

1 AN ACT relating to check cashing.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Bank" has the same meaning as in KRS 355.1-201;*

7 *(b) "Check" has the same meaning as in KRS 355.3-104;*

8 *(c) "Payable on demand" has the same meaning as in KRS 355.3-108; and*

9 *(d) "Presentment" has the same meaning as in KRS 355.3-501.*

10 *(2) Except as provided in subsection (4) of this section, a bank shall, to the extent*
11 *allowable under federal law, cash, free of charge, any check payable at the bank*
12 *or drawn on an account held at the bank by the end of the day on which the*
13 *check is presented to the bank, if:*

14 *(a) The check is payable on demand;*

15 *(b) Presentment is made to the bank at any of its branches or offices within this*
16 *state;*

17 *(c) The check is presented for payment by the payee of the check;*

18 *(d) There are sufficient funds in the account on which the check was drawn;*
19 *and*

20 *(e) The payee:*

21 *1. Complies with subsection (2)(b) of KRS 355.3-501, except a bank may*
22 *not require more than two (2) forms of identification if the payee*
23 *provides one (1) of the following:*

24 *a. A current passport issued by the State Department of the United*
25 *States;*

26 *b. A current motor vehicle operator's license issued by the*
27 *Commonwealth of Kentucky or other state-issued identification;*

- 1 c. A birth certificate;
- 2 d. A Department of Defense identification card; or
- 3 e. Another form of identification that the bank accepts in the
- 4 ordinary course of business in accordance with state or federal
- 5 law; and
- 6 2. Provides any other information necessary for the bank to comply with
- 7 any reporting or recordkeeping requirements under state or federal
- 8 law.
- 9 (3) (a) A violation of subsection (2) of this section shall:
- 10 1. Render the bank liable to the payee for all damages proximately
- 11 caused by the violation, including consequential damages; and
- 12 2. Be an unfair, false, misleading, or deceptive act or practice in
- 13 violation of KRS 367.170.
- 14 (b) All of the remedies, powers, and duties provided for the Attorney General in
- 15 KRS 367.190 to 367.300, and all of the penalties provided in KRS 367.990,
- 16 pertaining to acts declared unlawful by KRS 367.170, shall apply to acts and
- 17 practices in violation of this section.
- 18 (4) A bank may refuse payment on a check if:
- 19 (a) The bank determines that refusal is reasonably necessary to protect its
- 20 customer or the bank against potential fraud or loss; or
- 21 (b) Refusal is necessary to comply with:
- 22 1. Federal law; or
- 23 2. State law relating to fraud protection.
- 24 (5) A bank may cash a check that is not payable at the bank or drawn on an account
- 25 held at the bank, except the bank shall not charge a fee in excess of four dollars
- 26 (\$4) for the transaction.

27 ➔SECTION 2. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS

1 CREATED TO READ AS FOLLOWS:

2 *Notwithstanding KRS 286.3-102, 286.3-214, 286.5-705, 286.6-095, or any other*
3 *provision of law to the contrary:*

4 *(1) Every person regulated under this chapter shall comply with Section 1 of this*
5 *Act; and*

6 *(2) The commissioner shall exercise all powers granted to him or her under this*
7 *chapter to enforce the requirements of Section 1 of this Act.*

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

9 (1) Any fee charged by a licensee for cashing a check or entering into a deferred deposit
10 transaction shall be disclosed in writing to the bearer of the check prior to cashing
11 the check or entering into a deferred deposit transaction, and the fee shall be
12 deemed a service fee and not interest. A licensee shall not charge a service fee in
13 excess of *four dollars (\$4) for cashing a check or* fifteen dollars (\$15) per one
14 hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee
15 shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15) per one
16 hundred dollars (\$100). This service fee shall be for a period of at least fourteen
17 (14) days.

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

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

26 (4) No licensee shall indicate through advertising, signs, billhead, or otherwise that
27 checks may be cashed without identification of the bearer of the check; and any

1 person seeking to cash a check shall be required to submit reasonable identification
2 as prescribed by the commissioner. The provisions of this subsection shall not
3 prohibit a licensee from cashing a check simultaneously with the verification and
4 establishment of the identity of the presenter by means other than the presentation
5 of identification.

6 (5) Within two (2) business days after being advised by a financial institution that a
7 payment instrument has been altered, forged, stolen, obtained through fraudulent or
8 illegal means, negotiated without proper legal authority, or otherwise represents the
9 proceeds of illegal activity, the licensee shall notify the commissioner and the
10 prosecutor or law enforcement authority in the county in which the check was
11 received. If a payment instrument is returned to the licensee by a financial
12 institution for any of these reasons, the licensee shall not release the payment
13 instrument without the written consent of the prosecutor or law enforcement
14 authority, or a court order.

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

17 (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the
18 conduct of the licensed business.

19 (8) No licensee shall require a customer to provide security for the transaction or
20 require the customer to provide a guaranty from another person.

21 (9) A licensee shall not have more than two (2) deferred deposit transactions from any
22 one (1) customer at any one time. The total proceeds received by the customer from
23 all of the deferred deposit transactions shall not exceed five hundred dollars (\$500).

24 (10) (a) Prior to the establishment of the common database of deferred deposit
25 transactions established by KRS 286.9-140, each licensee shall inquire of any
26 customer seeking to present a deferred deposit transaction, whether the
27 customer has any outstanding deferred deposit transactions from any licensee.

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

1 commissioner upon request. The customer shall receive a copy of this agreement.

2 (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise
3 consolidate a deferred deposit transaction for a customer.

4 (15) No individual who enters into a deferred deposit transaction with a licensee shall be
5 convicted under the provisions of KRS 514.040.

6 (16) No licensee who enters into a deferred deposit transaction with an individual shall
7 prosecute or threaten to prosecute an individual under the provisions of KRS
8 514.040.

9 (17) Each licensee shall conspicuously display in each of its deferred deposit business
10 locations a sign supplied by the commissioner that gives the following notice: "No
11 person who enters into a post-dated or deferred deposit transaction with this
12 business establishment will be prosecuted for or convicted of writing cold checks or
13 of theft by deception under the provisions of KRS 514.040."

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

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

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

25 (b) If the commissioner has implemented a database under KRS 286.9-140 and
26 the database described in that section is fully operational, as determined by the
27 commissioner, the licensee shall promptly and accurately access the database

1 through an Internet real-time connection, and verify that the customer meets
2 the eligibility requirements for a deferred presentment service transaction
3 under this subtitle.

4 ➔Section 4. KRS 355.3-102 is amended to read as follows:

5 (1) This article applies to negotiable instruments. It does not apply to money, to
6 payment orders governed by Article 4A of this chapter, or to securities governed by
7 Article 8 of this chapter.

8 (2) If there is conflict between this article and Article 4 or 9 of this chapter, Articles 4
9 and 9 of this chapter govern.

10 (3) ~~*The following* [Regulations of the Board of Governors of the Federal Reserve
11 System and operating circulars of the Federal Reserve Banks]~~ supersede any
12 inconsistent provision of this article to the extent of the inconsistency:

13 *(a) Regulations of the Board of Governors of the Federal Reserve System and*
14 *operating circulars of the Federal Reserve Banks; and*

15 *(b) Section 1 of this Act.*

16 ➔Section 5. KRS 355.4-102 is amended to read as follows:

17 (1) To the extent that items within this article are also within Articles 3 and 8 of this
18 chapter, they are subject to those articles. If there is conflict, this article governs
19 Article 3 of this chapter but Article 8 of this chapter governs this article.

20 (2) The liability of a bank for action or nonaction with respect to an item handled by it
21 for purposes of presentment, payment, or collection is governed by the law of the
22 place where the bank is located. In the case of action or nonaction by or at a branch
23 or separate office of a bank, its liability is governed by the law of the place where
24 the branch or separate office is located.

25 *(3) Section 1 of this Act supersedes any inconsistent provision of this article to the*
26 *extent of the inconsistency.*