

CS FOR SENATE BILL NO. 272(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/5/06

Referred: Finance

Sponsor(s): SENATOR WAGONER

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; relating to mortgage loan activities; relating to fees for recorded
4 mortgage loan instruments; and providing for an effective date."

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

6 * **Section 1.** AS 06.01.050(3) is amended to read:

7 (3) "financial institution" means an institution subject to the regulation
8 of the department under this title; in this paragraph, "institution" includes a
9 commercial bank, savings bank, credit union, premium finance company, small loan
10 company, bank holding company, financial holding company, trust company, savings
11 and loan association, [AND] deferred deposit advance licensee under AS 06.50,
12 **mortgage lender under AS 06.60, and mortgage broker under AS 06.60;**

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

14 **Chapter 60. Mortgage Lending.**

1 **Article 1. Licensing.**

2 **Sec. 06.60.010. License required.** (a) Except as provided under AS 06.60.020,
3 a person, including a person doing business from outside this state, may not solicit or
4 engage in business, or offer to provide services, as a mortgage lender in this state
5 unless the person is licensed under this chapter.

6 (b) Except as provided under AS 06.60.020, a person, including a person
7 doing business from outside this state, may not solicit or engage in business as a
8 mortgage broker, or offer to provide services, in this state unless the person is licensed
9 under this chapter.

10 (c) The department may issue a dual license under this chapter that allows a
11 person to engage in business, or offer to provide services, as a mortgage lender and a
12 mortgage broker.

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

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

16 (1) a mortgage lender who makes six or fewer mortgage loans within a
17 period of 12 consecutive months;

18 (2) a person who is authorized to engage in business as a bank, savings
19 institution, or credit union under the laws of the United States, a state or territory of
20 the United States, or the District of Columbia, and whose mortgage loan activity is
21 subject to the general supervision, regulation, and examination of a regulatory body or
22 agency of the United States, a state or territory of the United States, or the District of
23 Columbia;

24 (3) a subsidiary of or an affiliate of a person who is covered by (2) of
25 this section and who is subject to the general supervision, regulation, and examination
26 of a regulatory body or agency of the United States, a state or territory of the United
27 States, or the District of Columbia;

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

30 (A) "nonprofit corporation" means a corporation that qualifies
31 under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code) for an exemption

1 from federal income taxation;

2 (B) "qualified individual" means an individual

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

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

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

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

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

14 (7) a person who is licensed in this state as an attorney, real estate
15 broker, or real estate agent when rendering services as an attorney, real estate broker,
16 or real estate agent, but who is not actively and principally engaged in negotiating,
17 placing, or finding mortgage loans; however, a real estate broker or real estate agent
18 who receives a fee, commission, rebate, or other payment for directly or indirectly
19 negotiating, placing, or finding a mortgage loan for another person is not covered by
20 this paragraph;

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

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

26 **Sec. 06.60.025. Employees and independent contractors.** (a) An employee
27 of a licensee is not required to obtain a separate license under this chapter.

28 (b) An independent contractor of a licensee is not required to obtain a license
29 under this chapter if

30 (1) the independent contractor and licensee execute a written contract
31 under which

1 (A) the licensee accepts responsibility for ensuring that the
2 independent contractor complies with the requirements of this chapter; and

3 (B) the independent contractor agrees to operate in compliance
4 with this chapter; and

5 (2) the department provides advance written approval of the agreement
6 between the independent contractor and the licensee.

7 **Sec. 06.60.030. Application for license.** An application for a 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) contain other information as the department may require
25 concerning the organization and operations of the applicant and the financial
26 responsibility, background, experience, and activities of the applicant and its
27 members, officers, directors, owners, and other principals.

28 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant
29 for a license to determine if the applicant satisfies the requirements of this chapter for
30 the license. An applicant for a license shall pay the investigation expenses incurred by
31 the department. When the applicant submits the application to the department, the

1 applicant shall pay to the department a nonrefundable application fee of \$500 in partial
2 payment of the investigation expenses incurred by the department. An applicant for a
3 dual license is not required to pay more than one application fee.

4 **Sec. 06.60.050. Initial annual fee.** (a) An applicant for a license shall pay the
5 annual license fee required by AS 06.60.210 to the department when the applicant
6 submits an application under AS 06.60.030. The initial annual license fee covers the
7 year that follows the date of the issuance of the license.

8 (b) An applicant for a dual license is not required to pay more than one initial
9 annual license fee.

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

14 (b) The bond required by (a) of this section shall be for the use of the
15 department, the Department of Law, or a person for a cause of action against the
16 obligor under this chapter. The bond must state that the obligor will faithfully conform
17 to and abide by the provisions of this chapter and all regulations adopted under this
18 chapter and will pay the department, the Department of Law, or a person all money
19 that may become due or owing to the department, the Department of Law, or the
20 person from the obligor under an order of the department under this chapter.

21 (c) An applicant for a license that covers more than one location is not
22 required to file more than one bond.

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

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

30 **Sec. 06.60.070. Issuance of license.** (a) Within 90 days after the date a
31 complete application, the required bond, and any required fees and investigative costs

1 are received by the department, the department shall either grant or deny the license.

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

5 **Sec. 06.60.080. Determinations for licensing.** Before granting a license, the
6 department shall determine that

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

9 (2) the financial responsibility, experience, character, and general
10 fitness of the applicant, and of the applicant's members and officers or other
11 principals, and the organization and operation of the applicant indicate that the
12 business will be operated efficiently and fairly, in the public interest, and under the
13 law; and

14 (3) the department has not found grounds for denial of a license under
15 AS 06.60.090.

16 **Sec. 06.60.090. Additional grounds for denial of license.** The grounds for
17 denial of a license include a finding by the department that a person named in the
18 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 renewal of license.** (a) A license issued under
9 this chapter remains in effect for one year after the license is issued unless revoked or
10 suspended under AS 06.60.300 or surrendered under AS 06.60.310.

11 (b) Unless the department denies the renewal under (c) of this section, a
12 licensee may renew a license by submitting to the department

13 (1) a renewal application in the form and manner established by the
14 department;

15 (2) the annual license fee required by AS 06.60.210; and

16 (3) a report identifying any changes in the information provided under
17 AS 06.60.030(4).

18 (c) A renewal under (b) of this section is considered granted unless, within 30
19 days after the department receives the renewal application, the department notifies the
20 licensee that the department has denied the renewal application because the licensee is
21 not complying with this chapter.

22 **Sec. 06.60.120. Transfer of license.** A licensee may not transfer or assign the
23 licensee's business unless

24 (1) the transfer is to another licensee with the same type of license as
25 the transferring or assigning licensee; and

26 (2) the licensee provides the department with written notice at least 30
27 days before the effective date of the proposed transfer or assignment.

28 **Article 2. Licensee Obligations.**

29 **Sec. 06.60.200. Annual report.** (a) On or before March 15, or on another date
30 established by the department by regulation, of each year a licensee shall file a report
31 with the department giving relevant information that the department requires

1 concerning the business and operations of each location in the state where business
2 was conducted by the licensee in the state during the preceding calendar year. The
3 licensee shall make the report under oath or on affirmation. The report must be in the
4 form established by the department.

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

7 **Sec. 06.60.210. Annual license fee.** (a) A licensee shall pay the department an
8 annual license fee of \$250.

9 (b) After the payment of the initial annual license fee under AS 06.60.050, a
10 licensee shall pay the annual license fee on or before the date of each annual
11 anniversary of the date the license was first issued. A dual license holder is not
12 required to pay more than one annual license fee.

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

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

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

25 **Sec. 06.60.240. Change in business operations or control of licensee.** (a) If
26 there is a significant change in the business operations of the licensee, the licensee
27 shall provide written notice to the department at least 30 days before the effective date
28 of the change in operations.

29 (b) The prior written approval of the department is required for the continued
30 operation of a licensee's business when a change in control of the licensee is proposed.
31 The department may require the information it considers necessary to determine

1 whether a new application is required. The licensee requesting approval of the change
2 in control shall pay all reasonable expenses incurred by the department to investigate
3 and approve or deny the change in control.

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

7 (b) A mortgage lender or mortgage broker required to be licensed under this
8 chapter shall maintain a record, by electronic record or photocopying, for the account
9 of each borrower and for each loan made to the borrower. This record must contain all
10 documents, notes, electronic correspondence, and forms that are produced or prepared
11 for the mortgage loan by the licensee, and the licensee shall retain each document,
12 note, electronic correspondence, and form for three years.

13 (c) A mortgage lender required to be licensed under this chapter shall retain
14 for at least three years after final payment is made on a mortgage loan or after a
15 mortgage loan is sold, whichever occurs first, copies of the note, settlement statement,
16 truth-in-lending disclosure, and other papers or records relating to the loan that may be
17 required by department order or regulation.

18 (d) A mortgage broker required to be licensed under this chapter shall retain
19 for at least three years after a mortgage loan is made the original contract for the
20 mortgage broker's compensation, a copy of the settlement statement, an account of
21 fees received in connection with the loan, and other papers or records that may be
22 required by department order or regulation.

23 (e) If a licensee conducts business as a mortgage loan servicing agent for loans
24 that the licensee owns, or as an agent for other mortgage lenders or investors, the
25 licensee shall in addition to complying with (a) and (b) of this section, maintain a
26 record for each mortgage loan. The record for each mortgage loan must include, either
27 in electronic or printed format, as well as other papers required by department order or
28 regulation, the amount of the mortgage loan, the total amount of interest and finance
29 charges on the mortgage loan, the interest rate on the mortgage loan, the amount of
30 each payment to be made on the mortgage loan, a description of the collateral taken
31 for the mortgage loan, a history of all payments received by the licensee on the

1 mortgage loan, a detailed history of the amount of each payment that is applied to the
 2 reduction of the mortgage loan principal, the interest that accrues on the mortgage
 3 loan, and any other fees and charges that are related to the mortgage loan. The licensee
 4 shall retain the record required by this subsection for three years after the loan is sold
 5 to another mortgage loan servicing agent or after the mortgage loan is satisfied,
 6 whichever occurs first.

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

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

12 (2) reimburse the department reasonable costs, as provided in
 13 AS 06.60.340(d), that are incurred by the department during an investigation or
 14 examination conducted at the office or place of business.

15 **Sec. 06.60.270. Disqualified persons.** (a) A disqualified person may not be an
 16 officer, a director, a partner, a member, a sole proprietor, a trustee, an independent
 17 contractor, an employee of a licensee, or in another position with similar
 18 responsibilities. In this subsection, "employee" means an individual who negotiates an
 19 agreement with a member of the public for the licensee or who has access to, or
 20 responsibility for, escrow accounts or escrow money held by the licensee.

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

24 (c) Before a person may obtain a controlling ownership interest of 10 percent
 25 or more in the business of a licensee, the person shall authorize the department to
 26 access the person's criminal history information in any state to determine whether the
 27 person is a disqualified person.

28 (d) In this section,

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

30 (A) is convicted of an offense that is a felony within the
 31 previous seven years;

1 (B) is held liable within the previous seven years for an action
 2 that involves dishonesty or fraud by a final judgment in a civil action or by an
 3 administrative judgment by a public agency; or

4 (C) had a professional license revoked or terminated for cause
 5 by a state agency or federal agency within the previous seven years;

6 (2) "offense" means a criminal offense that involves deception, fraud,
 7 misrepresentation, or violation of the public trust.

8 **Sec. 06.60.280. Posting of license.** A licensee shall conspicuously post the
 9 license in the place of business of the licensee.

10 **Article 3. Discipline of Licensee.**

11 **Sec. 06.60.300. Revocation and suspension of a license.** The department,
 12 after appropriate notice and opportunity for a hearing under AS 44.62 (Administrative
 13 Procedure Act), may suspend or revoke the license of a licensee if the department
 14 finds that

15 (1) the licensee has failed to

16 (A) pay any required fee or costs;

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

18 (C) comply with any applicable provision of this title, with any
 19 applicable regulations adopted under this title, with a lawful demand, ruling,
 20 order, or requirement of the department, or with any other statute or regulation
 21 applicable to the conduct of the licensee's business; or

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

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

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

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

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

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

8 **Sec. 06.60.330. Reinstatement of revoked license.** The department may
9 reinstate a revoked license if the licensee complies with this chapter or with a demand,
10 ruling, or requirement made by the department under this chapter. Before
11 reinstatement of a license, the licensee shall pay the annual license fee required under
12 AS 06.60.210.

13 **Sec. 06.60.340. Investigation and examination.** (a) The department may
14 investigate and examine the affairs, business, premises, and records of a mortgage
15 lender or mortgage broker required to be licensed under this chapter to determine
16 compliance with this chapter and regulations adopted under this chapter and AS 06.01.
17 Notwithstanding AS 06.01.015, the department shall conduct an examination at least
18 once every 36 months, or sooner if the examination is part of review of a complaint
19 against the licensee by a resident of the state.

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

23 (c) For the purposes of conducting an examination under this section, the
24 department

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

27 (2) may conduct the examination without prior notice to the licensee;
28 and

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

31 (d) A licensee shall reimburse the department reasonable costs incurred by the

1 department to conduct the examination. The reimbursement under this subsection may
 2 not exceed the rate of \$75 an hour for the examination, plus travel, housing, and per
 3 diem that does not exceed the per diem allowance for employees of the state under
 4 AS 39.20.110.

5 **Sec. 06.60.350. Untrue, misleading, or false statements.** A person may not,
 6 in a document filed with the department or in a proceeding under this chapter, make or
 7 cause to be made, an untrue statement of a material fact, or omit to state a material fact
 8 necessary in order to make the statement made, in the light of the circumstances under
 9 which it is made, not misleading or false.

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

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

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

20 **Sec. 06.60.410. Compliance with federal requirements.** If the regulations
 21 apply to the person under federal law, a person shall conduct the person's mortgage
 22 loan activities under 12 CFR Part 226 and other regulations adopted by the federal
 23 government under

- 24 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
 25 1974);
- 26 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);
- 27 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);
- 28 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
 29 Protection Act);
- 30 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and
- 31 (6) any other federal law or regulation.

1 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited
2 elsewhere in this chapter or by another law, a person who is a licensee, a person who
3 is required to be licensed under this chapter, a person who is exempt under
4 AS 06.60.020, and an employee and an independent contractor to whom AS 06.60.025
5 applies may not, in the course of a mortgage loan transaction,

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

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

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

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

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

29 (9) influence or attempt to influence through coercion, extortion, or
30 bribery the development, reporting, result, or review of a real estate appraisal sought
31 in connection with a mortgage loan; this paragraph does not prohibit a person from

1 asking an appraiser to

2 (A) consider additional appropriate property information;

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

5 (C) correct errors in the appraisal report;

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

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

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

17 (11) engage in a practice or course of business in which the ultimate
18 rates, terms, or costs of mortgage loans are materially worse for the borrowers than
19 they are represented to be in the first good faith estimates the person provides to the
20 borrowers; this paragraph does not apply if

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

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

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

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

31 (1) the borrower's new monthly payment is lower than the total of all

1 monthly obligations being refinanced, after taking into account the costs and fees of
2 the refinancing;

3 (2) the amortization period of the new loan is different from the
4 amortization period of the loan being refinanced;

5 (3) the borrower receives cash in excess of the costs and fees of the
6 refinancing;

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

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

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

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

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

16 **Sec. 06.60.440. Escrow accounts.** (a) A mortgage lender and a mortgage
17 broker shall keep in an escrow account all money that a borrower is required to pay to
18 defray future taxes or insurance premiums or for other lawful purposes. The escrow
19 account must be a trust account or another account that is segregated from the other
20 accounts of the mortgage lender or mortgage broker. The mortgage lender and
21 mortgage broker may not commingle the borrower's money with the general funds of
22 the mortgage lender and mortgage broker.

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

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

1 **Article 5. Enforcement.**

2 **Sec. 06.60.500. Cease and desist orders.** The department may issue, under
3 AS 06.01.030, an order directing a person to cease and desist from engaging in an
4 unsafe or unsound practice.

5 **Sec. 06.60.510. Censure, suspension, or bar.** (a) In addition to any other
6 remedy provided under this chapter, the department may, after appropriate notice and
7 opportunity for a hearing, by order, censure or suspend a licensee for a period not to
8 exceed 12 months or bar another person from a position of employment, management,
9 or control of a licensee if the department finds that

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

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

13 (3) the violation has caused material damage to the licensee or to the
14 public.

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

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

24 **Sec. 06.60.520 Responsibility of licensee for violations.** A licensee who acts
25 as a mortgage lender or mortgage broker is vicariously liable under AS 06.60.300 and
26 06.60.530 for a violation of a provision of this chapter or of a lawful demand, ruling,
27 or requirement of the department made under and within the authority of this chapter,
28 committed by a person while in the course of the person's employment or agency for
29 the licensee.

30 **Sec. 06.60.530. Civil penalty for violations.** (a) A person who knowingly
31 violates a provision of this chapter or a regulation adopted under this chapter is liable

1 for a civil penalty not to exceed \$10,000 for each violation.

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

5 **Sec. 06.60.540. Additional enforcement provisions, actions, and rights.** (a)
6 The department may treat a licensee as a financial institution under AS 06.01 when
7 applying the enforcement provisions of AS 06.01.

8 (b) This chapter may not be interpreted to prevent the attorney general or any
9 other person from exercising the rights provided under AS 45.50.471 - 45.50.561.

10 (c) If the department determines that a licensee or a person acting on the
11 behalf of the licensee is in violation of, or has violated, a provision of this chapter, the
12 department may refer the information to the attorney general and request that the
13 attorney general investigate the violation under AS 45.50.495. The attorney general
14 may enjoin a violation of this chapter and may seek restitution, rescission, and other
15 relief as allowed by law.

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

17 **Sec. 06.60.600. Authorization of program administration fee.** (a) The
18 department may collect a program administration fee of \$10 for each mortgage loan
19 instrument to reimburse the state for the cost of administering this chapter.

20 (b) The fee shall be paid by the buyer of the real property that is the subject of
21 the mortgage loan.

22 (c) If there are multiple mortgage loan instruments recorded for a single
23 mortgage loan transaction, only one fee under (a) of this section shall be due.

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

27 **Sec. 06.60.610. Appointment of agents.** (a) The department may contract with
28 a licensee or another person to act as an agent to collect the program administration
29 fee.

30 (b) The department is not liable for an agent's defalcation or failure to account
31 for the program administration fees collected by the agent, but the department may

1 require the agent to obtain a bond in an adequate sum conditioned on the agent's
2 faithfully accounting for all money collected under this section.

3 **Sec. 06.60.620. Retention and reporting of fees.** (a) An agent may retain 25
4 percent of the program administration fees collected by the agent.

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

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

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

17 **Article 7. Miscellaneous Provisions.**

18 **Sec. 06.60.700. Application to Internet activities.** This chapter applies to a
19 person even if the person is engaging in the activities regulated by this chapter by
20 using an Internet website from within or outside the state.

21 **Sec. 06.60.705. Applicability of administrative procedures.** The provisions
22 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to
23 deny, revoke, or suspend a license under this chapter and to hearings and orders of the
24 department.

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

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

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

Article 8. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) "mortgage loan"

(A) means a loan made to an individual if the proceeds are to be used primarily for personal, family, or household purposes and if the loan is

1 secured by a mortgage or deed of trust on an interest in a residential owner-
 2 occupied property for one to four families located in the state and regardless of
 3 where the loan is made;

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

5 (C) does not include loans

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

9 (ii) to persons related to the lender by blood or
 10 marriage;

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

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

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

17 (13) "program administration fee" means the fee described under
 18 AS 06.60.600(a);

19 (14) "records" includes books, accounts, papers, files, and other
 20 records;

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

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

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

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

28 * **Sec. 4.** AS 45.50.481 is amended by adding a new subsection to read:

29 (c) The exemption in (a)(1) of this section does not apply to an act or
 30 transaction regulated under AS 06.60.

31 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND
3 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a
4 person who is engaging in activities for which a license is required under AS 06.60, enacted
5 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to
6 comply with the licensing requirements of AS 06.60 until March 1, 2008. In this section,
7 "license," "mortgage broker," and "mortgage lender" have the meanings given in
8 AS 06.60.990, enacted by sec. 2 of this Act.

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

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

15 * **Sec. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

16 * **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect July 1, 2007.