

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 265

Introduced by La Grone, 49.

Read first time January 15, 2019

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to finance; to amend sections 45-901 and
2 45-1001, Revised Statutes Cumulative Supplement, 2018; to adopt the
3 Unsecured Consumer Loan Licensing Act; to provide penalties; to
4 create a fund; to clarify licensing provisions under the Delayed
5 Deposit Services Licensing Act and the Nebraska Installment Loan
6 Act; to harmonize provisions; and to repeal the original sections.

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

1 Section 1. Sections 1 to 33 shall be known and may be cited as the
2 Unsecured Consumer Loan Licensing Act.

3 Sec. 2. For purposes of the Unsecured Consumer Loan Licensing Act:

4 (1) Annual percentage rate means an annual percentage rate as
5 determined under section 107 of the federal Truth in Lending Act, 15
6 U.S.C. 1606, as such section existed on January 1, 2019, and includes all
7 fees, interest, and charges contained in an unsecured consumer loan
8 contract, except for charges permitted for the presentation of
9 instruments that are not negotiable under subsection (1)(e) of section 19
10 of this act;

11 (2) Check means any check, draft, or other instrument for the
12 payment of money, including an authorization to debit an account
13 electronically;

14 (3) Default means a borrower's failure to repay an unsecured
15 consumer loan transaction in compliance with the terms contained in an
16 unsecured consumer loan agreement;

17 (4) Department means the Department of Banking and Finance;

18 (5) Director means the Director of Banking and Finance or his or her
19 designee;

20 (6) Financial institution has the same meaning as in section
21 8-101.03;

22 (7) Licensee means any person licensed under the Unsecured Consumer
23 Loan Licensing Act;

24 (8) Nationwide Mortgage Licensing System and Registry means a
25 licensing system developed and maintained by the Conference of State Bank
26 Supervisors and the American Association of Residential Mortgage
27 Regulators for the licensing and registration of mortgage loan
28 originators, mortgage bankers, installment loan companies, and other
29 state-regulated financial services entities and industries;

30 (9) Person means an individual, proprietorship, association, joint
31 venture, joint stock company, partnership, limited partnership, limited

1 liability company, business corporation, nonprofit corporation, or any
2 group of individuals however organized; and

3 (10) Unsecured consumer loan business means any person who offers a
4 loan: (a) With a principal loan amount no greater than one thousand
5 dollars with loan payments that shall not exceed nine percent gross
6 monthly income; (b) in which the lender holds the borrower's check or
7 checks for a specific period, or receives the borrower's written
8 authorization to debit the borrower's account, other than as a result of
9 default under an agreement, either express or implied, for a specific
10 period, before the lender (i) offers the check or checks for deposit or
11 presentment or (ii) exercises the authorization or authorizations to
12 debit the borrower's account; (c) that does not take a security interest
13 in any property of the borrower; and (d) which is payable according to
14 the agreement between the licensee and consumer.

15 Sec. 3. The Unsecured Consumer Loan Licensing Act shall not apply
16 to a financial institution organized under the laws of this state or the
17 laws of the United States.

18 Sec. 4. (1) No person shall operate an unsecured consumer loan
19 business in this state unless the person is licensed by the director as
20 provided in the Unsecured Consumer Loan Licensing Act. Any unsecured
21 consumer loan transaction that is made by a person who is required to be
22 licensed pursuant to the act but who is not licensed is void, and the
23 person making such unsecured consumer loan business transaction has no
24 right to collect, receive, or retain any principal, interest, fees, or
25 any other charges in connection with such unsecured consumer loan
26 transaction.

27 (2) Nothing in this section shall prevent a person licensed under
28 the Unsecured Consumer Loan Licensing Act from acquiring a license under
29 the Delayed Deposit Services Licensing Act or the Nebraska Installment
30 Loan Act.

31 Sec. 5. (1) An applicant for a license shall submit an application,

1 under oath, to the director on forms prescribed by the director. The
2 forms shall contain such information as the director may prescribe,
3 including, but not limited to:

4 (a) The applicant's financial condition;

5 (b) The qualifications and business history of the applicant and any
6 of the applicant's officers, directors, shareholders, partners, or
7 members;

8 (c) Whether the applicant or any of the applicant's officers,
9 directors, shareholders, partners, or members have ever been convicted of
10 any (i) misdemeanor involving any aspect of an unsecured consumer loan
11 business, or any business of a similar nature or (ii) felony;

12 (d) Whether the applicant or any of the applicant's officers,
13 directors, shareholders, partners, or members have ever been permanently
14 or temporarily enjoined by a court of competent jurisdiction from
15 engaging in or continuing any conduct or practice involving any aspect of
16 an unsecured consumer loan business, or any business of a similar nature;

17 (e) A description of the applicant's proposed method of doing
18 business; and

19 (f) If the applicant is an individual, the applicant's social
20 security number.

21 (2) The director shall cause a criminal history record information
22 check to be conducted of the applicant and any of the applicant's
23 officers, directors, shareholders, partners, or members. The direct cost
24 of the criminal history record information check shall be paid by the
25 applicant.

26 Sec. 6. (1) Licensees under the Unsecured Consumer Loan Licensing
27 Act are required to be licensed and registered through the Nationwide
28 Mortgage Licensing System and Registry. In order to carry out this
29 requirement, the department is authorized to participate in the
30 Nationwide Mortgage Licensing System and Registry. For this purpose, the
31 department may establish requirements as necessary by adopting and

1 promulgating rules and regulations or by order. The requirements may
2 include, but are not limited to:

3 (a) Background checks of applicants and licensees, including, but
4 not limited to:

5 (i) Checks of an applicant's or a licensee's criminal history
6 through fingerprint or other data bases, except that the department shall
7 not require the submission of fingerprints by (A) an executive officer or
8 director of an applicant or licensee which is either a publicly traded
9 company or a wholly owned subsidiary of a publicly traded company or (B)
10 an applicant or licensee who has previously submitted the fingerprints of
11 an executive officer or director directly to the Nationwide Mortgage
12 Licensing System and Registry and the Federal Bureau of Investigation;

13 (ii) Checks of civil or administrative records;

14 (iii) Checks of an applicant's or a licensee's credit history; or

15 (iv) Any other information as deemed necessary by the Nationwide
16 Mortgage Licensing System and Registry;

17 (b) The payment of fees to apply for or renew a license through the
18 Nationwide Mortgage Licensing System and Registry;

19 (c) The setting or resetting, as necessary, of renewal processing or
20 reporting dates;

21 (d) Information and reports pertaining to authorized delegates; and

22 (e) Amending or surrendering a license or any other such activities
23 as the director deems necessary for participation in the Nationwide
24 Mortgage Licensing System and Registry.

25 (2) In order to fulfill the purposes of the act, the department is
26 authorized to contract with the Nationwide Mortgage Licensing System and
27 Registry or any other entity designated by the Nationwide Mortgage
28 Licensing System and Registry to collect and maintain records and process
29 transaction fees or other fees related to licensees or other persons
30 subject to the Unsecured Consumer Loan Licensing Act. The department may
31 allow such system to collect licensing fees on behalf of the department

1 and allow such system to collect a processing fee for the services of the
2 system directly from each licensee or applicant for a license.

3 (3) The director is required to regularly report enforcement actions
4 and other relevant information to the Nationwide Mortgage Licensing
5 System and Registry.

6 (4) The director shall establish a process whereby applicants and
7 licensees may challenge information entered by the director into the
8 Nationwide Mortgage Licensing System and Registry.

9 (5) The department shall ensure that the Nationwide Mortgage
10 Licensing System and Registry adopts a privacy, data security, and breach
11 of security of the system notification policy. The director shall make
12 available upon written request a copy of the contract between the
13 department and the Nationwide Mortgage Licensing System and Registry
14 pertaining to the provisions of the breach of security system.

15 (6) The department shall upon written request provide the most
16 recently available audited financial report of the Nationwide Mortgage
17 Licensing System and Registry.

18 Sec. 7. The application required by section 5 of this act shall be
19 accompanied by:

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

21 (2) A surety bond in the amount of fifty thousand dollars to be
22 executed by the licensee and a surety company authorized to do business
23 in Nebraska and approved by the director conditioned for the faithful
24 performance by the licensee of the duties and obligations pertaining to
25 the unsecured consumer loan business so licensed and the prompt payment
26 of any judgment recovered against the licensee. The bond or a substitute
27 bond shall remain in effect during all periods of licensing or the
28 licensee shall immediately cease doing business and its license shall be
29 surrendered to or canceled by the department. A surety may cancel a bond
30 only upon thirty days' written notice to the director.

31 (3) The director may at any time require the filing of a new or

1 supplemental bond in the form as provided in subdivision (2) of this
2 section if he or she determines that the bond filed under this section is
3 exhausted or is inadequate for any reason, including, but not limited to,
4 the financial condition of the licensee or the applicant for a license,
5 or violations of the Unsecured Consumer Loan Licensing Act or any rule,
6 regulation, or order thereunder, or any state or federal law applicable
7 to the licensee or applicant for a license. The new or supplemental bond
8 shall not exceed one hundred thousand dollars.

9 Sec. 8. (1) When an application for an unsecured consumer loan
10 license has been accepted by the director as substantially complete,
11 notice of the filing of the application shall be published by the
12 director for three successive weeks in a legal newspaper published in or
13 of general circulation in the county where the applicant proposes to
14 operate the unsecured consumer loan business. A public hearing shall be
15 held on each application except as provided in subsection (2) of this
16 section. The date for hearing shall not be less than thirty days after
17 the last publication. Written protest against the issuance of the license
18 may be filed with the department by any person not less than five days
19 before the date set for hearing. The director, in his or her discretion,
20 may grant a continuance. The costs of the hearing shall be paid by the
21 applicant. The director may investigate the propriety of the issuance of
22 a license to the applicant. The costs of such investigation shall be paid
23 by the applicant.

24 (2) The director may waive the hearing requirements of subsection
25 (1) of this section if (a) the applicant has held and operated under a
26 license to engage in the unsecured consumer loan business in Nebraska
27 pursuant to the Unsecured Consumer Loan Licensing Act for at least three
28 calendar years immediately prior to the filing of the application, (b) no
29 written protest against the issuance of the license has been filed with
30 the department within fifteen days after publication of a notice of the
31 filing of the application one time in a newspaper of general circulation

1 in the county where the applicant proposes to operate the unsecured
2 consumer loan business, and (c) in the judgment of the director, the
3 experience, character, and general fitness of the applicant warrant the
4 belief that the applicant will comply with the act.

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

7 Sec. 9. The director shall issue a license to an applicant, if,
8 after public hearing and any investigation of the applicant, the director
9 determines that:

10 (1) The experience, character, and general fitness of the applicant
11 and any of the applicant's officers, directors, shareholders, partners,
12 or members are such as to warrant the belief that the applicant will
13 conduct the unsecured consumer loan business honestly, fairly, and
14 efficiently;

15 (2) The applicant and any of the applicant's officers, directors,
16 shareholders, partners, or members have not been convicted of a felony in
17 this state or any other jurisdiction which would indicate moral turpitude
18 on the part of the applicant;

19 (3) The applicant is financially responsible and will conduct the
20 unsecured consumer loan business pursuant to the Unsecured Consumer Loan
21 Licensing Act; and

22 (4) The applicant has assets of at least twenty-five thousand
23 dollars available for operating the unsecured consumer loan business.

24 Sec. 10. The director shall approve or deny an application for a
25 license by written order not more than ninety days after the filing of a
26 substantially complete application. Failure of the director to act on a
27 substantially complete application within ninety days shall constitute
28 approval of the application. An order of the director issued pursuant to
29 this section may be appealed, and the appeal shall be in accordance with
30 the Administrative Procedure Act.

31 Sec. 11. (1) A license issued pursuant to the Unsecured Consumer

1 Loan Licensing Act shall be conspicuously posted at the licensee's place
2 of business.

3 (2) A license shall remain in effect until the next succeeding May
4 1, unless earlier canceled, suspended, or revoked by the director
5 pursuant to section 24 of this act or surrendered by the licensee
6 pursuant to section 12 of this act.

7 (3) Licenses may be renewed annually by filing with the director (a)
8 a renewal fee consisting of five hundred dollars for the main office
9 location and five hundred dollars for each branch office location and (b)
10 an application for renewal containing such information as the director
11 may require to indicate any material change in the information contained
12 in the original application or succeeding renewal applications.

13 Sec. 12. A licensee may surrender an unsecured consumer loan
14 business license by delivering to the director written notice that the
15 license is surrendered. The department may issue a notice of cancellation
16 of the license following such surrender in lieu of revocation
17 proceedings. The surrender shall not affect the licensee's civil or
18 criminal liability for acts committed prior to such surrender, affect
19 liability for any fines which may be levied against the licensee or any
20 of the licensee's officers, directors, shareholders, partners, or members
21 for acts committed before the surrender, affect the liability of the
22 surety on the bond, or entitle such licensee to a return of any part of
23 the annual license fee or fees. The director may establish procedures for
24 the disposition of the books, accounts, and records of the licensee and
25 may require such action as he or she deems necessary for the protection
26 of the borrowers whose unsecured consumer loans are outstanding at the
27 time of surrender of the license.

28 Sec. 13. A licensee shall be required to notify the director in
29 writing within thirty days after the occurrence of any material
30 development, including, but not limited to:

31 (1) Bankruptcy or corporate reorganization;

1 (2) Business reorganization;

2 (3) Institution of license revocation procedures by any other state
3 or jurisdiction;

4 (4) The filing of a criminal indictment or complaint against the
5 licensee or any of the licensee's officers, directors, shareholders,
6 partners, members, employees, or agents;

7 (5) A felony conviction against the licensee or any of the
8 licensee's officers, directors, shareholders, partners, members,
9 employees, or agents; or

10 (6) The termination of employment or association with the licensee
11 of any of the licensee's officers, directors, shareholders, partners,
12 members, employees, or agents for violations or suspected violations of
13 the Unsecured Consumer Loan Licensing Act or any rule, regulation, or
14 order thereunder, or any state or federal law applicable to the licensee.

15 Sec. 14. A license issued pursuant to the Unsecured Consumer Loan
16 Licensing Act shall not be transferable or assignable.

17 Sec. 15. The prior written approval of the director shall be
18 required whenever a change in control of a licensee is proposed. Control
19 in the case of a corporation means (1) direct or indirect ownership or
20 the right to control ten percent or more of the voting shares of the
21 corporation or (2) the ability of a person or group acting in concert to
22 elect a majority of the directors or otherwise effect a change in policy.
23 Control in the case of any other entity means any change in the
24 principals of the organization, whether active or passive. The director
25 may require such information as he or she deems necessary to determine
26 whether a new application is required. Costs incurred by the director in
27 investigating a change of control request shall be paid by the person or
28 persons requesting such approval.

29 Sec. 16. (1) A licensee may offer an unsecured consumer loan
30 business at an office location designated in the application. A licensee
31 may change the location of its office or offices with the prior written

1 approval of the director. The director may establish forms and procedures
2 for determining whether the change of location should be approved.

3 (2) A licensee may conduct an online unsecured consumer loan
4 business under the Unsecured Consumer Loan Act so long as the licensee
5 designates at least one principal place of business within this state.

6 (3) The director shall charge a fee of one hundred fifty dollars for
7 each request made pursuant to subsection (1) of this section.

8 Sec. 17. (1) Each licensee shall keep or make available the books
9 and records relating to transactions made under the Unsecured Consumer
10 Loan Licensing Act as are necessary to enable the department to determine
11 whether the licensee is complying with the act. The books and records
12 shall be maintained in a manner consistent with accepted accounting
13 practices.

14 (2) A licensee shall, at a minimum, include in its books and records
15 copies of all application materials relating to borrowers, disclosure
16 agreements, checks or electronic payment authorizations, payment
17 receipts, and proofs of compliance required by section 22 of this act.

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

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

28 Sec. 18. A licensee may operate an unsecured consumer loan business
29 at a location where any other business is operated or in association or
30 conjunction with any other business if:

31 (1) The books, accounts, and records of the unsecured consumer loan

1 business are kept and maintained separate and apart from the books,
2 accounts, and records of the other business;

3 (2) The other business is not of a type which would tend to conceal
4 evasion of the requirements of the Unsecured Consumer Loan Licensing Act.
5 If the director determines upon investigation that the other business is
6 of a type which would conceal evasion of the requirements of the act, the
7 director shall order such licensee to cease the operation of the other
8 business at such location; and

9 (3) At least thirty days prior to conducting such other business,
10 the licensee provides written notice to the director of (a) the
11 licensee's intent to conduct such other business at its location or
12 locations and (b) the nature of such other business and the director does
13 not disapprove of such other business within thirty days after receiving
14 the written notice.

15 Sec. 19. (1) Every licensee shall, at the time any unsecured
16 consumer loan is made, give to the borrower, or if there are two or more
17 borrowers, to one of them, a written notice disclosing:

18 (a) The name of the borrower, transaction date, and transaction
19 amount;

20 (b) The scheduled installment payment due dates and total payments
21 due;

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

24 (d) The date on which the check or checks or electronic debits will
25 be deposited or presented for negotiation; and

26 (e) Any penalty not to exceed fifteen dollars which the licensee
27 will charge if a check is not negotiable on the date agreed upon or the
28 authorization to debit the borrower's account is dishonored. The licensee
29 may assess one such charge regardless of how many times a check or an
30 authorization to debit the borrower's account may be submitted by a
31 licensee and dishonored.

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

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

5 2. THE LAW DOES NOT ALLOW THIS TYPE OF TRANSACTION TO BE MORE THAN
6 ONE THOUSAND DOLLARS (\$1,000) IN PRINCIPAL LOAN AMOUNT, EXCLUDING FEES
7 AND CHARGES, FROM ONE LENDER.

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

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

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

16 Sec. 20. No licensee shall charge a fee in excess of twenty percent
17 of the first three hundred dollars plus seven and one-half percent of any
18 amount in excess of three hundred dollars. Such fee shall be deemed fully
19 earned as of the date of the transaction and shall not be refundable or
20 prorated in the event of prepayment. In addition, the licensee may charge
21 a monthly maintenance fee on each unsecured consumer loan, not to exceed
22 eleven dollars and twenty-five cents per one hundred dollars loaned. The
23 monthly maintenance fee may be charged beginning with the first month,
24 but shall be refundable on a pro rata basis upon payment in full prior to
25 the maturity date. The lender shall only charge those charges authorized
26 in this section in connection with an unsecured consumer loan.

27 Sec. 21. (1) No licensee shall:

28 (a) Require the borrower to receive payment by a method which causes
29 the borrower to pay additional or further fees and charges to the
30 licensee or other person;

31 (b) Accept the proceeds of an unsecured consumer loan transaction as

1 repayment, refinancing, or any other consolidation of an unsecured
2 consumer loan transaction held by the same licensee;

3 (c) Renew, roll over, defer, or in any way extend an unsecured
4 consumer loan by allowing the borrower to pay less than the total amount
5 of the unsecured consumer loan transaction and any authorized fees or
6 charges;

7 (d) Enter into another unsecured consumer loan transaction with the
8 same borrower on the same business day as the completion of a transaction
9 unless prior to entering into the transaction the borrower and the
10 licensee verify on a form prescribed by the department that completion of
11 the prior transaction has occurred. The licensee shall retain written
12 proof of compliance with this subdivision. If a licensee fails or is
13 unable to provide such proof to the department upon request, there shall
14 be a rebuttable presumption that a violation of this subdivision has
15 occurred and the department may pursue any remedies or actions available
16 to it under the Unsecured Consumer Loan Licensing Act.

17 (2) For purposes of this section, (a) completion of an unsecured
18 consumer loan transaction means the licensee has presented a borrower's
19 check or checks for payment to a financial institution or electronically
20 debited the borrower's account or the borrower has redeemed the check or
21 checks by paying the full amount of the unsecured consumer loan
22 transaction in cash to the licensee and (b) licensee means (i) a person
23 related to the licensee by common ownership or control, (ii) a person in
24 whom such licensee has any financial interest of ten percent or more, or
25 (iii) any employee or agent of the licensee.

26 (3) No unsecured consumer loan licensee shall make an unsecured
27 consumer loan for a term of less than one hundred eighty days.

28 Sec. 22. (1) The director shall examine the books, accounts, and
29 records of each licensee no more than annually, except as provided in
30 section 23 of this act. The costs of the director incurred in an
31 examination shall be paid by the licensee the same as set forth in

1 sections 8-605 and 8-606.

2 (2) The director may accept any examination, report, or information
3 regarding a licensee from the Bureau of Consumer Financial Protection or
4 a foreign state agency. The director may provide any examination, report,
5 or information regarding a licensee to the Bureau of Consumer Financial
6 Protection or a foreign state agency. As used in this section, unless the
7 context otherwise requires, foreign state agency means any duly
8 constituted regulatory or supervisory agency which has authority over
9 unsecured consumer loan licensees or similar entities, and which is
10 created under the laws of any other state or any territory of the United
11 States, including Puerto Rico, Guam, American Samoa, the Trust Territory
12 of the Pacific Islands, or the Virgin Islands, or which is operating
13 under the code of law for the District of Columbia.

14 Sec. 23. (1) The director may examine or investigate complaints
15 about or reports of alleged violations of the Unsecured Consumer Loan
16 Licensing Act or any rule, regulation, or order of the director
17 thereunder. The director may order the actual cost of such examination or
18 investigation to be paid by the person who is the subject of the
19 examination or investigation, whether the alleged violator is licensed or
20 not.

21 (2) The director may publish information concerning any violation of
22 the Unsecured Consumer Loan Licensing Act or any rule, regulation, or
23 order of the director under the act.

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

31 (4) In the case of contumacy by or refusal to obey a subpoena issued

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

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

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

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

31 Sec. 24. (1) The director may, following a hearing in accordance

1 with the Administrative Procedure Act, suspend or revoke any license
2 issued pursuant to the Unsecured Consumer Loan Licensing Act if he or she
3 finds:

4 (a) A licensee or any of the licensee's officers, directors,
5 partners, or members has knowingly violated the Unsecured Consumer Loan
6 Licensing Act or any rule, regulation, or order of the director
7 thereunder;

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

11 (c) A licensee has abandoned the licensee's place of business for a
12 period of thirty days or more;

13 (d) A licensee or any of the licensee's officers, directors,
14 partners, or members has knowingly subscribed to, made, or caused to be
15 made any false statement or false entry in the books and records of any
16 licensee, has knowingly subscribed to or exhibited false papers with the
17 intent to deceive the department, has failed to make a true and correct
18 entry in the books and records of such licensee of its business and
19 transactions in the manner and form prescribed by the department, or has
20 mutilated, altered, destroyed, secreted, or removed any of the books or
21 records of such licensee without the written approval of the department;
22 or

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

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

28 (3)(a) If a licensee fails to renew its license as required by
29 section 11 of this act and does not voluntarily surrender the license
30 pursuant to section 12 of this act, the department may issue a notice of
31 expiration of the license to the licensee in lieu of revocation

1 proceedings.

2 (b) If a licensee fails to maintain a surety bond as required by
3 section 7 of this act, the department may issue a notice of cancellation
4 of the license in lieu of revocation proceedings.

5 (4) Revocation, suspension, cancellation, or expiration of a license
6 shall not impair or affect the obligation of a preexisting lawful
7 contract between the licensee and any person, including an unsecured
8 consumer loan transaction borrower.

9 (5) Revocation, suspension, cancellation, or expiration of a license
10 shall not affect civil or criminal liability for acts committed before
11 the revocation, suspension, cancellation, or expiration or liability for
12 finances levied against the licensee or any of the licensee's officers,
13 directors, shareholders, partners, or members pursuant to section 27 of
14 this act.

15 Sec. 25. (1) If the director believes that any person has engaged
16 in or is about to engage in any act or practice constituting a violation
17 of the Unsecured Consumer Loan Licensing Act or any rule, regulation, or
18 order of the director thereunder, the director may issue a cease and
19 desist order.

20 (2) Upon entry of a cease and desist order the director shall
21 promptly notify in writing all persons to whom the order is directed that
22 it has been entered and the reasons for the order. Any person to whom the
23 order is directed may in writing request a hearing within fifteen
24 business days after the date of the issuance of the order. Upon receipt
25 of such written request, the matter shall be set for hearing within
26 thirty business days after receipt by the director, unless the parties
27 consent to a later date or the hearing officer sets a later date for good
28 cause shown. If a hearing is not requested within fifteen business days
29 and no hearing is ordered by the director, the order of the director
30 shall automatically become final and shall remain in effect until
31 modified or vacated by the director. If a hearing is requested or

1 ordered, the director, after notice and hearing, shall issue his or her
2 written findings of fact and conclusions of law and may affirm, vacate,
3 or modify the order.

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

9 Sec. 26. Notwithstanding the administrative remedy provided in
10 section 25 of this act, if the director believes that any person has
11 engaged in or is about to engage in any act or practice constituting a
12 violation of the Unsecured Consumer Loan Licensing Act or a violation of
13 any rule, regulation, or order of the director thereunder, the director
14 may initiate an action in the district court of Lancaster County to
15 enjoin such acts or practices and to enforce compliance with the act or
16 any order under the act. Upon a proper showing a permanent or temporary
17 injunction, restraining order, or writ of mandamus shall be granted or a
18 receiver or conservator may be appointed for the defendant's assets. The
19 director shall not be required to post a bond.

20 Sec. 27. (1) If the director finds, after notice and hearing in
21 accordance with the Administrative Procedure Act, that any person has
22 violated the Unsecured Consumer Loan Licensing Act or any rule,
23 regulation, or order of the director thereunder, the director may order
24 such person to pay (a) an administrative fine of not more than five
25 thousand dollars for each separate violation and (b) the costs of
26 investigation.

27 (2) If any person is found to have violated subdivision (1)(b), (1)
28 (c), or (1)(d) of section 21 of this act, the director may also order
29 such person (a) to return to the borrower or borrowers all fees collected
30 plus all or part of the amount of the unsecured consumer loan transaction
31 which the licensee accepted in violation of such subdivision or

1 subdivisions and (b) not to engage in any unsecured consumer loan
2 transaction with any borrower for at least three days after the
3 completion of a unsecured consumer loan transaction with the borrower for
4 a period up to one year. If a person fails to pay an administrative fine
5 and the costs of investigation ordered pursuant to subsection (1) of this
6 section, a lien in the amount of such fine and costs may be imposed upon
7 all assets and property of such person in this state and may be recovered
8 in a civil action by the director. Failure of the person to pay such fine
9 and costs shall constitute a separate violation of the act.

10 Sec. 28. Any person required to be licensed under the Unsecured
11 Consumer Loan Licensing Act who operates an unsecured consumer loan
12 business in this state without first obtaining a license under the act or
13 while such license is suspended or revoked by the director shall be
14 guilty of a Class IV felony.

15 Sec. 29. (1) The director shall collect fees, charges, costs, and
16 finances under the Unsecured Consumer Loan Licensing Act and remit them to
17 the State Treasurer. Except as provided in subsection (2) of this
18 section, the State Treasurer shall credit the fees, charges, and costs to
19 the Financial Institution Assessment Cash Fund and distribute the fines
20 in accordance with Article VII, section 5, of the Constitution of
21 Nebraska.

22 (2) For renewal fees collected pursuant to section 11 of this act,
23 the State Treasurer shall (a) credit one hundred fifty dollars of each
24 renewal fee for a main office to the Financial Institution Assessment
25 Cash Fund and three hundred fifty dollars of each renewal fee for a main
26 office to the Financial Literacy Cash Fund and (b) credit one hundred
27 dollars of each renewal fee for a branch office to the Financial
28 Institution Assessment Cash Fund and four hundred dollars of each renewal
29 fee for a branch office to the Financial Literacy Cash Fund.

30 Sec. 30. Obtaining a license pursuant to the Unsecured Consumer
31 Loan Licensing Act shall constitute sufficient contact with the state for

1 the exercise of personal jurisdiction over the licensee in any action
2 arising out of the licensee's activities in this state.

3 Sec. 31. The director may adopt and promulgate rules and
4 regulations and issue orders, rulings, findings, and demands as may be
5 necessary to carry out the purposes of the Unsecured Consumer Loan
6 Licensing Act.

7 Sec. 32. The Financial Literacy Cash Fund is created. Amounts
8 credited to the fund shall include that portion of each renewal fee as
9 provided in section 29 of this act and such other revenue as is
10 incidental to administration of the fund. The fund shall be administered
11 by the University of Nebraska and shall be used to provide assistance to
12 nonprofit entities that offer financial literacy programs to students in
13 grades kindergarten through twelve. Any money in the fund available for
14 investment shall be invested by the state investment officer pursuant to
15 the Nebraska Capital Expansion Act and the Nebraska State Funds
16 Investment Act.

17 Sec. 33. Nothing in the Unsecured Consumer Loan Licensing Act shall
18 prevent a licensee from acquiring a license under the Delayed Deposit
19 Services Licensing Act or the Nebraska Installment Loan Act or both.

20 Sec. 34. Section 45-901, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 45-901 Sections 45-901 to 45-931 and section 35 of this act shall be
23 known and may be cited as the Delayed Deposit Services Licensing Act.

24 Sec. 35. Nothing in the Delayed Deposit Services Licensing Act
25 shall prevent a licensee from acquiring a license under the Unsecured
26 Consumer Loan Licensing Act.

27 Sec. 36. Section 45-1001, Revised Statutes Cumulative Supplement,
28 2018, is amended to read:

29 45-1001 Sections 45-1001 to 45-1070 and section 37 of this act shall
30 be known and may be cited as the Nebraska Installment Loan Act.

31 Sec. 37. Nothing in the Nebraska Installment Loan Act shall prevent

1 a licensee from acquiring a license under the Unsecured Consumer Loan
2 Licensing Act.

3 Sec. 38. Original sections 45-901 and 45-1001, Revised Statutes
4 Cumulative Supplement, 2018, are repealed.