

HOUSE BILL NO. 389

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 1/20/04

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain monetary advances in which the deposit or other negotiation**
2 **of certain instruments to pay the advances is delayed until a later date; and providing**
3 **for an effective date."**

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **PURPOSES.** The purposes of this Act are to

8 (1) protect the consuming public and to define and codify for the state the
9 practice where a business pays money in exchange for a check or other instrument but agrees
10 to delay depositing or otherwise negotiating the check or instrument;

11 (2) give the Department of Community and Economic Development
12 additional licensing and regulatory authority over persons who make these deferred deposit
13 advances;

14 (3) give recipients of these advances the right to rescind the advance without

1 cost before the end of the following business day;

2 (4) prohibit onerous collection practices by both deferred deposit advance
3 licensees and licensees' third-party collectors, including the threat of criminal charges;

4 (5) prohibit the acceptance of collateral other than a check or other instrument
5 in these situations; and

6 (6) define the additional disclosures that persons who make these advances
7 must make to clearly describe the advances and their uses for the persons receiving the
8 advances.

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

10 **Chapter 50. Deferred Deposit Advances.**

11 **Sec. 06.50.010. License required.** A person may not engage in the business
12 of making deferred deposit advances or offer to make a deferred deposit advance
13 without having a license under this chapter. A separate license is required for each
14 location from which the person conducts the business.

15 **Sec. 06.50.020. Qualifications for license.** (a) To qualify for a license, an
16 applicant shall

17 (1) have liquid assets of at least \$100,000, as determined under
18 generally accepted accounting principles, except that an applicant who wants to
19 engage in the business of making advances at more than one location in the state shall
20 have liquid assets of at least an additional \$50,000 for each additional location in the
21 state up to a maximum of \$275,000 for all locations in the state;

22 (2) demonstrate the financial responsibility, financial condition,
23 business experience, character, and general fitness that reasonably warrant the
24 department's belief that the applicant's business will be conducted lawfully and fairly;
25 when determining whether this qualification has been met, and for the purpose of
26 investigating compliance with this chapter, the department may review

27 (A) the relevant business records of the applicant and the
28 adequacy of the capital of the applicant;

29 (B) the competence, experience, integrity, and financial ability
30 of the applicant, and, if the applicant is an entity, of any person who is a
31 member, partner, director, senior officer, or owner of 25 percent or more of the

1 equity of the applicant; and

2 (C) a record of conviction, on the part of the applicant or a
3 person described in (B) of this paragraph, of

4 (i) criminal activity, fraud, or other act of personal
5 dishonesty;

6 (ii) an act, omission, or practice that constitutes a
7 breach of a fiduciary duty; or

8 (iii) a suspension, revocation, removal, or an
9 administrative act by an agency or department of the United States or a
10 state from participation in the conduct of a business;

11 (3) have a physical business location in the state; and

12 (4) have a current business license issued under AS 43.70.

13 (b) The requirements in (a) of this section are continuing in nature and may be
14 reviewed periodically by the department.

15 **Sec. 06.50.030. Application, duration, and renewal of license.** (a) An
16 application for a license must be in writing and under oath, in a form prescribed by the
17 department by regulation, and include at least

18 (1) the legal name, residence, and business address of the applicant
19 and, if the applicant is not a natural person, of each member, partner, director, senior
20 officer, or owner of 25 percent or more of the equity of the applicant;

21 (2) the address and physical location of the principal place of business
22 named in the application; and

23 (3) other information the department may require with respect to the
24 applicant and, if the applicant is not a natural person, about the applicant's members,
25 partners, directors, senior officers, or owners of 25 percent or more of the equity of the
26 applicant.

27 (b) The applicant shall submit with the application an investigation fee in an
28 amount established by the department by regulation. The department may not refund
29 the fee.

30 (c) An applicant shall pay the fee established under (b) of this section for each
31 location where the applicant will be conducting business.

1 (d) Within 60 days after an applicant files an application, the department shall
2 investigate whether the applicant satisfies the qualifications of AS 06.50.020(a). If the
3 department finds that the applicant satisfies the qualifications and approves the
4 application, the department shall issue the applicant a license to engage in the business
5 of making advances.

6 (e) A license issued under this section remains in force through the remainder
7 of the calendar year in which the license was issued unless surrendered, suspended, or
8 revoked under this chapter.

9 (f) A license issued under this section shall be renewed on or before the date
10 set by the department by submitting to the department a completed renewal
11 application on a form established by the department and paying the renewal fee
12 established by the department.

13 **Sec. 06.50.040. Denial of license or renewal.** (a) If the department
14 determines that an applicant is not qualified to receive a license or a license renewal,
15 the department shall notify the applicant in writing that the application has been
16 denied and state the basis for the denial.

17 (b) If the department denies an application for a license or a license renewal,
18 or if the department fails to act on an application within 60 days after the applicant
19 files a properly completed application, the applicant may request a hearing on the
20 question of whether the license should be granted or renewed. The request for a
21 hearing shall be made in writing and may not be made more than 15 days after the
22 department has mailed a notice to the applicant under (a) of this section. At a hearing,
23 the department shall reconsider the application and issue a written order granting or
24 denying the application.

25 **Sec. 06.50.050. Nontransferability.** Except for the transfer of a license to a
26 new location under AS 06.50.070, a licensee may not transfer or assign the licensee's
27 license.

28 **Sec. 06.50.060. Change in control.** The prior written approval of the
29 department is required for the continued operation of a licensee's deferred deposit
30 advance business when a change in control of the licensee is proposed. The
31 department may require the information it considers necessary to determine whether a

1 new application is required. The licensee requesting approval of the change in control
2 shall pay any costs up to \$5,000 incurred by the department to investigate the request
3 for approval.

4 **Sec. 06.50.070. Change in location or name.** A licensee shall notify the
5 department in writing at least 15 days before any proposed change in the licensee's
6 business location or name, and shall provide the department with

7 (1) the information described in AS 06.50.030(a)(1) if the licensee is
8 changing its name; and

9 (2) the address and physical location of the new business location if the
10 licensee is changing the business location.

11 **Sec. 06.50.080. Suspension or revocation of license.** (a) The department
12 may, after notice and a hearing, suspend or revoke a license if the department finds
13 that the licensee has

14 (1) knowingly or through the lack of due care failed to pay the annual
15 fee or other fees imposed by this chapter;

16 (2) committed fraud, engaged in dishonest activities, or made
17 misrepresentations in its business activities;

18 (3) violated a provision of this chapter or a regulation or order lawfully
19 made under this chapter or violated another law while acting as a licensee;

20 (4) made a materially false statement in the application for the license
21 or failed to give a true reply to a question in the application; or

22 (5) demonstrated incompetence or untrustworthiness to act as a
23 licensee.

24 (b) If the reason for suspension or revocation of a licensee's license at one
25 location applies generally to all locations operated by the licensee, the department may
26 suspend or revoke all licenses issued to the licensee.

27 **Sec. 06.50.090. Reports to department.** (a) On or before May 31 of each
28 year, a licensee shall file with the department a composite annual report for the
29 preceding calendar year in the form prescribed by the department relating to all
30 advances made by the licensee. The report must include the total number of advances
31 made, the total dollar amount of the advances made, the average length of the

1 advances made, and the rate of default.

2 (b) Within 15 days after the occurrence of any of the following events, a
3 licensee shall file a written report with the department describing the event and its
4 expected effect on the activities of the licensee in the state:

5 (1) filing for bankruptcy or reorganization by the licensee;

6 (2) institution of suspension or revocation proceedings against the
7 licensee by a state or other governmental authority;

8 (3) a felony indictment of the licensee and, if the licensee is not a
9 natural person, of a member, partner, director, senior officer, or holder of 25 percent or
10 more of the licensee's equity;

11 (4) a felony conviction of the licensee and, if the licensee is not a
12 natural person, of a member, partner, director, senior officer, or holder of 25 percent or
13 more of the licensee's equity; and

14 (5) other events that the department determines and identifies by
15 regulation.

16 **Sec. 06.50.100. Records.** A licensee shall maintain records in conformity
17 with generally accepted accounting principles and practices in a manner that will
18 enable the department to determine whether the licensee is complying with the
19 provisions of this chapter. The record-keeping system of a licensee is sufficient if the
20 licensee makes the required information reasonably available. The licensee's records
21 are not required to be kept at the place of business where advances are made if the
22 department is given unrestricted access to the records where the records are located.
23 The licensee is not required to preserve records relating to an advance for more than
24 two years after the advance is scheduled to be paid back.

25 **Sec. 06.50.110. Examinations and investigations.** (a) The department shall
26 examine the advances and business records of a licensee at intervals the department
27 considers appropriate. In addition, for the purpose of discovering violations of this
28 chapter or securing information lawfully required, the department may, at any time,
29 investigate the advances, business transactions, and records of a licensee. For these
30 purposes, the licensee shall provide the department with reasonable access to the
31 offices, places of business, and records of the licensee. The licensee shall pay the

1 department the cost of examination at a rate of \$75 an hour within 30 days after the
 2 department requests payment. Before each state fiscal year, the department shall
 3 establish the daily cost of an examination made under this section for that fiscal year.

4 (b) If the licensee's records are located outside this state, the licensee shall
 5 make those records available to the department at a convenient location within this
 6 state or pay the reasonable and necessary expenses for the department or the
 7 department's representative to examine the records where they are maintained. The
 8 department may designate representatives, including comparable officials of the state
 9 in which the records are located, to inspect them on the department's behalf.

10 (c) For the purposes of this section, the department may administer oaths or
 11 affirmations and, upon its own motion or upon request of a party, may subpoena
 12 witnesses, compel the attendance of witnesses, take evidence, and require the
 13 production of material that is relevant to the investigation, including the existence,
 14 description, nature, custody, condition, and location of books, documents, and other
 15 tangible items, and the identity and location of persons having knowledge of relevant
 16 facts, or other material reasonably calculated to lead to the discovery of admissible
 17 evidence.

18 (d) Upon failure without lawful excuse to obey a subpoena or to give
 19 testimony, and upon reasonable notice to all persons affected by the failure, the
 20 department may apply to the superior court for an order compelling compliance.

21 **Sec. 06.50.120. Application of Administrative Procedure Act.** Except
 22 where this chapter establishes procedures different from those in AS 44.62
 23 (Administrative Procedure Act), AS 44.62 applies to and governs administrative
 24 action taken by the department under this chapter.

25 **Sec. 06.50.130. Requirements, terms, and procedures.** (a) An advance
 26 shall be documented in a written agreement signed by the advance recipient. The
 27 agreement must include the name of the licensee, the loan date, the principal amount
 28 of the advance, a statement of the total amount of fees charged as a condition of
 29 making the advance, expressed both as a dollar amount and as an annual percentage
 30 rate, and any other item required to be disclosed under federal law.

31 (b) An advance recipient may not be a corporation, a partnership, or another

1 type of organization.

2 (c) The maximum principal amount of an advance is \$1,000.

3 (d) A licensee may charge an origination fee for each advance. The
4 origination fee is considered fully earned as of the date of the transaction and is not
5 considered interest for any purpose of law. A licensee may not charge or collect
6 another fee or charge for the advance except as specifically allowed under this chapter.

7 (e) A licensee shall conspicuously post a notice of the fees in each licensed
8 location, expressed as a dollar amount for each \$100, that the licensee charges for
9 advances. Notwithstanding any other provision of law and except where otherwise
10 provided by federal law, a licensee may charge up to \$15 for each \$100 that the
11 licensee charges for an advance.

12 (f) An advance recipient may rescind the advance without cost not later than
13 the end of the next business day following the day on which the licensee makes the
14 advance.

15 (g) Before disbursing funds under an advance, a licensee shall provide written
16 notice to the advance recipient indicating

17 (1) that the advance is intended to address short-term, not long-term,
18 financial needs;

19 (2) whether the advance recipient will be required to pay additional
20 fees if the advance is renewed rather than paid in full when due; and

21 (3) that the advance recipient may rescind the advance without cost not
22 later than the end of the next business day following the day on which the licensee
23 makes the advance.

24 (h) In a transaction allowed under this chapter, a licensee may not accept more
25 than one instrument as security for each advance. Before the licensee may deposit or
26 otherwise negotiate an instrument for payment, the instrument must be endorsed with
27 the actual name under which the licensee is doing business. The advance recipient
28 may redeem the instrument from the licensee at any time before the deposit or other
29 negotiation of the instrument by making payment to the licensee of the full amount of
30 the instrument in cash or immediately available funds.

31 (i) A licensee may pay to the advance recipient the amount paid to the

1 recipient by the licensee in an advance in cash, the licensee's business check, a money
2 order, an electronic funds transfer to the recipient's account, or another reasonable
3 electronic payment mechanism, except that the licensee may not charge an additional
4 fee to the recipient to access the proceeds of the advance.

5 (j) A licensee may charge an advance recipient an additional fee if the advance
6 is renewed rather than paid in full when due.

7 (k) An advance recipient may repay an advance

8 (1) in cash;

9 (2) by negotiation of the recipient's instrument that secures the
10 advance; or

11 (3) with the agreement of the licensee, a debit card, a cashier's check,
12 an electronic funds transfer from the recipient's bank account, or another reasonable
13 electronic payment mechanism to which the parties agree.

14 (l) A licensee may not accept property other than an instrument from an
15 advance recipient when making a deferred deposit advance.

16 **Sec. 06.50.140. Business practices.** (a) A licensee or a person under
17 common control with a licensee may not have outstanding at any time to a single
18 advance recipient advances with an aggregate principal balance that exceeds \$1,000,
19 plus fees allowed under this chapter.

20 (b) In addition to the damages, fees, and costs allowed under AS 09.68.115, if
21 an instrument from an advance recipient is returned unpaid to a licensee from a payor
22 financial institution, the licensee may collect the fees allowed by this chapter if the
23 fees are disclosed in the advance agreement. If the obligation is assigned to a third
24 party for collection, the provisions of this section apply to the third-party collector.

25 (c) A licensee may not threaten an advance recipient with criminal action as a
26 result of a payment deficit.

27 (d) A licensee may not renew an advance for a fee greater than the initial
28 origination fee or for more than four consecutive times, after which the licensee shall
29 require the advance recipient to repay the advance in full. A person who receives an
30 advance may enter into a new loan transaction with the licensee at any time after the
31 advance recipient pays off a previous advance to the licensee. An advance secured by

1 a recipient's instrument is paid off when the instrument is deposited or otherwise
2 negotiated by the licensee or redeemed by the recipient under AS 06.50.130(h).

3 (e) A licensee may not accept property, title to property, or other evidence of
4 ownership as collateral for an advance, except for an instrument from the advance
5 recipient.

6 (f) A licensee may conduct other business at a location where it engages in
7 making advances unless it carries on the other business for the purpose of evading or
8 violating the provisions of this chapter.

9 (g) A person who receives an advance may rescind an advance without cost at
10 any time before the close of business on the business day following the day on which
11 the advance was made by paying the principal amount of the advance to the licensee in
12 cash or other immediately available funds.

13 (h) A licensee may not make an advance on behalf of another person.

14 **Sec. 06.50.150. Regulations.** The department may adopt regulations under
15 AS 44.62 (Administrative Procedure Act) to implement this chapter.

16 **Sec. 06.50.160. Relationship to federal law.** If a provision of this chapter is
17 preempted by or conflicts with federal law in a particular situation, the provision does
18 not apply to the situation to the extent of the preemption or conflict.

19 **Sec. 06.50.190. Definitions.** In this chapter, unless the context requires
20 otherwise,

21 (1) "advance" means a deferred deposit advance;

22 (2) "advance recipient" means a person to whom an advance is made;

23 (3) "control," in the case of a person who is not a natural person,
24 means direct or indirect ownership, the right to vote or otherwise control 25 percent or
25 more of the governance interests of the entity, or the ability of a person to elect a
26 majority of the directors;

27 (4) "deferred deposit advance" means a transaction in which a person

28 (A) accepts a dated instrument from a person seeking an
29 advance;

30 (B) agrees to hold the instrument for a specified period of time
31 before depositing or otherwise negotiating the instrument; and

1 (C) pays to the advance recipient, credits to the account of the
 2 advance recipient, or pays to another person on behalf of the advance recipient
 3 the amount of the instrument less the charges allowed under this chapter;

4 (5) "department" means the Department of Community and Economic
 5 Development;

6 (6) "instrument" means a personal check or other authorization to
 7 transfer or withdraw money from an account;

8 (7) "license" means a license issued under this chapter;

9 (8) "licensee" means a person to whom a license has been issued under
 10 this chapter.

11 * **Sec. 3.** AS 44.62.330(a) is amended by adding a new paragraph to read:

12 (61) Department of Community and Economic Development relating
 13 to the licensing and regulation of persons making deferred deposit advances under
 14 AS 06.50.

15 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 TRANSITIONAL PROVISIONS. Notwithstanding AS 06.50.020(a)(1), enacted by
 18 sec. 2 of this Act, and in addition to the other requirements of AS 06.50.020, enacted by sec. 2
 19 of this Act, in order to qualify for a license under AS 06.50.020 during the first 180 days after
 20 the effective date of this Act, an applicant shall have liquid assets of at least \$30,000, as
 21 determined under generally accepted accounting principles, except that an applicant who
 22 wants to engage in the business of making deferred deposit advances at more than one
 23 location in the state shall have liquid assets of at least an additional \$5,000 for each additional
 24 location in the state up to a maximum of \$75,000 for all locations in the state. In this section,
 25 "deferred deposit advance" has the meaning given in AS 06.50.190, enacted by sec. 2 of this
 26 Act.

27 * **Sec. 5.** This Act takes effect January 1, 2005.