

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1144

Introduced by McGill, 26.

Read first time January 23, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Delayed Deposit Services Licensing Act;
2 to amend sections 45-901, 45-906, 45-915, 45-919, and
3 45-925, Revised Statutes Cumulative Supplement, 2006; to
4 provide for certain prohibited acts; to provide fees; to
5 provide penalties; to create a data base; to provide
6 powers and duties for the Director of Banking and
7 Finance; to harmonize provisions; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-901, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 45-901 Sections 45-901 to 45-929 and sections 6 to 9 of
4 this act shall be known and may be cited as the Delayed Deposit
5 Services Licensing Act.

6 Sec. 2. Section 45-906, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 45-906 The application required by section 45-905 shall
9 be accompanied by:

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

12 (2) A data base fee of one hundred dollars. The data base
13 fee shall be used to defray the costs of establishing the data base
14 implemented pursuant to section 6 of this act. The data base fee
15 established under this subsection shall terminate on the date the
16 director implements the data base pursuant to such section; and

17 ~~(2)~~ (3) A surety bond in the sum of fifty thousand
18 dollars to be executed by the licensee and a surety company
19 authorized to do business in Nebraska and approved by the director
20 conditioned for the faithful performance by the licensee of the
21 duties and obligations pertaining to the delayed deposit services
22 business so licensed and the prompt payment of any judgment
23 recovered against the licensee. The bond or a substitute bond shall
24 remain in effect during all periods of licensing or the licensee
25 shall immediately cease doing business and its license shall be

1 surrendered to or canceled by the department. A surety may cancel a
2 bond only upon thirty days' written notice to the director.

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

13 Sec. 3. Section 45-915, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 45-915 (1) Except as provided in subsection (2) of this
16 section, a licensee may offer a delayed deposit services business
17 only at an office designated as its principal place of business
18 in the application. A licensee may change the location of its
19 designated principal place of business with the prior written
20 approval of the director. The director may establish forms and
21 procedures for determining whether the change of location should be
22 approved.

23 (2) A licensee may operate branch offices only in the
24 same county in which the licensee's designated principal place of
25 business is located. The licensee may establish a branch office

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

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

8 (4) A data base fee of one hundred dollars shall be paid
9 to the director for each request made pursuant to subsection (1) or
10 (2) of this section. The data base fee shall be used to defray the
11 costs of establishing the data base implemented pursuant to section
12 6 of this act. The data base fee established under this subsection
13 shall terminate on the date the director implements the data base
14 pursuant to such section.

15 Sec. 4. Section 45-919, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 45-919 (1) No licensee shall:

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

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

23 (c) Hold or agree to hold a check for more than
24 thirty-four days. A check which is in the process of collection
25 for the reason that it was not negotiable on the day agreed upon

1 shall not be deemed as being held in excess of the thirty-four-day
2 period;

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

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

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

25 (g) Enter into another delayed deposit transaction with

1 the same a maker on the same business day as the within seventy-two
2 hours after completion of a delayed deposit transaction unless
3 prior to entering into the transaction the maker and the licensee
4 verify on a form prescribed by the department that completion of
5 the prior delayed deposit transaction has occurred. The licensee
6 shall retain written proof of compliance with this subdivision.
7 If a licensee fails, or is unable, to provide such proof
8 to the department upon request, there shall be a rebuttable
9 presumption that a violation of this subdivision has occurred and
10 the department may pursue any remedies or actions available to
11 it under the act. by such maker with the licensee or any other
12 licensee; or

13 (h) Enter into another delayed deposit transaction with a
14 maker if such maker has a delayed deposit transaction that is not
15 complete with the licensee or any other licensee.

16 (2) For purposes of this section, (a) completion of a
17 delayed deposit transaction means (i) the licensee has presented
18 a maker's check for payment to a financial institution as defined
19 in section 8-101 ~~or~~ and has received payment for the check, (ii)
20 the maker redeemed the check by paying the full amount of the
21 check in cash to the licensee, (iii) the licensee has written the
22 maker's check off as a bad debt after it was returned unpaid by
23 the financial institution, or (iv) the licensee has sold the check
24 to a third party after it was returned unpaid by the financial
25 institution and (b) licensee shall include (i) a person related to

1 the licensee by common ownership or control, (ii) a person in whom
2 such licensee has any financial interest of ten percent or more, or
3 (iii) any employee or agent of the licensee.

4 Sec. 5. Section 45-925, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

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

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

1 director. Failure of the person to pay such fine and costs shall
2 constitute a separate violation of the act.

3 Sec. 6. (1) A data base shall be created in accordance
4 with this section. The data base shall include information provided
5 by licensees as required by the director under this section and
6 section 7 of this act. The data base shall be used to facilitate
7 compliance by licensees with section 45-919 and to create an annual
8 report pursuant to section 8 of this act. The director may develop,
9 implement, and maintain the data base pursuant to subsection (2) of
10 this section, monitor compliance with section 45-919, and create an
11 annual report pursuant to section 8 of this act or contract with a
12 third-party provider pursuant to subsection (3) of this section to
13 perform such responsibilities.

14 (2) On or before January 1, 2010, the director or a
15 third-party provider, whoever is the data base provider, shall
16 develop, implement, and maintain a statewide, common data base that
17 has real-time access through an Internet connection, is accessible
18 at all times to licensees, and is accessible at all times to the
19 director, if the director is not the data base provider. The data
20 base shall comply with the requirements of this section. Before
21 the director determines that the data base is fully operational
22 for purposes of the Delayed Deposit Services Licensing Act, the
23 data base provider shall operate, for at least thirty days, a
24 pilot program of the data base to test all of its processes.
25 The data base provider shall make the pilot program available to

1 all applicants and licensees. During the thirty-day test period
2 beginning on a date on which the director determines that the
3 data base is fully operational, the director shall not approve the
4 imposition of any data base verification fees under subsection (4)
5 of section 7 of this act.

6 (3) If the director contracts with a third-party provider
7 for the development, implementation, and maintenance of the data
8 base, the following shall apply:

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

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

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

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

24 (e) If the third-party provider violates this section,
25 the director shall terminate the contract and the third-party

1 provider shall be barred from becoming a party to any other state
2 contract; and

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

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

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

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

16 (5) While operating the data base, the data base provider
17 shall:

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

22 (b) Provide accurate and secure receipt, transmission,
23 and storage of maker data.

24 (6) When the data base provider receives notification
25 that a delayed deposit services transaction is completed pursuant

1 to section 45-919, the data base provider shall designate the
2 transaction as completed in the data base immediately, but no later
3 than 11:59 p.m., on the day the director or data base provider
4 received notification.

5 (7) The response to an inquiry to the data base provider
6 by a licensee shall only state that a person is eligible or
7 ineligible for a new delayed deposit services transaction and
8 describe the reason for that determination. Only the person seeking
9 the transaction may make a direct inquiry to the data base
10 provider to request a more detailed explanation of a particular
11 transaction that was the basis for the ineligibility determination.
12 Any information regarding any maker's transactional history is
13 confidential, is not subject to public inspection, is not a
14 public record as defined in section 84-712.01, is not subject to
15 discovery, subpoena, or other compulsory process, except in an
16 action under the act, and shall not be disclosed to any person
17 other than the director.

18 (8) The data base provider may charge each licensee a
19 verification fee for access to the data base in amounts approved by
20 the director under subsection (4) of section 7 of this act.

21 (9) The director may access the data base only for
22 purposes of an investigation of, examination of, or enforcement
23 action against an individual data base provider, licensee, maker,
24 or other person under the act. The director and any employee of the
25 director or this state shall not obtain or access a maker's social

1 security number, driver's license number, or other state-issued
2 identification number in the data base except as provided in this
3 subsection. An individual who violates this subsection is guilty of
4 a Class II misdemeanor and, if convicted, shall be discharged from
5 employment.

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

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

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

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

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

18 (d) Information in the data base concerning a transaction
19 shall be deleted from the data base three years after the
20 transaction is completed or three years after the completion
21 of any enforcement action, whichever is later.

22 (12) The director may maintain access to information
23 archived under subsection (11) of this section for future
24 legislative or policy review.

25 (13) The director shall specify the information to be

1 transmitted by licensees for inclusion in the data base and the
2 form and manner of transmission of such information.

3 Sec. 7. (1) A licensee shall verify a maker's eligibility
4 to enter into a delayed deposit services transaction by doing one
5 of the following, as applicable:

6 (a) If the director has not yet implemented a data
7 base under section 6 of this act or the data base is not fully
8 operational, as determined by the director, the licensee shall
9 verify that the maker does not have an open delayed deposit
10 services transaction with the licensee. The licensee shall maintain
11 a data base of all of the licensee's transactions at all of its
12 locations and search that data base to meet its obligation under
13 this subdivision; or

14 (b) If the director has implemented a data base under
15 section 6 of this act and the data base is fully operational,
16 as determined by the director, the licensee shall access the data
17 base and verify that the maker does not have any transactions in
18 violation of section 45-919.

19 (2) If the director has not yet implemented a data
20 base under section 6 of this act, the data base is not fully
21 operational, as determined by the director, or the licensee is
22 unable to access the data base due to technical difficulties
23 occurring with the data base, as determined by the director, a
24 licensee may rely upon the written verification of the maker
25 in a statement provided in substantially the following form, in

1 at least 12-point type: I DO NOT HAVE ANY OUTSTANDING DELAYED
 2 DEPOSIT SERVICES TRANSACTIONS WITH ANY LICENSEE AND I HAVE
 3 NOT TERMINATED A DELAYED DEPOSIT AGREEMENT WITHIN THE PAST 72
 4 HOURS (maker signature and date
 5 of maker signature).

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

8 (4) The director may impose a data base verification fee,
 9 not to exceed one dollar per transaction, for data required to be
 10 submitted by a licensee. Such fee shall be for the actual costs
 11 of entering, accessing, and verifying data in the data base to
 12 determine that a maker does not have any other open delayed deposit
 13 services transactions and that an additional transaction would be
 14 in compliance with section 45-919. For the first twelve months
 15 that the data base is operational, an additional licensing fee of
 16 fifty cents per transaction shall be paid to defray the costs of
 17 establishing the data base. The fees levied under this subsection
 18 shall be exclusive to the licensee, and shall not be passed on to
 19 a maker.

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

24 (6) Before entering into a delayed deposit services
 25 transaction, a licensee shall submit to the data base provider the

1 maker's name and address, the maker's social security number,
2 driver's license number, or other state-issued identification
3 number, the amount of the transaction, the maker's check number,
4 the date of the transaction, the maturity date of the transaction,
5 and any other information required by the data base provider, in a
6 format required by the director.

7 (7) When a delayed deposit services transaction is
8 completed, the licensee shall designate the transaction as
9 completed and immediately notify the data base provider no later
10 than 11:59 p.m. on the day the transaction was completed. The
11 director shall assess an administrative fine of one hundred
12 dollars for each day that the licensee fails to notify the data
13 base provider that the transaction has been completed. It is a
14 defense to the assessment of the administrative fine under this
15 section that notifying the data base provider was not possible
16 due to temporary technical problems with the data base or to
17 circumstances beyond the licensee's control. All fines collected
18 under this subsection shall be remitted to the State Treasurer for
19 distribution in accordance with Article VII, section 5, of the
20 Constitution of Nebraska.

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

1 director implements the data base pursuant to section 6 of this
2 act.

3 Sec. 8. (1) The director or his or her third-party
4 provider contracted pursuant to section 6 of this act shall compile
5 an annual report from the information in the data base. The annual
6 report shall contain:

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

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

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

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

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

16 (f) Any other information the director deems relevant.

17 (2) The annual report shall be made available
18 electronically.

19 Sec. 9. (1) The state or its third-party provider
20 pursuant to section 6 of this act shall not be liable to any
21 person for gathering, managing, or using information in the data
22 base created under section 6 of this act.

23 (2) No licensee shall be liable to any person for
24 performing its duties under sections 6 to 9 of this act, unless
25 and to the extent the licensee commits a willful and wanton act or

1 omission.

2 Sec. 10. Original sections 45-901, 45-906, 45-915,
3 45-919, and 45-925, Revised Statutes Cumulative Supplement, 2006,
4 are repealed.