

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 553**

Introduced by McGill, 26.

Read first time January 19, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Delayed Deposit Services Licensing Act; to  
2 amend sections 45-901, 45-906, 45-915, 45-919, 45-921,  
3 45-925, and 45-927, Reissue Revised Statutes of Nebraska;  
4 to state intent; to prohibit certain acts; to provide  
5 fees; to provide penalties; to create a data base; to  
6 provide powers and duties for the Director of Banking and  
7 Finance; to change provisions relating to fines; to  
8 harmonize provisions; and to repeal the original  
9 sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 45-901, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           45-901 Sections 45-901 to 45-929 and sections 7 to 10 of  
4 this act shall be known and may be cited as the Delayed Deposit  
5 Services Licensing Act.

6           Sec. 2. Section 45-906, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

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

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

12           (2) A data base fee of one hundred dollars. The data base  
13 fee shall be used to defray the costs of establishing the data base  
14 implemented pursuant to section 7 of this act. The data base fee  
15 established under this subdivision terminates on the date the  
16 director implements the data base pursuant to section 7 of this act;  
17 and

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

1 immediately cease doing business and its license shall be surrendered  
2 to or canceled by the department. A surety may cancel a bond only  
3 upon thirty days' written notice to the director.

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

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

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

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

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

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

8 (4) A data base fee of one hundred dollars shall be paid  
9 to the director for each request made pursuant to subsection (1) or  
10 (2) of this section. The data base fee shall be used to defray any  
11 administrative costs of entering into the third-party data base  
12 contract pursuant to section 7 of this act. The data base fee  
13 established under this subsection shall terminate on the date the  
14 director enters into a contract for a data base pursuant to section 7  
15 of this act.

16 Sec. 4. Section 45-919, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 45-919 (1) No licensee shall:

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

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

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

1 deemed as being held in excess of the thirty-four-day period;

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

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

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

24 ~~(g) Enter into another delayed deposit transaction with~~  
25 ~~the same maker on the same business day as the completion of a~~

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

10 (g) Enter into another delayed deposit transaction with a  
11 maker if such maker has a delayed deposit transaction in an aggregate  
12 face amount of five hundred dollars that is not complete with the  
13 licensee or any other licensee.

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

1 agent of the licensee.

2           Sec. 5. Section 45-921, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           45-921 (1) The director may examine or investigate  
5 complaints about or reports of alleged violations of the Delayed  
6 Deposit Services Licensing Act or any rule, regulation, or order of  
7 the director thereunder. The director may order the actual cost of  
8 such examination or investigation to be paid by the person who is the  
9 subject of the examination or investigation, whether the alleged  
10 violator is licensed or not.

11           (2) The director may publish information concerning any  
12 violation of the act or any rule, regulation, or order of the  
13 director under the act.

14           (3) For purposes of any investigation, examination, or  
15 proceeding under the act, the director may administer oaths and  
16 affirmations, subpoena witnesses, compel their attendance, take  
17 evidence, and require the production of any books, papers,  
18 correspondence, memoranda, agreements, or other documents or records  
19 which the director deems relevant or material to the examination,  
20 investigation, or proceeding.

21           (4) In the case of contumacy by or refusal to obey a  
22 subpoena issued to any person, the district court of Lancaster  
23 County, upon application by the director, may issue an order  
24 requiring such person to appear before the director and to produce  
25 documentary evidence if so ordered to give evidence on the matter

1 under investigation or in question. Failure to obey the order of the  
2 court may be punished by the court as contempt.

3 (5) Upon receipt by a licensee of a notice of  
4 investigation or inquiry request for information from the department,  
5 the licensee shall respond within twenty-one calendar days. Each day  
6 a licensee fails to respond as required by this subsection shall  
7 constitute a separate violation.

8 (6) If the director finds, after notice and opportunity  
9 for hearing in accordance with the Administrative Procedure Act, that  
10 any person has violated subsection (5) of this section, the director  
11 may order such person to pay (a) an administrative fine of not more  
12 than one thousand dollars for each separate violation and (b) the  
13 costs of investigation. ~~All fines collected by the department~~  
14 ~~pursuant to this subsection shall be remitted to the State Treasurer~~  
15 ~~for credit to the permanent school fund. The department shall remit~~  
16 ~~fines collected under this subsection to the State Treasurer for~~  
17 ~~distribution in accordance with Article VII, section 5, of the~~  
18 ~~Constitution of Nebraska.~~

19 (7) If a person fails to pay an administrative fine and  
20 the costs of investigation ordered pursuant to subsection (6) of this  
21 section, a lien in the amount of such fine and costs may be imposed  
22 upon all assets and property of such person in this state and may be  
23 recovered in a civil action by the director. The lien shall attach to  
24 the real property of such person when notice of the lien is filed and  
25 indexed against the real property in the office of the register of

1 deeds in the county where the real property is located. The lien  
2 shall attach to any other property of such person when notice of the  
3 lien is filed against the property in the manner prescribed by law.  
4 Failure of the person to pay such fine and costs shall constitute a  
5 separate violation of the Delayed Deposit Services Licensing Act.

6 Sec. 6. Section 45-925, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

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

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

1 assets and property of such person in this state and may be recovered  
2 in a civil action by the director. Failure of the person to pay such  
3 fine and costs shall constitute a separate violation of the act.

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

14           (2) On or before January 1, 2014, the director shall  
15 enter into a contract with a third-party data base provider to  
16 develop, implement, and maintain a statewide, common data base that  
17 has real-time access through an Internet connection, is accessible at  
18 all times to licensees, and is accessible at all times to the  
19 director. The director shall select the third-party data base  
20 provider and shall retain oversight control over such provider. The  
21 data base shall comply with the requirements of this section. Before  
22 the director determines that the data base is fully operational for  
23 purposes of the Delayed Deposit Services Licensing Act, the third-  
24 party data base provider shall operate, for at least thirty days, a  
25 pilot program of the data base to test all of its processes. The

1 third-party data base provider shall make the pilot program available  
2 to all applicants and licensees. During the thirty-day test period  
3 beginning on a date on which the director determines that the data  
4 base is fully operational, the director shall not approve the  
5 imposition of any data base verification fees under subsection (4) of  
6 section 9 of this act.

7 (3) With respect to a contract with a third-party data  
8 base provider for the development, implementation, and maintenance of  
9 the data base, the following shall apply:

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

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

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

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

25 (e) If the third-party data base provider materially

1 violates this section, the director shall terminate the contract and  
2 the third-party data base provider shall be barred from becoming a  
3 party to any other state contract. If the director terminates the  
4 contract, the director shall reopen the bidding process in order to  
5 contract with another third-party data base provider within a  
6 reasonable period of time; and

7 (f) Any person injured by the third-party data base  
8 provider's violation of this section may maintain a civil cause of  
9 action against the third-party data base provider and may recover  
10 actual damages plus reasonable attorney's fees.

11 (4) The data base shall allow a licensee accessing the  
12 data base to:

13 (a) Verify whether a maker has any delayed deposit  
14 transactions with any licensee that have not been completed; and

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

19 (5) While operating the data base, the third-party data  
20 base provider shall:

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

25 (b) Provide accurate and secure receipt, transmission,

1 and storage of maker data.

2 (6) When the third-party data base provider receives  
3 notification that a delayed deposit transaction is completed pursuant  
4 to section 45-919, the third-party data base provider shall designate  
5 the transaction as completed in the data base immediately, but no  
6 later than 11:59 p.m., on the day the third-party data base provider  
7 received notification.

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

21 (8) The third-party data base provider may charge each  
22 licensee a verification fee for access to the data base in amounts  
23 approved by the director under subsection (4) of section 8 of this  
24 act.

25 (9) The director may access the data base only for

1 purposes of an investigation of, examination of, or enforcement  
2 action against an individual third-party data base provider,  
3 licensee, maker, or other person under the act. The director and any  
4 employee of the director or this state shall not obtain or access a  
5 maker's social security number, driver's license number, or other  
6 state-issued identification number in the data base except as  
7 provided in this subsection. An individual who violates this  
8 subsection is guilty of a Class II misdemeanor and, if convicted,  
9 shall be discharged from employment.

10 (10) The director shall investigate violations of this  
11 section. The director shall not delegate his or her responsibilities  
12 under this subsection to any third-party data base provider.

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

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

16 (b) Information in the data base concerning a transaction  
17 shall be archived within three hundred sixty-five days after a  
18 transaction is completed unless needed for a pending enforcement  
19 action;

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

22 (d) Information in the data base concerning a transaction  
23 shall be deleted from the data base three years after the transaction  
24 is completed or three years after the completion of any enforcement  
25 action, whichever is later.

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

4           (13) The director shall specify the information to be  
5 transmitted by licensees for inclusion in the data base and the form  
6 and manner of transmission of such information.

7           Sec. 8. (1) A licensee shall verify a maker's eligibility  
8 to enter into a delayed deposit transaction by doing one of the  
9 following, as applicable:

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

17           (b) If the director has implemented a data base under  
18 section 7 of this act and the data base is fully operational, as  
19 determined by the director, the licensee shall access the data base  
20 and verify that the maker does not have any transactions in violation  
21 of section 45-919.

22           (2) If the director has not yet implemented a data base  
23 under section 7 of this act, the data base is not fully operational  
24 as determined by the director, or the licensee is unable to access  
25 the data base due to technical difficulties occurring with the data

1 base as determined by the director, a licensee may rely upon the  
 2 written verification of the maker in a statement provided in  
 3 substantially the following form, in at least twelve-point type: I DO  
 4 NOT HAVE ANY OUTSTANDING DELAYED DEPOSIT TRANSACTIONS WITH ANY  
 5 LICENSEE AND I HAVE NOT TERMINATED A DELAYED DEPOSIT AGREEMENT WITHIN  
 6 THE PAST 72 HOURS ..... (maker signature  
 7 and date of maker signature).

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

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

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

1 information contained in the data base.

2 (6) Before entering into a delayed deposit transaction, a  
3 licensee shall submit to the third-party data base provider the  
4 maker's name and address, the maker's social security number,  
5 driver's license number, or other state-issued identification number,  
6 the amount of the transaction, the maker's check number, the date of  
7 the transaction, the maturity date of the transaction, and any other  
8 information required by the third-party data base provider, in a  
9 format required by the director.

10 (7) When a delayed deposit transaction is completed, the  
11 licensee shall designate the transaction as completed and immediately  
12 notify the third-party data base provider no later than 11:59 p.m. on  
13 the day the transaction was completed. The director shall assess an  
14 administrative fine of one hundred dollars for each day that the  
15 licensee fails to notify the third-party data base provider that the  
16 transaction has been completed. It is a defense to the assessment of  
17 the administrative fine under this section that notifying the third-  
18 party data base provider was not possible due to temporary technical  
19 problems with the data base or to circumstances beyond the licensee's  
20 control. All fines collected under this subsection shall be remitted  
21 to the State Treasurer for distribution in accordance with Article  
22 VII, section 5, of the Constitution of Nebraska. If the director  
23 determines that a licensee has a continuing pattern of willful  
24 violations of this subsection, the director may also take any action  
25 available to him or her under the Delayed Deposit Services Licensing

1 Act.

2 (8) The director may assess each licensee and each branch  
3 office that is licensed under the act as of the effective date of  
4 this act a data base fee not to exceed one hundred dollars to defray  
5 the costs of establishing the data base. The data base fee  
6 established under this section shall terminate on the date the  
7 director implements the data base pursuant to section 7 of this act.

8 Sec. 9. (1) The third-party data base provider contracted  
9 pursuant to section 7 of this act shall compile an annual report from  
10 the information in the data base. The annual report shall contain:

11 (a) The total transaction volume under the Delayed  
12 Deposit Services Licensing Act;

13 (b) The total dollar amount of transactions paid under  
14 the act;

15 (c) The total number of licensees and branches under the  
16 act;

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

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

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

21 (2) The annual report shall be made available  
22 electronically on the web site of the Department of Banking and  
23 Finance.

24 Sec. 10. (1) The state or its third-party data base  
25 provider pursuant to section 7 of this act shall not be liable to any

1 person for gathering, managing, or using information in the data base  
2 created under section 7 of this act and used in accordance with the  
3 provisions of the third-party data base provider contract and the  
4 Delayed Deposit Services Licensing Act.

5 (2) No licensee shall be liable to any person for  
6 performing its duties under sections 7 to 10 of this act unless and  
7 to the extent the licensee commits a willful and wanton act or  
8 omission.

9 Sec. 11. Section 45-927, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 ~~45-927 All fees, charges, costs, and fines collected by~~  
12 ~~the director under the Delayed Deposit Services Licensing Act shall~~  
13 ~~be remitted to the State Treasurer. Fees, charges, and costs shall be~~  
14 ~~credited to the Financial Institution Assessment Cash Fund, and fines~~  
15 ~~shall be credited to the permanent school fund.~~

16 (1) The director shall collect fees, charges, costs, and  
17 fines due the director under the Delayed Deposit Services Licensing  
18 Act and remit them to the State Treasurer. The State Treasurer shall  
19 credit the fees, charges, and costs to the Financial Institution  
20 Assessment Cash Fund and distribute the fines in accordance with  
21 Article VII, section 5, of the Constitution of Nebraska.

22 (2) The director shall allow the third-party data base  
23 provider to collect all fees the third-party data base provider is  
24 authorized to charge under the act directly from each licensee.

25 Sec. 12. Original sections 45-901, 45-906, 45-915,

1 45-919, 45-921, 45-925, and 45-927, Reissue Revised Statutes of  
2 Nebraska, are repealed.