

By the Council for Competitive Commerce and
Representatives Barreiro and Kosmas

1 A bill to be entitled
2 An act relating to the Money Transmitters'
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; amending s. 560.118, F.S.;
9 eliminating the authority to assess examination
10 fees; amending s. 560.119, F.S.; revising the
11 deposit of fees and assessments; amending s.
12 560.204, F.S.; clarifying exemption from
13 registration fees under part III of ch. 560,
14 F.S.; amending s. 560.205, F.S.; adding a fee
15 for authorized vendor or branch locations;
16 amending s. 560.206, F.S.; amending the
17 registration period; amending s. 560.207, F.S.;
18 conforming and clarifying the fee for late
19 renewals; amending the renewal application fee;
20 amending s. 560.208, F.S.; requiring
21 notification of vendor or branch locations;
22 requiring a nonrefundable fee and financial
23 statement; amending s. 560.307, F.S.; applying
24 the application fee to check cashers and
25 foreign 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 effective date.

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

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

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

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

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

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

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

9 560.111 Prohibited acts and practices.--

10 (4) Any person who willfully violates any provision of
11 s. 560.403, s. 560.404, s. 560.405, or s. 560.407 commits a
12 felony of the third degree, punishable as provided in s.
13 775.082, s. 775.083, or s. 775.084.

14 Section 3. Paragraphs (w) and (x) are added to
15 subsection (1) of section 560.114, Florida Statutes, to read:

16 560.114 Disciplinary actions.--

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

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

27 (x) Engaging or advertising engagement in the business
28 of a money transmitter without a registration, unless the
29 person is exempted from the registration requirements of the
30 code.

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

3 560.118 Examinations, reports, and internal audits;
4 penalty.--

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

30 (b) Persons subject to this chapter who are examined
31 shall make available to the department or its examiners the

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

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

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

26 ~~(e) The department may, by rule, set a maximum per-day~~
27 ~~examination cost for a regular examination. Such per-day cost~~
28 ~~may be less than that required to fully compensate the~~
29 ~~department for costs associated with the examination. For the~~
30 ~~purposes of this section, "costs" means the salary and travel~~
31 ~~expenses directly attributable to the field staff examining~~

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

12 Section 5. Section 560.119, Florida Statutes, is
13 amended to read:

14 560.119 Deposit of fees and assessments.--The
15 application fees, registration renewal fees, ~~examination fees,~~
16 late payment penalties, civil penalties, administrative fines,
17 and other fees or penalties provided for in the code shall, in
18 all cases, be paid directly to the department, which shall
19 deposit such proceeds into the ~~Financial Institutions'~~
20 Regulatory Trust Fund. Each year, the Legislature shall
21 appropriate from the trust fund to the department sufficient
22 moneys to pay the department's costs for administration of the
23 code. The ~~Financial Institutions'~~Regulatory Trust Fund is
24 subject to the service charge imposed pursuant to chapter 215.

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

27 560.204 Requirement of registration.--

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

3 Section 7. 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 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 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 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 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 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 (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 must be filed with the department pursuant to s. 560.307.

25 Section 13. 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) "Days" means calendar days.

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

15 (4) "Deferred presentment provider" means a person who
16 engages in a deferred presentment transaction and is
17 registered under part II or part III of the code and has filed
18 a declaration of intent with the department.

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

23 (6) "Drawer" means any person who writes a personal
24 check and upon whose account the check is drawn.

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

30 (8) "Fee" means the fee authorized for the deferral of
31 the presentation of a check pursuant to this part.

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

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

15 560.403 Requirements of registration; declaration of
16 intent.--

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

30 (2) A registrant under this part shall renew his or
31 her intent to engage in the business of deferred presentment

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

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

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

26 (5) No person, other than a financial institution as
27 defined in s. 655.005, shall be exempt from registration and
28 declaration if such person engages in deferred presentment
29 transactions, regardless of whether such person is currently
30 exempt from registration under any provision of this code.

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1 560.404 Requirements for deferred presentment
2 transactions.--
3 (1) Every deferred presentment transaction shall be
4 documented in a written agreement signed by both the deferred
5 presentment provider and the drawer.
6 (2) The deferred presentment transaction agreement
7 shall be executed on the day the deferred presentment provider
8 furnishes currency or a payment instrument to the drawer.
9 (3) Each written agreement shall contain the following
10 information, in addition to any information the department
11 requires by rule:
12 (a) The name or trade name, address, and telephone
13 number of the deferred presentment provider and the name and
14 title of the person who signs the agreement on behalf of the
15 deferred presentment provider.
16 (b) The date the deferred presentment transaction was
17 made.
18 (c) The amount of the drawer's check.
19 (d) The length of deferral period.
20 (e) The last day of the deferment period.
21 (f) The address and telephone number of the
22 department.
23 (g) A clear description of the drawer's payment
24 obligations under the deferred presentment transaction.
25 (h) The transaction number assigned by the
26 department's database.
27 (4) Every deferred presentment provider shall furnish
28 to the drawer a copy of the deferred presentment transaction
29 agreement.
30
31

- 1 (5) The face amount of a check taken for deferred
2 presentment may not exceed \$500 exclusive of the fees allowed
3 by this part.
- 4 (6) No deferred presentment provider or its affiliate
5 shall charge fees in excess of 10 percent of the currency or
6 payment instrument provided. However, a verification fee may
7 be charged in accordance with s. 560.309(4) and the rules
8 adopted pursuant to the code. The 10-percent fee may not be
9 applied to the verification fee. A deferred presentment
10 provider may charge only those fees specifically authorized in
11 this section.
- 12 (7) The fees authorized by this section may not be
13 collected before the drawer's check is presented or redeemed.
- 14 (8) No deferred presentment agreement shall be for a
15 term in excess of 31 days or less than 7 days.
- 16 (9) No deferred presentment provider shall require a
17 person to provide any additional security for the deferred
18 presentment transaction or any extension or require a person
19 to provide any additional guaranty from another person.
- 20 (10) A deferred presentment provider shall not include
21 any of the following provisions in any written agreement:
- 22 (a) A hold harmless clause;
23 (b) A confession of judgment clause;
24 (c) Any assignment of or order for payment of wages or
25 other compensation for services;
- 26 (d) A provision in which the drawer agrees not to
27 assert any claim or defense arising out of the agreement;
- 28 (e) A provision in which the customer authorizes the
29 deferred presentment provider to debit the customer's deposit
30 account electronically; or
- 31 (f) 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.

1
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.

28
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
31

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 and the counties served by the agencies and indicate the
16 agencies that provide telephone counseling and those that
17 provide Internet counseling. The department shall update the
18 list at 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.

14
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.

31

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.

29
30
31