

By the Committees on Appropriations; and Commerce and Tourism;
and Senators Bradley and Braynon

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1 A bill to be entitled
2 An act relating to consumer finance; amending s.
3 559.715, F.S.; revising a requirement for an assignee
4 of the right to bill and collect a consumer debt to
5 give the debtor written notice of the assignment;
6 amending s. 560.402, F.S.; providing and revising
7 definitions; amending s. 560.404, F.S.; specifying the
8 maximum face amount of checks that may be taken for
9 deferred presentment installment transactions,
10 exclusive of fees; specifying the maximum rate and
11 frequency of fees that deferred presentment providers
12 or their affiliates may charge on deferred presentment
13 installment transactions; specifying when fees are
14 earned for certain deferred presentment transactions;
15 specifying the calculation of fees earned for deferred
16 presentment installment transactions; prohibiting
17 prepayment penalties; specifying the minimum and
18 maximum terms of a deferred presentment installment
19 transaction; specifying dates that checks must bear;
20 authorizing providers of deferred presentment
21 installment transactions to accept additional checks
22 subject to certain limitations; requiring the deferred
23 presentment agreement to include the deferment period
24 applicable to each check; correcting a reference to
25 federal law; providing an exception to a prohibition
26 against the acceptance or holding of undated checks or
27 checks with certain dates by a deferred presentment
28 provider or its affiliate; conforming a cross-
29 reference; providing a verification process that may

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

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59 or her check before the agreed-upon date; reenacting
60 s. 560.111(5), F.S., relating to prohibited acts, to
61 incorporate the amendments made to ss. 560.404 and
62 560.405, F.S., in references thereto; providing an
63 effective date.

64

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

66

67 Section 1. Section 559.715, Florida Statutes, is amended to
68 read:

69 559.715 Assignment of consumer debts.—This part does not
70 prohibit the assignment, by a creditor, of the right to bill and
71 collect a consumer debt. However, the assignee must give the
72 debtor written notice of such assignment as soon as practical
73 after the assignment is made, but at least 30 days before
74 bringing any legal action to collect the debt. The assignee is a
75 real party in interest and may bring an action to collect a debt
76 that has been assigned to the assignee and is in default.

77 Section 2. Present subsections (3) through (5) and (6) of
78 section 560.402, Florida Statutes, are renumbered as subsections
79 (4) through (6) and (8), respectively, present subsection (7) is
80 amended, and new subsections (3) and (7) are added to that
81 section, to read:

82 560.402 Definitions.—For the purposes of this part, the
83 term:

84 (3) "Deferred presentment installment transaction" means a
85 deferred presentment transaction that is repayable in
86 installments.

87 (7) "Outstanding transaction balance" means the amount

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88 received by the drawer from the deferred presentment provider
89 that is due and owing, exclusive of the fees allowed under this
90 part, in a deferred presentment transaction.

91 (9)~~(7)~~ "Termination of a deferred presentment agreement"
92 means that all checks ~~the check~~ that are ~~is~~ the basis for the
93 agreement are ~~is~~ redeemed by the drawer by payment in full in
94 cash, or are ~~is~~ deposited and the deferred presentment provider
95 has evidence that such checks have ~~check has~~ cleared.

96 Verification of sufficient funds in the drawer's account by the
97 deferred presentment provider is not sufficient evidence to deem
98 that the deferred presentment ~~deposit~~ transaction is terminated.

99 Section 3. Subsections (5), (6), (8), (12), (13), (14),
100 (19), (20), (21), and (22) and present subsections (23) and (24)
101 of section 560.404, Florida Statutes, are amended, and new
102 subsection (23) and subsection (26) are added to that section,
103 to read:

104 560.404 Requirements for deferred presentment
105 transactions.—

106 (5) The face amount of a check taken for deferred
107 presentment transactions not repayable in installments may not
108 exceed \$500, exclusive of the fees allowed under this part. For
109 a deferred presentment installment transaction, neither the face
110 amount of a check nor the outstanding transaction balance may
111 exceed \$1,000, exclusive of the fees allowed under this part.

112 (6) (a) A deferred presentment provider or its affiliate may
113 not charge fees that exceed 10 percent of the currency or
114 payment instrument provided for a deferred presentment
115 transaction not repayable in installments. A deferred
116 presentment provider or its affiliate may not charge fees on any

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117 deferred presentment installment transaction which exceed 8
118 percent of the outstanding transaction balance on a biweekly
119 basis.

120 (b) Notwithstanding paragraph (a) However, a verification
121 fee may be charged as provided in s. 560.309(8). The fees in
122 paragraph (a) The 10-percent fee may not be applied to the
123 verification fee.

124 (c) Fees are earned at the time of origination for a
125 deferred presentment transaction scheduled to be paid off in 31
126 days or less; however, fees for a deferred presentment
127 installment transaction are earned using a simple interest
128 calculation. A deferred presentment provider may charge only
129 those fees specifically authorized in this section. Prepayment
130 penalties are prohibited.

131 (8) A deferred presentment agreement may not be for a term
132 longer than 31 days or fewer less than 7 days, except for a
133 deferred presentment installment transaction, which may not be
134 for a term longer than 90 days or fewer than 60 days.

135 (12) The deferred presentment agreement and the drawer's
136 initial check must bear the same date, and the number of days of
137 the deferment period must shall be calculated from that date.
138 For deferred presentment installment transactions, the deferred
139 presentment provider may accept additional checks, subject to
140 the limitations in subsection (5), each bearing the date that
141 the check was given to the provider, and the deferred
142 presentment agreement must include the deferment period
143 applicable to each check. The deferred presentment provider and
144 the drawer may not alter or delete the date on any written
145 agreement or check held by the deferred presentment provider.

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146 (13) For each deferred presentment transaction, the
147 deferred presentment provider must comply with the disclosure
148 requirements of 12 C.F.R. part 226, relating to the federal
149 Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer
150 Financial Protection Board of Governors of the Federal Reserve
151 Board. A copy of the disclosure must be provided to the drawer
152 at the time the deferred presentment transaction is initiated.

153 (14) A deferred presentment provider or its affiliate may
154 not accept or hold an undated check or a check dated on a date
155 other than the date on which the deferred presentment provider
156 agreed to hold the check and signed the deferred presentment
157 transaction agreement, except when a customer provides a new
158 payment instrument reflecting the new outstanding transaction
159 balance and anticipated fees upon making a payment on a deferred
160 presentment installment transaction.

161 (19) A deferred presentment provider may not enter into a
162 deferred presentment transaction with a drawer who has an
163 outstanding deferred presentment transaction with that provider
164 or with any other deferred presentment provider, or with a
165 person whose previous deferred presentment transaction with that
166 provider or with any other provider has been terminated for less
167 than 24 hours. The deferred presentment provider must verify
168 such information as follows:

169 (a) The deferred presentment provider must ~~shall~~ maintain a
170 common database and ~~shall~~ verify whether the provider or an
171 affiliate has an outstanding deferred presentment transaction
172 with a particular person or has terminated a transaction with
173 that person within the previous 24 hours. If a provider has not
174 established a database, the provider may rely upon the written

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175 verification of the drawer as provided in subsection (20).

176 (b) The deferred presentment provider must ~~shall~~ access the
177 office's database established pursuant to subsection (24) ~~(23)~~
178 and ~~shall~~ verify whether any other deferred presentment provider
179 has an outstanding deferred presentment transaction with a
180 particular person or has terminated a transaction with that
181 person within the previous 24 hours. Before the office has
182 implemented a database to include deferred presentment
183 installment transactions ~~If a provider has not established a~~
184 ~~database,~~ the deferred presentment provider must access the
185 office's current database pursuant to this paragraph and may
186 rely upon the written verification of the drawer as provided in
187 subsection (20).

188 (20) A deferred presentment provider must ~~shall~~ provide the
189 following notice in a prominent place on each deferred
190 presentment agreement in at least 14-point type in substantially
191 the following form and ~~must~~ obtain the signature of the drawer
192 where indicated:

194 NOTICE

195
196 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
197 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
198 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
199 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
200 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
201 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
202 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.
203

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204 YOU MUST SIGN THE FOLLOWING STATEMENT:

205

206 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
207 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
208 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
209 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

210 (Signature of Drawer)

211

212 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
213 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
214 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE
215 PURSUED AGAINST YOU.

216

217 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER
218 (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR
219 DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU
220 CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE
221 IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT
222 OF YOUR CHECK FOR PAYMENT.

223

224 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE
225 IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON
226 THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE
227 AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,
228 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF
229 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE
230 ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL
231 CHARGE. THE DEFERRED PRESENTMENT PROVIDER MUST ~~SHALL~~
232 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE

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233 GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING
234 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL
235 BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
236 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN
237 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND
238 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE
239 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
240 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
241 THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.
242

243 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
244 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY
245 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A
246 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE
247 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE
248 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
249 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
250 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
251 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
252 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
253 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS
254 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.
255

256 (21) The deferred presentment provider may not deposit or
257 present the drawer's check if the drawer informs the provider in
258 writing or in person that the drawer cannot redeem or pay in
259 full in cash the amount due and owing the deferred presentment
260 provider, unless the drawer fails to comply with subsection (22)
261 or subsection (23), as applicable. No additional fees or

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262 penalties may be imposed on the drawer by virtue of any
263 misrepresentation made by the drawer as to the sufficiency of
264 funds in the drawer's account. Additional fees may not be added
265 to the amounts due and owing to the deferred presentment
266 provider.

267 (22) For deferred presentment transactions not repayable in
268 installments, if, by the end of the deferment period, the drawer
269 informs the deferred presentment provider in writing or in
270 person that the drawer cannot redeem or pay in full in cash the
271 amount due and owing the deferred presentment provider, the
272 deferred presentment provider must ~~shall~~ provide a grace period
273 extending the term of the agreement for an additional 60 days
274 after the original termination date, without any additional
275 charge.

276 (a) The provider must ~~shall~~ require, ~~that~~ as a condition of
277 providing a grace period, that the drawer make an appointment
278 with a consumer credit counseling agency within 7 days after the
279 end of the deferment period and complete the counseling by the
280 end of the grace period. The drawer may agree to, comply with,
281 and adhere to a repayment plan approved by the counseling
282 agency. If the drawer agrees to comply with and adhere to a
283 repayment plan approved by the counseling agency, the provider
284 must also comply with and adhere to that repayment plan. The
285 deferred presentment provider may not deposit or present the
286 drawer's check for payment before the end of the 60-day grace
287 period unless the drawer fails to comply with such conditions or
288 the drawer fails to notify the provider of such compliance.
289 Before each deferred presentment transaction, the provider may
290 verbally advise the drawer of the availability of the grace

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291 period consistent with the written notice in subsection (20),
292 and may not discourage the drawer from using the grace period.

293 (b) At the commencement of the grace period, the deferred
294 presentment provider must ~~shall~~ provide the drawer:

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

297 2. A list of approved consumer credit counseling agencies
298 prepared by the office. The office list must ~~shall~~ include
299 nonprofit consumer credit counseling agencies affiliated with
300 the National Foundation for Credit Counseling which provide
301 credit counseling services to state residents in person, by
302 telephone, or through the Internet. The office list must include
303 phone numbers for the agencies, the counties served by the
304 agencies, and indicate the agencies that provide telephone
305 counseling and those that provide Internet counseling. The
306 office must ~~shall~~ update the list at least once each year.

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

309
310 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
311 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
312 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
313 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
314 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
315 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
316 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
317 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
318 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
319 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE

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320 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
321 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
322 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
323 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
324 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
325 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
326 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
327 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
328 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
329 THE DEBT.

330
331 (c) If a drawer completes an approved payment plan, the
332 deferred presentment provider must ~~shall~~ pay one-half of the
333 drawer's fee for the deferred presentment agreement to the
334 consumer credit counseling agency.

335 (23) For deferred presentment installment transactions, if
336 a drawer informs the deferred presentment provider in writing or
337 in person by noon of the business day before a scheduled payment
338 that the drawer cannot pay in full the scheduled payment amount
339 due and owing the provider, the deferred presentment provider
340 must provide the drawer the opportunity to defer the scheduled
341 payment, at no additional fee or charge, until after the last
342 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
343 same time zone in which the deferred presentment agreement was
344 entered into. Only one deferred payment is permitted for each
345 deferred presentment installment transaction. The deferred
346 payment must be due at an interval after the last scheduled
347 payment which is no shorter than the intervals between the
348 originally scheduled payments.

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349 (24) (a)~~(23)~~ The office must ~~shall~~ implement a common
350 database with real-time access through an Internet connection
351 for deferred presentment providers, as provided in this
352 subsection. The database must be accessible to the office and
353 the deferred presentment providers in order to verify whether
354 any deferred presentment transactions are outstanding for a
355 particular person. Deferred presentment providers must ~~shall~~
356 submit such data before entering into each deferred presentment
357 transaction in such format as required by rule, including the
358 drawer's name, social security number or employment
359 authorization alien number, address, driver license number,
360 amount of the transaction, date of transaction, the date that
361 the transaction is closed, and such additional information as is
362 required by rule.

363 (b) For data that must be submitted by a deferred
364 presentment provider, the commission may by rule impose a fee of
365 up to \$1 per transaction for deferred presentment transactions
366 not repayable in installments, and the commission may impose a
367 fee of up to \$1 for each full or partial 30-day period that a
368 balance is scheduled to be outstanding for a deferred
369 presentment installment transaction ~~for data that must be~~
370 ~~submitted by a deferred presentment provider.~~

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

375 (d) A deferred presentment provider must notify the office,
376 in a manner as prescribed by rule, within 15 business days after
377 ceasing operations or no longer holding a license under part II

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378 or part III of this chapter. Such notification must include a
379 reconciliation of all open transactions. If the provider fails
380 to provide notice, the office must ~~shall~~ take action to
381 administratively release all open and pending transactions in
382 the database after the office becomes aware of the closure.

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

386 (f) The commission may adopt rules to administer this
387 subsection and to ensure that the database is used by deferred
388 presentment providers in accordance with this section.

389 (25) ~~(24)~~ A deferred presentment provider may not accept
390 more than one check or authorization to initiate more than one
391 automated clearinghouse transaction to collect on a deferred
392 presentment transaction for a single deferred presentment
393 transaction, except for deferred presentment installment
394 transactions in which such checks or authorizations represent
395 multiple scheduled payments.

396 (26) A deferred presentment installment transaction must be
397 fully amortizing and repayable in consecutive installments as
398 nearly equal as mathematically practicable according to a
399 payment schedule agreed upon by the parties with no fewer than
400 13 days and not more than 1 calendar month between payments,
401 except that the first installment may be longer than the
402 remaining installments by not more than 15 days, and the first
403 installment payment may be larger than the remaining installment
404 payments by the amount of charges applicable to the extra days.
405 In calculating charges under this subsection, when the first
406 installment is longer than the remaining installments, the

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407 amount of the charges applicable to the extra days may not
408 exceed those that would accrue under a simple interest
409 calculation based on the rate allowed under subsection (6).

410 Section 4. Subsections (1), (3), and (4) of section
411 560.405, Florida Statutes, are amended to read:

412 560.405 Deposit; redemption.—

413 (1) The deferred presentment provider or its affiliate may
414 not present the drawer's check before the end of the deferment
415 period, except for a missed scheduled payment for a deferred
416 presentment installment transaction that has not been otherwise
417 deferred pursuant to s. 560.404(23), as reflected and described
418 in the deferred presentment transaction agreement.

419 (3) Notwithstanding subsection (1), in lieu of presentment,
420 a deferred presentment provider may allow the check to be
421 redeemed at any time upon payment of the outstanding transaction
422 balance and earned fees ~~face amount of the drawer's check~~.
423 However, payment may not be made in the form of a personal
424 check. Upon redemption, the deferred presentment provider must
425 ~~shall~~ return the drawer's check and provide a signed, dated
426 receipt showing that the drawer's check has been redeemed.

427 (4) A drawer may not be required to redeem his or her check
428 in full before the agreed-upon date; however, the drawer may
429 choose to redeem the check before the agreed-upon presentment
430 date.

431 Section 5. For the purpose of incorporating the amendments
432 made by this act to sections 560.404 and 560.405, Florida
433 Statutes, in references thereto, subsection (5) of section
434 560.111, Florida Statutes, is reenacted to read:

435 560.111 Prohibited acts.—

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436 (5) Any person who willfully violates any provision of s.
437 560.403, s. 560.404, or s. 560.405 commits a felony of the third
438 degree, punishable as provided in s. 775.082, s. 775.083, or s.
439 775.084.

440 Section 6. This act shall take effect July 1, 2019.