

By Representative Barreiro

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 an appropriation; providing
22 effective dates.

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

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

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

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

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

21 560.114 Disciplinary actions.--

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

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

1 (x) Engaging or advertising engagement in the business
2 of a money transmitter without a registration, unless the
3 person is exempted from the registration requirements of the
4 code.

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

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

11 560.118 Examinations, reports, and internal audits;
12 penalty.--

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

1 make a joint or concurrent examination with any state or
2 federal regulatory agency. The department may furnish a copy
3 of all examinations made of such money transmitter or
4 authorized vendor to the money transmitter and any appropriate
5 regulatory agency provided that such agency agrees to abide by
6 the confidentiality provisions as set forth in chapter 119.

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

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

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

1 ~~transmitter or authorized vendor is operating in an unsafe or~~
2 ~~unsound or unlawful manner.~~

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

20 Section 5. Section 560.119, Florida Statutes, is
21 amended to read:

22 560.119 Deposit of fees and assessments.--The
23 application fees, registration renewal fees, ~~examination fees,~~
24 late payment penalties, civil penalties, administrative fines,
25 and other fees or penalties provided for in the code shall, in
26 all cases, be paid directly to the department, which shall
27 deposit such proceeds into the ~~Financial Institutions~~
28 Regulatory Trust Fund. Each year, the Legislature shall
29 appropriate from the trust fund to the department sufficient
30 moneys to pay the department's costs for administration of the
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1 code. The ~~Financial Institutions~~ Regulatory Trust Fund is
2 subject to the service charge imposed pursuant to chapter 215.
3 Section 6. Subsection (2) of section 560.205, Florida
4 Statutes, is amended to read:
5 560.205 Qualifications of applicant for registration;
6 contents.--
7 (2) Each application for registration must be
8 submitted under oath to the department on such forms as the
9 department prescribes by rule and must be accompanied by a
10 nonrefundable application investigation fee. Such fee may not
11 exceed \$500 for each payment instrument seller or funds
12 transmitter and \$50 for each authorized vendor or location
13 operating within this state ~~and may be waived by the~~
14 ~~department for just cause~~. The application forms shall set
15 forth such information as the department reasonably requires,
16 including, but not limited to:
17 (a) The name and address of the applicant, including
18 any fictitious or trade names used by the applicant in the
19 conduct of its business.
20 (b) The history of the applicant's material
21 litigation, criminal convictions, pleas of nolo contendere,
22 and cases of adjudication withheld.
23 (c) A description of the activities conducted by the
24 applicant, the applicant's history of operations, and the
25 business activities in which the applicant seeks to engage in
26 this state.
27 (d) A list identifying the applicant's proposed
28 authorized vendors in this state, including the location or
29 locations in this state at which the applicant and its
30 authorized vendors propose to conduct registered activities.
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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 7. 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 8. 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 9. 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 opens a
10 location within this state or authorizes an authorized vendor
11 to operate on the registrant's behalf within this state, the
12 registrant shall notify the department on a form prescribed by
13 the department by rule. The notification shall be accompanied
14 by a nonrefundable \$50 fee for each authorized vendor or
15 location. Each notification shall also be accompanied by a
16 financial statement demonstrating compliance with s.
17 560.209(1), unless compliance has been demonstrated by a
18 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 after 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 10 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 10. 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 within this state. Such investigation fee shall satisfy the
8 fee requirement for the first year of registration or the
9 remaining part thereof.

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

19 (3) Within 10 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 11. 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 (2) The department shall renew registration upon
2 receipt of a completed renewal form and payment of a
3 nonrefundable renewal fee, ~~as provided by rule~~, not to exceed
4 \$500. The completed renewal form and payment of the renewal
5 fee shall occur on or after June 1 of the year in which the
6 existing registration expires.

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

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

25 Section 12. Part IV of chapter 560, Florida Statutes,
26 consisting of sections 560.401, 560.402, 560.403, 560.404,
27 560.405, 560.406, 560.407, and 560.408, Florida Statutes, is
28 created to read:

29 PART IV

30 DEFERRED PRESENTMENT

31

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. A deferment period may not
19 exceed 31 days.

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

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

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

30 (8) "Rollover" means the termination or extension of
31 an existing deferred presentment agreement by the payment of

1 any additional fee and the continued holding of the check, or
2 the substitution of a new check drawn by the drawer pursuant
3 to a new deferred presentment agreement.

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

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

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

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

22 (1) No person shall engage in a deferred presentment
23 transaction unless the person is registered under the
24 provisions of part II or part III and has on file with the
25 department a declaration of intent to engage in deferred
26 presentment transactions. The declaration of intent shall be
27 under oath and on such form as the department prescribes by
28 rule. The declaration of intent shall be filed together with
29 a 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 license of a registrant under this part who
19 fails to timely renew his or her intent to engage in the
20 business of deferred presentment transactions or to act as a
21 deferred presentment provider on or before the expiration date
22 of the registration period automatically expires. A renewal
23 declaration of intent and fee, and a late fee of \$500, must be
24 filed within 60 calendar days after the expiration of an
25 existing registration in order for the declaration of intent
26 to be reinstated. If the registrant has not filed a renewal
27 declaration of intent within 60 days after the expiration date
28 of an existing registration, a new declaration must be filed
29 with the department.

30 (5) No person shall be exempt from registration and
31 declaration if such person engages in deferred presentment

- 1 transactions, regardless of whether such person is currently
2 exempt from registration under any provision of this code.
- 3 (6) Every deferred presentment transaction shall be
4 documented in a written agreement signed by both the deferred
5 presentment provider and the drawer.
- 6 (7) 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 (8) 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 (9) Every deferred presentment provider shall furnish
25 to the drawer a copy of the deferred presentment transaction
26 agreement.
- 27 (10) No deferred presentment provider shall require a
28 person to provide any additional security for the deferred
29 presentment transaction or any extension or require a person
30 to provide any additional guaranty from another person.
31

1 (11) A deferred presentment provider shall not include
2 any of the following provisions in any written agreement:

3 (a) A hold harmless clause;

4 (b) A confession of judgment clause;

5 (c) Any assignment of or order for payment of wages or
6 other compensation for services;

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

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

10 560.404 Rules.--A person may engage in deferred
11 presentment transactions, subject to the following:

12 (1) No deferred presentment provider or affiliate of
13 such provider shall charge fees in excess of 10 percent of the
14 currency or payment instrument provided. However, a
15 verification fee may be charged in accordance with s.
16 560.309(4) and the rules adopted pursuant to the code. The
17 10-percent fee may not be applied to the verification fee.

18 (2) Each deferred presentment provider shall
19 immediately provide the drawer with the full amount of any
20 check to be held, less only the fees permitted under this
21 section.

22 (3) The deferred presentment agreement and drawer's
23 check shall bear the same date, and the number of days shall
24 be calculated from this date. No deferred presentment provider
25 or person may alter or delete the date on any written
26 agreement or check held by the deferred presentment provider.

27 (4) For each deferred presentment transaction, the
28 deferred presentment provider must comply with the disclosure
29 requirements of 12 C.F.R., Part 226, the federal
30 Truth-in-Lending Act, and Regulation Z of the Board of
31 Governors of the Federal Reserve Board. A copy of the

1 disclosure must be provided to the drawer at the time the
2 deferred presentment transaction is initiated.

3 (5) No deferred presentment provider or affiliate of
4 such provider may accept or hold an undated check or a check
5 dated on a date other than the date on which the deferred
6 presentment provider agreed to hold the check and signed the
7 deferred presentment transaction agreement.

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

10 (7) Every deferred presentment provider shall hold the
11 drawer's check for the agreed number of days, unless the
12 drawer chooses to redeem the check before the agreed
13 presentment date.

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

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

23 (10) No deferred presentment provider may require the
24 drawer to accept a payment instrument of such provider in lieu
25 of currency.

26 (11) No deferred presentment provider or affiliate of
27 such provider may engage in the rollover of any deferred
28 presentment agreement. Two business days after the
29 termination of an existing deferred presentment agreement, the
30 drawer may enter into a separate deferred presentment
31 agreement with the same deferred presentment provider or its

1 affiliate. A deferred presentment provider shall not redeem,
2 extend, or otherwise consolidate a deferred presentment
3 agreement with the proceeds of another deferred presentment
4 transaction made by the same or an affiliated deferred
5 presentment provider.

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

9 (13) No deferred presentment provider or affiliate may
10 have outstanding more than one check from any one drawer at
11 any one time, nor may the face value of any outstanding check
12 from any one drawer payable to any deferred presentment
13 provider or its affiliate exceed \$500, exclusive of the fees
14 allowed by this part. A deferred presentment provider shall
15 maintain a common database for the purpose of verifying
16 whether that deferred presentment provider or an affiliate has
17 outstanding more than one check from any one drawer at any
18 time. A deferred presentment provider shall not use any device
19 or agreement, including, but not limited to, agreements with
20 or referrals to other deferred presentment providers, to
21 obtain greater fees.

22 (14) A deferred presentment provider shall provide the
23 following notice in a prominent place on each deferred
24 presentment agreement in at least 16-point type in
25 substantially the following form:

26
27 NOTICE

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

1 ROLL OVER YOUR DEFERRED PRESENTMENT TRANSACTION
2 WITH THE REGISTRANT. THIS MEANS THAT YOU CANNOT BE ASKED OR
3 REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE
4 DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.
5 STATE LAW PROHIBITS THIS REGISTRANT FROM ENTERING INTO ANOTHER
6 DEFERRED PRESENTMENT TRANSACTION WITH YOU UNTIL AT LEAST
7 48 HOURS AFTER THE CLOSING OF THIS TRANSACTION.
8 STATE LAW PROHIBITS YOU FROM HAVING MORE THAN 1 DEFERRED
9 PRESENTMENT AGREEMENT WITH THIS DEFERRED PRESENTMENT PROVIDER
10 OR AN AFFILIATE TOTALING MORE THAN \$500,
11 EXCLUSIVE OF FEES, OUTSTANDING AT ANY TIME.
12 FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL
13 HARDSHIP FOR YOU AND YOUR FAMILY.
14 (15) A deferred presentment provider shall charge only
15 those fees specifically authorized in this section.
16 (16) If, at the end of the deferment period, the
17 drawer cannot redeem or pay in full in cash the amount due and
18 owing the deferred presentment provider, or if there are
19 insufficient available funds in the drawer's account, the
20 deferred presentment provider shall not deposit or present for
21 payment a check being held for deferred presentment before the
22 expiration of 60 days from the date of the deferred
23 presentment agreement. The deferred presentment provider may
24 rely upon the representation of the drawer as to the
25 sufficiency of funds in the drawer's account. No additional
26 fees or penalties shall be imposed on the drawer by virtue of
27 any misrepresentation made by the drawer as to the sufficiency
28 of funds in the drawer's account. In no event shall any
29 additional fees be added to the amounts due and owing to the
30 deferred presentment provider.
31 560.405 Deposit; redemption.--

1 (1) The deferred presentment provider or affiliate of
2 such provider shall not present the drawer's check prior to
3 the agreed-upon date of presentment, as reflected in the
4 deferred presentment transaction agreement.

5 (2) Before a deferred presentment provider presents
6 the drawer's check, the check shall be endorsed with the
7 actual name under which the deferred presentment provider is
8 doing business.

9 (3) Notwithstanding the provisions of subsection (1),
10 in lieu of presentment, a deferred presentment provider may
11 allow the check to be redeemed at any time upon payment to the
12 deferred presentment provider in the amount of the face amount
13 of the drawer's check. However, payment may not be made in the
14 form of a personal check. Upon redemption, the deferred
15 presentment provider shall return the drawer's check that was
16 being held and provide a signed, dated receipt showing that
17 the drawer's check has been redeemed.

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

22 560.406 Worthless checks.--If a check is returned to a
23 deferred presentment provider from a payor financial
24 institution due to lack of funds, a closed account, or a
25 stop-payment order, the deferred presentment provider may seek
26 collection pursuant to s. 68.065, except a deferred
27 presentment provider shall not be entitled to collect treble
28 damages pursuant s. 68.065. The notice sent by a deferred
29 deposit provider pursuant to s. 68.065 shall not include any
30 references to treble damages and must clearly state that the
31 deferred presentment provider is not entitled to recover such

1 damages. Except as otherwise provided in this part, an
2 individual who issues a personal check to a deferred
3 presentment provider under a deferred presentment agreement is
4 not subject to criminal penalty. If a check is returned to a
5 deferred presentment provider from a payor financial
6 institution due to insufficient funds, a closed account, or a
7 stop-payment order, the deferred presentment provider may
8 pursue all legally available civil remedies to collect the
9 check, including, but not limited to, the imposition of all
10 charges imposed on the deferred presentment provider by any
11 financial institution. In its collection practices, a deferred
12 presentment provider shall comply with the prohibitions
13 against harassment or abuse, false or misleading
14 representations, and unfair practices, which are contained in
15 ss. 806, 807, and 808 of the Fair Debt Collections Practices
16 Act, 15 U.S.C. ss. 1692d, 1692e, 1692f. A violation of this
17 act is a deceptive and unfair trade practice and constitutes a
18 violation of the Deceptive and Unfair Trade Practices Act,
19 part II, of chapter 501. In addition, a deferred presentment
20 provider shall comply with the applicable provisions of part
21 VI of chapter 559, the Consumer Collection Practices Act,
22 including, but not limited to, the provisions of s. 559.77.

23 560.407 Records.--

24 (1) Each registrant under this part must maintain all
25 books, accounts, records, and documents necessary to determine
26 the registrant's compliance with the provisions of the code.
27 Such books, accounts, records, and documents shall be retained
28 for a period of at least 3 years unless a longer period is
29 expressly required by the department, the laws of this state,
30 or any federal law.

31

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

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

10 (4) The original of any record of a registrant
11 includes the data or other information comprising a record
12 stored or transmitted in or by means of any electronic,
13 computerized, mechanized, or other information storage or
14 retrieval or transmission system or device that can upon
15 request generate, regenerate, or transmit the precise data or
16 other information comprising the record. An original also
17 includes the visible data or other information so generated,
18 regenerated, or transmitted if it is legible or can be made
19 legible by enlargement or other process.

20 560.408 Legislative intent; report.--

21 (1) It is the intent of the Legislature to provide for
22 the regulation of deferred presentment transactions. It is
23 further the intent of the Legislature to prevent fraud, abuse,
24 and other unlawful activity associated with deferred
25 presentment transactions in part by:

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

28 (b) Preventing rollovers.

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

31

1 (2) The Comptroller shall submit a report to the
2 President of the Senate and the Speaker of the House of
3 Representatives on January 1, 2003, and January 1, 2004,
4 containing findings and conclusions concerning the
5 effectiveness of this act in preventing fraud, abuse, and
6 other unlawful activity associated with deferred presentment
7 transactions. The report may contain legislative
8 recommendations addressing the prevention of fraud, abuse, and
9 other unlawful activity associated with deferred presentment
10 transactions. Prior to filing the report, the Comptroller
11 shall consult with the Attorney General for the purpose of
12 including any recommendations or concerns expressed by the
13 Attorney General.

14 Section 13. Effective July 1, 2001, the sum of
15 \$150,000 is appropriated from the Regulatory Trust Fund of the
16 Department of Banking and Finance to the department for fiscal
17 year 2001-2002 to fund three positions for the purpose of
18 administering the provisions of the Deferred Presentment Act.

19 Section 14. Except as otherwise provided in this act,
20 this act shall take effect October 1, 2001.

21
22 *****

23 HOUSE SUMMARY

24 Amends various provisions of the Money Transmitter's Code
25 to revise registration, fee, disciplinary action, and
26 penalty provisions. Creates pt. IV of ch. 560, F.S., as
the "Deferred Presentment Act." Regulates transactions
27 whereby a check is cashed by a person licensed to cash
payment instruments or exchange foreign currency and
28 provides that, by mutual agreement between such person
and the maker of the check, its presentment or
negotiation is deferred for a limited period of time.
29 Provides that a deferred presentment transaction is not a
loan. Provides requirements, limitations, and
30 proscriptions for registering as a deferred presentment
provider and for engaging in deferred presentment
31 transactions. See bill for details.