

LEGISLATIVE BILL 86

Approved by the Governor February 27, 1985

Introduced by Wesely, 26

AN ACT relating to loans; to amend sections 45-190, 45-192, and 45-193, Reissue Revised Statutes of Nebraska, 1943; to redefine a term; to change provisions relating to cease and desist orders; to provide powers; to change a penalty; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 45-190, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows: 45-190. As used in sections 45-189 to 45-193, unless the context otherwise requires:

(1) Advance fee shall mean any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker, ~~but shall not include any deposit which is returned to the borrower when a written loan commitment is not issued,~~ and shall include, but not be limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower shall mean a person obtaining or desiring to obtain a loan of money;

(3) Department shall mean the Department of Banking and Finance;

(4) Loan broker shall mean any person, except any bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, credit union, industrial loan company, securities broker-dealer, real estate broker or salesperson, attorney, Federal Housing Administration or Veterans' Administration approved lender, credit card company, installment loan licensee, or insurance company which is subject to regulation or supervision under the laws of the United States or this state, who:

(a) For or in expectation of consideration, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(b) For or in expectation of consideration, assists, consults, or advises a borrower in obtaining or attempting to obtain a loan of money;

(c) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(d) Holds himself or herself out, through advertising, signs, or other means, as a loan broker; and

(5) Person shall mean natural persons, corporations, trusts, unincorporated associations, joint ventures, and partnerships.

Sec. 2. That section 45-192, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-192. (1) The department may in its discretion, or upon the sworn complaint in writing of any person, investigate the actions of any loan broker. The department shall forward a copy of any complaint against any person exempted from sections 45-189 to 45-193 pursuant to subdivision (4) of section 45-190 to the agency responsible for regulating or supervising such person.

(2) The department shall have the power to order a loan broker to cease and desist whenever, after hearing and for cause shown, the department determines that the loan broker has violated any provision of sections 45-189 to 45-193. Upon entry of a cease and desist order, the director of the department shall promptly notify the loan broker that such order has been entered, of the reasons for such order, and that upon receipt of written request from the loan broker a hearing will be scheduled within fifteen business days after the date of the written request unless the loan broker consents to a later date. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(3) The director may vacate or modify a cease and desist 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.

(4) For the purpose of any investigations or proceedings under sections 45-189 to 45-193, the director or any officer designated by him or her 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 inquiry. Such hearings shall be conducted pursuant to Chapter 84, article 9.

(5) The department may bring an action in the name of the state to enjoin any person violating any provision of sections 45-189 to 45-193.

Sec. 3. That section 45-193, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-193. (1) A knowing and willful violation of subdivision (1) of section 45-191 is:

(a) A Class IV felony if the advance fee assessed or collected is in excess of one thousand three hundred dollars; and

(b) A Class I misdemeanor if the advance fee assessed or collected is one thousand three hundred dollars or less.

(2) A knowing and willful violation of

subdivision (2) of section 45-191 is a Class IV felony. ~~& misdemeanor.~~

Sec. 4. That original sections 45-190, 45-192, and 45-193, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.