deferred presentment

1 agreement with the proceeds of another deferred presentment
2 transaction made by the same or an affiliated deferred
3 presentment provider.

4 (19) A deferred presentment provider may not enter
5 into a deferred presentment transaction with a person who has
6 an outstanding deferred presentment transaction with that
7 provider or with any other deferred presentment provider, or
8 with a person whose previous deferred presentment transaction
9 with that provider or with any other provider has been
10 terminated for less than 24 hours. The deferred presentment
11 provider must verify such information as follows:

12 (a) The deferred presentment provider shall maintain a
13 common database and shall verify whether that deferred
14 presentment provider or an affiliate has an outstanding
15 deferred presentment transaction with a particular person or
16 has terminated a transaction with that person within the
17 previous 24 hours.

18 (b) The deferred presentment provider shall access the
19 department's database established pursuant to subsection (23)
20 and shall verify whether any other deferred presentment
21 provider has an outstanding deferred presentment transaction
22 with a particular person or has terminated a transaction with
23 that person within the previous 24 hours. Prior to the time
24 that the department has implemented such a database, the
25 deferred presentment provider may rely upon the written
26 verification of the drawer as provided in subsection (20).

27 (20) A deferred presentment provider shall provide the
28 following notice in a prominent place on each deferred
29 presentment agreement in at least 14-point type in
30 substantially the following form and must obtain the signature
31 of the drawer where indicated:

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NOTICE

1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED PRESENTMENT AGREEMENT WITHIN 24 HOURS OF TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

YOU MUST SIGN THE FOLLOWING STATEMENT:

I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT THIS TIME. I HAVE NOT TERMINATED A DEFERRED PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

(Signature of Drawer)

2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE PURSUED AGAINST YOU.

3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU

1 DO NOT HAVE SUFFICIENT FUNDS TO COVER THE CHECK
2 OR TO PAY IN FULL THE AMOUNT OWING AT THE END
3 OF THE TERM OF THIS AGREEMENT, YOU WILL BE
4 PROVIDED A GRACE PERIOD EXTENDING THE TERM OF
5 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER
6 THE TERMINATION DATE, WITHOUT ANY ADDITIONAL
7 CHARGE. THE DEFERRED PRESENTMENT PROVIDER MAY
8 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING
9 THE DEFERRAL, ATTEND A CONSUMER CREDIT
10 COUNSELING SERVICE AND COMPLY WITH A REPAYMENT
11 PLAN APPROVED BY THAT SERVICE.

12
13 (21) The deferred presentment provider may not deposit
14 or present the drawer's check if the drawer informs the
15 provider that there are not sufficient funds to cover the
16 check. No additional fees or penalties may be imposed on the
17 drawer by virtue of any misrepresentation made by the drawer
18 as to the sufficiency of funds in the drawer's account. In no
19 event shall any additional fees be added to the amounts due
20 and owing to the deferred presentment provider.

21 (22)(a) If, at the end of the deferment period, the
22 drawer does not redeem or pay in full in cash the amount due
23 and owing the deferred presentment provider, or if there are
24 insufficient funds available in the drawer's account, the
25 deferred presentment provider shall provide a grace period
26 extending the term of the agreement for an additional 60 days
27 after the termination date, without any additional charge. The
28 provider may require, as a condition of providing this grace
29 period, that the drawer make an appointment with an approved
30 consumer credit counseling service within 7 days after the end
31 of the deferment period, complete the counseling within 60

1 days after the end of the deferment period, and comply with
2 any repayment plan approved by the counseling service. The
3 deferred presentment provider may not deposit or present the
4 drawer's check for payment unless:

5 1. The drawer fails to provide notice to the provider
6 within 7 days after the end of the deferment period that the
7 appointment has been made;

8 2. The provider is informed by the consumer credit
9 counseling service designated by the drawer that the drawer
10 has not made the appointment or has not completed the
11 counseling service within 60 days; or

12 3. The drawer does not comply with the repayment plan
13 approved by the credit counseling service.

14 (b) The deferred presentment provider shall provide
15 the drawer with a list of approved consumer credit counseling
16 services prepared by the department. The department shall list
17 those consumer credit counseling services that are nonprofit,
18 affiliated with the National Foundation for Consumer Credit,
19 provide debt management counseling services free of charge or
20 on a sliding-fee scale based on income, and agree to provide
21 services in accordance with this section.

22 (c) The deferred presentment provider shall provide
23 the following notice in at least 14-point type in
24 substantially the following form to a drawer who does not
25 redeem or pay in full in cash the amount due and owing at the
26 end of the deferment period:

27
28 AS A CONDITION OF OBTAINING A GRACE PERIOD
29 EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT
30 AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL
31 [date], WITHOUT ANY ADDITIONAL FEES, YOU MUST

1 ATTEND AN APPROVED CONSUMER CREDIT COUNSELING
2 SERVICE AND COMPLY WITH A REPAYMENT PLAN
3 APPROVED BY THE SERVICE. IF YOU ELECT THIS
4 OPTION, YOU MUST NOTIFY US WITHIN SEVEN (7)
5 DAYS, BY [DATE], THAT YOU HAVE MADE AN
6 APPOINTMENT WITH AN APPROVED CONSUMER CREDIT
7 COUNSELING SERVICE. YOU MUST ALSO NOTIFY US
8 WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU
9 HAVE COMPLETED THE CONSUMER CREDIT COUNSELING
10 SERVICE. IF YOU FAIL TO PROVIDE EITHER THE
11 7-DAY OR 60-DAY NOTICE, OR IF THE CONSUMER
12 CREDIT COUNSELING SERVICE YOU HAVE CHOSEN DOES
13 NOT VERIFY THAT YOU HAVE MADE THE APPOINTMENT
14 OR COMPLETED THE COUNSELING WITHIN THE TIME
15 REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK
16 FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE
17 CIVIL MEANS TO ENFORCE THE DEBT.

18
19 (d) If a drawer completes an approved consumer credit
20 counseling service, the deferred presentment provider shall
21 pay one-half of the drawer's fee for the deferred presentment
22 agreement to the consumer credit counseling service.

23 (23) On or before March 1, 2002, the department shall
24 implement a common database with real-time access through a
25 toll-free connection for deferred presentment providers, as
26 provided in this subsection. The database must be accessible
27 to the department and the deferred presentment providers to
28 verify whether any deferred presentment transactions are
29 outstanding for a particular person. Deferred presentment
30 providers shall submit such data on each deferred presentment
31 transaction in such format as required by the department,

1 including the drawer's name, address, driver's license number,
2 amount of the transaction, date of transaction, the date that
3 the transaction is closed, and such additional information as
4 is required by the department. The department may impose a fee
5 not to exceed \$1 per transaction for data required to be
6 submitted by a deferred presentment provider. A deferred
7 presentment provider may rely on the information contained in
8 the database as accurate and is not liable or subject to
9 penalty as a result of inaccurate information contained in the
10 database. The department may adopt rules to administer and
11 enforce the provisions of this section and to assure that the
12 database is used by deferred presentment providers in
13 accordance with this section.

14 560.405 Deposit; redemption.--

15 (1) The deferred presentment provider or its affiliate
16 shall not present the drawer's check prior to the agreed-upon
17 date of presentment, as reflected in the deferred presentment
18 transaction agreement.

19 (2) Before a deferred presentment provider presents
20 the drawer's check, the check shall be endorsed with the
21 actual name under which the deferred presentment provider is
22 doing business.

23 (3) Notwithstanding the provisions of subsection (1),
24 in lieu of presentment, a deferred presentment provider may
25 allow the check to be redeemed at any time upon payment to the
26 deferred presentment provider in the amount of the face amount
27 of the drawer's check. However, payment may not be made in the
28 form of a personal check. Upon redemption, the deferred
29 presentment provider shall return the drawer's check that was
30 being held and provide a signed, dated receipt showing that
31 the drawer's check has been redeemed.

1 (4) No drawer can be required to redeem his or her
2 check prior to the agreed-upon date; however, the drawer may
3 choose to redeem the check before the agreed-upon presentment
4 date.

5 560.406 Worthless checks.--If a check is returned to a
6 deferred presentment provider from a payor financial
7 institution due to lack of funds, a closed account, or a
8 stop-payment order, the deferred presentment provider may seek
9 collection pursuant to s. 68.065, except a deferred
10 presentment provider shall not be entitled to collect treble
11 damages pursuant s. 68.065. The notice sent by a deferred
12 deposit provider pursuant to s. 68.065 shall not include any
13 references to treble damages and must clearly state that the
14 deferred presentment provider is not entitled to recover such
15 damages. Except as otherwise provided in this part, an
16 individual who issues a personal check to a deferred
17 presentment provider under a deferred presentment agreement is
18 not subject to criminal penalty. If a check is returned to a
19 deferred presentment provider from a payor financial
20 institution due to insufficient funds, a closed account, or a
21 stop-payment order, the deferred presentment provider may
22 pursue all legally available civil remedies to collect the
23 check, including, but not limited to, the imposition of all
24 charges imposed on the deferred presentment provider by any
25 financial institution. In its collection practices, a deferred
26 presentment provider shall comply with the prohibitions
27 against harassment or abuse, false or misleading
28 representations, and unfair practices which are contained in
29 ss. 806, 807, and 808 of the Fair Debt Collections Practices
30 Act, 15 U.S.C. ss. 1692d, 1692e, 1692f. A violation of this
31 act is a deceptive and unfair trade practice and constitutes a

1 violation of the Deceptive and Unfair Trade Practices Act,
2 part II, of chapter 501. In addition, a deferred presentment
3 provider shall comply with the applicable provisions of part
4 VI of chapter 559, the Consumer Collection Practices Act,
5 including, but not limited to, the provisions of s. 559.77.

6 560.407 Records.--

7 (1) Each registrant under this part must maintain all
8 books, accounts, records, and documents necessary to determine
9 the registrant's compliance with the provisions of the code.
10 Such books, accounts, records, and documents shall be retained
11 for a period of at least 3 years unless a longer period is
12 expressly required by the department, the laws of this state,
13 or any federal law.

14 (2) The records required to be maintained by the code
15 or any rule adopted pursuant thereto may be maintained by the
16 registrant at any location within this state, provided that
17 the registrant notifies the department, in writing, of the
18 location of the records in its application or otherwise.

19 (3) A registrant shall make records available to the
20 department for examination and investigation in this state, as
21 permitted by the code, within 7 days after receipt of a
22 written request.

23 (4) The original of any record of a registrant
24 includes the data or other information comprising a record
25 stored or transmitted in or by means of any electronic,
26 computerized, mechanized, or other information storage or
27 retrieval or transmission system or device that can upon
28 request generate, regenerate, or transmit the precise data or
29 other information comprising the record. An original also
30 includes the visible data or other information so generated,
31

1 regenerated, or transmitted if it is legible or can be made
2 legible by enlargement or other process.

3 560.408 Legislative intent; report.--

4 (1) It is the intent of the Legislature to provide for
5 the regulation of deferred presentment transactions. It is
6 further the intent of the Legislature to prevent fraud, abuse,
7 and other unlawful activity associated with deferred
8 presentment transactions in part by:

9 (a) Providing for sufficient regulatory authority and
10 resources to monitor deferred presentment transactions.

11 (b) Preventing rollovers.

12 (c) Regulating the allowable fees charged in
13 connection with a deferred presentment transaction.

14 (2) The Comptroller shall submit a report to the
15 President of the Senate and the Speaker of the House of
16 Representatives on January 1, 2003, and January 1, 2004,
17 containing findings and conclusions concerning the
18 effectiveness of this act in preventing fraud, abuse, and
19 other unlawful activity associated with deferred presentment
20 transactions. The report may contain legislative
21 recommendations addressing the prevention of fraud, abuse, and
22 other unlawful activity associated with deferred presentment
23 transactions. Prior to filing the report, the Comptroller
24 shall consult with the Attorney General for the purpose of
25 including any recommendations or concerns expressed by the
26 Attorney General.

27 Section 13. Except as otherwise provided in this act,
28 this act shall take effect October 1, 2001.

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31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB's 1526 & 314

4 The committee substitute replaces the provisions of SB 1526,
5 which was a short form bill that provided legislative intent
6 to regulate payday advance lenders. The committee substitute
7 creates the "Deferred Presentment Act" as part IV of chapter
8 560, F.S., to regulate "deferred presentment transactions" in
9 which a person provides cash or currency in exchange for
10 another person's check and agrees to hold that person's check
11 for a period of time prior to depositing or redeeming the
12 check. It provides for regulation of this industry by the
13 Department of Banking and Finance, and further provides:

- 14 * Registration requirements for deferred presentment
15 providers.
- 16 * A \$500 limit on the face amount of a check taken for
17 deferred presentment, exclusive of allowable fees.
- 18 * A maximum fee of 10 percent of the amount paid to the
19 consumer ("drawer"). In addition, a \$5 verification may
20 be charged.
- 21 * Prohibits a deferred presentment agreement from having a
22 term in excess of 31 days or less than 7 days.
- 23 * Prohibits "roll-overs" which extend a deferred
24 presentment agreement.
- 25 * Prohibits a provider from entering into an agreement if
26 an individual has an outstanding agreement with any
27 provider, or a previous transaction has been closed for
28 less than 24 hours. The provider must access a
29 centralized database that must be implemented by the
30 department. Until such time as this database is
31 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

1 the provision for treble damages).

2 The committee substitute also amends ch. 560, F.S., the Money
3 Transmitters' Code, to make the following changes:

4 * Deletes examination fees and uses registration fees to
5 fund the regulatory program;

6 * Adds an initial \$50 application fee for each vendor or
7 branch of a Part II (payment instruments and funds
8 transmission) or Part III (check cashing and foreign
9 currency) registrant;

10 * Authorizes the department to assess a registrant a \$500
11 late filing fee if the renewal application is submitted
12 within 60 days after the expiration of the license;

13 * Increases the cap on renewal fees for registrants with
14 multiple locations from \$5,000 to \$20,000; and

15 * Requires registrants to notify the department of any
16 newly established locations within 60 days.

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