

By Senator Campbell

33-277A-01

See HB 31

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:

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

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

31

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 that 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 branch
13 location and may be waived by the department for just cause.
14 The application forms shall set forth such information as the
15 department reasonably requires, including, but not limited to:
16 (a) The name and address of the applicant, including
17 any fictitious or trade names used by the applicant in the
18 conduct of its business.
19 (b) The history of the applicant's material
20 litigation, criminal convictions, pleas of nolo contendere,
21 and cases of adjudication withheld.
22 (c) A description of the activities conducted by the
23 applicant, the applicant's history of operations, and the
24 business activities in which the applicant seeks to engage in
25 this state.
26 (d) A list identifying the applicant's proposed
27 authorized vendors in this state, including the location or
28 locations in this state at which the applicant and its
29 authorized vendors propose to conduct registered activities.
30 (e) A sample authorized vendor contract, if
31 applicable.

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

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

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

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

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

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

30 560.207 Renewal of registration; registration fee.--
31

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

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

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

29 Section 9. Section 560.208, Florida Statutes, is
30 amended to read:

31 560.208 Conduct of business.--

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

4 (2) Each registrant shall notify the department,
5 within 60 days after the date of designation by the
6 registrant, of each authorized vendor or branch location.
7 Such notification shall be accompanied by a nonrefundable \$50
8 fee for each authorized vendor or branch location. Each
9 notification shall also be accompanied by a financial
10 statement demonstrating compliance with s. 560.209(1), unless
11 compliance is demonstrated by the quarterly report filed in
12 compliance with s. 560.118(2). This section shall not apply
13 to any authorized vendor or branch location that has been
14 designated by the registrant before the effective date of this
15 provision.

16 Section 10. Section 560.307, Florida Statutes, is
17 amended to read:

18 560.307 Fees.--

19 (1) The application shall be filed together with a
20 nonrefundable ~~application investigation~~ fee that shall be
21 established by department rule; however, the ~~application~~
22 ~~investigation~~ fee may not exceed \$250 for each check casher or
23 foreign currency exchanger and \$50 for each authorized vendor
24 or branch location. ~~Such investigation fee shall satisfy the~~
25 ~~fee requirement for the first year of registration or the~~
26 ~~remaining part thereof.~~

27 (2) Each registrant shall notify the department,
28 within 60 days after the date of designation by the
29 registrant, of each authorized vendor or branch location. Such
30 notification shall be accompanied by a nonrefundable \$50 fee
31 for each authorized vendor or branch location. This section

1 shall not apply to any authorized vendor or branch location
2 that has been designated by the registrant before the
3 effective date of this provision.

4 Section 11. Section 560.308, Florida Statutes, is
5 amended to read:

6 560.308 Registration terms; renewal; renewal fees.--

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

11 (2) The department shall renew registration upon
12 receipt of a completed renewal form and payment of a
13 nonrefundable renewal fee, as provided by rule, not to exceed
14 \$500. The completed renewal form and payment of the renewal
15 fee shall occur on or after June 1 of the year in which the
16 existing registration expires.

17 (3) In addition to the renewal fee required by
18 subsection (2), each registrant must register and pay a \$50
19 registration fee for each location, including any authorized
20 vendors, operating within this state or, at the option of the
21 registrant, a total 2-year fee of ~~\$20,000~~\$5,000 may be paid
22 to register all such operating locations within this state.

23 (4) Registration that is not renewed on or before the
24 expiration date of the registration period automatically
25 expires. A renewal application and fee, and a late fee of \$250
26 ~~an investigation fee pursuant to s. 560.307~~, must be filed
27 within 60 calendar days after the expiration of an existing
28 registration in order for the registration to before
29 ~~registration may~~ be reinstated.

30 Section 12. Part IV of chapter 560, Florida Statutes,
31 consisting of sections 560.401, 560.402, 560.403, 560.404,

1 560.405, 560.406, 560.407, and 560.408, Florida Statutes, is
2 created to read:

3 PART IV

4 DEFERRED PRESENTMENT

5 560.401 Short title.--This part may be cited as the
6 "Deferred Presentment Act."

7 560.402 Definitions.--In addition to the definitions
8 provided in ss. 560.103, 560.202, and 560.302 and unless
9 otherwise clearly indicated by the context, for purposes of
10 this part:

11 (1) "Affiliate" means a person who directly or
12 indirectly through one or more intermediaries controls or is
13 controlled by, or is under common control with, a deferred
14 presentment provider.

15 (2) "Amount financed" means the total amount of credit
16 provided to the drawer by the deferred presentment provider.

17 (3) "Business day" means the hours during a particular
18 day during which a deferred presentment provider customarily
19 conducts business, not to exceed 15 consecutive hours during
20 that day.

21 (4) "Days" means calendar days.

22 (5) "Deferment period" means the number of days a
23 deferred presentment provider agrees to defer depositing or
24 presenting a payment instrument. A deferment period may not
25 exceed 31 days.

26 (6) "Deferred presentment provider" means a person who
27 engages in a deferred presentment transaction and is
28 registered under part II or part III of the code and has filed
29 a declaration of intent with the department.

30 (7) "Deferred presentment transaction" means providing
31 currency or a payment instrument in exchange for a person's

1 check and agreeing to hold that person's check for a period of
2 time prior to presentment, deposit, or redemption.

3 (8) "Drawer" means any person who writes a personal
4 check and upon whose account the check is drawn.

5 (9) "Rollover" means the termination of an existing
6 deferred presentment agreement solely by the payment of fees
7 then due the deferred presentment provider and the continued
8 holding of the check or the substitution of a new check drawn
9 by the drawer pursuant to a new deferred presentment
10 agreement.

11 (10) "Fee" means the fee authorized for the deferral
12 of the presentation of a check pursuant to this part.

13 (11) "Termination of an existing deferred presentment
14 agreement" occurs when the check that is the basis for the
15 agreement is presented for payment, is deposited, or is
16 redeemed by the drawer by payment in full in cash or a cash
17 equivalent to the deferred presentment provider.

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

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

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

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

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

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

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

4 (7) The deferred presentment transaction agreement
5 shall be executed on the day the deferred presentment provider
6 furnishes currency or a payment instrument to the drawer.

7 (8) Each written agreement shall contain:

8 (a) The name or trade name, address, and telephone
9 number of the deferred presentment provider and the name and
10 title of the person who signs the agreement on behalf of the
11 deferred presentment provider.

12 (b) The date the deferred presentment transaction was
13 made.

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

15 (d) The length of deferral period.

16 (e) The address and telephone number of the
17 department.

18 (f) A clear description of the drawer's payment
19 obligations under the deferred presentment transaction.

20 (9) Every deferred presentment provider shall furnish
21 to the drawer a copy of the deferred presentment transaction
22 agreement.

23 (10) No deferred presentment provider shall require a
24 person to provide any additional security for the deferred
25 presentment transaction or any extension or require a person
26 to provide any additional guaranty from another person.

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

29 (a) A hold harmless clause;

30 (b) A confession of judgment clause;

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1 (c) Any assignment of or order for payment of wages or
2 other compensation for services;

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

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

6 560.404 Rules.--A person may engage in deferred
7 presentment transactions, subject to the following:

8 (1) No deferred presentment provider shall charge fees
9 in excess of 10 percent of the amount financed. However, a
10 verification fee may be charged in accordance with s.
11 560.309(4) and the rules adopted pursuant to the code.

12 (2) Each deferred presentment provider shall
13 immediately provide the drawer with the full amount of any
14 check to be held, less only the fees permitted under this
15 section. However, no deferred presentment provider shall
16 provide a drawer with the face amount of the check to be held.

17 (3) The deferred presentment agreement and drawer's
18 check shall bear the same date, and the number of days shall
19 be calculated from this date. No deferred presentment provider
20 or person may alter or delete the date on any written
21 agreement or check held by the deferred presentment provider.

22 (4) For each deferred presentment transaction, the
23 deferred presentment provider must comply with the disclosure
24 requirements of 12 C.F.R., Part 226, the federal
25 Truth-in-Lending Act, and Regulation Z of the Board of
26 Governors of the Federal Reserve Board. A copy of the
27 disclosure must be provided to the drawer at the time the
28 deferred presentment transaction is initiated.

29 (5) No deferred presentment provider may accept or
30 hold an undated check or a check dated on a date other than
31 the date on which the deferred presentment provider agreed to

1 hold the check and signed the deferred presentment transaction
2 agreement.

3 (6) No deferred presentment agreement shall be for a
4 term in excess of 21 days or less than 14 days.

5 (7) Every deferred presentment provider shall hold the
6 drawer's check for the agreed number of days, unless the
7 drawer chooses to redeem the check before the agreed
8 presentment date.

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

11 (9) Proceeds in a deferred presentment transaction may
12 be made to the drawer in the form of the deferred presentment
13 provider's business check or money order if the deferred
14 presentment provider is registered under part II; however, no
15 additional fee may be charged by a deferred presentment
16 provider for issuing or cashing the deferred presentment
17 provider's check.

18 (10) No deferred presentment provider may engage in
19 the rollover of any deferred presentment agreement. Two
20 business days after the termination of an existing deferred
21 presentment agreement, the drawer may enter into a separate
22 deferred presentment agreement with the same deferred
23 presentment provider or its affiliate. A deferred presentment
24 provider shall not redeem, extend, or otherwise consolidate a
25 deferred presentment agreement with the proceeds of another
26 deferred presentment transaction made by the same or an
27 affiliated deferred presentment provider.

28 (11) The face amount of a check taken for deferred
29 presentment may not exceed \$500 exclusive of the fees allowed
30 by this part.

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1 PRESENTMENT AGREEMENT WITH THIS DEFERRED PRESENTMENT PROVIDER
2 OR AN AFFILIATE TOTALING MORE THAN \$500,
3 EXCLUSIVE OF FEES, OUTSTANDING AT ANY TIME.
4 FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL
5 HARDSHIP FOR YOU AND YOUR FAMILY.

6 (14) A deferred presentment provider shall charge only
7 those fees specifically authorized in this section.

8 (15) If, at the end of the deferment period, the
9 drawer cannot redeem or pay in full in cash the amount due and
10 owing the deferred presentment provider, or if there are
11 insufficient available funds in the drawer's account, the
12 deferred presentment provider shall not deposit or present for
13 payment a check being held for deferred presentment before the
14 expiration of 60 days from the date of the deferred
15 presentment agreement. The deferred presentment provider may
16 rely upon the representation of the drawer as to the
17 sufficiency of funds in the drawer's account. No additional
18 fees or penalties shall be imposed on the drawer by virtue of
19 any misrepresentation made by the drawer as to the sufficiency
20 of funds in the drawer's account. In no event shall any
21 additional fees be added to the amounts due and owing to the
22 deferred presentment provider.

23 560.405 Deposit; redemption.--

24 (1) The deferred presentment provider shall not
25 present the drawer's check prior to the agreed-upon date of
26 presentment, as reflected in the deferred presentment
27 transaction agreement.

28 (2) Before a deferred presentment provider presents
29 the drawer's check, the check shall be endorsed with the
30 actual name under which the deferred presentment provider is
31 doing business.

1 (3) Notwithstanding the provisions of subsection (1),
2 in lieu of presentment, a deferred presentment provider may
3 allow the check to be redeemed at any time upon payment to the
4 deferred presentment provider in the amount of the face amount
5 of the drawer's check. However, payment may not be made in the
6 form of a personal check. Upon redemption, the deferred
7 presentment provider shall return the drawer's check that was
8 being held and provide a signed, dated receipt showing that
9 the drawer's check has been redeemed.

10 (4) No drawer can be required to redeem his or her
11 check prior to the agreed-upon date, unless the drawer chooses
12 to redeem the check before the agreed-upon presentment date.

13 560.406 Worthless checks.--If a check is returned to a
14 deferred presentment provider from a payor financial
15 institution due to lack of funds, a closed account, or a
16 stop-payment order, the deferred presentment provider may seek
17 collection pursuant to s. 68.065, except a deferred
18 presentment provider shall not be entitled to collect treble
19 damages pursuant s. 68.065. The notice sent by a deferred
20 deposit provider pursuant to s. 68.065 shall not include any
21 references to treble damages and must clearly state that the
22 deferred presentment provider is not entitled to recover such
23 damages. Except as otherwise provided in this part, an
24 individual who issues a personal check to a deferred
25 presentment provider under a deferred presentment agreement is
26 not subject to criminal penalty. If a check is returned to a
27 deferred presentment provider from a payor financial
28 institution due to insufficient funds, a closed account, or a
29 stop-payment order, the deferred presentment provider may
30 pursue all legally available civil remedies to collect the
31 check, including, but not limited to, the imposition of all

1 charges imposed on the deferred presentment provider by any
2 financial institution. In its collection practices, a deferred
3 presentment provider shall comply with the prohibitions
4 against harassment or abuse, false or misleading
5 representations, and unfair practices, which are contained in
6 ss. 806, 807, and 808 of the Fair Debt Collections Practices
7 Act, 15 U.S.C. ss. 1692d, 1692e, 1692f. A violation of this
8 act is a deceptive and unfair trade practice and constitutes a
9 violation of the Deceptive and Unfair Trade Practices Act,
10 part II, of chapter 501. In addition, a deferred presentment
11 provider shall comply with the applicable provisions of part
12 VI of chapter 559, the Consumer Collection Practices Act,
13 including, but not limited to, the provisions of s. 559.77.

14 560.407 Records.--

15 (1) Each registrant under this part must maintain all
16 books, accounts, records, and documents necessary to determine
17 the registrant's compliance with the provisions of the code.
18 Such books, accounts, records, and documents shall be retained
19 for a period of at least 3 years unless a longer period is
20 expressly required by the department, the laws of this state,
21 or any federal law.

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

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

31

1 (4) The original of any record of a registrant
2 includes the data or other information comprising a record
3 stored or transmitted in or by means of any electronic,
4 computerized, mechanized, or other information storage or
5 retrieval or transmission system or device that can upon
6 request generate, regenerate, or transmit the precise data or
7 other information comprising the record. An original also
8 includes the visible data or other information so generated,
9 regenerated, or transmitted if it is legible or can be made
10 legible by enlargement or other process.

11 560.408 Legislative intent; report.--

12 (1) It is the intent of the Legislature to provide for
13 the regulation of deferred presentment transactions. It is
14 further the intent of the Legislature to prevent fraud, abuse,
15 and other unlawful activity associated with deferred
16 presentment transactions in part by:

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

19 (b) Preventing rollovers.

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

22 (2) The Comptroller shall submit a report to the
23 President of the Senate and the Speaker of the House of
24 Representatives on January 1, 2003, and January 1, 2004,
25 containing findings and conclusions concerning the
26 effectiveness of this act in preventing fraud, abuse, and
27 other unlawful activity associated with deferred presentment
28 transactions. The report may contain legislative
29 recommendations addressing the prevention of fraud, abuse, and
30 other unlawful activity associated with deferred presentment
31 transactions. Prior to filing the report, the Comptroller

1 shall consult with the Attorney General for the purpose of
2 including any recommendations or concerns expressed by the
3 Attorney General.

4 Section 13. Effective July 1, 2001, the sum of
5 \$150,000 is appropriated from the Regulatory Trust Fund of the
6 Department of Banking and Finance to the department for fiscal
7 year 2001-2002 to fund three positions for the purpose of
8 administering the provisions of the Deferred Presentment Act.

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

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12 *****

13 LEGISLATIVE SUMMARY

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