

HOUSE BILL NO. 145

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE LYNN

Introduced: 2/23/09

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of residential real property mortgage lending,
2 including the licensing of mortgage lenders, mortgage brokers, and mortgage loan
3 originators and compliance with certain federal laws relating to residential mortgage
4 lending; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 06.01.050(3) is amended to read:

7 (3) "financial institution" means an institution subject to the regulation
8 of the department under this title; in this paragraph, "institution" includes a
9 commercial bank, savings bank, credit union, premium finance company, small loan
10 company, bank holding company, financial holding company, trust company, savings
11 and loan association, deferred deposit advance licensee under AS 06.50, and a
12 licensee under AS 06.62 [AS 06.60, A SMALL MORTGAGE LENDER UNDER
13 AS 06.60, AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY
14 OR WORKS UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE

1 LENDER; IN THIS PARAGRAPH,

2 (A) "LICENSEE UNDER AS 06.60" HAS THE MEANING
3 GIVEN TO "LICENSEE" IN AS 06.60.990;

4 (B) "ORIGINATOR UNDER AS 06.60" HAS THE
5 MEANING GIVEN TO "ORIGINATOR" IN AS 06.60.990;

6 (C) "SMALL MORTGAGE LENDER UNDER AS 06.60"
7 HAS THE MEANING GIVEN TO "SMALL MORTGAGE LENDER" IN
8 AS 06.60.990];

9 * **Sec. 2.** AS 06 is amended by adding a new chapter to read:

10 **Chapter 62. Regulation of Mortgage Lending.**

11 **Article 1. Regulation of Mortgage Lending.**

12 **Sec. 06.62.010. Regulation of mortgage lending.** The department shall
13 regulate mortgage lending activities in the state, including regulating a person
14 operating as a mortgage lender, mortgage broker, or mortgage loan originator.

15 **Sec. 06.62.020. Duties of the department.** The department shall adopt
16 regulations necessary to implement, interpret, or make specific this chapter, including
17 provisions relating to

18 (1) licensing of a mortgage lender, mortgage broker, or mortgage loan
19 originator, including submission of fingerprints for criminal history background
20 checks for an applicant or licensee;

21 (2) examination, investigation, and discipline of a person required to
22 be licensed under this chapter;

23 (3) competency testing and continuing education requirements for
24 persons required to be licensed under this chapter;

25 (4) mortgage business duties and restrictions;

26 (5) compliance with federal requirements, including 12 U.S.C. 5101 -
27 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008);

28 (6) compliance with the requirements of the Nationwide Mortgage
29 Licensing System and Registry for licensing by the state of mortgage lenders,
30 mortgage brokers, and mortgage loan originators; in this paragraph, "Nationwide
31 Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C.

1 5102(5);

2 (7) enforcement of provisions of law relating to mortgage lending;

3 (8) administration of the provisions of AS 06.62.100 - 06.62.180,
4 relating to the mortgage loan originator surety fund, and AS 06.62.200, relating to a
5 program administration fee; and

6 (9) the assessment of fees and other charges, including fund fees, late
7 payment penalties, and the reimbursement of investigation and examination expenses
8 related to the regulation of mortgage lending activities.

9 **Article 2. Mortgage Loan Originator Surety Fund.**

10 **Sec. 06.62.100. Mortgage loan originator surety fund.** The mortgage loan
11 originator surety fund is established as a separate account in the general fund. The
12 purpose of the fund is to pay fund claims against mortgage originator licensees.

13 **Sec. 06.62.110. Composition of fund.** The fund consists of payments made by
14 mortgage loan originator licensees under AS 06.62.120, filing fees for fund claims,
15 income earned on the investment of the money in the fund, and money appropriated to
16 the fund.

17 **Sec. 06.62.120. Required fund fees.** A person who applies for or renews a
18 mortgage loan originator license shall pay to the department a fee established by the
19 department.

20 **Sec. 06.62.130. Maximum liability.** (a) Payment of a fund claim out of the
21 fund may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan
22 transaction regardless of the number of persons injured or the number of pieces of
23 residential real property involved in the mortgage loan transaction.

24 (b) The liability of the fund for fund claims against one mortgage loan
25 originator licensee may not exceed \$50,000.

26 (c) If the liability limit under (b) of this section is insufficient to pay in full the
27 valid fund claims of all persons who have filed fund claims regarding one mortgage
28 loan originator licensee, the \$50,000 shall be distributed among the claimants in the
29 ratio that their individual fund claims bear to the aggregate of valid claims against that
30 mortgage loan originator licensee. The department shall distribute the money among
31 the persons entitled to share in the recovery without regard to the order in which their

1 fund claims were filed.

2 **Sec. 06.62.140. Election to use small claims court.** (a) Within 30 days after
3 receiving a copy of a fund claim under this chapter, the mortgage loan originator
4 licensee against whom the claim is made may elect to defend the fund claim as a small
5 claims action in district court under District Court Rules of Civil Procedure if the
6 claim does not exceed the small claims jurisdictional limit.

7 (b) A mortgage loan originator licensee who elects under (a) of this section to
8 defend a fund claim in district court under the small claims rules may not revoke the
9 election without the consent of the person who filed the fund claim.

10 (c) On receipt of a valid written election under (a) of this section, the
11 department shall dismiss the fund claim filed with the department and notify the
12 person who filed the fund claim that the fund claim will not be reimbursed by the
13 fund, but that the person who filed the fund claim may bring a small claims action in
14 the appropriate district court.

15 **Sec. 06.62.150. False claims or documents.** A person who knowingly files a
16 notice, statement, or other document under AS 06.62.100 - 06.62.160 that contains a
17 material misstatement of fact is guilty of a class A misdemeanor. In this section,
18 "knowingly" has the meaning given in AS 11.81.900.

19 **Sec. 06.62.160. Right to subrogation.** When the department has paid fund
20 money to a claimant, the department shall be subrogated to all of the rights of the
21 claimant to the amount paid, and the claimant shall assign all right, title, and interest in
22 that portion of the claim to the department. The department shall deposit in the fund
23 the money collected by the department under this section on the claim.

24 **Sec. 06.62.170. Claim hearing.** Except as otherwise provided by
25 AS 06.62.140, a hearing on a fund claim shall be handled by the office of
26 administrative hearings (AS 44.64.010).

27 **Sec. 06.62.180. Definition.** In AS 06.62.100 - 06.62.180, "fund claim" means a
28 claim against the fund.

29 **Article 3. Program Administration Fee.**

30 **Sec. 06.62.200. Authorization of program administration fee.** (a) The
31 department may establish and collect a program administration fee for each mortgage

1 loan transaction to reimburse the state for the cost of administering this chapter.

2 (b) The program administration fee shall be paid by a borrower who is
3 providing real property as security for the mortgage loan, except that, if the regulations
4 of a federal or state loan program that insures the loan and that applies to the mortgage
5 loan transaction prohibits the borrower from paying the program administration fee,
6 another party to the mortgage loan transaction shall pay the program administration
7 fee.

8 (c) If there are multiple mortgage loan instruments recorded for a single
9 mortgage loan transaction, the department shall collect only one program
10 administration fee.

11 (d) The program administration fees collected under this section shall be
12 separately accounted for and may be appropriated by the legislature to the department
13 for the operation of this chapter.

14 (e) In this section, "mortgage loan instrument" means a deed of trust,
15 mortgage, or another loan instrument recorded to encumber residential real property in
16 the state.

17 **Article 4. Examination and Enforcement.**

18 **Sec. 06.62.300. Examination.** Notwithstanding AS 06.01.015, the department
19 may conduct an examination every 36 months for a person required to be licensed
20 under this chapter. The department may conduct an examination more often if the
21 examination is part of the review of a complaint or other information received by the
22 department concerning the person.

23 **Sec. 06.62.310. Unfair trade practices and consumer protection.** (a) This
24 chapter may not be interpreted to prevent the attorney general or any other person
25 from exercising the rights provided under AS 45.50.471 - 45.50.561.

26 (b) If the department determines that a licensee or a person acting on behalf of
27 the licensee is in violation of, or has violated, a provision of this chapter or the
28 regulations adopted under this chapter, the department may refer the information to the
29 attorney general and request that the attorney general investigate the violation under
30 AS 45.50.495. The attorney general may enjoin a violation of this chapter and may
31 seek restitution, rescission, and other relief as allowed by law.

(c) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.

Article 5. General Provisions.

Sec. 06.62.400. Definitions. In this chapter, unless the context otherwise requires,

(1) "department" means the Department of Commerce, Community, and Economic Development;

(2) "fund" means the mortgage loan originator surety fund established under AS 06.62.100.

* **Sec. 3.** AS 09.38.065(a) is amended to read:

(a) **Notwithstanding** [SUBJECT TO AS 06.60.360(e), AND NOTWITHSTANDING] other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes;

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property; and

(3) a creditor may make a levy against exempt property of any kind to

1 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
 2 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
 3 results in a conviction of a crime or an adjudication of delinquency, except that the
 4 debtor is entitled to an exemption in property

5 (A) not to exceed an aggregate value of \$3,000 chosen by the
 6 debtor from the following categories of property:

7 (i) household goods and wearing apparel reasonably
 8 necessary for one household;

9 (ii) books and musical instruments, if reasonably held
 10 for the personal use of the debtor or a dependent of the debtor; and

11 (iii) family portraits and heirlooms of particular
 12 sentimental value to the debtor; and

13 (B) not to exceed an aggregate value of \$2,800 of the debtor's
 14 implements, professional books, and tools of the trade.

15 * **Sec. 4.** AS 12.62.400 is amended to read:

16 **Sec. 12.62.400. National criminal history record checks for employment,**
 17 **licensing, and other noncriminal justice purposes.** To obtain a national criminal
 18 history record check for determining a person's qualifications for a license, permit,
 19 registration, employment, or position, a person shall submit the person's fingerprints to
 20 the department with the fee established by AS 12.62.160. The department may submit
 21 the fingerprints to the Federal Bureau of Investigation to obtain a national criminal
 22 history record check of the person for the purpose of evaluating a person's
 23 qualifications for

24 (1) a license or conditional contractor's permit to manufacture, sell,
 25 offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage
 26 under AS 04.11;

27 (2) licensure as a mortgage lender, a mortgage broker, or an originator
 28 under AS 06.62 [AS 06.60];

29 (3) admission to the Alaska Bar Association under AS 08.08;

30 (4) licensure as a collection agency operator under AS 08.24;

31 (5) a certificate of fitness to handle explosives under AS 08.52;

(6) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(7) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(8) a teacher certificate under AS 14.20;

(9) licensure as a security guard under AS 18.65.400 - 18.65.490;

(10) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(11) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(12) serving and executing process issued by a court by a person designated under AS 22.20.130;

(13) a school bus driver license under AS 28.15.046;

(14) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(15) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060.

* **Sec. 5.** AS 44.62.330(a)(48) is amended to read:

(48) Department of Commerce, Community, and Economic Development relating to mortgage lending under **AS 06.62** [AS 06.60].

* **Sec. 6.** AS 44.64.030(a)(5) is amended to read:

(5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by **AS 06.62.170** [AS 06.60.590];

* **Sec. 7.** AS 45.50.471(b)(52) is amended to read:

(52) violating **AS 06.62** [AS 06.60.010 - 06.60.380] (mortgage lending regulation);

* **Sec. 8.** AS 45.50.481(c) is amended to read:

(c) The exemption in (a)(1) of this section does not apply to an act or transaction regulated under **AS 06.62** [AS 06.60].

* **Sec. 9.** AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027,

06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070,
 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105,
 06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150,
 06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240,
 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350,
 06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440,
 06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570,
 06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650,
 06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730,
 06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890,
 06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995;
 AS 09.38.015(e); and AS 12.62.400(2) are repealed.

*** Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60. (a) A person holding a valid license issued under former AS 06.60 as of the effective date of sec. 2 of this Act may continue to operate under that license until the license expires, is revoked, or is suspended, and AS 06.62, as enacted by sec. 2 of this Act, including its provisions on expiration, renewal, expiration, prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license.

(b) In (a) of this section, "AS 06.62" means AS 06.62 and the regulations adopted under AS 06.62.

*** Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Commerce, Community, and Economic Development may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.

*** Sec. 12.** Section 11 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect July 1, 2010.