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DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 213

RELATING TO: The Money Transmitter's Code

SPONSOR(S): Representative(s) Barriero

TIED BILL(S):

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

- (1) BANKING YEAS 8 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 5 NAYS 0
 - (3) FISCAL POLICY AND RESOURCES
 - (4) COUNCIL FOR COMPETITIVE COMMERCE
 - (5)
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I. SUMMARY:

The bill would create the "Deferred Presentment Act" as part IV of chapter 560, F.S. This would provide authorization for and regulation of "deferred presentment transactions" also known as "payday loans" in which an entity provides cash or currency in exchange for a person's check and agrees to hold that person's check for a period of time prior to depositing or redeeming the check. The bill continues regulatory oversight of this industry by the Department of Banking and Finance (the department), and further provides:

- Definitions for commonly used industry terms.
- Registration requirements for deferred-presentment providers.
- Specific content for provider agreements.
- A cap on service fees not to exceed 10 percent of the amount paid to a consumer.
- A prohibition on provider agreement "roll-over."
- A \$500 limit for any one provider agreement (exclusive of fees).
- A one-check limitation which any one consumer may have outstanding to one provider at any one time
- The ability of the consumer to redeem their check prior to the presentation date.
- The ability of the provider to seek collection of a returned check pursuant to s. 68.065, F.S. (but without the provision for treble damages).
- An effective date of October 1, 2001.

The bill makes numerous changes to parts I, II, and III of Chapter 560, F.S., including consolidating examination fees with application fees, establishing a \$50 fee for each vendor branch office (with an aggregate cap of \$20,000), and establishing a late fee that the registrant must file with the department within 60 days after the expiration of an existing registration.

The bill appropriates \$150,000 for fiscal year 2001-2002 from the Regulatory Trust Fund to the department to fund 3 positions to administer the provisions of the act created by this bill.

Please see Part VI for an explanation of the strike-everything amendment that was adopted by the Committee on Banking.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill provides for state-wide regulation for a previously unregulated activity and further provides for an appropriation from the department's regulatory Trust Fund to fund three additional full time positions to administer the provisions of the new part created in chapter 560, F.S.

2. Lower Taxes Yes No N/A

The bill authorizes a fee that a provider may charge a consumer to the maximum of 10 percent of the amount financed. Existing fees, depending on the type of check that is presented, range between 5 and 12 percent.

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

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

B. PRESENT SITUATION:

The Money Transmitters' Code (Chapter 560, F.S.), provides for licensure and regulation of certain check cashing operations by the Department of Banking and Finance, (Part III of Chapter 560, F.S., Check Cashing and Foreign Currency Exchange). No person may engage in the business of cashing checks or payment instruments¹ or the exchange of foreign currency without first registering under the provisions of this part, which:

1. Provides for registration, regulation, reports, and examinations for persons cashing checks or exchanging foreign currency. s. 5601.302, F.S.
2. Provides an exemption from registration for persons engaged in cashing payment instruments or exchanging foreign currency for compensation if such activity for each location does not exceed 5 percent of the total gross income from the retail sale of goods or services during its most recently completed fiscal year. s. 560.304, F.S.
3. Requires an investigation fee of \$250, provides for a renewal fee of \$500 every 2 years, and provides for a \$50 registration fee for each location not to exceed \$5,000. ss. 560.307 and 560.308, F.S.
4. Provides limitations on all persons in the business of cashing payment instruments or exchanging foreign currency for the following fees:

¹ A "payment instrument" is defined as a "check, draft, warrant, money order, travelers check or other instrument or payment of money, whether or not negotiable". s. 560.103(14), F.S.

- a. except as otherwise provided, no more than 5 percent of the face amount of a check, or 6 percent without identification, or \$5, whichever is greater;
 - b. for state public assistance or federal social security benefit check payable to the bearer no more than 3 percent of the face amount of a check, or 4 percent without identification, or \$5, whichever is greater;
 - c. for personal checks or money orders no more than 10 percent of the face amount, or \$5, whichever is greater.
- s. 560.309, F.S.

A person registered under this part as being in the business of cashing checks (a "registrant") may charge up to 10 percent of the face amount of a personal check as a fee for this service, as shown above. For a **deferred presentment**, also known as a **payday loan**, the registrant accepts a post-dated check or agrees to wait a certain number of days to cash the check. If a licensed check casher holds the check for a period of time the transaction has some characteristics of a loan, and it is the Department of Banking and Finance's position that although this transaction is not expressly prohibited by the statute it is probable the drafters of the statute did not contemplate this practice.

It is the position of the department that licensed check cashers are not permitted to execute "roll-overs" of these transactions because a "roll-over" would clearly convert the transaction into a loan of a type not authorized by any Florida statute. A "roll-over" occurs when the drafter of the check is unable to redeem the check and does not have sufficient funds in the bank to cover the check if presented, and so negotiates an extension by paying additional fees. It is the department's position that a roll-over would be both a regulatory violation which could result in civil penalties and a criminal violation of chapter 687, F.S., should the interest rate exceed 18 percent per annum.

Section 516.02, F.S., states that a person must not engage in the business of making consumer finance loans unless authorized to do so under Chapter 516, F.S., or some other statute. A consumer finance loan means a loan in an amount under \$25,000 with an annual interest greater than 18 percent per annum. s. 516.01(2), F.S. Specific statutes authorizing consumer finance loans in excess of 18 percent are found in Chapter 516, F.S. (consumer loans), Chapter 520, F.S. (retail installment sales), Chapter 538, F.S. (title loans), Chapter 539, F.S. (pawns), and Chapter 655, F.S. (credit cards). Consequently, deferred deposit loans, or any variation thereof, which do not strictly comport with the requirements of Chapter 560, F.S., may be contrary to the law if the amount of the loan is under \$25,000 and the interest rate exceeds 18 percent per annum. A violation of chapter 687, F.S., which addresses usurious contracts, may result in a second-degree misdemeanor conviction if the interest rate exceeds 25 percent but does not exceed 45 percent. If a usurious lender charges a per annum interest rate in excess of 45 percent the offense may be punished as a third degree felony. See, ss. 687.071(2) and (3), F.S.

In April of 1997, the department filed an administrative action against a local business named "Cash Cow", for statutory violations which resulted in a final order revoking the business' license, removal of the acting president, a cease and desist order, and a \$230,000 fine. The First District Court of Appeal affirmed that order without issuing a written opinion. On January 7, 1999, the Office of Statewide Prosecution launched dual criminal and administrative actions against that same business and its principals. That prosecution effort has almost completed the evidence-discovery phase and according to the state-wide prosecutor's office, as of February 9, 2001, the case will either be settled in a disposition hearing or the case will be set for trial.

The department also administers the Money Laundering Program to deter money laundering through financial institutions operating in Florida. The more recent focus of money laundering

activities has been on money transmitters (check cashers, foreign currency exchangers, money order issuers, and wire transmitters), which have been increasingly identified as vehicles for money laundering.

Consumer groups and other critics of the industry maintain that some payday loan companies skirt the law in the 19 states that ban the loans by teaming up with out-of-state nationally chartered banks. The 19 states and two U.S. jurisdictions that ban payday loans are Alabama, Alaska, Arizona, Connecticut, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia, Puerto Rico and the U.S. Virgin Islands.

C. EFFECT OF PROPOSED CHANGES:

See, Part I.D., SECTION-BY-SECTION ANALYSIS, below.

D. SECTION-BY-SECTION ANALYSIS:

Sections 1 - 5 apply to Money Transmitters², Generally (Part I of chapter 560, F.S.)

Section 1 amends s. 560.103, F.S., (definitions), to add references to the new Part IV of the chapter, relating to deferred presentment, as created by Section 6 of this bill.

Section 2 amends s. 560.111, F.S., establishing a third degree felony sanction for an unlicensed persons who violates or for licensed persons who willfully violate any of the newly created provisions of the Deferred Presentment part of Chapter 560.

Section 3 amends s. 560.114, F.S., relating to disciplinary action by the department for certain prohibited acts of any person who is registered under the chapter as a money transmitter, to add the following prohibited acts: 1) the failure to pay any fee, charge, or fine imposed or assessed pursuant to the chapter; or 2) engaging in or advertising engagement in the business of a money transmitter without a registration, unless exempt. These actions constitute grounds for the issuance of a cease and desist order, the issuance of a removal order, the denial of a registration application or the suspension of revocation of any registration previously issued. The bill also specifies that if any registration expires or is surrendered while administrative charges are pending, the proceeding shall continue.

Section 4 amends s. 560.118, F.S., removing reference to costs and per diem expenses for examinations by the department.

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

Sections 6 – 9 relate to payment instrument sellers³ and funds transmitters⁴ (Part II of chapter 560)

² The term "money transmitter" includes payment instrument sellers, foreign currency exchangers, check cashers and funds transmitters. s. 560.103(10), F.S.

³ The term "payment instrument sellers" means a person who sells a check, draft, warrant, money order, travelers check or other instrument or payment of money. s. 560.103(14) and (15).

⁴ The term "funds transmitter" means a person who engages in the receipt of currency or payment instruments for the purpose of transmission by any means, including transmissions within this country or to or from locations outside this country, by wire, facsimile, electronic transfer, courier or otherwise. s. 506.103(9), F.S.

Section 6 amends s. 560.205, F.S., consolidating examination fees with application fees and establishing a \$50 fee for each vendor branch office.

Section 7 amends s. 560.206, F.S., increasing from one year to two years the duration of an applicant's initial licensing period.

Section 8 amends s. 560.207, F.S., establishing fees for late renewal of licenses and requiring a new application be filed when a licensee is more than 60 days late with a license renewal. A \$50 fee for each branch office or a \$20,000 fee to cover all branches and authorized vendors that are currently registered in the state at the time of renewal shall accompany each biennial renewal. The renewal application deadline is extended from March 31 to April 30.

Section 9 amends s. 560.208, F.S.. The section requires each registrant to identify each branch office or authorized vendor to the department within 60 days after the date of designation by the registrant. The registrant must also file a \$50 fee for each authorized vendor location and a financial statement demonstrating compliance with s. 560.209 (1), F.S., or a quarterly report filed in compliance with s. 560.118(2), F.S. The financial statement must be dated within 90 days after the date of designation of the authorized vendor or location. This section will not apply to offices or vendors designated by the registrant prior to the effective date of the bill. The registrant must notify the department of a branch closure or vendor losing authorization within 10 days of either occurrence.

Sections 10 and 11 relate to check cashers⁵ and foreign currency exchangers⁶ (Part III of chapter 560).

Section 10 amends s. 560.307, F.S., consolidating examination fees with application fees, requiring a \$50 fee for each branch location, and requiring each registrant to identify each branch office or authorized vendor to the department within 60 days after the date of designation by the registrant. This section will not apply to offices or vendors designated by the registrant prior to the effective date of this provision. The department may prescribe by rule, forms that registrants use to notify the department of each branch location or authorized vendor, and the registrant must notify the department of a branch closure or vendor losing authorization within 10 days of either occurrence.

Section 11 amends s. 560.308, F.S., establishing a late fee that the registrant must file with the department within 60 days after the expiration of an existing registration in order to reinstate registration. If a renewal application is not filed within 60 days after expiration, a new application is required. A \$50 fee for each branch office or a \$20,000 fee to cover all branches and authorized vendors that are currently registered in the state at the time of renewal shall accompany each biennial renewal.

Section 12 applies to Deferred Presentment

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

1. Short Title (s. 560.401) The bill designates new part IV as the "Deferred Presentment Act."

⁵ The term "check cashier" is defined as a person who for compensation, sells currency in exchange for payment instruments received. s. 560.103(3), F.S.

⁶ The term "foreign currency exchanger" is defined as a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. s. 560.103(8), F.S.

2. Definitions.(s. 560.402) This section creates definitions for the following terms: affiliate, business day, days, drawer, and fee.

Key definitions include:

- a. "Deferred presentment transaction" which means "providing currency or a payment instrument in exchange for a person's check and agreeing to hold that person's check for a period of time prior to presentment, deposit or redemption."
 - b. "Deferred presentment provider" is the person who is registered under part II or part III of the Code, engages in a deferred presentment transaction, and has filed a declaration of intent with the department.
 - c. "Drawer" means any person who writes a person check and upon whose account the check is drawn.
 - d. "Rollover" means the termination of an existing deferred presentment agreement solely by the payment of any additional fees and the continued holding of the check or the substitution of a new check drawn by the drawer pursuant to a new deferred presentment agreement.
 - e. "Termination of an existing deferred presentment agreement" occurs when the drawer redeems the check that is the basis for the agreement by payment in full in cash or cash equivalent to the deferred presentment provider or the check is presented and the registrant has evidence that the presented check has cleared the bank.
 - f. "Extension of an existing deferred presentment agreement" occurs when the drawer pays additional fees to the provider to continue to hold the check.
3. Requirement of registration; declaration of intent (s. 560.403) This section establishes the requirements for registration of a deferred presentment provider, which includes a requirement that a person also be registered under part II or part III of the chapter, which currently regulates payment instrument sellers, funds transmitters, check cashers and foreign currency exchangers. Such persons must have on file with the department a declaration of intent to engage in deferred presentment transactions. The declaration of intent must be under oath, in a form as prescribed by the department, and no person who engages in deferred presentment is exempt from this registration.

Every deferred presentment transaction agreement must be written and signed by both the provider and the drawer and executed on the same day that the currency is provided.

Every transaction agreement must contain:

- The name, address, and telephone number of the provider, and the name and title of the person who signs the agreement on behalf of the provider;
- The date the transaction was made;
- The amount of the drawer's check;
- The length of the deferral period (this term is not defined in the Act.);

- The date the deferred presentment transaction is due (This requirement is unclear, as the *transaction* is the exchange of a check for currency);
- The address and telephone number of the department; and
- A clear description of the drawer's payment obligations under the transaction.

No provider shall require any person to provide additional security for the transaction, or any extension, or require a person to provide any additional guaranty.

A transaction agreement may not contain:

- A hold harmless clause;
 - A confession of judgment clause;
 - Any assignment of wages or other compensation for services;
 - Any statement that the drawer agrees not to assert any claim or defense arising out of the agreement; and,
 - A waiver of any provision of this part.
4. Rules. (s. 560.404) This section identifies certain acts and practices prohibited to a deferred presentment provider and affiliates, which include: 1) charging a service fee in excess of 10 percent of the amount financed by the drawer, exclusive of fee charged in accordance with existing s. 560.309(4), F.S; 2) accepting or holding an undated check; 3) altering or deleting the date on the check; 4) collecting a service fee before the drawer's check is presented, deposited, or redeemed; 5) renewing or extending any deferred presentment transaction; 6) holding more than two outstanding checks from any one drawer at any one time; 7) holding more than one outstanding checks from any one drawer, and certain other practices. Other rules include:
- a. Upon receipt of the drawer's check, a deferred present provider must immediately provide the drawer with the full amount of the check, less the fees permitted under this section;
 - b. A provider may only charge the drawer a check cashing fee or a verification fee pursuant to part III;
 - c. The bill specifies the types of currency that the deferred presentment provider may provide to the drawer of the check (which differs, depending on whether the provider is registered under part II or part III of the chapter). It further requires the deferred presentment provider to allow the drawer to cash any non-negotiable instrument issued by the provider with the provider without incurring any fees or costs, and further prohibits a provider from requiring the drawer to accept a payment instrument in lieu of currency;
 - d. The bill prohibits a provider from redeeming, extending, or otherwise consolidating a transaction with the proceeds of another transaction made by the same provider. The bill prohibits the term for the deferment to be in excess of 31 days or less than 7

days. A drawer may enter into a separate agreement with the same provider or affiliate two business days after the termination of the prior agreement;

- e. The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of fees as allowed by the bill;
 - f. Providers are required to post a disclosure statement that provides, in summary, that state law prohibits deferred presentment providers and affiliated providers from holding, at any one time, more than one outstanding check written by the drawer and that state law prohibits providers from holding a check written by the drawer which exceeds \$500, exclusive of the service fee.
 - g. If the drawer cannot redeem the check at the end of the deferment period, or the drawer represents to the provider that the account on which the check is written has insufficient funds to cover the amount of the check, the provider is required to defer presentment of the check for a period of 60 days from the date of the deferred presentment agreement, at no extra cost to the drawer.
5. Deposit and redemption (s.560.404). This section prohibits a deferred presentment provider or affiliate from presenting or depositing a drawer's check before the end of the deferral period, and requires the check to be endorsed with the actual name under which the deferred presentment provider is doing business. In addition, this section permits a drawer to redeem his or her check at any time before the end of the deferral period.
 6. Worthless checks (s. 560.406). If a check is returned to a provider from a payor financial institution due to lack of funds, a closed account, or a stop-payment order, the provider is allowed to seek collection on the check pursuant to s. 68.065, F.S., except that the provider is not entitled to the treble damages provided in that section. The bill provides that a person who issues a check under a deferred presentment agreement is not subject to criminal penalty. In its collection practices, providers are required to adhere to state and federal acts relating to deceptive and unfair trade practices and debt collection.
 7. Books and records. (s. 560.407) Deferred presentment providers would be required to maintain all books and records as prescribed by department rules, and to retain the records for at least 3 years. A registrant may keep all records at one central location in the state. The registrant must notify the state of the locale of the records, which must be made available to the department within seven days of a written request for production. This section acknowledges that an "original" document may include electronic data.
 8. Legislative intent; report. This section provides legislative intent language and requires the Comptroller to submit a report to the Speaker of the House and the Senate President on or before January 1, 2003 and January 1, 2004, that contains findings and conclusions concerning the effectiveness of this act in meeting its regulatory goals and/or legislative recommendations. The Comptroller is directed to consult with the Attorney General prior to filing the report for the purpose of including recommendations or concerns of the Attorney General regarding this matter.

Section 13 appropriates \$150,000 for fiscal year 2001-2002 from the Regulatory Trust Fund of the Department of Banking and Finance to the department to fund 3 positions to administer the provisions of the act created by this bill. This section is effective July 1, 1999.

Section 14 provides an effective date of October 1, 2001, except as otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 01-02	FY 02-03	FY 03-04
Money Transmitters	\$254,525	\$254,525	\$254,525
Deferred Presentment	\$284,000	\$142,000	\$142,000

2. Expenditures:

	FY 01-02	FY 02-03	FY 03-04
Regulatory Trust Fund	\$378,397	\$378,397	\$378,397
TOTAL	\$160,128	\$ 18,128	\$ 18,128

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill caps all service fees on provider agreements to not exceed 10 percent of the amount financed to the drawer, and prohibits rollovers of deferred presentment agreements, which may have the effect of decreasing the profit margin of those providing these services currently. Providers are required to pay a \$50 fee for every authorized vendor or location in the state, up to an aggregate amount of \$20,000. In addition, the bill provides for a regulatory framework and penalties for violations of the act. For the next three fiscal years the cost to the private sector will be in the form of increased fees to register money transmitter locations and/or as a deferred presentment provider as follows:

Money Transmitters	254,525	254,525	254,525
Deferred Presentment	284,000	142,000	142,000

D. FISCAL COMMENTS:

Persons currently providing check-cashing services to the public must be licensed by the department under part III of Chapter 560, F.S. (check cashers). This bill would require licensees under parts II or III of Chapter 560, F.S., who intend to provide this service after the effective date to file a declaration of intent with the department.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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

The bill does not affect the amount of state tax shared with a city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The bill expands the department's rulemaking authority to establish forms and procedures for data submitted electronically registrants.

C. OTHER COMMENTS:

Section 2 of the deferred presentment bill establishes a third degree felony sanction in the event unlicensed persons, who have no exemption from the chapter, violate sections of part IV of Chapter 560, F.S., and establishes the same penalty for licensed entities who willfully violate the same sections. The bill places this provision in the General Provisions of the Money Transmitter Code, but may be better suited for placement in part IV of the Code, after references to "money transmitters" are removed, since the sanctions are specifically tailored to address deferred presentment providers, and not money transmitters as an industry.

Under section 560.403, every written agreement must contain certain language, including "The date the deferred presentment transaction is due." This requirement is unclear, as the *transaction* is the exchange of a check for currency. Perhaps what the contract may need to express is *the last day of the deferral period*.

Under subsection (3) of section 560.404, this part reads: "The deferred presentment agreement and the drawer's check shall bear the same date, and the number of days shall be calculated from this date." It is unclear what the "number of days" alludes to, but in context, it may be referring to the duration of the deferral period.

The bill appropriates \$150,000 for fiscal year 2001-2002 from the Regulatory Trust Fund to the department to fund 3 positions to administer the provisions of the act created by this bill. According to the department it does not need the \$150,000 appropriation to fund 3 FTEs to administer the act, but will rely upon the fee structure herein to pay for the regulation. To that end, the fiscal impact of the bill may be negligible.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 28, 2001, the Committee on Banking passed favorably one strike-all amendment offered by representatives Cantens, Barriero, and Brummer. The amendment, traveling with the bill, retains the substance of HB 213 as drafted, removes the appropriation from the Department of Banking and Finance's regulatory Trust Fund, and adds the following items:

- A 60 day grace period if the customer is unable to pay, contingent upon the customer initiating and following through with consumer credit counseling.
- The provider pays one-half of the deferment fee to a credit counseling agency if the customer engages in a consumer credit counseling program.
- A department-maintained, Internet database for providers to input customer data in order to track transactions and verify compliance with the Act.

VII. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz