

CS FOR HOUSE BILL NO. 424(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/8/06

Referred: Judiciary, Finance

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mortgage lenders, mortgage brokers, state agents who collect
2 program administration fees, and other persons who engage in activities relating to
3 mortgage lending; and providing for an effective date."

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

5 * **Section 1.** AS 06 is amended by adding a new chapter to read:

6 **Chapter 60. Mortgage Lending.**

7 **Article 1. Licensing.**

8 **Sec. 06.60.010. License required.** (a) Except as provided under AS 06.60.020,
9 a person may not solicit or engage in business as a mortgage lender or hold the person
10 out to the public as a mortgage lender unless the person is licensed under this chapter.

11 (b) Except as provided under AS 06.60.020, a person may not solicit or
12 engage in business as a mortgage broker or hold the person out to the public as a
13 mortgage broker unless the person is licensed under this chapter.

14 (c) The department may issue a dual license under this chapter that allows a

1 person to engage in business as a mortgage lender and a mortgage broker and to hold
2 the person out to the public as a mortgage lender and a mortgage broker.

3 (d) A license may cover more than one location of the licensee.

4 **Sec. 06.60.020. Exemptions.** Except for AS 06.60.400 - 06.60.440, this
5 chapter does not apply to

6 (1) a mortgage lender who makes six or fewer mortgage loans within a
7 period of six consecutive months;

8 (2) a mortgage lender or mortgage broker who is authorized to engage
9 in business as a bank, savings institution, or credit union under the laws of the United
10 States, a state or territory of the United States, or the District of Columbia;

11 (3) a subsidiary and an affiliate of a mortgage lender or mortgage
12 broker who is covered by (2) of this section and who is subject to the general
13 supervision, regulation, audit, or examination by a regulatory body or agency of the
14 United States, a state or territory of the United States, or the District of Columbia;

15 (4) a nonprofit corporation that makes mortgage loans to promote
16 home ownership or home improvements for qualified individuals; in this paragraph,

17 (A) "nonprofit corporation" means a corporation that qualifies
18 under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code) for an exemption
19 from federal income taxation;

20 (B) "qualified individual" means an individual

21 (i) whose income is 60 percent or less of the median
22 income in the United States;

23 (ii) who is over 60 years of age; or

24 (iii) who has a disability; in this sub-subparagraph,
25 "disability" has the meaning given at 42 U.S.C. 12102(2)(A);

26 (5) an agency of the federal government, a state government, a
27 municipality, or a quasi-governmental agency making or brokering mortgage loans
28 under the specific authority of the laws of a state or the United States;

29 (6) a person who acts as a fiduciary for an employee pension benefit
30 plan qualified under 26 U.S.C. (Internal Revenue Code) and who makes mortgage
31 loans solely to participants of the plan from assets of the plan;

1 (7) a person who is licensed in this state as an attorney, or who is a real
 2 estate licensee under AS 08.88, when rendering services as an attorney or real estate
 3 licensee, but who is not actively and principally engaged in negotiating, placing, or
 4 finding mortgage loans; however, a real estate licensee who receives a fee,
 5 commission, kickback, rebate, or other payment for directly or indirectly negotiating,
 6 placing, or finding a mortgage loan for another person is not covered by this
 7 paragraph;

8 (8) a person who acts in a fiduciary capacity conferred by the authority
 9 of a court;

10 (9) a person who is licensed by the United States Small Business
 11 Administration as a small business investment company under 15 U.S.C. 661 - 696
 12 (Small Business Investment Act of 1958);

13 (10) an employee who is working under the direction and supervision
 14 of a licensee or of an entity identified under (1) - (9) of this section; and

15 (11) an independent contractor who is working as an independent
 16 contractor for an entity identified under (1) - (9) of this section if

17 (A) the independent contractor has a written agreement with
 18 the entity under which the entity accepts responsibility for ensuring that the
 19 independent contractor complies with the requirements imposed in this
 20 chapter, including maintaining records under AS 06.60.250 - 06.60.260; and

21 (B) the department approves the agreement between the
 22 independent contractor and the licensee or entity.

23 **Sec. 06.60.030. Application for license.** An application for a license must

24 (1) be in writing;

25 (2) be made under oath or affirmation;

26 (3) be in the form prescribed by the department;

27 (4) contain the name and both the residence and business addresses of
 28 the applicant as follows:

29 (A) if the applicant is a partnership or an association not
 30 covered by (B) or (C) of this paragraph, the name and both the residence and
 31 business addresses of each member of the partnership or association;

1 (B) if the applicant is a corporation, the name and both the
 2 residence and business addresses of each officer and director of the corporation
 3 and any shareholder holding 10 percent or more of the total shares;

4 (C) if the applicant is a limited liability company, the name and
 5 both the residence and business addresses of each member of the company and
 6 any manager of the company;

7 (5) contain the mailing address of the applicant, and the street address
 8 and city, if any, for each business location that will be licensed; and

9 (6) other information that the department may require.

10 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant
 11 for a license to determine if the applicant satisfies the requirements of this chapter for
 12 the license. An applicant for a license shall pay the investigation expenses incurred by
 13 the department. When the applicant submits the application to the department, the
 14 applicant shall pay to the department a nonrefundable application fee of \$500 in partial
 15 payment of the investigation expenses incurred by the department. An applicant for a
 16 dual license is not required to pay more than one annual license fee.

17 **Sec. 06.60.050. Initial annual fee.** An applicant for a license shall pay the
 18 annual license fee required by AS 06.60.210 to the department when the applicant
 19 submits an application under AS 06.60.030, and the applicant's next license fee is due
 20 the last day of the first January that occurs after the applicant receives a license.

21 **Sec. 06.60.060. Bonding.** (a) An applicant shall file with the application
 22 submitted to the department under AS 06.60.030 a bond with one or more sureties in
 23 the amount of \$25,000 in which the applicant is the obligor. The bond must be
 24 satisfactory to the department.

25 (b) The bond required by (a) of this section shall be for the use of the
 26 department for a cause of action against the obligor under this chapter. The bond must
 27 state that the obligor will faithfully conform to and abide by the provisions of this
 28 chapter and of all regulations adopted under this chapter and will pay to the
 29 department all money that may become due or owing to the department from the
 30 applicant under this chapter.

31 (c) An applicant for a license that covers more than one location is not

1 required to file more than one bond.

2 (d) The bond required under (a) of this section may be continuous until the
3 department revokes or otherwise terminates the license.

4 (e) If the department determines at any time that the bond required under (a)
5 of this section is unsatisfactory for any reason, the department may require the
6 licensee to file with the department, within 10 days after the receipt of a written
7 demand from the department, an additional bond that complies with the provisions of
8 this section.

9 **Sec. 06.60.070. Issuance of license.** (a) Within 90 days after the date an
10 application is filed with the department under AS 06.60.030, the department shall
11 either approve the application and issue a license to the applicant or disapprove the
12 application.

13 (b) If the department disapproves the application, the department shall
14 promptly notify the applicant. The notification must indicate the reason for the
15 disapproval and provide the applicant with an opportunity for a hearing on the
16 department's disapproval.

17 **Sec. 06.60.080. Determinations for licensing.** Before approving an
18 application filed under AS 06.60.030, the department shall determine that

19 (1) the applicant has complied with the requirements of this chapter for
20 obtaining a license, including having paid all required fees;

21 (2) the financial responsibility, experience, character, and general
22 fitness of the applicant, and of the applicant's members and officers, and the
23 organization and operation of the applicant indicate that the applicant will operate in
24 compliance with AS 06.60.400 - 06.60.440; and

25 (3) the department has not found grounds for disapproval of the
26 application under AS 06.60.090.

27 **Sec. 06.60.090. Additional grounds for disapproval of application.** The
28 grounds for disapproval of an application for a license include a finding by the
29 department that a person named in the application

30 (1) has liabilities that exceed the person's assets, cannot meet the
31 person's obligations as they mature, or is in a financial condition that indicates that the

1 person cannot continue in business and safely handle the mortgage loans of the
2 person's customers;

3 (2) has engaged in dishonest, fraudulent, or illegal practices or conduct
4 in a business or profession;

5 (3) has been convicted of a crime, if an essential element of the crime
6 was fraud;

7 (4) is permanently or temporarily enjoined by a court of competent
8 jurisdiction from engaging in or continuing conduct or a practice involving an aspect
9 of the business of providing financial services to the public; or

10 (5) has been prohibited by a federal or state regulatory agency from
11 engaging, participating, or controlling a finance-related activity that provides financial
12 services to the public.

13 **Sec. 06.60.100. Form and contents of license.** A license must be in a form
14 established by the department, state the address for each office of the business where
15 the business of the licensee is to be conducted, and contain the full name of the
16 licensee. If a licensee conducts business on the Internet, the license must also state the
17 registered domain address or addresses through which the licensee conducts the
18 licensee's business and the physical location of the main business office.

19 **Sec. 06.60.110. Duration and transfer of license.** (a) A license issued under
20 this chapter is a continuing license and remains in full force and effect until the license
21 is revoked or suspended under AS 06.60.300 or surrendered by the licensee under
22 AS 06.60.310.

23 (b) A licensee may not transfer or assign the licensee's business unless the
24 licensee transfers or assigns the business to another licensee with the same type of
25 license as the transferring or assigning licensee.

26 **Article 2. Licensee Obligations.**

27 **Sec. 06.60.200. Annual report.** (a) On or before March 15, or on another date
28 established by the department by regulation, of each year a licensee shall file a report
29 with the department giving relevant information that the department requires
30 concerning the business and operations of each location in the state where business
31 was conducted by the licensee in the state during the preceding calendar year. The

1 licensee shall make the report under oath or on affirmation. The report must be in the
2 form established by the department.

3 (b) A licensee who fails to file a report as required by (a) of this section is
4 subject to a civil penalty of \$25 for each day's failure to file the report.

5 **Sec. 06.60.210. Annual license fee.** (a) A licensee shall pay the department a
6 license fee of \$250 each year on or before the last day of January.

7 (b) The license fee imposed by (a) of this section is in addition to the fee
8 imposed under AS 43.70 (Alaska Business License Act).

9 **Sec. 06.60.220. Location of business of making loans.** A licensee may not
10 maintain the licensee's principal place of business or a branch office within an office,
11 suite, room, or place of business in which any other business is solicited or engaged in,
12 or in association or conjunction with another business, unless the name and ownership
13 of the other business is disclosed in the licensee's application for a license.

14 **Sec. 06.60.230. Change of place of business.** If a licensee wishes to change
15 the licensee's place of business to another location, the licensee shall submit a written
16 notice to the department at least 10 days before relocating the business. If the licensee
17 is otherwise in compliance with this chapter, the department shall issue a new license
18 to the licensee to reflect the new location.

19 **Sec. 06.60.240. Change in business operations.** If there is a significant
20 change in the business operations of the licensee, the licensee shall, within 10 days,
21 provide notice of the change to the department.

22 **Sec. 06.60.250. Records of licensee.** (a) A licensee shall keep and use in the
23 licensee's business the accounting records that are in accord with sound and accepted
24 accounting practices.

25 (b) A licensee shall maintain a record, by electronic record or photocopying,
26 for the account of each borrower and for each loan made to the borrower. This record
27 must contain all documents, notes, electronic correspondence, and forms that are
28 produced or prepared for the mortgage loan by the licensee, and the licensee shall
29 retain each document, note, electronic correspondence, and form for three years.

30 (c) If a licensee conducts business as a mortgage loan servicing agent for other
31 mortgage lenders or investors, the licensee shall, in addition to complying with (a) and

1 (b) of this section, maintain a record for each mortgage loan. The record for each
 2 mortgage loan must include the amount of the mortgage loan, the total amount of
 3 interest and finance charges on the mortgage loan, the interest rate on the mortgage
 4 loan, the amount of each payment to be made on the mortgage loan, a description of
 5 the collateral taken for the mortgage loan, a history of all payments received by the
 6 licensee on the mortgage loan, a detailed history of the amount of each payment that is
 7 applied to the reduction of the mortgage loan principal, the interest that accrues on the
 8 mortgage loan, and any other fees and charges that are related to the mortgage loan.
 9 The licensee shall retain the record required by this subsection for three years after the
 10 loan is sold to another mortgage loan servicing agent or after the mortgage loan is
 11 satisfied, whichever occurs first.

12 **Sec. 06.60.260. Availability of out-of-state records.** A licensee who operates
 13 an office or other place of business outside this state that is licensed under this chapter
 14 shall, at the request of the department,

15 (1) make the records of the office or place of business available to the
 16 department at a location within this state; or

17 (2) reimburse the department reasonable costs that are incurred by the
 18 department during an investigation or examination made at the office or place of
 19 business, as provided in AS 06.60.340(d).

20 **Sec. 06.60.270. Disqualified persons.** (a) A disqualified person may not serve
 21 as an officer, a director, a partner, a shareholder controlling an ownership interest of
 22 10 percent or more, a trustee, an independent contractor, or an employee of a licensee
 23 without the prior written approval of the department. In this subsection, "employee"
 24 means an individual who negotiates an agreement with a member of the public for the
 25 licensee or who has access to, or responsibility for, escrow accounts or escrow money
 26 held by the licensee.

27 (b) A licensee may not permit a disqualified person to obtain a controlling
 28 ownership interest of 10 percent or more in the licensee's business without the prior
 29 written approval of the department.

30 (c) Before an officer, director, or other person may obtain a controlling
 31 ownership interest of 10 percent or more in the business of a licensee, the officer,

1 director, or other person shall authorize the department to access the officer's,
 2 director's, or other person's criminal history information in this state to determine
 3 whether the officer, director, or other person is a disqualified person.

4 (d) In this section,

5 (1) "disqualified person" means a person who

6 (A) pleads guilty of, is convicted of, or pleads no contest to an
 7 offense that is a felony within the previous seven years; or

8 (B) is held liable for an act that involves dishonesty or fraud by
 9 a final judgment in a civil action or by an administrative judgment by a public
 10 agency within the previous five years;

11 (2) "offense" means a criminal offense under

12 (A) AS 11.46;

13 (B) a law in another state that is substantially similar to an
 14 offense under AS 11.46; or

15 (C) P.L. 101-73 (Financial Institutions Reform, Recovery, and
 16 Enforcement Act of 1989).

17 **Sec. 06.60.280. Minimum net worth required for certain licensees.** If a
 18 licensee conducts business as a mortgage loan servicing agent for other mortgage
 19 lenders or investors, the licensee may not engage in an activity that is authorized under
 20 this chapter unless the licensee continuously maintains minimum net worth in the
 21 following amount based on the average monthly balance of the accounts maintained
 22 by the licensee:

AVERAGE MONTHLY BALANCE	MINIMUM NET WORTH REQUIRED
\$100,000 or less	\$ 25,000
More than \$100,000 but not more than \$250,000.....	50,000
More than \$250,000 but not more than \$500,000.....	100,000
More than \$500,000 but not more than \$1,000,000.....	200,000
More than \$1,000,000	250,000

30 **Sec. 06.60.290. Posting of license.** A licensee shall conspicuously post the
 31 license in the place of business of the licensee.

1 **Article 3. Discipline of Licensee.**

2 **Sec. 06.60.300. Revocation and suspension of a license.** The department
3 shall revoke the license of a licensee if the department finds that

4 (1) the licensee has failed to

5 (A) pay the annual license fee;

6 (B) maintain in effect a bond required under AS 06.60.060; or

7 (C) comply with a provision of this chapter or a lawful demand,
8 ruling, or requirement of the department made under and within the authority
9 of this chapter; or

10 (2) a fact or condition exists that would have constituted grounds for
11 denial of the issuance of the license.

12 **Sec. 06.60.310. Surrender of license.** (a) A licensee may surrender a license
13 issued to the licensee by delivering written notice to the department that the licensee
14 intends to surrender the license, except that a licensee may not surrender a license until
15 all loans of that licensee have either been paid in full or sold.

16 (b) A licensee shall surrender a license issued to the licensee if the licensee
17 has not engaged in loan activity for 12 consecutive months.

18 (c) Surrender of a license under this section does not affect the licensee's civil
19 or criminal liability for acts committed before surrender of the license.

20 **Sec. 06.60.320. Effect of revocation, suspension, or surrender of license.**
21 The revocation, suspension, or surrender of a license does not impair or otherwise
22 affect the rights or obligations of a preexisting lawful contract between the licensee
23 and a borrower. If the department has revoked a license, the licensee shall divest itself
24 of all outstanding loans that were issued under this chapter by selling or assigning
25 them to another licensee, except that the divestment must be approved by the
26 department.

27 **Sec. 06.60.330. Reinstatement of revoked license.** The department may
28 reinstate a revoked license if the licensee complies with this chapter or with a demand,
29 ruling, or requirement made by the department under this chapter. Before
30 reinstatement of a license, the licensee shall pay the annual license fee required under
31 AS 06.60.210.

1 **Sec. 06.60.340. Examination of licensees.** (a) The department shall conduct
 2 an examination of a licensee to determine whether the licensee is complying with the
 3 provisions of this chapter and regulations adopted by the department and to obtain
 4 information required by the department under this chapter. The department shall
 5 conduct the examination at least once every 36 months.

6 (b) The department shall conduct other examinations, periodic audits, special
 7 audits, investigations, and hearings as may be necessary and proper for the efficient
 8 administration of this chapter.

9 (c) For the purposes of conducting an examination under this section, the
 10 department

11 (1) shall have free access to the place of business, books, accounts,
 12 safes, and vaults of the licensee;

13 (2) may conduct the examination without prior notice to the licensee;
 14 and

15 (3) may examine, under oath or affirmation, all persons whose
 16 testimony the department may require to conduct the examination.

17 (d) A licensee shall reimburse the department reasonable costs incurred by the
 18 department to conduct the examination. The reimbursement under this subsection may
 19 not exceed the rate of \$75 an hour for the examination, plus travel, housing, and per
 20 diem that does not exceed the per diem allowance for employees of the state under
 21 AS 39.20.110.

22 **Sec. 06.60.350. False information in course of investigation or examination**
 23 **prohibited.** A person may not knowingly give or cause to be given to the department
 24 a document or an oral or written statement or report that is false in any respect in the
 25 course of an investigation or examination by the department under this chapter.

26 **Sec. 06.60.360. Authority of department.** The department may make a ruling,
 27 demand, or finding that the department determines is necessary for the proper conduct
 28 of the licensee's business regulated by this chapter and the enforcement of this chapter.
 29 The ruling, demand, or finding must be consistent with this chapter.

30 **Article 4. Business Duties and Restrictions.**

31 **Sec. 06.60.400. False, misleading, or deceptive advertising prohibited.** A

1 person may not advertise, print, display, publish, distribute, broadcast, or cause or
 2 permit to be advertised, printed, displayed, published, distributed, or broadcast, in any
 3 manner a statement or representation with regard to the rates, terms, or conditions for
 4 a mortgage loan that is false, misleading, or deceptive.

5 **Sec. 06.60.410. Compliance with federal requirements.** If the regulations
 6 apply to a person under federal law, a person shall conduct the person's affairs under
 7 12 CFR Part 226 and other regulations adopted by the federal government under

8 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
 9 1974);

10 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

11 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

12 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
 13 Protection Act); and

14 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968).

15 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited
 16 elsewhere in this chapter or by another law, a person may not, in the course of a
 17 mortgage loan transaction,

18 (1) misrepresent or conceal material facts or make false promises
 19 likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower
 20 to enter into a mortgage loan transaction;

21 (2) pursue a course of misrepresentation through an agent;

22 (3) improperly refuse to issue a satisfaction of a mortgage loan;

23 (4) fail to account for or deliver to a person money, a document, or
 24 another thing of value obtained in connection with a mortgage loan, including money
 25 provided by a borrower for a real estate appraisal or a credit report if the person is not
 26 entitled to retain the money under the circumstances;

27 (5) pay, receive, or collect, in whole or in part, a commission, fee, or
 28 other compensation for brokering a mortgage loan in violation of this chapter,
 29 including a mortgage loan brokered by any unlicensed person other than an exempt
 30 person;

31 (6) fail to disburse money in accordance with a written commitment or

1 agreement to make a mortgage loan;

2 (7) engage in a transaction, practice, or course of business that is not
3 engaged in by the person in good faith or fair dealing or that constitutes a fraud on a
4 person in connection with the brokering, making, purchase, or sale of a mortgage loan;

5 (8) fail promptly to pay when due reasonable fees to a licensed
6 appraiser for appraisal services that are

7 (A) requested from the appraiser in writing by the person; and

8 (B) performed by the appraiser in connection with the
9 origination or closing of a mortgage loan for a customer of the person;

10 (9) influence or attempt to influence through coercion, extortion, or
11 bribery the development, reporting, result, or review of a real estate appraisal sought
12 in connection with a mortgage loan; this paragraph does not prohibit a person from
13 asking an appraiser to

14 (A) consider additional appropriate property information;

15 (B) provide further detail, substantiation, or explanation for the
16 appraiser's value conclusion; or

17 (C) correct errors in the appraisal report;

18 (10) in a loan commitment or prequalification letter, make a false or
19 misleading statement, or omit relevant information or conditions that the person knew
20 or reasonably should have known from a preliminary examination of the borrower's
21 loan application, credit report, assets, and income, except that this paragraph does not
22 apply if

23 (A) the borrower made a false or misleading statement or
24 omitted relevant information in the loan application that the person relied on
25 when issuing the loan commitment or prequalification letter; or

26 (B) the person funds the loan at the rate, terms, and costs stated
27 in the good faith estimate provided to the borrower at the time of the
28 prequalification letter or loan commitment;

29 (11) engage in a practice or course of business in which the ultimate
30 rates, terms, or costs of mortgage loans are materially worse for the borrowers than
31 they are represented to be in the first good faith estimates the person provides to the

1 borrowers; this paragraph does not apply if

2 (A) the person's generally published or advertised rates, terms,
3 or costs, if any, change for a borrower's loan program; or

4 (B) new or changed information from the borrower makes it
5 necessary to change the loan program offered to the borrower.

6 **Sec. 06.60.430. Certain refinancing prohibited.** (a) A mortgage lender or a
7 mortgage broker may not refinance a mortgage loan within 12 months after the date
8 the mortgage loan is originated by the lender or broker, unless the refinancing is in the
9 borrower's best interest.

10 (b) The factors to be considered when determining if a mortgage is in the
11 borrower's best interest include whether

12 (1) the borrower's new monthly payment is lower than the total of all
13 monthly obligations being refinanced, after taking into account the costs and fees of
14 the refinancing;

15 (2) the amortization period of the new loan is different from the
16 amortization period of the loan being refinanced;

17 (3) the borrower receives cash in excess of the costs and fees of the
18 refinancing;

19 (4) the rate of interest of the borrower's promissory note is reduced;

20 (5) the loan changes from an adjustable rate loan to a fixed rate loan
21 after taking into account costs and fees;

22 (6) the refinancing is necessary to respond to a bona fide personal need
23 or an order of a court of competent jurisdiction;

24 (7) the original term of the loan being refinanced is two years or less;
25 and

26 (8) the refinancing is being made to prevent a foreclosure on an
27 existing loan.

28 **Sec. 06.60.440. Escrow accounts.** (a) A mortgage lender and a mortgage
29 broker shall keep in an escrow account all money that a borrower is required to pay to
30 defray future taxes or insurance premiums or for other lawful purposes. The escrow
31 account must be a trust account or another account that is segregated from the other

1 accounts of the mortgage lender or mortgage broker. The mortgage lender and
 2 mortgage broker may not commingle the borrower's money with the general funds of
 3 the mortgage lender and mortgage broker.

4 (b) A mortgage lender and a mortgage broker may not require a borrower to
 5 pay money into escrow to defray future taxes, to defray insurance premiums, or for
 6 another purpose, in connection with a subordinate mortgage loan, unless an escrow
 7 account for that purpose is not being maintained for the mortgage loan that is superior
 8 to the subordinate mortgage loan.

9 (c) A mortgage lender or a mortgage broker who is holding money in escrow
 10 for insurance premiums shall notify the insurer in writing within 30 days after the
 11 billing address of the mortgage lender or mortgage broker changes, or 60 days before
 12 the renewal date of the insurance policy, whichever is later.

13 **Article 5. Enforcement.**

14 **Sec. 06.60.500. Stop orders.** (a) If, after investigation, the department has
 15 reasonable grounds to believe that a licensee is conducting business in an unsafe or
 16 injurious manner, the department shall, by written order addressed to the licensee,
 17 direct the licensee to stop the unsafe or injurious practices.

18 (b) If the department determines that a person is engaged in the activities of a
 19 mortgage lender or a mortgage broker without a license required by this chapter, the
 20 department may order the person to stop engaging in the activities.

21 (c) An order issued under (b) of this subsection is considered rescinded, if,
 22 within 30 days after the order is served on the person, the person files with the
 23 department a written request for a hearing, and the department fails to hold the hearing
 24 within 60 days after the request is filed.

25 (d) An order issued under this section is effective immediately, but only
 26 becomes final as indicated by AS 06.60.510.

27 **Sec. 06.60.510. Finality of stop orders.** (a) If the department provides written
 28 notice to a licensee of the department's intention to make a stop order issued under
 29 AS 06.60.500 final, the notice gives the reasons for the order, and the notice contains a
 30 hearing notice, the order becomes final if

31 (1) the licensee does not request a hearing within 30 days after the

1 department provides the notice, and the department does not order a hearing;

2 (2) after a hearing, it appears to the department that the licensee is
3 conducting business in an unsafe or injurious manner, or that the person, if not a
4 licensee, is engaged in the activities of a mortgage lender or mortgage broker without
5 a license required by this chapter.

6 (b) In this section, "hearing notice" means a notice that indicates that, if the
7 department receives a request for a hearing, the department will set a hearing to begin
8 within 15 business days after receiving the request or on a date agreed to by the
9 department and the person to whom the hearing notice is given.

10 **Sec. 06.60.520. Censure, suspension, or bar.** (a) In addition to any other
11 remedy provided under this chapter, the department may, after appropriate notice and
12 opportunity for a hearing, by order, censure or suspend a licensee for a period not to
13 exceed 12 months or bar another person from a position of employment, management,
14 or control of a licensee if the department finds that

15 (1) the censure, suspension, or bar is in the public interest;

16 (2) the licensee or person has knowingly committed or caused a
17 violation of this chapter or a regulation adopted under this chapter; and

18 (3) the violation has caused material damage to the licensee or to the
19 public.

20 (b) When the person who is the subject of a proposed order under this section
21 receives a notice of the department's intention to issue an order under this section, the
22 person is immediately prohibited from engaging in any activities for which a license is
23 required under this chapter.

24 (c) A person who is suspended or barred under this section is prohibited from
25 participating in a business activity of a licensee and from engaging in a business
26 activity on the premises where a licensee is conducting the licensee's business. This
27 subsection may not be construed to prohibit a suspended or barred person from having
28 the person's personal transactions processed by a licensee.

29 **Sec. 06.60.530. Civil penalty for violations.** (a) A person who knowingly
30 violates a provision of this chapter or a regulation adopted under this chapter is liable
31 for a civil penalty not to exceed \$10,000 for each violation.

1 (b) The remedies provided by this section and by other sections of this chapter
 2 are not exclusive and may be used in any combination with other remedies allowed
 3 under law to enforce the provisions of this chapter.

4 **Article 6. Collection of Program Administration Fee.**

5 **Sec. 06.60.600. Appointment of agents.** (a) The department shall collect a fee
 6 of \$10 for each mortgage loan document recorded for a mortgage loan handled by a
 7 licensee.

8 (b) The department may contract with a licensee or another person to act as an
 9 agent to collect the program administration fee.

10 (c) The department is not liable for an agent's defalcation or failure to account
 11 for the program administration fees collected by the agent, but the department may
 12 require the agent to obtain a bond in an adequate sum conditioned on the agent's
 13 faithfully accounting for all money collected under this section.

14 **Sec. 06.60.610. Retention and reporting of fees.** (a) An agent may retain 25
 15 percent of the program administration fees collected by the agent.

16 (b) An agent shall transmit to the department for deposit in the general fund
 17 the program administration fees collected by the agent under this section, except the
 18 amount authorized to be retained under (a) of this section, and report to the department
 19 the number of mortgage loan documents recorded by the agent under AS 40.17.

20 (c) An agent shall remit the program administration fees and report required
 21 under (b) of this section to the department by January 15 for the preceding calendar
 22 year.

23 (d) The department may assess against an agent who does not comply with (c)
 24 of this section a civil penalty of one and one-half percent of the amount of the program
 25 administration fees that the agent is required to transmit to the department. The
 26 department may assess the penalty for each entire month and each partial month that
 27 the proceeds are delinquent.

28 **Article 7. Miscellaneous Provisions.**

29 **Sec. 06.60.700. Applicability of administrative procedures.** The provisions
 30 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to
 31 deny, revoke, or suspend a license under this chapter and to hearings and orders of the

1 department.

2 **Sec. 06.60.710. Regulations.** The department may adopt regulations under
3 AS 44.62 (Administrative Procedure Act) to implement this chapter.

4 **Sec. 06.60.720. Relationship to federal and other state law.** (a) If a
5 provision of this chapter is preempted by or conflicts with federal law in a particular
6 situation, the provision does not apply to the extent of the preemption or conflict.

7 (b) If a provision of this chapter conflicts with another state law in a particular
8 situation, the provision in this chapter governs to the extent of the conflict.

9 **Article 8. General Provisions.**

10 **Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise
11 requires,

12 (1) "agent" does not include a person who is a state employee when
13 acting in the capacity of a state employee;

14 (2) "borrower" means an individual who receives a mortgage loan;

15 (3) "broker" means to engage in the activity of a mortgage broker;

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

18 (5) "dual license" means a license issued under AS 06.60.010(c);

19 (6) "knowingly" has the meaning given in AS 11.81.900;

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

21 (8) "licensee" means a person who holds a license issued under this
22 chapter;

23 (9) "mortgage broker" means a person who, for compensation or gain,
24 or in the expectation of compensation or gain, directly or indirectly, by telephone, by
25 electronic means, by mail, or in person with the borrower or potential borrower,

26 (A) accepts or offers to accept an application for a mortgage
27 loan;

28 (B) solicits or offers to solicit a mortgage loan;

29 (C) negotiates the terms or conditions of a mortgage loan; or

30 (D) issues mortgage loan commitments or interest rate
31 guarantee agreements to borrowers;

1 (10) "mortgage lender" means a person who consummates and funds a
 2 mortgage loan and who is named as the payee in the promissory note and as the
 3 beneficiary of the deed of trust; "mortgage lender" does not include a subsequent
 4 purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a
 5 licensee under this chapter;

6 (11) "mortgage loan"

7 (A) means a loan made to an individual if the proceeds are to
 8 be used primarily for personal, family, or household purposes and if the loan is
 9 secured by a mortgage or deed of trust on an interest in a residential owner-
 10 occupied property for one to four families located in the state and regardless of
 11 where the loan is made;

12 (B) includes the renewal or refinancing of a loan;

13 (C) does not include loans

14 (i) or extensions of credit to buyers of real property for
 15 a part of the purchase price of the property by persons selling the
 16 property owned by them;

17 (ii) to persons related to the lender by blood or
 18 marriage;

19 (iii) to persons who are employees of the lender; or

20 (iv) made primarily for a business, commercial, or
 21 agricultural purpose or for construction of residential property;

22 (12) "mortgage loan servicing agent" means a person who acts on
 23 behalf of a mortgage lender to collect payments on a mortgage loan and enforce the
 24 terms of a mortgage loan;

25 (13) "program administration fee" means the fee described under
 26 AS 06.60.600(a);

27 (14) "records" includes books, accounts, papers, files, and other
 28 records;

29 (15) "residential property" means improved real property used or
 30 occupied, or intended to be used or occupied, for residential purposes.

31 **Sec. 06.60.995. Short title.** This chapter may be known as the Mortgage

1 Lending Act of 2006.

2 * **Sec. 2.** AS 44.62.330(a) is amended by adding a new paragraph to read:

3 (46) Department of Commerce, Community, and Economic
4 Development relating to mortgage lending under AS 06.60.

5 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND
8 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 1 of this Act, a
9 person who is engaging in activities for which a license is required under AS 06.60, enacted
10 by sec. 1 of this Act, immediately before the effective date of AS 06.60 is not required to
11 comply with the licensing requirements of AS 06.60 until March 1, 2008. In this section,
12 "license," "mortgage broker," and "mortgage lender" have the meanings given in
13 AS 06.60.990, enacted by sec. 1 of this Act.

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

16 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
17 Economic Development may proceed to adopt regulations necessary to implement the
18 changes made by this Act. The regulations take effect under AS 44.62 (Administrative
19 Procedure Act), but not before the effective date of the respective statutory change.

20 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

21 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect July 1, 2007.