

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 194

Introduced by Vargas, 7; Linehan, 39.

Read first time January 10, 2017

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 sections 45-901, 45-910, and 45-927, Revised Statutes Cumulative
6 Supplement, 2016; to change provisions of the Credit Services
7 Organization Act, the Delayed Deposit Services Licensing Act, and
8 the Nebraska Installment Loan Act; to define and redefine terms; to
9 harmonize provisions; to provide an operative date; and to repeal
10 the original sections.

11 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 2016, is amended to read:

17 45-901 Sections 45-901 to 45-930 and sections 13, 15, 16, 17, 18,
18 19, 20, 26, 27, and 28 of this act shall be known and may be cited as the
19 Delayed Deposit 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 operative 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 16 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
5 Deposit 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 operative 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 45-910, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 45-910 (1) A license issued pursuant to the Delayed Deposit Services
7 Licensing Act shall be conspicuously posted at the licensee's place of
8 business.

9 (2) All licenses shall remain in effect until the next succeeding
10 May 1, unless earlier canceled, suspended, or revoked by the director
11 pursuant to section 45-922 or surrendered by the licensee pursuant to
12 section 45-911.

13 (3) Licenses may be renewed annually by filing with the director (a)
14 a renewal fee consisting of five hundred fifty dollars for the main
15 office location and five hundred fifty dollars for each branch office
16 location and (b) an application for renewal containing such information
17 as the director may require to indicate any material change in the
18 information contained in the original application or succeeding renewal
19 applications.

20 Sec. 9. Section 45-911, Reissue Revised Statutes of Nebraska, is
21 amended to read:

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

1 of the annual license fee or fees. The director may establish procedures
2 for the disposition of the books, accounts, and records of the licensee
3 and may require such action as he or she deems necessary for the
4 protection of borrowers and borrowers' instruments that the makers of
5 checks which are outstanding at the time of surrender of the license.

6 Sec. 10. Section 45-915, Reissue Revised Statutes of Nebraska, is
7 amended to read:

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

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

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

25 Sec. 11. Section 45-915.01, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 45-915.01 (1) Each licensee shall keep or make available the books
28 and records relating to transactions made under the Delayed Deposit
29 Services Licensing Act as are necessary to enable the department to
30 determine whether the licensee is complying with the act. The books and
31 records shall be maintained in a manner consistent with accepted

1 accounting practices.

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

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

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

17 Sec. 12. Section 45-917, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 45-917 ~~(1) Every licensee shall, at the time any delayed deposit~~
20 ~~services transaction is made, give to the maker of the check, or if there~~
21 ~~are two or more makers, to one of them, a notice written in plain English~~
22 ~~disclosing:~~

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

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

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

31 ~~(2) In addition to the notice required by subsection (1) of this~~

1 ~~section, every licensee shall conspicuously display a schedule of all~~
2 ~~fees, charges, and penalties for all services provided by the licensee.~~
3 ~~Such notice shall be posted at every office of the licensee.~~

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

9 (1) The name of the borrower, transaction date, and loan amount;
10 (2) The schedule of payments, total repayment, and loan duration;
11 (3) The total loan charges, expressed both as a dollar amount and an
12 annual percentage rate;

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

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

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

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

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

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

25 4. YOU HAVE THE RIGHT TO REVOKE OR REMOVE YOUR AUTHORIZATION FOR
26 ELECTRONIC PAYMENT.

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

31 Sec. 14. Section 45-918, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 ~~45-918 No licensee shall charge as a fee a total amount in excess~~
3 ~~of fifteen dollars per one hundred dollars or pro rata for any part~~
4 ~~thereof on the face amount of a check for services provided by licensee.~~

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

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

14 (3) Before initiating a delayed deposit loan transaction, a licensee
15 shall make a reasonable determination of the borrower's verified income,
16 which shall include obtaining from the borrower one or more recent pay
17 stubs or other written evidence of recurring income such as bank
18 statements. Such evidence shall include at least one document that, when
19 presented, is dated not more than forty-five days prior to the initiation
20 of the delayed deposit loan transaction. If a licensee obtains a bank
21 statement from a borrower, the licensee shall allow the borrower to
22 redact information other than the evidence of salary or wages.

23 (4) The department may provide additional guidance or may adopt and
24 promulgate rules and regulations regarding the verification of income.

25 Sec. 15. (1) Licensees may charge, collect, and receive only the
26 following fees and charges in connection with a delayed deposit loan:

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

28 (b) A monthly maintenance fee of the lessor of five percent of the
29 original contracted loan amount or twenty dollars, which fees shall not
30 be added to the original contracted loan for purposes of calculating
31 interest. The fees set forth in this subdivision shall not be charged to

1 individuals on active duty military or their spouses or dependents; and

2 (c) Charges permitted for the presentation of nonnegotiable
3 instruments under section 16 of this act.

4 (2) Notwithstanding any provision of the Delayed Deposit Services
5 Licensing Act to the contrary, a licensee shall not charge, collect, or
6 receive in connection with a delayed deposit loan a total amount of fees,
7 interest, and charges that exceeds fifty percent of the original loan
8 amount. All charges made in connection with the delayed deposit loan
9 shall be included in the total loan charge except charges permitted for
10 the presentation of nonnegotiable instruments under section 16 of this
11 act.

12 (3) No licensee shall charge, collect, or receive any finance
13 charges, fees, interest, or similar charges for loan brokerage,
14 insurance, or any other ancillary products. No licensee or any other
15 person, including a person operating as a credit services organization,
16 shall charge, collect, or receive any finance charges, fees, interest, or
17 similar charges that would cause a borrower to pay an amount in excess of
18 or in addition to those permitted under the Delayed Deposit Services
19 Licensing Act in connection with a delayed deposit loan, including, but
20 not limited to, charges for loan brokerage, insurance, or any other
21 ancillary products.

22 Sec. 16. If an instrument held by a licensee as a result of a
23 delayed deposit loan is returned unpaid to the licensee from a payor
24 financial institution due to insufficient funds, a closed account, a
25 stop-payment order, or any other reason, not including a bank error, the
26 licensee shall have the right to exercise all civil means authorized by
27 law to collect the face value of the instrument. In addition, the
28 licensee may contract for and collect one returned instrument charge for
29 each delayed deposit loan, not to exceed fifteen dollars, plus court
30 costs and reasonable attorney's fees as awarded by a court and incurred
31 as a result of the default. However, such attorney's fees shall not

1 exceed the loan amount. The licensee shall not collect any other fees as
2 a result of default. A returned instrument charge shall not be allowed
3 if, due to forgery or theft, the loan proceeds instrument is dishonored
4 by the financial institution.

5 Sec. 17. (1) A licensee shall accept prepayment from a borrower
6 prior to the loan due date without charging the borrower a penalty of any
7 kind.

8 (2) Upon prepayment in full by a borrower prior to the maturity of
9 the loan term, the licensee shall promptly refund to the borrower a
10 prorated portion of all interest and fees. The prorated rebate shall be
11 based on the ratio of the number of days the delayed deposit loan was
12 outstanding and the number of days for which the delayed deposit loan was
13 originally contracted.

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

16 Sec. 18. A licensee shall not lend an amount greater than five
17 hundred dollars, plus allowable fees and interest, to any borrower.

18 Sec. 19. (1) A borrower shall have the right to rescind a delayed
19 deposit loan on or before 5 p.m. the next business day following the
20 delayed deposit loan transaction.

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

25 Sec. 20. (1) Deferred presentment of an instrument by a licensee
26 shall be permitted only for instruments with an amount of five hundred
27 dollars or less, plus allowable fees and interest.

28 (2) A licensee may pay the proceeds from a delayed deposit loan or
29 rebate to the borrower in the form of a check, money order, cash, stored
30 value card, internet transfer, or authorized automated clearinghouse
31 transaction. The borrower shall not be charged an additional finance

1 charge or fee for cashing the licensee's check or for negotiating forms
2 of loan proceeds or rebates other than cash.

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

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

8 45-919 (1) No licensee shall:

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

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

16 (c) Negotiate or present an instrument for payment unless the
17 instrument is endorsed with the actual business name of the licensee ~~Hold~~
18 ~~or agree to hold a check for more than thirty-four days. A check which is~~
19 ~~in the process of collection for the reason that it was not negotiable on~~
20 ~~the day agreed upon shall not be deemed as being held in excess of the~~
21 ~~thirty-four-day period;~~

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

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

28 (f) Renew, roll over, defer, or in any way extend the term or
29 duration of a delayed deposit loan transaction by allowing the borrower
30 ~~maker~~ to pay less than the total amount of the instrument ~~check~~ and any
31 authorized fees or charges, except that a licensee may hold an instrument

1 and delay completion of a delayed deposit loan beyond the loan due date
2 without any additional written agreement or new disclosure, but the
3 licensee shall not charge any additional charges or fees for holding the
4 instrument or delaying the completion of the transaction; .—This
5 subdivision shall not prevent a licensee that agreed to hold a check for
6 less than thirty-four days from agreeing to hold the check for an
7 additional period of time no greater than the thirty-four days it would
8 have originally been able to hold the check if (i) the extension is at
9 the request of the maker, (ii) no additional fees are charged for the
10 extension, and (iii) the delayed deposit transaction is completed as
11 required by subdivision (1)(c) of this section. The licensee shall retain
12 written or electronic proof of compliance with this subdivision. If a
13 licensee fails, or is unable, to provide such proof to the department
14 upon request, there shall be a rebuttable presumption that a violation of
15 this subdivision has occurred and the department may pursue any remedies
16 or actions available to it under the Delayed Deposit Services Licensing
17 Act; or

18 (g) Enter into another delayed deposit transaction with the same
19 borrower maker on the same business day as the completion of a delayed
20 deposit transaction unless prior to entering into the transaction the
21 borrower maker and the licensee verify on a form prescribed by the
22 department that completion of the prior delayed deposit transaction has
23 occurred. The licensee shall retain written proof of compliance with this
24 subdivision. If a licensee fails, or is unable, to provide such proof to
25 the department upon request, there shall be a rebuttable presumption that
26 a violation of this subdivision has occurred and the department may
27 pursue any remedies or actions available to it under the Delayed Deposit
28 Services Licensing Act; or act.

29 (h) Engage, in connection with a delayed deposit loan, in unfair or
30 deceptive practices or advertising under the Uniform Deceptive Trade
31 Practices Act. It shall be a violation of this subdivision for a person

1 to engage in any act that limits or restricts the application of the
2 Delayed Deposit Services Licensing Act, including, but not limited to,
3 making loans disguised as personal property, personal sales, or leaseback
4 transactions, or to disguise loan proceeds as cash rebated for the
5 pretextual installment sale of goods and services.

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

15 Sec. 22. Section 45-921, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 45-921 (1) The director may examine or investigate complaints about
18 or reports of alleged violations of the Delayed Deposit Services
19 Licensing Act or any rule, regulation, or order of the director
20 thereunder. The director may order the actual cost of such examination or
21 investigation to be paid by the person who is the subject of the
22 examination or investigation, whether the alleged violator is licensed or
23 not.

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

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

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

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

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

22 (7) If a person fails to pay an administrative fine and the costs of
23 investigation ordered pursuant to subsection (6) of this section, a lien
24 in the amount of such fine and costs may be imposed upon all assets and
25 property of such person in this state and may be recovered in a civil
26 action by the director. The lien shall attach to the real property of
27 such person when notice of the lien is filed and indexed against the real
28 property in the office of the register of deeds in the county where the
29 real property is located. The lien shall attach to any other property of
30 such person when notice of the lien is filed against the property in the
31 manner prescribed by law. Failure of the person to pay such fine and

1 costs shall constitute a separate violation of the Delayed Deposit
2 Services Licensing Act.

3 Sec. 23. Section 45-922, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 45-922 (1) The director may, following a hearing in accordance with
6 the Administrative Procedure Act, suspend or revoke any license issued
7 pursuant to the Delayed Deposit Services Licensing Act if he or she
8 finds:

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

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

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

17 (d) A licensee or any of its officers, directors, partners, or
18 members has knowingly subscribed to, made, or caused to be made any false
19 statement or false entry in the books and records of any licensee, has
20 knowingly subscribed to or exhibited false papers with the intent to
21 deceive the department ~~Department of Banking and Finance~~, has failed to
22 make a true and correct entry in the books and records of such licensee
23 of its business and transactions in the manner and form prescribed by the
24 department, or has mutilated, altered, destroyed, secreted, or removed
25 any of the books or records of such licensee without the written approval
26 of the department or as provided in section 45-925; or

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

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

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

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

8 (4) Revocation, suspension, cancellation, or expiration of a license
9 shall not impair or affect the obligation of a preexisting lawful
10 contract between the licensee and any person, including a borrower ~~maker~~
11 ~~of a check~~.

12 (5) Revocation, suspension, cancellation, or expiration of a license
13 shall not affect civil or criminal liability for acts committed before
14 the revocation, suspension, cancellation, or expiration or liability for
15 fines levied against the licensee or any of its officers, directors,
16 shareholders, partners, or members, pursuant to section 45-925, for acts
17 committed before the revocation, suspension, cancellation, or expiration.

18 Sec. 24. Section 45-923, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 45-923 If the director believes that any person has engaged in or is
21 about to engage in any act or practice constituting a violation of the
22 Delayed Deposit Services Licensing Act or any rule, regulation, or order
23 of the director, the director may issue a cease and desist order in order
24 to prohibit the making of additional delayed deposit loans by the
25 licensee.

26 Upon entry of a cease and desist order the director shall promptly
27 notify in writing all persons to whom the order is directed that it has
28 been entered and of the reasons for the order. Any person to whom the
29 order is directed may in writing request a hearing within fifteen
30 business days after the date of the issuance of the order. Upon receipt
31 of such written request, the matter shall be set for hearing within

1 thirty business days after receipt by the director, unless the parties
2 consent to a later date or the hearing officer sets a later date for good
3 cause. If a hearing is not requested within fifteen business days and
4 none is ordered by the director, the order of the director shall
5 automatically become final and shall remain in effect until modified or
6 vacated by the director. If a hearing is requested or ordered, the
7 director, after notice and hearing, shall issue his or her written
8 findings of fact and conclusions of law and may affirm, vacate, or modify
9 the order.

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

15 Sec. 25. Section 45-925, Reissue Revised Statutes of Nebraska, is
16 amended to read:

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

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

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

7 Sec. 26. (1) Licensees shall, on an annual basis, provide the
8 following information to the director, in a uniform manner prescribed by
9 the department: Total number of borrowers; total number of loans; average
10 loan size; total contracted loan charges; total loan actual charges;
11 number of defaulted loans; number of charged-off loans; dollar value of
12 loans charged off; number of nonnegotiable instrument fees and dollar
13 value for the same; average contracted annual percentage rate; and any
14 other nonprivate information which may be requested in the discretion of
15 the director.

16 (2) The department shall compile the total number of licensees
17 operating in this state by location and the information required in
18 subsection (1) of this section regarding the lending activities of
19 licensees and borrowers under the Delayed Deposit Services Licensing Act
20 and shall report electronically to the Banking, Commerce and Insurance
21 Committee of the Legislature on or before December 1, 2018, and annually
22 thereafter.

23 Sec. 27. The written loan agreement for a delayed deposit loan may
24 provide that the entire unpaid loan balance, at the option of the
25 licensee, becomes due and payable after the delayed deposit loan has been
26 in default for ten days and written notice has been provided to the
27 borrower. Upon such acceleration, the licensee shall not be entitled to
28 judgment for unearned interest, but the balance owing shall be computed
29 as if the borrower had made a voluntary prepayment as of the date of
30 acceleration.

31 Sec. 28. (1) At least three days prior to a licensee's attempt to

1 collect upon a borrower's account, a licensee shall provide a written
2 notice to the borrower regarding the collection attempt. The written
3 notice shall include information on the amount sought to be collected,
4 the number of days payment is overdue, the date collection will be
5 attempted, and the methods by which the borrower may avoid or remedy the
6 collection attempt.

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

11 Sec. 29. Section 45-927, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

13 45-927 (1) The director shall collect fees, charges, costs, and
14 fines under the Delayed Deposit Services Licensing Act and remit them to
15 the State Treasurer. Except as provided in subsection (2) of this
16 section, the State Treasurer shall credit the fees, charges, and costs to
17 the Financial Institution Assessment Cash Fund and distribute the fines
18 in accordance with Article VII, section 5, of the Constitution of
19 Nebraska.

20 (2) For fees collected pursuant to section 45-910, the State
21 Treasurer shall (a) credit one hundred fifty dollars of each renewal fee
22 for a main office to the Financial Institution Assessment Cash Fund and
23 four hundred ~~three hundred fifty~~ dollars of each renewal fee for a main
24 office to the Financial Literacy Cash Fund and (b) credit one hundred
25 dollars of each renewal fee for a branch office to the Financial
26 Institution Assessment Cash Fund and four hundred fifty dollars of each
27 renewal fee for a branch office to the Financial Literacy Cash Fund.

28 Sec. 30. Section 45-1001, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 45-1001 Sections 45-1001 to 45-1069 and section 31 of this act shall
31 be known and may be cited as the Nebraska Installment Loan Act.

1 Sec. 31. Notwithstanding any other provision of law, the minimum
2 term of a loan contract for any loan governed by the Nebraska Installment
3 Loan Act shall be six months from the loan transaction date.

4 Sec. 32. This act becomes operative on January 1, 2018.

5 Sec. 33. Original sections 45-804, 45-902, 45-904, 45-906, 45-907,
6 45-908, 45-911, 45-915, 45-915.01, 45-917, 45-918, 45-919, 45-921,
7 45-922, 45-923, 45-925, and 45-1001, Reissue Revised Statutes of
8 Nebraska, and sections 45-901, 45-910, and 45-927, Revised Statutes
9 Cumulative Supplement, 2016, are repealed.