

ALASKA STATE LEGISLATURE

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SECTIONAL ANALYSIS HCS for CS for Senate Bill 279(L&C)

“An Act relating to regulation of residential mortgage lending, including the licensing of mortgage lenders, mortgage brokers, and mortgage loan originators, and compliance with certain federal laws relating to residential mortgage lending; and providing for an effective date.”

Section 1

Adds legislative intent in uncodified law to clarify that the repeal of 45.50.471(b)(52) does not prevent liability for prohibited conduct under 45.50.471-45.50.561.

Section 2

Amends the definition of financial institution in Title 06 to delete reference to “small mortgage lender,” because the new federal requirements of Public Law 110-289, Title V, Secure and Fair Enforcement for Mortgage Licensing Act (SAFE) do not allow states to offer a small mortgage lender exception.

Sections 3-4

Requires the state to use the National Mortgage Licensing System and Registry (“registry”) to license mortgage lenders, mortgage brokers, and mortgage loan originators and to issue them a unique identifier per SAFE. Doing business in the state includes doing business in the state from a location outside the state or via the Internet. Outlines loan processor and underwriter licensing requirements per Model State Language approved by HUD. If they are independent contractors, they must be licensed as a mortgage loan originator. If they are not independent contractors, and if they do not advertise or represent themselves to the public as mortgage loan originators, then they do not need to be licensed. Also, adds the internet to the list of advertising or communication requiring licensing identification.

Section 5

Sets forth the allowed exemptions to licensing under this chapter per SAFE.

Section 6

Grants authority for the state to participate in the registry, pay the required fees, require industry licensing through the registry and establish a process for licensees to challenge information entered into the registry, as required by SAFE.

Section 7

Describes license application requirements, which include: be on a form prescribed by the department (defined as DCCED) and the registry; contain complete information; include applicant and control person fingerprints, and contain financial background and experience. AS 06.60.020 and .025 are combined into this new section and .025 is repealed.

Regulations will include any other registry application process requirements not included in statute and required by SAFE.

Section 8

Reference to “originator” is changed to “mortgage loan originator. No substantive change.

Section 9

Per the SAFE act, requires applicant for mortgage license to furnish to the registry or the department, information regarding applicant’s identity, including fingerprints, personal history and experience, credit report, and information related to administrative, civil or criminal findings. It reduces points of contact and allows department to use the registry as a channeling agent for requesting and distributing information for any source directed by the department.

Section 10

Requires payment of application fee and license fee, and changes license renewal from biennial to annual renewal based on the calendar year, per SAFE.

Section 11

Clarifies that state mortgage license fees are in addition to registry fees and business license fees assessed under AS 43.70.

Section 12

Permits fees under this chapter to be set in regulation.

Section 13

Modifies prelicensing and relicensing education requirements for mortgage loan originators per SAFE requirements.

Section 14

Sets forth SAFE requirements for pre-licensing test. The test measures an applicant’s knowledge and comprehension, including ethics, and federal and state law relating to loan origination, fraud prevention, consumer protection, nontraditional mortgages and fair lending. The minimum passing score is 75 % correct answers. Mortgage loan originators may retake the test 3 consecutive times after waiting 30 days after the proceeding test. After failing 3 consecutive tests, an individual may not retest for at least 6 months. A mortgage loan originator who does not maintain a valid license for 5 years, must retake the test. This period without a license does not take into account time during which individual is a registered mortgage loan originator. Department is authorized to access a fee for each test administration.

Section 15

Authorizes the department to adopt regulations to cover bonding requirements.

Section 16

Requires that bonds be continuous and last until three years after a license is terminated or revoked. This brings the bonding requirements into line with the requirements for other licensed industries (*i.e.*, money service businesses and payday lenders, which are also licensed by the department).

Section 17

Deletes a reference to AS 06.60.025 (Application for originator license), which is being repealed and its subject matter added to SAFE-compliant AS 06.60.020 (Application for license).

Section 18

Sets forth the determinations the department must make before granting a mortgage license under SAFE. Applicants must have met the requirements of this chapter. General financial fitness and character of the applicants, directors, officers, members, owners, and other principals must indicate that the business will operate efficiently, fairly, in the public interest and under the law. Replaces the term “principals” with “control person” per the Model State Language. Control person is subsequently defined in Section 81 (Definitions).

Section 19

In order to be responsive to the industry and not halt the course of commerce, this amendment is added because of the length of time it sometimes takes to process fingerprint cards: sometimes up to 4 months in the past. The change authorizes the department to issue a provisional license, the duration of which may last no more than 90 days, if applicant meets all licensure requirements, with the exception of receipt of a background check, which is delayed, through no fault of the applicant, more than 60 days after the date the fingerprints were submitted by the applicant.

Section 20

Per SAFE requirements, changes the duration of the license from 2 years to one year, renewing each December 31st.

Section 21

Requires a licensee to renew license in a form and manner required by the department and the registry and to submit certain information. Changes the renewal fee from biennial to annual fee to comply with SAFE. Renewals are submitted through the registry, not the department. Authorizes the department to adopt procedures and deadlines for license renewal and the assessment of a penalty for late filing, consistent with registry requirements.

Section 22

Per SAFE, adds a new section, which states the minimum standards for license renewal, which include: meeting license issuance standards, satisfying continuing education requirements, paying fees, and complying with requirements under the chapter. Allows the department to establish reinstatement process for expired licenses via regulation.

Section 23

Adds clarifying language. Omits reference to the return of a paper license, in contemplation of going paperless, since all up-to-date records are fully accessible by the public on the registry website.

Section 24

Reference to “originator” is changed to “mortgage loan originator.”

Section 25

Clarifies process for a licensee to request the reactivation of a license.

Section 26

Changes three license inactivation requirements, which include: (1) paying annual license fee per SAFE, (2) maintaining the bond required by AS 06.60.045, instead of letting the bond expire, and (3) filing the annual report required by AS 06.60.100. During inactive status, a licensee must inform the department of any changes in name, address, location or business operations or control person.

Section 27

Modifies the requirements for reactivation of an inactive license, taking into account annual license renewals under SAFE and eliminating reference to 24 months, since inactive licenses expire within 12 months, if not reactivated and renewed. If reactivated, a license expires on December 31st of the year issued.

Section 28

Provides that the date licensees must file an annual report will be established by regulation, as well as the report’s form and content.

Section 29

Requires licensee to submit reports to the registry, as required by the registry.

Section 30

Adds a new section to deal with branch office applications through the registry, and authorizing the department to adopt regulations regarding procedures and fees for the submission of a branch office application consistent with the requirements of the registry.

Section 31

Adds the authority for the department to establish by regulation, the fees and other requirements for requesting approval of a change in control of a mortgage licensee, consistent with the requirements of the registry.

Section 32

Technical change to correct reference to a statute's subparagraph lettering, which is changed.

Sections 33-35

Reference to "originator" is changed to "mortgage loan originator."

Section 36

Establishes continuing education requirements for mortgage loan originators in accordance with SAFE. Changes current law (which requires 24 hours of education for each biennial license period) to at least 8 hours annually, and specifies 3 hours of federal law and regulation, 2 hours of ethics (including instruction on fraud prevention, consumer protection, and fair lending issues), and 2 hours of non-traditional mortgage product marketplace (*i.e.*, reverse mortgages). Continuing education courses must be approved by the department. A mortgage loan originator may only receive credit in the year for which the course was taken and may not retake the same course in the same or successive years to meet the annual continuing education requirement. A mortgage loan originator who is an approved instructor may receive credit at a rate of 2 hours for every hour taught. Successful completion of a continuing education course approved for another state by the registry shall be accepted as credit in Alaska. A mortgage loan originator who becomes unlicensed must complete the continuing education requirements for the last year in which they held a valid license. The department may establish by regulation procedures for making up deficiencies in continuing education.

Section 37

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE). This section authorizes the department to deny, suspend, revoke, condition, or decline to renew a license, or to take other disciplinary action, and sets forth the conditions under which disciplinary action may be applied.

Section 38

Changes "originator" to "mortgage loan originator." States the department may suspend or revoke a license when an award is made from the surety fund. Adds departmental authority to "decline to renew" a license as well.

Section 39

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 40

Clarifies that reinstatement of a license may occur when that license is under suspension (not when it has been revoked). Deletes reference to AS 06.60.017, the small mortgage lender statute (no small lender exemption allowed under SAFE).

Section 41

Clarifies and better defines the department's investigation and examination authority. Eliminates the 36 month suggested examination schedule and provides that the department may conduct reviews, investigations, or examinations as often as necessary to carry out the purposes of the chapter.

Sections 42-43

References to "originator" are changed to "mortgage loan originator."

Section 44

Adds a new section as required by SAFE, which mandates the department making regular reports of violations, as well as enforcement actions to the registry, subject to provisions established in regulations regarding confidentiality. Reportable information will include employment history and publicly adjudicated disciplinary and enforcement actions. Privileged and otherwise confidential information will be protected.

Section 45

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 46

Adds a new section which requires everyone operating as a mortgage loan originator, mortgage broker or mortgage lender to clearly display the unique identifier, which has been assigned by the registry, on all residential mortgage loan application forms, solicitations, and advertisements, including business cards or websites, and any other documents as established by regulation or order of the department. This language comes from the Model State Language.

Section 47

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE). Corrects the over-inclusiveness of AS 06.60.330(6) by limiting applicability from "any other federal law or regulation" to "any other federal statute the purpose of which is to regulate residential mortgage lending" and the regulations adopted under the statutes identified in AS 06.60.330.

Section 48

Prohibited activities from current law (subsections 1-2, and 16-25) are expanded to include additional prohibited activities for consumer protection from the Model State Language (subsections 3-15, and 26). These provisions are intended to protect consumers.

Section 49

Adds a new subsection to define "escrow account."

Section 50

Adds clarifying language and deletes reference to small mortgage lender (no small lender exemption allowed under SAFE) and the statutes which apply to small mortgage lenders.

Section 51

More clearly outlines the provisions for cease and desist proceedings per SAFE.

Section 52

Increases rights of licensees by adding a new section, which provides for the right of review of temporary cease and desist orders.

Sections 53-54

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 55-56

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 57

Reference to “originator” is changed to “mortgage loan originator.” Describes the surety fund purpose to be to pay fund claims against mortgage loan originator licensees.

Section 58

Reference to “originator” is changed to “mortgage loan originator.” Adds clarifying language to describe the composition of the surety fund, which includes: (1) appropriations of payments made by mortgage loan originator licensees, (2) filing fees for fund claims, (3) income earned on the investment of money in the fund, and (4) subrogation money deposited in the fund by the department under AS 06.60.740.

Section 59

Reference to “originator” is changed to “mortgage loan originator.” Authorizes the department to establish the fund fee, which is paid by mortgage loan originator licensees, to be set in regulations.

Section 60

Reference to “originator” is changed to “mortgage loan originator.” The amount of the fund fee (\$150) is omitted and will be set in regulations.

Sections 61-63

Reference to “originator” is changed to “mortgage loan originator” and clarifying language added regarding the penalty of unsworn falsification.

Section 64

Extends the time from 7 days to 30 days in which an originator may elect to defend a fund claim in small claims court.

Sections 65-72

Reference to “originator” is changed to “mortgage loan originator.”

Section 73

Clarifies language with regards to the surety fund, by adding the word “limit” to denote the \$50,000 liability limit for fund claims against one originator licensee. Reference to “originator” is changed to “mortgage loan originator.”

Section 74

Adds a new section, which provides that the rights granted to a claimant under the surety fund statutes do not limit any other cause of action the claimant may have against a mortgage loan originator.

Section 75-76

Reference to “originator” is changed to “mortgage loan originator.”

Section 77

Adds a new subsection (e), which calls for the \$10 program administration fees authorized to be collected under this section to be separately accounted for, and provides that the fees may be appropriated by the legislature to DCCED for the operation of the chapter. Under a later repealer section, the requirement that the Department of Natural Resources (DNR) collect the program administration fee is repealed. The process for the collection of the fee will be implemented through regulation. DNR determined that it would cost more for it to collect the fee than would actually be collected in fees. Therefore, a different procedure will be established via regulation, involving collection of the fee by title companies at closing, and direct submittal to DCCED, bypassing DNR entirely.

Section 78

Per SAFE, the department is authorized to publish disciplinary action taken against a licensee under this chapter, via the Internet, the registry or other publication.

Section 79

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE). Also adds that this chapter applies to Internet activities from within or outside the state.

Section 80

Adds clarifying language to the effect that notwithstanding the provisions of AS 06.01.030(f), the Administrative Code applies to departmental disciplinary actions and hearings and to the issuance of disciplinary orders.

Section 81

Deletes reference to small mortgage lender (no small lender exemption allowed under SAFE).

Section 82

Repeals current definitions section AS 06.60.900 and reenacts it to incorporate the following substantive changes per the SAFE Act and as follows:

- Omits definition of “agent.”
- Omits definition of “broker.”
- Adds “consumer reporting agency” per Fair Credit Reporting Act.
- Redefines “control” and “control person” per the registry’s MU1 application form. Changes to 10% the amount of voting shares in a corporation or 10% of the capital of an LLC or partnership, which determines when the person is considered to have control. “Control person” is defined according to the meaning provided in the registry’s MU1 application form. The 10% is presumptuous of control; however, this presumption can be overcome by a person having the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.
- Adds “depository institutions” which, per SAFE, has the meaning given in the Federal Deposit Insurance Act and includes a credit union.
- Adds “dwelling” which, per SAFE, means a residential structure or mobile home that contains one to four family housing units, or the individual units of condominiums or cooperatives.
- Omits definition of “escrow account.”
- Adds “federal banking agencies” which, per SAFE, means the Board of Governors of the Federal Reserve System, the comptroller of the currency, the director of the OTS, the NCUA and the FDIC.
- Adds “individual” which means natural person.
- Changes the meaning of “knowingly” to that meaning given in AS 11.81.900(a)
- Adds “licensed mortgage loan originator”
- Adds “loan processor or underwriter”
- Omits “mortgage lender license”
- Omits “mortgage lender licensee”
- Changes the definition of “mortgage loan” to use SAFE language. The main difference is the addition of mobile homes and encompasses non-owner-occupied one to four family units as well as owner-occupied one to four family units. (See definition of “dwelling.”)
- Adds “mortgage loan originator” per SAFE, and includes in the definition, the meaning of “real estate brokerage activity” per SAFE.
- Adds “mortgage loan originator license.”

- Adds “Nationwide Mortgage Licensing System and Registry” per SAFE.
- Adds “nontraditional mortgage product” which, per SAFE, means any mortgage product other than a 30-year fixed rate mortgage.
- Adds to the meaning of “operate” to include “hold out” which means to represent to the public, through advertising or other means of communication or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform an activity for which a license is required under this chapter.
- Adds “operate in the state” which includes Internet businesses.
- Omits “originator,” “originator license,” and “originator licensee,” having replaced these definitions with the those involving “mortgage loan originator.”
- Adds “registered mortgage loan originator” which, per SAFE, means those who work as

originators for a depository institution and its subsidiaries or an institution regulated by the Farm Credit Administration. These originators must be registered through the registry and maintain a unique identifier.

- Adds “registry” per SAFE.
- Adds “residential mortgage loan.”
- Defines “residential property” to mean, per SAFE, real property located in the state on which a dwelling is constructed or is intended to be constructed.
- Omits “small mortgage lender,” because no small lender exemption is allowed under SAFE.
- Adds “unique identifier” which, per SAFE, means a number or other identifier assigned to a licensee by protocols established by the registry.

Section 83

Amends the short title to the Alaska Secure and Fair Enforcement for Mortgage Licensing Act of 2010.

Section 84

Reference to “originator” is changed to “mortgage loan originator.”

Section 85

Amends AS 12.62.400 (National criminal history record checks for employment, licensing and other noncriminal justice purposes) is amended by adding a new subsection which permits the submittal of fingerprints to the registry, per SAFE requirements. Under the statute as it currently stands, these fingerprint cards must be submitted to the Department of Public Safety

Section 86

This is the repealer section. It repeals the following statutes as follow:

- 06.60.017 — (Small mortgage lenders and originators) This exemption is not permitted by SAFE.
- 06.60.025 — (Application for originator license) Application provisions for obtaining a mortgage loan originator license are added to AS 06.60.020 (Application for license).
- 06.60.065 — (Determinations for originator licensing) Determinations to be made by the department before issuing a mortgage loan originator, mortgage broker or mortgage lender license are all included in AS 06.60.60 (Determinations before licensing).
- 06.60.070 — (Form and contents of license) The department will no longer supply paper licenses. More complete and up-to-date information is available to the public on the registry website.
- 06.60.075 — (License availability) Eliminated, in contemplation of paperless license and more complete and up-to-date information is available to the public on the registry website.
- 06.60.090(i) — (Inactive license) Again, anticipates paperless license and obtaining license status via the registry website.
- 06.60.097(b) — (Surrender of license) Paperless license; therefore no surrender, merely license status on the registry website.
- 06.60.105 — (Biennial license fee) SAFE requires annual license fee, which is covered in this Bill Draft Section 20 (AS 06.60.085 – Renewal of license) provisions and Section

11 (AS 06.60.035 – Fees and expenses) which permits fees under this chapter to be set in regulation.

06.60.145 — (Disqualified persons) Inapplicable.

06.60.150 — (Posting of license) Eliminated, in contemplation of paperless license and more complete and up-to-date information is available to the public on the registry website.

06.60.440 — (Definition) "small mortgage lender" definition is eliminated because SAFE Act does not allow this exemption.

06.60.540 — (Approval required) Department is not authorized to and will not use surety fund for these purposes.

06.60.810 — (Payment and use of fees) Repeals the requirements that DNR collect the program administrative fee. Instead, this \$10 fee collection will be established via regulation.

06.60.870 — Temporary section passed last legislative session which authorized participation in the Registry; authorization is included elsewhere in statutes.

45.50.471(b)(52) – Automatic referral to the Consumer Protection Act. This repeal is the subject of the legislative intent language in section 1 of the bill.

Section 87

Transitional section provides that

- a person holding a valid license issued under Chapter 06.60 on or before July 1, 2010, may continue to operate under that license until license expires, is revoked, or is suspended except for a mortgage license application amendment submitted on or after July 1, 2010 requesting approval of a change of a control person and this Act, including its provisions on expiration, renewal, prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license;
- a person who is not licensed under Chapter 06.60 before July 1, 2010 and files an application for licensing under this Act after July 1, 2010, shall comply with the requirements of this Act to receive a license under this Act; and

Section 88

Transitional section provides for temporary fees and bond amount during the period from July 1, 2010 and effective date of new regulations. The intent is to have regulations in place by July 1st, but if delayed, fees during this period will essentially remain the same as under current statutes.

Section 89

Authorizes the department adopt regulations necessary to implement this Act. They will take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.

Section 90

Section 88 of this Act (authorizing the department to adopt regulations) takes effect immediately under AS 01.10.070(c).

Section 91

Except as provided in sec. 89 of this Act, this Act takes effect July 1, 2010.

