

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 286

Introduced by Craighead, 6.

Read first time January 11, 2017

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to finance; to amend sections 45-902 and
- 2 45-915, Reissue Revised Statutes of Nebraska; to adopt the Nebraska
- 3 Flexible Loan Act; to change provisions of the Delayed Deposit
- 4 Services Licensing Act; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 21 of this act shall be known and may be
2 cited as the Nebraska Flexible Loan Act.

3 Sec. 2. For purposes of the Nebraska Flexible Loan Act, unless the
4 context otherwise requires:

5 (1) Annual percentage rate means the measure of the cost of credit,
6 expressed as a yearly rate, that relates the amount extended to a
7 consumer on a flexible credit loan to the amount and timing of payments
8 made, as computed under the federal Truth in Lending Act;

9 (2) Consumer means an individual who obtains a flexible credit loan;

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

12 (4) Federal Truth in Lending Act means the federal Truth in Lending
13 Act, 15 U.S.C. 1601 et seq., and its implementing regulations, as the act
14 and regulations existed on January 1, 2017;

15 (5) Finance charge means the amount payable by a consumer incident
16 to or as a condition of the extension of a flexible credit loan but
17 excluding other fees and charges allowed under section 18 of this act;

18 (6) Flexible credit lender means a person who advertises, solicits,
19 or holds himself or herself out to make a flexible credit loan to a
20 consumer in this state;

21 (7) Flexible credit loan is a loan in which all of the following are
22 applicable:

23 (a) The debt is incurred for a personal, family, or household
24 purpose;

25 (b) The debt is not more than two thousand five hundred dollars;

26 (c) The debt is unsecured; and

27 (d) The debt is subject to prepayment in whole or in part at any
28 time without penalty;

29 (8) Licensee means a person licensed pursuant to the act; and

30 (9) Regularly engaged in the business means any of the following:

31 (a) Advertising to or making any other solicitation to a resident of

1 this state to offer a flexible credit loan within this state; or

2 (b) Making three or more flexible credit loans within a calendar
3 year to residents of this state.

4 Sec. 3. The Nebraska Flexible Loan Act shall not apply to any of
5 the following:

6 (1) A person who does business under the authority of a law of this
7 state, or any other state, while regulated by a state agency of that
8 other state, or of the United States, relating to banks, savings banks,
9 trust companies, savings and loan associations, profit sharing and
10 pension trusts, credit unions, insurance companies, or receiverships, if
11 the person is regulated by the other law or under the jurisdiction of a
12 court;

13 (2) A person who is not regularly engaged in the business of making
14 a flexible credit loan;

15 (3) A person who is licensed pursuant to another law of this state
16 to the extent that the person's activities are governed by that law; or

17 (4) A delayed deposit services business as defined by section
18 45-902.

19 Sec. 4. (1) Unless exempt under section 3 of this act, a person
20 shall not engage in the business of making a flexible credit loan to a
21 resident of this state without first having obtained a license as a
22 flexible credit lender from the director.

23 (2) An applicant for a license shall submit an application in
24 writing, under oath, and in the form as prescribed by the director. The
25 application shall require any information that the director determines is
26 necessary.

27 (3) At the time of making the application, the applicant shall pay
28 to the director a fee of five hundred dollars.

29 Sec. 5. The director may deny a license as a flexible credit lender
30 to a person for any of the following reasons:

31 (1) The person is insolvent;

1 (2) The person has failed to demonstrate the financial
2 responsibility, experience, character, and general fitness to command the
3 confidence of the community and to warrant the belief that the business
4 of the proposed flexible credit lender will be honestly and efficiently
5 conducted;

6 (3) The person has failed to pay the fee required under section 4 of
7 this act; or

8 (4) The person has failed to demonstrate that the person maintains
9 at least twenty-five thousand dollars in assets readily available for use
10 in the conduct of the business for the licensed office and each licensed
11 branch office.

12 Sec. 6. (1) The director shall issue a license to an applicant
13 within sixty days after receiving a complete application unless the
14 director finds grounds for denying the license.

15 (2) A license issued under the Nebraska Flexible Loan Act shall be
16 valid for a term of one year, beginning on January 1 and ending on
17 December 31.

18 (3) A license issued under the act shall remain in full force until
19 surrendered, revoked, or suspended.

20 (4) A license issued under the act shall not be transferable or
21 assignable.

22 (5) A license issued under the act shall remain the property of this
23 state. Upon the voluntary surrender of the license by the licensee or the
24 revocation of the license by the director, the licensee shall immediately
25 deliver the license to the director. Surrender or revocation of the
26 license shall not affect any other liability of the licensee.

27 (6) A license issued under the act shall be kept conspicuously
28 posted at the office of the licensee and any licensed branch office where
29 flexible credit loan transactions are conducted.

30 Sec. 7. (1) A licensee shall designate the principal place of
31 business where the licensee shall conduct flexible credit loan

1 transactions pursuant to the Nebraska Flexible Loan Act, which shall be
2 indicated on the license as the licensed office location.

3 (2)(a) A licensee may obtain a branch office license from the
4 director for each branch office if the licensee wants to maintain more
5 than one license location.

6 (b) A licensee may obtain a branch office license by submitting an
7 application in the form as prescribed by the director and paying a fee of
8 two hundred fifty dollars for each branch office license.

9 (c) The director shall issue a branch office license indicating the
10 address of the branch office if the director determines that the
11 applicant is qualified for the license and the applicant has paid the
12 required fee.

13 (3) A licensee shall not conduct flexible credit loan transactions
14 under any name or at any place of business other than the name and
15 location indicated on the license. However, a licensee may do any of the
16 following:

17 (a) Provide a flexible credit loan by mail or electronic means;

18 (b) Make an accommodation to a consumer at any location upon a
19 request by the consumer; or

20 (c) Conduct an administrative, loan servicing, or recordkeeping
21 activity at any other location not open to the public if the director is
22 notified in advance of that activity.

23 (4) A licensee may change the licensed office location or licensed
24 branch office location by providing the director with written notice, and
25 the director shall amend the license accordingly.

26 Sec. 8. (1) A license issued pursuant to the Nebraska Flexible Loan
27 Act shall be renewed annually. A licensee may renew a license by
28 submitting an application in the form as prescribed by the director no
29 later than December 1 and paying a renewal fee of five hundred dollars.

30 (2) The director may assess a late fee of ten dollars per day for
31 applications submitted and accepted for processing after December 1.

1 (3) The license of a licensee who has not filed a renewal
2 application or paid the renewal fee by December 31 shall expire and the
3 licensee shall not act as a flexible credit lender until the license is
4 renewed or a new license is issued under the act.

5 Sec. 9. (1) The director may deny the renewal of a license or
6 suspend or revoke a license if the director determines any of the
7 following:

8 (a) The licensee is insolvent;

9 (b) The licensee is not a person of honesty, truthfulness, and good
10 character, as determined by rule and regulation adopted and promulgated
11 by the director;

12 (c) The licensee has failed to pay the annual renewal fees;

13 (d) The licensee has failed to file an annual report as required by
14 the Nebraska Flexible Loan Act when the report was due or within any
15 extension of time provided by the director for good cause; or

16 (e) The licensee has failed to demonstrate that the licensee
17 maintains at least twenty-five thousand dollars in assets readily
18 available for use in the conduct of the business for the licensed office
19 and each licensed branch office.

20 (2) The director may also deny the renewal of a license or suspend
21 or revoke a license if the director determines a fact or condition exists
22 which would have warranted the director to refuse to originally issue the
23 license.

24 Sec. 10. (1) A licensee shall keep such books, accounts, and
25 records as the director may require in order to determine whether the
26 licensee is complying with the Nebraska Flexible Loan Act and with the
27 rules and regulations adopted and promulgated by the director under the
28 act.

29 (2) A licensee shall preserve for at least two years after making
30 the last entry on any flexible credit loan all books, accounts, and
31 records pertaining to the loan. A licensee who uses an electronic

1 recordkeeping system shall not be required to keep a written copy of the
2 books, accounts, and records if the licensee is able to generate all of
3 the information required under this section in a timely manner for
4 examination or other purposes.

5 (3) A licensee shall make any books, accounts, and records kept
6 outside of this state available to the director within three business
7 days upon request by the director. The director may examine such books,
8 accounts, and records at the office of the licensee located outside of
9 this state.

10 (4) A licensee shall provide to the director or the director's duly
11 authorized representative access, during normal business hours, to the
12 licensee's offices, files, safes, and vaults regarding the flexible
13 credit lending business or regarding the subject matter of any
14 examination, investigation, or hearing regarding the licensee.

15 Sec. 11. (1) A licensee shall annually on or before April 1 file a
16 report with the director giving such relevant information as the director
17 reasonably may require concerning the business and operations during the
18 twelve-month period ending the preceding December 31. Upon good cause
19 shown by a licensee, the director may extend the time for filing the
20 report for a period not to exceed sixty days.

21 (2)(a) The annual report shall include a licensee's average annual
22 percentage rate and average loan amount during the twelve-month period
23 ending the preceding December 31.

24 (b) On at least an annual basis, the director shall compile a report
25 of the average annual percentage rate and average loan amount of each
26 licensee as submitted pursuant to subdivision (2)(a) of this section. The
27 director shall disseminate the report in a manner deemed appropriate and
28 shall make the report available to the public for inspection and copying.

29 (3) The annual report shall include the total number of flexible
30 credit loan transactions that the licensee completed in the prior two
31 years.

1 (4)(a) If a licensee fails to file an annual report under this
2 section, the director or any person designated by the director may
3 examine the books, accounts, and records of the licensee, prepare the
4 annual report, and charge the licensee an examination fee as established
5 by rule and regulation adopted and promulgated by the director under the
6 Nebraska Flexible Loan Act. The fee shall be based on the actual cost of
7 the examination or investigation.

8 (b) If a licensee fails to file an annual report within the
9 specified time and has not received an extension, the licensee shall be
10 subject to a civil penalty not to exceed five dollars per day until the
11 licensee has filed the annual report. The licensee shall pay the penalty
12 to the director within thirty days after the penalty is levied.

13 Sec. 12. A licensee may surrender a flexible credit lender license
14 by delivering to the director written notice that the license is
15 surrendered. The surrender does not affect the licensee's civil or
16 criminal liability for acts committed prior to such surrender or entitle
17 such licensee to a return of any part of the annual license fee. The
18 director may establish procedures for the disposition of the books,
19 accounts, and records of the licensee and may require such action as
20 deemed necessary for the protection of consumers who have flexible credit
21 loans that are outstanding at the time of surrender of the license.

22 Sec. 13. (1) The revocation, suspension, surrender, expiration, or
23 alteration of a license provided under the Nebraska Flexible Loan Act
24 shall not impair or affect any of the following:

25 (a) The obligation of a preexisting flexible credit loan between a
26 flexible credit lender and a consumer; or

27 (b) The ability or right of a flexible credit lender to service a
28 preexisting flexible credit loan from outside this state.

29 (2) If the act or any part of the act is modified, amended, or
30 repealed, resulting in a cancellation or alteration of any flexible
31 credit lender license or right of a licensee under the act, that

1 cancellation or alteration shall not impair or affect the obligation of
2 any preexisting contract between a flexible credit lender and any
3 consumer.

4 Sec. 14. (1) A licensee shall not knowingly advertise, display,
5 distribute, broadcast, or televise, or cause or allow to be advertised,
6 displayed, distributed, broadcast, or televised, in any manner, any
7 false, misleading, or deceptive statement or representation with regard
8 to the rates, terms, or conditions of a flexible credit loan. To the
9 extent applicable, all advertising shall comply with the advertising
10 requirements specified in the federal Truth in Lending Act.

11 (2) A licensee shall not provide a flexible credit loan to a
12 consumer with more than one outstanding flexible credit loan provided
13 under the Nebraska Flexible Loan Act at any one time. A licensee shall
14 inquire of any consumer seeking a flexible credit loan regarding whether
15 the consumer has any outstanding flexible credit loans. A licensee may
16 only offer a consumer a flexible credit loan if the consumer represents
17 in writing that the consumer has no outstanding flexible credit loans.

18 (3)(a) A licensee shall not provide a flexible credit loan with an
19 annual percentage rate greater than that provided in 10 U.S.C. 987(b), to
20 any of the following:

21 (i) A member of the United States armed forces who is on active duty
22 under a call or order that does not specify a period of thirty days or
23 less;

24 (ii) A person on active national guard and reserve duty; or

25 (iii) A dependent as defined in 10 U.S.C. 987(i).

26 (b) A licensee shall not provide a flexible credit loan to a
27 consumer unless the consumer has signed a statement, to be included as
28 part of the loan, attesting to whether or not the consumer is a military
29 member or a dependent as defined in 10 U.S.C. 987(i). The statement shall
30 be in the form as prescribed by the director by rule and regulation
31 adopted and promulgated by the director.

1 (c) A flexible credit loan made in violation of 10 U.S.C. 987 is
2 void and its terms and conditions unenforceable.

3 (4) A licensee shall not condition a flexible credit loan upon a
4 consumer's agreement to repay the loan by recurring automatic electronic
5 fund transfers from the consumer's bank account. However, this shall not
6 preclude the consumer from providing written authorization to repay a
7 loan by recurring automatic electronic fund transfers from the consumer's
8 bank account if the licensee offers such a repayment option.

9 Sec. 15. (1) A flexible credit loan that is provided by a person
10 who is required to be licensed under the Nebraska Flexible Loan Act but
11 who is not licensed is void and its terms and conditions unenforceable.

12 (2) Except as provided in subsection (1) of this section and
13 subsection (3) of section 14 of this act, failure to comply with the act
14 shall not affect the validity or enforceability of a flexible credit
15 loan.

16 Sec. 16. (1) To the extent applicable, a licensee shall comply with
17 the disclosure requirements as set forth in the federal Truth in Lending
18 Act.

19 (2) A licensee shall conspicuously display a sign printed in at
20 least twelve-point bold font type at each desk in the licensed office and
21 licensed branch office where flexible credit loan transactions are
22 conducted with the following disclosure:

23 Notice: Before signing any loan documents or otherwise committing to
24 a loan, you may take copies of those documents away from the flexible
25 credit lender's place of business for review.

26 (3) A licensee providing electronic flexible credit loans shall
27 conspicuously display the following disclosure on the licensee's internet
28 site:

29 Notice: Before signing any loan documents or otherwise committing to
30 a loan, please read our terms and conditions carefully.

31 (4) A licensee who fails to provide disclosures as required under

1 this section shall be subject to a civil penalty not to exceed three
2 hundred dollars for each violation.

3 Sec. 17. (1) A licensee may charge a finance charge on a flexible
4 credit loan at a rate not to exceed eighteen percent per month on the
5 outstanding principal loan amount.

6 (2) This section does not authorize the compounding of a finance
7 charge.

8 Sec. 18. (1) In addition to the finance charge authorized under
9 section 17 of this act, a licensee may collect any of the following fees
10 or charges:

11 (a) A delinquency charge if an installment is not paid in full
12 within seven days after it is due, equal to five percent of the amount of
13 the installment;

14 (b) Court costs and reasonable attorney's fees if the flexible
15 credit loan is referred for collection to an attorney other than an
16 employee of the licensee; and

17 (c) A dishonored check service fee if a licensee receives a check,
18 draft, negotiable order of withdrawal, or similar instrument that is not
19 paid or is not honored by a depository institution, equal to the actual
20 charges assessed by the depository institution.

21 (2) A licensee shall not directly or indirectly charge, contract
22 for, or receive any other amount in connection with a flexible credit
23 loan except as provided in the Nebraska Flexible Loan Act.

24 Sec. 19. (1) For closed-end credit, the term of the flexible credit
25 loan may not exceed twenty-four months.

26 (2) If the flexible credit loan is repayable in installments, the
27 interval between payments shall be agreed upon between the lender and
28 borrower. However, the interval shall be substantially equal for all
29 payments except for the interval between origination and the first
30 scheduled payment.

31 (3) If the flexible credit loan is repayable in installments, the

1 installments shall be substantially equal and fully amortized over the
2 contracted term. For lines of credit, the minimum payments due shall be
3 substantially equal and fully amortized based on a period not to exceed
4 twelve months. Any new draws under the line of credit shall recalculate
5 installment payments for a period not to exceed twelve months.

6 Sec. 20. The director shall collect fees and civil penalties under
7 the Nebraska Flexible Loan Act and remit them to the State Treasurer who
8 shall credit the fees to the Financial Institution Assessment Cash Fund
9 and distribute the civil penalties in accordance with Article VII,
10 section 5, of the Constitution of Nebraska.

11 Sec. 21. The director may adopt and promulgate rules and
12 regulations as necessary to carry out the Nebraska Flexible Loan Act.

13 Sec. 22. Section 45-902, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 45-902 For purposes of the Delayed Deposit Services Licensing Act:

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

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

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

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

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

29 (6) Person means an individual, proprietorship, association, joint
30 venture, joint stock company, partnership, limited partnership, limited
31 liability company, business corporation, nonprofit corporation, or any

1 group of individuals however organized.

2 Sec. 23. Section 45-915, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 45-915 (1) ~~A Except as provided in subsection (2) of this section, a~~
5 licensee may offer a delayed deposit services business only at an office
6 or offices designated as ~~its principal place of business~~ in the
7 application. A licensee may change the location of its office or offices
8 ~~designated principal place of business~~ with the prior written approval of
9 the director. The director may establish forms and procedures for
10 determining whether the change of location should be approved.

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

18 (2) ~~(3)~~ A fee of one hundred fifty dollars shall be paid to the
19 director for each request made pursuant to subsection (1) ~~or (2)~~ of this
20 section.

21 Sec. 24. Original sections 45-902 and 45-915, Reissue Revised
22 Statutes of Nebraska, are repealed.