

1 A bill to be entitled
2 An act relating to deferred presentment transactions;
3 amending s. 560.402, F.S.; providing and revising
4 definitions; amending s. 560.404, F.S.; specifying the
5 maximum face amount of checks that may be taken for
6 deferred presentment installment transactions,
7 exclusive of fees; specifying the maximum rate and
8 frequency of fees that deferred presentment providers
9 or their affiliates may charge on deferred presentment
10 installment transactions; specifying when fees are
11 earned for certain deferred presentment transactions;
12 specifying the calculation of fees earned for deferred
13 presentment installment transactions; prohibiting
14 prepayment penalties; specifying the minimum and
15 maximum terms of a deferred presentment installment
16 transaction; specifying dates that checks must bear;
17 authorizing providers of deferred presentment
18 installment transactions to accept additional checks
19 subject to certain limitations; requiring the deferred
20 presentment agreement to include the deferment period
21 applicable to each check; correcting a reference to
22 federal law; providing an exception to a prohibition
23 against the acceptance or holding of undated checks or
24 checks with certain dates by a deferred presentment
25 provider or its affiliate; conforming a cross-

26 | reference; providing a verification process that may
27 | be relied upon under certain conditions; revising a
28 | notice in deferred presentment agreements; authorizing
29 | a drawer to inform a provider in writing that the
30 | drawer cannot redeem or pay in full the amount due and
31 | owing to the provider; providing an exception to a
32 | prohibition, under certain circumstances, against a
33 | deferred presentment provider's deposit or presentment
34 | of a drawer's check; requiring a provider of a
35 | deferred presentment installment transaction to allow
36 | a drawer to defer one scheduled payment under certain
37 | circumstances; providing requirements for the deferred
38 | payment; specifying the frequency a certain fee may be
39 | imposed by Financial Services Commission rule for data
40 | on certain transactions submitted by deferred
41 | presentment providers to a certain database; providing
42 | an exception to a limitation on a deferred presentment
43 | provider's acceptance of a certain check or
44 | authorization; specifying requirements for
45 | amortization, installment repayments, and calculation
46 | of charges for deferred presentment installment
47 | transactions; conforming provisions to changes made by
48 | the act; amending s. 560.405, F.S.; providing an
49 | exception to a prohibition against a deferred
50 | presentment provider's or its affiliate's presentment

51 of a drawer's check before the end of the deferment
 52 period; revising a condition under which a deferred
 53 presentment provider may allow the check to be
 54 redeemed in lieu of presentment; revising a
 55 prohibition against requiring a drawer to redeem his
 56 or her check before the agreed-upon date; reenacting
 57 s. 560.111(5), F.S., relating to prohibited acts, to
 58 incorporate the amendments made to ss. 560.404 and
 59 560.405, F.S., in references thereto; providing an
 60 effective date.

61
 62 Be It Enacted by the Legislature of the State of Florida:

63
 64 Section 1. Subsections (3) through (5) and (6) of section
 65 560.402, Florida Statutes, are renumbered as subsections (4)
 66 through (6) and (8), respectively, present subsection (7) is
 67 amended, and new subsections (3) and (7) are added to that
 68 section, to read:

69 560.402 Definitions.—For the purposes of this part, the
 70 term:

71 (3) "Deferred presentment installment transaction" means a
 72 deferred presentment transaction that is repayable in
 73 installments.

74 (7) "Outstanding transaction balance" means the amount
 75 received by the drawer from the deferred presentment provider

76 | that is due and owing, exclusive of the fees allowed under this
 77 | part, in a deferred presentment transaction.

78 | (9)-(7)- "Termination of a deferred presentment agreement"
 79 | means that all checks ~~the check~~ that are ~~is~~ the basis for the
 80 | agreement are ~~is~~ redeemed by the drawer by payment in full in
 81 | cash, or are ~~is~~ deposited and the deferred presentment provider
 82 | has evidence that such checks have ~~check has~~ cleared.
 83 | Verification of sufficient funds in the drawer's account by the
 84 | deferred presentment provider is not sufficient evidence to deem
 85 | that the deferred presentment ~~deposit~~ transaction is terminated.

86 | Section 2. Subsections (5), (6), (8), (12), (13), (14),
 87 | (19), (20), (21), and (22) and present subsections (23) and (24)
 88 | of section 560.404, Florida Statutes, are amended, and new
 89 | subsection (23) and subsection (26) are added to that section,
 90 | to read:

91 | 560.404 Requirements for deferred presentment
 92 | transactions.—

93 | (5) The face amount of a check taken for deferred
 94 | presentment transactions not repayable in installments may not
 95 | exceed \$500, exclusive of the fees allowed under this part. For
 96 | a deferred presentment installment transaction, neither the face
 97 | amount of a check nor the outstanding transaction balance may
 98 | exceed \$1,000, exclusive of the fees allowed under this part.

99 | (6) (a) A deferred presentment provider or its affiliate
 100 | may not charge fees that exceed 10 percent of the currency or

101 payment instrument provided for a deferred presentment
102 transaction not repayable in installments. A deferred
103 presentment provider or its affiliate may not charge fees on any
104 deferred presentment installment transaction which exceed 8
105 percent of the outstanding transaction balance on a biweekly
106 basis.

107 (b) Notwithstanding paragraph (a) However, a verification
108 fee may be charged as provided in s. 560.309(8). The fees in
109 paragraph (a) The 10-percent fee may not be applied to the
110 verification fee.

111 (c) Fees are earned at the time of origination for a
112 deferred presentment transaction scheduled to be paid off in 31
113 days or less; however, fees for a deferred presentment
114 installment transaction are earned using a simple interest
115 calculation. A deferred presentment provider may charge only
116 those fees specifically authorized in this section. Prepayment
117 penalties are prohibited.

118 (8) A deferred presentment agreement may not be for a term
119 longer than 31 days or fewer less than 7 days, except for a
120 deferred presentment installment transaction, which may not be
121 for a term longer than 90 days or fewer than 60 days.

122 (12) The deferred presentment agreement and the drawer's
123 initial check must bear the same date, and the number of days of
124 the deferment period must shall be calculated from that date.
125 For deferred presentment installment transactions, the deferred

126 presentment provider may accept additional checks, subject to
127 the limitations in subsection (5), each bearing the date that
128 the check was given to the provider, and the deferred
129 presentment agreement must include the deferment period
130 applicable to each check. The deferred presentment provider and
131 the drawer may not alter or delete the date on any written
132 agreement or check held by the deferred presentment provider.

133 (13) For each deferred presentment transaction, the
134 deferred presentment provider must comply with the disclosure
135 requirements of 12 C.F.R. part 226, relating to the federal
136 Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer
137 Financial Protection Board of Governors of the Federal Reserve
138 ~~Board~~. A copy of the disclosure must be provided to the drawer
139 at the time the deferred presentment transaction is initiated.

140 (14) A deferred presentment provider or its affiliate may
141 not accept or hold an undated check or a check dated on a date
142 other than the date on which the deferred presentment provider
143 agreed to hold the check and signed the deferred presentment
144 transaction agreement, except when a customer provides a new
145 payment instrument reflecting the new outstanding transaction
146 balance and anticipated fees upon making a payment on a deferred
147 presentment installment transaction.

148 (19) A deferred presentment provider may not enter into a
149 deferred presentment transaction with a drawer who has an
150 outstanding deferred presentment transaction with that provider

151 or with any other deferred presentment provider, or with a
152 person whose previous deferred presentment transaction with that
153 provider or with any other provider has been terminated for less
154 than 24 hours. The deferred presentment provider must verify
155 such information as follows:

156 (a) The deferred presentment provider must ~~shall~~ maintain
157 a common database and ~~shall~~ verify whether the provider or an
158 affiliate has an outstanding deferred presentment transaction
159 with a particular person or has terminated a transaction with
160 that person within the previous 24 hours. If a provider has not
161 established a database, the provider may rely upon the written
162 verification of the drawer as provided in subsection (20).

163 (b) The deferred presentment provider must ~~shall~~ access
164 the office's database established pursuant to subsection (24)
165 ~~(23)~~ and ~~shall~~ verify whether any other deferred presentment
166 provider has an outstanding deferred presentment transaction
167 with a particular person or has terminated a transaction with
168 that person within the previous 24 hours. Before the office has
169 implemented a database to include deferred presentment
170 installment transactions ~~If a provider has not established a~~
171 ~~database,~~ the deferred presentment provider must access the
172 office's current database pursuant to this paragraph and may
173 rely upon the written verification of the drawer as provided in
174 subsection (20).

175 (20) A deferred presentment provider must ~~shall~~ provide

176 the following notice in a prominent place on each deferred
 177 presentment agreement in at least 14-point type in substantially
 178 the following form and ~~must~~ obtain the signature of the drawer
 179 where indicated:

181 NOTICE

183 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
 184 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
 185 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
 186 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
 187 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
 188 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
 189 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

191 YOU MUST SIGN THE FOLLOWING STATEMENT:

193 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
 194 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
 195 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
 196 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

197 (Signature of Drawer)

199 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
 200 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY

201 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE
 202 PURSUED AGAINST YOU.

203
 204 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT
 205 PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL
 206 OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS
 207 MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN
 208 ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT
 209 OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.

210
 211 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT
 212 REPAYABLE IN INSTALLMENTS: IF YOU INFORM THE PROVIDER
 213 IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN
 214 FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS
 215 AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING
 216 THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS
 217 AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY
 218 ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER
 219 MUST ~~SHALL~~ REQUIRE THAT YOU, AS A CONDITION OF
 220 OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT
 221 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
 222 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
 223 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
 224 PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY
 225 WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT

226 AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR
 227 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS
 228 TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE
 229 PERIOD.

231 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
 232 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY
 233 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A
 234 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE
 235 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE
 236 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
 237 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
 238 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
 239 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
 240 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
 241 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS
 242 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.

244 (21) The deferred presentment provider may not deposit or
 245 present the drawer's check if the drawer informs the provider in
 246 writing or in person that the drawer cannot redeem or pay in
 247 full in cash the amount due and owing the deferred presentment
 248 provider, unless the drawer fails to comply with subsection (22)
 249 or subsection (23), as applicable. No additional fees or
 250 penalties may be imposed on the drawer by virtue of any

251 misrepresentation made by the drawer as to the sufficiency of
252 funds in the drawer's account. Additional fees may not be added
253 to the amounts due and owing to the deferred presentment
254 provider.

255 (22) For deferred presentment transactions not repayable
256 in installments, if, by the end of the deferment period, the
257 drawer informs the deferred presentment provider in writing or
258 in person that the drawer cannot redeem or pay in full in cash
259 the amount due and owing the deferred presentment provider, the
260 deferred presentment provider must ~~shall~~ provide a grace period
261 extending the term of the agreement for an additional 60 days
262 after the original termination date, without any additional
263 charge.

264 (a) The provider must ~~shall~~ require, ~~that~~ as a condition
265 of providing a grace period, that the drawer make an appointment
266 with a consumer credit counseling agency within 7 days after the
267 end of the deferment period and complete the counseling by the
268 end of the grace period. The drawer may agree to, comply with,
269 and adhere to a repayment plan approved by the counseling
270 agency. If the drawer agrees to comply with and adhere to a
271 repayment plan approved by the counseling agency, the provider
272 must also comply with and adhere to that repayment plan. The
273 deferred presentment provider may not deposit or present the
274 drawer's check for payment before the end of the 60-day grace
275 period unless the drawer fails to comply with such conditions or

276 | the drawer fails to notify the provider of such compliance.
 277 | Before each deferred presentment transaction, the provider may
 278 | verbally advise the drawer of the availability of the grace
 279 | period consistent with the written notice in subsection (20),
 280 | and may not discourage the drawer from using the grace period.

281 | (b) At the commencement of the grace period, the deferred
 282 | presentment provider must ~~shall~~ provide the drawer:

283 | 1. Verbal notice of the availability of the grace period
 284 | consistent with the written notice in subsection (20).

285 | 2. A list of approved consumer credit counseling agencies
 286 | prepared by the office. The office list must ~~shall~~ include
 287 | nonprofit consumer credit counseling agencies affiliated with
 288 | the National Foundation for Credit Counseling which provide
 289 | credit counseling services to state residents in person, by
 290 | telephone, or through the Internet. The office list must include
 291 | phone numbers for the agencies, the counties served by the
 292 | agencies, and indicate the agencies that provide telephone
 293 | counseling and those that provide Internet counseling. The
 294 | office must ~~shall~~ update the list at least once each year.

295 | 3. The following notice in at least 14-point type in
 296 | substantially the following form:

297 |
 298 | AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
 299 | THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
 300 | ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY

301 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
 302 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
 303 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
 304 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
 305 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
 306 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
 307 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
 308 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
 309 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
 310 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
 311 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
 312 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
 313 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
 314 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
 315 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
 316 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
 317 THE DEBT.

318
 319 (c) If a drawer completes an approved payment plan, the
 320 deferred presentment provider must ~~shall~~ pay one-half of the
 321 drawer's fee for the deferred presentment agreement to the
 322 consumer credit counseling agency.

323 (23) For deferred presentment installment transactions, if
 324 a drawer informs the deferred presentment provider in writing or
 325 in person by noon of the business day before a scheduled payment

326 that the drawer cannot pay in full the scheduled payment amount
327 due and owing the provider, the deferred presentment provider
328 must provide the drawer the opportunity to defer the scheduled
329 payment, at no additional fee or charge, until after the last
330 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
331 same time zone in which the deferred presentment agreement was
332 entered into. Only one deferred payment is permitted for each
333 deferred presentment installment transaction. The deferred
334 payment must be due at an interval after the last scheduled
335 payment which is no shorter than the intervals between the
336 originally scheduled payments.

337 (24) (a) ~~(23)~~ The office must ~~shall~~ implement a common
338 database with real-time access through an Internet connection
339 for deferred presentment providers, as provided in this
340 subsection. The database must be accessible to the office and
341 the deferred presentment providers in order to verify whether
342 any deferred presentment transactions are outstanding for a
343 particular person. Deferred presentment providers must ~~shall~~
344 submit such data before entering into each deferred presentment
345 transaction in such format as required by rule, including the
346 drawer's name, social security number or employment
347 authorization alien number, address, driver license number,
348 amount of the transaction, date of transaction, the date that
349 the transaction is closed, and such additional information as is
350 required by rule.

351 (b) For data that must be submitted by a deferred
352 presentment provider, the commission may by rule impose a fee of
353 up to \$1 per transaction for deferred presentment transactions
354 not repayable in installments, and the commission may impose a
355 fee of up to \$1 for each full or partial 30-day period that a
356 balance is scheduled to be outstanding for a deferred
357 presentment installment transaction ~~for data that must be~~
358 ~~submitted by a deferred presentment provider.~~

359 (c) A deferred presentment provider may rely on the
360 information contained in the database as accurate and is not
361 subject to any administrative penalty or civil liability due to
362 relying on inaccurate information contained in the database.

363 (d) A deferred presentment provider must notify the
364 office, in a manner as prescribed by rule, within 15 business
365 days after ceasing operations or no longer holding a license
366 under part II or part III of this chapter. Such notification
367 must include a reconciliation of all open transactions. If the
368 provider fails to provide notice, the office must ~~shall~~ take
369 action to administratively release all open and pending
370 transactions in the database after the office becomes aware of
371 the closure.

372 (e) This section does not affect the rights of the
373 provider to enforce the contractual provisions of the deferred
374 presentment agreements through any civil action allowed by law.

375 (f) The commission may adopt rules to administer this

376 subsection and to ensure that the database is used by deferred
377 presentment providers in accordance with this section.

378 ~~(25)-(24)~~ A deferred presentment provider may not accept
379 more than one check or authorization to initiate more than one
380 automated clearinghouse transaction to collect on a deferred
381 presentment transaction for a single deferred presentment
382 transaction, except for deferred presentment installment
383 transactions in which such checks or authorizations represent
384 multiple scheduled payments.

385 (26) A deferred presentment installment transaction must
386 be fully amortizing and repayable in consecutive installment
387 periods as nearly equal as mathematically practicable according
388 to a payment schedule agreed upon by the parties with no fewer
389 than 13 days and not more than 1 calendar month between
390 payments, except that the first installment period may be longer
391 than the remaining installment periods by not more than 15 days,
392 and the first installment payment may be larger than the
393 remaining installment payments by the amount of charges
394 applicable to the extra days. In calculating charges under this
395 subsection, when the first installment period is longer than the
396 remaining installment periods, the amount of the charges
397 applicable to the extra days may not exceed those that would
398 accrue under a simple interest calculation based on the rate
399 allowed under subsection (6).

400 Section 3. Subsections (1), (3), and (4) of section

401 560.405, Florida Statutes, are amended to read:

402 560.405 Deposit; redemption.—

403 (1) The deferred presentment provider or its affiliate may
404 not present the drawer's check before the end of the deferment
405 period, except for a missed scheduled payment for a deferred
406 presentment installment transaction that has not been otherwise
407 deferred pursuant to s. 560.404(23), as reflected and described
408 in the deferred presentment transaction agreement.

409 (3) Notwithstanding subsection (1), in lieu of
410 presentment, a deferred presentment provider may allow the check
411 to be redeemed at any time upon payment of the outstanding
412 transaction balance and earned fees ~~face amount of the drawer's~~
413 ~~check~~. However, payment may not be made in the form of a
414 personal check. Upon redemption, the deferred presentment
415 provider must ~~shall~~ return the drawer's check and provide a
416 signed, dated receipt showing that the drawer's check has been
417 redeemed.

418 (4) A drawer may not be required to redeem his or her
419 check in full before the agreed-upon date; however, the drawer
420 may choose to redeem the check before the agreed-upon
421 presentment date.

422 Section 4. For the purpose of incorporating the amendments
423 made by this act to sections 560.404 and 560.405, Florida
424 Statutes, in references thereto, subsection (5) of section
425 560.111, Florida Statutes, is reenacted to read:

426 | 560.111 Prohibited acts.—

427 | (5) Any person who willfully violates any provision of s.
428 | 560.403, s. 560.404, or s. 560.405 commits a felony of the third
429 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
430 | 775.084.

431 | Section 5. This act shall take effect July 1, 2019.