

Committee Substitute for Committee Substitute for  
Committee Substitute for Senate Bill Nos. 1526 and 314

An act relating to the Money Transmitter's Code; amending s. 560.103, F.S.; revising definitions; amending s. 560.111, F.S.; providing penalties for specified violations of the deferred presentment act; amending s. 560.114, F.S.; providing additional grounds for disciplinary action; providing for continuation of certain administrative proceedings under certain circumstances; amending s. 560.118, F.S.; eliminating the authority to assess examination fees; amending s. 560.119, F.S.; revising the deposit of fees and assessments; amending s. 560.204, F.S.; clarifying exemption from registration fees under part III of ch. 560, F.S.; amending s. 560.205, F.S.; adding a fee for authorized vendor or branch locations; amending s. 560.206, F.S.; amending the registration period; amending s. 560.207, F.S.; conforming and clarifying the fee for late renewals; amending the renewal application fee; amending s. 560.208, F.S.; requiring notification of vendor or branch locations; requiring a nonrefundable fee and financial statement; amending s. 560.307, F.S.; applying the application fee to check cashers and foreign currency exchanges and adding a fee for authorized vendors or branch locations; requiring notification of vendor or branch locations; amending s. 560.308, F.S.; increasing the registration and renewal fee for each registrant; clarifying the fee to be charged for late renewal; creating part IV, ch. 560, F.S., consisting of ss. 560.401, 560.402, 560.403, 560.404, 560.405, 560.406, 560.407, and 560.408, F.S.; providing a short title; providing definitions; providing registration requirements for deferred presentment transactions; providing for filing fees; providing limitations; specifying requirements and limitations for engaging in deferred presentment transactions; providing prohibitions; providing for fees; providing limitations; requiring certain notice; specifying criteria and requirements for deposit and redemption of a drawer's check; providing procedures for recovering damages for worthless checks; requiring maintenance of records for a time certain; providing legislative intent; requiring the Comptroller to submit a report to the President of the Senate and the Speaker of the House of Representatives concerning the effectiveness of this act; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (4) of section 560.103, Florida Statutes, and subsection (10) of that section is amended, to read:

560.103 Definitions.—As used in the code, unless the context otherwise requires:

- (4) "Code" means the "Money Transmitters' Code," consisting of:

(d) Part IV of this chapter, relating to deferred presentments.

(10) “Money transmitter” means any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, ~~or funds transmitter, or deferred presentment provider.~~

Section 2. Subsection (4) is added to section 560.111, Florida Statutes, to read:

560.111 Prohibited acts and practices.—

(4) Any person who willfully violates any provision of s. 560.403, s. 560.404, s. 560.405, or s. 560.407 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraphs (w) and (x) are added to subsection (1) of section 560.114, Florida Statutes, to read:

560.114 Disciplinary actions.—

(1) The following actions by a money transmitter or money transmitter-affiliated party are violations of the code and constitute grounds for the issuance of a cease and desist order, the issuance of a removal order, the denial of a registration application or the suspension or revocation of any registration previously issued pursuant to the code, or the taking of any other action within the authority of the department pursuant to the code:

(w) Failure to pay any fee, charge, or fine under the code.

(x) Engaging or advertising engagement in the business of a money transmitter without a registration, unless the person is exempted from the registration requirements of the code.

Section 4. Subsection (1) of section 560.118, Florida Statutes, is amended to read:

560.118 Examinations, reports, and internal audits; penalty.—

(1)(a) The department may conduct an examination of a money transmitter or authorized vendor by providing not less than 15 days' advance notice to the money transmitter or authorized vendor. However, if the department suspects that the money transmitter or authorized vendor has violated any provisions of this code or any criminal laws of this state or of the United States or is engaging in an unsafe and unsound practice, the department may, at any time without advance notice, conduct an examination of all affairs, activities, transactions, accounts, business records, and assets of any money transmitter or any money transmitter-affiliated party for the protection of the public. For the purpose of examinations, the department may administer oaths and examine a money transmitter or any of its affiliated parties concerning their operations and business activities and affairs. The department may accept an audit or examination from any appropriate regulatory agency or from an independent third party with respect to the operations of a money transmitter or an authorized vendor. The department may

also make a joint or concurrent examination with any state or federal regulatory agency. The department may furnish a copy of all examinations made of such money transmitter or authorized vendor to the money transmitter and any appropriate regulatory agency provided that such agency agrees to abide by the confidentiality provisions as set forth in chapter 119.

(b) Persons subject to this chapter who are examined shall make available to the department or its examiners the accounts, records, documents, files, information, assets, and matters which are in their immediate possession or control and which relate to the subject of the examination. Those accounts, records, documents, files, information, assets, and matters not in their immediate possession shall be made available to the department or the department's examiners within 10 days after actual notice is served on such persons.

(c) The audit of a money transmitter required under this section may be performed by an independent third party that has been approved by the department or by a certified public accountant authorized to do business in the United States. The examination of a money transmitter or authorized vendor required under this section may be performed by an independent third party that has been approved by the department or by a certified public accountant authorized to do business in the United States. The cost of such an independent examination or audit shall be directly borne by the money transmitter or authorized vendor.

~~(d) The department may recover the costs of a regular examination and supervision of a money transmitter or authorized vendor; however, the department may not recover the costs of more than one examination in any 12-month period unless the department has determined that the money transmitter or authorized vendor is operating in an unsafe or unsound or unlawful manner.~~

~~(e) The department may, by rule, set a maximum per-day examination cost for a regular examination. Such per-day cost may be less than that required to fully compensate the department for costs associated with the examination. For the purposes of this section, "costs" means the salary and travel expenses directly attributable to the field staff examining the money transmitter or authorized vendor, and the travel expenses of any supervisory staff required as a result of examination findings. Reimbursement for such costs incurred under this subsection must be postmarked no later than 30 days after the date of receipt of a notice stating that such costs are due. The department may levy a late payment penalty of up to \$100 per day or part thereof that a payment is overdue, unless the late payment penalty is excused for good cause. In excusing any such late payment penalty, the department may consider the prior payment history of the money transmitter or authorized vendor.~~

Section 5. Section 560.119, Florida Statutes, is amended to read:

560.119 Deposit of fees and assessments.—The application fees, registration renewal fees, ~~examination fees~~, late payment penalties, civil penalties, administrative fines, and other fees or penalties provided for in the code shall, in all cases, be paid directly to the department, which shall deposit

such proceeds into the ~~Financial Institutions'~~ Regulatory Trust Fund. Each year, the Legislature shall appropriate from the trust fund to the department sufficient moneys to pay the department's costs for administration of the code. The ~~Financial Institutions'~~ Regulatory Trust Fund is subject to the service charge imposed pursuant to chapter 215.

Section 6. Subsection (2) of section 560.204, Florida Statutes, is amended to read:

560.204 Requirement of registration.—

(2) A person registered pursuant to this part is permitted to engage in the activities authorized by this part. A person registered pursuant to this part may also engage in the activities authorized under part III and is exempt from the registration fee required by s. 560.307.

Section 7. Subsection (2) of section 560.205, Florida Statutes, is amended to read:

560.205 Qualifications of applicant for registration; contents.—

(2) Each application for registration must be submitted under oath to the department on such forms as the department prescribes by rule and must be accompanied by a nonrefundable application investigation fee. Such fee may not exceed \$500 for each payment instrument seller or funds transmitter and \$50 for each authorized vendor or location operating within this state ~~and may be waived by the department for just cause.~~ The application forms shall set forth such information as the department reasonably requires, including, but not limited to:

(a) The name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

(b) The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

(c) A description of the activities conducted by the applicant, the applicant's history of operations, and the business activities in which the applicant seeks to engage in this state.

(d) A list identifying the applicant's proposed authorized vendors in this state, including the location or locations in this state at which the applicant and its authorized vendors propose to conduct registered activities.

(e) A sample authorized vendor contract, if applicable.

(f) A sample form of payment instrument, if applicable.

(g) The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.

(h) Documents revealing that the net worth and bonding requirements specified in s. 560.209 have been or will be fulfilled.

Section 8. Section 560.206, Florida Statutes, is amended to read:

560.206 Investigation of applicants.—Upon the filing of a properly completed application, accompanied by the nonrefundable application fee and other required documents, the department shall investigate to ascertain whether the qualifications and requirements prescribed by this part have been met. If the department finds that the applicant meets such qualifications and requirements, the department shall issue the applicant a registration to engage in the business of selling payment instruments and transmitting funds in this state. Any registration issued under this part shall remain effective through April 30 of the second year following the date of issuance of the registration, not to exceed 24 months, unless during such period the registration is in effect through April 30 next following its date of issuance unless otherwise specified by the department or earlier surrendered, suspended, or revoked.

Section 9. Section 560.207, Florida Statutes, is amended to read:

560.207 Renewal of registration; registration fee.—

(1) Registration may be renewed for a 24-month period or the remainder of any such period without proration following the date of its expiration, upon the filing with the department of an application and other statements and documents as may reasonably be required of registrants by the department. However, the registrant must remain qualified for such registration under the provisions of this part.

(2) All registration renewal applications shall be accompanied by a renewal fee not to exceed \$1,000, ~~unless such fee is waived by the department.~~ All renewal applications must be filed on or after January 1 of the year in which the existing registration expires, but before the expiration date of April 30 March 31. If the renewal application is filed prior to the expiration date of an existing registration, no ~~late investigation~~ fee shall be paid in connection with such renewal application. If the renewal application is filed within 60 calendar days after the expiration date of an existing registration, then, in addition to the \$1,000 renewal fee, the renewal application shall be accompanied by a nonrefundable late fee of \$500 investigation fee pursuant to s. 560.205(2). ~~If the registrant has not filed a renewal application within 60 calendar days after the expiration date of an existing registration, a new application shall be filed with the department pursuant to s. 560.205.~~

(3) Every registration renewal application shall also include a 2-year registration renewal fee of \$50 for each authorized vendor or location operating within this state or, at the option of the registrant, a total 2-year renewal fee of \$20,000 \$5,000 may be paid to renew the registration of register all such locations currently registered at the time of renewal operating within this state.

Section 10. Section 560.208, Florida Statutes, is amended to read:

560.208 Conduct of business.—

(1) A registrant may conduct its business at one or more locations within this state through branches or by means of authorized vendors, as designated by the registrant.

(2) Within 60 days after the date a registrant either opens a location within this state or authorizes an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the department on a form prescribed by the department by rule. The notification shall be accompanied by a nonrefundable \$50 fee for each authorized vendor or location. Each notification shall also be accompanied by a financial statement demonstrating compliance with s. 560.209(1), unless compliance has been demonstrated by a financial statement filed with the registrant's quarterly report in compliance with s. 560.118(2). The financial statement must be dated within 90 days of the date of designation of the authorized vendor or location. This subsection shall not apply to any authorized vendor or location that has been designated by the registrant before October 1, 2001.

(3) Within 60 days after the date a registrant closes a location within this state or withdraws authorization for an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the department on a form prescribed by the department by rule.

Section 11. Section 560.307, Florida Statutes, is amended to read:

560.307 Fees.—

(1) The application shall be filed together with a nonrefundable application investigation fee of that shall be established by department rule; however, the investigation fee may not exceed \$250 for each check casher or foreign currency exchanger and \$50 for each authorized vendor or location operating within this state. Such investigation fee shall satisfy the fee requirement for the first year of registration or the remaining part thereof.

(2) Within 60 days after the date a registrant either opens a location within this state or authorizes an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the department on a form prescribed by the department by rule. The notification shall be accompanied by a nonrefundable \$50 fee for each authorized vendor or location. This subsection shall not apply to any authorized vendor or location that has been designated by the registrant before October 1, 2001.

(3) Within 60 days after the date a registrant closes a location within this state or withdraws authorization for an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the department on a form prescribed by the department by rule.

Section 12. Section 560.308, Florida Statutes, is amended to read:

560.308 Registration terms; renewal; renewal fees.—

(1) Registration pursuant to this part shall remain effective through the remainder of the second calendar year following its date of issuance unless during such calendar year the registration is surrendered, suspended, or revoked.

(2) The department shall renew registration upon receipt of a completed renewal form and payment of a nonrefundable renewal fee, ~~as provided by rule,~~ not to exceed \$500. The completed renewal form and payment of the renewal fee shall occur on or after June 1 of the year in which the existing registration expires.

(3) In addition to the renewal fee required by subsection (2), each registrant must ~~register and~~ pay a 2-year ~~\$50 registration renewal fee of \$50 for each authorized vendor or location, including any authorized vendors,~~ operating within this state or, at the option of the registrant, a total 2-year renewal fee of ~~\$20,000~~ \$5,000 may be paid to renew the registration of ~~register~~ all such operating locations currently registered at the time of renewal within this state.

(4) Registration that is not renewed on or before the expiration date of the registration period automatically expires. A renewal application and fee, and ~~a late fee of \$250 an investigation fee pursuant to s. 560.307,~~ must be filed within 60 calendar days after the expiration of an existing registration in order for the registration to before registration may be reinstated. If the registrant has not filed a renewal application within 60 days after the expiration date of an existing registration, a new application must be filed with the department pursuant to s. 560.307.

Section 13. Part IV of chapter 560, Florida Statutes, consisting of sections 560.401, 560.402, 560.403, 560.404, 560.405, 560.406, 560.407, and 560.408, Florida Statutes, is created to read:

PART IV  
DEFERRED PRESENTMENT

560.401 Short title.—This part may be cited as the “Deferred Presentment Act.”

560.402 Definitions.—In addition to the definitions provided in ss. 560.103, 560.202, and 560.302 and unless otherwise clearly indicated by the context, for purposes of this part:

(1) “Affiliate” means a person who directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a deferred presentment provider.

(2) “Business day” means the hours during a particular day during which a deferred presentment provider customarily conducts business, not to exceed 15 consecutive hours during that day.

(3) “Days” means calendar days.

(4) “Deferment period” means the number of days a deferred presentment provider agrees to defer depositing or presenting a payment instrument.

(5) “Deferred presentment provider” means a person who engages in a deferred presentment transaction and is registered under part II or part III of the code and has filed a declaration of intent with the department.

(6) “Deferred presentment transaction” 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.

(7) “Drawer” means any person who writes a personal check and upon whose account the check is drawn.

(8) “Rollover” means the termination or extension of an existing deferred presentment agreement by the payment of any additional fee and the continued holding of the check, or the substitution of a new check drawn by the drawer pursuant to a new deferred presentment agreement.

(9) “Fee” means the fee authorized for the deferral of the presentation of a check pursuant to this part.

(10) “Termination of an existing deferred presentment agreement” means that the check that is the basis for an agreement is redeemed by the drawer by payment in full in cash, or is deposited and the deferred presentment provider has evidence that such check has cleared. A verification of sufficient funds in the drawer’s account by the deferred presentment provider shall not be sufficient evidence to deem the existing deferred deposit transaction to be terminated.

(11) “Extension of an existing deferred presentment agreement” means that a deferred presentment transaction is continued by the drawer paying any additional fees and the deferred presentment provider continues to hold the check for another period of time prior to deposit, presentment, or redemption.

#### 560.403 Requirements of registration; declaration of intent.—

(1) No person, unless otherwise exempt from this chapter, shall engage in a deferred presentment transaction unless the person is registered under the provisions of part II or part III and has on file with the department a declaration of intent to engage in deferred presentment transactions. The declaration of intent shall be under oath and on such form as the department prescribes by rule. The declaration of intent shall be filed together with a nonrefundable filing fee of \$1,000. Any person who is registered under part II or part III on the effective date of this act and intends to engage in deferred presentment transactions shall have 60 days after the effective date of this act to file a declaration of intent.

(2) A registrant under this part shall renew his or her intent to engage in the business of deferred presentment transactions or to act as a deferred presentment provider upon renewing his or her registration under part II or part III and shall do so by indicating his or her intent on the renewal form and by submitting a nonrefundable deferred presentment provider renewal fee of \$1,000, in addition to any fees required for renewal of registration under part II or part III.

(3) A registrant under this part who fails to timely renew his or her intent to engage in the business of deferred presentment transactions or to



act as a deferred presentment provider shall immediately cease to engage in the business of deferred presentment transactions or to act as a deferred presentment provider.

(4) The notice of intent of a registrant under this part who fails to timely renew his or her intent to engage in the business of deferred presentment transactions or to act as a deferred presentment provider on or before the expiration date of the registration period automatically expires. A renewal declaration of intent and fee, and a late fee of \$500, must be filed within 60 calendar days after the expiration of an existing registration in order for the declaration of intent to be reinstated. If the registrant has not filed a renewal declaration of intent within 60 days after the expiration date of an existing registration, a new declaration must be filed with the department.

(5) No person, other than a financial institution as defined in s. 655.005, shall be exempt from registration and declaration if such person engages in deferred presentment transactions, regardless of whether such person is currently exempt from registration under any provision of this code.

560.404 Requirements for deferred presentment transactions.—

(1) Every deferred presentment transaction shall be documented in a written agreement signed by both the deferred presentment provider and the drawer.

(2) The deferred presentment transaction agreement shall be executed on the day the deferred presentment provider furnishes currency or a payment instrument to the drawer.

(3) Each written agreement shall contain the following information, in addition to any information the department requires by rule:

(a) The name or trade name, address, and telephone number of the deferred presentment provider and the name and title of the person who signs the agreement on behalf of the deferred presentment provider.

(b) The date the deferred presentment transaction was made.

(c) The amount of the drawer's check.

(d) The length of deferral period.

(e) The last day of the deferment period.

(f) The address and telephone number of the department.

(g) A clear description of the drawer's payment obligations under the deferred presentment transaction.

(h) The transaction number assigned by the department's database.

(4) Every deferred presentment provider shall furnish to the drawer a copy of the deferred presentment transaction agreement.

(5) The face amount of a check taken for deferred presentment may not exceed \$500 exclusive of the fees allowed by this part.

(6) No deferred presentment provider or its affiliate shall charge fees in excess of 10 percent of the currency or payment instrument provided. However, a verification fee may be charged in accordance with s. 560.309(4) and the rules adopted pursuant to the code. The 10-percent fee may not be applied to the verification fee. A deferred presentment provider may charge only those fees specifically authorized in this section.

(7) The fees authorized by this section may not be collected before the drawer's check is presented or redeemed.

(8) No deferred presentment agreement shall be for a term in excess of 31 days or less than 7 days.

(9) No deferred presentment provider shall require a person to provide any additional security for the deferred presentment transaction or any extension or require a person to provide any additional guaranty from another person.

(10) A deferred presentment provider shall not include any of the following provisions in any written agreement:

(a) A hold harmless clause;

(b) A confession of judgment clause;

(c) Any assignment of or order for payment of wages or other compensation for services;

(d) A provision in which the drawer agrees not to assert any claim or defense arising out of the agreement; or

(e) A waiver of any provision of this part.

(11) Each deferred presentment provider shall immediately provide the drawer with the full amount of any check to be held, less only the fees permitted under this section.

(12) The deferred presentment agreement and drawer's check shall bear the same date, and the number of days of the deferment period shall be calculated from this date. No deferred presentment provider or person may alter or delete the date on any written agreement or check held by the deferred presentment provider.

(13) For each deferred presentment transaction, the deferred presentment provider must comply with the disclosure requirements of 12 C.F.R., Part 226, the federal Truth-in-Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve Board. A copy of the disclosure must be provided to the drawer at the time the deferred presentment transaction is initiated.

(14) No deferred presentment provider or its affiliate may accept or hold an undated check or a check dated on a date other than the date on which

the deferred presentment provider agreed to hold the check and signed the deferred presentment transaction agreement.

(15) Every deferred presentment provider shall hold the drawer's check for the agreed number of days, unless the drawer chooses to redeem the check before the agreed presentment date.

(16) Proceeds in a deferred presentment transaction may be made to the drawer in the form of the deferred presentment provider's payment instrument if the deferred presentment provider is registered under part II; however, no additional fee may be charged by a deferred presentment provider or its affiliate for issuing or cashing the deferred presentment provider's payment instrument.

(17) No deferred presentment provider may require the drawer to accept its payment instrument in lieu of currency.

(18) No deferred presentment provider or its affiliate may engage in the rollover of any deferred presentment agreement. A deferred presentment provider shall not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by the same or an affiliated deferred presentment provider.

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

(a) The deferred presentment provider shall maintain a common database and shall verify whether that deferred presentment provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.

(b) The deferred presentment provider shall access the department's database established pursuant to subsection (23) and shall verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. Prior to the time that the department has implemented such a database, the deferred presentment provider may rely upon the written verification of the drawer as provided in subsection (20).

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

NOTICE

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

YOU MUST SIGN THE FOLLOWING STATEMENT:

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

(Signature of Drawer)

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

3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER SHALL REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

(21) The deferred presentment provider may not deposit or present the drawer's check if the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider. No additional fees or penalties may be imposed on the drawer by virtue of any misrepresentation made by the drawer as to the sufficiency of funds in the drawer's account. In no event shall any additional

fees be added to the amounts due and owing to the deferred presentment provider.

(22)(a) If, by the end of the deferment period, the drawer informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider, the deferred presentment provider shall provide a grace period extending the term of the agreement for an additional 60 days after the original termination date, without any additional charge. The provider shall require that as a condition of providing this grace period, that within the first 7 days of the grace period the drawer make an appointment with a consumer credit counseling agency within 7 days after the end of the deferment period and complete the counseling by the end of the grace period. The drawer may agree to, comply with, and adhere to a repayment plan approved by the counseling agency. If the drawer agrees to comply with and adhere to a repayment plan approved by the counseling agency, the provider is also required to comply with and adhere to that repayment plan. The deferred presentment provider may not deposit or present the drawer's check for payment before the end of the 60-day grace period unless the drawer fails to comply with such conditions or the drawer fails to notify the provider of such compliance. Before each deferred presentment transaction, the provider may verbally advise the drawer of the availability of the grace period consistent with the provisions of the written notice in subsection (20), and shall not discourage the drawer from using the grace period.

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

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

2. A list of approved consumer credit counseling agencies prepared by the department. The department shall prepare the list by October 1, 2001. The department list shall include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to Florida residents in person, by telephone, or through the internet. The department list must include phone numbers for the agencies, the counties served by the agencies, and indicate the agencies that provide telephone counseling and those that provide internet counseling. The department shall update the list at least once each year.

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

AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL [date], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING

MAY BE IN-PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7) DAYS, BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH SUCH A CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.

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

(23) On or before March 1, 2002, the department shall implement a common database with real-time access through an internet connection for deferred presentment providers, as provided in this subsection. The database must be accessible to the department and the deferred presentment providers to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall submit such data before entering into each deferred presentment transaction in such format as the department shall require by rule, including the drawer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by the department. The department may impose a fee not to exceed \$1 per transaction for data required to be submitted by a deferred presentment provider. A deferred presentment provider may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database. The department may adopt rules to administer and enforce the provisions of this section and to assure that the database is used by deferred presentment providers in accordance with this section.

560.405 Deposit; redemption.—

(1) The deferred presentment provider or its affiliate shall not present the drawer's check prior to the agreed-upon date of presentment, as reflected in the deferred presentment transaction agreement.

(2) Before a deferred presentment provider presents the drawer's check, the check shall be endorsed with the actual name under which the deferred presentment provider is doing business.

(3) Notwithstanding the provisions of subsection (1), in lieu of presentment, a deferred presentment provider may allow the check to be redeemed at any time upon payment to the deferred presentment provider in the amount of the face amount of the drawer's check. However, payment may not be made in the form of a personal check. Upon redemption, the deferred

presentment provider shall return the drawer's check that was being held and provide a signed, dated receipt showing that the drawer's check has been redeemed.

(4) No drawer can be required to redeem his or her check prior to the agreed-upon date; however, the drawer may choose to redeem the check before the agreed-upon presentment date.

560.406 Worthless checks.—If a check is returned to a deferred presentment provider from a payor financial institution due to lack of funds, a closed account, or a stop-payment order, the deferred presentment provider may seek collection pursuant to s. 68.065, except a deferred presentment provider shall not be entitled to collect treble damages pursuant s. 68.065. The notice sent by a deferred deposit provider pursuant to s. 68.065 shall not include any references to treble damages and must clearly state that the deferred presentment provider is not entitled to recover such damages. Except as otherwise provided in this part, an individual who issues a personal check to a deferred presentment provider under a deferred presentment agreement is not subject to criminal penalty. If a check is returned to a deferred presentment provider from a payor financial institution due to insufficient funds, a closed account, or a stop-payment order, the deferred presentment provider may pursue all legally available civil remedies to collect the check, including, but not limited to, the imposition of all charges imposed on the deferred presentment provider by any financial institution. In its collection practices, a deferred presentment provider shall comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices which are contained in ss. 806, 807, and 808 of the Fair Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, 1692f. A violation of this act is a deceptive and unfair trade practice and constitutes a violation of the Deceptive and Unfair Trade Practices Act, part II, of chapter 501. In addition, a deferred presentment provider shall comply with the applicable provisions of part VI of chapter 559, the Consumer Collection Practices Act, including, but not limited to, the provisions of s. 559.77.

560.407 Records.—

(1) Each registrant under this part must maintain all books, accounts, records, and documents necessary to determine the registrant's compliance with the provisions of the code. Such books, accounts, records, and documents shall be retained for a period of at least 3 years unless a longer period is expressly required by the department, the laws of this state, or any federal law.

(2) The records required to be maintained by the code or any rule adopted pursuant thereto may be maintained by the registrant at any location within this state, provided that the registrant notifies the department, in writing, of the location of the records in its application or otherwise.

(3) A registrant shall make records available to the department for examination and investigation in this state, as permitted by the code, within 7 days after receipt of a written request.

(4) The original of any record of a registrant includes the data or other information comprising a record stored or transmitted in or by means of any electronic, computerized, mechanized, or other information storage or retrieval or transmission system or device that can upon request generate, regenerate, or transmit the precise data or other information comprising the record. An original also includes the visible data or other information so generated, regenerated, or transmitted if it is legible or can be made legible by enlargement or other process.

560.408 Legislative intent; report.—

(1) It is the intent of the Legislature to provide for the regulation of deferred presentment transactions. It is further the intent of the Legislature to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions in part by:

(a) Providing for sufficient regulatory authority and resources to monitor deferred presentment transactions.

(b) Preventing rollovers.

(c) Regulating the allowable fees charged in connection with a deferred presentment transaction.

(2) The Comptroller shall submit a report to the President of the Senate and the Speaker of the House of Representatives on January 1, 2003, and January 1, 2004, containing findings and conclusions concerning the effectiveness of this act in preventing fraud, abuse, and other unlawful activity associated with deferred presentment transactions. The report may contain legislative recommendations addressing the prevention of fraud, abuse, and other unlawful activity associated with deferred presentment transactions. Prior to filing the report, the Comptroller shall consult with the Attorney General for the purpose of including any recommendations or concerns expressed by the Attorney General.

Section 14. This act shall take effect October 1, 2001.

Approved by the Governor May 31, 2001.

Filed in Office Secretary of State May 31, 2001.