

LEGISLATIVE BILL 194

Approved by the Governor April 19, 2018

Introduced by Vargas, 7; Linehan, 39; Albrecht, 17; Blood, 3; Pansing Brooks, 28.

A BILL FOR AN ACT relating to interest, loans, and debt; to amend sections 45-804, 45-904, 45-907, 45-911, 45-915.01, 45-917, 45-918, 45-921, 45-922, 45-923, and 45-1001, Reissue Revised Statutes of Nebraska, section 45-901, Revised Statutes Cumulative Supplement, 2016, and sections 45-902 and 45-919, Revised Statutes Supplement, 2017; to prohibit certain fees under the Credit Services Organization Act; to change provisions relating to the Delayed Deposit Services Licensing Act; to define and redefine terms; to change and add prohibited acts by licensees and their affiliates; to add and change provisions relating to notice, fees, collection of returned checks, prepayment, rescission of a delayed deposit transaction, payment of proceeds, distribution and amount of fines, and cease and desist orders; to provide for extended payment plans; to provide reporting duties for licensees and the Department of Banking and Finance; to provide for a minimum term for loans under the Nebraska Installment Loan Act; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

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

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

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

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

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

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

(5) Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization;

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

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

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

Sec. 2. Section 45-901, Revised Statutes Cumulative Supplement, 2016, is amended to read:

45-901 Sections 45-901 to 45-930 and sections 10, 11, 12, 13, 15, and 19 of this act shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Sec. 3. Section 45-902, Revised Statutes Supplement, 2017, is amended to read:

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

(1) Annual percentage rate means an annual percentage rate as determined under section 107 of the federal Truth in Lending Act, 15 U.S.C. 1606, as such section existed on January 1, 2018, and includes all fees, interest, and

charges contained in a delayed deposit service contract, except for charges permitted for the presentation of instruments that are not negotiable under subdivision (1)(a)(v) of section 45-917 or returned unpaid under section 10 of this act;

(2) (1) Check means any check, draft, or other instrument for the payment of money. Check also means an authorization to debit an account electronically;

(3) Default means a maker's failure to repay a delayed deposit transaction in compliance with the terms contained in a delayed deposit service agreement;

(4) (2) Delayed deposit services business means any person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check, whether express or implied;

(5) Department means the Department of Banking and Finance;

(6) (3) Director means the Director of Banking and Finance or his or her designee;

(7) (4) Financial institution has the same meaning as in section 8-101.03;

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

(9) Maker means an individual who receives the proceeds of a delayed deposit transaction; and

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

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

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

Sec. 5. Section 45-907, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

Sec. 6. Section 45-911, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 7. Section 45-915.01, Reissue Revised Statutes of Nebraska, is amended to read:

45-915.01 (1) Each licensee shall keep or make available the books and

records relating to transactions made under the Delayed Deposit Services Licensing Act as are necessary to enable the department to determine whether the licensee is complying with the act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

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

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

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

Sec. 8. Section 45-917, Reissue Revised Statutes of Nebraska, is amended to read:

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

(i) The name of the maker, transaction date, and transaction amount;

(ii) The payment due date and total payment due;

(iii) The total of fees on the transaction, expressed as both a dollar amount and an annual percentage rate;

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

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

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

(b) The notice required by this subsection shall include the following language, all capitalized and in at least ten-point font:

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

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

3. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION IF YOU DO SO BY THE NEXT BUSINESS DAY BEFORE 5 P.M.

4. YOU HAVE THE RIGHT TO RESCIND YOUR AUTHORIZATION FOR ELECTRONIC PAYMENT.

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

Sec. 9. Section 45-918, Reissue Revised Statutes of Nebraska, is amended to read:

45-918 (1) No licensee shall charge as a fee a total amount in excess of fifteen dollars per one hundred dollars or pro rata for any part thereof on the face amount of a check for services provided by the licensee.

(2) The fees set forth in this section shall not be charged to individuals on active duty military or their spouses or dependents in an amount that exceeds what is allowed under 10 U.S.C. 987, as such section existed on January 1, 2018.

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

Sec. 11. A licensee shall accept prepayment from a maker prior to the due date without charging the maker a penalty of any kind.

Sec. 12. (1) A maker shall have the right to rescind a delayed deposit transaction before 5 p.m. the next business day following the delayed deposit transaction.

(2) Prior to the licensee negotiating or presenting the check, the maker shall have the right to redeem any check held by a licensee as a result of a delayed deposit transaction if the maker pays the full amount to the licensee.

Sec. 13. (1) A licensee may pay the proceeds from a delayed deposit transaction or rebate to the maker in the form of check, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. Neither the licensee nor any affiliate of the licensee shall charge the maker an additional finance charge or fee for cashing the licensee's check or for negotiating forms of transaction proceeds or rebates other than

cash.

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

Sec. 14. Section 45-919, Revised Statutes Supplement, 2017, 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, an affiliate of the licensee, or any other person;

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

(f) Except as provided in section 15 of this act, renew 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 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 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; -

(h) Charge, collect, or receive any finance charges, fees, interest, or similar charges for loan brokerage, insurance, or any other ancillary products;

(i) Negotiate or present a paper check for payment unless the check is endorsed with the actual business name of the licensee;

(j) Engage, in connection with a delayed deposit transaction, in unfair or deceptive practices or advertising under the Uniform Deceptive Trade Practices Act to engage in any act that limits or restricts the application of the Delayed Deposit Services Licensing Act, including, but not limited to, making transactions disguised as personal property, personal sales, or leaseback transactions, or disguise transaction proceeds as cash rebated for the pretextual installment sale of goods and services; or

(k) Attempt to deposit or negotiate a check after two consecutive failed collection attempts unless the licensee has obtained a new, written payment authorization from the maker.

(2) No licensee, affiliate of a licensee, or any other person, including a person operating as a credit services organization, shall charge, collect, or receive any finance charges, fees, interest, or similar charges that would cause a maker to pay an amount in excess of or in addition to those permitted under the Delayed Deposit Services Licensing Act in connection with a delayed deposit transaction, including, but not limited to, charges for loan brokerage, insurance, or any other ancillary products.

(3) ~~(2)~~ For purposes of this section, (a) completion of a delayed deposit transaction means the licensee has presented a maker's check for payment to a financial institution as defined in section 8-101.03 or the maker redeemed the check by paying the full amount of the check in cash to the licensee 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. 15. (1) A maker who cannot pay back a delayed deposit transaction when it is due may elect once in any twelve-month period to repay the delayed deposit transaction to the licensee by means of an extended payment plan.

(2) To request an extended payment plan, the maker, before the due date of the outstanding delayed deposit transaction, must request the plan and sign an amendment to the delayed deposit agreement that reflects the new payment schedule and terms.

(3) The extended payment plan's terms must allow the maker, at no additional cost, to repay the outstanding delayed deposit transaction, including any fee due, in at least four equal payments that coincide with the maker's periodic pay dates.

(4) The maker may prepay an extended payment plan in full at any time

without penalty. The licensee shall not charge the maker any interest or additional fees during the term of the extended payment plan.

(5) If the maker fails to pay any extended payment plan installment when due, the maker shall be in default of the payment plan and the licensee immediately may accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.

Sec. 16. 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 two ~~one~~ thousand dollars for each separate violation and (b) the costs of investigation. 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 ~~All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.~~

(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. 17. Section 45-922, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

(3)(a) If a licensee fails to renew its license as required by section 45-910 and does not voluntarily surrender the license pursuant to section

45-911, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

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

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

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

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

45-923 If the director believes that any person has engaged in or is about to engage in any act or practice constituting a violation of the Delayed Deposit Services Licensing Act or any rule, regulation, or order of the director, the director may issue a cease and desist order and prohibit the making of additional delayed deposit transactions as part of such order.

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

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

Sec. 19. (1) Licensees shall, on an annual basis, provide the following information to the director, in a uniform manner prescribed by the department: Total number of makers; total number of transactions; average transaction size; total contracted transaction charges; total transaction actual charges; number of defaulted transactions; number of charged-off transactions; dollar value of transactions charged off; number of nonnegotiable check fees and dollar value for the same; average contracted annual percentage rate; and any other nonprivate information which may be requested in the discretion of the director.

(2) The department shall compile the total number of licensees operating in this state by location and the information required in subsection (1) of this section regarding the transaction activities of licensees and makers under the Delayed Deposit Services Licensing Act and shall report electronically to the Clerk of the Legislature on or before December 1, 2018, and annually thereafter.

Sec. 20. Section 45-1001, Reissue Revised Statutes of Nebraska, is amended to read:

45-1001 Sections 45-1001 to 45-1069 and section 21 of this act shall be known and may be cited as the Nebraska Installment Loan Act.

Sec. 21. Notwithstanding any other provision of law, the minimum term of a loan contract for any loan governed by the Nebraska Installment Loan Act shall be six months from the loan transaction date.

Sec. 22. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 23 of this act become operative on January 1, 2019. The other sections of this act become operative on their effective date.

Sec. 23. Original sections 45-804, 45-904, 45-907, 45-911, 45-915.01, 45-917, 45-918, 45-921, 45-922, 45-923, and 45-1001, Reissue Revised Statutes of Nebraska, section 45-901, Revised Statutes Cumulative Supplement, 2016, and sections 45-902 and 45-919, Revised Statutes Supplement, 2017, are repealed.