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 286.9-100 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*[the] deferred deposit

10   check. A licensee shall prorate any fee, based upon the maximum fee of

11   fifteen dollars ($15) per one hundred dollars ($100). This service fee shall be

12   for a period of 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*[No] 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*[No] 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[shall be required] to submit

26   reasonable 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***[these] reasons ***stated in paragraph (a) of this subsection***, the

11   licensee shall not release the payment instrument without the written consent

12   of the prosecutor or law enforcement authority[,] or a court order.

13   (6)   *A*[No] licensee shall ***not*** alter or delete the date on any payment instrument

14   accepted by the licensee.

15   (7)   *A*[No] licensee shall ***not*** engage in unfair or deceptive acts, practices, or advertising

16   in the conduct of the licensed business.

17   (8)   *A*[No] licensee shall ***not*** require a customer to provide security for ***a deferred***

18   ***deposit***[the] transaction or require the customer to provide a guaranty from another

19   person.

20   (9)   A licensee shall not have more than two (2) deferred deposit transactions from any

21   one (1) customer at any one time. The total proceeds received by the customer from

22   all of the deferred deposit transactions shall not exceed five hundred dollars ($500).

23   (10) (a)   ***If the database described in Section 2 of this Act is unavailable due to***

24   ***technical difficulties with the database, as determined by the commissioner,***

25   ***a licensee shall utilize the process established in this subsection to verify***

26   ***deferred deposit transactions.***

27   *(b)*   *A*[Prior to the establishment of the common database of deferred deposit

1		transactions established by KRS 286.9-140, each] licensee shall inquire of any

2		customer seeking to ***enter into***[present] a deferred deposit transaction,

3		whether the customer has any outstanding deferred deposit transactions from

4		any licensee.

5	*(c)*[(b)]		If the customer represents in writing that the customer has no more than

6		one (1) deferred deposit transaction outstanding to any licensee and that the

7		total proceeds received by the customer from the outstanding deferred deposit

8		transaction[issued by the customer] does not equal or exceed five hundred

9		dollars ($500), a licensee may accept a deferred deposit transaction in an

10		amount that, when combined with the customer's other outstanding deferred

11		deposit transaction, does not exceed five hundred dollars ($500) of total

12		proceeds received by the customer.

13	*(d)*[(c)]		If the customer represents in writing that the customer has more than

14		one (1) deferred deposit transaction outstanding to licensees or if the total

15		proceeds received by the customer from the deferred deposit transactions

16		equal or exceed five hundred dollars ($500), a licensee shall not enter into

17		another deferred deposit transaction with that customer until the customer

18		represents to the licensee in writing that the customer qualifies to enter into a

19		new deferred deposit transaction under the requirements set forth in this

20		subtitle.

21		[(d)	If the database described in KRS 286.9-140 is unavailable due to technical

22		difficulties with the database, as determined by the commissioner, the licensee

23		shall utilize the process established in this subsection to verify deferred

24		deposit transactions.]

25	(11)	A licensee shall not use any device or agreement, including agreements with an

26		affiliate of a licensee, with the intent to obtain greater charges than are authorized in

27		this subtitle.

1   (12) *A*[No] licensee shall *not* agree to hold a deferred deposit transaction for more than

2   sixty (60) days.

3   (13) (a)   Each deferred deposit transaction shall be made according to a written *or*

4   *electronic* agreement that *is:*

5   *1.*   [shall be]Dated and signed by the customer and the licensee or an

6   authorized agent of the licensee*;*[at the licensed location,] and

7   *2.*   Made available to the commissioner upon request.

8   *(b)*   The customer shall receive a copy of *the*[this] agreement *referenced in*

9   *paragraph (a) of this subsection*.

10   *(c)*[(b)]   *A customer may enter into an agreement referenced in paragraph (a)*

11   *of this subsection:*

12   *1.*   *In person at the licensed location; or*

13   *2.*   *If the customer is a citizen of this state, by telephone or other*

14   *electronic means*[A licensee shall not require a customer to provide

15   authorization for the licensee to submit an original payment instrument

16   electronically before entering into a deferred deposit transaction].

17   (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise

18   consolidate a deferred deposit transaction for a customer.

19   (15) *An*[No] individual who enters into a deferred deposit transaction with a licensee

20   shall *not* be convicted under the provisions of KRS 514.040.

21   (16) *A*[No] licensee who enters into a deferred deposit transaction with an individual

22   shall *not* prosecute or threaten to prosecute *the*[an] individual under the provisions

23   of KRS 514.040.

24   (17) Each licensee shall conspicuously display in each of its deferred deposit business

25   locations a sign supplied by the commissioner that gives the following notice: "No

26   person who enters into a post-dated or deferred deposit transaction with this

27   business establishment will be prosecuted for or convicted of writing cold checks or

1 of theft by deception under the provisions of KRS 514.040."

2 (18) A licensee *shall*[may] not enter into a deferred deposit transaction with a customer

3 who has two (2) open deferred deposit transactions.

4 (19) A licensee shall verify a customer's eligibility to enter into a deferred

5 *deposit*[presentment service] transaction by doing one (1) of the following, as

6 applicable:

7 (a) If the[commissioner has not implemented a database under KRS 286.9-140 or

8 the] database[described in KRS 286.9-140] is not fully operational, as

9 determined by the commissioner, the licensee shall verify that the customer

10 meets the eligibility requirements for a deferred *deposit*[presentment service]

11 transaction under this subtitle. The licensee shall maintain a database of all of

12 the licensee's transactions at all of its locations and search that database to

13 meet its obligation under this subtitle; or

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

15 the] database[described in that section] is fully operational, as determined by

16 the commissioner, the licensee shall promptly and accurately access the

17 database through an internet real-time connection, and verify that the

18 customer meets the eligibility requirements for a deferred *deposit*[presentment

19 service] transaction under this subtitle.

20 ➔Section 2. KRS 286.9-140 is amended to read as follows:

21 (1) *(a)* [The commissioner shall, on or before July 1, 2010, implement]A common

22 database with real-time access through an internet connection for deferred

23 deposit service business licensees *implemented in accordance with*[as

24 provided in] this subtitle[unless implementing the database by that date

25 would be financially impracticable for the commissioner to design and operate

26 a database or because a contract with a qualified third-party provider has not

27 been entered into. The database] shall be accessible to the department and

1	 *a*[the] deferred deposit service business licensee to verify whether any

2	 deferred deposit transactions 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*[rule] or order,

7	 including the customer's name, Social Security number or employment

8	 authorization alien number, address, driver's license number, amount of the

9	 transaction, date of transaction, date that the completed transaction is closed,

10	 and any additional information required by the commissioner.

11	 *(c)*	The commissioner may *promulgate administrative regulations in*

12	 *accordance with KRS Chapter 13A*[adopt rules] to administer and enforce the

13	 provisions of this subtitle and to assure that the database is used by deferred

14	 deposit service business licensees in accordance with this subtitle.

15	(2)	The commissioner shall impose a fee *not to exceed three dollars ($3)*[of one dollar

16	 ($1)] per transaction for data required to be submitted by a deferred deposit service

17	 business licensee, which fee may be charged to the customer.

18	(3)	*(a)*	The commissioner may operate the database[described in subsection (1) of

19	 this section] or may select and contract with a third-party provider to operate

20	 the database.

21	 *(b)*	If the commissioner contracts with a third-party provider for the operation of

22	 the database, all of the following apply:

23	 *1.*[(a)]	The commissioner shall ensure that the third-party provider

24	 selected as the database provider operates the database pursuant to the

25	 provisions of this subtitle;

26	 *2.*[(b)]	The commissioner shall consider cost of service and ability to

27	 meet all the requirements of this subtitle in selecting a third-party

1   provider as the database provider;

2   *3.*[(c)]   In selecting a third-party provider to act as the database provider,

3   the commissioner shall give strong consideration to the third-party

4   provider's ability to prevent fraud, abuse, and other unlawful activities

5   associated with deferred *deposit*[presentment service] transactions and

6   provide additional tools for the administration and enforcement of this

7   subtitle;

8   *4.*[(d)]   The third-party provider shall use the data collected under this

9   subtitle only as prescribed in this subtitle and the contract with the

10   department and for no other purpose;

11   *5.*[(e)]   If the third-party provider violates this subtitle, the commissioner

12   may terminate the contract and the third-party provider may be barred

13   from becoming a party to any other state contracts;

14   *6.*[(f)]   A person injured by the third-party provider's violation of this

15   subtitle may maintain a civil cause of action against the third-party

16   provider and may recover actual damages plus reasonable attorney's fees

17   and court costs; and

18   *7.*[(g)]   The commissioner may require that the third-party provider collect

19   the fee assessed in subsection (2) of this section from the licensee. The

20   third-party provider shall remit the fee collected from the licensee to the

21   commissioner no later than the first day of each month. The third-party

22   provider shall deposit any fee collected in a separate escrow account in a

23   federally insured financial institution and shall hold the fee deposited in

24   trust for the Commonwealth of Kentucky.

25 (4)   The database[described in subsection (1) of this section] shall allow a deferred

26   deposit service business licensee accessing the database to do all of the following:

27   (a)   Verify whether a customer has any open deferred deposit transactions with

1   any deferred deposit business service licensee that have not been closed;

2   (b)   Provide information necessary to ensure deferred deposit service business

3   licensee compliance with any requirements imposed by the United States

4   Treasury Office of Foreign Assets Control and United States Treasury Office

5   of Financial Crimes Enforcement Network; and

6   (c)   Track and monitor the number of customers who notify a deferred deposit

7   service business licensee of violations of this subtitle, the number of times a

8   deferred deposit service business licensee agreed that a violation occurred, the

9   number of times that a deferred deposit service business licensee did not agree

10   that a violation occurred, the amount of restitution paid, and any other

11   information the commissioner requires by ***administrative regulation***[rule] or

12   order.

13   (5)   While operating the database, the database provider shall do all of the following:

14   (a)   Establish and maintain a process for responding to transaction verification

15   requests due to technical difficulties occurring with the database that prevent

16   the licensee from accessing the database through the internet;

17   (b)   Comply with any applicable federal and state provisions to prevent identity

18   theft;

19   (c)   Provide accurate and secure receipt, transmission, and storage of customer

20   data; and

21   (d)   Meet the requirements of this subtitle.

22   (6)   When the database provider receives notification that a deferred deposit[service]

23   transaction has been closed, the database provider shall designate the transaction as

24   closed in the database immediately, but in no event after 11:59 p.m. on the day the

25   commissioner or database provider receives notification.

26   (7)   ***(a)***   The database provider shall automatically designate a deferred deposit[

27   service] transaction as closed in the database five (5) days after the transaction

1   maturity date unless a deferred deposit service business licensee reports to the

2   database provider before that time that the transaction remains open because*:*

3   *1.*   Of the customer's failure to make payment;[that the transaction is open

4   because]

5   *2.*   The customer's payment instrument or an electronic redeposit is in the

6   process of clearing the banking system;[or that the transaction remains

7   open because]

8   *3.*   The customer's payment instrument is being returned to the deferred

9   deposit service business licensee for insufficient funds, a closed account,

10   or a stop payment order; or[because]

11   *4.*   Of any other factors determined by the commissioner.

12   *(b)*   If a deferred deposit service business licensee reports the status of a

13   transaction as open in a timely manner, the transaction remains an open

14   transaction until it is closed and the database provider is notified that the

15   transaction is closed.

16 (8) *(a)*   If a deferred deposit service business licensee stops providing deferred

17   deposit[service] transactions, the database provider shall designate all open

18   transactions with that licensee as closed in the database sixty (60) days after

19   the date the deferred deposit service business licensee stops offering deferred

20   deposit[service] transactions, unless the deferred deposit service business

21   licensee reports to the database provider before the expiration of the sixty (60)

22   day period which of its transactions remain open and the specific reason each

23   transaction remains open.

24   *(b)*   The deferred deposit service business licensee shall also provide to the

25   commissioner a reasonably acceptable plan that outlines how the deferred

26   deposit service business licensee will continue to update the database after it

27   stops offering deferred *deposit*[presentment service] transactions.

1   *(c)*   The commissioner shall promptly approve or disapprove the plan and

2   immediately notify the deferred deposit service business licensee of the

3   commissioner's decision.

4   *(d)*   If the plan is disapproved, the deferred deposit service business licensee may

5   submit a new plan or may submit a modified plan for the deferred deposit

6   service business licensee to follow.

7   *(e)*   If at any time the commissioner reasonably determines that a deferred deposit

8   service business licensee that has stopped offering deferred deposit[service]

9   transactions is not updating the database in accordance with its approved plan,

10   the commissioner shall immediately close or instruct the database provider to

11   immediately close all remaining open transactions of that deferred deposit

12   service business licensee.

13   (9) *(a)*   The response to an inquiry to the database provider by a deferred deposit

14   service business licensee shall state only that a person is eligible or ineligible

15   for a new deferred deposit[service] transaction and describe the reason for

16   that determination.

17   *(b)*   Only the person seeking the transaction may make a direct inquiry to the

18   database provider to request a more detailed explanation of a particular

19   transaction that was the basis for the ineligibility determination.

20   *(c)*   Any information regarding any person's transaction history is confidential; is

21   not subject to public inspection; is not a public record subject to the disclosure

22   requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is

23   not subject to discovery, subpoena, or other compulsory process, except in an

24   administrative or legal action arising under this subtitle; and shall not be

25   disclosed to any person other than the commissioner.

26 (10) The commissioner may access the database[provided under subsection (1) of this

27   section] only for purposes of an investigation of, examination of, or enforcement

1   action concerning an individual database provider, licensee, customer, or other

2   person.

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

4   *(b)*   The commissioner shall not delegate his or her responsibilities under this

5   subsection to any third-party provider.

6   (12) [(a) ~~The commissioner shall make a determination that the database is fully~~

7   ~~operational and shall send written notification to each licensee subject to the~~

8   ~~provisions of this subtitle:~~

9   ~~1.   That the database has been implemented; and~~

10   ~~2.   Of the exact date that the database shall be considered operational for~~

11   ~~the data entry requirement established in paragraph (b) of this~~

12   ~~subsection.~~

13   ~~(b)   A deferred deposit service business licensee shall promptly and accurately~~

14   ~~enter into the database all transactions undertaken by the licensee upon receipt~~

15   ~~of the written notification established in paragraph (a) of this subsection.~~

16   (13)]The commissioner may, by ***administrative regulation***[rule] or order, do all of the

17   following:

18   (a)   Require that data be retained in the database only as required to ensure

19   deferred deposit service business licensee compliance with this subtitle;

20   (b)   Require that customer transaction data in the database are archived within

21   three hundred sixty-five (365) days after the customer transaction is closed

22   unless needed for a pending enforcement or legal action;

23   (c)   Require that any identifying customer information is deleted from the

24   database when data are archived; and

25   (d)   Require that data in the database concerning a customer transaction are

26   deleted from the database three (3) years after the customer transaction is

27   closed or, if any administrative, legal, or law enforcement action is pending,

1   three (3) years after the administrative, legal, or law enforcement action is

2   completed, whichever is later.

3   *(13)*[(14)] The commissioner may maintain access to data archived under subsection

4   *(12)*[(13)] of this section for examination, investigation, or legislative or policy

5   review.

6   *(14)*[(15)] A deferred deposit service business licensee may rely on the information

7   contained in the database as accurate and is not subject to any administrative

8   penalty or civil liability as a result of relying on inaccurate information contained in

9   the database, provided the deferred deposit licensee accurately and promptly

10   submits such data as required before entering into a deferred deposit transaction

11   with a customer.

12   *(15)*[(16)] The commissioner may use the database to administer and enforce this

13   subtitle.

14   *(16)*[(17)] The commissioner may require a database provider to file a report by March 1

15   of each year containing the following information:

16   (a)   The total number and dollar amount of deferred deposit transactions entered

17   into in the calendar year ending December 31 of the previous year;

18   (b)   The total number and dollar amount of deferred deposit transactions

19   outstanding as of December 31 of the previous year;

20   (c)   The total dollar amount of fees collected for deferred deposit transactions as

21   of December 31 of the previous year;

22   (d)   The minimum, maximum, and average dollar amount of deferred deposit

23   transactions entered into, the total dollar amount of the net charge-offs and

24   write-offs, and the net recoveries of licensees as of December 31 of the

25   previous year;

26   (e)   The average deferred deposit transaction amount, the average number of

27   transactions, and the average aggregate deferred deposit transaction amount

1   entered into per customer as of December 31 of the previous year;

2   (f)   The average number of days a customer was engaged in a deferred deposit

3   *transaction*[transactions] for the previous year; and

4   (g)   An estimate of the average total fees paid per customer for deferred deposit

5   transactions for the previous year.

6   [(18) Enforcement of this section shall be effective ninety (90) days after the database

7   implementation date established by the commissioner as set forth in subsection (12)

8   of this section.]