

LEGISLATIVE BILL 279

Approved by the Governor March 7, 2013

Introduced by Pirsch, 4.

FOR AN ACT relating to finance; to amend sections 45-191.10, 45-920, 45-1008, 45-1013, and 45-1018, Reissue Revised Statutes of Nebraska, and section 45-190, Revised Statutes Cumulative Supplement, 2012; to change provisions relating to loan brokers and to redefine a term; to change provisions relating to the Delayed Deposit Services Licensing Act and the Nebraska Installment Loan Act; and to repeal the original sections.

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

Section 1. Section 45-190, Revised Statutes Cumulative Supplement, 2012, is amended to read:

45-190 For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

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

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

~~(5)~~ (5)(a) Loan broker means 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, licensed or registered mortgage banker, Federal Housing Administration or United States Department of Veterans Affairs approved lender as long as the loan of money made by the Federal Housing Administration or the United States Department of Veterans Affairs approved lender is secured or covered by guarantees or commitments or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs, 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) (i) For or in expectation of consideration from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;~~

~~(b) (ii) For or in expectation of consideration from a borrower, assists a borrower in making an application to obtain a loan of money;~~

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

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

(b) Loan broker does not include: (i) A bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, or credit union which is subject to regulation or supervision under the laws of the United States or any state; (ii) a mortgage banker or installment loan company licensed or registered under the laws of the State of Nebraska; (iii) a credit card company; (iv) an insurance company authorized to conduct business under the laws of the State of Nebraska; or (v) a lender approved by the Federal Housing Administration or the United States Department of Veterans Affairs, if the loan is secured or covered by guarantees, commitments, or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Sec. 2. Section 45-191.10, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.10 The following persons are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, certified public accountant, or investment adviser.

Sec. 3. Section 45-920, Reissue Revised Statutes of Nebraska, is amended to read:

45-920 (1) The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) The director may accept any examination, report, or information regarding a licensee from the Consumer Financial Protection Bureau or a foreign state agency. The director may provide any examination, report, or information regarding a licensee to the Consumer Financial Protection Bureau or a foreign state agency. As used in this section, unless the context otherwise requires, foreign state agency means any duly constituted regulatory or supervisory agency which has authority over delayed deposit services businesses, payday lenders, or similar entities, and which is created under the laws of any other state or any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, or which is operating under the code of law for the District of Columbia.

Sec. 4. Section 45-1008, Reissue Revised Statutes of Nebraska, is amended to read:

45-1008 Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the act. The license shall remain in full force and effect until the following March 1 December 31 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act. Beginning January 1, 2010, initial licenses shall remain in full force and effect until the next succeeding December 31.

Sec. 5. Section 45-1013, Reissue Revised Statutes of Nebraska, is amended to read:

45-1013 (1) ~~Except as provided in subsection (2) of this section,~~ For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

~~(2) Licenses which expire on March 1, 2010, shall be renewed until December 31, 2010, upon compliance with subsection (1) of this section. For such renewals, the department shall prorate the fees provided in subsection (1) of this section using a factor of ten-twelfths.~~

~~(3)~~ (2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The expense of any publication required by this section shall be paid by the applicant licensee.

Sec. 6. Section 45-1018, Reissue Revised Statutes of Nebraska, is amended to read:

45-1018 (1) A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) Effective on January 1, 2011, a A licensee shall submit a

mortgage report of condition as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

Sec. 7. Original sections 45-191.10, 45-920, 45-1008, 45-1013, and 45-1018, Reissue Revised Statutes of Nebraska, and section 45-190, Revised Statutes Cumulative Supplement, 2012, are repealed.