

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1036

Introduced by Campbell, 25; Cook, 13; Davis, 43; Howard, 9; Mello, 5;
Morfeld, 46; Pansing Brooks, 28.

Read first time January 19, 2016

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to interest, loans, and debt; to amend
2 sections 45-804, 45-902, 45-904, 45-906, 45-907, 45-908, 45-911,
3 45-915, 45-915.01, 45-917, 45-918, 45-919, 45-921, 45-922, 45-923,
4 45-925, and 45-1001, Reissue Revised Statutes of Nebraska, and
5 section 45-901, Revised Statutes Cumulative Supplement, 2014; to
6 change provisions of the Credit Services Organization Act, the
7 Delayed Deposit Services Licensing Act, and the Nebraska Installment
8 Loan Act; to define and redefine terms; to harmonize provisions; to
9 provide an operative date; and to repeal the original sections.

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

1 Section 1. Section 45-804, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 45-804 A credit services organization, a salesperson, agent, or
4 representative of a credit services organization, or an independent
5 contractor who sells or attempts to sell the services of a credit
6 services organization shall not:

7 (1) Charge a buyer or receive from a buyer money or other valuable
8 consideration before completing performance of all services, other than
9 those described in subdivision (2) of this section, which the credit
10 services organization has agreed to perform for the buyer unless the
11 credit services organization has obtained a surety bond or established
12 and maintained a surety account as provided in section 45-805;

13 (2) Charge a buyer or receive from a buyer money or other valuable
14 consideration for obtaining or attempting to obtain an extension of
15 credit that the credit services organization has agreed to obtain for the
16 buyer before the extension of credit is obtained;

17 (3) Charge a buyer or receive from a buyer money or other valuable
18 consideration solely for referral of the buyer to a retail seller who
19 will or may extend credit to the buyer if the credit that is or will be
20 extended to the buyer is substantially the same as that available to the
21 general public;

22 (4) Make or use a false or misleading representation in the offer or
23 sale of the services of a credit services organization, including (a)
24 guaranteeing to erase bad credit or words to that effect unless the
25 representation clearly discloses that this can be done only if the credit
26 history is inaccurate or obsolete and (b) guaranteeing an extension of
27 credit regardless of the person's previous credit problem or credit
28 history unless the representation clearly discloses the eligibility
29 requirements for obtaining an extension of credit;

30 (5) Engage, directly or indirectly, in a fraudulent or deceptive
31 act, practice, or course of business in connection with the offer or sale

1 of the services of a credit services organization;

2 (6) Make or advise a buyer to make a statement with respect to a
3 buyer's credit worthiness, credit standing, or credit capacity that is
4 false or misleading or that should be known by the exercise of reasonable
5 care to be false or misleading to a consumer reporting agency or to a
6 person who has extended credit to a buyer or to whom a buyer is applying
7 for an extension of credit;~~or~~

8 (7) Advertise or cause to be advertised, in any manner whatsoever,
9 the services of a credit services organization without filing a
10 registration statement with the Secretary of State under section 45-806
11 unless otherwise provided by the Credit Services Organization Act;or -

12 (8) Notwithstanding any other provision of law, charge any brokerage
13 fees or any other fees or charges whatsoever in connection with a loan
14 governed by the Nebraska Installment Loan Act.

15 Sec. 2. Section 45-901, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

17 45-901 Sections 45-901 to 45-930 and sections 12, 14 to 19, and 25
18 to 27 of this act shall be known and may be cited as the Delayed Deposit
19 Services Licensing Act.

20 Sec. 3. Section 45-902, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 45-902 For purposes of the Delayed Deposit Services Licensing Act:

23 (1) Annual percentage rate means an annual percentage rate as
24 determined under section 107 of the federal Truth in Lending Act, 15
25 U.S.C. 1606, as such section existed on the effective date of this act,
26 and includes all fees, interest, and charges contained in the loan
27 contract, except for charges permitted for the presentation of
28 nonnegotiable instruments under section 15 of this act ~~Check means any~~
29 ~~check, draft, or other instrument for the payment of money;~~

30 (2) Borrower means an individual who receives a delayed deposit
31 loan;

1 (3) Default means a borrower's failure to repay a delayed deposit
2 loan in compliance with the terms contained in a delayed deposit loan
3 agreement;

4 (4) Delayed deposit loan means a consumer loan whereby a licensee,
5 for a fee, finance charge, or other consideration, does the following:

6 (a) Accepts a dated instrument from the borrower as sole security
7 for a loan and no other collateral;

8 (b) Agrees to hold the instrument for a period of time prior to
9 deposit or negotiation of the instrument; and

10 (c) Pays to the borrower, credits to the borrower's account, or pays
11 to another person on the borrower's behalf the amount of the instrument,
12 less charges permitted under the Delayed Deposit Services Licensing Act;

13 (5 2) Delayed deposit services business means a person who engages
14 in the practice of offering or providing a delayed deposit loan, who
15 arranges a delayed deposit loan for a third party, or who acts as an
16 agent for a third party, regardless of whether the third party is exempt
17 from licensing under the Delayed Deposit Services Licensing Act or
18 whether approval is necessary to create a legal obligation for the third
19 party through any method, including telephone, Internet, or other
20 electronic means any person who for a fee (a) accepts a check dated
21 subsequent to the date it was written or (b) accepts a check dated on the
22 date it was written and holds the check for a period of days prior to
23 deposit or presentment pursuant to an agreement with or any
24 representation made to the maker of the check, whether express or
25 implied;

26 (6) Department means the Department of Banking and Finance;

27 (7 3) Director means the Director of Banking and Finance or his or
28 her designee;

29 (8 4) Financial institution has the same meaning as in section
30 8-101;

31 (9) Instrument means any check, draft, or other instrument or

1 authorization to transfer or withdraw funds from an account which is
2 signed by the borrower and made payable to a person subject to the
3 Delayed Deposit Services Licensing Act;

4 (10 5) Licensee means any person licensed under the Delayed Deposit
5 Services Licensing Act;~~and~~

6 (11) Loan amount means the amount financed as calculated pursuant to
7 Regulation Z of the federal Truth in Lending Act, 12 C.F.R. 226.18(b), as
8 such regulation existed on the effective date of this act; and

9 (12 6) Person means an individual, proprietorship, association,
10 joint venture, joint stock company, partnership, limited partnership,
11 limited liability company, business corporation, nonprofit corporation,
12 or any group of individuals however organized.

13 Sec. 4. Section 45-904, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 45-904 No person shall operate a delayed deposit services business
16 or make or offer a delayed deposit loan in this state unless the person
17 is licensed by the director as provided in the Delayed Deposit Services
18 Licensing Act. Any delayed deposit loan that is made by a person who is
19 required to be licensed pursuant to the act but who is not licensed is
20 void, and the person making such delayed deposit loan has no right to
21 collect, receive, or retain any principal, interest, fees, or any other
22 charges in connection with such delayed deposit loan.

23 Sec. 5. Section 45-906, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 45-906 The application required by section 45-905 shall be
26 accompanied by:

27 (1) A nonrefundable application fee of one thousand five hundred
28 dollars; and

29 (2) A surety bond in the sum of fifty thousand dollars to be
30 executed by the licensee and a surety company authorized to do business
31 in Nebraska and approved by the director conditioned for the faithful

1 performance by the licensee of the duties and obligations pertaining to
2 the delayed deposit services business so licensed and the prompt payment
3 of any judgment recovered against the licensee. The bond or a substitute
4 bond shall remain in effect during all periods of licensing or the
5 licensee shall immediately cease doing business and its license shall be
6 surrendered to or canceled by the department. A surety may cancel a bond
7 only upon thirty days' written notice to the director.

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

17 Sec. 6. Section 45-907, Reissue Revised Statutes of Nebraska, is
18 amended to read:

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

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

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

15 (3) The expense of any publication made pursuant to this section
16 shall be paid by the applicant.

17 Sec. 7. Section 45-908, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 45-908 The director shall issue a license to an applicant, if, after
20 public hearing and any investigation of the applicant, the director
21 determines that:

22 (1) The experience, character, and general fitness of the applicant
23 and its officers, directors, shareholders, partners, or members are such
24 as to warrant the belief that the applicant will conduct the delayed
25 deposit services business honestly, fairly, and efficiently;

26 (2) The applicant and its officers, directors, shareholders,
27 partners, or members have not been convicted of a felony in this state or
28 any other jurisdiction which would indicate moral turpitude on the part
29 of the applicant;

30 (3) The applicant is financially responsible and will conduct the
31 delayed deposit services business pursuant to the Delayed Deposit

1 Services Licensing Act; and

2 (4) The applicant has assets of at least fifty ~~twenty-five~~ thousand
3 dollars available for operating the delayed deposit services business.

4 Sec. 8. Section 45-911, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 45-911 A licensee may surrender a delayed deposit services business
7 license by delivering to the director written notice that the license is
8 surrendered. The ~~department~~ Department of Banking and Finance may issue a
9 notice of cancellation of the license following such surrender in lieu of
10 revocation proceedings. The surrender shall not affect the licensee's
11 civil or criminal liability for acts committed prior to such surrender,
12 affect the liability for any fines which may be levied against the
13 licensee or any of its officers, directors, shareholders, partners, or
14 members for acts committed before the surrender, affect the liability of
15 the surety on the bond, or entitle such licensee to a return of any part
16 of the annual license fee or fees. The director may establish procedures
17 for the disposition of the books, accounts, and records of the licensee
18 and may require such action as he or she deems necessary for the
19 protection of borrowers and borrowers' instruments that ~~the makers of~~
20 ~~checks which~~ are outstanding at the time of surrender of the license.

21 Sec. 9. Section 45-915, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 45-915 (1) Except as provided in subsection (2) of this section, a
24 licensee may operate ~~offer~~ a delayed deposit services business only at an
25 office designated as its principal place of business in the application.
26 A licensee may change the location of its designated principal place of
27 business with the prior written approval of the director. The director
28 may establish forms and procedures for determining whether the change of
29 location should be approved.

30 (2) A licensee may operate branch offices only in the same county in
31 which the licensee's designated principal place of business is located.

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

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

9 Sec. 10. Section 45-915.01, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 45-915.01 (1) Each licensee shall keep or make available the books
12 and records relating to transactions made under the Delayed Deposit
13 Services Licensing Act as are necessary to enable the department to
14 determine whether the licensee is complying with the act. The books and
15 records shall be maintained in a manner consistent with accepted
16 accounting practices.

17 (2) A licensee shall, at a minimum, include in its books and records
18 copies of all application materials relating to borrowers ~~makers~~,
19 disclosure agreements, instruments ~~checks~~, payment receipts, and proofs
20 of compliance required by section 45-919.

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

26 (4) The licensee shall maintain its books, accounts, and records,
27 whether in physical or electronic form, at its designated principal place
28 of business, except that books, accounts, and records which are older
29 than two years may be maintained at any other place within this state as
30 long as such records are available for inspection by the department
31 ~~Department of Banking and Finance~~.

1 Sec. 11. Section 45-917, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 45-917 ~~(1) Every licensee shall, at the time any delayed deposit~~
4 ~~services transaction is made, give to the maker of the check, or if there~~
5 ~~are two or more makers, to one of them, a notice written in plain English~~
6 ~~disclosing:~~

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

8 ~~(b) The date on which the check will be deposited or presented for~~
9 ~~negotiation; and~~

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

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

19 Each delayed deposit loan transaction shall be documented by a
20 written agreement signed by both the licensee and the borrower. Every
21 licensee shall, at the time any delayed deposit loan transaction is made,
22 give to the borrower or, if there are two or more borrowers, to one of
23 them, such written agreement in plain English disclosing:

24 (1) The name of the borrower, transaction date, and loan amount;

25 (2) The schedule of payments, total repayment, and loan duration;

26 (3) The total loan charges, expressed both as a dollar amount and an
27 annual percentage rate;

28 (4) The date on which the instrument will be deposited or presented
29 for negotiation;

30 (5) Any allowable penalty upon default of the loan if the instrument
31 is not negotiable on the date agreed upon; and

1 (6) The following language, all capitalized and in at least ten-
2 point font:

3 1. THIS TYPE OF LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH
4 NEEDS.

5 2. THE LAW DOES NOT ALLOW THIS TYPE OF LOAN TO BE MORE THAN FIVE
6 HUNDRED DOLLARS (\$500) IN TOTAL, PLUS FEES AND CHARGES, FROM ONE LENDER.

7 3. YOU HAVE THE RIGHT TO RESCIND OR NOT TAKE OUT THIS LOAN IF YOU DO
8 SO BY THE NEXT BUSINESS DAY AT 5 P.M.

9 4. YOU HAVE THE RIGHT TO REVOKE OR REMOVE YOUR AUTHORIZATION FOR
10 ELECTRONIC PAYMENT.

11 Sec. 12. Every licensee shall conspicuously display a schedule of
12 all finance charges, fees, interest, other charges, and penalties for all
13 services provided by the licensee. Such notice shall be posted at every
14 office of the licensee.

15 Sec. 13. Section 45-918, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 45-918 No licensee shall charge as a fee a total amount in excess
18 of fifteen dollars per one hundred dollars or pro rata for any part
19 thereof on the face amount of a check for services provided by licensee.

20 (1) Delayed deposit loans shall be precomputed loans, payable in
21 substantially equal installments of principal, fees, interest, and
22 charges combined. For purposes of this subsection, precomputed loan means
23 a loan in which the debt is a sum comprising the principal amount and the
24 amount of fees, interest, and charges computed in advance on the
25 assumption that all scheduled payments will be made when due.

26 (2) The total monthly payment shall not exceed the greater of five
27 percent of a borrower's verified gross, pretax monthly income or six
28 percent of the borrower's verified net, posttax monthly income.

29 (3) Before initiating a delayed deposit loan transaction, a licensee
30 shall make a reasonable determination of the borrower's verified income,
31 which shall include obtaining from the borrower one or more recent pay

1 stubs or other written evidence of recurring income such as bank
2 statements. Such evidence shall include at least one document that, when
3 presented, is dated not more than forty-five days prior to the initiation
4 of the delayed deposit loan transaction. If a licensee obtains a bank
5 statement from a borrower, the licensee shall allow the borrower to
6 redact information other than the evidence of salary or wages.

7 (4) The department may provide additional guidance or may adopt and
8 promulgate rules and regulation regarding the verification of income.

9 Sec. 14. (1) Licensees may charge, collect, and receive only the
10 following fees and charges in connection with a delayed deposit loan:

11 (a) Interest of no more than thirty-six percent per annum;

12 (b) A monthly maintenance fee of the lessor of five percent of the
13 original contracted loan amount or twenty dollars, which fees shall not
14 be added to the original contracted loan for purposes of calculating
15 interest. The fees set forth in this subdivision shall not be charged to
16 individuals on active duty military or their spouses or dependents; and

17 (c) Charges permitted for the presentation of nonnegotiable
18 instruments under section 15 of this act.

19 (2) Notwithstanding any provision of the Delayed Deposit Services
20 Licensing Act to the contrary, a licensee shall not charge, collect, or
21 receive in connection with a delayed deposit loan a total amount of fees,
22 interest, and charges that exceeds fifty percent of the original loan
23 amount. All charges made in connection with the delayed deposit loan
24 shall be included in the total loan charge except charges permitted for
25 the presentation of nonnegotiable instruments under section 15 of this
26 act.

27 (3) No licensee shall charge, collect, or receive any finance
28 charges, fees, interest, or similar charges for loan brokerage,
29 insurance, or any other ancillary products. No licensee or any other
30 person, including a person operating as a credit services organization,
31 shall charge, collect, or receive any finance charges, fees, interest, or

1 similar charges that would cause a borrower to pay an amount in excess of
2 or in addition to those permitted under the Delayed Deposit Services
3 Licensing Act in connection with a delayed deposit loan, including, but
4 not limited to, charges for loan brokerage, insurance, or any other
5 ancillary products.

6 Sec. 15. If an instrument held by a licensee as a result of a
7 delayed deposit loan is returned unpaid to the licensee from a payor
8 financial institution due to insufficient funds, a closed account, a
9 stop-payment order, or any other reason, not including a bank error, the
10 licensee shall have the right to exercise all civil means authorized by
11 law to collect the face value of the instrument. In addition, the
12 licensee may contract for and collect one returned instrument charge for
13 each delayed deposit loan, not to exceed fifteen dollars, plus court
14 costs and reasonable attorney's fees as awarded by a court and incurred
15 as a result of the default. However, such attorney's fees shall not
16 exceed the loan amount. The licensee shall not collect any other fees as
17 a result of default. A returned instrument charge shall not be allowed
18 if, due to forgery or theft, the loan proceeds instrument is dishonored
19 by the financial institution.

20 Sec. 16. (1) A licensee shall accept prepayment from a borrower
21 prior to the loan due date without charging the borrower a penalty of any
22 kind.

23 (2) Upon prepayment in full by a borrower prior to the maturity of
24 the loan term, the licensee shall promptly refund to the borrower a
25 prorated portion of all interest and fees. The prorated rebate shall be
26 based on the ratio of the number of days the delayed deposit loan was
27 outstanding and the number of days for which the delayed deposit loan was
28 originally contracted.

29 (3) Monthly fees shall not be considered fully earned at the
30 beginning of a month.

31 Sec. 17. A licensee shall not lend an amount greater than five

1 hundred dollars, plus allowable fees and interest, to any borrower.

2 Sec. 18. (1) A borrower shall have the right to rescind a delayed
3 deposit loan on or before 5 p.m. the next business day following the
4 delayed deposit loan transaction.

5 (2) Prior to the licensee negotiating or presenting the instrument,
6 the borrower shall have the right to redeem any instrument held by a
7 licensee as a result of a delayed deposit loan if the borrower pays the
8 full loan amount to the licensee.

9 Sec. 19. (1) Deferred presentment of an instrument by a licensee
10 shall be permitted only for instruments with an amount of five hundred
11 dollars or less, plus allowable fees and interest.

12 (2) A licensee may pay the proceeds from a delayed deposit loan or
13 rebate to the borrower in the form of a check, money order, cash, stored
14 value card, internet transfer, or authorized automated clearinghouse
15 transaction. The borrower shall not be charged an additional finance
16 charge or fee for cashing the licensee's check or for negotiating forms
17 of loan proceeds or rebates other than cash.

18 (3) A licensee may utilize electronic payment through transfer or
19 withdrawal of funds from the borrower's account only, but only with the
20 written authorization of the borrower.

21 Sec. 20. Section 45-919, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 45-919 (1) No licensee shall:

24 (a) Enter into more than one delayed deposit loan with the same
25 borrower at any one time ~~At any one time hold from any one maker more~~
26 ~~than two checks;~~

27 (b) At any one time hold from any one borrower an instrument or
28 instruments in an aggregate maker a check or checks in an aggregate face
29 amount of more than five hundred dollars, plus allowable fees and
30 interest;

31 (c) Negotiate or present an instrument for payment unless the

1 ~~instrument is endorsed with the actual business name of the licensee Hold~~
2 ~~or agree to hold a check for more than thirty-four days. A check which is~~
3 ~~in the process of collection for the reason that it was not negotiable on~~
4 ~~the day agreed upon shall not be deemed as being held in excess of the~~
5 ~~thirty-four-day period;~~

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

9 (e) Accept an instrument ~~a check~~ as repayment, refinancing, or any
10 other consolidation of an instrument or instruments ~~a check or checks~~
11 held by the same licensee;

12 (f) Renew, roll over, defer, or in any way extend the term or
13 duration of a delayed deposit loan transaction by allowing the borrower
14 ~~maker~~ to pay less than the total amount of the instrument ~~check~~ and any
15 authorized fees or charges, except that a licensee may hold an instrument
16 and delay completion of a delayed deposit loan beyond the loan due date
17 without any additional written agreement or new disclosure, but the
18 licensee shall not charge any additional charges or fees for holding the
19 instrument or delaying the completion of the transaction .—This
20 ~~subdivision shall not prevent a licensee that agreed to hold a check for~~
21 ~~less than thirty-four days from agreeing to hold the check for an~~
22 ~~additional period of time no greater than the thirty-four days it would~~
23 ~~have originally been able to hold the check if (i) the extension is at~~
24 ~~the request of the maker, (ii) no additional fees are charged for the~~
25 ~~extension, and (iii) the delayed deposit transaction is completed as~~
26 ~~required by subdivision (1)(c) of this section. The licensee shall retain~~
27 ~~written or electronic proof of compliance with this subdivision. If a~~
28 ~~licensee fails, or is unable, to provide such proof to the department~~
29 ~~upon request, there shall be a rebuttable presumption that a violation of~~
30 ~~this subdivision has occurred and the department may pursue any remedies~~
31 ~~or actions available to it under the Delayed Deposit Services Licensing~~

1 Act; ~~or~~

2 (g) Enter into another delayed deposit transaction with the same
3 borrower ~~maker~~ on the same business day as the completion of a delayed
4 deposit transaction unless prior to entering into the transaction the
5 borrower ~~maker~~ and the licensee verify on a form prescribed by the
6 department that completion of the prior delayed deposit transaction has
7 occurred. The licensee shall retain written proof of compliance with this
8 subdivision. If a licensee fails, or is unable, to provide such proof to
9 the department upon request, there shall be a rebuttable presumption that
10 a violation of this subdivision has occurred and the department may
11 pursue any remedies or actions available to it under the Delayed Deposit
12 Services Licensing Act; ~~or act.~~

13 (h) Engage, in connection with a delayed deposit loan, in unfair or
14 deceptive practices or advertising under the Uniform Deceptive Trade
15 Practices Act. It shall be a violation of this subdivision for a person
16 to engage in any act that limits or restricts the application of the
17 Delayed Deposit Services Licensing Act, including, but not limited to,
18 making loans disguised as personal property, personal sales, or leaseback
19 transactions, or to disguise loan proceeds as cash rebated for the
20 pretextual installment sale of goods and services.

21 (2) For purposes of this section, (a) completion of a delayed
22 deposit transaction means the licensee has presented a borrower's
23 instrument ~~maker's check~~ for payment to a financial institution as
24 ~~defined in section 8-101~~ or the borrower ~~maker~~ redeemed the instrument
25 ~~check~~ by paying the full amount of the instrument ~~check~~ in cash to the
26 licensee and (b) licensee includes ~~shall include~~ (i) a person related to
27 the licensee by common ownership or control, (ii) a person in whom such
28 licensee has any financial interest of ten percent or more, or (iii) any
29 employee or agent of the licensee.

30 Sec. 21. Section 45-921, Reissue Revised Statutes of Nebraska, is
31 amended to read:

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

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

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

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

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

27 (6) If the director finds, after notice and opportunity for hearing
28 in accordance with the Administrative Procedure Act, that any person has
29 violated subsection (5) of this section, the director may order such
30 person to pay (a) an administrative fine of not more than two ~~one~~
31 thousand dollars for each separate violation and (b) the costs of

1 investigation. The department shall remit fines collected under this
2 subsection to the State Treasurer for distribution in accordance with
3 Article VII, section 5, of the Constitution of Nebraska All fines
4 ~~collected by the department pursuant to this subsection shall be remitted~~
5 ~~to the State Treasurer for credit to the permanent school fund.~~

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

18 Sec. 22. Section 45-922, Reissue Revised Statutes of Nebraska, is
19 amended to read:

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

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

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

30 (c) A licensee has abandoned its place of business for a period of
31 thirty days or more;

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

11 (e) A licensee has knowingly violated a voluntary consent or
12 compliance agreement which had been entered into with the director.

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

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

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

23 (4) Revocation, suspension, cancellation, or expiration of a license
24 shall not impair or affect the obligation of a preexisting lawful
25 contract between the licensee and any person, including a maker of an
26 instrument ~~a check~~.

27 (5) Revocation, suspension, cancellation, or expiration of a license
28 shall not affect civil or criminal liability for acts committed before
29 the revocation, suspension, cancellation, or expiration or liability for
30 fines levied against the licensee or any of its officers, directors,
31 shareholders, partners, or members, pursuant to section 45-925, for acts

1 committed before the revocation, suspension, cancellation, or expiration.

2 Sec. 23. Section 45-923, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 45-923 If the director believes that any person has engaged in or is
5 about to engage in any act or practice constituting a violation of the
6 Delayed Deposit Services Licensing Act or any rule, regulation, or order
7 of the director, the director may issue a cease and desist order in order
8 to prohibit the making of additional delayed deposit loans by the
9 licensee.

10 Upon entry of a cease and desist order, the director shall promptly
11 notify in writing all persons to whom the order is directed that it has
12 been entered and of the reasons for the order. Any person to whom the
13 order is directed may in writing request a hearing within fifteen
14 business days after the date of the issuance of the order. Upon receipt
15 of such written request, the matter shall be set for hearing within
16 thirty business days after receipt by the director, unless the parties
17 consent to a later date or the hearing officer sets a later date for good
18 cause. If a hearing is not requested within fifteen business days and
19 none is ordered by the director, the order of the director shall
20 automatically become final and shall remain in effect until modified or
21 vacated by the director. If a hearing is requested or ordered, the
22 director, after notice and hearing, shall issue his or her written
23 findings of fact and conclusions of law and may affirm, vacate, or modify
24 the order.

25 The director may vacate or modify an order if he or she finds that
26 the conditions which caused its entry have changed or that it is
27 otherwise in the public interest to do so. Any person aggrieved by a
28 final order of the director may appeal the order, and the appeal shall be
29 in accordance with the Administrative Procedure Act.

30 Sec. 24. Section 45-925, Reissue Revised Statutes of Nebraska, is
31 amended to read:

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

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

22 Sec. 25. (1) Licensees shall, on an annual basis, provide the
23 following information to the director, in a uniform manner prescribed by
24 the department: Total number of borrowers; total number of loans; average
25 loan size; total contracted loan charges; total loan actual charges;
26 number of defaulted loans; number of charged-off loans; dollar value of
27 loans charged off; number of nonnegotiable instrument fees and dollar
28 value for the same; average contracted annual percentage rate; and any
29 other nonprivate information which may be requested in the discretion of
30 the director.

31 (2) The department shall compile the total number of licensees

1 operating in this state by location and the information required in
2 subsection (1) of this section regarding the lending activities of
3 licensees and borrowers under the Delayed Deposit Services Licensing Act
4 and shall report electronically to the Banking, Commerce and Insurance
5 Committee of the Legislature on or before December 1, 2018, and annually
6 thereafter.

7 Sec. 26. The written loan agreement for a delayed deposit loan may
8 provide that the entire unpaid loan balance, at the option of the
9 licensee, becomes due and payable after the delayed deposit loan has been
10 in default for ten days and written notice has been provided to the
11 borrower. Upon such acceleration, the licensee shall not be entitled to
12 judgment for unearned interest, but the balance owing shall be computed
13 as if the borrower had made a voluntary prepayment as of the date of
14 acceleration.

15 Sec. 27. (1) At least three days prior to a licensee's attempt to
16 collect upon a borrower's account, a licensee shall provide a written
17 notice to the borrower regarding the collection attempt. The written
18 notice shall include information on the amount sought to be collected,
19 the number of days payment is overdue, the date collection will be
20 attempted, and the methods by which the borrower may avoid or remedy the
21 collection attempt.

22 (2) A licensee shall not attempt to deposit or negotiate an
23 instrument after two consecutive failed collection attempts unless the
24 licensee has obtained a new, written payment authorization from the
25 borrower.

26 Sec. 28. Section 45-1001, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 45-1001 Sections 45-1001 to 45-1069 and section 29 of this act shall
29 be known and may be cited as the Nebraska Installment Loan Act.

30 Sec. 29. Notwithstanding any other provision of law, the minimum
31 term of a loan contract for any loan governed by the Nebraska Installment

1 Loan Act shall be six months from the loan transaction date.

2 Sec. 30. This act becomes operative on January 1, 2017.

3 Sec. 31. Original sections 45-804, 45-902, 45-904, 45-906, 45-907,
4 45-908, 45-911, 45-915, 45-915.01, 45-917, 45-918, 45-919, 45-921,
5 45-922, 45-923, 45-925, and 45-1001, Reissue Revised Statutes of
6 Nebraska, and section 45-901, Revised Statutes Cumulative Supplement,
7 2014, are repealed.