

By the Committees on Finance and Taxation; Commerce and Economic Opportunities; Banking and Insurance; and Senators Constantine and Campbell

314-1826-01

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. 560.204, F.S.; clarifying exemption  
15 from registration fees under part III of ch.  
16 560, F.S.; amending s. 560.205, F.S.; adding a  
17 fee for authorized vendor or branch locations;  
18 amending s. 560.206, F.S.; amending the  
19 registration period; amending s. 560.207, F.S.;  
20 conforming and clarifying the fee for late  
21 renewals; amending the renewal application fee;  
22 amending s. 560.208, F.S.; requiring  
23 notification of vendor or branch locations;  
24 requiring a nonrefundable fee and financial  
25 statement; amending s. 560.307, F.S.; applying  
26 the application fee to check cashers and  
27 foreign currency exchanges and adding a fee for  
28 authorized vendors or branch locations;  
29 requiring notification of vendor or branch  
30 locations; amending s. 560.308, F.S.;  
31 increasing the registration and renewal fee for

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

24

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

26

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

30 560.103 Definitions.--As used in the code, unless the  
31 context otherwise requires:

1           (4) "Code" means the "Money Transmitters' Code,"  
2 consisting of:

3           (d) Part IV of this chapter, relating to deferred  
4 presentments.

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

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

11           560.111 Prohibited acts and practices.--

12           (4) Any person who willfully violates any provision of  
13 s. 560.403, s. 560.404, s. 560.405, or s. 560.407 commits a  
14 felony of the third degree, punishable as provided in s.  
15 775.082, 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, to read:

18           560.114 Disciplinary actions.--

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

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

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

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

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

5 560.118 Examinations, reports, and internal audits;  
6 penalty.--

7 (1)(a) The department may conduct an examination of a  
8 money transmitter or authorized vendor by providing not less  
9 than 15 days' advance notice to the money transmitter or  
10 authorized vendor. However, if the department suspects that  
11 the money transmitter or authorized vendor has violated any  
12 provisions of this code or any criminal laws of this state or  
13 of the United States or is engaging in an unsafe and unsound  
14 practice, the department may, at any time without advance  
15 notice, conduct an examination of all affairs, activities,  
16 transactions, accounts, business records, and assets of any  
17 money transmitter or any money transmitter-affiliated party  
18 for the protection of the public. For the purpose of  
19 examinations, the department may administer oaths and examine  
20 a money transmitter or any of its affiliated parties  
21 concerning their operations and business activities and  
22 affairs. The department may accept an audit or examination  
23 from any appropriate regulatory agency or from an independent  
24 third party with respect to the operations of a money  
25 transmitter or an authorized vendor. The department may also  
26 make a joint or concurrent examination with any state or  
27 federal regulatory agency. The department may furnish a copy  
28 of all examinations made of such money transmitter or  
29 authorized vendor to the money transmitter and any appropriate  
30 regulatory agency provided that such agency agrees to abide by  
31 the confidentiality provisions as set forth in chapter 119.

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

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

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

28           ~~(e) The department may, by rule, set a maximum per-day~~  
29 ~~examination cost for a regular examination. Such per-day cost~~  
30 ~~may be less than that required to fully compensate the~~  
31 ~~department for costs associated with the examination. For the~~

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

14 Section 5. Section 560.119, Florida Statutes, is  
15 amended to read:

16 560.119 Deposit of fees and assessments.--The  
17 application fees, registration renewal fees, ~~examination fees,~~  
18 late payment penalties, civil penalties, administrative fines,  
19 and other fees or penalties provided for in the code shall, in  
20 all cases, be paid directly to the department, which shall  
21 deposit such proceeds into the ~~Financial Institutions+~~  
22 Regulatory Trust Fund. Each year, the Legislature shall  
23 appropriate from the trust fund to the department sufficient  
24 moneys to pay the department's costs for administration of the  
25 code. The ~~Financial Institutions+~~Regulatory Trust Fund is  
26 subject to the service charge imposed pursuant to chapter 215.

27 Section 6. Subsection (2) of section 560.204, Florida  
28 Statutes, is amended to read:

29 560.204 Requirement of registration.--

30 (2) A person registered pursuant to this part is  
31 permitted to engage in the activities authorized by this part.

1 A person registered pursuant to this part may also engage in  
2 the activities authorized under part III and is exempt from  
3 the registration fee required by s. 560.307.

4 Section 7. Subsection (2) of section 560.205, Florida  
5 Statutes, is amended to read:

6 560.205 Qualifications of applicant for registration;  
7 contents.--

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

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

21 (b) The history of the applicant's material  
22 litigation, criminal convictions, pleas of nolo contendere,  
23 and cases of adjudication withheld.

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

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

1 (e) A sample authorized vendor contract, if  
2 applicable.

3 (f) A sample form of payment instrument, if  
4 applicable.

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

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

12 Section 8. Section 560.206, Florida Statutes, is  
13 amended to read:

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

30 Section 9. Section 560.207, Florida Statutes, is  
31 amended to read:



1           560.207 Renewal of registration; registration fee.--

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

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

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

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1 ~~register~~ all such locations currently registered at the time  
2 of renewal operating within this state.

3 Section 10. Section 560.208, Florida Statutes, is  
4 amended to read:

5 560.208 Conduct of business.--

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

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. Each notification shall also be  
16 accompanied by a financial statement demonstrating compliance  
17 with s. 560.209(1), unless compliance has been demonstrated by  
18 a financial statement filed with the registrant's quarterly  
19 report in compliance with s. 560.118(2). The financial  
20 statement must be dated within 90 days of the date of  
21 designation of the authorized vendor or location. This  
22 subsection shall not apply to any authorized vendor or  
23 location that has been designated by the registrant before  
24 October 1, 2001.

25 (3) Within 60 days after the date a registrant closes  
26 a location within this state or withdraws authorization for an  
27 authorized vendor to operate on the registrant's behalf within  
28 this state, the registrant shall notify the department on a  
29 form prescribed by the department by rule.

30 Section 11. Section 560.307, Florida Statutes, is  
31 amended to read:

1           560.307 Fees.--

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

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

19           (3) Within 60 days after the date a registrant closes  
20 a location within this state or withdraws authorization for an  
21 authorized vendor to operate on the registrant's behalf within  
22 this state, the registrant shall notify the department on a  
23 form prescribed by the department by rule.

24           Section 12. Section 560.308, Florida Statutes, is  
25 amended to read:

26           560.308 Registration terms; renewal; renewal fees.--

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

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1           560.401 Short title.--This part may be cited as the  
2 "Deferred Presentment Act."

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

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

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

15           (3) "Days" means calendar days.

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

19           (5) "Deferred presentment provider" means a person who  
20 engages in a deferred presentment transaction and is  
21 registered under part II or part III of the code and has filed  
22 a declaration of intent with the department.

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

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

29           (8) "Rollover" means the termination or extension of  
30 an existing deferred presentment agreement by the payment of  
31 any additional fee and the continued holding of the check, or

1 the substitution of a new check drawn by the drawer pursuant  
2 to a new deferred presentment agreement.

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

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

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

19 560.403 Requirements of registration; declaration of  
20 intent.--

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

1 transactions shall have 60 days after the effective date of  
2 this act to file a declaration of intent.

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

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

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

30 (5) No person, other than a financial institution as  
31 defined in s. 655.005, shall be exempt from registration and

1 declaration if such person engages in deferred presentment  
2 transactions, regardless of whether such person is currently  
3 exempt from registration under any provision of this code.

4 560.404 Requirements for deferred presentment  
5 transactions.--

6 (1) Every deferred presentment transaction shall be  
7 documented in a written agreement signed by both the deferred  
8 presentment provider and the drawer.

9 (2) The deferred presentment transaction agreement  
10 shall be executed on the day the deferred presentment provider  
11 furnishes currency or a payment instrument to the drawer.

12 (3) Each written agreement shall contain the following  
13 information, in addition to any information the department  
14 requires by rule:

15 (a) The name or trade name, address, and telephone  
16 number of the deferred presentment provider and the name and  
17 title of the person who signs the agreement on behalf of the  
18 deferred presentment provider.

19 (b) The date the deferred presentment transaction was  
20 made.

21 (c) The amount of the drawer's check.

22 (d) The length of deferral period.

23 (e) The last day of the deferment period.

24 (f) The address and telephone number of the  
25 department.

26 (g) A clear description of the drawer's payment  
27 obligations under the deferred presentment transaction.

28 (h) The transaction number assigned by the  
29 department's database.

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1           (4) Every deferred presentment provider shall furnish  
2 to the drawer a copy of the deferred presentment transaction  
3 agreement.

4           (5) The face amount of a check taken for deferred  
5 presentment may not exceed \$500 exclusive of the fees allowed  
6 by this part.

7           (6) No deferred presentment provider or its affiliate  
8 shall charge fees in excess of 10 percent of the currency or  
9 payment instrument provided. However, a verification fee may  
10 be charged in accordance with s. 560.309(4) and the rules  
11 adopted pursuant to the code. The 10-percent fee may not be  
12 applied to the verification fee. A deferred presentment  
13 provider may charge only those fees specifically authorized in  
14 this section.

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

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

19           (9) No deferred presentment provider shall require a  
20 person to provide any additional security for the deferred  
21 presentment transaction or any extension or require a person  
22 to provide any additional guaranty from another person.

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

25           (a) A hold harmless clause;

26           (b) A confession of judgment clause;

27           (c) Any assignment of or order for payment of wages or  
28 other compensation for services;

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

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

1           (11) Each deferred presentment provider shall  
2 immediately provide the drawer with the full amount of any  
3 check to be held, less only the fees permitted under this  
4 section.

5           (12) The deferred presentment agreement and drawer's  
6 check shall bear the same date, and the number of days of the  
7 deferment period shall be calculated from this date. No  
8 deferred presentment provider or person may alter or delete  
9 the date on any written agreement or check held by the  
10 deferred presentment provider.

11           (13) For each deferred presentment transaction, the  
12 deferred presentment provider must comply with the disclosure  
13 requirements of 12 C.F.R., Part 226, the federal  
14 Truth-in-Lending Act, and Regulation Z of the Board of  
15 Governors of the Federal Reserve Board. A copy of the  
16 disclosure must be provided to the drawer at the time the  
17 deferred presentment transaction is initiated.

18           (14) No deferred presentment provider or its affiliate  
19 may accept or hold an undated check or a check dated on a date  
20 other than the date on which the deferred presentment provider  
21 agreed to hold the check and signed the deferred presentment  
22 transaction agreement.

23           (15) Every deferred presentment provider shall hold  
24 the drawer's check for the agreed number of days, unless the  
25 drawer chooses to redeem the check before the agreed  
26 presentment date.

27           (16) Proceeds in a deferred presentment transaction  
28 may be made to the drawer in the form of the deferred  
29 presentment provider's payment instrument if the deferred  
30 presentment provider is registered under part II; however, no  
31 additional fee may be charged by a deferred presentment

1 provider or its affiliate for issuing or cashing the deferred  
2 presentment provider's payment instrument.

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

5 (18) No deferred presentment provider or its affiliate  
6 may engage in the rollover of any deferred presentment  
7 agreement. A deferred presentment provider shall not redeem,  
8 extend, or otherwise consolidate a deferred presentment  
9 agreement with the proceeds of another deferred presentment  
10 transaction made by the same or an affiliated deferred  
11 presentment provider.

12 (19) A deferred presentment provider may not enter  
13 into a deferred presentment transaction with a person who has  
14 an outstanding deferred presentment transaction with that  
15 provider or with any other deferred presentment provider, or  
16 with a person whose previous deferred presentment transaction  
17 with that provider or with any other provider has been  
18 terminated for less than 24 hours. The deferred presentment  
19 provider must verify such information as follows:

20 (a) The deferred presentment provider shall maintain a  
21 common database and shall verify whether that deferred  
22 presentment provider or an affiliate has an outstanding  
23 deferred presentment transaction with a particular person or  
24 has terminated a transaction with that person within the  
25 previous 24 hours.

26 (b) The deferred presentment provider shall access the  
27 department's database established pursuant to subsection (23)  
28 and shall verify whether any other deferred presentment  
29 provider has an outstanding deferred presentment transaction  
30 with a particular person or has terminated a transaction with  
31 that person within the previous 24 hours. Prior to the time

1 that the department has implemented such a database, the  
2 deferred presentment provider may rely upon the written  
3 verification of the drawer as provided in subsection (20).

4 (20) A deferred presentment provider shall provide the  
5 following notice in a prominent place on each deferred  
6 presentment agreement in at least 14-point type in  
7 substantially the following form and must obtain the signature  
8 of the drawer where indicated:

9  
10 NOTICE

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

19  
20 YOU MUST SIGN THE FOLLOWING STATEMENT:

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

26 (Signature of Drawer)

27  
28 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT  
29 FOR A CHECK WRITTEN UNDER THIS AGREEMENT, BUT  
30 ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE  
31 THE DEBT MAY BE PURSUED AGAINST YOU.

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2           3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT  
3           PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO  
4           "ROLL OVER" YOUR DEFERRED PRESENTMENT  
5           TRANSACTION. THIS MEANS THAT YOU CANNOT BE  
6           ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN  
7           ORDER TO FURTHER DELAY THE DEPOSIT OR  
8           PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU  
9           INFORM THE PROVIDER IN PERSON THAT YOU CANNOT  
10          COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING  
11          AT THE END OF THE TERM OF THIS AGREEMENT, YOU  
12          WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM  
13          OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS  
14          AFTER THE ORIGINAL TERMINATION DATE, WITHOUT  
15          ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT  
16          PROVIDER SHALL REQUIRE THAT YOU, AS A CONDITION  
17          OF OBTAINING THE GRACE PERIOD, COMPLETE  
18          CONSUMER CREDIT COUNSELING PROVIDED BY AN  
19          AGENCY INCLUDED ON THE LIST THAT WILL BE  
20          PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO  
21          AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT  
22          PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT  
23          COMPLY WITH AND ADHERE TO A REPAYMENT PLAN  
24          APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR  
25          PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL  
26          LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE  
27          DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

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29          (21) The deferred presentment provider may not deposit  
30          or present the drawer's check if the drawer informs the  
31          provider in person that the drawer cannot redeem or pay in

1 full in cash the amount due and owing the deferred presentment  
2 provider. No additional fees or penalties may be imposed on  
3 the drawer by virtue of any misrepresentation made by the  
4 drawer as to the sufficiency of funds in the drawer's account.  
5 In no event shall any additional fees be added to the amounts  
6 due and owing to the deferred presentment provider.

7 (22)(a) If, by the end of the deferment period, the  
8 drawer informs the deferred presentment provider in person  
9 that the drawer cannot redeem or pay in full in cash the  
10 amount due and owing the deferred presentment provider, the  
11 deferred presentment provider shall provide a grace period  
12 extending the term of the agreement for an additional 60 days  
13 after the original termination date, without any additional  
14 charge. The provider shall require that as a condition of  
15 providing this grace period, that within the first 7 days of  
16 the grace period the drawer make an appointment with a  
17 consumer credit counseling agency within 7 days after the end  
18 of the deferment period and complete the counseling by the end  
19 of the grace period. The drawer may agree to, comply with, and  
20 adhere to a repayment plan approved by the counseling agency.  
21 If the drawer agrees to comply with and adhere to a repayment  
22 plan approved by the counseling agency, the provider is also  
23 required to comply with and adhere to that repayment plan. The  
24 deferred presentment provider may not deposit or present the  
25 drawer's check for payment before the end of the 60-day grace  
26 period unless the drawer fails to comply with such conditions  
27 or the drawer fails to notify the provider of such compliance.  
28 Before each deferred presentment transaction, the provider may  
29 verbally advise the drawer of the availability of the grace  
30 period consistent with the provisions of the written notice in

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1 subsection (20), and shall not discourage the drawer from  
2 using the grace period.

3 (b) At the commencement of the grace period, the  
4 deferred presentment provider shall provide the drawer:

5 1. Verbal notice of the availability of the grace  
6 period consistent with the written notice in subsection (20).

7 2. A list of approved consumer credit counseling  
8 agencies prepared by the department. The department shall  
9 prepare the list by October 1, 2001. The department list shall  
10 include nonprofit consumer credit counseling agencies  
11 affiliated with the National Foundation for Credit Counseling  
12 which provide credit counseling services to Florida residents  
13 in person, by telephone, or through the internet. The  
14 department list must include phone numbers for the agencies,  
15 the counties served by the agencies, and indicate the agencies  
16 that provide telephone counseling and those that provide  
17 internet counseling. The department shall update the list at  
18 least once each year.

19 3. The following notice in at least 14-point type in  
20 substantially the following form:

21  
22 AS A CONDITION OF OBTAINING A GRACE PERIOD  
23 EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT  
24 AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL  
25 [date], WITHOUT ANY ADDITIONAL FEES, YOU MUST  
26 COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY  
27 AN AGENCY INCLUDED ON THE LIST THAT WILL BE  
28 PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO  
29 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT  
30 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY  
31 BE IN-PERSON, BY TELEPHONE, OR THROUGH THE

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

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15           (c) If a drawer completes an approved payment plan,  
16           the deferred presentment provider shall pay one-half of the  
17           drawer's fee for the deferred presentment agreement to the  
18           consumer credit counseling agency.

19           (23) On or before March 1, 2002, the department shall  
20           implement a common database with real-time access through an  
21           internet connection for deferred presentment providers, as  
22           provided in this subsection. The database must be accessible  
23           to the department and the deferred presentment providers to  
24           verify whether any deferred presentment transactions are  
25           outstanding for a particular person. Deferred presentment  
26           providers shall submit such data before entering into each  
27           deferred presentment transaction in such format as the  
28           department shall require by rule, including the drawer's name,  
29           social security number or employment authorization alien  
30           number, address, driver's license number, amount of the  
31           transaction, date of transaction, the date that the



1 transaction is closed, and such additional information as is  
2 required by the department. The department may impose a fee  
3 not to exceed \$1 per transaction for data required to be  
4 submitted by a deferred presentment provider. A deferred  
5 presentment provider may rely on the information contained in  
6 the database as accurate and is not subject to any  
7 administrative penalty or civil liability as a result of  
8 relying on inaccurate information contained in the database.  
9 The department may adopt rules to administer and enforce the  
10 provisions of this section and to assure that the database is  
11 used by deferred presentment providers in accordance with this  
12 section.

13 560.405 Deposit; redemption.--

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

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

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

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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 14. This act shall take effect October 1,  
28 2001.

- 1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS/CS/SB 1526 & 314
- 4 1) Clarifies conditions related to the 60-day grace period:  
5       Drawer must inform the provider in person that they  
6       cannot repay the loan;  
7       Must complete, not just attend, credit counseling;  
8       Drawer may enter a payment plan approved by a credit  
9       counselor and the provider must also follow this plan;  
10      If the drawer does not agree to a payment plan the loan  
11      must be paid at the end of the grace period.
- 12 2) Clarifies that counseling may be accessed in person, by  
13      telephone or by Internet.
- 14 3) Specifies that verbal & written notice must be provided  
15      to the drawer at the beginning of the grace period
- 16 4) Specifies that the provider may attempt to discourage  
17      use of the grace period
- 18 5) Exempts persons engaged in the selling or issuing of  
19      payment instruments or in activity of a funds  
20      transmitter from the registration fee requirements of s.  
21      560.307, F.S.
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