

By Senator Bradley

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1 A bill to be entitled
2 An act relating to deferred presentment transactions;
3 amending s. 560.402, F.S.; defining the term "deferred
4 presentment installment transaction"; amending s.
5 560.404, F.S.; specifying the maximum face amount of
6 checks which may be taken for deferred presentment
7 installment transactions, exclusive of fees;
8 specifying the maximum rate and frequency of fees that
9 deferred presentment providers or their affiliates may
10 charge on deferred presentment installment
11 transactions; specifying when fees are earned for
12 certain deferred presentment transactions; specifying
13 the calculation of fees earned for deferred
14 presentment installment transactions; prohibiting
15 prepayment penalties; specifying the minimum and
16 maximum terms of a deferred presentment installment
17 transaction; providing an exception to a prohibition
18 against the acceptance or holding of undated checks or
19 checks with certain dates by a preferred presentment
20 provider or its affiliate; conforming a cross-
21 reference; revising a notice in deferred presentment
22 agreements; providing an exception to a prohibition,
23 under certain circumstances, against a deferred
24 presentment provider's deposit or presentment of a
25 drawer's check; requiring a provider of a deferred
26 presentment installment transaction to allow a drawer
27 to defer a scheduled payment under certain
28 circumstances; providing requirements for the deferred
29 payment; specifying the frequency a certain fee may be

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30 imposed by Financial Services Commission rule for data
31 on certain transactions submitted by deferred
32 presentment providers to a certain database; providing
33 an exception to a limitation on a deferred presentment
34 provider's acceptance of a certain check or
35 authorization; specifying requirements for
36 amortization, installment repayments, and calculation
37 of charges for deferred presentment installment
38 transactions; conforming provisions to changes made by
39 the act; amending s. 560.405, F.S.; providing an
40 exception to a prohibition against a deferred
41 presentment provider's or its affiliate's presentment
42 of a drawer's check before the end of the deferment
43 period; revising a condition under which a deferred
44 presentment provider may allow the check to be
45 redeemed in lieu of presentment; revising a
46 prohibition against requiring a drawer to redeem his
47 or her check before the agreed-upon date; reenacting
48 s. 560.111(5), F.S., relating to prohibited acts, to
49 incorporate the amendments made to ss. 560.404 and
50 560.405, F.S., in references thereto; providing an
51 effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Present subsections (3) through (7) of section
56 560.402, Florida Statutes, are redesignated as subsections (4)
57 through (8), respectively, and a new subsection (3) is added to
58 that section, to read:

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59 560.402 Definitions.—For the purposes of this part, the
60 term:

61 (3) "Deferred presentment installment transaction" means a
62 deferred presentment transaction that is repayable in
63 installments.

64 Section 2. Subsections (5), (6), (8), and (14), paragraph
65 (b) of subsection (19), and subsections (20), (21), and (22) of
66 section 560.404, Florida Statutes, are amended, present
67 subsections (23) and (24) of that section are redesignated as
68 subsections (24) and (25), respectively, and amended, and a new
69 subsection (23) and subsection (26) are added to that section,
70 to read:

71 560.404 Requirements for deferred presentment
72 transactions.—

73 (5) The face amount of a check taken for deferred
74 presentment may not exceed \$500, exclusive of the fees allowed
75 under this part. The face amount of a check taken for a deferred
76 presentment installment transaction may not exceed \$1,000,
77 exclusive of fees allowed under this part.

78 (6) (a) A deferred presentment provider or its affiliate may
79 not charge fees that exceed 10 percent of the currency or
80 payment instrument provided. A deferred presentment provider or
81 its affiliate may not charge fees on any deferred presentment
82 installment transaction which exceed 8 percent of the
83 outstanding transaction balance on a biweekly basis.

84 (b) Notwithstanding paragraph (a) However, a verification
85 fee may be charged as provided in s. 560.309(8). The fees in
86 paragraph (a) The 10-percent fee may not be applied to the
87 verification fee.

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88 (c) Fees are earned at the time of origination for a
89 deferred presentment transaction scheduled to be paid off in 31
90 days or less; however, fees for a deferred presentment
91 installment transaction are earned using a simple interest
92 calculation. A deferred presentment provider may charge only
93 those fees specifically authorized in this section. Prepayment
94 penalties are prohibited.

95 (8) A deferred presentment agreement may not be for a term
96 longer than 31 days or less than 7 days, except for a deferred
97 presentment installment transaction, which may not be for a term
98 longer than 90 days or less than 60 days.

99 (14) A deferred presentment provider or its affiliate may
100 not accept or hold an undated check or a check dated on a date
101 other than the date on which the deferred presentment provider
102 agreed to hold the check and signed the deferred presentment
103 transaction agreement, except when a customer provides a new
104 payment instrument reflecting the new outstanding transaction
105 balance and anticipated fees upon making a payment on a deferred
106 presentment installment transaction.

107 (19) A deferred presentment provider may not enter into a
108 deferred presentment transaction with a drawer who has an
109 outstanding deferred presentment transaction with that provider
110 or with any other deferred presentment provider, or with a
111 person whose previous deferred presentment transaction with that
112 provider or with any other provider has been terminated for less
113 than 24 hours. The deferred presentment provider must verify
114 such information as follows:

115 (b) The deferred presentment provider shall access the
116 office's database established pursuant to subsection (24) ~~(23)~~

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117 and shall verify whether any other deferred presentment provider
118 has an outstanding deferred presentment transaction with a
119 particular person or has terminated a transaction with that
120 person within the previous 24 hours. If a provider has not
121 established a database, the deferred presentment provider may
122 rely upon the written verification of the drawer as provided in
123 subsection (20).

124 (20) A deferred presentment provider shall provide the
125 following notice in a prominent place on each deferred
126 presentment agreement in at least 14-point type in substantially
127 the following form and must obtain the signature of the drawer
128 where indicated:

129

130

NOTICE

131

132 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
133 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
134 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
135 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
136 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
137 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
138 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

139

140 YOU MUST SIGN THE FOLLOWING STATEMENT:

141

142 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
143 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
144 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
145 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

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146 (Signature of Drawer)

147

148 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
 149 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
 150 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE
 151 PURSUED AGAINST YOU.

152

153 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER
 154 (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR
 155 DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU
 156 CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE
 157 IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT
 158 OF YOUR CHECK FOR PAYMENT.

159

160 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT PAYABLE
 161 IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON
 162 THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE
 163 AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,
 164 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF
 165 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE
 166 ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL
 167 CHARGE. THE DEFERRED PRESENTMENT PROVIDER SHALL
 168 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE
 169 GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING
 170 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL
 171 BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
 172 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN
 173 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND
 174 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE

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175 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
 176 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
 177 THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.
 178

179 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
 180 IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT
 181 PAY IN FULL THE SCHEDULED AMOUNT OWING BEFORE THE DUE
 182 DATE AS PROVIDED BY THE AGREEMENT, YOU MAY DEFER THE
 183 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
 184 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
 185 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
 186 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
 187 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
 188 DUE AT AN INTERVAL NO LESS THAN THE INTERVALS BETWEEN
 189 THE SCHEDULED PAYMENTS.
 190

191 (21) The deferred presentment provider may not deposit or
 192 present the drawer's check if the drawer informs the provider in
 193 person that the drawer cannot redeem or pay in full in cash the
 194 amount due and owing the deferred presentment provider without
 195 first complying with subsection (23). No additional fees or
 196 penalties may be imposed on the drawer by virtue of any
 197 misrepresentation made by the drawer as to the sufficiency of
 198 funds in the drawer's account. Additional fees may not be added
 199 to the amounts due and owing to the deferred presentment
 200 provider.

201 (22) As to deferred presentment transactions not payable in
 202 installments, if, by the end of the deferral period, the drawer
 203 informs the deferred presentment provider in person that the

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204 drawer cannot redeem or pay in full in cash the amount due and
205 owing the deferred presentment provider, the deferred
206 presentment provider shall provide a grace period extending the
207 term of the agreement for an additional 60 days after the
208 original termination date, without any additional charge.

209 (a) The provider shall require ~~that~~ as a condition of
210 providing a grace period, that the drawer make an appointment
211 with a consumer credit counseling agency within 7 days after the
212 end of the deferment period and complete the counseling by the
213 end of the grace period. The drawer may agree to, comply with,
214 and adhere to a repayment plan approved by the counseling
215 agency. If the drawer agrees to comply with and adhere to a
216 repayment plan approved by the counseling agency, the provider
217 must also comply with and adhere to that repayment plan. The
218 deferred presentment provider may not deposit or present the
219 drawer's check for payment before the end of the 60-day grace
220 period unless the drawer fails to comply with such conditions or
221 the drawer fails to notify the provider of such compliance.
222 Before each deferred presentment transaction, the provider may
223 verbally advise the drawer of the availability of the grace
224 period consistent with the written notice in subsection (20),
225 and may not discourage the drawer from using the grace period.

226 (b) At the commencement of the grace period, the deferred
227 presentment provider shall provide the drawer:

228 1. Verbal notice of the availability of the grace period
229 consistent with the written notice in subsection (20).

230 2. A list of approved consumer credit counseling agencies
231 prepared by the office. The office list shall include nonprofit
232 consumer credit counseling agencies affiliated with the National

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233 Foundation for Credit Counseling which provide credit counseling
234 services to state residents in person, by telephone, or through
235 the Internet. The office list must include phone numbers for the
236 agencies, the counties served by the agencies, and indicate the
237 agencies that provide telephone counseling and those that
238 provide Internet counseling. The office shall update the list at
239 least once each year.

240 3. The following notice in at least 14-point type in
241 substantially the following form:

242

243 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
244 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
245 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
246 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
247 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
248 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
249 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
250 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
251 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
252 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
253 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
254 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
255 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
256 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
257 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
258 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
259 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
260 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
261 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE

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262 THE DEBT.

263

264 (c) If a drawer completes an approved payment plan, the
265 deferred presentment provider shall pay one-half of the drawer's
266 fee for the deferred presentment agreement to the consumer
267 credit counseling agency.

268 (23) As to deferred presentment installment transactions,
269 if a drawer informs the deferred presentment installment
270 transaction provider in writing or in person by noon of the
271 business day before a scheduled payment that the drawer cannot
272 pay in full the scheduled payment amount due and owing the
273 deferred presentment installment provider, the deferred
274 presentment installment provider must provide the drawer the
275 opportunity to defer the scheduled payment, at no additional fee
276 or charges, until after the last scheduled payment. Such
277 deferred payment must be due at an interval after the last
278 scheduled payment which is no less than the intervals between
279 the originally scheduled payments.

280 (24)~~(23)~~ The office shall implement a common database with
281 real-time access through an Internet connection for deferred
282 presentment providers, as provided in this subsection. The
283 database must be accessible to the office and the deferred
284 presentment providers in order to verify whether any deferred
285 presentment transactions are outstanding for a particular
286 person. Deferred presentment providers shall submit such data
287 before entering into each deferred presentment transaction in
288 such format as required by rule, including the drawer's name,
289 social security number or employment authorization alien number,
290 address, driver license number, amount of the transaction, date

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291 of transaction, the date that the transaction is closed, and
292 such additional information as is required by rule. The
293 commission may by rule impose a fee of up to \$1 per transaction,
294 or for each month that a balance is scheduled to be outstanding
295 on transactions that have multiple scheduled payments, for data
296 that must be submitted by a deferred presentment provider. A
297 deferred presentment provider may rely on the information
298 contained in the database as accurate and is not subject to any
299 administrative penalty or civil liability due to relying on
300 inaccurate information contained in the database. A deferred
301 presentment provider must notify the office, in a manner as
302 prescribed by rule, within 15 business days after ceasing
303 operations or no longer holding a license under part II or part
304 III of this chapter. Such notification must include a
305 reconciliation of all open transactions. If the provider fails
306 to provide notice, the office shall take action to
307 administratively release all open and pending transactions in
308 the database after the office becomes aware of the closure. This
309 section does not affect the rights of the provider to enforce
310 the contractual provisions of the deferred presentment
311 agreements through any civil action allowed by law. The
312 commission may adopt rules to administer this subsection and to
313 ensure that the database is used by deferred presentment
314 providers in accordance with this section.

315 (25)~~(24)~~ A deferred presentment provider may not accept
316 more than one check or authorization to initiate more than one
317 automated clearinghouse transaction to collect on a deferred
318 presentment transaction for a single deferred presentment
319 transaction, except for deferred presentment installment

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320 transactions in which such checks or authorizations represent
321 multiple scheduled payments.

322 (26) A deferred presentment installment transaction must be
323 fully amortizing and repayable in substantially equal and
324 consecutive installments according to a payment schedule agreed
325 upon by the parties with no less than 13 days and not more than
326 1 calendar month between payments, except that the first
327 installment period may be longer than the remaining installment
328 periods by not more than 15 days, and the first installment
329 payment may be larger than the remaining installment payments by
330 the amount of charges applicable to the extra days. In
331 calculating charges under this subsection, when the first
332 installment period is longer than the remaining installment
333 periods, the amount of the charges applicable to the extra days
334 may not exceed those that would accrue under a simple interest
335 calculation based on the rates allowed under subsection (6).

336 Section 3. Subsections (1), (3), and (4) of section
337 560.405, Florida Statutes, are amended to read:

338 560.405 Deposit; redemption.—

339 (1) The deferred presentment provider or its affiliate may
340 not present the drawer's check before the end of the deferment
341 period, except for a missed scheduled payment for a deferred
342 presentment installment transaction, as reflected and described
343 in the deferred presentment transaction agreement.

344 (3) Notwithstanding subsection (1), in lieu of presentment,
345 a deferred presentment provider may allow the check to be
346 redeemed at any time upon payment of the outstanding transaction
347 balance and earned fees ~~face amount of the drawer's check.~~

348 However, payment may not be made in the form of a personal

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349 check. Upon redemption, the deferred presentment provider shall
350 return the drawer's check and provide a signed, dated receipt
351 showing that the drawer's check has been redeemed.

352 (4) A drawer may not be required to redeem his or her check
353 in full before the agreed-upon date; however, the drawer may
354 choose to redeem the check before the agreed-upon presentment
355 date.

356 Section 4. For the purpose of incorporating the amendments
357 made by this act to sections 560.404 and 560.405, Florida
358 Statutes, in references thereto, subsection (5) of section
359 560.111, Florida Statutes, is reenacted to read:

360 560.111 Prohibited acts.—

361 (5) Any person who willfully violates any provision of s.
362 560.403, s. 560.404, or s. 560.405 commits a felony of the third
363 degree, punishable as provided in s. 775.082, s. 775.083, or s.
364 775.084.

365 Section 5. This act shall take effect July 1, 2018.