

1 AN ACT relating to deferred deposit transactions.

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

3 ➔Section 1. KRS 286.9-100 is amended to read as follows:

4 (1) (a) Any fee charged by a licensee for cashing a check or entering into a deferred
5 deposit transaction shall be disclosed in writing to the bearer of the check
6 prior to cashing the check or entering into a deferred deposit transaction, and
7 the fee for cashing a check shall be deemed a service fee and not interest.

8 (b) 1. A licensee shall not charge a customer interest, or otherwise receive
9 interest from a customer, at an annual percentage rate greater than
10 thirty-six percent (36%) for any deferred deposit transaction~~[a service~~
11 ~~fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on~~
12 ~~the face amount of a deferred deposit check. A licensee shall prorate any~~
13 ~~fee, based upon the maximum fee of fifteen dollars (\$15) per one~~
14 ~~hundred dollars (\$100). This service fee shall be for a period of at least~~
15 ~~fourteen (14) days].~~

16 2. As used in this paragraph:

17 a. "Annual percentage rate" has the same meaning as in 10 U.S.C.
18 sec. 987(i); and

19 b. "Interest" includes consideration.

20 (2) Before a licensee shall deposit with any bank or other depository institution a check
21 cashed by the licensee, the check shall be endorsed with the actual name under
22 which the licensee is doing business.

23 (3) A licensee shall not cash a check payable to a payee other than a natural person
24 unless the licensee has previously obtained appropriate documentation from the
25 board of directors or similar governing body of the payee clearly indicating the
26 authority of the natural person or persons cashing the check, draft, or money order
27 on behalf of the payee.

- 1 (4) (a) A licensee shall:
- 2 1. Not indicate through advertising, signs, billhead, or otherwise that
- 3 checks may be cashed without identification of the bearer of the check;
- 4 and
- 5 2. Require any person seeking to cash a check to submit reasonable
- 6 identification as prescribed by the commissioner.
- 7 (b) The provisions of this subsection shall not prohibit a licensee from cashing a
- 8 check simultaneously with the verification and establishment of the identity of
- 9 the presenter by means other than the presentation of identification.
- 10 (5) (a) Within two (2) business days after being advised by a financial institution that
- 11 a payment instrument has been altered, forged, stolen, obtained through
- 12 fraudulent or illegal means, negotiated without proper legal authority, or
- 13 otherwise represents the proceeds of illegal activity, the licensee shall notify
- 14 the commissioner and the prosecutor or law enforcement authority in the
- 15 county in which the check was received.
- 16 (b) If a payment instrument is returned to the licensee by a financial institution
- 17 for any of the reasons stated in paragraph (a) of this subsection, the licensee
- 18 shall not release the payment instrument without the written consent of the
- 19 prosecutor or law enforcement authority or a court order.
- 20 (6) A licensee shall not alter or delete the date on any payment instrument accepted by
- 21 the licensee.
- 22 (7) A licensee shall not engage in unfair or deceptive acts, practices, or advertising in
- 23 the conduct of the licensed business.
- 24 (8) A licensee shall not require a customer to provide security for a deferred deposit
- 25 transaction or require the customer to provide a guaranty from another person.
- 26 (9) A licensee shall not have more than two (2) deferred deposit transactions from any
- 27 one (1) customer at any one time. The total proceeds received by the customer from

- 1 all of the deferred deposit transactions shall not exceed five hundred dollars (\$500).
- 2 (10) (a) If the database described in KRS 286.9-140 is unavailable due to technical
3 difficulties with the database, as determined by the commissioner, a licensee
4 shall utilize the process established in this subsection to verify deferred
5 deposit transactions.
- 6 (b) A licensee shall inquire of any customer seeking to enter into a deferred
7 deposit transaction, whether the customer has any outstanding deferred
8 deposit transactions from any licensee.
- 9 (c) If the customer represents in writing that the customer has no more than one
10 (1) deferred deposit transaction outstanding to any licensee and that the total
11 proceeds received by the customer from the outstanding deferred deposit
12 transaction does not equal or exceed five hundred dollars (\$500), a licensee
13 may accept a deferred deposit transaction in an amount that, when combined
14 with the customer's other outstanding deferred deposit transaction, does not
15 exceed five hundred dollars (\$500) of total proceeds received by the customer.
- 16 (d) If the customer represents in writing that the customer has more than one (1)
17 deferred deposit transaction outstanding to licensees or if the total proceeds
18 received by the customer from the deferred deposit transactions equal or
19 exceed five hundred dollars (\$500), a licensee shall not enter into another
20 deferred deposit transaction with that customer until the customer represents
21 to the licensee in writing that the customer qualifies to enter into a new
22 deferred deposit transaction under the requirements set forth in this subtitle.
- 23 (11) A licensee shall not use any device or agreement, including agreements with an
24 affiliate of a licensee, with the intent to obtain greater charges than are authorized in
25 this subtitle.
- 26 (12) A licensee shall not agree to hold a deferred deposit transaction for more than sixty
27 (60) days.

- 1 (13) (a) Each deferred deposit transaction shall be made according to a written or
2 electronic agreement that is:
- 3 1. Dated and signed by the customer and the licensee or an authorized
4 agent of the licensee; and
 - 5 2. Made available to the commissioner upon request.
- 6 (b) The customer shall receive a copy of the agreement referenced in paragraph
7 (a) of this subsection.
- 8 (c) A customer may enter into an agreement referenced in paragraph (a) of this
9 subsection:
- 10 1. In person at the licensed location; or
 - 11 2. If the customer is a citizen of this state, by telephone or other electronic
12 means.
- 13 (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise
14 consolidate a deferred deposit transaction for a customer.
- 15 (15) An individual who enters into a deferred deposit transaction with a licensee shall
16 not be convicted under the provisions of KRS 514.040.
- 17 (16) A licensee who enters into a deferred deposit transaction with an individual shall
18 not prosecute or threaten to prosecute the individual under the provisions of KRS
19 514.040.
- 20 (17) Each licensee shall conspicuously display in each of its deferred deposit business
21 locations a sign supplied by the commissioner that gives the following notice: "No
22 person who enters into a post-dated or deferred deposit transaction with this
23 business establishment will be prosecuted for or convicted of writing cold checks or
24 of theft by deception under the provisions of KRS 514.040."
- 25 (18) A licensee shall not enter into a deferred deposit transaction with a customer who
26 has two (2) open deferred deposit transactions.
- 27 (19) A licensee shall verify a customer's eligibility to enter into a deferred deposit

1 transaction by doing one (1) of the following, as applicable:

2 (a) If the database is not fully operational, as determined by the commissioner,
3 the licensee shall verify that the customer meets the eligibility requirements
4 for a deferred deposit transaction under this subtitle. The licensee shall
5 maintain a database of all of the licensee's transactions at all of its locations
6 and search that database to meet its obligation under this subtitle; or

7 (b) If the database is fully operational, as determined by the commissioner, the
8 licensee shall promptly and accurately access the database through an internet
9 real-time connection, and verify that the customer meets the eligibility
10 requirements for a deferred deposit transaction under this subtitle.

11 ➔Section 2. This Act applies to deferred deposit transactions entered on or after
12 the effective date of this Act.