

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

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

51 of a drawer's check before the end of the deferment
 52 period; revising a condition under which a deferred
 53 presentment provider may allow the check to be
 54 redeemed in lieu of presentment; revising a
 55 prohibition against requiring a drawer to redeem his
 56 or her check before the agreed-upon date; reenacting
 57 s. 560.111(5), F.S., relating to prohibited acts, to
 58 incorporate the amendments made to ss. 560.404 and
 59 560.405, F.S., in references thereto; providing an
 60 effective date.

61
 62 Be It Enacted by the Legislature of the State of Florida:

63
 64 Section 1. Subsections (3) through (5) and (6) of section
 65 560.402, Florida Statutes, are renumbered as subsections (4)
 66 through (6) and (8), respectively, present subsection (7) is
 67 amended, and new subsections (3) and (7) are added to that
 68 section, to read:

69 560.402 Definitions.—For the purposes of this part, the
 70 term:

71 (3) "Deferred presentment installment transaction" means a
 72 deferred presentment transaction that is repayable in
 73 installments.

74 (7) "Outstanding transaction balance" means the amount
 75 received by the drawer from the deferred presentment provider

76 | that is due and owing, exclusive of the fees allowed under this
 77 | part, in a deferred presentment transaction.

78 | (9)-(7)- "Termination of a deferred presentment agreement"
 79 | means that all checks ~~the check~~ that are ~~is~~ the basis for the
 80 | agreement are ~~is~~ redeemed by the drawer by payment in full in
 81 | cash, or are ~~is~~ deposited and the deferred presentment provider
 82 | has evidence that such checks have ~~check has~~ cleared.
 83 | Verification of sufficient funds in the drawer's account by the
 84 | deferred presentment provider is not sufficient evidence to deem
 85 | that the deferred presentment ~~deposit~~ transaction is terminated.

86 | Section 2. Subsections (5), (6), (8), (12), (13), (14),
 87 | (19), (20), (21), and (22) and present subsections (23) and (24)
 88 | of section 560.404, Florida Statutes, are amended, and new
 89 | subsections (23) and (26) are added to that section, to read:

90 | 560.404 Requirements for deferred presentment
 91 | transactions.—

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

98 | (6) (a) A deferred presentment provider or its affiliate
 99 | may not charge fees that exceed 10 percent of the currency or
 100 | payment instrument provided for a deferred presentment

101 transaction not repayable in installments. A deferred
102 presentment provider or its affiliate may not charge fees on any
103 deferred presentment installment transaction which exceed 8
104 percent of the outstanding transaction balance on a biweekly
105 basis.

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

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

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

121 (12) The deferred presentment agreement and the drawer's
122 initial check must bear the same date, and the number of days of
123 the deferment period must ~~shall~~ be calculated from that date.
124 For deferred presentment installment transactions, the deferred
125 presentment provider may accept additional checks, subject to

126 | the limitations in subsection (5), each bearing the date that
127 | the check was given to the provider, and the deferred
128 | presentment agreement must include the deferment period
129 | applicable to each check. The deferred presentment provider and
130 | the drawer may not alter or delete the date on any written
131 | agreement or check held by the deferred presentment provider.

132 | (13) For each deferred presentment transaction, the
133 | deferred presentment provider must comply with the disclosure
134 | requirements of 12 C.F.R. part 1026 226, relating to the federal
135 | Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer
136 | Financial Protection Board of Governors of the Federal Reserve
137 | Board. A copy of the disclosure must be provided to the drawer
138 | at the time the deferred presentment transaction is initiated.

139 | (14) A deferred presentment provider or its affiliate may
140 | not accept or hold an undated check or a check dated on a date
141 | other than the date on which the deferred presentment provider
142 | agreed to hold the check and signed the deferred presentment
143 | transaction agreement, except when a customer provides a new
144 | payment instrument reflecting the new outstanding transaction
145 | balance and anticipated fees upon making a payment on a deferred
146 | presentment installment transaction.

147 | (19) A deferred presentment provider may not enter into a
148 | deferred presentment transaction with a drawer who has an
149 | outstanding deferred presentment transaction with that provider
150 | or with any other deferred presentment provider, or with a

151 person whose previous deferred presentment transaction with that
152 provider or with any other provider has been terminated for less
153 than 24 hours. The deferred presentment provider must verify
154 such information as follows:

155 (a) The deferred presentment provider must ~~shall~~ maintain
156 a common database and ~~shall~~ verify whether the provider or an
157 affiliate has an outstanding deferred presentment transaction
158 with a particular person or has terminated a transaction with
159 that person within the previous 24 hours. If a provider has not
160 established a database, the provider may rely upon the written
161 verification of the drawer as provided in subsection (20).

162 (b) The deferred presentment provider must ~~shall~~ access
163 the office's database established pursuant to subsection (24)
164 ~~(23)~~ and ~~shall~~ verify whether any other deferred presentment
165 provider has an outstanding deferred presentment transaction
166 with a particular person or has terminated a transaction with
167 that person within the previous 24 hours. Before the office has
168 implemented a database to include deferred presentment
169 installment transactions ~~If a provider has not established a~~
170 ~~database,~~ the deferred presentment provider must access the
171 office's current database pursuant to this paragraph and may
172 rely upon the written verification of the drawer as provided in
173 subsection (20).

174 (20) A deferred presentment provider must ~~shall~~ provide
175 the following notice in a prominent place on each deferred

176 presentment agreement in at least 14-point type in substantially
 177 the following form and ~~must~~ obtain the signature of the drawer
 178 where indicated:

180 NOTICE

181
 182 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
 183 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
 184 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
 185 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
 186 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
 187 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
 188 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

189
 190 YOU MUST SIGN THE FOLLOWING STATEMENT:

191
 192 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
 193 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
 194 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
 195 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

196 (Signature of Drawer)

197
 198 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
 199 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
 200 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE

201 PURSUED AGAINST YOU.

202

203 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT
 204 PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL
 205 OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS
 206 MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN
 207 ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT
 208 OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.

209

210 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT
 211 REPAYABLE IN INSTALLMENTS: IF YOU INFORM THE PROVIDER
 212 IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN
 213 FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS
 214 AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING
 215 THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS
 216 AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY
 217 ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER
 218 MUST ~~SHALL~~ REQUIRE THAT YOU, AS A CONDITION OF
 219 OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT
 220 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
 221 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
 222 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
 223 PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY
 224 WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT
 225 AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR

226 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS
 227 TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE
 228 PERIOD.

229
 230 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
 231 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY
 232 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A
 233 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE
 234 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE
 235 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
 236 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
 237 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
 238 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
 239 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
 240 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS
 241 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.

242
 243 (21) The deferred presentment provider may not deposit or
 244 present the drawer's check if the drawer informs the provider in
 245 writing or in person that the drawer cannot redeem or pay in
 246 full in cash the amount due and owing the deferred presentment
 247 provider, unless the drawer fails to comply with subsection (22)
 248 or subsection (23), as applicable. No additional fees or
 249 penalties may be imposed on the drawer by virtue of any
 250 misrepresentation made by the drawer as to the sufficiency of

251 funds in the drawer's account. Additional fees may not be added
252 to the amounts due and owing to the deferred presentment
253 provider.

254 (22) For deferred presentment transactions not repayable
255 in installments, if, by the end of the deferment period, the
256 drawer informs the deferred presentment provider in writing or
257 in person that the drawer cannot redeem or pay in full in cash
258 the amount due and owing the deferred presentment provider, the
259 deferred presentment provider must ~~shall~~ provide a grace period
260 extending the term of the agreement for an additional 60 days
261 after the original termination date, without any additional
262 charge.

263 (a) The provider must ~~shall~~ require, ~~that~~ as a condition
264 of providing a grace period, that the drawer make an appointment
265 with a consumer credit counseling agency within 7 days after the
266 end of the deferment period and complete the counseling by the
267 end of the grace period. The drawer may agree to, comply with,
268 and adhere to a repayment plan approved by the counseling
269 agency. If the drawer agrees to comply with and adhere to a
270 repayment plan approved by the counseling agency, the provider
271 must also comply with and adhere to that repayment plan. The
272 deferred presentment provider may not deposit or present the
273 drawer's check for payment before the end of the 60-day grace
274 period unless the drawer fails to comply with such conditions or
275 the drawer fails to notify the provider of such compliance.

276 Before each deferred presentment transaction, the provider may
 277 verbally advise the drawer of the availability of the grace
 278 period consistent with the written notice in subsection (20),
 279 and may not discourage the drawer from using the grace period.

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

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

284 2. A list of approved consumer credit counseling agencies
 285 prepared by the office. The office list must ~~shall~~ include
 286 nonprofit consumer credit counseling agencies affiliated with
 287 the National Foundation for Credit Counseling which provide
 288 credit counseling services to state residents in person, by
 289 telephone, or through the Internet. The office list must include
 290 phone numbers for the agencies, the counties served by the
 291 agencies, and indicate the agencies that provide telephone
 292 counseling and those that provide Internet counseling. The
 293 office must ~~shall~~ update the list at least once each year.

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

296
 297 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
 298 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
 299 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
 300 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT

301 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
302 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
303 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
304 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
305 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
306 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
307 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
308 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
309 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
310 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
311 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
312 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
313 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
314 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
315 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
316 THE DEBT.

317
318 (c) If a drawer completes an approved payment plan, the
319 deferred presentment provider must ~~shall~~ pay one-half of the
320 drawer's fee for the deferred presentment agreement to the
321 consumer credit counseling agency.

322 (23) For deferred presentment installment transactions, if
323 a drawer informs the deferred presentment provider in writing or
324 in person by noon of the business day before a scheduled payment
325 that the drawer cannot pay in full the scheduled payment amount

326 due and owing the provider, the deferred presentment provider
327 must provide the drawer the opportunity to defer the scheduled
328 payment, at no additional fee or charge, until after the last
329 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
330 same time zone in which the deferred presentment agreement was
331 entered into. Only one deferred payment is permitted for each
332 deferred presentment installment transaction. The deferred
333 payment must be due at an interval after the last scheduled
334 payment which is no shorter than the intervals between the
335 originally scheduled payments.

336 (24) (a) ~~(23)~~ The office must ~~shall~~ implement a common
337 database with real-time access through an Internet connection
338 for deferred presentment providers, as provided in this
339 subsection. The database must be accessible to the office and
340 the deferred presentment providers in order to verify whether
341 any deferred presentment transactions are outstanding for a
342 particular person. Deferred presentment providers must ~~shall~~
343 submit such data before entering into each deferred presentment
344 transaction in such format as required by rule, including the
345 drawer's name, social security number or employment
346 authorization alien number, address, driver license number,
347 amount of the transaction, date of transaction, the date that
348 the transaction is closed, and such additional information as is
349 required by rule.

350 (b) For data that must be submitted by a deferred

351 presentment provider, the commission may by rule impose a fee of
352 up to \$1 per transaction for deferred presentment transactions
353 not repayable in installments, and the commission may impose a
354 fee of up to \$1 for each full or partial 30-day period that a
355 balance is scheduled to be outstanding for a deferred
356 presentment installment transaction ~~for data that must be~~
357 ~~submitted by a deferred presentment provider.~~

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

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

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

374 (f) The commission may adopt rules to administer this
375 subsection and to ensure that the database is used by deferred

376 presentment providers in accordance with this section.

377 ~~(25)(24)~~ A deferred presentment provider may not accept
378 more than one check or authorization to initiate more than one
379 automated clearinghouse transaction to collect on a deferred
380 presentment transaction for a single deferred presentment
381 transaction, except for deferred presentment installment
382 transactions in which such checks or authorizations represent
383 multiple scheduled payments.

384 (26) A deferred presentment installment transaction must
385 be fully amortizing and repayable in consecutive installments as
386 nearly equal as mathematically practicable according to a
387 payment schedule agreed upon by the parties with no fewer than
388 13 days and not more than 1 calendar month between payments,
389 except that the first installment period may be longer than the
390 remaining installment periods by not more than 15 days, and the
391 first installment payment may be larger than the remaining
392 installment payments by the amount of charges applicable to the
393 extra days. In calculating charges under this subsection, when
394 the first installment period is longer than the remaining
395 installment periods, the amount of the charges applicable to the
396 extra days may not exceed those that would accrue under a simple
397 interest calculation based on the rate allowed under subsection
398 (6).

399 Section 3. Subsections (1), (3), and (4) of section
400 560.405, Florida Statutes, are amended to read:

401 560.405 Deposit; redemption.—

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

408 (3) Notwithstanding subsection (1), in lieu of
409 presentment, a deferred presentment provider may allow the check
410 to be redeemed at any time upon payment of the outstanding
411 transaction balance and earned fees ~~face amount of the drawer's~~
412 ~~check~~. However, payment may not be made in the form of a
413 personal check. Upon redemption, the deferred presentment
414 provider must ~~shall~~ return the drawer's check and provide a
415 signed, dated receipt showing that the drawer's check has been
416 redeemed.

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

421 Section 4. For the purpose of incorporating the amendments
422 made by this act to sections 560.404 and 560.405, Florida
423 Statutes, in references thereto, subsection (5) of section
424 560.111, Florida Statutes, is reenacted to read:

425 560.111 Prohibited acts.—

426 (5) Any person who willfully violates any provision of s.
427 560.403, s. 560.404, or s. 560.405 commits a felony of the third
428 degree, punishable as provided in s. 775.082, s. 775.083, or s.
429 775.084.

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