

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 286.9-010 is amended to read as follows:

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

- 5 (1) "Affiliate" means a person who directly or indirectly through one (1) or more
6 intermediaries controls or is controlled by, or is under common control with, a
7 licensee;
- 8 (2) **"Annual percentage rate" means the annual percentage rate applicable to the**
9 **extension of consumer credit as defined in Section 107 of the Truth in Lending**
10 **Act, 15 U.S.C. sec. 1606, as implemented by regulations of the Board of**
11 **Governors of the Federal Reserve System. All interest, fees, and charges,**
12 **including fees and charges for any ancillary products sold in connection with the**
13 **deferred deposit transaction, shall be included in the calculation of the annual**
14 **percentage rate;**
- 15 (3) "Applicant" means a person filing an application or renewal application for a license
16 under this subtitle;
- 17 ~~(4)~~~~(3)~~ "Archive" means to copy data to a long-term storage mechanism apart from
18 the database;
- 19 ~~(5)~~~~(4)~~ "Cashing" means providing currency for a payment instrument;
- 20 ~~(6)~~~~(5)~~ "Check" means any check, draft, money order, personal money order,
21 travelers' check, or other demand instrument for the transmission or payment of
22 money;
- 23 ~~(7)~~~~(6)~~ "Closed" or "close" means that one (1) of the following has occurred in
24 connection with a deferred deposit service transaction concerning the customer's
25 payment instrument:
- 26 (a) The payment instrument is redeemed by the customer by payment to the
27 licensee of the face amount of the payment instrument in cash;

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

9 ~~(8)~~~~(7)~~ "Consideration" means any interest, fee, premium, or other charge~~[premium~~
10 ~~or fee charged]~~ of any kind for the sale of goods or services in excess of the cash
11 price of the goods or services;

12 ~~(9)~~~~(8)~~ "Control" means:

- 13 (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent
14 (25%) or more of a class of voting securities or voting interests of a licensee
15 or applicant, or the person in control of a licensee or applicant;
- 16 (b) The power to elect a majority of executive officers, managers, directors,
17 trustees, or other persons exercising managerial authority over a licensee or
18 applicant, or the person in control of a licensee or applicant; or
- 19 (c) The power to exercise, directly or indirectly, a controlling influence over the
20 management or policies of a licensee or applicant, or the person in control of a
21 licensee or applicant;

22 ~~(10)~~~~(9)~~ "Customer" means a person who inquires into the availability of or applies for
23 a deferred presentment service transaction or a person who enters into a deferred
24 presentment service transaction;

25 ~~(11)~~~~(10)~~ "Customer transaction data" means all data reported to the database pertinent
26 to a particular customer transaction, including the date of the transaction,
27 identification of the licensee and location, the sum of money involved, the time

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

3 ~~(12)~~~~(11)~~ "Database" means the database described in KRS 286.9-140;

4 ~~(13)~~~~(12)~~ "Database provider" means one (1) of the following:

5 (a) A third-party provider selected by the commissioner under KRS 286.9-140 to
6 operate the statewide database described in that section; or

7 (b) The commissioner, if the commissioner has not selected a third-party provider
8 under KRS 286.9-140;

9 ~~(14)~~~~(13)~~ "Deferred deposit service business" means a person who engages in deferred
10 deposit transactions;

11 ~~(15)~~~~(14)~~ "Deferred deposit transaction" or "deferred presentment service transaction"
12 means, for consideration, accepting a payment instrument, and holding the payment
13 instrument for a period of time prior to deposit or presentment in accordance with
14 an agreement with or any representation made to the customer whether express or
15 implied;

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

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

19 ~~(18)~~~~(17)~~ "Identifying customer information" means the name of the customer, his or
20 her Social Security number, driver license number, or other state-issued
21 identification number, address, any account numbers or information specific to a
22 payment instrument provided by a customer to a licensee, a bank, savings bank,
23 savings and loan association, or credit union, and any other nonpublic, personal
24 financial information of a customer entered into the database or that comes into the
25 possession of the database provider through customer or licensee inquiry or report;

26 **(19) "Interest" means all charges payable, directly or indirectly, by a customer to a**
27 **licensee as a condition of a deferred deposit transaction, including fees, service**

1 **charges, renewal charges, credit insurance premiums, and any ancillary product**
 2 **sold in connection with a deferred deposit transaction made pursuant to this**
 3 **subtitle;**

4 ~~(20)~~~~(18)~~ "Licensee" means a person duly licensed by the commissioner under this
 5 subtitle to conduct check cashing or deferred deposit service business in the
 6 Commonwealth;

7 ~~(21)~~~~(19)~~ "Maturity date" means the date on which a payment instrument is authorized
 8 to be redeemed or presented for payment;

9 ~~(22)~~~~(20)~~ "Department" means the Department of Financial Institutions;

10 ~~(23)~~~~(21)~~ "Payment instrument" means a check, draft, money order, or traveler's check,
 11 for the transmission or payment of money sold or issued to one (1) or more persons,
 12 whether or not such instrument is negotiable; and

13 ~~(24)~~~~(22)~~ "Person" means any individual, partnership, association, joint stock
 14 association, trust, corporation, or other entity however organized.

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

16 (1) **All interest, including fees,**~~[Any fee]~~ charged by a licensee for cashing a check or
 17 entering into a deferred deposit transaction shall be disclosed in writing to the
 18 bearer of the check prior to cashing the check or entering into a deferred deposit
 19 transaction~~[, and the fee shall be deemed a service fee and not interest].~~ A licensee
 20 shall not **charge interest at an annual percentage rate greater than thirty-six**
 21 **percent (36%) for any deferred deposit transaction made pursuant to this**
 22 **subtitle**~~[charge a service fee in excess of fifteen dollars (\$15) per one hundred~~
 23 ~~dollars (\$100) on the face amount of the deferred deposit check. A licensee shall~~
 24 ~~prorate any fee, based upon the maximum fee of fifteen dollars (\$15) per one~~
 25 ~~hundred dollars (\$100). This service fee shall be for a period of at least fourteen~~
 26 ~~(14) days].~~

27 (2) Before a licensee shall deposit with any bank or other depository institution a check

1 cashed by the licensee, the check shall be endorsed with the actual name under
2 which the licensee is doing business.

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

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

15 (5) Within two (2) business days after being advised by a financial institution that a
16 payment instrument has been altered, forged, stolen, obtained through fraudulent or
17 illegal means, negotiated without proper legal authority, or otherwise represents the
18 proceeds of illegal activity, the licensee shall notify the commissioner and the
19 prosecutor or law enforcement authority in the county in which the check was
20 received. If a payment instrument is returned to the licensee by a financial
21 institution for any of these reasons, the licensee shall not release the payment
22 instrument without the written consent of the prosecutor or law enforcement
23 authority, or a court order.

24 (6) No licensee shall alter or delete the date on any payment instrument accepted by the
25 licensee.

26 (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the
27 conduct of the licensed business. *The making of a deferred deposit transaction*

1 which violates this section or Section 3 of this Act, or which is void pursuant to
2 KRS 286.9-035, shall be deemed an unfair, false, misleading, or deceptive act or
3 practice in violation of the Consumer Protection Act, KRS 367.110 to 367.300,
4 and shall be subject to all rights and remedies thereunder, including enforcement
5 by the Attorney General. If the deferred deposit transaction violates the maximum
6 allowable interest rate established by subsection (1) of this section, the customer
7 may also bring an action pursuant to Section 4 of this Act.

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

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

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

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 engage in any deceptive practice to evade the requirements of**
13 **this subtitle, including assisting a customer in obtaining a deferred deposit**
14 **transaction at a rate of interest that is prohibited by subsection (1) of this section,**
15 **making deferred deposit transactions disguised as personal property sales or**
16 **leaseback transactions, or disguising deferred deposit transaction proceeds as**
17 **cash rebates under the pretext of an installment sale of goods or services.**

18 **(13)** No licensee shall agree to hold a deferred deposit transaction for more than sixty
19 (60) days.

20 **(14)**~~(13)~~ Each deferred deposit transaction shall be made according to a written
21 agreement that shall be dated and signed by the customer and the licensee or an
22 authorized agent of the licensee at the licensed location, and made available to the
23 commissioner upon request. The customer shall receive a copy of this agreement.

24 **(15)**~~(14)~~ A licensee or its affiliate shall not for a fee renew, roll over, or otherwise
25 consolidate a deferred deposit transaction for a customer.

26 **(16)**~~(15)~~ No individual who enters into a deferred deposit transaction with a licensee
27 shall be convicted under the provisions of KRS 514.040.

1 ~~(17)~~~~(16)~~ No licensee who enters into a deferred deposit transaction with an individual
2 shall prosecute or threaten to prosecute an individual under the provisions of KRS
3 514.040.

4 ~~(18)~~~~(17)~~ Each licensee shall conspicuously display in each of its deferred deposit
5 business locations a sign supplied by the commissioner that gives the following
6 notice: "No person who enters into a post-dated or deferred deposit transaction with
7 this 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."

9 ~~(19)~~~~(18)~~ A licensee may not enter into a deferred deposit transaction with a customer
10 who has two (2) open deferred deposit transactions.

11 ~~(20)~~~~(19)~~ A licensee shall verify a customer's eligibility to enter into a deferred
12 presentment service transaction by doing one (1) of the following, as applicable:

13 (a) If the commissioner has not implemented a database under KRS 286.9-140 or
14 the database described in KRS 286.9-140 is not fully operational, as
15 determined by the commissioner, the licensee shall verify that the customer
16 meets the eligibility requirements for a deferred presentment service
17 transaction under this subtitle. The licensee shall maintain a database of all of
18 the licensee's transactions at all of its locations and search that database to
19 meet its obligation under this subtitle.

20 (b) If the commissioner has implemented a database under KRS 286.9-140 and
21 the database described in that section is fully operational, as determined by the
22 commissioner, the licensee shall promptly and accurately access the database
23 through an Internet real-time connection, and verify that the customer meets
24 the eligibility requirements for a deferred presentment service transaction
25 under this subtitle.

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

27 (1) Each licensee who engages in deferred deposit transactions shall give the customer

1 the disclosures in writing required by the Consumer Credit Protection Act (15
2 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the
3 commissioner upon request.

4 (2) Each licensee shall conspicuously display a schedule of all interest, fees, and
5 charges for all services provided by the licensee that are authorized by this subtitle.
6 The notice shall be posted at each location where a licensee conducts its business
7 under this subtitle.

8 (3) A licensee may charge, collect, and receive check collection charges made by a
9 financial institution for each check returned or dishonored for any reason, provided
10 that the terms and conditions upon which check collection charges will be charged
11 to the customer are set forth in advance in the written disclosure.

12 (4) Any personal check accepted from a customer must be payable to the licensee.

13 (5) Before a licensee shall present for payment or deposit a check accepted by the
14 licensee, the check shall be endorsed with the actual name under which the licensee
15 is doing business.

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

18 *The taking, receiving, reserving, or charging of a rate of interest greater than is*
19 *allowed by subsection (1) of Section 2 of this Act, when knowingly done, shall be*
20 *deemed a forfeiture of the entire interest which the deferred deposit transaction carries*
21 *with it, or which has been agreed to be paid. If the greater rate of interest has been*
22 *paid, the person by whom it has been paid, or his or her legal representative, may*
23 *recover, in a civil action to collect a debt, twice the amount of the interest paid to the*
24 *deferred deposit transaction licensee taking or receiving the interest if the action is*
25 *commenced within two (2) years from the time the deferred deposit transaction*
26 *occurred.*