

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 431**

Introduced by McGill, 26.

Read first time January 20, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Delayed Deposit Services Licensing  
2 Act; to amend section 45-921, Reissue Revised Statutes  
3 of Nebraska, and sections 45-901, 45-906, 45-915,  
4 45-919, 45-925, and 45-927, Revised Statutes Cumulative  
5 Supplement, 2008; to provide for certain prohibited acts;  
6 to provide fees; to provide penalties; to create a data  
7 base; to provide powers and duties for the Director  
8 of Banking and Finance; to change provisions relating  
9 to fines; to harmonize provisions; and to repeal the  
10 original sections.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 45-901, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           45-901 Sections 45-901 to 45-929 and sections 7 to 10 of  
4 this act shall be known and may be cited as the Delayed Deposit  
5 Services Licensing Act.

6           Sec. 2. Section 45-906, Revised Statutes Cumulative  
7 Supplement, 2008, is amended to read:

8           45-906 The application required by section 45-905 shall  
9 be accompanied by:

10           (1) A nonrefundable application fee of five hundred  
11 dollars; ~~and~~

12           (2) A data base fee of one hundred dollars. The data base  
13 fee shall be used to defray the costs of establishing the data base  
14 implemented pursuant to section 7 of this act. The data base fee  
15 established under this subsection shall terminate on the date the  
16 director implements the data base pursuant to such section; and

17           ~~(2)~~ (3) A surety bond in the sum of fifty thousand  
18 dollars to be executed by the licensee and a surety company  
19 authorized to do business in Nebraska and approved by the director  
20 conditioned for the faithful performance by the licensee of the  
21 duties and obligations pertaining to the delayed deposit services  
22 business so licensed and the prompt payment of any judgment  
23 recovered against the licensee. The bond or a substitute bond shall  
24 remain in effect during all periods of licensing or the licensee  
25 shall immediately cease doing business and its license shall be

1 surrendered to or canceled by the department. A surety may cancel a  
2 bond only upon thirty days' written notice to the director.

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

13           Sec. 3. Section 45-915, Revised Statutes Cumulative  
14 Supplement, 2008, is amended to read:

15           45-915 (1) Except as provided in subsection (2) of this  
16 section, a licensee may offer a delayed deposit services business  
17 only at an office designated as its principal place of business  
18 in the application. A licensee may change the location of its  
19 designated principal place of business with the prior written  
20 approval of the director. The director may establish forms and  
21 procedures for determining whether the change of location should be  
22 approved.

23           (2) A licensee may operate branch offices only in the  
24 same county in which the licensee's designated principal place of  
25 business is located. The licensee may establish a branch office

1 or change the location of a branch office with the prior written  
2 approval of the director. The director may establish forms and  
3 procedures for determining whether an original branch or branches  
4 or a change of location of a branch should be approved.

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

8 (4) A data base fee of one hundred dollars shall be paid  
9 to the director for each request made pursuant to subsection (1) or  
10 (2) of this section. The data base fee shall be used to defray the  
11 costs of establishing the data base implemented pursuant to section  
12 7 of this act. The data base fee established under this subsection  
13 shall terminate on the date the director implements the data base  
14 pursuant to such section.

15 Sec. 4. Section 45-919, Revised Statutes Cumulative  
16 Supplement, 2008, is amended to read:

17 45-919 (1) No licensee shall:

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

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

23 (c) Hold or agree to hold a check for more than  
24 thirty-four days. A check which is in the process of collection  
25 for the reason that it was not negotiable on the day agreed upon

1 shall not be deemed as being held in excess of the thirty-four-day  
2 period;

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

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

8 (f) Renew, roll over, defer, or in any way extend a  
9 delayed deposit transaction by allowing the maker to pay less  
10 than the total amount of the check and any authorized fees or  
11 charges. This subdivision shall not prevent a licensee that agreed  
12 to hold a check for less than thirty-four days from agreeing to  
13 hold the check for an additional period of time no greater than  
14 the thirty-four days it would have originally been able to hold the  
15 check if (i) the extension is at the request of the maker, (ii)  
16 no additional fees are charged for the extension, and (iii) the  
17 delayed deposit transaction is completed as required by subdivision  
18 (1)(c) of this section. The licensee shall retain written or  
19 electronic proof of compliance with this subdivision. If a licensee  
20 fails, or is unable, to provide such proof to the ~~department~~  
21 director upon request, there shall be a rebuttable presumption that  
22 a violation of this subdivision has occurred and the ~~department~~  
23 director may pursue any remedies or actions available to it under  
24 the Delayed Deposit Services Licensing Act; ~~or~~

25 (g) Enter into another delayed deposit transaction with

1 the same a maker on the same business day as the within seventy-two  
2 hours after completion of a delayed deposit transaction unless  
3 prior to entering into the transaction the maker and the licensee  
4 verify on a form prescribed by the department that completion of  
5 the prior delayed deposit transaction has occurred. The licensee  
6 shall retain written proof of compliance with this subdivision.  
7 If a licensee fails, or is unable, to provide such proof  
8 to the department upon request, there shall be a rebuttable  
9 presumption that a violation of this subdivision has occurred and  
10 the department may pursue any remedies or actions available to  
11 it under the act. by such maker with the licensee or any other  
12 licensee; or

13 (h) Enter into another delayed deposit transaction with a  
14 maker if such maker has a delayed deposit transaction that is not  
15 complete with the licensee or any other licensee.

16 (2) For purposes of this section, (a) completion of a  
17 delayed deposit transaction means (i) the licensee has presented  
18 a maker's check for payment to a financial institution as defined  
19 in section 8-101 ~~or~~ and has received payment for the check, (ii)  
20 the maker redeemed the check by paying the full amount of the  
21 check in cash to the licensee, (iii) the licensee has written the  
22 maker's check off as a bad debt after it was returned unpaid by  
23 the financial institution, or (iv) the licensee has sold the check  
24 to a third party after it was returned unpaid by the financial  
25 institution and (b) licensee shall include (i) a person related to

1 the licensee by common ownership or control, (ii) a person in whom  
2 such licensee has any financial interest of ten percent or more, or  
3 (iii) any employee or agent of the licensee.

4 Sec. 5. Section 45-921, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 45-921 (1) The director may examine or investigate  
7 complaints about or reports of alleged violations of the Delayed  
8 Deposit Services Licensing Act or any rule, regulation, or order  
9 of the director thereunder. The director may order the actual cost  
10 of such examination or investigation to be paid by the person who  
11 is the subject of the examination or investigation, whether the  
12 alleged violator is licensed or not.

13 (2) The director may publish information concerning any  
14 violation of the act or any rule, regulation, or order of the  
15 director under the act.

16 (3) For purposes of any investigation, examination,  
17 or proceeding under the act, the director may administer oaths  
18 and affirmations, subpoena witnesses, compel their attendance,  
19 take evidence, and require the production of any books, papers,  
20 correspondence, memoranda, agreements, or other documents or  
21 records which the director deems relevant or material to the  
22 examination, investigation, or proceeding.

23 (4) In the case of contumacy by or refusal to obey a  
24 subpoena issued to any person, the district court of Lancaster  
25 County, upon application by the director, may issue an order

1 requiring such person to appear before the director and to produce  
2 documentary evidence if so ordered to give evidence on the matter  
3 under investigation or in question. Failure to obey the order of  
4 the court may be punished by the court as contempt.

5 (5) Upon receipt by a licensee of a notice of  
6 investigation or inquiry request for information from the  
7 department, the licensee shall respond within twenty-one calendar  
8 days. Each day a licensee fails to respond as required by this  
9 subsection shall constitute a separate violation.

10 (6) If the director finds, after notice and opportunity  
11 for hearing in accordance with the Administrative Procedure Act,  
12 that any person has violated subsection (5) of this section, the  
13 director may order such person to pay (a) an administrative fine  
14 of not more than one thousand dollars for each separate violation  
15 and (b) the costs of investigation. All fines collected by the  
16 department pursuant to this subsection shall be remitted to the  
17 State Treasurer for credit to the permanent school fund. The  
18 department shall remit fines collected under this subsection to the  
19 State Treasurer for distribution in accordance with Article VII,  
20 section 5, of the Constitution of Nebraska.

21 (7) If a person fails to pay an administrative fine and  
22 the costs of investigation ordered pursuant to subsection (6) of  
23 this section, a lien in the amount of such fine and costs may be  
24 imposed upon all assets and property of such person in this state  
25 and may be recovered in a civil action by the director. The lien

1 shall attach to the real property of such person when notice of the  
2 lien is filed and indexed against the real property in the office  
3 of the register of deeds in the county where the real property is  
4 located. The lien shall attach to any other property of such person  
5 when notice of the lien is filed against the property in the manner  
6 prescribed by law. Failure of the person to pay such fine and  
7 costs shall constitute a separate violation of the Delayed Deposit  
8 Services Licensing Act.

9           Sec. 6. Section 45-925, Revised Statutes Cumulative  
10 Supplement, 2008, is amended to read:

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

18           (2) If any person is found to have violated subdivision  
19 (1)(e), (1)(f), ~~or (1)(g)~~, or (1)(h) of section 45-919, the  
20 director may also order such person to ~~(a)~~ return to the maker  
21 or makers all fees collected plus all or part of the amount of  
22 the check or checks which the licensee accepted in violation of  
23 such subdivision or subdivisions, and ~~(b) for a period up to one~~  
24 ~~year not engage in any delayed deposit transaction with any maker~~  
25 ~~for at least three days after the completion of a delayed deposit~~

1 ~~transaction with the same maker.~~ If a person fails to pay an  
2 administrative fine and the costs of investigation ordered pursuant  
3 to subsection (1) of this section, a lien in the amount of such  
4 fine and costs may be imposed upon all assets and property of such  
5 person in this state and may be recovered in a civil action by the  
6 director. Failure of the person to pay such fine and costs shall  
7 constitute a separate violation of the act.

8           Sec. 7. (1) A data base shall be created in accordance  
9 with this section. The data base shall include information provided  
10 by licensees as required by the director under this section and  
11 section 8 of this act. The data base shall be used to facilitate  
12 compliance by licensees with section 45-919 and to create an annual  
13 report pursuant to section 9 of this act. The director may develop,  
14 implement, and maintain the data base pursuant to subsection (2) of  
15 this section, monitor compliance with section 45-919, and create an  
16 annual report pursuant to section 9 of this act or contract with a  
17 third-party provider pursuant to subsection (3) of this section to  
18 perform such responsibilities.

19           (2) On or before January 1, 2011, the director or a  
20 third-party provider, whoever is the data base provider, shall  
21 develop, implement, and maintain a statewide, common data base that  
22 has real-time access through an Internet connection, is accessible  
23 at all times to licensees, and is accessible at all times to the  
24 director, if the director is not the data base provider. The data  
25 base shall comply with the requirements of this section. Before

1 the director determines that the data base is fully operational  
2 for purposes of the Delayed Deposit Services Licensing Act, the  
3 data base provider shall operate, for at least thirty days, a  
4 pilot program of the data base to test all of its processes.  
5 The data base provider shall make the pilot program available to  
6 all applicants and licensees. During the thirty-day test period  
7 beginning on a date on which the director determines that the  
8 data base is fully operational, the director shall not approve the  
9 imposition of any data base verification fees under subsection (4)  
10 of section 8 of this act.

11 (3) If the director contracts with a third-party provider  
12 for the development, implementation, and maintenance of the data  
13 base, the following shall apply:

14 (a) The director shall ensure that the third-party  
15 provider selected as the data base provider operates the data  
16 base pursuant to this section;

17 (b) The director shall consider cost of service and  
18 ability to meet all the requirements of this section in selecting a  
19 third-party provider as the data base provider;

20 (c) In selecting a third-party provider to act as the  
21 data base provider, the director shall give strong consideration  
22 to the third-party provider's ability to prevent fraud, abuse,  
23 and other unlawful activity associated with delayed deposit  
24 transactions and provide additional tools for the administration  
25 and enforcement of the act;

1           (d) The third-party provider shall only use the data  
2 collected under this section as prescribed in this section and the  
3 contract with the director and for no other purpose;

4           (e) If the third-party provider violates this section,  
5 the director shall terminate the contract and the third-party  
6 provider shall be barred from becoming a party to any other state  
7 contract; and

8           (f) Any person injured by the third-party provider's  
9 violation of this section may maintain a civil cause of action  
10 against the third-party provider and may recover actual damages  
11 plus reasonable attorney's fees.

12           (4) The data base shall allow a licensee accessing the  
13 data base to:

14           (a) Verify whether a maker has any open delayed  
15 deposit service transactions with any licensee that have not been  
16 completed; and

17           (b) Provide information necessary to ensure licensee  
18 compliance with any requirements imposed by the United States  
19 Department of the Treasury, Office of Foreign Assets Control, under  
20 federal law.

21           (5) While operating the data base, the data base provider  
22 shall:

23           (a) Establish and maintain a process for responding to  
24 transaction verification requests due to technical difficulties  
25 occurring with the data base that prevent the licensee from

1 accessing the data base through the Internet; and

2 (b) Provide accurate and secure receipt, transmission,  
3 and storage of maker data.

4 (6) When the data base provider receives notification  
5 that a delayed deposit services transaction is completed pursuant  
6 to section 45-919, the data base provider shall designate the  
7 transaction as completed in the data base immediately, but no later  
8 than 11:59 p.m., on the day the director or data base provider  
9 received notification.

10 (7) The response to an inquiry to the data base provider  
11 by a licensee shall only state that a person is eligible or  
12 ineligible for a new delayed deposit services transaction and  
13 describe the reason for that determination. Only the person seeking  
14 the transaction may make a direct inquiry to the data base  
15 provider to request a more detailed explanation of a particular  
16 transaction that was the basis for the ineligibility determination.  
17 Any information regarding any maker's transactional history is  
18 confidential, is not subject to public inspection, is not a  
19 public record as defined in section 84-712.01, is not subject to  
20 discovery, subpoena, or other compulsory process, except in an  
21 action under the act, and shall not be disclosed to any person  
22 other than the director.

23 (8) The data base provider may charge each licensee a  
24 verification fee for access to the data base in amounts approved by  
25 the director under subsection (4) of section 8 of this act.

1           (9) The director may access the data base only for  
2 purposes of an investigation of, examination of, or enforcement  
3 action against an individual data base provider, licensee, maker,  
4 or other person under the act. The director and any employee of the  
5 director or this state shall not obtain or access a maker's social  
6 security number, driver's license number, or other state-issued  
7 identification number in the data base except as provided in this  
8 subsection. An individual who violates this subsection is guilty of  
9 a Class II misdemeanor and, if convicted, shall be discharged from  
10 employment.

11           (10) The director shall investigate violations of  
12 this section. The director shall not delegate his or her  
13 responsibilities under this subsection to any third-party provider.

14           (11) With respect to information in the data base:

15           (a) Information in the data base shall be retained only  
16 as required to ensure licensee compliance with the act;

17           (b) Information in the data base concerning a transaction  
18 shall be archived within three hundred sixty-five days after a  
19 transaction is completed, unless needed for a pending enforcement  
20 action;

21           (c) Any identifying maker information shall be deleted  
22 from the data base when such information is archived; and

23           (d) Information in the data base concerning a transaction  
24 shall be deleted from the data base three years after the  
25 transaction is completed or three years after the completion

1 of any enforcement action, whichever is later.

2 (12) The director may maintain access to information  
3 archived under subsection (11) of this section for future  
4 legislative or policy review.

5 (13) The director shall specify the information to be  
6 transmitted by licensees for inclusion in the data base and the  
7 form and manner of transmission of such information.

8 Sec. 8. (1) A licensee shall verify a maker's eligibility  
9 to enter into a delayed deposit services transaction by doing one  
10 of the following, as applicable:

11 (a) If the director has not yet implemented a data  
12 base under section 7 of this act or the data base is not fully  
13 operational, as determined by the director, the licensee shall  
14 verify that the maker does not have an open delayed deposit  
15 services transaction with the licensee. The licensee shall maintain  
16 a data base of all of the licensee's transactions at all of its  
17 locations and search that data base to meet its obligation under  
18 this subdivision; or

19 (b) If the director has implemented a data base under  
20 section 7 of this act and the data base is fully operational,  
21 as determined by the director, the licensee shall access the data  
22 base and verify that the maker does not have any transactions in  
23 violation of section 45-919.

24 (2) If the director has not yet implemented a data  
25 base under section 7 of this act, the data base is not fully

1 operational, as determined by the director, or the licensee is  
 2 unable to access the data base due to technical difficulties  
 3 occurring with the data base, as determined by the director, a  
 4 licensee may rely upon the written verification of the maker  
 5 in a statement provided in substantially the following form, in  
 6 at least 12-point type: I DO NOT HAVE ANY OUTSTANDING DELAYED  
 7 DEPOSIT SERVICES TRANSACTIONS WITH ANY LICENSEE AND I HAVE  
 8 NOT TERMINATED A DELAYED DEPOSIT AGREEMENT WITHIN THE PAST 72  
 9 HOURS ..... (maker signature and date  
 10 of maker signature).

11 (3) The director may use the data base to administer and  
 12 enforce the Delayed Deposit Services Licensing Act.

13 (4) The director may impose a data base verification fee,  
 14 not to exceed one dollar per transaction, for data required to be  
 15 submitted by a licensee. Such fee shall be for the actual costs  
 16 of entering, accessing, and verifying data in the data base to  
 17 determine that a maker does not have any other open delayed deposit  
 18 services transactions and that an additional transaction would be  
 19 in compliance with section 45-919. For the first twelve months  
 20 that the data base is operational, an additional licensing fee of  
 21 fifty cents per transaction shall be paid to defray the costs of  
 22 establishing the data base. The fees levied under this subsection  
 23 shall be exclusive to the licensee, and shall not be passed on to  
 24 a maker.

25 (5) A licensee may rely on the information contained in

1 the data base as accurate and is not subject to any administrative  
2 penalty or civil liability as a result of relying on inaccurate  
3 information contained in the data base.

4 (6) Before entering into a delayed deposit services  
5 transaction, a licensee shall submit to the data base provider the  
6 maker's name and address, the maker's social security number,  
7 driver's license number, or other state-issued identification  
8 number, the amount of the transaction, the maker's check number,  
9 the date of the transaction, the maturity date of the transaction,  
10 and any other information required by the data base provider, in a  
11 format required by the director.

12 (7) When a delayed deposit services transaction is  
13 completed, the licensee shall designate the transaction as  
14 completed and immediately notify the data base provider no later  
15 than 11:59 p.m. on the day the transaction was completed. The  
16 director shall assess an administrative fine of one hundred  
17 dollars for each day that the licensee fails to notify the data  
18 base provider that the transaction has been completed. It is a  
19 defense to the assessment of the administrative fine under this  
20 section that notifying the data base provider was not possible  
21 due to temporary technical problems with the data base or to  
22 circumstances beyond the licensee's control. All fines collected  
23 under this subsection shall be remitted to the State Treasurer for  
24 distribution in accordance with Article VII, section 5, of the  
25 Constitution of Nebraska.

1           (8) The director may assess each licensee and each branch  
2 office that is licensed under the act as of the effective date  
3 of this act a data base fee not to exceed one hundred dollars  
4 to defray the costs of establishing the data base. The data base  
5 fee established under this section shall terminate on the date the  
6 director implements the data base pursuant to section 7 of this  
7 act.

8           Sec. 9. (1) The director or his or her third-party  
9 provider contracted pursuant to section 7 of this act shall compile  
10 an annual report from the information in the data base. The annual  
11 report shall contain:

12           (a) The total transaction volume under the Delayed  
13 Deposit Services Licensing Act;

14           (b) The total dollar amount of transactions paid under  
15 the act;

16           (c) The total number of licensees and branches under the  
17 act;

18           (d) The number of delayed deposit transactions per maker;

19           (e) The total number and total dollar amount of delayed  
20 deposit transactions that were not complete; and

21           (f) Any other information the director deems relevant.

22           (2) The annual report shall be made available  
23 electronically.

24           Sec. 10. (1) The state or its third-party provider  
25 pursuant to section 7 of this act shall not be liable to any person

1 for gathering, managing, or using information in the data base  
2 created under section 7 of this act.

3 (2) No licensee shall be liable to any person for  
4 performing its duties under sections 7 to 10 of this act, unless  
5 and to the extent the licensee commits a willful and wanton act or  
6 omission.

7 Sec. 11. Section 45-927, Revised Statutes Cumulative  
8 Supplement, 2008, is amended to read:

9 45-927 All fees, charges, costs, and fines collected by  
10 the director under the Delayed Deposit Services Licensing Act shall  
11 be remitted to the State Treasurer. Fees, charges, and costs shall  
12 be credited to the Financial Institution Assessment Cash Fund,  
13 and fines shall be credited to the permanent school fund. The  
14 director shall collect fees, charges, costs, and fines under the  
15 Delayed Deposit Services Licensing Act and remit them to the State  
16 Treasurer. The State Treasurer shall credit the fees, charges,  
17 and costs to the Financial Institution Assessment Cash Fund and  
18 distribute the fines in accordance with Article VII, section 5, of  
19 the Constitution of Nebraska.

20 Sec. 12. Original section 45-921, Reissue Revised  
21 Statutes of Nebraska, and sections 45-901, 45-906, 45-915, 45-919,  
22 45-925, and 45-927, Revised Statutes Cumulative Supplement, 2008,  
23 are repealed.