LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 553

Introduced by McGill, 26.
Read first time January 19, 2011
Committee: Banking, Commerce and Insurance

A BILL

FOR AN ACT relating to the Delayed Deposit Services Licensing Act; to amend sections 45-901, 45-906, 45-915, 45-919, 45-921, 45-925, and 45-927, Reissue Revised Statutes of Nebraska; to state intent; to prohibit certain acts; to provide fees; to provide penalties; to create a data base; to provide powers and duties for the Director of Banking and Finance; to change provisions relating to fines; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 45-901, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(2) A data base fee of one hundred dollars. The data base fee shall be used to defray the costs of establishing the data base implemented pursuant to section 7 of this act. The data base fee established under this subdivision terminates on the date the director implements the data base pursuant to section 7 of this act; and

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

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

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

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

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

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

(4) A data base fee of one hundred dollars shall be paid
to the director for each request made pursuant to subsection (1) or
(2) of this section. The data base fee shall be used to defray any
administrative costs of entering into the third-party data base
contract pursuant to section 7 of this act. The data base fee
established under this subsection shall terminate on the date the
director enters into a contract for a data base pursuant to section 7
of this act.

Sec. 4. Section 45-919, Reissue Revised Statutes of
Nebraska, is amended to read:

45-919 (1) No licensee shall:

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

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

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

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

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

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

(g) Enter into another delayed deposit transaction with
the same maker on the same business day as the completion of a
delayed deposit transaction unless prior to entering into the
transaction the maker and the licensee verify on a form prescribed by
the department that completion of the prior delayed deposit
transaction has occurred. The licensee shall retain written proof of
compliance with this subdivision. If a licensee fails, or is unable,
to provide such proof to the department upon request, there shall be
a rebuttable presumption that a violation of this subdivision has
occurred and the department may pursue any remedies or actions
available to it under the act.

(g) Enter into another delayed deposit transaction with a
maker if such maker has a delayed deposit transaction in an aggregate
face amount of five hundred dollars that is not complete with the
licensee or any other licensee.

(2) For purposes of this section, (a) completion of a
delayed deposit transaction means (i) the licensee has presented a
maker's check for payment to a financial institution as defined in
section 8-101 or—and has received payment for the check, (ii) the
maker redeemed the check by paying the full amount of the check in
cash to the licensee, (iii) the licensee has written the maker's
check off as a bad debt after it was returned unpaid by the financial
institution, or (iv) the licensee has sold the check to a third party
after it was returned unpaid by the financial institution and (b)
licensee shall include (i) a person related to the licensee by common
ownership or control, (ii) a person in whom such licensee has any
financial interest of ten percent or more, or (iii) any employee or
agent of the licensee.

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

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

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

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

(4) In the case of contumacy by or refusal to obey a subpoena issued to any person, the district court of Lancaster County, upon application by the director, may issue an order requiring such person to appear before the director and to produce documentary evidence if so ordered to give evidence on the matter.
under investigation or in question. Failure to obey the order of the
court may be punished by the court as contempt.

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

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

(7) If a person fails to pay an administrative fine and
the costs of investigation ordered pursuant to subsection (6) of this
section, a lien in the amount of such fine and costs may be imposed
upon all assets and property of such person in this state and may be
recovered in a civil action by the director. The lien shall attach to
the real property of such person when notice of the lien is filed and
indexed against the real property in the office of the register of
deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Delayed Deposit Services Licensing Act.

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

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

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

Sec. 7. (1) A data base shall be created in accordance with this section. The data base shall include information provided by licensees as required by the director under this section and section 8 of this act. The data base shall be used to facilitate compliance by licensees with section 45-919 and to create an annual report pursuant to section 9 of this act. The director shall enter into a contract with a third-party data base provider to develop, implement, and maintain the data base pursuant to subsection (2) of this section, monitor compliance with section 45-919 and create an annual report pursuant to section 9 of this act.

(2) On or before January 1, 2014, the director shall enter into a contract with a third-party data base provider to develop, implement, and maintain a statewide, common data base that has real-time access through an Internet connection, is accessible at all times to licensees, and is accessible at all times to the director. The director shall select the third-party data base provider and shall retain oversight control over such provider. The data base shall comply with the requirements of this section. Before the director determines that the data base is fully operational for purposes of the Delayed Deposit Services Licensing Act, the third-party data base provider shall operate, for at least thirty days, a pilot program of the data base to test all of its processes. The
third-party data base provider shall make the pilot program available
to all applicants and licensees. During the thirty-day test period
beginning on a date on which the director determines that the data
base is fully operational, the director shall not approve the
imposition of any data base verification fees under subsection (4) of
section 9 of this act.

(3) With respect to a contract with a third-party data
base provider for the development, implementation, and maintenance of
the data base, the following shall apply:

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

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

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

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

(e) If the third-party data base provider materially
violates this section, the director shall terminate the contract and
the third-party data base provider shall be barred from becoming a
party to any other state contract. If the director terminates the
contract, the director shall reopen the bidding process in order to
contract with another third-party data base provider within a
reasonable period of time; and

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

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

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

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

(5) While operating the data base, the third-party data
base provider shall;

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

(b) Provide accurate and secure receipt, transmission,
(6) When the third-party data base provider receives notification that a delayed deposit transaction is completed pursuant to section 45-919, the third-party data base provider shall designate the transaction as completed in the data base immediately, but no later than 11:59 p.m., on the day the third-party data base provider received notification.

(7) The response to an inquiry to the third-party data base provider by a licensee shall only state that a person is eligible or ineligible for a new delayed deposit transaction and describe the reason for that determination. Only the person seeking the transaction may make a direct inquiry to the third-party data base provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any maker's transactional history is confidential, is not subject to public inspection, is not a public record as defined in section 84-712.01, is not subject to discovery, subpoena, or other compulsory process, except in an action under the Delayed Deposit Services Licensing Act, and shall not be disclosed to any person other than the director.

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

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

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

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

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

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

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

(d) Information in the data base concerning a transaction shall be deleted from the data base three years after the transaction is completed or three years after the completion of any enforcement action, whichever is later.
(12) The director may maintain access to information archived under subsection (11) of this section for future legislative or policy review.

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

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

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

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

(2) If the director has not yet implemented a data base under section 7 of this act, the data base is not fully operational as determined by the director, or the licensee is unable to access the data base due to technical difficulties occurring with the data...
base as determined by the director, a licensee may rely upon the
written verification of the maker in a statement provided in
substantially the following form, in at least twelve-point type: I DO
NOT HAVE ANY OUTSTANDING DELAYED DEPOSIT TRANSACTIONS WITH ANY
LICENSEE AND I HAVE NOT TERMINATED A DELAYED DEPOSIT AGREEMENT WITHIN
THE PAST 72 HOURS ................................. (maker signature
and date of maker signature).

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

(4) The third-party data base provider may impose a data
base verification fee, not to exceed one dollar per transaction, for
data required to be submitted by a licensee. Such fee shall be for
the actual costs of entering, accessing, and verifying data in the
data base to determine that a maker does not have any other delayed
deposit transactions that are not complete and that an additional
transaction would be in compliance with section 45-919. For the first
twelve months that the data base is operational, an additional
licensing fee of fifty cents per transaction shall be paid to defray
the costs of establishing the data base. The fees levied under this
subsection shall be exclusive to the licensee and shall not be passed
on to a maker. The director shall allow the third-party data base
provider to collect such fee.

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

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

(7) When a delayed deposit transaction is completed, the licensee shall designate the transaction as completed and immediately notify the third-party data base provider no later than 11:59 p.m. on the day the transaction was completed. The director shall assess an administrative fine of one hundred dollars for each day that the licensee fails to notify the third-party data base provider that the transaction has been completed. It is a defense to the assessment of the administrative fine under this section that notifying the third-party data base provider was not possible due to temporary technical problems with the data base or to circumstances beyond the licensee's control. All fines collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. If the director determines that a licensee has a continuing pattern of willful violations of this subsection, the director may also take any action available to him or her under the Delayed Deposit Services Licensing
Act.

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

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

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

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

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

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

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

(f) Any other information the director deems relevant.

(2) The annual report shall be made available electronically on the web site of the Department of Banking and Finance.

Sec. 10. (1) The state or its third-party data base provider pursuant to section 7 of this act shall not be liable to any
person for gathering, managing, or using information in the data base
created under section 7 of this act and used in accordance with the
provisions of the third-party data base provider contract and the
Delayed Deposit Services Licensing Act.

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

Sec. 11. Section 45-927, Reissue Revised Statutes of
Nebraska, is amended to read:

45-927 All fees, charges, costs, and fines collected by
the director under the Delayed Deposit Services Licensing Act shall
be remitted to the State Treasurer. Fees, charges, and costs shall be
credited to the Financial Institution Assessment Cash Fund, and fines
shall be credited to the permanent school fund.

(1) The director shall collect fees, charges, costs, and
fines due the director under the Delayed Deposit Services Licensing
Act and remit them to the State Treasurer. The State Treasurer shall
credit the fees, charges, and costs to the Financial Institution
Assessment Cash Fund and distribute the fines in accordance with
Article VII, section 5, of the Constitution of Nebraska.

(2) The director shall allow the third-party data base
provider to collect all fees the third-party data base provider is
authorized to charge under the act directly from each licensee.

Sec. 12. Original sections 45-901, 45-906, 45-915,
1 45-919, 45-921, 45-925, and 45-927, Reissue Revised Statutes of Nebraska, are repealed.