

1 AN ACT relating to deferred deposit transaction fees imposed by the commissioner.

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 shall be deemed a service fee and not interest.
- 8 (b) A licensee shall not charge a service fee in excess of fifteen dollars (\$15) per  
9 one hundred dollars (\$100) on the face amount of a deferred deposit check. A  
10 licensee shall prorate any fee, based upon the maximum fee of fifteen dollars  
11 (\$15) per one hundred dollars (\$100). This service fee shall be for a period of  
12 at least fourteen (14) days.
- 13 (2) Before a licensee shall deposit with any bank or other depository institution a check  
14 cashed by the licensee, the check shall be endorsed with the actual name under  
15 which the licensee is doing business.
- 16 (3) A licensee shall not cash a check payable to a payee other than a natural person  
17 unless the licensee has previously obtained appropriate documentation from the  
18 board of directors or similar governing body of the payee clearly indicating the  
19 authority of the natural person or persons cashing the check, draft, or money order  
20 on behalf of the payee.
- 21 (4) (a) A licensee shall:
- 22 1. Not indicate through advertising, signs, billhead, or otherwise that  
23 checks may be cashed without identification of the bearer of the check;  
24 and
- 25 2. Require any person seeking to cash a check to submit reasonable  
26 identification as prescribed by the commissioner.
- 27 (b) The provisions of this subsection shall not prohibit a licensee from cashing a

1 check simultaneously with the verification and establishment of the identity of  
2 the presenter by means other than the presentation of identification.

3 (5) (a) Within two (2) business days after being advised by a financial institution that  
4 a payment instrument has been altered, forged, stolen, obtained through  
5 fraudulent or illegal means, negotiated without proper legal authority, or  
6 otherwise represents the proceeds of illegal activity, the licensee shall notify  
7 the commissioner and the prosecutor or law enforcement authority in the  
8 county in which the check was received.

9 (b) If a payment instrument is returned to the licensee by a financial institution  
10 for any of the reasons stated in paragraph (a) of this subsection, the licensee  
11 shall not release the payment instrument without the written consent of the  
12 prosecutor or law enforcement authority or a court order.

13 (6) A licensee shall not alter or delete the date on any payment instrument accepted by  
14 the licensee.

15 (7) A licensee shall not engage in unfair or deceptive acts, practices, or advertising in  
16 the conduct of the licensed business.

17 (8) A licensee shall not require a customer to provide security for a deferred deposit  
18 transaction or require the customer to provide a guaranty from another person.

19 (9) (a) A licensee shall not have more than two (2) deferred deposit transactions from  
20 any one (1) customer at any one time.

21 (b) 1. Except as provided in subparagraph 2. of this paragraph, the total  
22 proceeds received by a~~the~~ customer from all open~~of the~~ deferred  
23 deposit transactions shall not exceed six~~five~~ hundred dollars  
24 (\$600)~~(\$500)~~.

25 2. a. Subject to subdivision b. of this subparagraph, the commissioner  
26 shall, on or before July 1 of each year, issue an order increasing,  
27 or decreasing if the percent change is negative, the maximum

1 amount of total proceeds permitted under subparagraph 1. of  
 2 this paragraph by the percent change in the nonseasonally  
 3 adjusted annual average Consumer Price Index for all Urban  
 4 Consumers (CPI-U), U.S. City Average, All Items, for the  
 5 previous calendar year as published by the United States Bureau  
 6 of Labor Statistics, except the amount shall be rounded up to the  
 7 nearest ten dollar (\$10) increment.

8 b. The commissioner shall not issue an order under subdivision a.  
 9 of this subparagraph that results in the amount of total proceeds  
 10 permitted under subparagraph 1. of this paragraph exceeding  
 11 eight hundred fifty dollars (\$850).

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

16 (b) A licensee shall inquire of any customer seeking to enter into a deferred  
 17 deposit transaction, whether the customer has any outstanding deferred  
 18 deposit transactions from any licensee.

19 (c) If the customer represents in writing that the customer has no more than one  
 20 (1) deferred deposit transaction outstanding to any licensee and that the total  
 21 proceeds received by the customer from the outstanding deferred deposit  
 22 transaction does not equal or exceed the amount permitted under subsection  
 23 (9)(b) of this section ~~five hundred dollars (\$500)],~~ a licensee may accept a  
 24 deferred deposit transaction in an amount that, when combined with the  
 25 customer's other outstanding deferred deposit transaction, does not exceed the  
 26 amount permitted under subsection (9)(b) of this section ~~five hundred~~  
 27 ~~dollars (\$500) of total proceeds received by the customer].~~

- 1 (d) If the customer represents in writing that the customer has more than one (1)  
2 deferred deposit transaction outstanding to licensees or if the total proceeds  
3 received by the customer from the deferred deposit transactions equal or  
4 exceed the amount permitted under subsection (9)(b) of this section~~[five~~  
5 ~~hundred dollars (\$500)]~~, a licensee shall not enter into another deferred  
6 deposit transaction with that customer until the customer represents to the  
7 licensee in writing that the customer qualifies to enter into a new deferred  
8 deposit transaction under the requirements set forth in this subtitle.
- 9 (11) A licensee shall not use any device or agreement, including agreements with an  
10 affiliate of a licensee, with the intent to obtain greater charges than are authorized in  
11 this subtitle.
- 12 (12) A licensee shall not agree to hold a deferred deposit transaction for more than sixty  
13 (60) days.
- 14 (13) (a) Each deferred deposit transaction shall be made according to a written or  
15 electronic agreement that is:
- 16 1. Dated and signed by the customer and the licensee or an authorized  
17 agent of the licensee; and
- 18 2. Made available to the commissioner upon request.
- 19 (b) The customer shall receive a copy of the agreement referenced in paragraph  
20 (a) of this subsection.
- 21 (c) A customer may enter into an agreement referenced in paragraph (a) of this  
22 subsection:
- 23 1. In person at the licensed location; or  
24 2. If the customer is a citizen of this state, by telephone or other electronic  
25 means.
- 26 (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise  
27 consolidate a deferred deposit transaction for a customer.

- 1 (15) An individual who enters into a deferred deposit transaction with a licensee shall  
2 not be convicted under the provisions of KRS 514.040.
- 3 (16) A licensee who enters into a deferred deposit transaction with an individual shall  
4 not prosecute or threaten to prosecute the individual under the provisions of KRS  
5 514.040.
- 6 (17) Each licensee shall conspicuously display in each of its deferred deposit business  
7 locations a sign supplied by the commissioner that gives the following notice: "No  
8 person who enters into a post-dated or deferred deposit transaction with this  
9 business establishment will be prosecuted for or convicted of writing cold checks or  
10 of theft by deception under the provisions of KRS 514.040."
- 11 (18) A licensee shall not enter into a deferred deposit transaction with a customer who  
12 has two (2) open deferred deposit transactions.
- 13 (19) A licensee shall verify a customer's eligibility to enter into a deferred deposit  
14 transaction by doing one (1) of the following, as applicable:
- 15 (a) If the database is not fully operational, as determined by the commissioner,  
16 the licensee shall verify that the customer meets the eligibility requirements  
17 for a deferred deposit transaction under this subtitle. The licensee shall  
18 maintain a database of all of the licensee's transactions at all of its locations  
19 and search that database to meet its obligation under this subtitle; or
- 20 (b) If the database is fully operational, as determined by the commissioner, the  
21 licensee shall promptly and accurately access the database through an internet  
22 real-time connection, and verify that the customer meets the eligibility  
23 requirements for a deferred deposit transaction under this subtitle.
- 24 ➔Section 2. KRS 286.9-140 is amended to read as follows:
- 25 (1) (a) A common database with real-time access through an internet connection for  
26 deferred deposit service business licensees implemented in accordance with  
27 this subtitle shall be accessible to the department and a deferred deposit

1 service business licensee to verify whether any deferred deposit transactions  
2 are outstanding for a particular person.

3 (b) A deferred deposit service business licensee shall accurately and promptly  
4 submit such data into the database as may be required by the commissioner  
5 before entering into each deferred deposit transaction in such format as the  
6 commissioner may require by administrative regulation or order, including the  
7 customer's name, Social Security number or employment authorization alien  
8 number, address, driver's license number, amount of the transaction, date of  
9 transaction, date that the completed transaction is closed, and any additional  
10 information required by the commissioner.

11 (c) The commissioner may promulgate administrative regulations in accordance  
12 with KRS Chapter 13A to administer and enforce the provisions of this  
13 subtitle and to assure that the database is used by deferred deposit service  
14 business licensees in accordance with this subtitle.

15 (2) The commissioner shall impose a fee ~~of not to exceed~~ three dollars (\$3) per  
16 transaction for data required to be submitted by a deferred deposit service business  
17 licensee, which fee may be charged to the customer.

18 (3) (a) The commissioner may operate the database or may select and contract with a  
19 third-party provider to operate the database.

20 (b) If the commissioner contracts with a third-party provider for the operation of  
21 the database, all of the following apply:

22 1. The commissioner shall ensure that the third-party provider selected as  
23 the database provider operates the database pursuant to the provisions of  
24 this subtitle;

25 2. The commissioner shall consider cost of service and ability to meet all  
26 the requirements of this subtitle in selecting a third-party provider as the  
27 database provider;

- 1           3. In selecting a third-party provider to act as the database provider, the  
2           commissioner shall give strong consideration to the third-party  
3           provider's ability to prevent fraud, abuse, and other unlawful activities  
4           associated with deferred deposit transactions and provide additional  
5           tools for the administration and enforcement of this subtitle;
- 6           4. The third-party provider shall use the data collected under this subtitle  
7           only as prescribed in this subtitle and the contract with the department  
8           and for no other purpose;
- 9           5. If the third-party provider violates this subtitle, the commissioner may  
10          terminate the contract and the third-party provider may be barred from  
11          becoming a party to any other state contracts;
- 12          6. A person injured by the third-party provider's violation of this subtitle  
13          may maintain a civil cause of action against the third-party provider and  
14          may recover actual damages plus reasonable attorney's fees and court  
15          costs; and
- 16          7. The commissioner may require that the third-party provider collect the  
17          fee assessed in subsection (2) of this section from the licensee. The  
18          third-party provider shall remit the fee collected from the licensee to the  
19          commissioner no later than the first day of each month. The third-party  
20          provider shall deposit any fee collected in a separate escrow account in a  
21          federally insured financial institution and shall hold the fee deposited in  
22          trust for the Commonwealth of Kentucky.
- 23 (4) The database shall allow a deferred deposit service business licensee accessing the  
24          database to do all of the following:
- 25          (a) Verify whether a customer has any open deferred deposit transactions with  
26          any deferred deposit business service licensee that have not been closed;
- 27          (b) Provide information necessary to ensure deferred deposit service business

- 1 licensee compliance with any requirements imposed by the United States  
2 Treasury Office of Foreign Assets Control and United States Treasury Office  
3 of Financial Crimes Enforcement Network; and
- 4 (c) Track and monitor the number of customers who notify a deferred deposit  
5 service business licensee of violations of this subtitle, the number of times a  
6 deferred deposit service business licensee agreed that a violation occurred, the  
7 number of times that a deferred deposit service business licensee did not agree  
8 that a violation occurred, the amount of restitution paid, and any other  
9 information the commissioner requires by administrative regulation or order.
- 10 (5) While operating the database, the database provider shall do all of the following:
- 11 (a) Establish and maintain a process for responding to transaction verification  
12 requests due to technical difficulties occurring with the database that prevent  
13 the licensee from accessing the database through the internet;
- 14 (b) Comply with any applicable federal and state provisions to prevent identity  
15 theft;
- 16 (c) Provide accurate and secure receipt, transmission, and storage of customer  
17 data; and
- 18 (d) Meet the requirements of this subtitle.
- 19 (6) When the database provider receives notification that a deferred deposit transaction  
20 has been closed, the database provider shall designate the transaction as closed in  
21 the database immediately, but in no event after 11:59 p.m. on the day the  
22 commissioner or database provider receives notification.
- 23 (7) (a) The database provider shall automatically designate a deferred deposit  
24 transaction as closed in the database five (5) days after the transaction  
25 maturity date unless a deferred deposit service business licensee reports to the  
26 database provider before that time that the transaction remains open because:
- 27 1. Of the customer's failure to make payment;

- 1           2.    The customer's payment instrument or an electronic redeposit is in the
  - 2                    process of clearing the banking system;
  - 3           3.    The customer's payment instrument is being returned to the deferred
  - 4                    deposit service business licensee for insufficient funds, a closed account,
  - 5                    or a stop payment order; or
  - 6           4.    Of any other factors determined by the commissioner.
- 7           (b) If a deferred deposit service business licensee reports the status of a
- 8                    transaction as open in a timely manner, the transaction remains an open
- 9                    transaction until it is closed and the database provider is notified that the
- 10                  transaction is closed.
- 11       (8) (a) If a deferred deposit service business licensee stops providing deferred deposit
- 12                    transactions, the database provider shall designate all open transactions with
- 13                    that licensee as closed in the database sixty (60) days after the date the
- 14                    deferred deposit service business licensee stops offering deferred deposit
- 15                    transactions, unless the deferred deposit service business licensee reports to
- 16                    the database provider before the expiration of the sixty (60) day period which
- 17                    of its transactions remain open and the specific reason each transaction
- 18                    remains open.
- 19           (b) The deferred deposit service business licensee shall also provide to the
- 20                    commissioner a reasonably acceptable plan that outlines how the deferred
- 21                    deposit service business licensee will continue to update the database after it
- 22                    stops offering deferred deposit transactions.
- 23           (c) The commissioner shall promptly approve or disapprove the plan and
- 24                    immediately notify the deferred deposit service business licensee of the
- 25                    commissioner's decision.
- 26           (d) If the plan is disapproved, the deferred deposit service business licensee may
- 27                    submit a new plan or may submit a modified plan for the deferred deposit

1 service business licensee to follow.

2 (e) If at any time the commissioner reasonably determines that a deferred deposit  
3 service business licensee that has stopped offering deferred deposit  
4 transactions is not updating the database in accordance with its approved plan,  
5 the commissioner shall immediately close or instruct the database provider to  
6 immediately close all remaining open transactions of that deferred deposit  
7 service business licensee.

8 (9) (a) The response to an inquiry to the database provider by a deferred deposit  
9 service business licensee shall state only that a person is eligible or ineligible  
10 for a new deferred deposit transaction and describe the reason for that  
11 determination.

12 (b) Only the person seeking the transaction may make a direct inquiry to the  
13 database provider to request a more detailed explanation of a particular  
14 transaction that was the basis for the ineligibility determination.

15 (c) Any information regarding any person's transaction history is confidential; is  
16 not subject to public inspection; is not a public record subject to the disclosure  
17 requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is  
18 not subject to discovery, subpoena, or other compulsory process, except in an  
19 administrative or legal action arising under this subtitle; and shall not be  
20 disclosed to any person other than the commissioner.

21 (10) The commissioner may access the database only for purposes of an investigation of,  
22 examination of, or enforcement action concerning an individual database provider,  
23 licensee, customer, or other person.

24 (11) (a) The commissioner shall investigate violations of and enforce this subtitle.

25 (b) The commissioner shall not delegate his or her responsibilities under this  
26 subsection to any third-party provider.

27 (12) The commissioner may, by administrative regulation or order, do all of the

1 following:

2 (a) Require that data be retained in the database only as required to ensure  
3 deferred deposit service business licensee compliance with this subtitle;

4 (b) Require that customer transaction data in the database are archived within  
5 three hundred sixty-five (365) days after the customer transaction is closed  
6 unless needed for a pending enforcement or legal action;

7 (c) Require that any identifying customer information is deleted from the  
8 database when data are archived; and

9 (d) Require that data in the database concerning a customer transaction are  
10 deleted from the database three (3) years after the customer transaction is  
11 closed or, if any administrative, legal, or law enforcement action is pending,  
12 three (3) years after the administrative, legal, or law enforcement action is  
13 completed, whichever is later.

14 (13) The commissioner may maintain access to data archived under subsection (12) of  
15 this section for examination, investigation, or legislative or policy review.

16 (14) A deferred deposit service business licensee may rely on the information contained  
17 in the database as accurate and is not subject to any administrative penalty or civil  
18 liability as a result of relying on inaccurate information contained in the database,  
19 provided the deferred deposit licensee accurately and promptly submits such data as  
20 required before entering into a deferred deposit transaction with a customer.

21 (15) The commissioner may use the database to administer and enforce this subtitle.

22 (16) The commissioner may require a database provider to file a report by March 1 of  
23 each year containing the following information:

24 (a) The total number and dollar amount of deferred deposit transactions entered  
25 into in the calendar year ending December 31 of the previous year;

26 (b) The total number and dollar amount of deferred deposit transactions  
27 outstanding as of December 31 of the previous year;

- 1 (c) The total dollar amount of fees collected for deferred deposit transactions as  
2 of December 31 of the previous year;
- 3 (d) The minimum, maximum, and average dollar amount of deferred deposit  
4 transactions entered into, the total dollar amount of the net charge-offs and  
5 write-offs, and the net recoveries of licensees as of December 31 of the  
6 previous year;
- 7 (e) The average deferred deposit transaction amount, the average number of  
8 transactions, and the average aggregate deferred deposit transaction amount  
9 entered into per customer as of December 31 of the previous year;
- 10 (f) The average number of days a customer was engaged in a deferred deposit  
11 transaction for the previous year; and
- 12 (g) An estimate of the average total fees paid per customer for deferred deposit  
13 transactions for the previous year.

14 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 425 IS CREATED TO  
15 READ AS FOLLOWS:

16 **(1) An order of attachment or garnishment of earnings on a judgment-debtor**  
17 **employee provided to a garnishee-employer shall, at a minimum, contain the**  
18 **following information clearly placed on a single page:**

19 **(a) The debtor's name;**

20 **(b) One (1) of the following:**

21 **1. The debtor's last known physical address; or**

22 **2. A statement that the debtor's last known physical address is unknown;**

23 **(c) One (1) of the following:**

24 **1. The debtor's last known mailing address;**

25 **2. A statement that the debtor's last known mailing address is the same**  
26 **as the debtor's last known physical address; or**

27 **3. A statement that the debtor's last known mailing address is unknown;**

- 1        (d) The amount of the debt that is owed;
- 2        (e) Information sufficient to identify the judgment on which the garnishment
- 3                or attachment is based;
- 4        (f) The name and contact information of the creditor's agent;
- 5        (g) Where the employer is required to submit remittances; and
- 6        (h) Any optional alternative remittance method.
- 7        (2) (a) To properly match the judgment-debtor employee, a separate addendum
- 8                may be used to provide sensitive identifying information to the garnishee-
- 9                employer in a manner that protects the employee's information from public
- 10                inspection.
- 11        (b) A separate addendum used under paragraph (a) of this subsection may
- 12                include:
- 13                1. The debtor's date of birth;
- 14                2. One (1) of the following:
- 15                        a. The debtor's Social Security number; or
- 16                        b. A statement that the debtor's Social Security number is
- 17                                unknown; and
- 18                3. If the debtor's full Social Security number is unknown, any additional
- 19                identifying information.

20        ➔Section 4. Sections 1 and 2 of this Act apply to deferred deposit transactions

21        entered on or after the effective date of this Act.