

CHAPTER 33

(HB 433)

AN ACT relating to financial institutions.

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

➔Section 1. KRS 286.9-080 is amended to read as follows:

- (1) Each license may be renewed for the ensuing twelve (12) ~~month~~~~[months]~~ period upon the timely submission of a completed renewal application and payment to the commissioner annually on or before ~~December 31~~~~[June 20]~~ of each year *of the following fees*~~[a license fee of]~~:
 - (a) Five hundred dollars (\$500) for the first location; and
 - (b) Five hundred dollars (\$500) for each additional location.
- (2) The commissioner may reinstate a license that has expired within thirty-one (31) days of the expiration of the license if the licensee pays:
 1. A late fee~~[in the amount]~~ of one hundred dollars (\$100); and
 2. A reinstatement fee of five hundred dollars (\$500).
- (3) A license shall not be reinstated ~~when~~~~[where]~~ the renewal application, fees, or any required information is received ~~on or~~ after ~~January 31~~~~[August 1]~~ of the *following* year that the application was due.
- (4) *The commissioner may, by promulgation of an administrative regulation pursuant to KRS Chapter 13A, modify the dates for submissions under this section when necessary to:*
 - (a) *Implement uniform national licensing procedures; or*
 - (b) *Facilitate common practices and procedures among the states.*

➔Section 2. 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) "Applicant" means a person filing an application or renewal application for a license in accordance with this subtitle;
- (3) "Archive" means to copy data to a long-term storage mechanism apart from the database;
- (4) "Cashing" means providing currency for a payment instrument;
- (5) "Check" means any check, draft, money order, personal money order, travelers' check, or other demand instrument for the transmission or payment of money;
- (6) "Check cashing license" means a license issued pursuant to this subtitle by the commissioner to conduct the business of cashing checks in this Commonwealth;
- (7) "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, *or submitted as an electronic check pursuant to federal law and with specific customer authorization to do so*, 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) "Consideration" means any 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) "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) "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) "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) "Database" means the database described in KRS 286.9-140;
- (13) "Database provider" means one (1) of the following:
 - (a) A third-party provider selected by the commissioner in accordance with 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 in accordance with KRS 286.9-140;
- (14) "Deferred deposit service business" means a person who engages in deferred deposit transactions;
- (15) "Deferred deposit service business license" means a license issued in accordance with this subtitle by the commissioner to conduct check cashing and deferred deposit service business in this Commonwealth;
- (16) "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;
- (17) "Delete" means to erase data by overwriting the data;
- (18) "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) "Licensee" means a person who has been issued either a check cashing license or a deferred deposit service business license by the commissioner in accordance with this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth;
- (20) "Maturity date" means the date on which a payment instrument is authorized to be redeemed or presented for payment; and
- (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.

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

- (1) 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 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). 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.
- (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 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)
 - (a) 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.
 - (b) *A licensee shall not require a customer to provide authorization for the licensee to submit an original payment instrument electronically before entering into a deferred deposit transaction.*
- (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.

Signed by Governor March 20, 2023.