

SENATE BILL NO. 272

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY SENATOR WAGONER

Introduced: 2/8/06

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mortgage lenders and persons who engage in activities relating to**
2 **mortgage lending; and providing for an effective date."**

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

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

5 **Chapter 60. Mortgage Lending.**

6 **Article 1. Licensing.**

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

10 (b) A license may cover more than one location of the licensee.

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

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

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

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

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

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

13 (B) "qualified individual" means an individual

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

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

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

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

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

25 (7) a person who is licensed in this state as an attorney, real estate
26 broker, or real estate agent when rendering services as an attorney, real estate broker,
27 or real estate agent, but who is not actively and principally engaged in negotiating,
28 placing, or finding mortgage loans; however, a real estate broker or real estate agent
29 who receives a fee, commission, kickback, rebate, or other payment for directly or
30 indirectly negotiating, placing, or finding a mortgage loan for another person is not
31 covered by this paragraph;

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

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

6 **Sec. 06.60.030. Application for license.** An application for a mortgage lender
7 license must

8 (1) be in writing;

9 (2) be made under oath or affirmation;

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

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

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

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

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

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

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

25 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant
26 for a license to determine if the applicant satisfies the requirements of this chapter for
27 the license. An applicant for a license shall pay the investigation expenses incurred by
28 the department. When the applicant submits the application to the department, the
29 applicant shall pay to the department a nonrefundable application fee of \$500 in partial
30 payment of the investigation expenses incurred by the department.

31 **Sec. 06.60.050. Initial annual fee.** An applicant for a license shall pay the

1 annual license fee required by AS 06.60.210 to the department when the applicant
2 submits an application under AS 06.60.030, and the applicant's next license fee is due
3 the last day of the first January that occurs after the applicant receives a license.

4 **Sec. 06.60.060. Bonding.** (a) Except as provided by (b) of this section, an
5 applicant shall file with the application submitted to the department under
6 AS 06.60.030 a bond with one or more sureties in the amount of \$25,000 in which the
7 applicant is the obligor. The bond must be satisfactory to the department.

8 (b) In place of a bond required by (a) of this section, an applicant may submit
9 a statement in the form required by the department that demonstrates that the applicant
10 has assets of \$100,000 in the state.

11 (c) The bond required by (a) of this section shall be for the use of the
12 department for a cause of action against the obligor under this chapter. The bond must
13 state that the obligor will faithfully conform to and abide by the provisions of this
14 chapter and of all regulations adopted under this chapter and will pay to the
15 department all money that may become due or owing to the department from the
16 applicant under this chapter.

17 (d) An applicant for a license that covers more than one location is not
18 required to file more than one bond.

19 (e) The bond required under (a) of this section may be continuous until the
20 department revokes or otherwise terminates the license.

21 (f) If the department determines at any time that the bond required under (a) of
22 this section is unsatisfactory for any reason, the department may require the licensee to
23 file with the department, within 10 days after the receipt of a written demand from the
24 department,

25 (1) an additional bond that complies with the provisions of this section;
26 or

27 (2) a statement in the form required by the department that
28 demonstrates that the applicant has assets of \$100,000 in the state.

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

1 application.

2 (b) If the department disapproves the application, the department shall
3 promptly notify the applicant. The notification must indicate the reason for the
4 disapproval and provide the applicant with an opportunity for a hearing on the
5 department's disapproval.

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

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

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

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

16 **Sec. 06.60.090. Additional grounds for disapproval of application.** The
17 grounds for disapproval of an application for a license include a finding by the
18 department that a person named in the application

19 (1) has liabilities that exceed the person's assets, cannot meet the
20 person's obligations as they mature, or is in a financial condition that indicates that the
21 person cannot continue in business and safely handle the mortgage loans of the
22 person's customers;

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

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

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

30 (5) has been prohibited by a federal or state regulatory agency from
31 engaging, participating, or controlling a finance-related activity that provides financial

1 services to the public.

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

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

12 (b) A licensee may not transfer or assign a license. If a licensee transfers or
13 assigns a license, the license is void.

14 **Article 2. Licensee Obligations.**

15 **Sec. 06.60.200. Annual report.** (a) On or before March 15, or on another date
16 established by the department by regulation, of each year a licensee shall file a report
17 with the department giving relevant information that the department requires
18 concerning the business and operations of each location in the state where business
19 was conducted by the licensee in the state during the preceding calendar year. The
20 licensee shall make the report under oath or on affirmation. The report must be in the
21 form established by the department.

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

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

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

28 **Sec. 06.60.220. Restriction on location of business of making loans.** A
29 licensee may not conduct the business of making mortgage loans within an office,
30 suite, room, or place of business in which any other business is solicited or engaged in,
31 or in association or conjunction with another business, unless the name and ownership

1 of the other business is disclosed in the licensee's application for a license.

2 **Sec. 06.60.230. Change of place of business.** (a) If a licensee wishes to
3 change the licensee's place of business to another location, the licensee shall submit a
4 written notice to the department at least 10 days before relocating the business. If the
5 licensee is otherwise in compliance with this chapter, the department shall issue a new
6 license to the licensee to reflect the new location.

7 (b) The department may allow a change in the place of business of a licensee
8 to a location outside the community named in the license only if the department
9 determines that the new location would serve substantially the same community as is
10 served at the location named in the license. In this subsection, "community" means a
11 municipality or an unincorporated community in the unorganized borough.

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

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

18 (b) A licensee shall maintain a separate record, by electronic record or ledger
19 card, for the account of each borrower and for each loan made to the borrower. The
20 record must state the amount of the cash advance, the total amount of interest and
21 charges, the interest rate, the payment amount, the date and amount of each payment
22 received, a description of collateral, if any, that secures the loan, the insurance
23 coverage, and any fees or other charges allowed to be charged the borrower under this
24 chapter.

25 (c) A licensee shall retain the licensee's record on a mortgage loan for at least
26 two years after the mortgage loan is satisfied.

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

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

1 (2) pay the reasonable expenses for travel, meals, and lodging of the
 2 department that are incurred during an investigation or examination made at the office
 3 or place of business.

4 **Sec. 06.60.270. Disqualified persons.** (a) A disqualified person may not serve
 5 as an officer, a director, a partner, a shareholder controlling an ownership interest of
 6 10 percent or more, a trustee, an independent contractor, or an employee of a mortgage
 7 lender without the prior written approval of the department. In this subsection,
 8 "employee" means an individual who negotiates an agreement with a member of the
 9 public for the licensee or who has access to, or responsibility for, escrow accounts or
 10 escrow money held by the licensee.

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

14 (c) Before an officer, director, or other person may obtain a controlling
 15 ownership interest of 10 percent or more in the business of a licensee, the officer,
 16 director, or other person shall authorize the department to access the officer's,
 17 director's, or other person's criminal history information in this state to determine
 18 whether the officer, director, or other person is a disqualified person.

19 (d) In this section,

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

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

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

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

27 (A) AS 11.46;

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

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

Sec. 06.60.280. Minimum net worth required for certain mortgage lenders.

(a) If a licensee conducts business as a mortgage loan servicing agent for other mortgage lenders or investors, the licensee may not engage in an activity that is authorized under this chapter unless the licensee continuously maintains minimum net worth in the following amount based on the average monthly balance of the accounts maintained 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

(b) In this section, "mortgage loan servicing agent" means a person who acts on behalf of a mortgage lender to collect payments on a mortgage loan and enforce the terms of a mortgage loan.

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

Article 3. Discipline of Licensee.

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

- (1) the licensee has failed to
 - (A) pay the annual license fee;
 - (B) maintain in effect a bond required under AS 06.60.060; or
 - (C) comply with a provision of this chapter or a lawful demand, ruling, or requirement of the department made under and within the authority of this chapter; or
- (2) a fact or condition exists that would have constituted grounds for denial of the issuance of the license.

Sec. 06.60.310. Surrender of license. (a) A licensee may surrender a license issued to the licensee by delivering written notice to the department that the licensee

1 intends to surrender the license, except that a licensee may not surrender a license until
2 all loans of that licensee have either been paid in full or sold.

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

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

7 **Sec. 06.60.320. Effect of revocation, suspension, or surrender of license.**

8 The revocation, suspension, or surrender of a license does not impair or otherwise
9 affect the rights or obligations of a preexisting lawful contract between the licensee
10 and a borrower. If the department has revoked a license, the licensee shall divest itself
11 of all outstanding loans that were issued under this chapter by selling or assigning
12 them to another licensee, except that the divestment must be approved by the
13 department.

14 **Sec. 06.60.330. Reinstatement of revoked license.** The department may
15 reinstate a revoked license if the licensee complies with this chapter or with a demand,
16 ruling, or requirement made by the department under this chapter. Before
17 reinstatement of a license, the licensee shall pay the annual license fee required under
18 AS 06.60.210.

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

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

27 (c) For the purposes of conducting an examination under this section, the
28 department

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

31 (2) may conduct the examination without prior notice to the licensee;

1 and

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

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

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

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

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

18 **Sec. 06.60.400. False, misleading, or deceptive advertising prohibited.** A
19 licensee may not advertise, print, display, publish, distribute, broadcast, or cause or
20 permit to be advertised, printed, displayed, published, distributed, or broadcast, in any
21 manner a statement or representation with regard to the rates, terms, or conditions for
22 a mortgage loan that is false, misleading, or deceptive.

23 **Sec. 06.60.410. Compliance with federal requirements.** If the regulations
24 apply to a licensee under federal law, a licensee shall conduct the licensee's affairs
25 under 12 CFR Part 226 and other regulations adopted by the federal government under

26 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
27 1974);

28 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

29 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

30 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
31 Protection Act); and

1 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968).

2 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited
3 elsewhere in this chapter or by another law, a licensee may not, in the course of a
4 mortgage loan transaction,

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

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

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

10 (4) fail to account for or deliver to a person money, a document, or
11 another thing of value obtained in connection with a mortgage loan, including money
12 provided by a borrower for a real estate appraisal or a credit report if the mortgage
13 banker, broker, or loan officer is not entitled to retain the money under the
14 circumstances;

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

19 (6) fail to disburse money in accordance with a written commitment or
20 agreement to make a mortgage loan;

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

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

26 (A) requested from the appraiser in writing by the mortgage
27 loan broker, mortgage loan banker, or employee of the mortgage loan broker or
28 mortgage loan banker; and

29 (B) performed by the appraiser in connection with the
30 origination or closing of a mortgage loan for a customer or the mortgage loan
31 broker or mortgage loan banker;

1 (9) make, purchase, or sell a mortgage loan that contains a prepayment
2 penalty;

3 (10) influence or attempt to influence through coercion, extortion, or
4 bribery the development, reporting, result, or review of a real estate appraisal sought
5 in connection with a mortgage loan; this paragraph does not prohibit a mortgage loan
6 broker or mortgage loan banker from asking an appraiser to

7 (A) consider additional appropriate property information;

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

10 (C) correct errors in the appraisal report.

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

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

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

19 (2) the amortization period of the new loan is different from the
20 amortization period of the loan being refinanced;

21 (3) the borrower receives cash in excess of the costs and fees of the
22 refinancing;

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

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

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

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

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

1 AS 06.60.500 final, the notice gives the reasons for the order, and the notice contains a
2 hearing notice, the order becomes final if

3 (1) the licensee does not request a hearing within 30 days after the
4 department provides the notice, and the department does not order a hearing;

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

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

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

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

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

21 (3) the violation has caused material damage to the mortgage lender or
22 to the public.

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

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

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

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

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

8 **Sec. 06.60.600. Appointment of agents.** (a) The department may contract with
9 a licensee to act as an agent to collect a program administration fee of \$10 for each
10 mortgage loan document to be recorded for a mortgage loan handled by a licensee.

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

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

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

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

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

29 **Article 7. Miscellaneous Provisions.**

30 **Sec. 06.60.700. Applicability of administrative procedures.** The provisions
31 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to

1 deny, revoke, or suspend a license under this chapter and to hearings and orders of the
2 department.

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

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

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

10 **Article 8. General Provisions.**

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

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

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

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

18 (4) "knowingly" has the meaning given in AS 11.81.900;

19 (5) "license" means a license issued under this chapter;

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

22 (7) "mortgage lender" means a person who consummates and funds a
23 mortgage loan and who is named as the payee in the promissory note and as the
24 beneficiary of the deed of trust; "mortgage lender" does not include a subsequent
25 purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a
26 licensee under this chapter;

27 (8) "mortgage loan"

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

1 where the loan is made;

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

3 (C) does not include loans

4 (i) or extensions of credit to buyers of real property for
5 a part of the purchase price of the property by persons selling the
6 property owned by them;

7 (ii) to persons related to the lender by blood or
8 marriage;

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

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

12 (9) "program administration fee" means the fee described under
13 AS 06.60.600;

14 (10) "records" includes books, accounts, papers, files, and other
15 records;

16 (11) "residential property" means improved real property used or
17 occupied, or intended to be used or occupied, for residential purposes.

18 **Sec. 06.60.995. Short title.** This chapter may be known as the Mortgage
19 Lending Act of 2006.

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

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

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

25 **TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS.**
26 Notwithstanding AS 06.60.010, enacted by sec. 1 of this Act, a person who is engaging in
27 activities for which a license is required under AS 06.60, enacted by sec. 1 of this Act,
28 immediately before the effective date of AS 06.60 is not required to comply with the licensing
29 requirements of AS 06.60 until March 1, 2008. In this section, "license" and "mortgage
30 lender" have the meanings given in AS 06.60.990, enacted by sec. 1 of this Act.

31 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

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