

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 75

Introduced by Pahls, 31.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend sections 45-189,
2 45-190, and 45-742, Reissue Revised Statutes of Nebraska,
3 and section 8-702, Revised Statutes Cumulative
4 Supplement, 2010; to change provisions relating to loan
5 brokers, mortgage loan originators, and residential
6 mortgage licensing; to repeal the original sections; and
7 to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-702, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 8-702 (1) Except as provided in subsection (2) of this
4 section, any banking institution organized under the laws of this
5 state shall, before a charter may be issued, enter into such
6 contracts, incur such obligations, and generally do and perform any
7 and all such acts and things whatsoever as may be necessary or
8 appropriate in order to obtain membership in the Federal Deposit
9 Insurance Corporation and provide for insurance of deposits in the
10 banking institution. Any banking institution may take advantage of
11 any and all memberships, loans, subscriptions, contracts, grants,
12 rights, or privileges which may at any time be available or inure to
13 banking institutions or to their depositors, creditors, stockholders,
14 conservators, receivers, or liquidators by virtue of those provisions
15 of section 8 of the Federal Banking Act of 1933 (section 12B of the
16 Federal Reserve Act, as amended) which establish the Federal Deposit
17 Insurance Corporation and provide for the insurance of deposits or of
18 any other provisions of that or of any other act or resolution of
19 Congress to aid, regulate, or safeguard banking institutions and
20 their depositors, including any amendments of the same or any
21 substitutions therefor. Any banking institution may also subscribe
22 for and acquire any stock, debentures, bonds, or other types of
23 securities of the Federal Deposit Insurance Corporation and comply
24 with the lawful regulations and requirements from time to time issued
25 or made by such corporation.

1 (2)(a) A banking institution which has not complied with
2 subsection (1) of this section and which was in operation on
3 September 4, 2005, may continue to operate if it provides notice to
4 depositors and holders of savings certificates, certificates of
5 indebtedness, or other similar instruments that such deposits or
6 instruments are not insured. Such notice shall be given (i) on the
7 date any such deposit, savings certificate, certificate of
8 indebtedness, or similar instrument is created for deposits made and
9 instruments created on or after October 1, 1984, and (ii) annually on
10 October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE
11 OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS
12 CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT
13 IS NOT INSURED. Any advertising conducted by such banking institution
14 shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES,
15 CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS
16 INSTITUTION ARE NOT INSURED. The banking institution shall also
17 display such notice in one or more prominent places in all facilities
18 in which the institution operates. All such notices and statements
19 shall be given in large or contrasting type in such a manner that
20 such notices shall be conspicuous. Each willful failure to give the
21 notice prescribed in subdivision (2)(a) of this section shall
22 constitute a Class II misdemeanor. All officers and directors of any
23 such banking institution shall be jointly and severally responsible
24 for the issuance of the notices described in subdivision (2)(a) of
25 this section in the form and manner described. The banking

1 institution shall annually by November 1 file proof of compliance
2 with subdivision (2)(a) of this section with the Department of
3 Banking and Finance.

4 (b) Effective July 31, 2010, or within ~~sixty one hundred~~
5 eighty days after the Nationwide Mortgage Licensing System and
6 Registry is capable of accepting such registrations, whichever occurs
7 later, any banking institution described in subdivision (a) of this
8 subsection that employs mortgage loan originators, as defined in
9 section 45-702, shall register such employees with the Nationwide
10 Mortgage Licensing System and Registry, as defined in section 45-702,
11 by furnishing the following information concerning the employees'
12 identities to the Nationwide Mortgage Licensing System and Registry:

13 (i) Fingerprints for submission to the Federal Bureau of
14 Investigation, and any governmental agency or entity authorized to
15 receive such information, for a state and national criminal history
16 background check; and

17 (ii) Personal history and experience, including
18 authorization for the Nationwide Mortgage Licensing System and
19 Registry to obtain information related to any administrative, civil,
20 or criminal findings by any governmental jurisdiction.

21 (3) The charter of any banking institution which fails to
22 comply with the provisions of this section shall be automatically
23 forfeited and such banking institution shall be liquidated and
24 dissolved, either voluntarily by its board of directors under the
25 supervision of the department or involuntarily by the department as

1 in cases of insolvency, except that such charter shall not be
2 automatically forfeited for failure to comply with subdivision (2)(b)
3 of this section if the banking institution cures such violation
4 within sixty days after receipt of notice of such violation from the
5 Department of Banking and Finance. Any banking institution whose
6 charter is automatically forfeited under the provisions of this
7 subsection which continues to engage in the business for which it had
8 been chartered after such forfeiture, as well as the directors and
9 officers thereof, shall be subject to the penalties provided by law
10 for illegally engaging in the business of banking.

11 Sec. 2. Section 45-189, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 45-189 The Legislature finds that:

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

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

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

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

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

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

9 Sec. 3. Section 45-190, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 45-190 For purposes of sections 45-189 to 45-191.11,
12 unless the context otherwise requires:

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

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

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

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

23 (5) Loan broker means any person, except any bank, trust
24 company, savings and loan association or subsidiary of a savings and
25 loan association, building and loan association, credit union,

1 licensed or registered mortgage banker, Federal Housing
2 Administration or United States Department of Veterans Affairs
3 approved lender as long as the loan of money made by the Federal
4 Housing Administration or the United States Department of Veterans
5 Affairs approved lender is secured or covered by guarantees or
6 commitments or agreements to purchase or take over the same by the
7 Federal Housing Administration or the United States Department of
8 Veterans Affairs, credit card company, installment loan licensee, or
9 insurance company which is subject to regulation or supervision under
10 the laws of the United States or this state, who:

11 (a) For or in expectation of ~~an advance fee~~ consideration
12 from a borrower, procures, attempts to procure, arranges, or attempts
13 to arrange a loan of money for a borrower;

14 (b) For or in expectation of ~~an advance fee~~ consideration
15 from a borrower, assists a borrower in making an application to
16 obtain a loan of money;

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

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

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

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

1 Sec. 4. Section 45-742, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 45-742 (1) The director may, following a hearing under
4 the Administrative Procedure Act and the rules and regulations
5 adopted and promulgated under the act, suspend or revoke any license
6 issued under the Residential Mortgage Licensing Act. The director may
7 also impose an administrative fine for each separate violation of the
8 act if the director finds:

9 (a) The licensee has materially violated or demonstrated
10 a continuing pattern of violating the act, rules and regulations
11 adopted and promulgated under the act, any order, including a cease
12 and desist order, issued under the act, or any other state or federal
13 law applicable to the conduct of its business;

14 (b) A fact or condition exists which, if it had existed
15 at the time of the original application for the license, would have
16 warranted the director to deny the application;

17 (c) The licensee has violated a voluntary consent or
18 compliance agreement which had been entered into with the director;

19 (d) The licensee has made or caused to be made, in any
20 document filed with the director or in any proceeding under the act,
21 any statement which was, at the time and in light of the
22 circumstances under which it was made, false or misleading in any
23 material respect or suppressed or withheld from the director any
24 information which, if submitted by the licensee, would have resulted
25 in denial of the license application;

1 (e) The licensee has refused to permit an examination by
2 the director of the licensee's books and affairs pursuant to
3 subsection (1) or (2) of section 45-741 or has refused or failed to
4 comply with subsection (5) of section 45-741 after written notice of
5 the violation by the director. Each day the licensee continues in
6 violation of this subdivision after such written notice constitutes a
7 separate violation;

8 (f) The licensee has failed to maintain records as
9 required by subdivision (8) of section 45-737 or as otherwise
10 required following written notice of the violation by the director.
11 Each day the licensee continues in violation of this subdivision
12 after such written notice constitutes a separate violation;

13 (g) The licensee knowingly has employed any individual or
14 knowingly has maintained a contractual relationship with any
15 individual acting as an agent, if such individual has been convicted
16 of, pleaded guilty to, or was found guilty after a plea of nolo
17 contendere to (i) a misdemeanor under any state or federal law which
18 involves dishonesty or fraud or which involves any aspect of the
19 mortgage banking business, depository institution business, or
20 installment loan company business or (ii) any felony under state or
21 federal law;

22 (h) The licensee knowingly has employed any individual or
23 knowingly has maintained a contractual relationship with any
24 individual acting as an agent, if such individual (i) has had a
25 mortgage loan originator license revoked in any state, unless such

1 revocation was subsequently vacated, (ii) has a mortgage loan
2 originator license which has been suspended by the director, or (iii)
3 while previously associated in any other capacity with another
4 licensee, was the subject of a complaint under the act and the
5 complaint was not resolved at the time the individual became employed
6 by, or began acting as an agent for, the licensee and the licensee
7 with reasonable diligence could have discovered the existence of such
8 complaint;

9 (i) The licensee knowingly has employed any individual or
10 knowingly has maintained a contractual relationship with any
11 individual acting as an agent if such individual is conducting
12 activities requiring a mortgage loan originator license in this state
13 without first obtaining such license;

14 (j) The licensee has violated the written restrictions or
15 conditions under which the license was issued;

16 (k) The licensee, or if the licensee is a business
17 entity, one of the officers, directors, shareholders, partners, and
18 members, was convicted of, pleaded guilty to, or was found guilty
19 after a plea of nolo contendere to (i) a misdemeanor under any state
20 or federal law which involves dishonesty or fraud or which involves
21 any aspect of the mortgage banking business, depository institution
22 business, or installment loan company business or (ii) any felony
23 under state or federal law;

24 (l) The licensee has had a similar license revoked in any
25 other jurisdiction; or

1 (m) The licensee has failed to reasonably supervise any
2 officer, employee, or agent to assure his or her compliance with the
3 act or with any state or federal law applicable to the mortgage
4 banking business.

5 (2) Except as provided in this section, a license shall
6 not be revoked or suspended except after notice and a hearing in
7 accordance with the Administrative Procedure Act and the rules and
8 regulations adopted and promulgated under the act.

9 (3) A licensee may voluntarily surrender a license by
10 delivering to the director written notice of the surrender, but a
11 surrender shall not affect civil or criminal liability for acts
12 committed before the surrender or liability for any fines which may
13 be levied against the licensee or any of its officers, directors,
14 shareholders, partners, or members pursuant to section 45-743 for
15 acts committed before the surrender. The director's approval of such
16 license surrender shall not be required unless the director has
17 commenced an examination or investigation pursuant to section 45-741
18 or has commenced a proceeding to revoke or suspend the licensee's
19 license or impose an administrative fine pursuant to this section.

20 (4)(a) If a licensee fails to (i) renew its license as
21 required by ~~section 45-706~~ sections 45-706 and 45-732 and does not
22 voluntarily surrender the license pursuant to this section or (ii)
23 pay the required fee for renewal of the license, the department may
24 issue a notice of expiration of the license to the licensee in lieu
25 of revocation proceedings.

1 (b) The director may adopt by rule, regulation, or order
2 procedures for the reinstatement of licenses for which a notice of
3 expiration was issued in accordance with subdivision (a) of this
4 subsection. Such procedures shall be consistent with standards
5 established by the Nationwide Mortgage Licensing System and Registry.
6 The fee for reinstatement shall be the same fee as the fee for the
7 initial license application.

8 (c) If a licensee fails to maintain a surety bond as
9 required by section 45-724, the department may issue a notice of
10 cancellation of the license in lieu of revocation proceedings.

11 (5) Revocation, suspension, surrender, cancellation, or
12 expiration of a license shall not impair or affect the obligation of
13 a preexisting lawful contract between the licensee and any person,
14 including a borrower.

15 (6) Revocation, suspension, cancellation, or expiration
16 of a license shall not affect civil or criminal liability for acts
17 committed before the revocation, suspension, cancellation, or
18 expiration or liability for any fines which may be levied against the
19 licensee or any of its officers, directors, shareholders, partners,
20 or members pursuant to section 45-743 for acts committed before the
21 revocation, suspension, cancellation, or expiration.

22 Sec. 5. Original sections 45-189, 45-190, and 45-742,
23 Reissue Revised Statutes of Nebraska, and section 8-702, Revised
24 Statutes Cumulative Supplement, 2010, are repealed.

25 Sec. 6. Since an emergency exists, this act takes effect

1 when passed and approved according to law.