

Delayed Deposit Services Licensing Act
Chapter 45, Article 9
§§ 45-901 to 45-931

45-901

Act, how cited.

Sections 45-901 to 45-931 shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Last amended:

~ Cum. Supp. 2020

45-902

Terms, defined.

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, 2020, 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 45-918.01;

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

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

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

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

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

(11) 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.

Last amended:

~ Cum. Supp. 2020

45-903

Act; not applicable to financial institutions.

The Delayed Deposit Services Licensing Act shall not apply to a financial institution organized under the laws of this state or the laws of the United States.

Last amended:

~ Reissue 2010

45-904

License required; void transaction; effect.

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.

Last amended:

~ Cum. Supp. 2020

45-905

Application for license; form; contents; criminal history record information check.

(1) An applicant for a license shall submit an application, under oath, to the director on forms prescribed by the director. The forms shall contain such information as the director may prescribe, including, but not limited to:

(a) The applicant's financial condition;

(b) The qualifications and business history of the applicant and of its officers, directors, shareholders, partners, or members;

(c) Whether the applicant or any of its officers, directors, shareholders, partners, or members have ever been convicted of any (i) misdemeanor involving any aspect of a delayed deposit services business or any business of a similar nature or (ii) felony;

(d) Whether the applicant or any of its officers, directors, shareholders, partners, or members have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a delayed deposit services business or any business of a similar nature;

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

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

(2) The director shall cause a criminal history record information check to be conducted of the applicant, its officers, directors, shareholders, partners, or members and, on or after January 1, 2021, as provided in subsection (1) of section 45-905.01. The direct cost of the criminal history record information check shall be paid by the applicant.

Last amended:

~ Cum. Supp. 2020

45-905.01

Nationwide Mortgage Licensing System and Registry; licensees; requirements; director; powers and duties.

(1) On and after January 1, 2021, licensees under the Delayed Deposit Services Licensing Act are required to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the director may establish requirements as necessary by adopting and promulgating rules and regulations or by order. The requirements may include, but are not limited to:

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

(i) Fingerprints of any principal officer, director, partner, member, or sole proprietor submitted to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check;

(ii) Checks of civil or administrative records;

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

(iv) Any other information as deemed necessary by the director;

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

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

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

(2) In order to fulfill the purposes of the Delayed Deposit Services Licensing Act, the department may contract with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to applicants, licensees, or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and may allow such system to collect a processing fee for the services of the system directly from each applicant or licensee.

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

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

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of such policy and the contract between the department and the system.

(6) Upon written request the department shall provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

(7) The director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (5) of this section.

Last amended:

~ Cum. Supp. 2020

45-906

Application; fee; bond.

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

(1) A nonrefundable application fee of five hundred dollars and any processing fee allowed under subsection (2) of section 45-905.01; and

(2) A surety bond in the base amount of fifty thousand dollars which, on or after January 1, 2021, shall be increased by fifty thousand dollars for each branch office established or to be established in Nebraska. The surety bond shall be executed by the licensee and a surety company authorized to do business in Nebraska and approved by the director conditioned for the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed and the prompt payment of any judgment recovered against the licensee. The bond or a substitute bond shall remain in effect during all periods of licensing or the licensee shall immediately cease doing business and its license shall be surrendered to or canceled by the department. A surety may cancel a bond only upon thirty days' written notice to the director.

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

Last amended:

~ Cum. Supp. 2020

45-907

Application; notice of filing; publication; hearing; investigation; costs.

(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 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.

Last amended:
~ Cum. Supp. 2020

45-908
License; issuance; conditions.

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

(1) The experience, character, and general fitness of the applicant and its officers, directors, shareholders, partners, or members are such as to warrant the belief that the applicant will conduct the delayed deposit services business honestly, fairly, and efficiently;

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

(3) The applicant is financially responsible and will conduct the delayed deposit services business pursuant to the Delayed Deposit Services Licensing Act; and

(4) The applicant has assets of at least twenty-five thousand dollars available for operating the delayed deposit services business.

Last amended:
~ Reissue 2010

45-909
Application for license; timely action of director required; appeal.

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

Last amended:
~ Reissue 2010

45-910
License; posting; renewal; fee.

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

(2)(a) Except as provided in subdivision (2)(b) of this section, all licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(b) All licenses issued on or after November 14, 2020, and before January 1, 2021, shall remain in effect until December 31, 2021, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911. All licenses issued on or after January 1, 2021, shall remain in effect until the next succeeding December 31, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of five hundred dollars and any processing fee allowed under subsection (2) of section 45-905.01 for the main office location and five hundred dollars and any processing fee allowed under subsection (2) of section 45-905.01 for each branch office location and (b) an application for renewal in writing through the Nationwide Mortgage Licensing System and Registry containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

Last amended:

~ Cum. Supp. 2020

45-911

Surrender of license; effect.

A licensee may surrender a delayed deposit services business license by delivering to the director written notice that the license is surrendered and any processing fee allowed under subsection (2) of section 45-905.01. The department 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.

Last amended:

~ Cum. Supp. 2020

45-912

Licensee; duty to inform director; when.

A licensee shall be required to notify the director in writing through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of any material development, including, but not limited to:

- (1) Bankruptcy or corporate reorganization;
- (2) Business reorganization;
- (3) Institution of license revocation procedures by any other state or jurisdiction;
- (4) The filing of a criminal indictment or complaint against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;
- (5) A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents; or
- (6) The termination of employment or association with the licensee of any of the licensee's officers, directors, shareholders, partners, members, employees, or agents for violations or suspected violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee.

Last amended:

~ Cum. Supp. 2020

45-913

License; not transferable or assignable.

A license issued pursuant to the Delayed Deposit Services Licensing Act shall not be transferable or assignable.

Last amended:

~ Reissue 2010

45-914

Change in control of licensee; approval required.

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

Last amended:

~ Reissue 2010

45-915

Licensee; principal place of business; change of location; branch offices; approval required; fees.

(1) Except as provided in subsection (2) of this section, a licensee, on or before December 31, 2020, may offer a delayed deposit services business only at an office designated as its principal place of business in the application. A licensee may change the location of its designated principal place of business with the prior written approval of the director. The director may establish forms and procedures for determining whether the change of location should be approved.

(2) On or before December 31, 2020, a licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the director. The director may establish forms and procedures for determining whether an original branch or branches or a change of location of a branch should be approved.

(3) On or after January 1, 2021, a licensee shall designate an office in Nebraska as its principal place of business. A licensee may change the location of its designated principal place of business with the prior written approval of the director. The director may establish forms and procedures for determining whether the change of location should be approved.

(4) On or after January 1, 2021, a licensee may operate branch offices in Nebraska. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the director. The director may establish forms and procedures for determining whether an original branch or branches or a change of location of a branch should be approved.

(5) A licensee may offer a delayed deposit services business only at an office designated as its principal place of business and any branch office established pursuant to this section.

(6) A fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-905.01 shall be submitted with each request made pursuant to this section.

Last amended:

~ Cum. Supp. 2020

45-915.01

Licensee; books and records.

(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.

Last amended:

~ Cum. Supp. 2020

45-916

Operating with other business; conditions.

A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if:

(1) The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business;

(2) The other business is not of a type which would tend to conceal evasion of the Delayed Deposit Services Licensing Act. If the director determines upon investigation that the other business is of a type which would conceal evasion of the act, the director shall order such licensee to cease the operation of the other business at such location; and

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

Last amended:

~ Reissue 2010

45-917

Licensee; written notice; contents; fees, charges, and penalties; posting required.

(1)(a) Every licensee shall, at the time any delayed deposit 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;

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

(v) 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.

Last amended:

~ Cum. Supp. 2020

45-918

Annual percentage rate; violation; effect; fee, limitation.

(1) A licensee shall not impose an annual percentage rate greater than thirty-six percent in connection with a delayed deposit transaction. Any delayed deposit transaction made in violation of this section is void, and the licensee 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.

(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.

Last amended:

~ Initiative Law 2020, No. 428, § 1

45-918.01

Returned check; collection; returned check charge; court costs; attorney's fees.

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.

Last amended:

~ Cum. Supp. 2020

45-918.02

Prepayment; how treated.

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

Last amended:

~ Cum. Supp. 2020

45-918.03

Rescission; redemption.

(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.

Last amended:

~ Cum. Supp. 2020

45-918.04

Licensee; payment options; electronic payment with authorization.

(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.

Last amended:

~ Cum. Supp. 2020

45-919

Acts prohibited.

(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 45-919.01, 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;

(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;

(k) Evade the requirements of section 45-918, including, but not limited to, making, offering, assisting, arranging, or guaranteeing a delayed deposit transaction with a greater rate of interest, consideration, fees, or charges than is permitted therein through any method including mail, telephone, Internet or any electronic means regardless of whether the licensee has a physical location in the state; or

(l) 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) 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.

Last amended:

~ Cum. Supp. 2020

45-919.01***Extended payment plan; request; terms; default.***

(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.

Last amended:

~ Cum. Supp. 2020

45-920***Director; examination of licensee; powers; costs.***

(1) The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) The director may accept any examination, report, or information regarding a licensee from the Consumer Financial Protection Bureau or a foreign state agency. The director may provide any examination, report, or information regarding a licensee to the Consumer Financial Protection Bureau or a foreign state agency. As used in this section, unless the context otherwise requires, foreign state agency means any duly constituted regulatory or supervisory agency which has authority over delayed deposit services businesses, payday lenders, or similar entities, and which is created under the laws of any other state or any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, or which is operating under the code of law for the District of Columbia.

Last amended:

~ Cum. Supp. 2020

45-921

Alleged violations; director; powers and duties.

(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 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.

(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.

Last amended:
~ Cum. Supp. 2020

45-922

Licensee; disciplinary actions; failure to renew.

(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, 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.

Last amended:

~ Cum. Supp. 2020

45-923

Cease and desist order; procedure; appeal.

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.

Last amended:

~ Cum. Supp. 2020

45-924

Injunction, restraining order, or writ of mandamus.

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 a violation of any rule, regulation, or order of the director thereunder, the director may initiate an action in the district court of Lancaster County to enjoin such acts or practices and to enforce compliance with the act or any order under the act. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted or a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

Last amended:

~ Reissue 2010

45-925

Violations; orders authorized; administrative fine; lien; failure to pay; separate violation.

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

(2) If any person is found to have violated subdivision (1)(e), (1)(f), or (1)(g) of section 45-919, the director may also order such person to (a) return to the maker or makers all fees collected plus all or part of the amount of the check or checks which the licensee accepted in violation of such subdivision or subdivisions and (b) for a period up to one year not engage in any delayed deposit transaction with any maker for at least three days after the completion of a delayed deposit transaction with the same maker. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (1) 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. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Last amended:

~ Reissue 2010

45-926

Operating without a license; penalty.

Any person required to be licensed under the Delayed Deposit Services Licensing Act who operates a delayed deposit services business in this state without first obtaining a license under the act or while such license is suspended or revoked by the director shall be guilty of a Class IV felony.

Last amended:

~ Reissue 2010

45-927

Fees, charges, costs, and fines; distribution.

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

(2) For fees collected pursuant to section 45-910, the State Treasurer shall (a) credit one hundred fifty dollars of each renewal fee for a main office to the Financial Institution Assessment

Cash Fund and three hundred fifty dollars of each renewal fee for a main office to the Financial Literacy Cash Fund and (b) credit one hundred dollars of each renewal fee for a branch office to the Financial Institution Assessment Cash Fund and four hundred dollars of each renewal fee for a branch office to the Financial Literacy Cash Fund.

Last amended:

~ Cum. Supp. 2020

45-928

Personal jurisdiction over licensee.

Obtaining a license pursuant to the Delayed Deposit Services Licensing Act shall constitute sufficient contact with the state for the exercise of personal jurisdiction over the licensee in any action arising out of the licensee's activities in this state.

Last amended:

~ Reissue 2010

45-929

Director; rules and regulations; additional powers.

The director may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Delayed Deposit Services Licensing Act.

Last amended:

~ Reissue 2010

45-930

Financial Literacy Cash Fund; created; use; investment.

The Financial Literacy Cash Fund is created. Amounts credited to the fund shall include that portion of each renewal fee as provided in section 45-927 and such other revenue as is incidental to administration of the fund. The fund shall be administered by the University of Nebraska and shall be used to provide assistance to nonprofit entities that offer financial literacy programs to students in grades kindergarten through twelve. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Last amended:

~ Cum. Supp. 2020

45-931

Licensees; annual report; contents; department; duties; report.

(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.

Last amended:

~ Cum. Supp. 2020
