

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 908

Introduced by Williams, 36.

Read first time January 10, 2020

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Delayed Deposit Services Licensing Act;
- 2 to amend sections 45-905, 45-906, 45-912, and 45-915, Reissue
- 3 Revised Statutes of Nebraska, and sections 45-901, 45-902, 45-910,
- 4 and 45-911, Revised Statutes Cumulative Supplement, 2018; to update
- 5 a definition, define a term, add a processing fee, and change
- 6 licensing provisions; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-901, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 45-901 Sections 45-901 to 45-931 and section 5 of this act shall be
4 known and may be cited as the Delayed Deposit Services Licensing Act.

5 Sec. 2. Section 45-902, Revised Statutes Cumulative Supplement,
6 2018, is amended to read:

7 45-902 For purposes of the Delayed Deposit Services Licensing Act:

8 (1) Annual percentage rate means an annual percentage rate as
9 determined under section 107 of the federal Truth in Lending Act, 15
10 U.S.C. 1606, as such section existed on January 1, 2020 ~~2018~~, and
11 includes all fees, interest, and charges contained in a delayed deposit
12 service contract, except for charges permitted for the presentation of
13 instruments that are not negotiable under subdivision (1)(a)(v) of
14 section 45-917 or returned unpaid under section 45-918.01;

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

18 (3) Default means a maker's failure to repay a delayed deposit
19 transaction in compliance with the terms contained in a delayed deposit
20 service agreement;

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

27 (5) Department means the Department of Banking and Finance;

28 (6) Director means the Director of Banking and Finance or his or her
29 designee;

30 (7) Financial institution has the same meaning as in section
31 8-101.03;

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

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

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

11 (11) {10} Person means an individual, proprietorship, association,
12 joint venture, joint stock company, partnership, limited partnership,
13 limited liability company, business corporation, nonprofit corporation,
14 or any group of individuals however organized.

15 Sec. 3. Section 45-905, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 45-905 (1) An applicant for a license shall submit an application,
18 under oath, to the director on forms prescribed by the director. The
19 forms shall contain such information as the director may prescribe,
20 including, but not limited to:

21 (a) The applicant's financial condition;

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

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

28 (d) Whether the applicant or any of its officers, directors,
29 shareholders, partners, or members have ever been permanently or
30 temporarily enjoined by a court of competent jurisdiction from engaging
31 in or continuing any conduct or practice involving any aspect of a

1 delayed deposit services business or any business of a similar nature;

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

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

6 (2) The director shall cause a criminal history record information
7 check to be conducted of the applicant, its officers, directors,
8 shareholders, partners, or members and, on or after January 1, 2021, as
9 provided in subsection (1) of section 5 of this act. The direct cost of
10 the criminal history record information check shall be paid by the
11 applicant.

12 Sec. 4. Section 45-906, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 45-906 The application required by section 45-905 shall be
15 accompanied by:

16 (1) A nonrefundable application fee of five hundred dollars and any
17 processing fee allowed under subsection (2) of section 5 of this act; and

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

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

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

10 Sec. 5. (1) On and after January 1, 2021, licensees under the
11 Delayed Deposit Services Licensing Act are required to be licensed and
12 registered through the Nationwide Mortgage Licensing System and Registry.
13 In order to carry out this requirement, the department is authorized to
14 participate in the Nationwide Mortgage Licensing System and Registry. For
15 this purpose, the director may establish requirements as necessary by
16 adopting and promulgating rules and regulations or by order. The
17 requirements may include, but are not limited to:

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

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

25 (ii) Checks of civil or administrative records;

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

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

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

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

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

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

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

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

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

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

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

1 purposes of subsection (5) of this section.

2 Sec. 6. Section 45-910, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

4 45-910 (1) A license issued pursuant to the Delayed Deposit Services
5 Licensing Act shall be conspicuously posted at the licensee's place of
6 business.

7 (2)(a) Except as provided in subdivision (2)(b) of this section, all
8 ~~(2)~~ All licenses shall remain in effect until the next succeeding May 1,
9 unless earlier canceled, suspended, or revoked by the director pursuant
10 to section 45-922 or surrendered by the licensee pursuant to section
11 45-911.

12 (b) All licenses issued on or after the effective date of this act
13 and before January 1, 2021, shall remain in effect until December 31,
14 2021, unless earlier canceled, suspended, or revoked by the director
15 pursuant to section 45-922 or surrendered by the licensee pursuant to
16 section 45-911. All licenses issued on or after January 1, 2021, shall
17 remain in effect until the next succeeding December 31, unless earlier
18 canceled, suspended, or revoked by the director pursuant to section
19 45-922 or surrendered by the licensee pursuant to section 45-911.

20 (3) Licenses may be renewed annually by filing with the director (a)
21 a renewal fee consisting of five hundred dollars and any processing fee
22 allowed under subsection (2) of section 5 of this act for the main office
23 location and five hundred dollars and any processing fee allowed under
24 subsection (2) of section 5 of this act for each branch office location
25 and (b) an application for renewal in writing through the Nationwide
26 Mortgage Licensing System and Registry containing such information as the
27 director may require to indicate any material change in the information
28 contained in the original application or succeeding renewal applications.

29 Sec. 7. Section 45-911, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 45-911 A licensee may surrender a delayed deposit services business

1 license by delivering to the director written notice that the license is
2 surrendered and any processing fee allowed under subsection (2) of
3 section 5 of this act. The department may issue a notice of cancellation
4 of the license following such surrender in lieu of revocation
5 proceedings. The surrender shall not affect the licensee's civil or
6 criminal liability for acts committed prior to such surrender, affect the
7 liability for any fines which may be levied against the licensee or any
8 of its officers, directors, shareholders, partners, or members for acts
9 committed before the surrender, affect the liability of the surety on the
10 bond, or entitle such licensee to a return of any part of the annual
11 license fee or fees. The director may establish procedures for the
12 disposition of the books, accounts, and records of the licensee and may
13 require such action as he or she deems necessary for the protection of
14 the makers of checks which are outstanding at the time of surrender of
15 the license.

16 Sec. 8. Section 45-912, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 45-912 A licensee shall be required to notify the director in
19 writing through the Nationwide Mortgage Licensing System and Registry
20 within thirty days after the occurrence of any material development,
21 including, but not limited to:

22 (1) Bankruptcy or corporate reorganization;

23 (2) Business reorganization;

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

26 (4) The filing of a criminal indictment or complaint against the
27 licensee or any of its officers, directors, shareholders, partners,
28 members, employees, or agents;

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

1 (6) The termination of employment or association with the licensee
2 of any of the licensee's officers, directors, shareholders, partners,
3 members, employees, or agents for violations or suspected violations of
4 the Delayed Deposit Services Licensing Act, any rule, regulation, or
5 order thereunder, or any state or federal law applicable to the licensee.

6 Sec. 9. Section 45-915, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 45-915 (1) Except as provided in subsection (2) of this section, a
9 licensee, on or before December 31, 2020, may offer a delayed deposit
10 services business only at an office designated as its principal place of
11 business in the application. A licensee may change the location of its
12 designated principal place of business with the prior written approval of
13 the director. The director may establish forms and procedures for
14 determining whether the change of location should be approved.

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

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

28 (4) On or after January 1, 2021, a licensee may operate branch
29 offices in Nebraska. The licensee may establish a branch office or change
30 the location of a branch office with the prior written approval of the
31 director. The director may establish forms and procedures for determining

1 whether an original branch or branches or a change of location of a
2 branch should be approved.

3 (5) (3) A fee of one hundred fifty dollars and any processing fee
4 allowed under shall be paid to the director for each request made
5 pursuant to subsection (1) or (2) of this section 5 of this act shall be
6 submitted with each request made pursuant to this section.

7 Sec. 10. Original sections 45-905, 45-906, 45-912, and 45-915,
8 Reissue Revised Statutes of Nebraska, and sections 45-901, 45-902,
9 45-910, and 45-911, Revised Statutes Cumulative Supplement, 2018, are
10 repealed.