

AN ACT relating to deferred deposit transactions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 286.9-010 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

- (1) "Affiliate" means a person who directly or indirectly through one (1) or more intermediaries controls or is controlled by, or is under common control with, a licensee;
- (2) ***"Annual percentage rate" means the annual percentage rate applicable to the extension of consumer credit as defined in Section 107 of the Truth in Lending Act, 15 U.S.C. sec. 1606, as implemented by regulations of the Board of Governors of the Federal Reserve System. All interest, as well as any broker fees charged by a licensee for brokering or acting as an agent for a third party to assist a borrower in obtaining or making a deferred deposit transaction, shall be included in the calculation of the annual percentage rate;***
- (3) "Applicant" means a person filing an application or renewal application for a license under this subtitle;
- ~~(4)(3)~~ "Archive" means to copy data to a long-term storage mechanism apart from the database;
- ~~(5)(4)~~ "Cashing" means providing currency for a payment instrument;
- ~~(6)(5)~~ "Check" means any check, draft, money order, personal money order, travelers' check, or other demand instrument for the transmission or payment of money;
- ~~(7)(6)~~ "Closed" or "close" means that one (1) of the following has occurred in connection with a deferred deposit service transaction concerning the customer's payment instrument:
 - (a) The payment instrument is redeemed by the customer by payment to the licensee of the face amount of the payment instrument in cash;

- (b) The payment instrument is exchanged by the licensee for a cashier's check or cash from the customer's financial institution;
- (c) The payment instrument is deposited by the licensee, and the licensee has evidence that the person has satisfied the obligation;
- (d) The payment instrument is collected by the licensee or its agent through any civil remedy available under the laws of this state; or
- (e) Any other reason that the commissioner may deem to be proper under this subtitle;

~~(8)~~~~(7)~~ "Consideration" means any interest charged~~premium or fee charged~~ of any ~~kind~~ for the sale of goods or services in excess of the cash price of the goods or services;

~~(9)~~~~(8)~~ "Control" means:

- (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or the person in control of a licensee or applicant;
- (b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority over a licensee or applicant, or the person in control of a licensee or applicant; or
- (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or the person in control of a licensee or applicant;

~~(10)~~~~(9)~~ "Customer" means a person who inquires into the availability of or applies for a deferred presentment service transaction or a person who enters into a deferred presentment service transaction;

~~(11)~~~~(10)~~ "Customer transaction data" means all data reported to the database pertinent to a particular customer transaction, including the date of the transaction, identification of the licensee and location, the sum of money involved, the time

payment is deferred, fees charged, any alleged violations of this subtitle, and any identifying customer information;

~~(12)~~~~(11)~~ "Database" means the database described in KRS 286.9-140;

~~(13)~~~~(12)~~ "Database provider" means one (1) of the following:

- (a) A third-party provider selected by the commissioner under KRS 286.9-140 to operate the statewide database described in that section; or
- (b) The commissioner, if the commissioner has not selected a third-party provider under KRS 286.9-140;

~~(14)~~~~(13)~~ "Deferred deposit service business" means a person who engages in deferred deposit transactions;

~~(15)~~~~(14)~~ "Deferred deposit transaction" or "deferred presentment service transaction" means, for consideration, accepting a payment instrument, and holding the payment instrument for a period of time prior to deposit or presentment in accordance with an agreement with or any representation made to the customer whether express or implied;

~~(16)~~~~(15)~~ "Delete" means to erase data by overwriting the data;

~~(17)~~~~(16)~~ "Commissioner" means the commissioner of the Department of Financial Institutions;

~~(18)~~~~(17)~~ "Identifying customer information" means the name of the customer, his or her Social Security number, driver license number, or other state-issued identification number, address, any account numbers or information specific to a payment instrument provided by a customer to a licensee, a bank, savings bank, savings and loan association, or credit union, and any other nonpublic, personal financial information of a customer entered into the database or that comes into the possession of the database provider through customer or licensee inquiry or report;

~~(19)~~ **"Interest" means all charges payable, directly or indirectly, by a customer to a licensee in connection with a deferred deposit transaction, including any fees,**

service charges, renewal charges, insurance premiums, or other charges, and any ancillary product sold in connection with a deferred deposit transaction made pursuant to this subtitle;

(20)~~[(18)]~~ "Licensee" means a person duly licensed by the commissioner under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth;

(21)~~[(19)]~~ "Maturity date" means the date on which a payment instrument is authorized to be redeemed or presented for payment;

(22)~~[(20)]~~ "Department" means the Department of Financial Institutions;

(23)~~[(21)]~~ "Payment instrument" means a check, draft, money order, or traveler's check, for the transmission or payment of money sold or issued to one (1) or more persons, whether or not such instrument is negotiable; and

(24)~~[(22)]~~ "Person" means any individual, partnership, association, joint stock association, trust, corporation, or other entity however organized.

➔ Section 2. KRS 286.9-100 is amended to read as follows:

- (1) *All interest*~~[Any fee]~~ charged by a licensee for cashing a check or entering into a deferred deposit transaction shall be disclosed in writing to the bearer of the check prior to cashing the check or entering into a deferred deposit transaction~~[-, and the fee shall be deemed a service fee and not interest]~~. A licensee shall not charge *interest at an annual percentage rate greater than thirty-six percent (36%) for any deferred deposit transaction made pursuant to this subtitle*~~[a service fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15) per one hundred dollars (\$100)]~~. *The interest charged*~~[This service fee]~~ shall be for a period of at least fourteen (14) days.
- (2) Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under

which the licensee is doing business.

- (3) No licensee shall cash a check payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the board of directors or similar governing body of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
- (4) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the commissioner. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.
- (5) Within two (2) business days after being advised by a financial institution that a payment instrument has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or otherwise represents the proceeds of illegal activity, the licensee shall notify the commissioner and the prosecutor or law enforcement authority in the county in which the check was received. If a payment instrument is returned to the licensee by a financial institution for any of these reasons, the licensee shall not release the payment instrument without the written consent of the prosecutor or law enforcement authority, or a court order.
- (6) No licensee shall alter or delete the date on any payment instrument accepted by the licensee.
- (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business. **The making, offering, or arranging of a deferred deposit transaction which violates this section or Section 3 of this Act, or which is**

void pursuant to KRS 286.9-035, shall be deemed an unfair, false, misleading, or deceptive act or practice in violation of the Consumer Protection Act, KRS 367.110 to 367.300, and shall be subject to all rights and remedies granted under the Consumer Protection Act, including enforcement by the Attorney General. If the deferred deposit transaction violates the maximum allowable interest rate established by subsection (1) of this section, the customer may also bring an action pursuant to Section 4 of this Act.

- (8) No licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.
- (9) A licensee shall not have more than two (2) deferred deposit transactions from any one (1) customer at any one time. The total proceeds received by the customer from all of the deferred deposit transactions shall not exceed five hundred dollars (\$500).
- (10) (a) Prior to the establishment of the common database of deferred deposit transactions established by KRS 286.9-140, each licensee shall inquire of any customer seeking to present a deferred deposit transaction, whether the customer has any outstanding deferred deposit transactions from any licensee.
(b) If the customer represents in writing that the customer has no more than one (1) deferred deposit transaction outstanding to any licensee and that the total proceeds received by the customer from the outstanding deferred deposit transaction issued by the customer does not equal or exceed five hundred dollars (\$500), a licensee may accept a deferred deposit transaction in an amount that, when combined with the customer's other outstanding deferred deposit transaction, does not exceed five hundred dollars (\$500) of total proceeds received by the customer.
(c) If the customer represents in writing that the customer has more than one (1) deferred deposit transaction outstanding to licensees or if the total proceeds received by the customer from the deferred deposit transactions equal or

exceed five hundred dollars (\$500), a licensee shall not enter into another deferred deposit transaction with that customer until the customer represents to the licensee in writing that the customer qualifies to enter into a new deferred deposit transaction under the requirements set forth in this subtitle.

(d) If the database described in KRS 286.9-140 is unavailable due to technical difficulties with the database, as determined by the commissioner, the licensee shall utilize the process established in this subsection to verify deferred deposit transactions.

(11) **A licensee shall not engage in any deceptive practice to evade the requirements of this subtitle, including but not limited to:**

(a) Assisting a customer in obtaining a deferred deposit transaction at a rate of interest that is prohibited by subsection (1) of this section;

(b) Brokering or acting as an agent for a third party to assist a borrower in obtaining or making a deferred deposit transaction;

(c) Making deferred deposit transactions disguised as personal property sales or leaseback transactions;

(d) Disguising deferred deposit transaction proceeds as cash rebates under the pretext of an installment sale of goods or services; or

(e) Using any device or agreement, including agreements with an affiliate of a licensee, with the intent to obtain greater charges than are authorized in this subtitle~~[A licensee shall not use any device or agreement, including agreements with an affiliate of a licensee, with the intent to obtain greater charges than are authorized in this subtitle].~~

(12) No licensee shall agree to hold a deferred deposit transaction for more than sixty (60) days.

(13) Each deferred deposit transaction shall be made according to a written agreement that shall be dated and signed by the customer and the licensee or an authorized

agent of the licensee at the licensed location, and made available to the commissioner upon request. The customer shall receive a copy of this agreement.

- (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.
- (15) No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040.
- (16) No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.
- (17) Each licensee shall conspicuously display in each of its deferred deposit business locations a sign supplied by the commissioner that gives the following notice: "No person who enters into a post-dated or deferred deposit transaction with this business establishment will be prosecuted for or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040."
- (18) A licensee may not enter into a deferred deposit transaction with a customer who has two (2) open deferred deposit transactions.
- (19) A licensee shall verify a customer's eligibility to enter into a deferred presentment service transaction by doing one (1) of the following, as applicable:
 - (a) If the commissioner has not implemented a database under KRS 286.9-140 or the database described in KRS 286.9-140 is not fully operational, as determined by the commissioner, the licensee shall verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subtitle.
 - (b) If the commissioner has implemented a database under KRS 286.9-140 and the database described in that section is fully operational, as determined by the

commissioner, the licensee shall promptly and accurately access the database through an Internet real-time connection, and verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle.

➔Section 3. KRS 286.9-102 is amended to read as follows:

- (1) Each licensee who engages in deferred deposit transactions shall give the customer the disclosures in writing required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the commissioner upon request.
- (2) Each licensee shall conspicuously display a schedule of all ~~interest fees, and charges for~~ interest all services provided by the licensee that are authorized by this subtitle. The notice shall be posted at each location where a licensee conducts its business under this subtitle.
- (3) A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in advance in the written disclosure.
- (4) Any personal check accepted from a customer must be payable to the licensee.
- (5) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

➔SECTION 4. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The taking, receiving, reserving, or charging of a rate of interest greater than is allowed by subsection (1) of Section 2 of this Act, when knowingly done, shall be deemed a forfeiture of the entire interest which the deferred deposit transaction carries with it, or which has been agreed to be paid thereon. If the greater rate of interest has

been paid, the person by whom it has been paid, or his or her legal representative, may recover, in an action in the nature of an action to collect a debt, twice the amount of the interest paid to the deferred deposit service business taking or receiving the interest if the action is commenced within two (2) years from the time the deferred deposit transaction occurred.

→Section 5. This Act may be cited as the Responsible Payday Lending Act.