

LEGISLATIVE BILL 967

Approved by the Governor April 18, 1994

Introduced by Landis, 46

AN ACT relating to interest, loans, and debt; to amend section 45-127, Reissue Revised Statutes of Nebraska, 1943, and section 45-101.04, Revised Statutes Supplement, 1993; to adopt the Delayed Deposit Services Licensing Act; to provide penalties; to harmonize provisions; to provide an operative date; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 29 of this act shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Sec. 2. For purposes of the Delayed Deposit Services Licensing Act:

(1) Check shall mean any check, draft, or other instrument for the payment of money.

(2) Delayed deposit services business shall mean 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;

(3) Director shall mean the Director of Banking and Finance or his or her designee;

(4) Licensee shall mean any person licensed under the Delayed Deposit Services Licensing Act; and

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

Sec. 3. 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.

Sec. 4. No person shall operate a delayed deposit services business in this state unless the person is licensed by the director as provided in the Delayed Deposit Services Licensing Act.

Sec. 5. (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; and

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

(2) The director shall cause a criminal history record information check to be conducted of the applicant, its officers, directors, shareholders, partners, or members. The direct cost of the criminal history record information check shall be paid by the applicant.

Sec. 6. The application required by section 5 of this act shall be accompanied by:

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

(2) A surety bond in the sum of fifty thousand dollars to be executed by the licensee and a surety company 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 shall be renewed and refiled annually on or before May 1 of each year or the licensee shall, within thirty days thereafter, cease doing business and its license shall be surrendered or revoked. A surety may cancel such bond

only upon thirty days' written notice to the director.

Sec. 7. 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. The costs of the publication shall be paid by the applicant. A public hearing shall be held on each application. The date for hearing shall not be less than thirty days after the last publication. 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.

Sec. 8. 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.

Sec. 9. 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.

Sec. 10. A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business. All licenses shall remain in effect until the next succeeding May 1, unless earlier suspended or revoked by the director pursuant to section 22 of this act or surrendered by the licensee pursuant to section 11 of this act. Licenses may be renewed annually by filing with the director a renewal fee of one hundred dollars and an application for renewal 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.

Sec. 11. A licensee may surrender a delayed deposit services business license by delivering to the director written notice that the license is surrendered. The surrender shall not affect the licensee's civil or criminal liability for acts committed prior to such surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees. The director may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as he or she deems necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

Sec. 12. A licensee shall be required to notify the director in writing 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; or

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

Sec. 13. A license issued pursuant to the Delayed Deposit Services Licensing Act shall not be transferable or assignable.

Sec. 14. 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.

Sec. 15. (1) Except as provided in subsection (2) of this section, a licensee may offer a delayed deposit services business only at an office designated as its principal place of business in the application. The licensee shall maintain its books, accounts, and records at its designated 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.

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

Sec. 16. 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; and

(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.

Sec. 17. (1) Every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing:

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

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

(c) Any penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon.

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

Sec. 18. No licensee shall charge as a fee a total amount in excess of fifteen dollars per one hundred dollars or pro rata for any part thereof on the face amount of a check for services provided by licensee.

Sec. 19. (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-one days;

(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 or other person; or

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

(2) For purposes of this section, licensee shall include a person related to the licensee by common ownership or control, a person in whom such licensee has any financial interest, or any employee or agent of the licensee.

Sec. 20. The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 21 of this act. The costs of the director incurred in an examination shall be paid by the licensee.

Sec. 21. (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.

Sec. 22. The director may, following a minimum ten days notice and 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:

(1) 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;

(2) A licensee has failed to pay the original or annual renewal license fee or to maintain in effect the required bond;

(3) 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; or

(4) A licensee has abandoned its place of business for a period of sixty days or more.

Sec. 23. 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.

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 fifteen business days after receipt by the director, unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the director, the order of the director shall automatically become final and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall issue his or her written findings of fact and conclusions of law and may affirm, vacate, or modify the order.

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

Sec. 24. 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.

Sec. 25. (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 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.

Sec. 26. 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.

Sec. 27. All fees, charges, costs, and fines collected by the director under the Delayed Deposit Services Licensing Act shall be remitted to the State Treasurer. Fees, charges, and costs shall be credited to the Loan Act Fund established under section 45-127, and fines shall be credited to the permanent school fund.

Sec. 28. 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.

Sec. 29. 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.

Sec. 30. That section 45-101.04, Revised Statutes Supplement, 1993, be amended to read as follows:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, subsection (4) of section 8-319, or sections 8-401 to 8-417, 8-815 to 8-829, or 45-114 to 45-155;

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (13) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or loans secured by real estate when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance, (b) by any bank or savings and loan association chartered by the United States, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance; ~~or~~

(11) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; ~~or~~

(12) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Sec. 31. That section 45-127, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-127. All original license fees and annual renewal fees shall be collected by the Department of Banking and Finance and deposited with the State Treasurer and shall be credited to the Loan Act Fund, Department of

Banking and Finance, State of Nebraska, which, during any biennium, shall be used exclusively for the administration and enforcement of the Delayed Deposit Services Licensing Act, the Nebraska Installment Sales Act, and sections 45-114 to 45-155, if and 45-334 to 45-353, if and when specifically appropriated by the Legislature for that purpose. All investigation and examination fees, charges, and costs collected by or paid to the Department of Banking and Finance under any of the provisions of ~~said sections such acts and sections~~, shall likewise be deposited and credited to the Loan Act Fund and shall be available for the uses and purposes of ~~said the~~ fund. It is not the intention of the Legislature that any revenue arising hereunder shall inure to any school fund of the State of Nebraska in any of its governmental subdivisions. Any money in the Loan Act Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to ~~72-1259~~ 72-1276.

Sec. 32. This act shall become operative on October 1, 1994.

Sec. 33. That original section 45-127, Reissue Revised Statutes of Nebraska, 1943, and section 45-101.04, Revised Statutes Supplement, 1993, are repealed.