The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 920

INTRODUCER: Commerce and Tourism Committee and Senators Bradley and Braynon

SUBJECT: Deferred Presentment Transactions

DATE: February 14, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Little	McKay	CM	**Fav/CS**
3.	Sanders	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 920 authorizes deferred presentment installment transactions under Florida law. A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive installments, which must be as equal as mathematically practicable. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days and the time between installment payments must be at least 13 days but not greater than one calendar month.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The maximum fees that may be charged on a deferred presentment installment transaction are eight percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited. The bill retains current law in s. 560.404(19), F.S., prohibiting a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

If the drawer[1] timely informs the provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing, the provider must provide a grace period for payment of a scheduled installment.

The impact to state revenues and expenditures is indeterminate. The Office of Financial Regulation (OFR) indicates the bill may impact collected revenues that are assessed for deferred presentation transactions. Currently, $1 is assessed for each deferred presentment transaction. The OFR indicates that there may need to be rule modification to require $1 per month for each outstanding deferred presentment installment transaction, $2 for each 60-day term, and $3 for each 90-day term. According to the OFR, $7,657,486 was collected in Fiscal Year 2016-2017 for the current $1 transaction fee. It is unknown how many deferred presentment installment transactions will result from the bill's passage, what the length of their terms will be, and what the decline will be in the number of current deferred presentment transactions.[2]

The OFR currently contracts with a vendor to host and maintain the existing deferred presentment provider transaction database. The OFR paid the vendor $2,656,269 in Fiscal Year 2016-2017 for the database. Based on modifications of the loan product proposed in the bill, the OFR indicates that it would likely need to procure a new contract. An increased appropriation may be required if current funding is insufficient to pay for a new contract. It is unknown how much a newly procured contract would cost.[3]

The bill takes effect July 1, 2019.

II. Present Situation:

Deferred Presentment

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's check and agreeing to hold the check for a number of days before depositing, presenting, or redeeming the payment instrument.[4] The transactions are commonly referred to as "payday loans." These transactions are governed by part IV of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as

---

[1] "Drawer" means a customer who writes a personal check and upon whose account the check is drawn. *See* s. 560.402(4), F.S.

[2] Office of Financial Regulation, *Senate Bill 920 Legislative Analysis* (Jan. 10, 2018) (on file with the Senate Appropriations Subcommittee on General Government).

[3] Id.

[4] *See* s. 560.402, F.S.

defined in s. 655.005, F.S.,[5] and money services businesses licensed under part II[6] or part III[7] of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[8] Fees generally may not exceed 10 percent of payment provided to the drawer, except that an additional verification fee not to exceed $5 may also be charged.[9] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[10] A deferred presentment provider may not enter into a deferred presentment transaction with a drawer (customer) who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[11] A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[12]

If the drawer, at the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days. As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[13]

The deferred presentment agreement may not include a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the

---

[5] Section 655.005(1)(i), F.S., defines a "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et Seq.

[6] A "money transmitter" is licensed under part II of ch. 560, F.S., and is defined as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S. *See* s. 560.103(23), F.S.,

[7] A "check casher" is licensed under part III of ch. 560, F.S. and is defined as a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.1030, F.S.

[8] Section 560.404(5), F.S.

[9] Section 560.404(6), F.S.

[10] Section 560.404(8), F.S.

[11] Section 560.404(19), F.S.

[12] Section 560.404(18), F.S.

[13] Section 560.404(22), F.S.

agreement or any provision of part IV, ch. 560, F.S.[14] The deferred presentment provider must comply with state and federal disclosure requirements.[15]

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.[16] Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of $3.09 billion with total advance fees of $306 million. The average transaction from July 2016 to June 2017 was $400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of $3.09. Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in one to three transactions, 30.7 engaged in 4 to 9 transactions, and 37.6 percent engaged in 10 or more transactions. The loan loss rate is 1.8 percent of total transactions representing an advance amount of approximately $50.4 million. Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.

Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

On October 5, 2017, the Bureau of Consumer Financial Protection (CFPB) finalized a rule governing certain consumer credit products.[17] The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.[18] The key provisions of the rule are as follows:[19]

The Lender Must Determine the Consumer's Ability to Repay

It is an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans,[20] including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay the loans according to their terms. The ability-to-repay standard requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;

[14] Section 560.404(10), F.S.
[15] Section 560.404(13) and (20), F.S.
[16] Office of Financial Regulation, Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017 (June 2017) (On file with the Senate Committee on Banking and Insurance).
[17] 82 FR 54472.
[18] Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (October 5, 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps (last accessed February 7, 2018).
[19] The summary of key provisions of the CFPB rule is taken from 82 FR 54472 at pgs. 1-9, unless otherwise indicated.
[20] A balloon payment loan is a larger than usual one-time payment at the end of the loan term.

- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

The rule also prohibits lenders from making a covered loan to a consumer who has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, for 30 days after the third loan is no longer outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than $500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period, or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

Payment Practices

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loans as the ability-to-repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alert the consumer to unusual payment attempts. The notice may be provided electronically with the consumer's consent.

Lender Reporting and Compliance Requirements

Lenders are required to furnish registered information systems with certain information concerning loans covered by the rule. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

Implementation of the Rule

The CFPB rule provides minimum consumer protections and allows state and local jurisdictions to adopt further regulatory measures to protect consumers. Lender compliance with the rule is required on August 19, 2019. Many Florida deferred presentment transactions are affected by the rule because they are for 45 days or less and do not qualify for one of the rule's exceptions. Thus deferred presentment transaction providers are required to comply with the underwriting requirements of the rule or conform their business practices to meet the exception to underwriting.

III. Effect of Proposed Changes:

The bill authorizes deferred presentment installment transactions under Florida law. Deferred presentment transactions will be exempt from the underwriting requirement of the CFPB rule because such loans will be for a term longer than 30 days, and will not be a longer-term balloon payment loan because the bill requires installment payment to be as equal as mathematically practicable. Provisions of the CFPB rule relating to payment practices, lender reporting, and compliance will apply to deferred presentment installment transaction lenders that provide loans with a term longer than 45 days, with a cost of credit exceeding 36 percent per annum, and that have a leveraged payment mechanism.

Section 1 amends s. 560.402, F.S., to define a "deferred presentment installment transaction" to mean "a deferred presentment transaction that is repayable in installments" and an "outstanding transaction balance" to mean "the amount received by the drawer from the deferred presentment provider that is due and owing, exclusive of the fees allowed under this party, in a deferred presentment transaction."

Section 2 amends s. 560.404, F.S., to authorize deferred presentment installment transactions under Florida law.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days. The bill retains current law in s. 560.404(19), F.S., which prohibits a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

The maximum fees that may be charged by a provider or its affiliate on a deferred presentment installment transaction are eight percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited.

A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive and as equal as mathematically practicable installments. The time between installment payments must be at least 13 days but not greater than one calendar month. The provider of a deferred presentment installment transaction may accept additional checks bearing the date that the check is given to the provider if the deferred presentment agreement includes the deferment period applicable to each check.[21]

The provider must provide a grace period for payment of a scheduled installment if the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment. The bill clarifies that "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into. The grace period postpones the due date of an installment until after the last scheduled installment payment, at an interval that is no less than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the grace period must be at least two weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement. The bill requires the notice to detail the availability of the single grace period for a deferred presentment installment transaction.

The bill authorizes the Financial Services Commission to impose a fee of up to $1 for each full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction.

Section 3 amends s. 560.405, F.S., to allow a deferred presentment provider to present a check before the end of a deferment transaction if the check is for a missed scheduled payment for a deferred presentment installment transaction. The bill also makes a technical change to clarify that the drawer may redeem the check used in the deferred presentment transaction by paying the outstanding transaction balance and earned fees.

Section 4 reenacts s. 560.111, F.S., for the purpose of incorporating the amendments made by the bill to ss. 560.404 and 560.405, F.S. Section 560.111, F.S., makes willful violations of those sections a third degree felony.

Section 5 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[21] The bill subjects these checks to the limitations in subsection 560.404(5), F.S., of the bill, which provides that neither the face value of a check nor the outstanding transaction balance may exceed $1,000, exclusive of the fees.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows the OFR to increase the deferred presentment transaction database fee to vary with the term of the loan, thus increasing the total possible database fee from $1 to $3.

B. Private Sector Impact:

The impact to the private sector is indeterminate.

Many payday lenders assert that the CFPB rule imposes additional costs and administrative burdens that will result in reducing the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps.

There are many circumstances where a new loan under this bill would result in lower fees than a current payday loan. For instance, below is an example using the standard payoff average of 14 days[22] under current law for a $500 loan and a $500 deferred presentment installment loan under SB 920 that an individual pays off early (the same standard payoff average of 14 days).

Loan Comparison	Current Loan	SB 920 Loan
Loan Amount	$500.00	$500.00
Fees (interest and $5 Verification fee)	$55.00	$45.00
Payoff Period (days)	14	14
Payments	1	1
Payment Amount	$555.00	$545.00
Fees per day	$3.93	$3.21
APR	286.79%[23]	234.64%[24]

Below is a comparison between how a payday loan works under SB 920 for $500 with 60-day and 90-day terms with a current maximum $500 payday loan transaction with the

[22] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2018) (On file with the Senate Committee on Banking and Insurance).
[23] $55 / $500 x 365 days / 14 days x 100 = 286.79%
[24] $45 / $500 x 365 days / 14 days x 100 = 234.64%

maximum payoff period of 31 days. The examples below assume a payday lender collects the maximum allowable verification fee of $5.

Loan Comparison	Current Law Loans	60-day Loan under SB 920	90-day Loan under SB 920
Loan Amount	$500.00	$500.00	$500.00
Fees (interest and $5 Verification fee)	$55.00	$122.21	$175.56
Term (days)	31	60	90
Payments	1	4	6
Payment Amount	$555.00	$155.55	$112.59
Total Payment	555.00	$622.21	$675.56
Fees per day	$1.77	$2.04	$1.95
APR	129.52%[25]	148.69%[26]	142.40%[27]

C. Government Sector Impact:

Office of Financial Regulation[28]

The OFR assesses each deferred presentment provider a $1 transaction fee for each deferred presentment transaction to maintain an Internet database that records all deferred presentment transactions in the state. Deferred presentment providers and the OFR use the database to verify whether any deferred presentment transactions are outstanding for a particular person. The database is required by s. 560.404(23), F.S. The impact of the bill on the number of transactions is unknown and the impact of the bill on these revenues is indeterminate. The OFR received $7,657,486 in revenue related to the $1 transaction fee during Fiscal Year 2016-2017, which could be reduced with the longer transaction terms. If the OFR imposes a $2 fee for deferred presentment installment transactions with a 60-day term and a $3 fee for transactions with a 90-day term as permitted in this bill, the reduction in revenue may be offset.

The OFR contracts with a third-party vendor that maintains a database that records all deferred presentment transactions in the state, the cost of which is directly related to the number of deferred presentment transactions and database fees collected. For Fiscal Year 2016-2017, the OFR paid its third-party vendor $2,656,269 for hosting, maintaining, and operating the database. The bill may increase or decrease this cost if the statutory authorization of deferred presentment installment transactions increases or decreases the number of deferred presentment transactions.

The bill would require modifications to the database, which the OFR would obtain through a procurement requiring a legislative budget appropriation and between 18 to 24

[25] $55 / $500 x 365 days / 31 days x 100 = 129.52%
[26] $122.21 / $500 x 365 days / 60 days x 100 = 148.69%
[27] $175.56 / $500 x 365 days / 90 days x 100 = 142.40%
[28] Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2017) (On file with the Senate Committee on Banking and Insurance).

months to implement. The actual cost would not be known until bids are received from vendors pursuant to the procurement process.

The OFR believes that the provisions of the bill would require the OFR, through the Financial Services Commission, to amend a number of administrative rules. The cost incurred by the OFR for the rulemaking filings can be absorbed within the current budget of the Division of Consumer Finance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.402, 560.404, 560.405, and 560.111.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 29, 2018:
The bill is amended to:
- Define "outstanding transaction balance" as the amount received by the drawer from the deferred presentment provider that is due and owing in a deferred presentment transaction, exclusive of allowable fees;
- Provide that the deferred presentment provider for a deferred presentment installment transaction may accept additional checks bearing the date that the check was given to the provider if the deferred presentment agreement includes the deferment period applicable to each check;
- Require the deferred presentment provider to access the current database until the OFR is able to implement a database that includes deferred presentment installment contracts;
- Allow the drawer to inform the deferred presentment provider in writing or in person if the drawer cannot redeem or pay in full in cash;
- Clarify that the term "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment installment transaction agreement was entered into;
- Provide that the Financial Services Commission may impose a fee of up to $1 per full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction, rather than $1 per transaction;
- Provide that the bill takes effect on July 1, 2019; and
- Make additional technical and conforming changes throughout the bill.

B. Amendments:

None.