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# **Government Operations & Technology Appropriations Subcommittee**

**Tuesday, February 13, 2018  
9:30 AM – 11:30 AM  
Morris Hall (17 HOB)**

**Meeting Packet**



# The Florida House of Representatives

## Appropriations Committee

### Government Operations & Technology Appropriations Subcommittee

Richard Corcoran  
Speaker

Blaise Ingoglia  
Chair

#### AGENDA

Tuesday, February 13, 2018  
17 HOB (Morris Hall)  
9:30-11:30 A.M.

- I. Call to Order / Roll Call
- II. Opening Remarks
- III. Consideration of the following bill(s):
  - CS/HB 227 Workers' Compensation Benefits for First Responders by Willhite and Plasencia
  - CS/HB 857 Deferred Presentment Transactions by Insurance & Banking Subcommittee and Grant, J. and Cruz
  - HB 1057 E911 Systems by DuBose and Toledo
- IV. Closing Remarks/Meeting Adjourned



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 227 Workers' Compensation Benefits for First Responders

**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee; Willhite; Plasencia; and others

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N, As CS	Moore	Harrington
2) Government Operations & Technology Appropriations Subcommittee		Helping CH	Topp BT
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Workers' compensation laws require employers to pay medical and wage replacement (i.e., indemnity payments) benefits if an employee suffers an accidental injury or death arising out of work performed in the course and the scope of the employment. Current law establishes the conditions under which a mental or nervous injury is compensated. Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. However, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. While medical treatment is covered, first responders without an accompanying physical injury may not receive wage replacement benefits.

The bill provides workers' compensation wage replacement benefits in specified circumstances for a mental or nervous injury of a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic, whether or not such injury is accompanied by a physical injury requiring medical treatment. A law enforcement officer, firefighter, emergency medical technician, or paramedic who entered service before July 1, 2018, is entitled to receive such indemnity benefits if:

- The mental or nervous injury resulted from the individual acting within the course of his or her employment and such individual witnessed a murder, suicide, fatal injury, child death, or mass killing or treated or transported a deceased child or the victim of a murder, suicide, or fatal injury; and
- The mental or nervous injury is demonstrated by clear and convincing medical evidence by a licensed psychiatrist to meet the criteria for post-traumatic stress disorder (PTSD) as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association. The diagnosis must have been made within two years of when the individual witnessed the murder, suicide, fatal injury, child death, or mass killing or treated or transported the deceased child or the victim of a murder, suicide, or fatal injury.

A law enforcement officer, firefighter, emergency medical technician, or paramedic who enters service on or after July 1, 2018, is entitled to receive wage replacement benefits if the individual meets the above requirements and also passes a pre-employment mental health examination that fails to reveal any diagnosis of PTSD, if the prospective employer provided such examination.

The bill also requires an employing agency of a first responder to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

The bill may have a significant negative fiscal impact on the state and local governments (See *Fiscal Analysis & Economic Impact Statement*).

The bill has an effective date of July 1, 2018.

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Workers' Compensation System

Employers are required to provide medical and wage replacement (i.e., indemnity payments) benefits that are required under ch. 440, F.S., if an employee suffers an accidental injury or death arising out of work performed in the course and the scope of the employment.<sup>1</sup> Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,<sup>2</sup> or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.<sup>3</sup>

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.<sup>4</sup> A work-related accident must be the major contributing cause of any resulting injury or illness, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.<sup>5</sup>

##### *General Compensability for Mental or Nervous Injuries*

Section 440.093, F.S., establishes the conditions under which a mental or nervous injury is compensated under workers' compensation laws. Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a mental or nervous injury occurring as a manifestation of a compensable physical injury must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary indemnity benefits for a compensable mental or nervous injury to no more than 6 months after the employee reaches maximum medical improvement.<sup>6</sup> If the 6 month cap on temporary benefits is reached and the injured worker has reached maximum medical improvement (MMI) or if MMI is reached before reaching the cap, permanent indemnity benefits will be due if they are permanently and totally disabled or if they have a permanent impairment.<sup>7</sup>

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.<sup>8</sup>

Indemnity benefits only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.<sup>9</sup> These benefits are generally payable at 66 2/3 percent of the

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<sup>1</sup> Section 440.09(1), F.S.

<sup>2</sup> Section 440.38, F.S.

<sup>3</sup> Section 627.311(5)(a), F.S.

<sup>4</sup> "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

<sup>5</sup> Section 440.09(1), F.S.

<sup>6</sup> Temporary indemnity benefits, known as temporary total disability and temporary partial disability benefits, are due while an injured worker is either unable to earn a wage or earn the same or greater wage as prior to the compensable injury and has not yet reached maximum medical improvement. Following maximum medical improvement, permanent total disability or permanent impairment benefits may be due. Section 440.15, F.S.

<sup>7</sup> However, in 2016, the Florida Supreme Court and the First District Court of Appeal in two cases found the general limitation on temporary indemnity benefits unconstitutional in circumstances where the injured worker had reached the 104-week limit on benefits, but was unable to return to work. They invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016) and *Jones v. Food Lion, Inc.*, 202 So. 3d 964 (Fla. 1st DCA 2016). While no court has issued an opinion applying these cases to 6 month cap on compensable mental and nervous injuries, it is reasonable to believe the this limitation may be unconstitutional, as well.

<sup>8</sup> Section 440.13(2)(a), F.S.

<sup>9</sup> Section 440.12(1), F.S.



employee's average weekly wage,<sup>10</sup> up to the maximum weekly benefit established by law.<sup>11</sup> Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.<sup>12</sup>
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.<sup>13</sup>
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for no more than five years.<sup>14</sup>

#### *Compensability for Mental or Nervous Injuries of First Responders*

In 2007, the Legislature enacted significant changes in workers' compensation benefits for first responders that provide benefits and standards for determining benefits for employment-related accidents and injuries of first responders. The term "first responder" is defined as a law enforcement officer,<sup>15</sup> a firefighter,<sup>16</sup> or an emergency medical technician or paramedic<sup>17</sup> employed by state or local government.<sup>18</sup> Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.<sup>19</sup>

Although mental or nervous injuries are generally not compensable under workers' compensation laws, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. However, while medical treatment is covered, first responders without an accompanying physical injury may not receive indemnity benefits.<sup>20</sup>

#### Post-Traumatic Stress Disorder

The American Psychiatric Association provides diagnostic criteria for mental disorders, including post-traumatic stress disorder (PTSD) in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth*

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<sup>10</sup> An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

<sup>11</sup> Section 440.15(1)-(4), F.S.

<sup>12</sup> Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016). In addition, s. 440.15(4)(e), F.S., specifies that temporary partial disability benefits are payable for 104 weeks; however, the First DCA applied the holding in *Westphal* to these benefits, found the limitation unconstitutional, and reverted the limitation back to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA).

<sup>13</sup> Section 440.15(3), F.S.

<sup>14</sup> Section 440.15(1), F.S.

<sup>15</sup> The term "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10, F.S.

<sup>16</sup> The term "firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. Section 633.102, F.S.

<sup>17</sup> The term "emergency medical technician" means a person who is certified by the Department of Health to perform basic life support. The term "paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support. Section 401.23, F.S.

<sup>18</sup> Chapter 2007-1, L.O.F.

<sup>19</sup> Section 112.1815, F.S.

<sup>20</sup> Section 112.1815(2)(a)3., F.S. The outcomes in *Westphal* and *Jones* imply that this limitation may be unconstitutional.

*Edition (DSM-5).*<sup>21</sup> PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.<sup>22</sup> A diagnosis of PTSD requires exposure to an upsetting traumatic event. However, exposure could be indirect rather than first hand.<sup>23</sup> Symptoms generally begin within the first three months after the trauma, although there may be a delay of months or even years before the criteria for the diagnosis are met.<sup>24</sup>

The DSM-5 estimates approximately 8.7 percent of the U.S. population will develop PTSD in their lifetime.<sup>25</sup> Nationwide, the proportion of adults reporting symptoms of PTSD in a year is approximately 3.5 percent.<sup>26</sup> Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.<sup>27</sup> A 2016 report estimated 20 percent of firefighters and paramedics had PTSD.<sup>28</sup> Preexisting mental health conditions may be exacerbated and new mental health conditions may occur due to extremely emotionally and physically demanding working conditions.<sup>29</sup> A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.<sup>30</sup>

### **Effect of the Bill**

The bill revises workers' compensation standards to provide indemnity benefits for a mental or nervous injury of a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic, whether or not such injury is accompanied by a physical injury requiring medical treatment, if certain requirements are met.

A law enforcement officer, firefighter, emergency medical technician, or paramedic who entered service before July 1, 2018, is entitled to receive such indemnity benefits if:

- The mental or nervous injury resulted from the individual acting within the course of his or her employment and such individual witnessed a murder, suicide, fatal injury, child death, or mass killing<sup>31</sup> or treated or transported a deceased child or the victim of a murder, suicide, or fatal injury; and
- The mental or nervous injury is demonstrated by clear and convincing medical evidence by a licensed psychiatrist to meet the criteria for PTSD as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association. The diagnosis must have been made within two years of when the individual witnessed the murder, suicide, fatal injury, child death, or mass killing or treated or transported the deceased child or the victim of a murder, suicide, or fatal injury.

<sup>21</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition (2013). Commonly referred to as DSM-5.

<sup>22</sup> American Psychiatric Association, *What is Posttraumatic Stress Disorder?*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited Jan. 26, 2017).

<sup>23</sup> *Id.*

<sup>24</sup> DSM-5, *supra*, note 19 at 276.

<sup>25</sup> DSM-5, *supra*, note 19, at 276.

<sup>26</sup> This is commonly referred to as a 12-month prevalence period. <https://www.nimh.nih.gov/health/statistics/what-is-prevalence.shtml> (last visited Feb. 6, 2018).

<sup>27</sup> *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

<sup>28</sup> Fauzeyya Rahman, *New study estimates 20 percent of firefighters and paramedics have PTSD*, EMS1.COM NEWS Aug. 17, 2016, available at <https://www.ems1.com/health-and-wellness/articles/117387048-New-study-estimates-20-percent-of-firefighters-paramedics-have-PTSD/>.

<sup>29</sup> Johns Hopkins Public Health Preparedness Programs, *First Responders, Mental Health Services, and the Law*, Apr. 25, 2013, available at [https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-public-health/research/FirstResp\\_MHsvcs.pdf](https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-public-health/research/FirstResp_MHsvcs.pdf).

<sup>30</sup> Wes Venteicher, *Increasing suicide rates among first responders spark concerns*, FIRE RESCUE NEWS, Mar. 19, 2017, available at <https://www.firerescue1.com/fire-ems/articles/222673018-Increasing-suicide-rates-among-first-responders-spark-concern/>.

<sup>31</sup> The term "mass killing" means three or more killings in a single incident. 28 U.S.C. 530C(b)(1)(M).

A law enforcement officer, firefighter, emergency medical technician, or paramedic who enters service on or after July 1, 2018, is entitled to receive the indemnity benefits if:

- The individual passes a pre-employment mental health examination that fails to reveal any diagnosis of PTSD, if the prospective employer provided such examination;
- The mental or nervous injury resulted from the individual acting within the course of his or her employment and such individual witnessed a murder, suicide, fatal injury, child death, or mass killing or treated or transported a deceased child or the victim of a murder, suicide, or fatal injury; and
- The mental or nervous injury is demonstrated by clear and convincing medical evidence by a licensed psychiatrist to meet the criteria for PTSD as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association. The diagnosis must have been made within two years of when the individual witnessed the murder, suicide, fatal injury, child death, or mass killing or treated or transported the deceased child or the victim of a murder, suicide, or fatal injury.

A law enforcement officer, firefighter, emergency medical technician, or paramedic is not entitled to the bill's indemnity benefits if a claim for benefits is not made prior to or within 180 days after leaving employment with the employing agency.

The bill also requires an employing agency of a first responder to provide educational training related to mental health awareness, prevention, mitigation, and treatment.

#### B. SECTION DIRECTORY:

Section 1. amends s. 112.1815, F.S., relating to firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2. amends s. 440.093, F.S., relating to mental and nervous injuries.

Section 3. provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.



2. Expenditures:

The bill will likely have a significant negative fiscal impact to the state. However, the amount is indeterminate. The fiscal impact will vary depending on the number of claims meeting the requirements of the bill that are submitted, how many claims are awarded, and the legal fees associated with increased claims. The National Council on Compensation calculates that the average cost for each indemnity claim in Florida is \$15,378.<sup>32</sup> Based on an estimate of first responders in Florida, and the average indemnity cost per claim, below is an example of increased costs to the state. The cost varies based on a percentage of first responder employees awarded claims.

Estimated Average Indemnity Cost, Based on Varying Percentage of Awarded Claims					
	State First Responders	Percent awarded claims	Number receiving benefit	Average Florida Indemnity Cost for all Claims	Total Cost (rounded to nearest dollar)
Firefighters - State Government	619	0.25%	1.548	\$ 15,378	\$ 23,805
State Law Enforcement	4,285	0.25%	10.713	\$ 15,378	\$ 164,745
University System Law Enforcement	418	0.25%	1.045	\$ 15,378	\$ 16,070
				<b>TOTAL</b>	<b>\$ 204,620</b>

Firefighters - State Government	619	0.50%	3.095	\$ 15,378	\$ 47,595
State Law Enforcement	4,285	0.50%	21.425	\$ 15,378	\$ 329,474
University System Law Enforcement	418	0.50%	2.090	\$ 15,378	\$ 32,140
				<b>TOTAL</b>	<b>\$ 409,209</b>

Firefighters - State Government	619	0.75%	4.643	\$ 15,378	\$ 71,400
State Law Enforcement	4,285	0.75%	32.138	\$ 15,378	\$ 494,218
University System Law Enforcement	418	0.75%	3.135	\$ 15,378	\$ 48,210
				<b>TOTAL</b>	<b>\$ 613,828</b>

Firefighters - State Government	619	1.00%	6.190	\$ 15,378	\$ 95,190
State Law Enforcement	4,285	1.00%	42.850	\$ 15,378	\$ 658,947
University System Law Enforcement	418	1.00%	4.180	\$ 15,378	\$ 64,280
				<b>TOTAL</b>	<b>\$ 818,417</b>

In addition to indemnity costs, the National Council on Compensation Insurance notes that modifications to workers' compensation related to PTSD could result in increased litigation costs related to the confirmation of a PTSD diagnosis and the determination of whether the PTSD arose out of an activity performed within the course of employment.<sup>33</sup>

Recent case law<sup>34</sup> has resulted in a significant increase in workers' compensation related attorney fees. According to the Office of the Judges of Compensation claims,<sup>35</sup> from fiscal year 2015-2016 to fiscal year 2016-2017, there was a:

<sup>32</sup> Florida Department of Financial Services, Agency Analysis of 2018 House Bill 227, p. 2 (Nov. 2, 2017).

<sup>33</sup> NCCI, *Analysis of SB 376* (Oct. 19, 2017) (on file with Government Operations & Technology Appropriations Subcommittee)

<sup>34</sup> *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. 2016) and *Miles v. City of Edgewater Police Department*, 190 So. 3d 171 (Fla. 1st DCA 2016).

- 36 percent (\$49 million) increase in total injured worker attorney fees.
- 5 percent increase in reported defense attorney fees.
- 191 percent increase in total hourly attorney fees.
- 109 percent increase in total attorney hours reported.
- 39 percent increase in overall average hourly attorney rates.

Attorney fees, generally, and recent increases in them are not figured into the average indemnity cost used to calculate the estimated fiscal impact of the change proposed by the bill. Additionally, until the interpretation of a statutory revision is well settled by judicial opinions, a significant amount of litigation should be expected to explore the scope of coverage offered by the law change. There will be an indeterminate, but significant, negative fiscal impact due to attorney fee costs associated with the bill.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill will likely have a significant negative fiscal impact to local governments. However, the amount is indeterminate. The fiscal impact will vary depending on the number of claims meeting the requirements of the bill that are submitted, how many claims are awarded, and the legal fees associated with increased claims. In their analysis of SB 376, which provides for a greater likelihood of increased claims than this bill, the National Council on Compensation on Compensation Insurance estimates that the overall impact to the workers' compensation system to be minimal.<sup>36</sup> A minimal impact in this context is defined as an impact on overall system costs of less than 0.2 percent or approximately \$7 million.<sup>37</sup>

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector as a result of higher costs in some workers' compensation claims. However, this impact should be minimal, as the bill would only apply to first responders employed in the private sector.

#### D. FISCAL COMMENTS:

The Division of Risk Management, within the Department of Financial Services, provides workers' compensation coverage for state employees. The division, through the State Risk Management Trust Fund, pays compensable workers' compensation claims including indemnity and medical costs.

The December 21, 2017, Revenue Estimating Conference projects that the State Risk Management Trust Fund will be in a deficit of \$18.8 million for fiscal year 2018-19. The deficit is related to the costs associated with hurricane damage to state property, which is also paid for by the trust fund. The House General Appropriations Act, Specific Appropriation 1971A, provides a \$20 million transfer from the General Revenue Fund to the State Risk Management Trust Fund to offset the projected deficit. The bill will likely result in additional workers' compensation claims and increased legal costs covered by the State Risk Management Trust Fund.

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<sup>35</sup> Email from David Langham, Deputy Chief Judge, Office of the Judges of Compensation Claims, Re: report and updated figures (Nov. 9, 2017).

<sup>36</sup> *Id.*

<sup>37</sup> NCCI correspondence (Dec. 4, 2017) (on file with Government Operations & Technology Appropriations Subcommittee).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires workers' compensation indemnity benefits to be paid to first responders for a mental or nervous injury; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because all similarly situated state and local government employers of first responders are required to provide the indemnity benefits. However, for this exception to apply, the bill must declare that it fulfills an important state interest.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 39-43, the bill repeals current law allowing first responders to receive medical benefits following a mental or nervous injury without suffering a physical injury. Subsequent provisions of the bill do not offer replacement benefits, unless the first responder is diagnosed with PTSD. It is not apparent that the intent of the bill is to remove medical benefits from non-PTSD first responder mental or nervous injury claims. An amendment to restore this provision would avoid the elimination of these benefits. If this were done, then the term "benefits" on lines 95 and 121 should be replaced with the term "indemnity benefits" to avoid duplication.

Lines 50-52 state that an employing agency must provide specified education. It is unclear whether this applies to agencies that engage volunteers in service as first responders.

On lines 109 and 141, a licensed psychiatrist is required to demonstrate that the first responder has PTSD by clear and convincing evidence. Clear and convincing evidence is a legal standard used in litigation that must be met by the injured worker's attorney. A psychiatrist does not function in the role of an attorney. Also, the workers' compensation law requires medical providers, including psychiatrists, to render medical opinions within a reasonable degree of medical certainty. An amendment to this provision would address the incongruence between the role of the provider and application of such a legal standard.

On lines 106, 117, 138, and 149, the bill references the medical treatment of a deceased child or the victim of a murder, suicide, or fatal injury. However, medical treatment is not rendered to the deceased; rather, upon recognition of death, treatment stops or is not applied, if not ongoing. These references may be to the treatment of an injured person, who subsequently dies. An amendment would clarify the application of this provision.

The bill provides for coverage of PTSD for first responders related to witnessing, treating, or transporting victims of murder, suicide, fatal injury, child death, or mass killings. A "fatal injury" is an undefined, broad term that subsumes the other victim types, since each type of victim suffers a fatal injury. This either creates superfluous language or the distinctions between the various types and fatal injury are unclear. An amendment would clarify the application of this provision.

The bill authorizes a pre-employment mental health examination to identify whether a prospective employee has PTSD. It is unclear whether this requires an in-person examination of the prospective employee or merely a records review and who must conduct the examination. This could be clarified to



specify the type of examination and whether it is to be conducted by a mental health professional, perhaps even limiting it to a particular specialty (such as a psychiatrist as proposed for the diagnosis required for compensability of first responder PTSD). Additionally, a pre-employment screening for PTSD may violate the Americans with Disabilities Act and result in unlawful discrimination in hiring.

Current law requires an injured worker to provide notice of their injury to his or her employer or the employer's insurer within 30 days of the injury or manifestation of the injury. The bill provides that a claim for first responder PTSD benefits must be made within 180 days after leaving employment. This may extend the notice time period for some and eliminate it for others with the only distinguishing fact being the date on which the injury manifested itself. The bill is silent on whether the general 30 day notice requirement continues to apply or how the provision would apply if a first responder left employment immediately after a qualifying event, but did not manifest PTSD symptoms for more than 180 days. It may require litigation to discover whether their claim would be barred. Additionally, the bill requires the diagnosis of PTSD to occur within 2 years of the qualifying event. It is unclear how this time limitation interacts with the notice of claim limitation. Such ambiguities may lead to confusion and litigation.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 30, 2018, the Oversight, Transparency & Administration Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided indemnity benefits to a law enforcement officer, firefighter, emergency medical technician, or paramedic (first responder) who treated or transported a deceased child or the victim of a murder, suicide, or fatal injury;
- Required an employing agency of a first responder to provide educational training related to mental health awareness, prevention, mitigation, and treatment;
- Required a first responder hired on or after July 1, 2018, to pass a pre-employment mental health examination that failed to reveal a diagnosis of PTSD, if such examination is provided by the prospective employer, in order to receive benefits;
- Required a first responder to receive a diagnosis of PTSD within two years of when the first responder witnessed a murder, suicide, fatal injury, child death, or mass killing, or treated or transported a deceased child or the victim of a murder, suicide, or fatal injury; and
- Prohibited a first responder from filing a claim for benefits more than 180 days after he or she leaves employment.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to workers' compensation benefits for  
 3           first responders; amending s. 112.1815, F.S.; deleting  
 4           certain limitations relating to workers' compensation  
 5           benefits for first responders; requiring employers to  
 6           provide certain education training; amending s.  
 7           440.093, F.S.; providing that law enforcement  
 8           officers, firefighters, emergency medical technicians,  
 9           and paramedics are entitled to benefits under the  
 10          Workers' Compensation Law for mental or nervous  
 11          injuries, whether or not such injuries are accompanied  
 12          by physical injuries requiring medical treatment,  
 13          under specified circumstances; providing an effective  
 14          date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Paragraph (a) of subsection (2) of section  
 19           112.1815, Florida Statutes, is amended, and subsection (5) is  
 20           added to that section to read:

21           112.1815 Firefighters, paramedics, emergency medical  
 22           technicians, and law enforcement officers; special provisions  
 23           for employment-related accidents and injuries.-

24           (2)(a) For the purpose of determining benefits under this  
 25           section relating to employment-related accidents and injuries of



26 first responders, the following shall apply:

27 1. An injury or disease caused by the exposure to a toxic  
 28 substance is not an injury by accident arising out of employment  
 29 unless there is a preponderance of the evidence establishing  
 30 that exposure to the specific substance involved, at the levels  
 31 to which the first responder was exposed, can cause the injury  
 32 or disease sustained by the employee.

33 2. Any adverse result or complication caused by a smallpox  
 34 vaccination of a first responder is deemed to be an injury by  
 35 accident arising out of work performed in the course and scope  
 36 of employment.

37 3. A mental or nervous injury involving a first responder  
 38 and occurring as a manifestation of a compensable injury must be  
 39 demonstrated by clear and convincing evidence. ~~For a mental or~~  
 40 ~~nervous injury arising out of the employment unaccompanied by a~~  
 41 ~~physical injury involving a first responder, only medical~~  
 42 ~~benefits under s. 440.13 shall be payable for the mental or~~  
 43 ~~nervous injury. However, payment of indemnity as provided in s.~~  
 44 ~~440.15 may not be made unless a physical injury arising out of~~  
 45 ~~injury as a first responder accompanies the mental or nervous~~  
 46 ~~injury.~~ Benefits for a first responder are not subject to any  
 47 limitation on temporary benefits under s. 440.093 or the 1-  
 48 percent limitation on permanent psychiatric impairment benefits  
 49 under s. 440.15(3)(c).

50 (5) An employing agency of a first responder must provide

51 educational training related to mental health awareness,  
52 prevention, mitigation, and treatment.

53 Section 2. Section 440.093, Florida Statutes, is amended  
54 to read:

55 440.093 Mental and nervous injuries.—

56 (1) Except as provided in subsections (4) and (5):

57 (a) A mental or nervous injury due to stress, fright, or  
58 excitement only is not an injury by accident arising out of the  
59 employment.

60 (b) ~~Nothing in~~ This section may not ~~shall~~ be construed to  
61 allow for the payment of benefits under this chapter for mental  
62 or nervous injuries without an accompanying physical injury  
63 requiring medical treatment.

64 (c) A physical injury resulting from mental or nervous  
65 injuries unaccompanied by physical trauma requiring medical  
66 treatment is ~~shall~~ not be compensable under this chapter.

67 (2) Mental or nervous injuries occurring as a  
68 manifestation of an injury compensable under this chapter shall  
69 be demonstrated by clear and convincing medical evidence by a  
70 licensed psychiatrist meeting criteria established in the Fifth  
71 Edition ~~most recent edition~~ of the Diagnostic and Statistical  
72 Manual of Mental Disorders published by the American Psychiatric  
73 Association. Except as provided in subsections (4) and (5), the  
74 compensable physical injury must be and remain the major  
75 contributing cause of the mental or nervous condition and the

76 | compensable physical injury as determined by reasonable medical  
 77 | certainty must be at least 50 percent responsible for the mental  
 78 | or nervous condition as compared to all other contributing  
 79 | causes combined. Compensation is not payable for the mental,  
 80 | psychological, or emotional injury arising out of depression  
 81 | from being out of work or losing employment opportunities,  
 82 | resulting from a preexisting mental, psychological, or emotional  
 83 | condition or due to pain or other subjective complaints that  
 84 | cannot be substantiated by objective, relevant medical findings.

85 |       (3) Subject to the payment of permanent benefits under s.  
 86 | 440.15, in no event shall temporary benefits for a compensable  
 87 | mental or nervous injury be paid for more than 6 months after  
 88 | the date of maximum medical improvement for the injured  
 89 | employee's physical injury or injuries, which shall be included  
 90 | in the period of 104 weeks as provided in s. 440.15(2) and (4).  
 91 | Mental or nervous injuries are compensable only in accordance  
 92 | with the terms of this section.

93 |       (4) A law enforcement officer, firefighter, emergency  
 94 | medical technician, or paramedic who entered service before July  
 95 | 1, 2018, is entitled to receive benefits under this chapter for  
 96 | a mental or nervous injury, whether or not such injury is  
 97 | accompanied by a physical injury requiring medical treatment,  
 98 | if:

99 |       (a) The mental or nervous injury resulted from the law  
 100 | enforcement officer, firefighter, emergency medical technician,

101 or paramedic acting within the course of his or her employment  
 102 as described in s. 440.091 and the law enforcement officer,  
 103 firefighter, emergency medical technician, or paramedic  
 104 witnessed a murder, suicide, fatal injury, child death, or mass  
 105 killing as defined in 28 U.S.C. s. 530C, or treated or  
 106 transported a deceased child or the victim of a murder, suicide,  
 107 or fatal injury; and

108 (b) The mental or nervous injury is demonstrated by clear  
 109 and convincing medical evidence by a licensed psychiatrist to  
 110 meet the criteria for posttraumatic stress disorder as described  
 111 in the Diagnostic and Statistical Manual of Mental Disorders,  
 112 Fifth Edition, published by the American Psychiatric Association  
 113 and the diagnosis is made within 2 years of when the law  
 114 enforcement officer, firefighter, emergency medical technician,  
 115 or paramedic witnessed a murder, suicide, fatal injury, child  
 116 death, or mass killing as defined in 28 U.S.C. s. 530C, or  
 117 treated or transported a deceased child or the victim of a  
 118 murder, suicide, or fatal injury.

119 (5) A law enforcement officer, firefighter, emergency  
 120 medical technician, or paramedic who enters service on or after  
 121 July 1, 2018, is entitled to receive benefits under this chapter  
 122 for a mental or nervous injury, whether or not such injury is  
 123 accompanied by a physical injury requiring medical treatment,  
 124 if:

125 (a) The law enforcement officer, firefighter, emergency

126 medical technician, or paramedic successfully passes a pre-  
127 employment mental health examination, which fails to reveal any  
128 diagnosis of posttraumatic stress disorder. However, this  
129 paragraph does not apply if the prospective employer fails to  
130 provide the pre-employment mental health examination;

131 (b) The mental or nervous injury resulted from the law  
132 enforcement officer, firefighter, emergency medical technician,  
133 or paramedic acting within the course of his or her employment  
134 as described in s. 440.091 and the law enforcement officer,  
135 firefighter, emergency medical technician, or paramedic  
136 witnessed a murder, suicide, fatal injury, child death, or mass  
137 killing as defined in 28 U.S.C. s. 530C, or treated or  
138 transported a deceased child or the victim of a murder, suicide,  
139 or fatal injury; and

140 (c) The mental or nervous injury is demonstrated by clear  
141 and convincing medical evidence by a licensed psychiatrist to  
142 meet the criteria for posttraumatic stress disorder as described  
143 in the Diagnostic and Statistical Manual of Mental Disorders,  
144 Fifth Edition, published by the American Psychiatric Association  
145 and the diagnosis is made within 2 years of when the law  
146 enforcement officer, firefighter, emergency medical technician,  
147 or paramedic witnessed a murder, suicide, fatal injury, child  
148 death, or mass killing as defined in 28 U.S.C. s. 530C, or  
149 treated or transported a deceased child or the victim of a  
150 murder, suicide, or fatal injury.



151        (6) A law enforcement officer, firefighter, emergency  
152 medical technician, or paramedic is not entitled to benefits  
153 under subsection (4) or subsection (5) if a claim for benefits  
154 is not made prior to or within 180 days after leaving employment  
155 with the employing agency.

156        Section 3. This act shall take effect July 1, 2018.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations &  
 2 Technology Appropriations Subcommittee  
 3 Representative Willhite offered the following:  
 4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Subsections (5) and (6) are added to section  
 8 112.1815, Florida Statutes, to read:

9 112.1815 Firefighters, paramedics, emergency medical  
 10 technicians, and law enforcement officers; special provisions  
 11 for employment-related accidents and injuries.-

12 (5) (a) For the purposes of this section and ch. 440 and  
 13 notwithstanding sub-subparagraph (2) (a) 3., s. 440.093, and  
 14 subsection 440.151(2), posttraumatic stress disorder, as  
 15 described in the Diagnostic and Statistical Manual of Mental  
 16 Disorders, Fifth Edition, published by the American Psychiatric

Amendment No. 1

17 Association, suffered by a first responder, is a compensable  
18 occupational disease, within the meaning of subsection (4) and  
19 s. 440.151, if the first responder:

20 1. was acting within the course of his or her employment as  
21 provided in s. 440.091, and

22 2. is diagnosed with such disorder by a psychiatrist, who  
23 is an authorized treating physician as provided in ch. 440,  
24 following examination of the first responder, due to one of the  
25 following events:

26 (I) seeing a deceased minor,

27 (II) directly witnessing the death of a minor,

28 (III) directly witnessing an injury to a minor who  
29 subsequently died prior to or upon arrival at a hospital  
30 emergency department,

31 (IV) participating in the physical treatment of an injured  
32 minor who subsequently died prior to or upon arrival at a  
33 hospital emergency department,

34 (V) manually transporting an injured minor who subsequently  
35 died prior to or upon arrival at a hospital emergency  
36 department,

37 (VI) seeing a decedent whose death involved grievous bodily  
38 harm of a nature that shocks the conscience,

39 (VII) directly witnessing a death, including suicide,  
40 involving bodily injury by grievous bodily harm of a nature that  
41 shocks the conscience,

Amendment No. 1

42 (VIII) directly witnessing a death by homicide regardless  
43 of whether the homicide was criminal or excusable, including  
44 murder, mass killing as defined in 28 U.S.C. s. 530C,  
45 manslaughter, self-defense, misadventure, and negligence,

46 (IX) directly witnessing an injury to a person who  
47 subsequently died prior to or upon arrival at a hospital  
48 emergency department if the person was injured by grievous  
49 bodily harm of a nature that shocks the conscience, including an  
50 attempted suicide by means that creates such harm,

51 (X) participating in the physical treatment of an injury to  
52 a person who subsequently died prior to or upon arrival at a  
53 hospital emergency department if the person was injured by  
54 grievous bodily harm of a nature that shocks the conscience,  
55 including an attempted suicide by means that creates such harm,  
56 or

57 (XI) manually transporting a person who subsequently died  
58 prior to or upon arrival at a hospital emergency department if  
59 the person was injured by grievous bodily harm of a nature that  
60 shocks the conscience, including an attempted suicide by means  
61 that creates such harm.

62  
63 "Directly witnessing" means to see or hear for oneself.

64 "Manually transporting" means performing manual labor on the  
65 body of a wounded person to move the person for his or her  
66 safety or medical treatment. "Minor" has the same meaning as

Amendment No. 1

67 provided in s. 1.01(13). The Department of Financial Services  
68 shall adopt rules specifying injuries qualifying as grievous  
69 bodily harm of a nature that shocks the conscience for the  
70 purposes of this section.

71 (b) Such disorder must be demonstrated by clear and  
72 convincing medical evidence.

73 (c) Benefits for a first responder under this subsection  
74 are not:

75 1. subject to apportionment due to preexisting  
76 posttraumatic stress disorder,

77 2. do not require a physical injury to the first responder,  
78 and

79 3. are not subject to

80 a. any limitation on temporary benefits under s. 440.093,  
81 or

82 b. the 1-percent limitation on permanent psychiatric  
83 impairment benefits under s. 440.15(3)(c).

84 (d) The time for notice of injury or death in cases of  
85 compensable posttraumatic stress disorder under this subsection  
86 is the time period provided in s. 440.185(1) and must be  
87 measured from the qualifying event listed in sub-sub-  
88 subparagraphs (5)(a)2.(I)-(XI) or the manifestation of the  
89 disorder, whichever is later. However, a claim under this  
90 subsection is barred unless it is properly noticed within 52  
91 weeks of the qualifying event.



Amendment No. 1

92       (6) An employing agency of a first responder, including  
93 volunteer first responders, must provide educational training  
94 related to mental health awareness, prevention, mitigation, and  
95 treatment.

96       Section 2. This act shall take effect July 1, 2018.

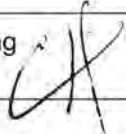
97  
98  
99       -----  
100                   **T I T L E   A M E N D M E N T**

101       Remove everything before the enacting clause and insert:  
102       An act relating to workers' compensation benefits for  
103       first responders; amending s. 112.1815, F.S. ;  
104       providing that first responders are entitled to  
105       benefits under the Workers' Compensation Law for  
106       posttraumatic stress disorder under specified  
107       circumstances; providing definitions; providing a  
108       standard of proof of such disorder; providing a time  
109       for notice of injury or death; requiring an employing  
110       agency to provide specified mental health training;  
111       providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 857 Deferred Presentment Transactions  
**SPONSOR(S):** Insurance and Banking Subcommittee; Grant; Cruz and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Government Operations & Technology Appropriations Subcommittee		Helpling	Topp  BDT
3) Commerce Committee			

### SUMMARY ANALYSIS

Florida law currently authorizes deferred presentment transactions, also known as payday loans, for a maximum loan amount of \$500 (exclusive of fees), a term of at least seven days to a maximum of 31 days, and fees of up to 10 percent of the loan amount plus up to a \$5 verification fee. Deferred presentment transactions in Florida will be affected by the federal Consumer Financial Protection Bureau's (CFPB) rule governing payday, vehicle title, and certain high-cost installment loans because they would fall under the rule's definition of a "covered short-term loan." Effective August 19, 2019, deferred presentment providers will have to comply with the underwriting requirements of the rule or conform their business practices to meet the exemption to underwriting.

The bill authorizes deferred presentment installment transactions that have a maximum loan amount of \$1,000 (exclusive of fees) and a term of at least 60 days to a maximum of 90 days. The permissible fees are (1) up to \$5 for a verification fee, and (2) up to eight percent of the outstanding transaction balance on a biweekly basis, which must be earned according to a simple interest calculation and may not be applied to the verification fee. Prepayment penalties are prohibited. A deferred presentment installment transaction must be fully amortizing and repayable in installments as nearly equal as mathematically practicable. The time between installment payments must generally be at least 13 days but not greater than one calendar month. The provider of a deferred presentment installment transaction must provide one opportunity for the borrower to defer a scheduled payment for no additional fee or charge. The deferred payment is due after the last scheduled installment payment, at an interval, which is no shorter than the intervals between the originally scheduled payments.

The bill retains current law that a provider may not enter into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours. In order to enforce this restriction, the Office of Financial Regulation (OFR) currently maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.

Deferred presentment transactions made pursuant to the bill would be exempt from the underwriting requirement of the CFPB rule because such loans would fall under the rule's definition of a "covered longer-term loan." However, deferred presentment transactions made pursuant to the bill would still be required to comply with provisions of the rule relating to payment practices, record retention, and compliance requirements.

The bill likely has a positive, indeterminate, fiscal impact on state revenues. The OFR indicates that it would likely need to procure a new contract to administer the deferred presentment transaction database. The bill has no impact on local governments. The bill has an indeterminate fiscal impact on the private sector.

The bill provides an effective date of July 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 1/23/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background: Florida Law on Deferred Presentment Transactions (Payday Loans)**

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.<sup>1</sup> The transactions are commonly referred to as "payday loans." These transactions are governed by part IV of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,<sup>2</sup> and money services business licensed under part II<sup>3</sup> or part III<sup>4</sup> of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of fees.<sup>5</sup> Fees may not exceed 10 percent of payment provided to the drawer plus up to a \$5 verification fee.<sup>6</sup> The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.<sup>7</sup> A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.<sup>8</sup> In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.<sup>9</sup> A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.<sup>10</sup>

If the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.<sup>11</sup> As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.

<sup>1</sup> s. 560.402(2), (3), F.S.

<sup>2</sup> Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et Seq.

<sup>3</sup> Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S.

<sup>4</sup> Licensure as a check casher. Section 560.103(6), F.S., defines a "check casher" to mean a person who sells currency in exchange for payment instruments received, except travelers checks.

<sup>5</sup> s. 560.404(5), F.S.

<sup>6</sup> s. 560.404(6), F.S.

<sup>7</sup> s. 560.404(8), F.S.

<sup>8</sup> s. 560.404(19), F.S.

<sup>9</sup> s. 560.404(19)(a), (23), F.S.

<sup>10</sup> s. 560.404(18), F.S.

<sup>11</sup> s. 560.404(22), F.S.



The deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of part IV, ch. 560, F.S.<sup>12</sup> The deferred presentment provider must comply with state and federal disclosure requirements.<sup>13</sup>

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.<sup>14</sup> Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of \$3.09 billion with total advance fees of \$306 million.<sup>15</sup> The average transaction from July 2016 to June 2017 was \$400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of \$3.09.<sup>16</sup> Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in one to three transactions, 30.7 percent engaged in four to nine transactions, and 37.6 percent engaged in ten or more transactions.<sup>17</sup> The loan loss rate is 1.8 percent of total transactions representing a total outstanding advance amount of approximately \$50.4 million.<sup>18</sup> Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.<sup>19</sup>

### **Background: Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans**

On November 17, 2017, the Bureau of Consumer Financial Protection (CFPB) published in the Federal Register a final rule governing payday, vehicle title, and certain high-cost installment loans.<sup>20</sup> The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.<sup>21</sup> Lender compliance with the relevant portions of the rule is required by August 19, 2019.<sup>22</sup> The key provisions of the rule are as follows:<sup>23</sup>

#### *The Lender Must Determine the Consumer's Ability to Repay*

The rule makes it an unfair and abusive practice for a lender to make covered short-term<sup>24</sup> or longer-term balloon-payment loans,<sup>25</sup> including payday and vehicle title loans, without reasonably determining

---

<sup>12</sup> s. 560.404(10), F.S.

<sup>13</sup> s. 560.404(13), (20), F.S.

<sup>14</sup> Veritec Solutions, *Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017*, June 2017, at 4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 6 and 16.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* at 14.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472 (Nov. 17, 2017) (to be codified at 12 C.F.R. pt. 1041), available at <https://www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans>.

<sup>21</sup> Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (Oct. 5, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps> (last visited Jan. 13, 2018).

<sup>22</sup> Payday, Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 20, at 54814.

<sup>23</sup> The summary of key provisions of the CFPB rule is taken from 82 Fed. Reg. 54472 at pages 54472-54474, unless otherwise indicated.

<sup>24</sup> A "covered short-term loan" includes closed-end credit that does not provide for multiple advances to consumers, wherein the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation. 12 C.F.R. §§ 1041.2(a)(10) and 1041.3(b)(1).

<sup>25</sup> A "covered longer-term balloon-payment loan" includes closed-end credit that does not provide for multiple advances to consumers, wherein the consumer is required to repay substantially the entire balance of the loan in a single payment more than 45 days after consummation or to repay such loan through at least one payment that is more than twice as large as any other payment(s). 12 C.F.R. §§ 1041.2(a)(7) and 1041.3(b)(2).



that consumer have the ability to repay the loans according to their terms. The ability to repay standard loans requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system<sup>26</sup> as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;
- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

If a consumer has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, a lender is prohibited from making a covered short-term loan to such consumer for 30 days after the third loan is no longer outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, the loan must satisfy certain prescribed terms; the lender must confirm that the consumer meets specified borrowing history conditions; and the lender must provide required disclosures to the consumer. Among other conditions, under this alternative approach, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than \$500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

### *Payment Practices*

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loan types as under the ability to repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alert the consumer to unusual payment attempts. The notice may be provided electronically with the consumer's consent.

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<sup>26</sup> The rule creates a process and eligibility criteria for entities to become a provisionally registered or registered information system. Payday, Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 20, at 54473. The rule provides for a registration process that will allow information systems to be registered, and lenders to be ready to furnish required information, at the time the furnishing obligation in the rule takes effect. *Id.*



## *Lender Reporting, Record Retention, and Compliance Requirements*

The rule requires lenders to furnish to registered information systems certain information concerning covered short-term and longer-term balloon-payment loans. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of covered short-term and longer-term balloon-payment loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders for all loans covered by the rule must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must also retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

The CFPB rule provides the minimum consumer protections and allows State and local jurisdictions to adopt further regulatory measures to protect consumers.

### **Background: Effect of the CFPB Rule on Deferred Presentment Transactions Under Florida Law**

Deferred presentment transactions in Florida will be affected by the rule because they would fall under the rule's definition of a "covered short-term loan."<sup>27</sup> Effective August 19, 2019,<sup>28</sup> deferred presentment providers will have to comply with the underwriting requirements of the rule or conform their business practices to meet the exemption to underwriting. Deferred presentment transactions made pursuant to the bill would be exempt from the underwriting requirement of the CFPB rule because such loans would fall under the rule's definition of a "covered longer-term loan."<sup>29</sup> However, deferred presentment transactions made pursuant to the bill would still be required to comply with provisions of the rule relating to payment practices, record retention, and compliance requirements, as described above.

### **Effect of Proposed Changes**

The bill creates a new type of deferred presentment transaction that is repayable in installments and is called a "deferred presentment installment transaction." Neither the face amount of a check nor the outstanding transaction balance<sup>30</sup> may exceed \$1,000, exclusive of permissible fees. The permissible fees are (1) up to \$5 for a verification fee, and (2) up to eight percent of the outstanding transaction balance on a biweekly basis, which must be earned according to a simple interest calculation and may not be applied to the verification fee. Prepayment penalties are prohibited. The term of a deferred presentment installment transaction may not be fewer than 60 days or more than 90 days.

A deferred presentment installment transaction must be fully amortizing (i.e., the balance due will be entirely paid after the last payment is made) and repayable in consecutive installments<sup>31</sup> as nearly equal as mathematically practicable. The time between installment payments must be at least 13 days but not greater than one calendar month. However, the first installment period may be longer than the

<sup>27</sup> See definition of "covered short-term loan", *supra* note 24.

<sup>28</sup> On January 16, 2018, the CFPB released a statement saying that it "intends to engage in a rulemaking process so that the [CFPB] may reconsider the Payday Rule." Consumer Financial Protection Bureau, *CFPB Statement on Payday Rule*, (Jan. 16, 2018), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

<sup>29</sup> A "covered longer-term loan" means that the loan is neither a "covered short-term loan" nor a "covered longer-term balloon-payment loan"; the cost of credit for the loan exceeds 36 percent per annum; and the lender or service provider obtains a leveraged payment mechanism (e.g., a check or automated clearing house authorization). 12 C.F.R. §§ 1041.2(a)(8) and 1041.3(b)(3).

<sup>30</sup> The bill defines "outstanding transaction balance" to mean "the amount received by the drawer from the deferred presentment provider that is due and owing, exclusive of fees allowed under this part, in a deferred presentment transaction."

<sup>31</sup> See the "DRAFTING ISSUES OR OTHER COMMENTS" section regarding a drafting error related to this provision.



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.

For deferred presentment installment transactions, the deferred presentment provider may accept more than one check, subject to the limitations on the outstanding transaction balance and the face amount of each check. Each check must bear the date that the check was given to the provider, and the deferred presentment agreement must include the deferment period applicable to each check. Since a deferred presentment installment transaction will involve the deferred presentment provider accepting more than one check, the bill makes clear that a termination of a deferred presentment agreement only occurs once all checks, not just one check, that are the basis for a deferred presentment agreement are redeemed or deposited.

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon<sup>32</sup> of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must provide one opportunity to defer a scheduled payment for no additional fee or charge. The deferred payment is due after the last scheduled installment payment, at an interval, which is no shorter than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement such that it details the availability of a single deferred payment option for a deferred presentment installment transaction.

The bill retains current law in s. 560.404(19), F.S., that a provider may not enter into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours. Before the office has implemented a database to include deferred presentment installment transactions, the deferred presentment provider must access the OFR's current database pursuant to this paragraph and may rely upon the written verification of the drawer as provided in statute.

In order to pay for the deferred presentment transaction database in relation to deferred presentment installment transactions, the bill permits the Financial Services Commission to impose a fee on a deferred presentment provider 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.

Lastly, the bill makes technical corrections to current law such as changing the term "deferred deposit transaction" to "deferred presentment transaction" and changing the reference of "Regulation Z of the Board of Governors of the Federal Reserve Board" to "Regulation Z of the Bureau of Consumer Financial Protection."

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 560.402, F.S., relating to definitions.

**Section 2.** Amends s. 560.404, F.S., relating to requirements for deferred presentment transactions.

**Section 3.** Amends s. 560.405, F.S., relating to deposit; redemption.

**Section 4.** Amends s. 560.111, F.S., relating to prohibited acts.

**Section 5.** Provides an effective date of July 1, 2019.

<sup>32</sup> The bill defines "noon" to mean "12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into."

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The OFR indicates that the bill may impact collected revenues that are assessed on the provider for deferred presentment transactions.<sup>33</sup> Currently, \$1 is assessed for each deferred presentment transaction.<sup>34</sup> The office indicates that there may need to be rule modification to require \$1 per month for each outstanding deferred presentment installment transaction, \$2 for each 60-day term, and \$3 for each 90-day term.<sup>35</sup> According to the office, \$7,657,486 was collected in Fiscal Year 2016-17 for the current \$1 transaction fee.<sup>36</sup>

Increasing the collected fees associated with deferred presentment transactions will likely increase state revenues. However, it is unknown how many deferred presentment installment transactions will result from the bill's passage, what the length of their terms will be, and what the decline will be in the number of current deferred presentment transactions. Therefore, the impact to state revenues is likely to be positive, but indeterminate.

#### 2. Expenditures:

Currently, the OFR contracts with a vendor to host and maintain the existing deferred presentment provider transaction database.<sup>37</sup> Based on modifications of the loan product proposed in the bill, the OFR indicates that it would likely need to procure a new contract.<sup>38</sup> An increased appropriation may be required if current funding is insufficient to pay for a new contract.<sup>39</sup> It is unknown how much a newly procured contract would cost. Therefore, the impact to state expenditures is indeterminate, but likely an increase.

Below is the current appropriation and disbursements made by OFR for the current fiscal year and the previous three fiscal years to pay for the current deferred presentment provider transaction database contract.

<b>Appropriation and Disbursements for Current Contract</b>		
<b>Fiscal Year</b>	<b>Appropriation</b>	<b>Disbursement To Vendor</b>
2014-2015	2,930,000	2,437,027
2015-2016	2,930,000	2,747,303
2016-2017	2,930,000	2,786,499
2017-2018*	2,930,000	1,333,956

\*Disbursements through January 23, 2018.

<sup>33</sup> Office of Financial Regulation, Agency Analysis of 2018 House Bill 857 (Dec. 28, 2017).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The impact to the private sector is indeterminate. Many deferred presentment providers assert that the CFPB rule on payday, vehicle title, and certain high-cost installment loans imposes additional costs and administrative burdens that will result in a reduction of the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps. The bill will reduce the cost of deferred presentment transactions to some consumers but will increase the cost to others. If the finance fee under current law were expressed as an annual percentage rate, assuming a \$500 loan, it would be between 129.52 percent<sup>40</sup> and 573.57 percent.<sup>41</sup> Under the bill, the annual percentage rate would be 208 percent,<sup>42</sup> excluding the \$5 verification fee. The annual percentage would be slightly adjusted by the amount charged for the verification fee.

Below are examples comparing the current loan product to the new loan product. The current product examples below assume a 14-day average for repayment of loans.<sup>43</sup> The examples also assume the maximum \$5 verification fee allowed for each product.

Current Loan Product Compared to New Loan Product for \$500 Loan			
	Current Loan Product	New Loan Product	New Loan Product
Fees (Interest and \$5 Verification)	\$55	\$122.21	\$175.56
Term (Days)	14	60	90
Payments	1	4	6
Total Payment	\$555	\$622.21	\$675.56
Fees Per Day	\$3.93	\$2.04	\$1.95
Current Loan Product Compared to New Loan Product for \$1,000 Loan			
	Current Loan Product <sup>44</sup>	New Loan Product	New Loan Product
Fees (Interest & \$5 Verification)	\$110	\$238.83	\$345.11
Term (Days)	28	60	90
Payments	2	4	6
Total Payment	\$1,110	\$1,238.83	\$1,345.11
Fees Per Day	\$3.93	\$3.98	\$3.83

**D. FISCAL COMMENTS:**

None.

<sup>40</sup>  $\$55/\$500 \times 365 \text{ days}/31 \text{ days} \times 100 = 129.52\%$

<sup>41</sup>  $\$55/\$500 \times 365 \text{ days}/7 \text{ days} \times 100 = 573.57\%$

<sup>42</sup>  $8\% \times 26 = 208\%$

<sup>43</sup> For the purposes of calculating Annual Percentage Rates, 14 day hold periods are assumed by current loan providers as seen here: <https://www.amscot.com/resources/APRschedule.pdf?>

<sup>44</sup> For current loans, the borrower is limited to a maximum of \$500. This example assumes the borrower has taken two \$500 loans over two separate 14-day periods.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides the Financial Services Commission with rulemaking authority to impose a fee on a deferred presentment provider 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. The bill will also result in the OFR, through the Financial Services Commission, amending certain existing rules relating to deferred presentment transactions.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains a drafting error in which the word "installments," referring to the payment amount, was incorrectly amended to "installment periods," referring to the time between each payment. The sponsor has indicated an intent to amend the bill to correct the drafting error.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2018, the Insurance and Banking Subcommittee considered one strike-all amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute:

- Defines the term "outstanding transaction balance," which is a term the bill introduces to part IV of ch. 560, F.S.
- Adds portions of part IV of ch. 560, F.S., that should be amended to accommodate the new deferred presentment installment transaction product.
- Amends portions of the bill to make various technical and clarifying changes and to better accommodate the new deferred presentment installment transaction product.
- Provides a process by which the new deferred presentment installment transaction product could still be offered in the event that the OFR's existing deferred presentment transaction database is not modified to accept this new product before the bill takes effect.
- Requires that deferred presentment installment transactions be repayable in installments that are "as nearly equal as mathematically practicable" rather than "substantially equal."
- Amends the effective date of the bill in order to provide additional time for the OFR to engage in rulemaking and to modify the existing deferred presentment transaction database to accommodate deferred presentment installment transactions.
- Makes technical changes to current law.

The staff analysis has been updated to reflect the committee substitute.

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 subsection (23) and subsection (26) are added to that section,  
90 to read:

91 560.404 Requirements for deferred presentment  
92 transactions.—

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

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



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

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

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

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

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

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

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

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

148 (19) A deferred presentment provider may not enter into a  
149 deferred presentment transaction with a drawer who has an  
150 outstanding deferred presentment transaction with that provider



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

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

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

175 (20) A deferred presentment provider must ~~shall~~ provide

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176 the following notice in a prominent place on each deferred  
177 presentment agreement in at least 14-point type in substantially  
178 the following form and ~~must~~ obtain the signature of the drawer  
179 where indicated:

## NOTICE

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

191 YOU MUST SIGN THE FOLLOWING STATEMENT:

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

197 (Signature of Drawer)

199 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A  
200 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY



201 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE  
202 PURSUED AGAINST YOU.

203

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

210

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



226 AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR  
227 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS  
228 TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE  
229 PERIOD.

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

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

251 misrepresentation made by the drawer as to the sufficiency of  
252 funds in the drawer's account. Additional fees may not be added  
253 to the amounts due and owing to the deferred presentment  
254 provider.

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

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



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

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

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

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

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

297

298 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING  
299 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN  
300 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY

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

318

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

323 (23) For deferred presentment installment transactions, if  
324 a drawer informs the deferred presentment provider in writing or  
325 in person by noon of the business day before a scheduled payment



326 that the drawer cannot pay in full the scheduled payment amount  
 327 due and owing the provider, the deferred presentment provider  
 328 must provide the drawer the opportunity to defer the scheduled  
 329 payment, at no additional fee or charge, until after the last  
 330 scheduled payment. The phrase "by noon" means 12:00 p.m. of the  
 331 same time zone in which the deferred presentment agreement was  
 332 entered into. Only one deferred payment is permitted for each  
 333 deferred presentment installment transaction. The deferred  
 334 payment must be due at an interval after the last scheduled  
 335 payment which is no shorter than the intervals between the  
 336 originally scheduled payments.

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

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

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

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

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

375        (f) The commission may adopt rules to administer this



376 subsection and to ensure that the database is used by deferred  
377 presentment providers in accordance with this section.

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

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

400 Section 3. Subsections (1), (3), and (4) of section

CS/HB 857

2018

401 560.405, Florida Statutes, are amended to read:

402 560.405 Deposit; redemption.—

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

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

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

422 Section 4. For the purpose of incorporating the amendments  
423 made by this act to sections 560.404 and 560.405, Florida  
424 Statutes, in references thereto, subsection (5) of section  
425 560.111, Florida Statutes, is reenacted to read:



426 |           560.111 Prohibited acts.—

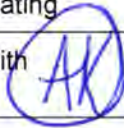
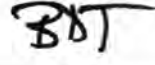
427 |           (5) Any person who willfully violates any provision of s.  
 428 | 560.403, s. 560.404, or s. 560.405 commits a felony of the third  
 429 | degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 430 | 775.084.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1057 E911 Systems  
**SPONSOR(S):** DuBose and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	9 Y, 0 N	Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee		Keith 	Topp 
3) Commerce Committee			

### SUMMARY ANALYSIS

Within the E911 system, public safety answering points (PSAPs) are the public safety agencies that receive incoming 911 requests for assistance and dispatch appropriate public safety agencies to respond to the requests in accordance with the state E911 plan. According to the Department of Management Services (DMS), some counties are currently able to implement call routing between PSAPs within their county jurisdiction, but most, if not all, cannot route calls outside of their county.

The bill creates s. 365.176, F.S., to require the Technology Program (office) within the DMS to develop and implement a plan by January 1, 2019, to require that all 911 public safety telecommunicators, when prudent and requested by a caller or when necessary, be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. In developing and implementing this plan, the office is required to:

- Coordinate with public agencies to identify and resolve any technological or logistical issues in implementing the plan.
- Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in the state.
- Establish a date, considering any technological, logistical, financial, or other identified issues, by which all E911 systems in the state must be able to transfer emergency calls as described above.

The bill has a significant, yet indeterminate negative fiscal impact on state and local government expenditures. Provisions of the bill require implementation of a plan to allow for the transfer of calls between E911 systems within Florida, requiring additional staff time and technological upgrades for both the DMS and local governments to meet the January 1, 2019 implementation timeline. The DMS indicates that extensive research must be done to survey and analyze the current capabilities of all 256 primary, secondary and backup PSAPs in the state. (See Fiscal Analysis and Economic Impact Statement)

The bill provides an effective date of July 1, 2018.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Technology Program (office) within the Department of Management Services (DMS) oversees the E911 system in Florida.<sup>1</sup> The office is required by law to develop, maintain, and implement the statewide emergency communications E911 system plan. The plan must provide for:

- The public agency emergency communications requirements for each entity of local government<sup>2</sup> in the state.
- A system to meet specific local government requirements, which must include law enforcement, firefighting, and emergency medical services, and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost to implement the E911 system.

The office is responsible for implementing and coordinating the plan, and must adopt any necessary rules and schedules related to public agencies<sup>3</sup> implementing and coordinating the plan. The secretary of DMS, or his or her designee, is the director of the statewide emergency communications number E911 system and is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director must consult, cooperate, and coordinate with local law enforcement agencies.

Florida law permits the formation of multijurisdictional or regional E911 systems. Any system established pursuant to this law may include the jurisdiction, or any portion thereof, of more than one public agency.<sup>4</sup>

Within the E911 system, public safety answering points (PSAPs) are the public safety agencies<sup>5</sup> that receive incoming 911 requests for assistance and dispatch appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.<sup>6</sup> There are 256 primary, secondary, and backup PSAPs in Florida.<sup>7</sup> According to DMS, some counties are currently able to implement call routing between PSAPs within their county jurisdiction, but most, if not all, cannot route calls outside of their county without using an Emergency Service Internet Protocol Network (ESInet).<sup>8</sup> Currently, there is not a statewide ESInet established.<sup>9</sup>

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<sup>1</sup> s. 365.171, F.S.

<sup>2</sup> "Local government" is defined as any city, county, or political subdivision of the state and its agencies. s. 365.171(3)(b), F.S.

<sup>3</sup> "Public agency" is defined as the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. s. 365.171(3)(c), F.S.

<sup>4</sup> s. 365.175(6), F.S.

<sup>5</sup> "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services. s. 365.172(3)(x), F.S.

<sup>6</sup> s. 365.172(3)(y), F.S.

<sup>7</sup> Florida Department of Management Services, Agency Analysis of 2018 HB 1057, p. 2 (Jan. 23, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

## Effect of Proposed Changes

The bill creates s. 365.176, F.S., to require the office to develop and implement a plan by January 1, 2019, to require that all 911 public safety telecommunicators,<sup>10</sup> when prudent and requested by a caller or when necessary, be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. In developing and implementing this plan, the office is required to:

- Coordinate with public agencies to identify and resolve any technological or logistical issues in implementing the plan.
- Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in the state.
- Establish a date, considering any technological, logistical, financial, or other identified issues, by which all E911 systems in the state must be able to transfer emergency calls as described above.

The bill provides an effective date of July 1, 2018.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 365.172, F.S., providing a definition.

**Section 2.** Creates s. 365.176, F.S., relating to the transfer of E911 calls between systems.

**Section 3.** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill has a significant, yet indeterminate negative fiscal impact on state government expenditures. The bill requires the DMS to develop and implement a plan, by January 1, 2019, that allows for the transfer of calls between E911 systems within Florida. The DMS indicates that extensive research must be done to survey and analyze the current capabilities of all 256 primary, secondary and backup Public Safety Answering Points (PSAPs) in the state. The DMS also indicates that the costs to implement these requirements by January 1, 2019 are unknown, but are expected to be significant.<sup>11</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

<sup>10</sup> "911 public safety telecommunicator" is defined as a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel. s. 401.465(1)(a), F.S.

<sup>11</sup> *Supra* note 7, at p. 4.

2. Expenditures:

The bill has a significant, yet indeterminate negative fiscal impact on local government expenditures. The DMS indicates that many of the 911 call centers in Florida are not equipped to implement the transfer service required by the bill and will require equipment upgrades.<sup>12</sup>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

Local government 911 call centers may be eligible for funding through the state's E911 Fund prescribed in s. 365.172(10), F.S., for the technological costs to upgrade equipment needed to meet requirements of the bill.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide any new rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>12</sup> *Supra* note 7, at p. 4.  
STORAGE NAME: h1057b.GOT.DOCX  
DATE: 2/8/2018



1 A bill to be entitled

2 An act relating to E911 systems; amending s. 365.172,  
3 F.S.; revising applicability of definitions; providing  
4 a definition; creating s. 365.176, F.S.; requiring the  
5 Technology Program within the Department of Management  
6 Services to develop and implement a plan to require  
7 that emergency dispatchers be able to transfer an  
8 emergency call from one E911 system to another E911  
9 system in the state; providing duties relating to the  
10 development and implementation of such plan; providing  
11 an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Subsection (3) of section 365.172, Florida  
16 Statutes, is amended to read:

17 365.172 Emergency communications number "E911."—

18 (3) DEFINITIONS.—Only as used in this section and ss.  
19 365.171, 365.173, ~~and~~ 365.174, and 365.176, the term:

20 (a) "911 public safety telecommunicator" has the same  
21 meaning as provided in s. 401.465(1).

22 (b) ~~(a)~~ "Authorized expenditures" means expenditures of the  
23 fee, as specified in subsection (10).

24 (c) ~~(b)~~ "Automatic location identification" means the  
25 capability of the E911 service which enables the automatic

26 display of information that defines the approximate geographic  
27 location of the wireless telephone, or the location of the  
28 address of the wireline telephone, used to place a 911 call.

29 (d)~~(e)~~ "Automatic number identification" means the  
30 capability of the E911 service which enables the automatic  
31 display of the service number used to place a 911 call.

32 (e)~~(d)~~ "Board" or "E911 Board" means the board of  
33 directors of the E911 Board established in subsection (5).

34 (f)~~(e)~~ "Building permit review" means a review for  
35 compliance with building construction standards adopted by the  
36 local government under chapter 553 and does not include a review  
37 for compliance with land development regulations.

38 (g)~~(f)~~ "Collocation" means the situation when a second or  
39 subsequent wireless provider uses an existing structure to  
40 locate a second or subsequent antennae. The term includes the  
41 ground, platform, or roof installation of equipment enclosures,  
42 cabinets, or buildings, and cables, brackets, and other  
43 equipment associated with the location and operation of the  
44 antennae.

45 (h)~~(g)~~ "Designed service" means the configuration and  
46 manner of deployment of service the wireless provider has  
47 designed for an area as part of its network.

48 (i)~~(h)~~ "Enhanced 911" or "E911" means an enhanced 911  
49 system or enhanced 911 service that is an emergency telephone  
50 system or service that provides a subscriber with 911 service

51 and, in addition, directs 911 calls to appropriate public safety  
52 answering points by selective routing based on the geographical  
53 location from which the call originated, or as otherwise  
54 provided in the state plan under s. 365.171, and that provides  
55 for automatic number identification and automatic location-  
56 identification features. E911 service provided by a wireless  
57 provider means E911 as defined in the order.

58 (j)~~(i)~~ "Existing structure" means a structure that exists  
59 at the time an application for permission to place antennae on a  
60 structure is filed with a local government. The term includes  
61 any structure that can structurally support the attachment of  
62 antennae in compliance with applicable codes.

63 (k)~~(j)~~ "Fee" means the E911 fee authorized and imposed  
64 under subsections (8) and (9).

65 (l)~~(k)~~ "Fund" means the Emergency Communications Number  
66 E911 System Fund established in s. 365.173 and maintained under  
67 this section for the purpose of recovering the costs associated  
68 with providing 911 service or E911 service, including the costs  
69 of implementing the order. The fund shall be segregated into  
70 wireless, prepaid wireless, and nonwireless categories.

71 (m)~~(l)~~ "Historic building, structure, site, object, or  
72 district" means any building, structure, site, object, or  
73 district that has been officially designated as a historic  
74 building, historic structure, historic site, historic object, or  
75 historic district through a federal, state, or local designation



76 program.

77 (n)~~(m)~~ "Land development regulations" means any ordinance  
 78 enacted by a local government for the regulation of any aspect  
 79 of development, including an ordinance governing zoning,  
 80 subdivisions, landscaping, tree protection, or signs, the local  
 81 government's comprehensive plan, or any other ordinance  
 82 concerning any aspect of the development of land. The term does  
 83 not include any building construction standard adopted under and  
 84 in compliance with chapter 553.

85 (o)~~(n)~~ "Local exchange carrier" means a "competitive local  
 86 exchange telecommunications company" or a "local exchange  
 87 telecommunications company" as defined in s. 364.02.

88 (p)~~(e)~~ "Local government" means any municipality, county,  
 89 or political subdivision or agency of a municipality, county, or  
 90 political subdivision.

91 (q)~~(p)~~ "Medium county" means any county that has a  
 92 population of 75,000 or more but less than 750,000.

93 (r)~~(q)~~ "Mobile telephone number" or "MTN" means the  
 94 telephone number assigned to a wireless telephone at the time of  
 95 initial activation.

96 (s)~~(r)~~ "Nonwireless category" means the revenues to the  
 97 fund received from voice communications services providers other  
 98 than wireless providers.

99 (t)~~(s)~~ "Office" means the Technology Program within the  
 100 Department of Management Services, as designated by the

101 secretary of the department.

102 (u)~~(t)~~ "Order" means:

103 1. The following orders and rules of the Federal  
104 Communications Commission issued in FCC Docket No. 94-102:

105 a. Order adopted on June 12, 1996, with an effective date  
106 of October 1, 1996, the amendments to s. 20.03 and the creation  
107 of s. 20.18 of Title 47 of the Code of Federal Regulations  
108 adopted by the Federal Communications Commission pursuant to  
109 such order.

110 b. Memorandum and Order No. FCC 97-402 adopted on December  
111 23, 1997.

112 c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

113 d. Order No. FCC 98-345 adopted December 31, 1998.

114 2. Orders and rules subsequently adopted by the Federal  
115 Communications Commission relating to the provision of 911  
116 services, including Order Number FCC-05-116, adopted May 19,  
117 2005.

118 (v)~~(u)~~ "Prepaid wireless category" means all revenues in  
119 the fund received through the Department of Revenue from the fee  
120 authorized and imposed under subsection (9).

121 (w)~~(v)~~ "Prepaid wireless service" means a right to access  
122 wireless service that allows a caller to contact and interact  
123 with 911 to access the 911 system, which service must be paid  
124 for in advance and is sold in predetermined units or dollars,  
125 which units or dollars expire on a predetermined schedule or are

126 decremented on a predetermined basis in exchange for the right  
 127 to access wireless service.

128 (x)~~(w)~~ "Public agency" means the state and any  
 129 municipality, county, municipal corporation, or other  
 130 governmental entity, public district, or public authority  
 131 located in whole or in part within this state which provides, or  
 132 has authority to provide, firefighting, law enforcement,  
 133 ambulance, medical, or other emergency services.

134 (y)~~(x)~~ "Public safety agency" means a functional division  
 135 of a public agency which provides firefighting, law enforcement,  
 136 medical, or other emergency services.

137 (z)~~(y)~~ "Public safety answering point," "PSAP," or  
 138 "answering point" means the public safety agency that receives  
 139 incoming 911 requests for assistance and dispatches appropriate  
 140 public safety agencies to respond to the requests in accordance  
 141 with the state E911 plan.

142 (aa)~~(z)~~ "Rural county" means any county that has a  
 143 population of fewer than 75,000.

144 (bb)~~(aa)~~ "Service identifier" means the service number,  
 145 access line, or other unique identifier assigned to a subscriber  
 146 and established by the Federal Communications Commission for  
 147 purposes of routing calls whereby the subscriber has access to  
 148 the E911 system.

149 (cc)~~(bb)~~ "Tower" means any structure designed primarily to  
 150 support a wireless provider's antennae.



151        (dd)~~(ee)~~ "Voice communications services" means two-way  
152 voice service, through the use of any technology, which actually  
153 provides access to E911 services, and includes communications  
154 services, as defined in s. 202.11, which actually provide access  
155 to E911 services and which are required to be included in the  
156 provision of E911 services pursuant to orders and rules adopted  
157 by the Federal Communications Commission. The term includes  
158 voice-over-Internet-protocol service. For the purposes of this  
159 section, the term "voice-over-Internet-protocol service" or  
160 "VoIP service" means interconnected VoIP services having the  
161 following characteristics:

- 162            1. The service enables real-time, two-way voice  
163 communications;
- 164            2. The service requires a broadband connection from the  
165 user's locations;
- 166            3. The service requires IP-compatible customer premises  
167 equipment; and
- 168            4. The service offering allows users generally to receive  
169 calls that originate on the public switched telephone network  
170 and to terminate calls on the public switched telephone network.

171        (ee)~~(dd)~~ "Voice communications services provider" or  
172 "provider" means any person or entity providing voice  
173 communications services, except that the term does not include  
174 any person or entity that resells voice communications services  
175 and was assessed the fee authorized and imposed under subsection

176 (8) by its resale supplier.

177 ~~(ff)~~(ee) "Wireless 911 system" or "wireless 911 service"  
 178 means an emergency telephone system or service that provides a  
 179 subscriber with the ability to reach an answering point by  
 180 accessing the digits 911.

181 ~~(gg)~~(ff) "Wireless category" means the revenues to the  
 182 fund received from a wireless provider from the fee authorized  
 183 and imposed under subsection (8).

184 ~~(hh)~~(gg) "Wireless communications facility" means any  
 185 equipment or facility used to provide service and may include,  
 186 but is not limited to, antennae, towers, equipment enclosures,  
 187 cabling, antenna brackets, and other such equipment. Placing a  
 188 wireless communications facility on an existing structure does  
 189 not cause the existing structure to become a wireless  
 190 communications facility.

191 ~~(ii)~~(hh) "Wireless provider" means a person who provides  
 192 wireless service and:

- 193 1. Is subject to the requirements of the order; or
- 194 2. Elects to provide wireless 911 service or E911 service
- 195 in this state.

196 ~~(jj)~~(ii) "Wireless service" means "commercial mobile radio  
 197 service" as provided under ss. 3(27) and 332(d) of the Federal  
 198 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and  
 199 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-  
 200 66, August 10, 1993, 107 Stat. 312. The term includes service

201 provided by any wireless real-time two-way wire communication  
 202 device, including radio-telephone communications used in  
 203 cellular telephone service; personal communications service; or  
 204 the functional or competitive equivalent of a radio-telephone  
 205 communications line used in cellular telephone service, a  
 206 personal communications service, or a network radio access line.  
 207 The term does not include wireless providers that offer mainly  
 208 dispatch service in a more localized, noncellular configuration;  
 209 providers offering only data, one-way, or stored-voice services  
 210 on an interconnected basis; providers of air-to-ground services;  
 211 or public coast stations.

212 Section 2. Section 365.176, Florida Statutes, is created  
 213 to read:

214 365.176 Transfer of E911 calls between systems.-

215 (1) The office shall develop and implement a plan by  
 216 January 1, 2019, to require that a 911 public safety  
 217 telecommunicator, when deemed prudent and requested by a caller  
 218 or when necessary, be able to transfer an emergency call from  
 219 one local, multijurisdictional, or regional E911 system to  
 220 another local, multijurisdictional, or regional E911 system in  
 221 the state.

222 (2) In developing and implementing this plan, the office  
 223 shall:

224 (a) Coordinate with public agencies to identify and  
 225 resolve any technological or logistical issues in implementing



226 | this section.

227 |       (b) Identify or establish a system or clearinghouse for  
 228 | maintaining contact information for all E911 systems in the  
 229 | state.

230 |       (c) Establish a date, considering any technological,  
 231 | logistical, financial, or other identified issues, by when all  
 232 | E911 systems in the state must be able to transfer emergency  
 233 | calls pursuant to subsection (1).

234 |       Section 3. This act shall take effect July 1, 2018.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations &  
 2 Technology Appropriations Subcommittee  
 3 Representative DuBose offered the following:  
 4

**Amendment (with title amendment)**

6 Remove lines 215-233 and insert:

7 (1) The office shall develop a plan by February 1, 2019, to  
 8 upgrade 911 public safety answering points within the state to  
 9 be able to transfer an emergency call from one local,  
 10 multijurisdictional, or regional E911 system to another local,  
 11 multijurisdictional, or regional E911 system in the state.  
 12 These transfers should include, but not be limited to voice,  
 13 text message, image, video, caller identification information,  
 14 location information and additional standards-based 911 call  
 15 information.

16 (2) In developing this plan, the office shall:

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17 (a) Coordinate with public agencies to identify and resolve  
18 any technological or logistical issues pertaining to this  
19 section.

20 (b) Identify or establish a system or clearing house for  
21 maintaining contact information for all E911 systems in the  
22 state.

23 (c) For both a regionally phased and statewide approach,  
24 establish a date, considering any technological, logistical,  
25 financial, or other identified issues, by when all E911 systems  
26 in the state must be able to transfer emergency calls pursuant  
27 to subsection (1).

28 Section 3. For the 2018-2019 fiscal year, the sum of \$200,000  
29 in nonrecurring funds are appropriated from the Emergency  
30 Communications Number E911 System Trust Fund to the Department  
31 of Management Services for the purpose of implementing this act.

32  
33 -----  
34 **T I T L E A M E N D M E N T**

35 Remove lines 6-10 and insert:

36 Services to develop a plan to require that emergency dispatchers  
37 be able to transfer an emergency call from on E911 system to  
38 another E911 system in the state; providing duties relating to  
39 the development of such plan; providing an appropriation;  
40 providing