

AMENDMENTS TO LB 568

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. Section 45-901, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 45-901. Sections 45-901 to 45-929 and section 11 of this
6 act shall be known and may be cited as the Delayed Deposit Services
7 Licensing Act.

8 Sec. 2. Section 45-906, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 45-906. The application required by section 45-905 shall
11 be accompanied by:

12 (1) A nonrefundable application fee of five hundred
13 dollars; and

14 (2) A surety bond in the sum of fifty thousand dollars to
15 be executed by the licensee and a surety company authorized to do
16 business in Nebraska and approved by the director conditioned for
17 the faithful performance by the licensee of the duties and
18 obligations pertaining to the delayed deposit services business so
19 licensed and the prompt payment of any judgment recovered against
20 the licensee. The bond or a substitute bond shall remain in effect
21 during all periods of licensing or the licensee shall immediately
22 cease doing business and its license shall be surrendered to or
23 canceled by the department. A surety may cancel a bond only upon
24 thirty days' written notice to the director.

1 (3) The director may at any time require the filing of a
2 new or supplemental bond in the form as provided in subsection (2)
3 of this section if he or she determines that the bond filed under
4 this section is exhausted or is inadequate for any reason,
5 including, but not limited to, the financial condition of the
6 licensee or the applicant for a license, or violations of the
7 Delayed Deposit Services Licensing Act, any rule, regulation, or
8 order thereunder, or any state or federal law applicable to the
9 licensee or applicant for a license. The new or supplemental bond
10 shall not exceed one hundred thousand dollars.

11 Sec. 3. Section 45-907, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 45-907. (1) When an application for a delayed deposit
14 services business license has been accepted by the director as
15 substantially complete, notice of the filing of the application
16 shall be published by the director for three successive weeks in a
17 legal newspaper published in or of general circulation in the
18 county where the applicant proposes to operate the delayed deposit
19 services business. The costs of the publication shall be paid by
20 the applicant. A public hearing shall be held on each application
21 except as provided in subsection (2) of this section. The date for
22 hearing shall not be less than thirty days after the last
23 publication. Written protest against the issuance of the license
24 may be filed with the Department of Banking and Finance by any
25 person not less than five days before the date set for hearing.
26 The director, in his or her discretion, may grant a continuance.
27 The costs of the hearing shall be paid by the applicant. The

1 director may investigate the propriety of the issuance of a license
2 to the applicant. The costs of such investigation shall be paid by
3 the applicant.

4 (2) The director may waive the hearing requirements of
5 subsection (1) of this section if (a) the applicant has held and
6 operated under a license to engage in the delayed deposit services
7 business in Nebraska pursuant to the Delayed Deposit Services
8 Licensing Act for at least three calendar years immediately prior
9 to the filing of the application, (b) no written protest against
10 the issuance of the license has been filed with the department
11 within fifteen days after publication of a notice of the filing of
12 the application one time in a newspaper of general circulation in
13 the county where the applicant proposes to operate the delayed
14 deposit services business, and (c) in the judgment of the director,
15 the experience, character, and general fitness of the applicant
16 warrant the belief that the applicant will comply with the act.

17 Sec. 4. Section 45-911, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 45-911. A licensee may surrender a delayed deposit
20 services business license by delivering to the director written
21 notice that the license is surrendered. The Department of Banking
22 and Finance may issue a notice of cancellation of the license
23 following such surrender in lieu of revocation proceedings. The
24 surrender shall not affect the licensee's civil or criminal
25 liability for acts committed prior to such surrender, affect the
26 liability for any fines which may be levied against the licensee or
27 any of its officers, directors, shareholders, partners, or members

1 for acts committed before the surrender, affect the liability of
2 the surety on the bond, or entitle such licensee to a return of any
3 part of the annual license fee or fees. The director may establish
4 procedures for the disposition of the books, accounts, and records
5 of the licensee and may require such action as he or she deems
6 necessary for the protection of the makers of checks which are
7 outstanding at the time of surrender of the license.

8 Sec. 5. Section 45-912, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 45-912. A licensee shall be required to notify the
11 director in writing within thirty days after the occurrence of any
12 material development, including, but not limited to:

13 (1) Bankruptcy or corporate reorganization;

14 (2) Business reorganization;

15 (3) Institution of license revocation procedures by any
16 other state or jurisdiction;

17 (4) The filing of a criminal indictment or complaint
18 against the licensee or any of its officers, directors,
19 shareholders, partners, members, employees, or agents; ~~or~~

20 (5) A felony conviction against the licensee or any of
21 the licensee's officers, directors, shareholders, partners,
22 members, employees, or agents; or

23 (6) The termination of employment or association with the
24 licensee of any of the licensee's officers, directors,
25 shareholders, partners, members, employees, or agents for
26 violations or suspected violations of the Delayed Deposit Services
27 Licensing Act, any rule, regulation, or order thereunder, or any

1 state or federal law applicable to the licensee.

2 Sec. 6. Section 45-915, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 45-915. (1) Except as provided in subsection (2) of this
5 section, a licensee may offer a delayed deposit services business
6 only at an office designated as its principal place of business in
7 the application. ~~The licensee shall maintain its books, accounts,~~
8 ~~and records at its designated principal place of business.~~ A
9 licensee may change the location of its designated principal place
10 of business with the prior written approval of the director. The
11 director may establish forms and procedures for determining whether
12 the change of location should be approved.

13 (2) A licensee may operate branch offices only in the
14 same county in which the licensee's designated principal place of
15 business is located. The licensee may establish a branch office or
16 change the location of a branch office with the prior written
17 approval of the director. The director may establish forms and
18 procedures for determining whether an original branch or branches
19 or a change of location of a branch should be approved.

20 (3) A fee of one hundred fifty dollars shall be paid to
21 the director for each request made pursuant to subsection (1) or
22 (2) of this section.

23 Sec. 7. Section 45-917, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 45-917. (1) Every licensee shall, at the time any
26 delayed deposit services transaction is made, give to the maker of
27 the check, or if there are two or more makers, to one of them, a

1 notice written in plain English disclosing:

2 (a) The fee to be charged for the transaction;

3 (b) The date on which the check will be deposited or
4 presented for negotiation; and

5 (c) Any penalty not to exceed fifteen dollars which the
6 licensee will charge if the check is not negotiable on the date
7 agreed upon. If the licensee required the maker to give two checks
8 for one delayed deposit transaction, the licensee shall charge only
9 one penalty in the event both checks are not negotiable on the date
10 agreed upon.

11 (2) In addition to the notice required by subsection (1)
12 of this section, every licensee shall conspicuously display a
13 schedule of all fees, charges, and penalties for all services
14 provided by the licensee. Such notice shall be posted at every
15 office of the licensee.

16 Sec. 8. Section 45-919, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 45-919. (1) No licensee shall:

19 (a) At any one time hold from any one maker more than two
20 checks;

21 (b) At any one time hold from any one maker a check or
22 checks in an aggregate face amount of more than five hundred
23 dollars;

24 (c) Hold or agree to hold a check for more than
25 thirty-one days. A check which is in the process of collection for
26 the reason that it was not negotiable on the day agreed upon shall
27 not be deemed as being held in excess of the thirty-one-day period;

1 (d) Require the maker to receive payment by a method
2 which causes the maker to pay additional or further fees and
3 charges to the licensee or other person; ~~or~~

4 (e) Accept a check as repayment, refinancing, or any
5 other consolidation of a check or checks held by the same licensee;

6 (f) Renew, roll over, defer, or in any way extend a
7 delayed deposit transaction by allowing the maker to pay less than
8 the total amount of the check and any authorized fees or charges.
9 This subdivision shall not prevent a licensee that agreed to hold a
10 check for less than thirty-one days from agreeing to hold the check
11 for an additional period of time no greater than the thirty-one
12 days it would have originally have been able to hold the check if

13 (i) the extension is at the request of the maker, (ii) no
14 additional fees are charged for the extension, and (iii) the
15 delayed deposit transaction is completed as required by subdivision
16 (1)(c) of this section. The licensee shall retain written or
17 electronic proof of compliance with this subdivision. If a
18 licensee fails, or is unable, to provide such proof to the
19 department upon request, there shall be a rebuttable presumption
20 that a violation of this subdivision has occurred and the
21 department may pursue any remedies or actions available to it under
22 the Delayed Deposit Services Licensing Act; or

23 (g) Enter into another delayed deposit transaction with
24 the same maker on the same business day as the completion of a
25 delayed deposit transaction unless prior to entering into the
26 transaction the maker and the licensee verify on a form prescribed
27 by the department that completion of the prior delayed deposit

1 transaction has occurred. The licensee shall retain written proof
2 of compliance with this subdivision. If a licensee fails, or is
3 unable, to provide such proof to the department upon request, there
4 shall be a rebuttable presumption that a violation of this
5 subdivision has occurred and the department may pursue any remedies
6 or actions available to it under the act.

7 (2) For purposes of this section, (a) completion of a
8 delayed deposit transaction means the licensee has presented a
9 maker's check for payment to a financial institution as defined in
10 section 8-101 or the maker redeemed the check by paying the full
11 amount of the check in cash to the licensee and (b) licensee shall
12 include (i) a person related to the licensee by common ownership or
13 control, (ii) a person in whom such licensee has any financial
14 interest of ten percent or more, or (iii) any employee or agent of
15 the licensee.

16 Sec. 9. Section 45-922, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 45-922. (1) The director may, following a hearing in
19 accordance with the Administrative Procedure Act, suspend or revoke
20 any license issued pursuant to the Delayed Deposit Services
21 Licensing Act if he or she finds:

22 (a) A licensee or any of its officers, directors,
23 partners, or members has knowingly violated the act or any rule,
24 regulation, or order of the director thereunder;

25 (b) A fact or condition existing which, if it had existed
26 at the time of the original application for such license, would
27 have warranted the director to refuse to issue such license; ~~or~~

1 (c) A licensee has abandoned its place of business for a
2 period of sixty days or more; or

3 (d) A licensee or any of its officers, directors,
4 partners, or members has knowingly subscribed to, made, or caused
5 to be made any false statement or false entry in the books and
6 records of any licensee, has knowingly subscribed to or exhibited
7 false papers with the intent to deceive the Department of Banking
8 and Finance, has failed to make true and correct entry in the books
9 and records of such licensee of its business and transactions in
10 the manner and form prescribed by the department, or has mutilated,
11 altered, destroyed, secreted, or removed any of the books or
12 records of such licensee without the written approval of the
13 department or as provided in section 45-925.

14 (2) Except as provided in this section, a license shall
15 not be revoked or suspended except after notice and a hearing in
16 accordance with the Administrative Procedure Act.

17 (3)(a) If a licensee fails to renew its license as
18 required by section 45-910 and does not voluntarily surrender the
19 license pursuant to section 45-911, the department may issue a
20 notice of expiration of the license to the licensee in lieu of
21 revocation proceedings.

22 (b) If a licensee fails to maintain a surety bond as
23 required by section 45-906, the department may issue a notice of
24 cancellation of the license in lieu of revocation proceedings.

25 (4) Revocation, suspension, cancellation, or expiration
26 of a license shall not impair or affect the obligation of a
27 preexisting lawful contract between the licensee and any person,

1 including a maker of a check.

2 (5) Revocation, suspension, cancellation, or expiration
3 of a license shall not affect civil or criminal liability for acts
4 committed before the revocation, suspension, cancellation, or
5 expiration.

6 Sec. 10. Section 45-925, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 45-925. (1) If the director finds, after notice and
9 hearing in accordance with the Administrative Procedure Act, that
10 any person has violated the Delayed Deposit Services Licensing Act
11 or any rule, regulation, or order of the director thereunder, the
12 director may order such person to pay (a) an administrative fine of
13 not more than five thousand dollars for each separate violation and
14 (b) the costs of investigation.

15 (2) If any person is found to have violated subdivision
16 (1)(e), (1)(f), or (1)(g) of section 45-919, the director may also
17 order such person to (i) return to the maker or makers all fees
18 collected plus all or part of the amount of the check or checks
19 which the licensee accepted in violation of such subdivision or
20 subdivisions and (ii) for a period up to one year not engage in any
21 delayed deposit transaction with any maker for at least three days
22 after the completion of a delayed deposit transaction with the same
23 maker. If a person fails to pay an administrative fine and the
24 costs of investigation ordered pursuant to subsection (1) of this
25 section, a lien in the amount of such fine and costs may be imposed
26 upon all assets and property of such person in this state and may
27 be recovered in a civil action by the director. Failure of the

1 person to pay such fine and costs shall constitute a separate
2 violation of the act.

3 Sec. 11. (1) Each licensee shall keep or make available
4 the books and records relating to transactions made under the
5 Delayed Deposit Services Licensing Act as are necessary to enable
6 the department to determine whether the licensee is complying with
7 the act. The books and records shall be maintained in a manner
8 consistent with accepted accounting practices.

9 (2) A licensee shall, at a minimum, include in its books
10 and records, copies of all application materials relating to
11 makers, disclosure agreements, checks, payment receipts, and
12 verification receipts required by section 45-919.

13 (3) A licensee shall preserve or keep its books and
14 records relating to every delayed deposit transaction for three
15 years from the date of the inception of the transaction, or two
16 years from the date a final entry is made thereon, including any
17 applicable collection effort, whichever is later.

18 (4) The licensee shall maintain its books, accounts, and
19 records, whether in physical or electronic form, at its designated
20 principal place of business, except that books, accounts, and
21 records which are older than two years may be maintained at any
22 other place within this state as long as such records are available
23 for inspection by the Department of Banking and Finance.

24 Sec. 12. Original sections 45-901, 45-906, 45-907,
25 45-912, 45-915, 45-917, 45-919, 45-922, and 45-925, Reissue Revised
26 Statutes of Nebraska, are repealed."