

CHAPTER 2018-26

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 920

An act relating to deferred presentment transactions; amending s. 560.402, F.S.; providing and revising definitions; amending s. 560.404, F.S.; specifying the maximum face amount of checks that may be taken for deferred presentment installment transactions, exclusive of fees; specifying the maximum rate and frequency of fees that deferred presentment providers or their affiliates may charge on deferred presentment installment transactions; specifying when fees are earned for certain deferred presentment transactions; specifying the calculation of fees earned for deferred presentment installment transactions; prohibiting prepayment penalties; specifying the minimum and maximum terms of a deferred presentment installment transaction; specifying dates that checks must bear; authorizing providers of deferred presentment installment transactions to accept additional checks subject to certain limitations; requiring the deferred presentment agreement to include the deferment period applicable to each check; correcting a reference to federal law; providing an exception to a prohibition against the acceptance or holding of undated checks or checks with certain dates by a deferred presentment provider or its affiliate; conforming a cross-reference; providing a verification process that may be relied upon under certain conditions; revising a notice in deferred presentment agreements; authorizing a drawer to inform a provider in writing that the drawer cannot redeem or pay in full the amount due and owing to the provider; providing an exception to a prohibition, under certain circumstances, against a deferred presentment provider's deposit or presentment of a drawer's check; requiring a provider of a deferred presentment installment transaction to allow a drawer to defer one scheduled payment under certain circumstances; providing requirements for the deferred payment; specifying the frequency a certain fee may be imposed by Financial Services Commission rule for data on certain transactions submitted by deferred presentment providers to a certain database; providing an exception to a limitation on a deferred presentment provider's acceptance of a certain check or authorization; specifying requirements for amortization, installment repayments, and the calculation of charges for deferred presentment installment transactions; conforming provisions to changes made by the act; amending s. 560.405, F.S.; providing an exception to a prohibition against a deferred presentment provider's or its affiliate's presentment of a drawer's check before the end of the deferment period; revising a condition under which a deferred presentment provider may allow the check to be redeemed in lieu of presentment; revising a prohibition against requiring a drawer to redeem his or her check before the agreed-upon date; reenacting s. 560.111(5), F.S., relating to prohibited acts, to incorporate the amendments made to ss. 560.404 and 560.405, F.S., in references thereto; providing an effective date.

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

Section 1. Present subsections (3) through (5) and (6) of section 560.402, Florida Statutes, are renumbered as subsections (4) through (6) and (8), respectively, present subsection (7) is amended, and new subsections (3) and (7) are added to that section, to read:

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

(3) “Deferred presentment installment transaction” means a deferred presentment transaction that is repayable in installments.

(7) “Outstanding transaction balance” means the amount received by the drawer from the deferred presentment provider which is due and owing, exclusive of the fees allowed under this part, in a deferred presentment transaction.

(9)(7) “Termination of a deferred presentment agreement” means that all checks the check that are is the basis for the agreement are is redeemed by the drawer by payment in full in cash, or are is deposited and the deferred presentment provider has evidence that such checks have check has cleared. Verification of sufficient funds in the drawer’s account by the deferred presentment provider is not sufficient evidence to deem that the deferred presentment deposit transaction is terminated.

Section 2. Subsections (5), (6), (8), (12), (13), (14), (19), (20), (21), and (22) and present subsections (23) and (24) of section 560.404, Florida Statutes, are amended, and a new subsection (23) and subsection (26) are added to that section, to read:

560.404 Requirements for deferred presentment transactions.—

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

(6)(a) A deferred presentment provider or its affiliate may not charge fees that exceed 10 percent of the currency or payment instrument provided for a deferred presentment transaction not repayable in installments. A deferred presentment provider or its affiliate may not charge fees on any deferred presentment installment transaction which exceed 8 percent of the outstanding transaction balance on a biweekly basis.

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

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

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

(12) The deferred presentment agreement and the drawer's initial check must bear the same date, and the number of days of the deferment period must shall be calculated from that date. For deferred presentment installment transactions, the deferred presentment provider may accept additional checks, subject to the limitations in subsection (5), each bearing the date that the check was given to the provider, and the deferred presentment agreement must include the deferment period applicable to each check. The deferred presentment provider and the drawer may not 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 ~~1026~~ 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer Financial Protection 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) A deferred presentment provider or its affiliate may not 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, except when a customer provides a new payment instrument reflecting the new outstanding transaction balance and anticipated fees upon making a payment on a deferred presentment installment transaction.

(19) A deferred presentment provider may not enter into a deferred presentment transaction with a drawer 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 must shall maintain a common database and shall verify whether the 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.

If a provider has not established a database, the provider may rely upon the written verification of the drawer as provided in subsection (20).

(b) The deferred presentment provider ~~must shall~~ access the office's database established pursuant to subsection ~~(24) (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. Before the office has implemented a database to include deferred presentment installment transactions ~~If a provider has not established a database, the deferred presentment provider must access the office's current database pursuant to this paragraph and~~ may rely upon the written verification of the drawer as provided in subsection (20).

(20) A deferred presentment provider ~~must 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 AFTER 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.

4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE IN INSTALLMENTS: 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 MUST 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.

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

(21) The deferred presentment provider may not deposit or present the drawer's check if the drawer informs the provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider, unless the drawer fails to comply with subsection (22) or subsection (23), as applicable. 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. Additional fees may not be added to the amounts due and owing to the deferred presentment provider.

(22) For deferred presentment transactions not repayable in installments, if, by the end of the deferment period, the drawer informs the deferred presentment provider in writing or 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 must 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.

(a) The provider ~~must shall~~ require, ~~that~~ as a condition of providing a grace period, that 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 must also 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 written notice in subsection (20), and may not discourage the drawer from using the grace period.

(b) At the commencement of the grace period, the deferred presentment provider ~~must 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 office. The office list ~~must shall~~ include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to state residents in person, by telephone, or through the Internet. The office 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 office ~~must 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 7 DAYS, BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO

NOTIFY US WITHIN 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 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 ~~must shall~~ pay one-half of the drawer's fee for the deferred presentment agreement to the consumer credit counseling agency.

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

~~(24)(a)(23)~~ The office ~~must 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 office and the deferred presentment providers in order to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers ~~must shall~~ submit such data before entering into each deferred presentment transaction in such format as required by rule, including the drawer's name, social security number or employment authorization alien number, address, driver license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by rule.

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

(c) 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 due to relying on inaccurate information contained in the database.

(d) A deferred presentment provider must notify the office, in a manner as prescribed by rule, within 15 business days after ceasing operations or no longer holding a license under part II or part III of this chapter. Such notification must include a reconciliation of all open transactions. If the provider fails to provide notice, the office must ~~shall~~ take action to administratively release all open and pending transactions in the database after the office becomes aware of the closure.

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

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

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

(26) A deferred presentment installment transaction must be fully amortizing and repayable in consecutive installments as nearly equal as mathematically practicable according to a payment schedule agreed upon by the parties with no fewer than 13 days and not more than 1 calendar month between payments, except that the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of charges applicable to the extra days. In calculating charges under this subsection, when the first installment period is longer than the remaining installment periods, the amount of the charges applicable to the extra days may not exceed those that would accrue under a simple interest calculation based on the rate allowed under subsection (6).

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

560.405 Deposit; redemption.—

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

(3) Notwithstanding subsection (1), in lieu of presentment, a deferred presentment provider may allow the check to be redeemed at any time upon payment of the outstanding transaction balance and earned fees 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 must ~~shall~~ return the drawer's check and provide a signed, dated receipt showing that the drawer's check has been redeemed.

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

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

560.111 Prohibited acts.—

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

Section 5. This act shall take effect July 1, 2019.

Approved by the Governor March 19, 2018.

Filed in Office Secretary of State March 19, 2018.