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Bannister
3/18/09

CS FOR HOUSE BILL NO. 145()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE LYNN

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 licensing and otherwise
14 regulating a person doing business in the state as a mortgage lender, mortgage broker,
15 or mortgage loan originator. In this section, "doing business in the state" includes
16 doing business in the state from a location outside the state or from an Internet website
17 that originates inside or outside the state.

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

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

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

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

28 (4) mortgage business duties and restrictions;

29 (5) compliance with federal requirements, including 12 U.S.C. 5101 -
30 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008);

31 (6) compliance with the requirements of the Nationwide Mortgage

1 Licensing System and Registry for licensing by the state of mortgage lenders,
2 mortgage brokers, and mortgage loan originators; in this paragraph, "Nationwide
3 Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C.
4 5102(5);

5 (7) enforcement of provisions of law relating to mortgage lending,
6 including enforcement by cease and desist orders, censure orders, removal orders,
7 penalty assessments, license suspensions, license revocations, rescission orders,
8 disgorgement orders, restitution orders, summary orders, temporary orders, and orders
9 barring persons from certain positions;

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

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

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

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

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

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

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

31 (b) The liability of the fund for fund claims against one mortgage loan

1 originator licensee may not exceed \$50,000.

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

9 **Sec. 06.62.135. Other rights of claimant.** The rights granted to a claimant
10 under AS 06.62.100 - 06.62.180 do not limit any other cause of action the claimant
11 may have against a mortgage loan originator.

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

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

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

25 **Sec. 06.62.150. False claims or documents.** A person who knowingly files a
26 notice, statement, or other document under AS 06.62.100 - 06.62.160 that contains a
27 material misstatement of fact is guilty of a class A misdemeanor.

28 **Sec. 06.62.160. Right to subrogation.** When the department has paid fund
29 money to a claimant, the department shall be subrogated to all of the rights of the
30 claimant to the amount paid, and the claimant shall assign all right, title, and interest in
31 that portion of the claim to the department.

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

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

6 **Article 3. Program Administration Fee.**

7 **Sec. 06.62.200. Authorization of program administration fee.** (a) The
8 department may establish and collect a program administration fee for each mortgage
9 loan transaction to reimburse the state for the cost of administering this chapter.

10 (b) The program administration fee shall be paid by a borrower who is
11 providing real property as security for the mortgage loan, except that, if the regulations
12 of a federal or state loan program that insures the loan and that applies to the mortgage
13 loan transaction prohibits the borrower from paying the program administration fee,
14 another party to the mortgage loan transaction shall pay the program administration
15 fee.

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

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

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

25 **Article 4. Examination and Enforcement.**

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

31 **Sec. 06.62.310. Unfair trade practices and consumer protection.** (a) This

1 chapter may not be interpreted to prevent the attorney general or any other person
2 from exercising the rights provided under AS 45.50.471 - 45.50.561.

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

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

13 **Sec. 06.62.320. Publication of disciplinary action.** The department may
14 release for publication on the Internet and in the area where a person who is required
15 to be licensed under this chapter operates as a mortgage lender, mortgage broker, or
16 mortgage loan originator a notice of disciplinary action taken by the department
17 against the person.

18 **Sec. 06.62.330. Department list.** The department may make available to the
19 public a list of all persons who are licensed under this chapter and who have been
20 censured, who have been barred from holding a position, or who have had their
21 licenses suspended or revoked under this chapter. The department shall update the list
22 on a monthly basis.

23 **Sec. 06.62.340. Criminal penalties.** (a) The department may report violations
24 under (b) - (e) of this section to the attorney general, who may take action to enforce
25 the criminal penalties provided in (b) - (e) of this section.

26 (b) A person who knowingly provides false or misleading information to the
27 department that is material under this chapter is guilty of a class A misdemeanor.

28 (c) A person who is required to be licensed under this chapter and who
29 knowingly fails to account for or deliver to a person money, deposits, or checks or
30 other forms of negotiable instruments in violation of this chapter is guilty of a class A
31 misdemeanor.

1 (d) A person who is required to be licensed under this chapter and who
2 knowingly fails to disburse money belonging to a borrower without just cause is guilty
3 of a class A misdemeanor.

4 (e) Unless the person is except from licensing under this chapter, a person who
5 knowingly does business in this state as a mortgage lender, mortgage broker, or
6 mortgage loan originator without a license issued under this chapter is guilty of a class
7 A misdemeanor.

8 **Sec. 06.62.350. Civil penalty.** A person who violates this chapter, a regulation
9 adopted under this chapter, or an order issued under this chapter is liable to the state
10 for a civil penalty not to exceed \$10,000 for each violation.

11 **Sec. 06.62.360. Remedies not exclusive.** The remedies provided by this
12 chapter are not exclusive and may be sought in combination with other remedies
13 available under law to enforce this chapter.

14 **Article 5. General Provisions.**

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

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

19 (2) "fund" means the mortgage loan originator surety fund established
20 under AS 06.62.100;

21 (3) In this chapter, "knowingly" has the meaning given in
22 AS 11.81.900.

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

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

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

28 (A) child support;

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

1 (C) state or local taxes;
2 (2) a creditor may make a levy against exempt property to enforce a
3 claim for

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

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

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

11 (3) a creditor may make a levy against exempt property of any kind to
12 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
13 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
14 results in a conviction of a crime or an adjudication of delinquency, except that the
15 debtor is entitled to an exemption in property

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

18 (i) household goods and wearing apparel reasonably
19 necessary for one household;

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

22 (iii) family portraits and heirlooms of particular
23 sentimental value to the debtor; and

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

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

27 **Sec. 12.62.400. National criminal history record checks for employment,**
28 **licensing, and other noncriminal justice purposes.** To obtain a national criminal
29 history record check for determining a person's qualifications for a license, permit,
30 registration, employment, or position, a person shall submit the person's fingerprints to
31 the department with the fee established by AS 12.62.160. The department may submit

1 the fingerprints to the Federal Bureau of Investigation to obtain a national criminal
2 history record check of the person for the purpose of evaluating a person's
3 qualifications for

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

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

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

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

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

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

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

17 (8) a teacher certificate under AS 14.20;

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

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

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

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

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

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

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

30 * **Sec. 5.** AS 12.62.400 is amended by adding a new subsection to read:

31 (b) Notwithstanding (a) of this section, an applicant for a license under

1 AS 06.62 may submit the applicant's fingerprints to the Nationwide Mortgage
2 Licensing System and Registry. In this section, "Nationwide Mortgage Licensing
3 System and Registry" has the meaning given in 12 U.S.C. 5102(5).

4 * **Sec. 6.** AS 44.62.330(a)(48) is amended to read:

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

7 * **Sec. 7.** AS 44.64.030(a)(5) is amended to read:

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

10 * **Sec. 8.** AS 45.50.471(b)(52) is amended to read:

11 (52) violating the duties, restrictions, and licensing requirements
12 that apply under AS 06.62 to a person who does business in the state as a
13 mortgage lender, mortgage broker, or mortgage loan originator [AS 06.60.010 -
14 06.60.380 (MORTGAGE LENDING REGULATION)];

15 * **Sec. 9.** AS 45.50.481(c) is amended to read:

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

18 * **Sec. 10.** AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027,
19 06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070,
20 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105,
21 06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150,
22 06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240,
23 06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350,
24 06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440,
25 06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570,
26 06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650,
27 06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730,
28 06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890,
29 06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995; and
30 AS 09.38.015(e) are repealed.

31 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

10 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

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

16 * **Sec. 13.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 14.** Except as provided in sec. 13 of this Act, this Act takes effect July 1, 2010.