

1 AN ACT relating to deferred deposit service businesses.

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 ***charge imposed***~~[fee—charged]~~ by a licensee for cashing a check or  
5 entering into a deferred deposit transaction shall be disclosed in writing to the  
6 bearer of the check prior to cashing the check or entering into ***the***~~[a]~~ deferred  
7 deposit transaction~~[, and the fee shall be deemed a service fee and not~~  
8 interest].

9 ***(b) Except as provided in subsection (12) of this section and in KRS 286.9-102:***

10 ***1. When entering into a deferred deposit transaction with any of the***  
11 ***following, a licensee shall not impose charges that exceed an annual***  
12 ***percentage rate of thirty-six percent (36%):***

13 ***a. A veteran; or***

14 ***b. A natural person who:***

15 ***i. Is less than twenty-one (21) years of age; or***

16 ***ii. Has attained the age set forth in 42 U.S.C. sec. 402(a)(2),***  
17 ***as amended, for entitlement to old-age insurance benefits;***

18 ***2. When entering into a deferred deposit transaction with any customer***  
19 ***not referenced in subparagraph 1. of this paragraph,*** a licensee shall  
20 not ***impose charges***~~[charge—a service fee]~~ in excess of ***four dollars***  
21 ***(\$4)***~~[fifteen dollars (\$15)]~~ per one hundred dollars (\$100) ***of proceeds***  
22 ***received by the customer***~~[on the face amount of the deferred deposit~~  
23 ~~check].~~ A licensee shall prorate any ***charge***~~[fee]~~, based upon the  
24 maximum ***charge***~~[fee]~~ of ***four dollars (\$4)***~~[fifteen dollars (\$15)]~~ per one  
25 hundred dollars (\$100). This ***charge***~~[service fee]~~ shall be for a period of  
26 at least fourteen (14) days~~;~~[-].

27 ***3. A licensee shall not agree to hold a deferred deposit transaction for***

1 more than sixty (60) days; and

2 4. A licensee or its affiliate shall not impose a charge to renew, roll over,  
3 or otherwise consolidate a deferred deposit transaction.

4 (c) For purposes of paragraph (b) of this subsection:

5 1. "Annual percentage rate" shall be determined and calculated as  
6 provided in Section 107 of the Truth in Lending Act, 15 U.S.C. sec.  
7 1606, as amended, and any related federal regulations, as amended;  
8 and

9 2. "Veteran" means any natural person who served in the active Armed  
10 Forces of the United States, Reserves, or National Guard and was  
11 released, separated, discharged, or retired therefrom under conditions  
12 other than dishonorable.

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) No licensee shall cash a check payable to a payee other than a natural person unless  
17 the licensee has previously obtained appropriate documentation from the board of  
18 directors or similar governing body of the payee clearly indicating the authority of  
19 the natural person or persons cashing the check, draft, or money order on behalf of  
20 the payee.

21 (4) No licensee shall indicate through advertising, signs, billhead, or otherwise that  
22 checks may be cashed without identification of the bearer of the check; and any  
23 person seeking to cash a check shall be required to submit reasonable identification  
24 as prescribed by the commissioner. The provisions of this subsection shall not  
25 prohibit a licensee from cashing a check simultaneously with the verification and  
26 establishment of the identity of the presenter by means other than the presentation  
27 of identification.

- 1 (5) Within two (2) business days after being advised by a financial institution that a  
2 payment instrument has been altered, forged, stolen, obtained through fraudulent or  
3 illegal means, negotiated without proper legal authority, or otherwise represents the  
4 proceeds of illegal activity, the licensee shall notify the commissioner and the  
5 prosecutor or law enforcement authority in the county in which the check was  
6 received. If a payment instrument is returned to the licensee by a financial  
7 institution for any of these reasons, the licensee shall not release the payment  
8 instrument without the written consent of the prosecutor or law enforcement  
9 authority, or a court order.
- 10 (6) No licensee shall alter or delete the date on any payment instrument accepted by the  
11 licensee.
- 12 (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the  
13 conduct of the licensed business.
- 14 (8) No licensee shall require a customer to provide security for the transaction or  
15 require the customer to provide a guaranty from another person.
- 16 (9) A licensee shall not **enter into a deferred deposit transaction with a**  
17 **customer:**~~[have more than two (2) deferred deposit transactions from any one (1)~~  
18 ~~customer at any one time.]~~
- 19 **(a) Who has two (2) or more open deferred deposit transactions;**
- 20 **(b) In an amount that, when combined with the customer's other open deferred**  
21 **deposit transactions, exceeds**~~[The total proceeds received by the customer~~  
22 ~~from all of the deferred deposit transactions shall not exceed]~~ five hundred  
23 dollars (\$500) **of total proceeds received by the customer; or**
- 24 **(c) Before the forty-fifth day following the day a previous deferred deposit**  
25 **transaction between the customer and any licensee was closed, if the**  
26 **previous deferred deposit transaction exceeded four (4) deferred deposit**  
27 **transactions by that customer within one hundred eighty (180) days.**

1 (10) *If the database described in KRS 286.9-140 is unavailable due to technical*  
2 *difficulties with the database, as determined by the commissioner, the licensee*  
3 *shall utilize the following process to verify deferred deposit transactions:*

4 (a) ~~[Prior to the establishment of the common database of deferred deposit~~  
5 ~~transactions established by KRS 286.9-140, ]~~Each licensee shall inquire of  
6 any customer seeking to present a deferred deposit transaction, whether the  
7 customer has any outstanding deferred deposit transactions from any  
8 licensee; ~~[-]~~

9 (b) 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 ~~[issued by the customer]~~ does not equal or exceed five hundred  
13 dollars (\$500), a licensee may accept a deferred deposit transaction in an  
14 amount that, when combined with the customer's other outstanding deferred  
15 deposit transaction, does not exceed five hundred dollars (\$500) of total  
16 proceeds received by the customer; *and* ~~[-]~~

17 (c) If the customer represents in writing that the customer has more than one (1)  
18 deferred deposit transaction outstanding to licensees or if the total proceeds  
19 received by the customer from the deferred deposit transactions equal or  
20 exceed five hundred dollars (\$500), a licensee shall not enter into another  
21 deferred deposit transaction with that customer until the customer represents  
22 to the licensee in writing that the customer qualifies to enter into a new  
23 deferred deposit transaction under the requirements set forth in this subtitle.

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

1 (11) A licensee shall not use any device or agreement, including agreements with an  
2 affiliate of a licensee, with the intent to obtain greater charges than are authorized in  
3 this subtitle.

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

6 ~~(13)~~ [Each deferred deposit transaction shall be made according to a written agreement  
7 that shall be dated and signed by the customer and the licensee, or an authorized  
8 agent of the licensee, at the licensed location, and **the written agreement shall be**  
9 made available to the commissioner upon request.

10 **(b)** The customer shall receive a copy of **the written** ~~[this]~~ agreement.

11 **(c)** **Notwithstanding any other provision of this section, the written agreement**  
12 **shall offer the customer an extended payment plan option, which:**

13 **1. Shall provide as follows:**

14 **a. The customer may enter into the extended payment plan by**  
15 **returning to the location where the deferred deposit loan was**  
16 **made and signing an amendment to the written agreement**  
17 **reflecting the extended terms of the deferred deposit transaction**  
18 **on or before the maturity date of the loan;**

19 **b. The extended payment plan shall allow the customer to repay the**  
20 **balance of the deferred deposit loan in four (4) substantially**  
21 **equal installments that are not less than fourteen (14) days**  
22 **apart;**

23 **c. If the customer receives regular wages or income, the due date of**  
24 **each installment shall coincide with the date on which the**  
25 **customer receives the regular wages or income;**

26 **d. The first installment shall be due no sooner than fourteen (14)**  
27 **days following execution of the amendment referenced in**

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subdivision a. of this subparagraph;

e. No additional charges shall be applied to the deferred deposit transaction or in connection with the extended payment plan,

except:

i. Check collection charges authorized under KRS 286.9-102; and

ii. If the customer defaults on the extended payment plan, the licensee may charge a one (1) time default fee of fifteen dollars (\$15);

f. The customer shall be permitted to make one (1) or more prepayments on the extended payment plan at any time; and

g. If the customer defaults on the extended payment plan, the licensee may terminate the plan and accelerate the requirement to pay the amount owed; and

2. May include a provision that limits the customer's eligibility for an extended payment plan to not less than one (1) extended payment plan with any licensee during the preceding twelve (12) months.

(d) At the time the written agreement is executed, the licensee, or an authorized agent of the licensee, shall verbally identify the extended payment plan option required under paragraph (c) of this subsection to the customer, which the customer shall acknowledge by initialing the agreement adjacent to the identified provision.

~~(13)~~~~(14)~~ (a)~~[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.

~~(b)~~~~(16)~~ No licensee who enters into a deferred deposit transaction with an

1 individual shall prosecute or threaten to prosecute an individual under the  
 2 provisions of KRS 514.040.

3 ~~(14)~~~~(17)~~ Each licensee shall conspicuously display in each of its deferred deposit  
 4 business locations:

5 (a) A sign supplied by the commissioner that gives the following notice: "No  
 6 person who enters into a post-dated or deferred deposit transaction with this  
 7 business establishment will be prosecuted for or convicted of writing cold  
 8 checks or of theft by deception under the provisions of KRS 514.040."; and

9 (b) *The following notice: "If you are unable to repay a post-dated or deferred*  
 10 *deposit transaction with this business establishment, you may be entitled to*  
 11 *extend the time period for paying off your loan at no additional charge by*  
 12 *making a request with this business establishment on or before the maturity*  
 13 *date of your transaction. Please inquire with a representative for more*  
 14 *information."*

15 ~~[(18) A licensee may not enter into a deferred deposit transaction with a customer who~~  
 16 ~~has two (2) open deferred deposit transactions.]~~

17 ~~(15)~~~~(19)~~ A licensee shall verify a customer's eligibility to enter into a deferred  
 18 deposit~~[presentment service]~~ transaction by doing one (1) of the following, as  
 19 applicable:

20 (a) ~~If [the commissioner has not implemented a database under KRS 286.9-140~~  
 21 ~~or] the database described in KRS 286.9-140 is not fully operational, as~~  
 22 ~~determined by the commissioner, the licensee shall verify that the customer~~  
 23 ~~meets the eligibility requirements for a deferred deposit~~[presentment service]~~~~  
 24 ~~transaction under this subtitle. The licensee shall maintain a database of all of~~  
 25 ~~the licensee's transactions at all of its locations and search that database to~~  
 26 ~~meet its obligation under this subtitle; and~~[-]~~~~

27 (b) ~~If [the commissioner has implemented a database under KRS 286.9-140 and]~~

1           the database described in **KRS 286.9-140**~~[that section]~~ is fully operational, as  
2           determined by the commissioner, the licensee shall promptly and accurately  
3           access the database through an Internet real-time connection, and verify that  
4           the customer meets the eligibility requirements for a deferred  
5           **deposit**~~[presentment service]~~ transaction under this subtitle.

6           ➔Section 2. Section 1 of this Act applies to deferred deposit transactions entered  
7           on or after the effective date of this Act.