

CSHB 145 – is supported by the Division of Banking and Securities, Department of Commerce, Community and Economic Development, which administers the Alaska Mortgage Lending Regulation Act.

Talking Points – Lorie Hovanec, Director, Division of Banking and Securities
Speaking in support of CSHB 145

1. Primary Purpose of Bill. House Bill 145, along with regulations promulgated when the bill becomes law, will bring Alaska's mortgage lending law into compliance with new requirements under federal law and will authorize the department to join with and participate in a federally mandated national licensing system.
2. Current State Mortgage Lending Law—Consumer Protection Purpose. Alaska's current mortgage lending law, the Alaska Mortgage Lending Regulation Act ("AMLRA"), found at AS 06.60, became effective July 1, 2008. The law requires that mortgage lenders, brokers, and originators apply for and obtain a mortgage license in order to do business in Alaska. The purpose of this law is to protect consumers and hinder predatory lending and fraudulent behavior.
3. Federal SAFE Act Compliance Deadline is July 30, 2009. On July 30, 2008, a new federal law called the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act) became effective. The SAFE Act requires that all states implement a mortgage law that conforms to its requirements by July 30, 2009, and that all states use a national database for licensing mortgage loan originators. States may comply through statute and regulation and may implement more comprehensive mortgage lending laws than are provided under the federal SAFE Act, which provides minimum standards and requirements. Under the SAFE Act, states with legislatures that meet annually have until July 30, 2009, to comply. States with legislatures that meet every other year have until July 30, 2010.
4. The SAFE Act Requires All States to Participate in a National Licensing System. States must also join the National Mortgage Licensing System (NMLS) and participate in licensing through this nationwide system by the July 30, 2009 deadline.
5. CSHB 145 Contains Revised Current Law, Provisions Required Under the SAFE Act, and Authority to Promulgate Regulations. Last fall the Division of Banking and Securities, with the help of Department of Law, created a draft bill which incorporated the required changes to Alaska's mortgage lending law. In late December, the Department of Law drafted a short bill (HB145) which grants the department the authority to license and regulate the mortgage industry, and in addition contemplates that a large regulations package will be developed to incorporate the nuts and bolts of our current law, plus revisions to comply with the SAFE Act. Neither the department nor the industry liked the short bill. We have since returned a majority the law to the committee substitute bill, and a lesser amount of law will be contained in regulation.
6. Built-in Flexibility Desirable in Anticipation of Regulatory Changes. Congressional Reports indicate that the federal government is considering additional changes to federal and state regulation of the mortgage lending industry. In anticipation of these potential changes, some provisions of mortgage lending law will be contained in regulation, making further amendments easier.
7. Noncompliance with Deadline Results in Federal Regulation. If a state does not comply with the federal law by the July 30, 2009, deadline, then the U.S. Department of Housing and Urban Development (HUD) is required under the SAFE Act to take over licensing in noncompliant states and is not required to coordinate with the states. Therefore, it is important for Alaska to make every effort to amend its current law to become compliant with the new federal law within the earliest possible time frame.
8. Extension Possible, But No HUD Standards Yet. Noncompliant states, with legislatures that meet annually, may apply to HUD for a one year extension. They must show that they are making a good faith effort to join the NMLS and become compliant with federal law. Each state must have a reasonable implementation plan in place. **However, HUD has not stated specific standards as of yet for granting an extension, and no other state has applied for an extension.**
9. Legislature Must Grant Authority for State to Join NMLS this Legislative Session to Keep Us on Track to Becoming Compliant. Alaska is scheduled to join the NMLS on August 1, 2009, (this year) and to begin licensing through the NMLS at that time. States are allowed to join prior to the effective date of their

legislation, provided they have statutory approval to join and pay the one-time fee. After payment of the one-time fee, the cost for operating the NMLS is born by the industry through fees. It is important that we show our intent to comply with the SAFE Act by joining the NMLS on schedule. **The department needs legislative approval this legislative session (a) to join the NMLS system, and (b) to pay the one-time fee (approximately \$50,000, the minimum fee, based on number of licensees).**

10. Mortgage Lending Industry – requests two section changes. I request your support for changes to two statutes which are unrelated to the federally mandated changes. Both statutes must be mentioned in CSHB 145: one because of a citation up-date from 06.60 to the new chapter 06.62, and the other because the statute was not in the short bill, and we are adding it to the longer Committee Substitute bill.

Representatives of the mortgage lending industry have been very vocal in their advocacy for these changes. Former division director, Mark Davis, also endorses these changes and supports their inclusion in the bill.

At first, the Department of Law (DOL) Consumer Protection Section was not in favor of the change to the Unfair Trade Practices and Consumer Protection Act provision, AS 45.50.471(b)(52) (hereafter “(b)(52).” DOL was concerned that repeal would create an ambiguity as to the reason for the change. After further deliberation, both Julia Coster (Assistant AG in the Consumer Protection Section) and Deborah Behr (Chief Assistant Attorney General and Regulations Attorney) have approved the change, provided a “Letter of Intent,” which they drafted, is also included for the record in legislative history to document the reason for the change.

Descriptions and explanations of the two changes and the Letter of Intent approved by DOL follow.

A. **Repeal of AS 45.50.471 (b)(52).** (b)(52) is a subparagraph within the provision of the Consumer Protection Act which details examples of “unfair methods of competition” and “unfair or deceptive acts or practices.”

Subparagraph (b)(52) specifies that the violation of certain mortgage lending statutes under AS 06.60 provides the basis for a cause of action under the Consumer Protection Act.

While we want unfair and deceptive trade practices, such as those enumerated at the beginning of AS 45.50.471(b) to provide a cause of action which the Attorney General may pursue, we do not want, for instance, an infraction of a licensing requirement to provide the basis for such a complaint under the Consumer Protection Act.

A portion of the statute follows for your reference. This abbreviated version gives you the idea of the intent of AS 45.50.471.

AS 45.50.471. Unlawful acts and practices.

- (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.
- (b) The terms “unfair methods of competition” and “unfair or deceptive acts or practices” include, but are not limited to, the following acts:
 - (1) fraudulently conveying or transferring goods or services by representing them to be those of another;
 - (2) falsely representing or designating the geographic origin of goods or services;
 - (3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person’s affiliation, connection, or association with or certification or goods or services;
 - (4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
 - (5) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

- (7) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (8) advertising goods or services with intent not to sell them as advertised;
- ...
- (14) representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve, or which are prohibited by law;
- (15) misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction;
- ...
- (52) violating AS 06.60.010 - 06.60.380 (mortgage lending regulation);**

When (b)(52) is repealed, the Attorney General will still have the rights that existed prior the addition of (b)(52) to the Consumer Protection Act by the Alaska Mortgage Lending Regulation Act which became effective July 1, 2008. Any unfair or deceptive acts or practices by the mortgage lending industry can still be prosecuted under the Consumer Protection Act. However, infractions of the mortgage lending law, which are not deemed to be unfair trade practices, (such as, failing to meet the continuing education requirements), will not be a cause of action under the Consumer Protection Act. The Division of Banking and Securities, which administers the mortgage lending laws, can and would pursue any enforcement actions available to us under our mortgage lending laws, such as license revocation and civil penalties, when appropriate; however, the treble damages provisions of the Consumer Protection Act, would be available for only those infractions which are truly unfair or deceptive acts or practices contemplated under the Consumer Protection Act.

The Consumer Protection Section of the Attorney General's Office drafted a *Letter of Intent* to accompany the introduction of the House and Senate Committee Substitute bills, which contain the repeal of AS 45.50.471(b)(52). The substance of that letter follows, and must be signed by the Chairman of the Committee introducing the Committee Substitute.

House Labor and Commerce Committee
Letter of Intent for CSHB 145 (L&C)

It is the intent of the legislature that nothing in CSHB 145 (L&C) may be interpreted to prevent the attorney general or any other person from exercising the rights provided under AS 45.50.471 – AS 45.50.561, and the repeal of AS 45.50.471 (b)(52) by CSHB 145 (L&C) returns the law under AS 45.50.471 relating to mortgage lending acts or transactions to what the law was before passage of the Mortgage Lending Regulation Act, sec. 2, ch. 50 SLA 2007.

Dated: _____

Representative Olson
Chair, House Labor and
Commerce Committee

- B. **Amending Sec. 06.60.340(6).** The second proposed change to statute, which is not a mandatory change under the SAFE Act, involves a section of the current mortgage lending law which enumerates those federal laws and regulations with which mortgage lenders must comply. The sixth item in the list of federal laws is overly-inclusive, and the industry would like this to be amended to narrow the application to those federal laws, “the primary purpose of which is to regulate residential mortgage lending.”

Without this amendment, the industry fears that the infraction of any federal law, including an OSHA violation, or a federal Fair Labor Standards Act (FLSA) violation, would subject the industry to enforcement under the mortgage lending law, as well as the Consumer Protection Act, if (b)(52) is not repealed.

We have remedied this unintended breadth and over-inclusiveness by proposing that the following amended language be inserted (underlined text below):

Sec. 06.60.340. (Compliance with federal requirements)

A person, including a small mortgage lender, subject to this chapter shall conduct the person's mortgage loan activities in compliance with the following federal statutes and with 12 CFR Part 226 and other regulations adopted by the federal government under

- (1) 12 U.S.C. 2601 – 2617 (Real Estate Settlement Procedures Act of 1974);
- (2) 12 U.S.C. 2801 – 2810 (Home Mortgage Disclosure Act of 1975);
- (3) 12 U.S.C. 2901 – 2908 (Community Reinvestment Act of 1977);
- (4) 15 U.S.C. 1601 – 1666j and 1671 – 1693r (Consumer Credit Protection Act);
- (5) 42 U.S.C. 3601 – 3631 (Fair Housing Act of 1968); and
- (6) any other federal law or regulation, **the primary purpose of which is to regulate residential mortgage lending, including 12 U.S.C. 5101 – 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008).**