

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 293

Introduced by Nantkes, 46.

Read first time January 15, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to finance; to amend section 45-101.04,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Short-Term Lenders Act; to provide a penalty; to provide
4 for finance education classes; to create a fund; to
5 eliminate the Delayed Deposit Services Licensing Act;
6 to harmonize provisions; to repeal the original section;
7 and to outright repeal sections 45-902, 45-903, 45-904,
8 45-905, 45-908, 45-909, 45-913, 45-914, 45-918, 45-921,
9 45-923, 45-924, 45-926, 45-927, 45-928, and 45-929,
10 Reissue Revised Statutes of Nebraska, and sections
11 45-901, 45-906, 45-907, 45-910, 45-911, 45-912, 45-915,
12 45-915.01, 45-916, 45-917, 45-920, 45-922, and 45-925,
13 Revised Statutes Cumulative Supplement, 2008.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 20 of this act shall be known
2 and may be cited as the Short-Term Lenders Act.

3 Sec. 2. For purposes of the Short-Term Lenders Act:

4 (1) Annual percentage rate has the same meaning as in
5 the federal Truth in Lending Act, 15 U.S.C. 1606, as the section
6 existed on January 1, 2009, and as implemented by regulations of
7 the Board of Governors of the Federal Reserve System. All fees
8 and charges shall be included in the computation of the annual
9 percentage rate, including fees and charges for single premium
10 credit insurance and other ancillary products sold in connection
11 with the credit transaction;

12 (2) Department means the Department of Banking and
13 Finance;

14 (3) Director means the Director of Banking and Finance;

15 (4) Interest means all charges payable directly or
16 indirectly by a borrower to a licensee as a condition to a
17 short-term loan, including fees, short-term loan origination
18 charges, service charges, renewal charges, credit insurance
19 premiums, and any ancillary product sold in connection with a
20 short-term loan;

21 (5) Licensee means a person licensed under the Short-Term
22 Lenders Act; and

23 (6) Short-term loan means a loan made pursuant to the
24 act.

25 Sec. 3. (1) No person shall engage in the business of

1 making short-term loans to a borrower in Nebraska, or, in whole
2 or in part, make, offer, or broker a short-term loan, or assist
3 a borrower in Nebraska to obtain a short-term loan, without first
4 having obtained a license from the director under the Short-Term
5 Lenders Act. No licensee shall make, offer, or broker a short-term
6 loan, or assist a borrower to obtain a short-term loan, when
7 the borrower is not physically present in the licensee's business
8 location.

9 (2) A person not located in Nebraska shall not make
10 a short-term loan to a borrower in Nebraska. Nothing in this
11 section prohibits a business not located or licensed in Nebraska
12 from lending funds to Nebraska borrowers who physically visit the
13 out-of-state office of the business and obtain the disbursement
14 of short-term loan funds at that out-of-state location. No person
15 shall make, offer, or broker a short-term loan, or assist a
16 borrower to obtain a short-term loan, via the telephone, mail, or
17 Internet.

18 (3) The Short-Term Lenders Act does not apply to
19 any state-chartered or federally chartered financial institution
20 lawfully doing business in this state.

21 Sec. 4. (1) Application for an original or renewal
22 license to make short-term loans shall be in writing, under oath,
23 and in the form prescribed by the director and shall contain
24 the name and address of the applicant, the location where the
25 business of making short-term loans is to be conducted, and any

1 further information as the director requires. At the time of making
2 an application for an original license, the applicant shall pay
3 to the director a nonrefundable investigation fee of two hundred
4 dollars. No investigation fee or any portion thereof shall be
5 refunded after an original license has been issued. The application
6 for an original or renewal license shall be accompanied by an
7 original or renewal license fee, for each business location, of
8 five thousand dollars. All fees paid to the director pursuant to
9 this subsection shall be remitted to the State Treasurer for credit
10 to the Financial Literacy Education Fund.

11 (2) Upon the filing of an application for an original
12 license and, with respect to an application filed for a renewal
13 license, on a schedule determined by the director by rule and
14 regulation, and the payment of fees in accordance with subsection
15 (1) of this section, the director shall investigate the facts
16 concerning the applicant and the requirements provided by this
17 subsection. The director shall prescribe that the application
18 include, in a manner prescribed by the director, a background
19 investigation of each applicant by means of fingerprints and a
20 check of his or her criminal history record information maintained
21 by the Federal Bureau of Investigation through the Nebraska
22 State Patrol. If the applicant is a partnership, association,
23 corporation, or other form of business organization, the director
24 may require a criminal history record information check on each
25 member, director, or principal officer of each applicant or any

1 individual acting in the capacity of the manager of a business
2 location. The applicant shall be responsible for the direct
3 costs associated with criminal history record information checks
4 performed. The criminal history record information obtained may be
5 used by the director to determine the applicant's eligibility for
6 licensing. The director shall also conduct a civil history records
7 information check. The director shall approve an application and
8 issue an original or renewal license to the applicant if the
9 director finds all of the following:

10 (a) The financial responsibility, experience, reputation,
11 and general fitness of the applicant are such as to warrant
12 the belief that the business of making short-term loans will
13 be operated lawfully, honestly, and fairly under the Short-Term
14 Lenders Act and within the purposes of the act; the applicant has
15 fully complied with the act and any rule or regulation adopted or
16 promulgated or order issued pursuant to section 19 of this act;
17 and the applicant is qualified to engage in the business of making
18 short-term loans under the act;

19 (b) The applicant is financially sound and has a
20 net worth of not less than one hundred thousand dollars. The
21 applicant's net worth shall be computed according to generally
22 accepted accounting principles;

23 (c) The applicant has never had revoked a license to
24 make short-term loans under the Short-Term Lenders Act or engage in
25 business under the Delayed Deposit Services Licensing Act;

1 (d) Neither the applicant nor any senior officer or
2 partner of the applicant has pleaded guilty to or been convicted
3 of any criminal offense involving theft, receiving stolen property,
4 embezzlement, forgery, fraud, passing bad checks, money laundering,
5 or drug trafficking, any criminal offense involving money or
6 securities, or any violation of an existing or former law of this
7 state, any other state, or the United States that substantially is
8 equivalent to such a criminal offense. However, if the applicant or
9 a senior officer or partner has pleaded guilty to, nolo contendere
10 to, or been convicted of any such offense other than theft, the
11 director shall not consider the offense if the applicant has proven
12 to the director, by a preponderance of the evidence, that the
13 applicant's or other person's activities and employment record
14 since the conviction show that the applicant or other person is
15 honest, truthful, and of good reputation, and there is no basis in
16 fact for believing that the applicant or other person will commit
17 such an offense again; and

18 (e) Neither the applicant nor any senior officer or
19 partner of the applicant has been subject to any adverse judgment
20 for conversion, embezzlement, misappropriation of funds, fraud,
21 misfeasance or malfeasance, or breach of fiduciary duty or, if
22 the applicant or a senior officer or partner has been subject
23 to such a judgment, the applicant has proven to the director, by
24 a preponderance of the evidence, that the applicant's or other
25 person's activities and employment record since the judgment show

1 that the applicant or other person is honest, truthful, and of good
2 reputation, and there is no basis in fact for believing that the
3 applicant or other person will be subject to such a judgment again.

4 (3) If the director finds that the applicant does not
5 meet the requirements of subsection (2) of this section or that the
6 applicant knowingly or repeatedly contracts with or employs persons
7 to directly engage in lending activities who have been convicted
8 of a felony crime listed in subdivision (2)(e) of this section,
9 the director shall issue an order denying the application for an
10 original or renewal license and giving the applicant an opportunity
11 for a hearing on the denial in accordance with the Administrative
12 Procedure Act. The director shall notify the applicant of the
13 denial, the grounds for the denial, and the applicant's opportunity
14 for a hearing. If the application is denied, the director shall
15 return the annual license fee but shall retain the investigation
16 fee.

17 (4) No person licensed under the Short-Term Lenders Act
18 shall conduct business in this state unless the licensee has
19 obtained and maintains in effect at all times a corporate surety
20 bond issued by a bonding company or insurance company authorized
21 to do business in this state. The bond shall be in favor of the
22 director and in the penal sum of at least one hundred thousand
23 dollars. The term of the bond shall coincide with the term of
24 the license. The licensee shall file a copy of the bond with
25 the director. The bond shall be for the exclusive benefit of any

1 borrower injured by a violation of the act by a licensee or any
2 employee of a licensee.

3 Sec. 5. (1) A license issued by the director under
4 the Short-Term Lenders Act shall state the address at which the
5 business of making short-term loans is to be conducted and shall
6 state the full name of the business. Each license issued shall
7 be conspicuously posted in the place of business and is not
8 transferable or assignable.

9 (2)(a) Not more than one place of business shall be
10 maintained under the same license issued under the act, but the
11 director may issue additional licenses to the same applicant upon
12 compliance with the act.

13 (b) No change in the place of business of a licensee to
14 a location outside the original city or village shall be permitted
15 under the same license. When a licensee wishes to change its place
16 of business within the same city or village, written notice thereof
17 shall be given in advance to the director who shall provide without
18 cost a license pursuant to the act for the new address.

19 Sec. 6. A licensee may engage in the business of making
20 short-term loans if each short-term loan meets all of the following
21 conditions:

22 (1) The total amount of the short-term loan does not
23 exceed five hundred dollars;

24 (2) The duration of the short-term loan, as specified in
25 the short-term loan contract required under subdivision (3) of this

1 section, is not less than thirty-five days;

2 (3) The short-term loan is made pursuant to a written
3 short-term loan contract that sets forth the terms and conditions
4 of the short-term loan. A copy of the short-term loan contract
5 shall be provided to the borrower. The short-term loan contract
6 shall disclose in a clear and concise manner all of the following:

7 (a) The total amount of fees and charges the borrower
8 will be required to pay in connection with the short-term loan
9 pursuant to the short-term loan contract;

10 (b) The total amount of each payment, when each payment
11 is due, and the total number of payments that the borrower will be
12 required to make under the short-term loan contract;

13 (c) A statement, printed in boldface type of the minimum
14 font size of ten points, as follows: WARNING: The cost of
15 this short-term loan is higher than the average cost charged by
16 financial institutions on substantially similar short-term loans;

17 (d) A statement, printed in a minimum font size of ten
18 points, which informs the borrower that complaints regarding the
19 short-term loan or licensee may be submitted to the department and
20 includes the correct telephone number and mailing address for the
21 department;

22 (e) Any disclosures required under the federal Truth in
23 Lending Act, 15 U.S.C. 1601 et seq., as the act existed on January
24 1, 2009; and

25 (f) The rate of interest contracted for under the

1 short-term loan contract as an annual percentage rate based on
2 the sum of the principal of the short-term loan and the short-term
3 loan origination fee, check collection charge, and all other fees
4 or charges contracted for under the short-term loan contract; and

5 (4) The short-term loan contract includes a provision
6 that offers the borrower an optional extended payment plan that may
7 be invoked by the borrower at any time before the maturity date
8 of the short-term loan. To invoke the extended payment plan, the
9 borrower shall return to the business location where the short-term
10 loan was made and sign an amendment to the original short-term loan
11 agreement reflecting the extended terms of the short-term loan. The
12 extended payment plan shall allow the borrower to repay the balance
13 by not less than sixty days from the original maturity date. No
14 additional fees or charges may be applied to the short-term loan
15 upon the borrower entering the extended payment plan. The person
16 originating the short-term loan for the licensee shall identify
17 verbally to the borrower the contract provision regarding the
18 extended payment plan, and the borrower shall verify that the
19 provision has been identified by initialing the contract adjacent
20 to the provision.

21 Sec. 7. A licensee may charge, collect, and receive the
22 following amounts in connection with a short-term loan:

23 (1) Interest calculated in compliance with the federal
24 Truth in Lending Act, 15 U.S.C. 1606, as such section existed
25 on January 1, 2009, and not exceeding an annual percentage rate

1 greater than thirty-six percent; and

2 (2) One check collection charge per short-term loan not
3 exceeding an amount equal to twenty dollars plus any amount passed
4 on from other financial institutions for each check, negotiable
5 order of withdrawal, share draft, or other negotiable instrument
6 returned or dishonored for any reason, if the terms and conditions
7 upon which check collection charges will be charged to the borrower
8 are set forth in the written short-term loan contract described in
9 subdivision (3) of section 6 of this act.

10 Sec. 8. No licensee shall:

11 (1) Violate section 3 of this act;

12 (2) Make a short-term loan that does not comply with
13 section 6 of this act;

14 (3) Charge, collect, or receive, directly or indirectly,
15 any additional fees, interest, or charges in connection with a
16 short-term loan, other than fees, charges, costs, and disbursements
17 permitted by section 7 of this act;

18 (4) Make a short-term loan to a borrower if there
19 exists an outstanding short-term loan between the licensee and
20 that borrower, if a short-term loan between any licensee and that
21 borrower was terminated on the same business day, if the borrower
22 has more than one outstanding short-term loan, or if the short-term
23 loan would obligate the borrower to repay a total amount of more
24 than five hundred dollars to licensees or indebt the borrower to
25 one or more licensees for an amount that is more than twenty-five

1 percent of the borrower's gross monthly salary, not including
2 bonus, overtime, or other such compensation, based upon a payroll
3 verification statement presented by the borrower;

4 (5) Bring or threaten to bring an action or complaint
5 against a borrower for the borrower's failure to comply with
6 the terms of the short-term loan contract solely due to the
7 check, negotiable order of withdrawal, share draft, or negotiable
8 instrument being returned or dishonored for insufficient funds.
9 Nothing in this subdivision prohibits such conduct, action, or
10 complaint if the borrower has intentionally engaged in fraud by,
11 including, but not limited to, closing or using any closed or false
12 account to evade payment;

13 (6) Make a short-term loan to a borrower for purposes of
14 retiring an existing short-term loan between any licensee and that
15 borrower;

16 (7) Require the borrower to waive the borrower's right to
17 legal recourse under any otherwise applicable provision of state or
18 federal law;

19 (8) Accept the title of a vehicle, real property,
20 physical assets, or other collateral as security for a short-term
21 loan;

22 (9) Engage in any device or subterfuge to evade the
23 requirements of the Short-Term Lenders Act, including assisting
24 a borrower to obtain a short-term loan on terms that would
25 be prohibited by the act, making short-term loans disguised as

1 personal property sales and leaseback transactions, or disguising
2 short-term loan proceeds as cash rebates for the pretextual
3 installment sale of goods or services;

4 (10) Assess or charge a borrower a fee for prepaying the
5 short-term loan in full prior to the maturity date;

6 (11) Fail to comply with section 17 of this act;

7 (12) Recommend to a borrower that the borrower obtain
8 a short-term loan for a dollar amount that is higher than the
9 borrower has requested;

10 (13) Make a short-term loan to a borrower that has
11 received two short-term loans within the previous ninety days from
12 licensees unless the borrower has completed during that period a
13 financial literacy program approved by the director;

14 (14) Draft funds electronically from any depository
15 financial institution in this state or bill any credit card issued
16 by such an institution. Nothing in this subdivision shall prohibit
17 the conversion of a negotiable instrument into an electronic form
18 for processing through the automated clearinghouse system;

19 (15) Make, publish, or otherwise disseminate, directly or
20 indirectly, any misleading or false advertisement or engage in any
21 other deceptive trade practice;

22 (16) Offer any incentive to a borrower in exchange
23 for the borrower taking out multiple short-term loans over any
24 period of time or provide a short-term loan at no charge or at
25 a discounted charge as compensation for any previous or future

1 business;

2 (17) Make a short-term loan to a borrower if the borrower
3 has received a total of four or more short-term loans, from one or
4 more licensees, in the calendar year;

5 (18) Present a check, negotiable order of withdrawal,
6 share draft, or other negotiable instrument, that has been
7 previously presented by the licensee and subsequently returned
8 or dishonored for any reason without prior written approval from
9 the borrower; or

10 (19) Change the check number or in any other way alter
11 a check, negotiable order of withdrawal, or share draft, prior to
12 submitting such check, negotiable order of withdrawal, or share
13 draft for processing through the automated clearinghouse system,
14 or submit false information about any check, negotiable order of
15 withdrawal, or share draft to the automated clearinghouse system.

16 Sec. 9. (1) The director shall suspend or revoke a
17 license issued pursuant to the Short-Term Lenders Act if the
18 director determines that either of the following applies:

19 (a) The licensee has failed to comply with any order
20 issued by the director pursuant to section 19 of this act; or

21 (b) Any fact or condition exists that if it had existed
22 or had been known to exist at the time of original or renewal
23 licensure pursuant to the act, the fact or condition clearly would
24 have warranted the director to refuse to issue a license pursuant
25 to the act.

1 (2) The director may make any investigation and conduct
2 any hearing the director considers necessary to determine whether
3 any person has violated the act or any rule or regulation or order
4 adopted or promulgated or issued under section 19 of this act or
5 has otherwise engaged in conduct that would justify the suspension,
6 revocation, or refusal of an original or renewal license or
7 the imposition of an administrative fine. An administrative fine
8 shall not exceed one thousand dollars for each violation. An
9 administrative fine shall be remitted to the State Treasurer for
10 distribution in accordance with Article VII, section 5, of the
11 Constitution of Nebraska.

12 (3) In making any investigation or conducting any hearing
13 pursuant to this section, the director, or any person designated
14 by the director, at any time, may compel by subpoena witnesses,
15 may take depositions of witnesses residing outside of the state in
16 the manner provided for in civil actions, pay any witnesses the
17 fees and mileage for their attendance provided for witnesses in
18 civil actions, and administer oaths. The director also may compel
19 by order or subpoena duces tecum the production of, and examine,
20 all relevant books, records, accounts, and other documents. If a
21 person does not comply with a subpoena or subpoena duces tecum,
22 the director may apply to the district court of Lancaster County
23 for an order compelling the person to comply with the subpoena or
24 subpoena duces tecum or, for failure to do so, an order to be held
25 in contempt of court.

1 (4) In connection with any investigation under this
2 section, the director may file an action in the district court
3 of Lancaster County or the district court of the county in which
4 the person who is the subject of the investigation resides, or is
5 engaging in or proposing to engage in actions in violation of the
6 act, to obtain an injunction, temporary restraining order, or other
7 appropriate relief.

8 Sec. 10. As often as the director considers it necessary,
9 the director may examine the records of a licensee, but in any
10 case, the director shall examine the records of a licensee at least
11 annually.

12 Sec. 11. (1) Every licensee shall keep and use in the
13 licensee's business such books, accounts, records, and short-term
14 loan documents as will enable the department to determine whether
15 the licensee is complying with the Short-Term Lenders Act and
16 with the orders and rules and regulations made and adopted and
17 promulgated by the director and the department under the act.
18 Such books, accounts, records, and short-term loan documents shall
19 be segregated from those pertaining to transactions that are not
20 subject to the act. Every licensee shall preserve the books,
21 accounts, records, and short-term loan documents pertaining to
22 short-term loans made under the act for at least two years after
23 making the final entry on, or final revision of, any short-term
24 loan document relative to any short-term loan recorded therein.
25 Accounting systems maintained in whole or in part by mechanical

1 or electronic data processing methods that provide information
2 equivalent to that otherwise required are acceptable for this
3 purpose.

4 (2) (a) As required by the director, each licensee shall
5 file with the department each year a report under oath or
6 affirmation, on forms supplied by the department, concerning the
7 business and operation for the preceding calendar year. If a
8 licensee has more than one place of business in this state, the
9 licensee shall furnish a report for each location.

10 (b) The department shall publish annually an analysis of
11 the information required under subdivision (2) (a) of this section,
12 but the individual reports shall not be a public record subject
13 to disclosure by the director pursuant to sections 84-712 to
14 84-712.09.

15 Sec. 12. (1) A violation of section 8 of this act is
16 deemed an unfair or deceptive act or practice in violation of the
17 Uniform Deceptive Trade Practices Act. A borrower injured by a
18 violation of section 8 of this act shall have a cause of action and
19 be entitled to the same relief available to a consumer under the
20 act, and all powers and remedies available to the Attorney General
21 to enforce the act are available to the Attorney General to enforce
22 section 8 of this act.

23 (2) The director or a borrower may bring directly an
24 action to enjoin a violation of the Short-Term Lenders Act. The
25 county attorney of the county in which the action may be brought

1 may bring an action to enjoin a violation of the act only if the
2 county attorney first presents any evidence of the violation to
3 the Attorney General and, within a reasonable period of time, the
4 Attorney General has not agreed to bring the action.

5 (3) The director may present evidence of criminal
6 violation to the county attorney of the county in which the offense
7 occurred for criminal prosecution. If the county attorney does not
8 prosecute the violations, or at the request of the county attorney,
9 the director shall present any evidence of criminal violations to
10 the Attorney General, who may proceed in the prosecution.

11 (4) The county attorney of the county in which an alleged
12 offense may be prosecuted may initiate criminal proceedings under
13 the act.

14 (5) In order to initiate criminal proceedings under the
15 act, the Attorney General first shall present any evidence of
16 criminal violations to the county attorney of the county in which
17 the alleged offense may be prosecuted. If, within a reasonable
18 period of time, the county attorney has not agreed to prosecute
19 the violations, the Attorney General may proceed in the prosecution
20 with all the rights, privileges, and powers described in subsection
21 (2) of this section.

22 Sec. 13. The director shall develop and make a statewide
23 common data base, as implemented by the director, accessible at
24 all times to all licensees and to the director through an Internet
25 connection. Licensees shall use the data base to determine if a

1 borrower is eligible for a short-term loan. Licensees shall submit
2 the required data in a format as the director prescribes by rule
3 and regulation and verify eligibility before entering into each
4 short-term loan transaction.

5 (2) The director shall adopt and promulgate rules and
6 regulations to administer and enforce this section and to ensure
7 that the data base is used by licensees in accordance with this
8 section, including:

9 (a) A rule or regulation requiring that data are retained
10 in the data base only as required to ensure licensee compliance
11 with this section;

12 (b) A rule or regulation requiring that identifying
13 borrower information is deleted from the data base on a regular and
14 routine basis, twelve months after a transaction is closed;

15 (c) A rule or regulation authorizing the archiving of
16 deleted data if the director determines that archiving is necessary
17 for the enforcement of this section;

18 (d) A rule or regulation prohibiting the data base from
19 ranking the credit worthiness of a borrower and limiting the
20 data base so that it may only be used to determine a borrower's
21 eligibility or ineligibility for a short-term loan based on the
22 Short-Term Lenders Act;

23 (e) A rule or regulation requiring that data collected
24 pursuant to this section be used only as prescribed in this section
25 and for no other purpose;

1 (f) A rule or regulation authorizing the data base
2 operator to impose a per transaction fee to be paid by the licensee
3 for data required to be submitted; and

4 (g) A rule or regulation prohibiting the data base
5 operator from including, in the data base, the social security
6 number of any borrower.

7 (3) The data base operator, whether the director or
8 a third party selected by the director, shall do all of the
9 following:

10 (a) Establish and maintain a process for responding to
11 transaction verification requests due to technical difficulties
12 with the data base that prevent a licensee from accessing the data
13 base through the Internet;

14 (b) Provide accurate and secure receipt, transmission,
15 and storage of borrower data;

16 (c) Designate a transaction as closed within one business
17 day of receiving notification from a licensee; and

18 (d) Take all reasonable measures to ensure the
19 confidentiality of the data base and to prevent identity theft.

20 (4) A licensee may rely on the information contained in
21 the data base as accurate and is not subject to any administrative
22 penalty or civil liability as a result of relying on inaccurate
23 information contained in the data base.

24 (5) With respect to the data base, any information
25 submitted for incorporation into the data base, information in

1 the data base itself, or archived information as maintained by
2 the director pursuant to this section is not a public record
3 subject to disclosure by the director pursuant to sections 84-712
4 to 84-712.09.

5 (6) If approved by the director, the data base operator
6 may impose a per transaction fee for the actual costs of entering,
7 accessing, and maintaining data in the data base. The fee shall be
8 payable to the data base operator in a manner prescribed by the
9 director. A licensee may not charge a short-term loan applicant or
10 borrower all or part of the fee.

11 (7) The records of a licensee and any electronic data
12 base tracking service shall be subject to review and examination
13 by the department to determine whether the licensee is complying
14 with this section and other applicable provisions of the Short-Term
15 Lenders Act.

16 Sec. 14. (1) A licensee, and any person required to be
17 licensed under the Short-Term Lenders Act, in addition to duties
18 imposed by other statutes or common law, shall:

19 (a) Follow reasonable and lawful instructions from a
20 borrower;

21 (b) Act with reasonable skill, care, and diligence; and

22 (c) Act in good faith and fair dealing in any transaction
23 or practice or course of business in connection with a short-term
24 loan.

25 (2) The duties and standards of care created in this

1 section may not be waived or modified.

2 (3) A borrower injured by a violation of this section
3 may bring an action for recovery of damages. Damages awarded shall
4 not be less than all compensation paid directly or indirectly to
5 a licensee from any source, plus reasonable attorney's fees and
6 costs. The borrower may be awarded punitive damages which shall be
7 remitted to the State Treasurer for distribution in accordance with
8 Article VII, section 5, of the Constitution of Nebraska.

9 Sec. 15. (1) The director shall report semiannually to
10 the Governor and Legislature on the operations of the department
11 with respect to the following:

12 (a) Enforcement actions instituted by the director for a
13 violation of or failure to comply with the Short-Term Lenders Act,
14 and the final disposition of each such enforcement action; and

15 (b) Suspension, revocation, or refusal to issue or renew
16 a license under the act.

17 (2) The information required under subdivisions (1)(a)
18 and (b) of this section does not include information that, pursuant
19 to subsection (3) of this section, is confidential.

20 (3) The following information is confidential and is not
21 a public record subject to disclosure by the director pursuant to
22 sections 84-712 to 84-712.09:

23 (a) Examination information and any information leading
24 to or arising from an examination; and

25 (b) Investigation information and any information arising

1 from or leading to an investigation.

2 (4) The information described in subdivision (1)(a) of
3 this section shall remain confidential for all purposes except when
4 it is necessary for the director to take official action regarding
5 the affairs of a licensee or in connection with criminal or civil
6 proceedings to be initiated by a county attorney or the Attorney
7 General.

8 (5) All application information, except social security
9 numbers, employer identification numbers, financial account
10 numbers, the identity of the institution where financial accounts
11 are maintained, personal financial information, fingerprint cards
12 and the information contained on such cards, and criminal
13 background information, is a public record.

14 (6) This section does not prevent the department from
15 releasing information relating to licensees to the Attorney General
16 for purposes of that office's enforcement of the Short-Term Lenders
17 Act or the Uniform Deceptive Trade Practices Act. Information
18 the department releases to the Attorney General pursuant to this
19 section remains privileged and confidential, and the Attorney
20 General may not disclose the information except by introduction
21 into evidence in connection with the Attorney General's enforcement
22 of the act or as authorized by the director.

23 Sec. 16. For purposes of section 17 of this act:

24 (1) Borrower means a person who has an outstanding
25 or delinquent short-term loan and includes the borrower's

1 spouse; parent if the borrower is a minor; guardian; personal
2 representative; or administrator;

3 (2) Communication means the conveying of information
4 regarding a debt resulting from a short-term loan directly or
5 indirectly to any person through any medium;

6 (3) Consumer reporting agency means any person that, for
7 monetary fees, dues, or on a cooperative nonprofit basis, regularly
8 engages in whole or in part in the practice of assembling or
9 evaluating consumer credit information or other information on
10 consumers for the purpose of furnishing consumer reports to third
11 parties and that uses any means or facility for the purpose of
12 preparing or furnishing consumer reports;

13 (4) Debt collector means a licensee, an officer,
14 employee, or agent of a licensee, any person acting as a debt
15 collector for a licensee, or any person while serving or attempting
16 to serve legal process on any other person in connection with the
17 judicial enforcement of any debt resulting from a short-term loan
18 made by a licensee; and

19 (5) Location information means a consumer's residence,
20 telephone number, or place of employment.

21 Sec. 17. (1) When communicating with any person other
22 than the borrower for the purpose of acquiring location information
23 about the borrower, the debt collector shall identify itself,
24 state that the purpose for the communication is to confirm or
25 correct location information concerning a person, and, only if

1 expressly requested, identify the debt collector's employer. The
2 debt collector shall not:

3 (a) State that the person for whom location information
4 is being sought is a borrower or owes any debt;

5 (b) Communicate with any person more than once unless
6 requested to do so by such person or unless the debt collector
7 reasonably believes that the earlier response of such person is
8 erroneous or incomplete and that such person now has correct or
9 complete location information;

10 (c) Communicate by postcard;

11 (d) Use any language or symbol on any envelope or in the
12 contents of any communication effected by the mails or telegram
13 that indicates that the communication relates to the collection of
14 a debt; or

15 (e) After the debt collector knows the borrower is
16 represented by an attorney with regard to the subject debt and
17 has knowledge of, or can readily ascertain, such attorney's name
18 and address, communicate with any person other than that attorney
19 unless the attorney fails to respond within a reasonable period of
20 time to communication from the debt collector.

21 (2) A debt collector, without the prior consent of the
22 borrower given directly to the debt collector or without the
23 express permission of a court of competent jurisdiction, may not
24 communicate with a borrower in connection with the collection of
25 any debt:

1 (a) At any unusual time or place or a time or place known
2 or which should be known to be inconvenient to the borrower. In
3 the absence of knowledge of circumstances to the contrary, a debt
4 collector shall assume that the convenient time for communicating
5 with a borrower is after eight a.m. at the borrower's location and
6 before nine p.m. at the borrower's location;

7 (b) If the debt collector knows the borrower is
8 represented by an attorney with respect to such debt and has
9 knowledge of, or can readily ascertain, such attorney's name and
10 address unless the attorney fails to respond within a reasonable
11 period of time to a communication from the debt collector or unless
12 the attorney consents to direct communication with the borrower; or

13 (c) At the borrower's place of employment if the debt
14 collector knows or has reason to know that the borrower's employer
15 prohibits the borrower from receiving such communication.

16 (3) A debt collector, without the prior consent of the
17 borrower given directly to the debt collector, without the express
18 permission of a court of competent jurisdiction, or as reasonably
19 necessary to effectuate a postjudgment judicial remedy, may not
20 communicate, in connection with the collection of any debt, with
21 any person other than the borrower, the borrower's attorney, a
22 consumer reporting agency if otherwise permitted by law, or the
23 attorney of the debt collector.

24 (4) If a borrower provides written notification to a
25 licensee or a debt collector that the borrower refuses to pay

1 a debt or that the borrower wishes the debt collector to cease
2 further communication with the borrower, the debt collector shall
3 not communicate further with the borrower with respect to such debt
4 except:

5 (a) To advise the borrower that the debt collector's
6 further efforts are being terminated;

7 (b) To notify the borrower that the debt collector or
8 licensee may invoke specified remedies that are ordinarily invoked
9 by such debt collector or licensee; or

10 (c) Where applicable, to notify the borrower that the
11 debt collector or licensee intends to invoke a specified remedy. If
12 such notice from the borrower is made by mail, notification shall
13 be complete upon receipt.

14 (5) A debt collector may not engage in any conduct the
15 natural consequence of which is to harass, oppress, or abuse any
16 person in connection with the collection of a debt, including, but
17 not limited to, any of the following:

18 (a) Using or threatening to use violence or other
19 criminal means to harm the physical person, reputation, or property
20 of any person;

21 (b) Using obscene or profane language or language the
22 natural consequence of which is to abuse the hearer or reader;

23 (c) Publication of a list of borrowers who allegedly
24 refuse to pay debts, except to a consumer reporting agency; or

25 (d) Causing a telephone to ring or engaging any person

1 in telephone conversation repeatedly or continuously with intent to
2 annoy, abuse, or harass any person at the called number.

3 (6) A debt collector may not use any false, deceptive,
4 or misleading representation or means in connection with the
5 collection of any debt, including, but not limited to, any of the
6 following:

7 (a) Falsely representing or implying that the debt
8 collector is vouched for, bonded by, or affiliated with the United
9 States or any state, including the use of any badge, uniform, or
10 facsimile thereof;

11 (b) Falsely representing the character, amount, or legal
12 status of any debt, any services rendered, or compensation which
13 may be lawfully received by any debt collector for the collection
14 of a debt;

15 (c) Falsely representing or implying that any individual
16 is an attorney or that any communication is from an attorney;

17 (d) Representing or implying that nonpayment of any debt
18 will result in the arrest or imprisonment of any person or the
19 seizure, garnishment, attachment, or sale of any property or wages
20 of any person unless such action is lawful and the debt collector
21 intends to take such action;

22 (e) Threatening to take any action that cannot legally be
23 taken or that is not intended to be taken;

24 (f) Falsely representing or implying that a sale,
25 referral, or other transfer of any interest in a debt will cause

1 the borrower to lose any claim or defense to payment of the debt;

2 (g) Falsely representing or implying that the borrower
3 committed any crime or other conduct in order to disgrace the
4 borrower;

5 (h) Communicating or threatening to communicate to any
6 person credit information that is known or that should be known to
7 be false, including the failure to communicate that a disputed debt
8 is disputed;

9 (i) Using or distributing any written communication that
10 simulates or is falsely represented to be a document authorized,
11 issued, or approved by any court, official, or agency of the United
12 States or any state or that creates a false impression as to its
13 source, authorization, or approval;

14 (j) Using any false representation or deceptive means to
15 collect or attempt to collect any debt or to obtain information
16 concerning a borrower;

17 (k) Failing to disclose in the initial written
18 communication with the borrower, and in addition, if the initial
19 communication with the borrower is oral, in that initial oral
20 communication, that the debt collector is attempting to collect
21 a debt and that any information obtained will be used for that
22 purpose, and the failure to disclose in subsequent communications
23 that the communication is from a debt collector, except that this
24 subdivision shall not apply to a formal pleading made in connection
25 with a legal action;

1 (l) Falsely representing or implying that accounts have
2 been turned over to innocent purchasers for value;

3 (m) Falsely representing or implying that documents are
4 legal process;

5 (n) Using any business, company, or organization name
6 other than the true name of the debt collector's business, company,
7 or organization;

8 (o) Falsely representing or implying that documents are
9 not legal process forms or do not require action by the consumer;
10 or

11 (p) Falsely representing or implying that a debt
12 collector operates or is employed by a consumer reporting agency.

13 (7) A debt collector may not use unfair or unconscionable
14 means to collect or attempt to collect any debt, including, but not
15 limited to, any of the following:

16 (a) Collecting any amount, including any interest, fee,
17 charge, or expense incidental to the principal obligation, unless
18 the amount is expressly authorized by the agreement creating the
19 debt or permitted by law;

20 (b) Accepting from any person a check or other payment
21 instrument postdated by more than five days unless the person is
22 notified in writing of the debt collector's intent to deposit the
23 check or instrument not more than ten nor less than three business
24 days prior to deposit;

25 (c) Soliciting any postdated check or other postdated

1 payment instrument for the purpose of threatening or instituting
2 criminal prosecution;

3 (d) Depositing or threatening to deposit any postdated
4 check or other postdated payment instrument prior to the date on
5 the check or instrument;

6 (e) Causing charges to be made to any person for
7 communications by concealment of the true purpose of the
8 communication. The charges include, but are not limited to, collect
9 telephone calls and telegram fees;

10 (f) Taking or threatening to take any nonjudicial action
11 to effect dispossession or disablement of property if there is no
12 present right to possession of the property claimed as collateral
13 through an enforceable security interest, there is no present
14 intention to take possession of the property, or the property is
15 exempt by law from dispossession or disablement;

16 (g) Communicating with a borrower regarding a debt by
17 postcard;

18 (h) Using any language or symbol, other than the debt
19 collector's address, on any envelope when communicating with a
20 borrower by use of the mails or by telegram, except that a debt
21 collector may use the collector's business name if the name does
22 not indicate that the collector is in the debt collection business;
23 or

24 (i) Designing, compiling, and furnishing any form knowing
25 that the form would be used to create the false belief in a

1 borrower that a person other than the licensee is participating in
2 the collection of or in an attempt to collect a debt the borrower
3 allegedly owes the creditor when in fact the person is not so
4 participating.

5 (8) In addition to the requirements of this section, a
6 debt collector shall follow the practices set forth in the federal
7 Fair Debt Collection Practices Act, sections 15 U.S.C. 1692b,
8 1692c, 1692d, 1692e, and 1692f, as the sections existed on January
9 1, 2009. In the event of a conflict between described practices
10 in the federal act and described practices in this section, this
11 section shall prevail.

12 Sec. 18. The department may adopt and promulgate rules
13 and regulations and the director may issue specific orders to
14 enforce and carry out the purposes of the Short-Term Lenders Act.

15 Sec. 19. Any violation of the Short-Term Lenders Act is
16 a Class I misdemeanor.

17 Sec. 20. Section 45-101.04, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 45-101.04 The limitation on the rate of interest provided
20 in section 45-101.03 shall not apply to:

21 (1) Other rates of interest authorized for loans made by
22 any licensee or permittee operating under a license or permit duly
23 issued by the Department of Banking and Finance pursuant to the
24 Credit Union Act, the Nebraska Installment Loan Act, subsection (4)
25 of section 8-319, or sections 8-815 to 8-829;

1 (2) Loans made to any corporation, partnership, limited
2 liability company, or trust;

3 (3) The guarantor or surety of any loan to a corporation,
4 partnership, limited liability company, or trust;

5 (4) Loans made when the aggregate principal amount of
6 the indebtedness is twenty-five thousand dollars or more of the
7 borrower to any one financial institution, licensee, or permittee;

8 (5) Loans insured, guaranteed, sponsored, or participated
9 in, either in whole or part, by any agency, department, or program
10 of the United States or state government;

11 (6) Loans or advances of money, repayable on demand,
12 which are made solely upon securities, as defined in subdivision
13 (15) of section 8-1101, pledged as collateral for such repayment
14 and in which such loans or advances are used by the borrower only
15 for the purchase of securities as so defined. It shall be lawful to
16 contract for and receive any rate of interest on such transaction
17 as the parties thereto may expressly agree;

18 (7) Interest charges made on open credit accounts by a
19 person who sells goods or services on credit when the interest
20 charges do not exceed one and one-third percent per month for any
21 charges which remain unpaid for more than thirty days following
22 rendition of the statement of account;

23 (8) A minimum charge of ten dollars per loan which may be
24 charged by the lender in lieu of all interest charges;

25 (9) Loans described in subsection (4) of section 8-319

1 made by a state or federal savings and loan association at a rate
2 not to exceed nineteen percent per annum;

3 (10) Loans made primarily for business or agricultural
4 purposes or secured by real property when such loans are made (a)
5 by a licensee, registrant, or permittee operating under a license,
6 registration, or permit duly issued by the Department of Banking
7 and Finance except for licensees operating under the Nebraska
8 Installment Loan Act, (b) by any financial institution insured by
9 the Federal Deposit Insurance Corporation or the National Credit
10 Union Administration, or (c) by any insurance company organized
11 under the laws of this state and subject to regulation by the
12 Department of Insurance;

13 (11) Loans secured solely by real property when such
14 loans are (a) made by licensees operating under the Nebraska
15 Installment Loan Act and (b) made to finance or refinance the
16 purchase of the property or construction on or improvements to
17 the property, if the Department of Banking and Finance has the
18 authority to examine such loans for compliance with sections
19 45-101.02 and 45-101.03. A licensee making a loan pursuant to this
20 subdivision may obtain an interest in any fixtures attached to such
21 real property and any insurance proceeds payable in connection with
22 such real property or the loan;

23 (12) Loans secured by a reverse mortgage pursuant to
24 section 45-1068;

25 (13) Interest charges made on any goods or services sold

1 under an installment contract pursuant to the Nebraska Installment
2 Sales Act. Subject to section 45-338, it shall be lawful to
3 contract for and receive any rate of interest on such contract as
4 the parties may expressly agree to in writing; or

5 (14) Fees which may be charged by a licensee for services
6 pursuant to the ~~Delayed Deposit Services Licensing Act~~, Short-Term
7 Lenders Act.

8 Sec. 21. The Financial Literacy Education Fund is
9 created. The fund shall consist of funds appropriated to it by
10 the Legislature. The initial appropriation shall be two hundred
11 fifty thousand dollars. The fund shall be used to support
12 various adult financial literacy education programs developed
13 or implemented by the Department of Banking and Finance. The
14 fund shall be administered by the department. The department
15 shall adopt and promulgate rules and regulations to require that
16 at least one-half of the financial literacy education programs
17 developed or implemented pursuant to this section and offered to
18 the public be presented by or available at community colleges
19 or state institutions throughout the state. The department shall
20 provide to the Governor and Legislature an annual report that
21 includes an outline of each adult financial literacy education
22 program developed or implemented, the number of individuals who
23 were educated by each program, and an accounting for all funds
24 distributed.

25 Sec. 22. Original section 45-101.04, Reissue Revised

1 Statutes of Nebraska, is repealed.

2 Sec. 23. The following sections are outright repealed:

3 Sections 45-902, 45-903, 45-904, 45-905, 45-908, 45-909, 45-913,

4 45-914, 45-918, 45-921, 45-923, 45-924, 45-926, 45-927, 45-928, and

5 45-929, Reissue Revised Statutes of Nebraska, and sections 45-901,

6 45-906, 45-907, 45-910, 45-911, 45-912, 45-915, 45-915.01, 45-916,

7 45-917, 45-920, 45-922, and 45-925, Revised Statutes Cumulative

8 Supplement, 2008.