

LEGISLATIVE BILL 154

Approved by the Governor March 16, 1931

Introduced by Wesely, 26

AN ACT relating to loan brokers; to provide definitions; to regulate practices by loan brokers; to provide duties; to establish penalties; and to provide for severability.

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

Section 1. The Legislature finds that:

(1) Many professional groups are presently licensed or otherwise regulated by the State of Nebraska in the interest of public protection;

(2) Certain questionable business practices, such as the collection of an advanced fee prior to the performance of the service, misleads the public;

(3) Such practices are avoided by many professional groups and many professional groups are regulated by the state to restrict practices which tend to mislead or deceive the public;

(4) Loan brokers in Nebraska have engaged in the practice of collecting an advance fee from borrowers in consideration for attempting to procure a loan of money;

(5) Such practice, as well as others, by loan brokers has led the public to believe that the loan broker has agreed to procure a loan for the borrower when in fact the loan broker has merely promised to attempt to procure a loan; and

(5) Regulation of loan brokers by the state, in similar fashion to that of other professions, is necessary in order to protect the public welfare and to promote the use of fair and equitable business practices.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Advance fee shall mean any fee 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;

(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, 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

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

Sec. 3. No loan broker shall:

(1) Assess or collect an advance fee from a borrower under a contract to provide services for the procurement of a loan of money; or

(2) Willfully, either orally or in writing, misrepresent the terms, benefits, privileges, or provisions of any service contract issued or to be issued by the loan broker or by any lender.

Sec. 4. 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 this act pursuant to subdivision (4) of section 2 of this act to the agency responsible for regulating or supervising such person. 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 this act. Such hearings shall be conducted pursuant to Chapter 84, article 9. The department may bring an action in the name of the state to enjoin any person violating any provision of this act.

Sec. 5. (1) A knowing and willful violation of subdivision (1) of section 3 of this act is:

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

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

(2) A knowing and willful violation of subdivision (2) of section 3 of this act is a Class I misdemeanor.

Sec. 6. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.