

STORAGE NAME: h0553.jud

DATE: April 6, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 553

RELATING TO: Deferred Presentment

SPONSOR(S): Representative Barreiro

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 8 NAYS 2
 - (2) JUDICIARY
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill would create the "Deferred Presentment Act" as part IV of chapter 560, F.S. This would provide for authorization for and regulation of "deferred presentment transactions" in which a person provides cash or currency in exchange for another person's check and agrees to hold that person's check for a period of time prior to depositing or redeeming the check. A deferred presentment transaction that complies with the provisions of the bill would not be construed to be a loan under state law.

The bill continues regulatory oversight of this industry by the Department of Banking and Finance (the "department"), and further provides:

- definitions for commonly used industry terms.
- registration requirements for deferred-presentment providers.
- specific content for provider agreements.
- a cap on service fees not to exceed 15 percent of the amount paid to a consumer.
- a prohibition on provider agreement "roll-over."
- a \$500 limit for any one provider agreement (exclusive of fees).
- a two-check limitation which any one consumer may have outstanding to one provider at any one time (with a maximum aggregate amount not to exceed \$1,000).
- the ability of the consumer to redeem their check prior to the presentation date.
- the ability of the provider to seek collection of a returned check pursuant to s. 68.065, F.S. (but without the provision for treble damages).
- an effective date of October 1, 2000.

The bill appropriates \$150,000 for fiscal year 2000-2001 from the Regulatory Trust Fund to the department to fund 3 positions to administer the provisions of the act created by this bill. The bill does not provide a funding mechanism to cover this projected expense by the department.

The bill has an effective date of October 1, 2000.

THE COMMITTEE ON FINANCIAL SERVICES ADOPTED A STRIKE-EVERYTHING AMENDMENT THAT IS TRAVELING WITH THE BILL. SEE SECTION VI, INFRA.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill provides for an appropriation from the department's Regulatory Trust Fund to fund three additional full time positions to administer the provisions of the new part created in chapter 560, F.S.

2. Lower Taxes Yes No N/A

The bill raises the fee that a deferred-presentment provider may charge on a consumer to a maximum of 15% of the face value of the check that is presented. This is an increase in fees of between 5 and 12% over existing fees that are authorized, depending on the type of check that is presented.

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

The Money Transmitters' Code (chapter 560, F.S.), provides for licensure and regulation of certain check cashing operations by the Department of Banking and Finance, (Part III of chapter 560, F.S., Check Cashing and Foreign Currency Exchange). No person may engage in the business of cashing checks or payment instruments or the exchange of foreign currency without first registering under the provisions of this part, which:

- Provides for registration, regulation, reports, and examinations for persons cashing checks or exchanging foreign currency.
- Provides an exemption from registration for persons engaged in cashing payment instruments or exchanging foreign currency for compensation if such activity for each location does not exceed 5 percent of the total gross income from the retail sale of goods or services during its most recently completed fiscal year.
- Requires an investigation fee of \$250, provides for a renewal fee of \$500 every 2 years, and provides for a \$50 registration fee for each location not to exceed \$5,000.
- Provides limitations on all persons in the business of cashing payment instruments or exchanging foreign currency for the following fees:
 - 1) except as otherwise provided, no more than 5 percent of the face amount of a check, or 6 percent without identification, or \$5, whichever is greater;
 - 2) for state public assistance or federal social security benefit check payable to the bearer no more than 3 percent of the face amount of a check, or 4 percent without identification, or \$5, whichever is greater;
 - 3) for personal checks or money orders no more than 10 percent of the face amount, or \$5, whichever is greater.

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A person registered under this part as being in the business of cashing checks ("registrant") may charge up to 10% of the face amount of a personal check as a fee for this service, as shown above. The registrant may accept a post-dated check or agree to wait a certain number of days to cash the check. If a licensed check casher holds the check for a period of time the transaction has some characteristics of a loan, and it is the department's position that although this transaction is not expressly prohibited by the statute it is probable the drafters of the statute did not contemplate this practice.

It is the position of the department that licensed check cashers are not permitted to execute "roll-overs" of these transactions because a "roll-over" would clearly convert the transaction into a loan of a type not authorized by any Florida statute. Should a licensee engage in a "roll-over," it is the department's position that it would be both a regulatory violation which could result in civil penalties and a criminal violation of chapter 687, F.S., should the interest rate exceed 18 percent per annum.

Section 516.02, F.S., states that a person must not engage in the business of making consumer finance loans unless authorized to do so under chapter 516, F.S., or some other statute. A consumer finance loan means a loan in an amount under \$25,000 with an annual interest greater than 18 percent per annum. s. 516.01(2), F.S. Specific statutes authorizing consumer finance loans in excess of 18 percent are found in chapter 516, F.S. (consumer loans), chapter 520, F.S. (retail installment sales), chapter 538, F.S. (title loans), chapter 539, F.S. (pawns), and chapter 655, F.S. (credit cards). Consequently, deferred deposit loans, or any variation thereof, which do not strictly comport with the requirements of chapter 560, F.S., may be contrary to the law if the amount of the loan is under \$25,000 and the interest rate exceeds 18 percent per annum. A violation of chapter 687, F.S., which addresses usurious contracts, may result in a second degree misdemeanor conviction if the interest rate exceeds 25 percent but does not exceed 45 percent. If a usurious lender charges a per annum interest rate in excess of 45 percent the offense may be punished as a third degree felony. See, ss. 687.071(2) and (3), F.S.

In April of 1997, the department filed an administrative action against a local business, Cash Cow, for statutory violations which resulted in a final order revoking the business' license, removal of the acting president, a cease and desist order, and a \$230,000 fine. The First District Court of Appeal affirmed that order *per curiam*. On January 7, 1999, the state-wide prosecutor's office launched dual criminal and administrative actions against that same business and its principals. That prosecution effort is currently in the evidence-discovery phase.

The department also administers the Money Laundering Program to deter money laundering through financial institutions operating in Florida. The more recent focus of money laundering activities has been on money transmitters (check cashers, foreign currency exchangers, money order issuers, and wire transmitters) which have been increasingly identified as vehicles for money laundering.

According to an Associated Press article dated March 6, 2000, via NewsEdge Corporation, Rep. John LaFalce of New York, senior Democrat on the House Banking Committee, introduced H.R. 3823 on March 2, 2000, which would prohibit all federally insured banks from making payday loans either directly or through an affiliate. According to the story, consumer groups and other critics of the industry maintain that some payday loan companies skirt the law in the 19 states that ban the loans by teaming up with out-of-state nationally chartered banks. The 19 states and two U.S. jurisdictions that ban payday loans are Alabama, Alaska, Arizona, Connecticut, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New

Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia, Puerto Rico and the U.S. Virgin Islands.

C. EFFECT OF PROPOSED CHANGES:

The bill would create the "Deferred Presentment Act." as part IV of chapter 560, F.S. This would provide for authorization for and regulation of "deferred presentment transactions" in which a person provides cash or currency in exchange for another person's check and agrees to hold that person's check for a period of time prior to depositing or redeeming the check. A deferred presentment transaction that complies with the provisions of the bill would not be construed to be a loan under state law.

The bill provides regulatory oversight of this industry by the department, and further provides:

- definitions for commonly used industry terms.
- registration requirements for deferred-presentment providers.
- specific content for provider agreements.
- a cap on service fees not to exceed 15 percent of the amount paid to a consumer.
- prohibition for agreement "roll-over."
- a \$500 limit for any one provider agreement (exclusive of fees).
- a two-check limitation which any one consumer may have outstanding to one provider at any one time (with a maximum aggregate amount not to exceed \$1,000).
- the ability of the consumer to redeem their check prior to the presentation date.
- the ability of the provider to seek collection of a returned check pursuant to s. 68.065, F.S. (but without the provision for treble damages).
- an appropriation of \$150,000 annually from the department's Regulatory Trust Fund to fund three full time positions to administer the act.

D. SECTION-BY-SECTION ANALYSIS:

Sections 1 - 5 apply to Money Transmitters, Generally (Part I of chapter 560, F.S.)

Section 1 amends s. 560.103, F.S., (definitions), to add reference to new part IV of the chapter, relating to deferred presentment, as created by Section 6 of this bill.

Section 2 amends s. 560.114, F.S., relating to disciplinary action by the department for certain prohibited acts of any person who is registered under the chapter as a money transmitter (check casher, etc.), to add the following prohibited acts: the failure to pay any fee, charge, or fine imposed or assessed pursuant to the chapter; or engaging in or advertising engagement in the business of a money transmitter without a registration, unless exempt. The bill also specifies that if any registration expires or is surrendered while administrative charges are pending, the proceeding shall continue.

Section 3 amends s. 560.129, F.S., relating to the confidentiality of certain proceedings and records. The bill deletes current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings conducted under this chapter. The bill also deletes the confidentiality provisions that currently apply to any emergency order entered under s. 560.112 (6), F.S., which relates to conduct likely to cause substantial dissipation of assets or earnings of the money transmitter or insolvency or substantial prejudice to the customers. As amended by the bill, these hearings and proceedings and related records would no longer be confidential.

Section 4 amends s. 560.207, F.S., relating to renewal of a money transmitter's registration. The bill extends the date for expiration of registration from March 31 to April 30.

Section 5 applies to Deferred Presentment

Section 5 creates new part IV of chapter 560 (ss. 560.401 - 560.407), F.S., to authorize and regulate deferred presentment agreements. The bill creates the following statutes, which provide as follows:

s. 560.401, F.S. Short Title. The bill designates new part IV as the "Deferred Presentment Act."

s. 560.402, F.S. Definitions. The bill creates definitions for the following terms: days, deferred presentment provider, deferred presentment transaction, drawer, renewal, and service fee.

The key definition of the practice that is regulated under this part is "deferred presentment transaction" which means "providing currency or a payment instrument in exchange for a person's check and agreeing to hold that person's check for a period of time prior to presentment, deposit or redemption. A deferred presentment transaction is not a loan under state law."

Other key terms include:

"Drawer" means a person who writes a personal check and upon whose account the check is drawn.

"Renewal" means the termination of an existing agreement solely by the payment of fees due and the substitution of a new check drawn by the drawer pursuant to a new agreement.

"Deferred presentment provider" or "provider" who is the person who is registered under part II or part III of the Code, engages in a deferred presentment transaction, and has filed a declaration of intent with the department.

"Service fee" means the fee a provider may charge in a deferred presentment transaction, which may not be deemed interest for any purpose. (See s. 560.404, F.S., which limits the fee to 15% of the face amount of the check.)

"Days" means calendar days.

s. 560.403, F.S. Requirement of registration; declaration of intent. The bill establishes the requirements for registration of a deferred presentment provider, which includes a requirement that a person also be registered under part II or part III of the chapter, which currently regulates persons who sell or issue payment instruments (checks, money orders, etc.) or who transmits funds (part II) and persons who are in the business of cashing checks or other payment instruments or the exchanging of foreign currency (part III.) Such persons must have on file with the department a declaration of intent to engage in deferred presentment transactions. The declaration of intent must be under oath, in a form as prescribed by the department, and no person who engages in deferred presentment is exempt from this registration. Every deferred presentment transaction agreement must be written and signed by both the provider and the drawer and executed on the same day that the currency is provided.

Every transaction agreement must contain:

- The name, address, and telephone number of the provider, and the name and title of the person who signs the agreement on behalf of the provider;
- The date the transaction was made;
- The amount of the drawer's check;
- The length of the deferral period (this term is not currently defined in the Act.);
- The address and telephone number of the department; and
- A clear description of the drawer's payment obligations under the transaction.

No provider shall require any person to provide additional security for the transaction, or any extension, or require a person to provide any additional guaranty.

A transaction agreement may not contain:

- A hold harmless clause;
- A confession of judgment clause;
- Any assignment of wages or other compensation for services;
- Any statement that the drawer agrees not to assert any claim or defense arising out of the agreement; and,
- A waiver of any provision of this part.

s. 560.404, F.S. Rules. The bill prohibits certain acts and practices for a deferred presentment provider, including charging a service fee in excess of 15 percent of the amount provided to the drawer. Other prohibited acts include accepting or holding an undated check; altering or deleting the date on the check; collecting a service fee before the drawer's check is presented, deposited, or redeemed; renewing or extending any deferred presentment transaction (beyond the 31 day limit); holding more than two outstanding checks from any one drawer at any one time; holding outstanding checks from any one drawer which in the aggregate exceed \$1,000; charging any fee other than the maximum 15% service fee, and certain other practices. Other rules include:

- Upon receipt of the drawer's check, a deferred present provider must immediately provide the drawer with the face amount of the check, less the service fee permitted under this section;
- A provider may not charge the drawer a check cashing fee or a verification fee pursuant to part III;
- The bill specifies the types of currency that the deferred presentment provider may provide to the drawer of the check (which differs, depending on whether the provider is registered under part II or part III of the chapter). It further requires the deferred presentment provider to allow the drawer to cash any non-negotiable instrument issued by the provider with the provider without incurring any fees or costs;
- The bill prohibits a provider from redeeming, extending, or otherwise consolidating a transaction with the proceeds of another transaction made by the same provider;
- The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of fees as allowed by the bill;
- Providers are required to post a disclosure statement that provides, in summary, that state law prohibits deferred presentment providers and affiliated providers from holding, at any one time, more than two outstanding checks written by the drawer ("you") and that state law prohibits providers from holding checks written by you which in the aggregate exceed \$1,000, exclusive of the service fee.

s. 560.405, F.S. Deposit and redemption. The bill prohibits a deferred presentment provider from presenting or depositing a drawer's check before the end of the deferral period, and requires the check to be endorsed with the actual name under which the deferred presentment provider is doing business. Allows a drawer of a check to elect to redeem his or her check at any time before the end of the deferral period.

The written agreement must authorize the registrant to defer presentment or negotiation of the check until after a specific date, not later than 31 days from the date the check is accepted by the registrant.

s. 560.406, F.S. Worthless checks. If a check is returned to a provider from a payor financial institution due to lack of funds, a closed account, or a stop-payment order, the provider is allowed to seek collection on the check pursuant to s. 68.065, F.S., except that the provider is not entitled to the treble damages provided in that section. The bill provides that a person who issues a check under a deferred presentment agreement is not subject to criminal penalty.

s. 560.407, F.S. Books and records. Deferred presentment providers would be required to maintain all books and records as prescribed by department rules, and be retained for at least 3 years.

Section 6 appropriates \$150,000 for fiscal year 1999-2000 from the Regulatory Trust Fund of the Department of Banking and Finance to the department to fund 3 positions to administer the provisions of the act created by this bill. This section is effective July 1, 1999.

Section 7 provides an effective date of October 1, 1999, except as otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

	FY 2000-01	FY 2001-02
Regulatory Trust Fund	\$150,000	\$150,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill caps all service fees on provider agreements to not exceed 15 percent of the amount paid to the drawer, and prohibits rollovers of deferred presentment agreements, which may have the effect of decreasing the profit margin of those providing these services currently. In addition, the bill provides for a regulatory framework and penalties for violations of the act. The cap on fees will operate as an increase in the fee that may be charged to a consumer from 5 to 12 percentage points.

D. FISCAL COMMENTS:

Persons currently providing check cashing services to the public must be licensed by the department under part III of Chapter 560, F.S. (check cashers). This bill would require licensees under parts II or III of Chapter 560, F.S., who intend to provide this service after the effective date to file a declaration of intent with the department. The bill does not provide a new funding source to the department to cover what the department estimates it will cost to administer the program.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with a city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The department has existing, adequate rule-making authority in part I of chapter 560 (General Provisions).

C. OTHER COMMENTS:

COMMENTS BY COMMITTEE ON FINANCIAL SERVICES

Section 4 amends s. 560.129, F.S., to delete current law provisions that make confidential and exempt from the Public Records and Public Meetings laws, the hearings and proceedings

conducted under this chapter and any emergency order entered under s. 560.112 (6), F.S., which relates to conduct likely to cause substantial dissipation of assets or earnings of the money transmitter or insolvency or substantial prejudice to the customers. As amended by the bill, these hearings and proceedings and related records would no longer be confidential. Since the bill does not create or expand an exemption from the public records law, the bill does not raise a constitutional issue of requiring a separate bill.

A potential conflict exists within s. 560.404, F.S., as created by the bill. Section 560.404(2), F.S., states that the provider shall provide the drawer with the full amount of any check to be held, less only the fees permitted under this section. The next sentence of subsection (2) states that no provider shall provide a drawer with the face amount of the check to be held. Therefore, if a 15 percent service charge is assessed to a \$100 check, subsection (2) permits a provider to provide \$85 to the drawer. However, s. 560.404(1), F.S., states that a provider may not charge more than 15 percent of the amount paid to the drawer. Obviously, the full amount of the check, less fees (a 15 percent service charge), would be a different amount than 15 percent of the amount paid to the drawer. This provision may have been intended to refer to other fees allowable under the section such as fees due the provider for insufficient funds charges.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 3, 2000, the Committee on Financial Services adopted a Strike Everything amendment that is traveling with the bill. The Strike Everything amendment differs from the original bill in that the Strike Everything:

Relating to Money Transmitters, Parts I, II, and III of Chapter 560

- consolidates examination fees with application and renewal fees for Chapter 560, as was done with Chapter 494 (Mortgage Brokers and Lenders), Chapter 516 (consumer finance) and Chapter 520 (retail installment sales) in the 1999 Regular Session
- shifts funds for Money Transmitter regulation from the Financial Institutions Regulatory Trust Fund to the Regulatory Trust Fund, on account of Performance Based Budgeting
- conforms branch location requirements, fee requirements, and notification requirements with other industries regulated by the department
- clarifies the fees charged to registrants who fail to timely renew and the time period they have to reinstate
- requires a \$50 fee for each new location added after the effective date, and increases the cap on 2-year renewal fee for branch locations from \$5,000 to \$20,000

Relating to Deferred Presentment Act - Part IV of Chapter 560

- provide definitions for "affiliate," "amount financed," and "business day" and when an agreement is "terminated"
- establishes a nonrefundable, annual declaration fee of \$1,000 (in addition to any other fees required by Parts II or III of Chapter 560, F.S.)

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- reduces the total amount of fees from 15 percent to 10 percent of the amount financed, but authorizes providers to charge a verification fee in compliance with s. 560.309(4) and its rules
- establishes a two day waiting period between agreements
- reduces the number of outstanding agreements (from two to one), and the total dollar amount (from \$1,000 to \$500), any one drawer may have with any one provider at any one time
- conforms branch location requirements, fee requirements, and notification requirements with other industries regulated by the department
- clarifies the fees charged to registrants who fail to timely renew and the time period they have to reinstate to conform with the department's regulation of other industries
- conforms record-keeping requirements with other industries regulated by the department
- makes other technical, conforming changes
- **Fiscal impact: According to projections provided by the department, this amendment provides an approximate positive impact of \$135,297 for FY 2000-01 and negative impacts of \$17,900 for FY 2001-02, and \$7,900 for FY 2002-03, for the Regulatory Trust Fund.**

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON JUDICIARY:

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