

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

IN THE MATTER OF:	)	FINDINGS OF FACT
	)	
McKenzie Check Advance of Nebraska, LLC,	)	CONCLUSIONS OF LAW
d/b/a Advance America,	)	
d/b/a Advance America, Cash Advance Centers,	)	AND
4718 O Street,	)	
Lincoln, Lancaster County, Nebraska	)	CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Delayed Deposit Services Licensing Act, Neb. Rev. Stat. §§ 45-901 to 45-929 (Reissue 2004; Cum. Supp. 2008) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008), the DEPARTMENT has examined the books, accounts, and records of McKenzie Check Advance of Nebraska, LLC, d/b/a Advance America; d/b/a Advance America, Cash Advance Centers, 4718 O Street, Lincoln, Lancaster County, Nebraska (“ADVANCE AMERICA”). As a result of such examination, and being duly advised and informed in the matter, the Director and ADVANCE AMERICA enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. ADVANCE AMERICA holds a delayed deposit services business license under the Act. License #1864 was originally issued on January 21, 1999. The license has been renewed annually on May 1<sup>st</sup> since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

2. On May 9, 2007, the DEPARTMENT commenced an examination of ADVANCE AMERICA pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008). This examination included an on-site visitation of ADVANCE AMERICA's three Lincoln, Lancaster County, Nebraska locations.

3. On December 15, 2008, the DEPARTMENT commenced an examination of ADVANCE AMERICA pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008). This examination included an on-site visitation of ADVANCE AMERICA's three Lincoln, Lancaster County, Nebraska locations.

4. The May 9, 2007 Report of Examination ("2007 Report") was forwarded to ADVANCE AMERICA on June 11, 2007. The December 15, 2008 Report of Examination ("2008 Report") was forwarded to ADVANCE AMERICA on January 13, 2009. The Reports noted a number of violations of the Act. ADVANCE AMERICA submitted responses received by the DEPARTMENT on July 2, 2007, and August 30, 2007, for the 2007 Report, and on June 1, 2009, for the 2008 Report.

5. The previous regular examination of ADVANCE AMERICA conducted on July 12, 2005 ("2005 Exam") noted a number of violations of the Act resulting in a Consent Agreement with the effective date of March 16, 2006. Repeat violations will be noted below.

6. References in this Consent Agreement to customers of ADVANCE AMERICA will be by way of initials, in order to protect the privacy of such customers. ADVANCE AMERICA knows or should know the identity of these customers. If ADVANCE AMERICA is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

7. The DEPARTMENT has reviewed the responses received by ADVANCE AMERICA and has taken them into consideration in preparing this Consent Agreement.

8. The 2007 Report noted fifty-eight (58) instances where ADVANCE AMERICA failed to obtain a completed Same Day Transaction Verification Form (“SDTVF(s)”) for its customers.

9. ADVANCE AMERICA’s failure to obtain completed SDTVFs in fifty-eight instances represents fifty-eight (58) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008).

10. The 2008 Report noted five (5) instances where ADVANCE AMERICA failed to maintain files for C A-W, EA, CG, RS, and TS.

11. ADVANCE AMERICA’s failure to maintain files in five instances represents five (5) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

12. The 2007 Report noted four (4) instances where ADVANCE AMERICA held more than one check with an aggregate face value greater than five hundred dollars for customers MV, TL(2) and SS. The 2008 Report noted six (6) instances where ADVANCE AMERICA held more than one check with an aggregate face value greater than five hundred dollars for customers AJ, BM, unknown D, DA, AA, and KH.

13. ADVANCE AMERICA’s holding of more than one check with an aggregate face value greater than five hundred dollars in ten instances represents ten (10) separate violations of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

14. The 2008 Report noted two (2) instances where ADVANCE AMERICA held checks for CG and EJ longer than the statutorily allowed time.

15. ADVANCE AMERICA's holding of checks for customers CG and EJ longer than the statutorily allowed time represents two (2) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(c) as noted in the 2005 Exam and corresponding Consent Agreement.

16. The DEPARTMENT could conclude that the actions of ADVANCE AMERICA warrant the commencement of administrative proceedings to determine whether it should impose an administrative fine in an amount up to five thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008).

17. The DEPARTMENT incurred a minimum of seven hundred fifty dollars in investigation costs in this matter.

#### **CONCLUSIONS OF LAW**

1. Neb. Rev. Stat. § 45-908 (Reissue 2004) provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, and shareholders are such as to warrant a belief that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.

2. Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) provides that 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. Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008) provides that no licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars.

4. Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) provides that no licensee shall hold or agree to hold a check for more than thirty-four days.

5. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) sets forth acts which are prohibited to a licensee. These acts include entering 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.

6. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008) provides that if the Director finds, after notice and opportunity for hearing, that any person has violated the Act, the Director may order such person to pay an administrative fine of not more than five thousand dollars for each separate violation and the costs of an investigation.

7. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that ADVANCE AMERICA has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008).

8. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

9. It is in the best interest of ADVANCE AMERICA, and it is in the best interest of the public, for ADVANCE AMERICA and the DEPARTMENT to resolve the issues included herein.

## **CONSENT AGREEMENT**

The DEPARTMENT and ADVANCE AMERICA agree as follows:

Stipulations: In connection with this Consent Agreement, ADVANCE AMERICA and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters raised by the DEPARTMENT's May 9, 2007 and December 15, 2008 Reports of ADVANCE AMERICA. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

ADVANCE AMERICA further represents as follows:

1. ADVANCE AMERICA is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. ADVANCE AMERICA is acting free from any duress or coercion of any kind or nature.
3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, ADVANCE AMERICA shall pay a fine of one hundred dollars (\$100.00) for each of the

five (5) instances it failed to maintain customer files in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

2. Within ten (10) days after the effective date of this Consent Agreement, ADVANCE AMERICA shall pay a fine of fifty dollars (\$50.00) for each of the fifty-eight (58) instances it failed to obtain completed SDTVFs in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) and Neb. Rev. Stat. 919(1)(g) (Cum. Supp. 2008).

3. Within ten (10) days of the effective date of this Consent Agreement, ADVANCE AMERICA shall pay a fine of one hundred (\$100.00) for each of the ten (10) instances it held checks for customers with an aggregate face value greater than five hundred dollars in violation of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

4. Within ten (10) days after the effective date of this Consent Agreement, ADVANCE AMERICA shall pay a fine of two hundred fifty dollars (\$250.00) for each of the two (2) instances it held checks longer than the statutorily allowed time in repeat violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

5. Within ten (10) days after the effective date of this Consent Agreement, ADVANCE AMERICA shall pay the DEPARTMENT's investigation costs in the amount of seven hundred fifty dollars (\$750.00).

6. The total amount of the fine, four thousand nine hundred dollars (\$4,900.00), plus the total amount of investigation costs, seven hundred fifty dollars (\$750.00), shall be payable in one check or money order in the amount of five thousand six hundred fifty dollars (\$5,650.00) to the DEPARTMENT.

7. In the event ADVANCE AMERICA fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action

regarding ADVANCE AMERICA as it deems necessary and appropriate in the public interest.

8. If, at any time, the DEPARTMENT determines ADVANCE AMERICA has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

9. The effective date of this Consent Agreement will be the date of the Director's signature.

DATED this 29 day of AUGUST, 2009.

**McKenzie Check Advance of Nebraska, LLC  
d/b/a Advance America  
d/b/a Advance America, Cash Advance Centers**

By: 

W. Thomas Newell, Vice President

135 North Church Street  
Spartanburg, SC 29306

DATED this 26<sup>th</sup> day of August, 2009.

**STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE**

By: 

John Munn, Director

Commerce Court, Suite 400  
1230 "O" Street  
Lincoln, Nebraska 68508  
(402) 471-2171