

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(Amended After Comments)

808 KAR 9:010. Deferred deposit database compliance.

RELATES TO: KRS 286.9-010~~(7)~~~~(6)~~, 286.9-075, 286.9-100(1), (7), (9), (10), (18), (19), 286.9-140.

STATUTORY AUTHORITY: KRS 286.9-090(1), 286.9-100, 286.9-140(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-100(9) prohibits licensees from having more than two (2) deferred deposit transactions from any one (1) customer at any one (1) time and limits the total proceeds received by a customer from all deferred deposit transactions to \$500. KRS 286.9-140(1) requires the commissioner to implement a common database with real-time access through an internet connection accessible to the department and licensees to verify whether any deferred deposit transactions are outstanding for a particular person and authorizes the commissioner to adopt rules to administer and enforce KRS 286.9-140. This administrative regulation establishes requirements for licensee use of the database established pursuant to KRS 286.9-140.

Section 1. Closed Deferred Deposit Service Transactions. The Commissioner deems the following occurrences as closed deferred deposit service transactions pursuant to ~~Definitions. The following shall be additional definitions of "closed" or "close" under~~ KRS 286.9-010~~(7)~~~~(6)~~(e):

- (1) The customer's payment instrument was unpaid and the licensee has sold the underlying debt to a non-affiliated third party without recourse;
- (2) The underlying debt represented by the customer's payment instrument has been discharged in bankruptcy;
- (3) The database provider has designated the deferred deposit transaction concerning the customer's payment instrument as closed pursuant to KRS 286.9-140(7); or
- (4) The licensee has reported to the database provider that the deferred deposit transaction concerning the customer's payment instrument is closed following being held open pursuant to KRS 286.9-140(7).

Section 2. Deferred Deposit Database Requirements.

- (1) A licensee shall institute procedures and maintain an accounting system designed to:
 - (a) Prevent the licensee from entering into transactions with a customer in violation of KRS 286.9-100(9), including procedures for:
 1. Maintaining a record of all current transactions with the licensee; and
 2. Checking the record of current transactions with the database prior to issuance of a new transaction; and
 - (b) Generate reports that will readily permit examination and verification of compliance with KRS 286.9-100(9), KRS 286.9-140, and this section by department examiners.
- (2) For each deferred deposit transaction, a licensee shall submit:
 - (a) The customer's date of birth;
 - (b) The check number of the payment instrument, if applicable;
 - (c) The database verification fee of \$2.25, which may be paid directly by the licensee or charged to the customer~~, if any~~;
 - (d) The service fee charged to the customer; and
 - (e) The date the payment instrument was deposited or otherwise presented for payment.

(3) A licensee shall indicate in the database whether the customer entered into the deferred deposit transaction in person, electronically, or via telephone.

~~(4) [(3)]~~ A licensee shall not cause a closed deferred deposit transaction to be reopened in the database unless:

(a) The deferred deposit transaction was closed by reason of clerical error by the licensee;

(b) The licensee caused the deferred deposit transaction to be reopened on or before the close of business on the business day after the transaction was closed; and

(c) Reopening the transaction would not cause the customer to exceed the transaction limits set forth in KRS 286.9-100(9).

~~(5) [(4)]~~ A licensee shall not accept, collect, or seek payment on a deferred deposit transaction that is designated as closed in the database.

~~(6) [(5)]~~ A licensee that has reported to the database provider that a deferred deposit transaction is open beyond the maturity date pursuant to KRS 286.9-140(7) shall immediately notify the database provider when the transaction becomes closed.

~~(7) [(6)]~~ A new licensee or an existing licensee applying for an additional location shall establish an account with the database provider for each location prior to the time of application.

MARNI R. GIBSON, Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: January 15, 2025
FILED WITH LRC: January 15, 2025 at 10:05 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the definitions and requirements for licensee operation of the deferred deposit database established in KRS 286.9-140.

(b) The necessity of this administrative regulation:

KRS 286.9-140(1) requires the commissioner to implement a common database with real-time access to verify outstanding deferred deposit transactions.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation establishes and sets forth the requirements for the licensee operation of the deferred deposit database.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the database and licensee requirements for compliance with statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

KRS 286.9-140(2) was amended from a set amount of one dollar (\$1) to require the commissioner to charge a fee of up to three dollars (\$3) per transaction. This amendment sets the fee per transaction to \$2.25, which, based on the amendments after public comments, may be paid by the licensee or passed on to the customer.

(b) The necessity of the amendment to this administrative regulation:

This regulation sets forth the fee amount as the amended statute provided only a ceiling but no specific dollar amount.

(c) How the amendment conforms to the content of the authorizing statutes:

The statute requires the commissioner to charge a fee for each transaction; however, the amount was not set.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will establish the fee as required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The amendment would affect licensed deferred deposit entities and consumers that enter into deferred deposit agreements. From May 2023 through May 2024, there have been 1,131,119 deferred deposit transactions in Kentucky. There are 231 licensed deferred deposit entities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The regulated entities will be required to amend their customer documents to reflect the new fee and ensure it is properly disclosed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost of editing the template documents will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The entities will not accrue benefits as they do not retain the fee.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

\$0

(b) On a continuing basis:

\$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

Yes. This administrative regulation increases the transaction fee from \$1 to \$2.25.

(9) TIERING: Is tiering applied?

No. The set amount for each transaction is the same regardless of the dollar amount of the deferred deposit transaction.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 286.9-140

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Department of Financial Institutions, Non-Depository Division

(a) Estimate the following for the first year:

Expenditures:None

Revenues:Estimated to be \$1.2 million (depends on number of transactions, which varies each year)

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

None

(a) Estimate the following for the first year:

Expenditures:N/A

Revenues:N/A

Cost Savings:N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

N/A

(4) Identify additional regulated entities not listed in questions (2) or (3):

The fee is a pass-through to the consumer, so it will not impact other regulated entities.

(a) Estimate the following for the first year:

Expenditures:N/A

Revenues:N/A

Cost Savings:N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The costs will not impact the licensees, but the fee will pass to the consumer and will only be incurred when entering into a contract for a deferred deposit transaction. Based on the amendments after public comments, a licensee may pay the fee directly or pass it along to the consumer. If the licensee pays the fee directly, the impact would be as much as \$2.25 per transaction.

(b) Methodology and resources used to determine the fiscal impact:

The fiscal impact was determined by reviewing the requirements to comply with the amended regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The regulation will not have an overall negative or adverse major economic impact to the entities identified in the aforementioned questions.

(b) The methodology and resources used to reach this conclusion:

The expected costs were reviewed.