

**CS FOR SENATE BILL NO. 272(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/1/06

Referred: Today's Calendar

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.** This chapter does not apply to

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

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

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

27 (4) a nonprofit corporation that makes mortgage loans to promote  
28 home ownership or home improvements; in this paragraph, "nonprofit corporation"  
29 means a corporation that qualifies under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue  
30 Code) for an exemption from federal income taxation;

31 (5) an agency of the federal government, a state government, a

1 municipality, or a quasi-governmental agency making or brokering mortgage loans  
2 under the specific authority of the laws of a state or the United States;

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

6 (7) a person who is licensed in this state as an attorney, real estate  
7 broker, or real estate agent when rendering services as an attorney, real estate broker,  
8 or real estate agent, but who is not actively and principally engaged in negotiating,  
9 placing, or finding mortgage loans; however, a real estate broker or real estate agent  
10 who receives a fee, commission, rebate, or other payment for directly or indirectly  
11 negotiating, placing, or finding a mortgage loan for another person is not covered by  
12 this paragraph;

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

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

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

20 (b) An independent contractor of a licensee who provides services related to  
21 mortgage loans to a licensee is not required to obtain a license under this chapter if

22 (1) the independent contractor and licensee execute a written contract  
23 under which

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

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

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

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

31 (1) be in writing;

1 (2) be made under oath or affirmation;  
 2 (3) be in the form prescribed by the department;  
 3 (4) contain the name and both the residence and business addresses of  
 4 the applicant as follows:

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

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

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

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

16 (6) contain other information as the department may require  
 17 concerning the organization and operations of the applicant and the financial  
 18 responsibility, background, experience, and activities of the applicant and its  
 19 members, officers, directors, owners, and other principals.

20 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant  
 21 for a license to determine if the applicant satisfies the requirements of this chapter for  
 22 the license. An applicant for a license shall pay the investigation expenses incurred by  
 23 the department. When the applicant submits the application to the department, the  
 24 applicant shall pay to the department a nonrefundable application fee of \$500 in partial  
 25 payment of the investigation expenses incurred by the department. An applicant for a  
 26 dual license is not required to pay more than one application fee.

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

31 (b) An applicant for a dual license is not required to pay more than one initial

1 annual license fee.

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

6 (b) The bond required by (a) of this section shall be for the use of the  
7 department, the Department of Law, or a person for a cause of action against the  
8 obligor under this chapter. The bond must state that the obligor will faithfully conform  
9 to and abide by the provisions of this chapter and all regulations adopted under this  
10 chapter and will pay the department, the Department of Law, or a person all money  
11 that may become due or owing to the department, the Department of Law, or the  
12 person from the obligor under this chapter.

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

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

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

22 **Sec. 06.60.070. Issuance of license.** (a) Within 30 days after the date a  
23 complete application, the required bond, and any required fees and investigative costs  
24 are received by the department, the department shall either grant or deny the license.

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

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

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

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

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

8                   **Sec. 06.60.090. Additional grounds for denial of license.** The grounds for  
9 denial of a license include a finding by the department that a person named in the  
10 application

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

15                   (2) is permanently or temporarily enjoined by a court of competent  
16 jurisdiction from engaging in or continuing conduct or a practice involving an aspect  
17 of the business of providing financial services to the public;

18                   (3) has been prohibited by a federal or state regulatory agency from  
19 engaging, participating, or controlling a finance-related activity that provides financial  
20 services to the public; or

21                   (4) has, within the previous seven years,

22                               (A) been convicted, including a conviction based on a guilty  
23 plea or plea of nolo contendere, of a crime, including fraud or another crime  
24 involving personal dishonesty;

25                               (B) committed an act, made an omission, or engaged in a  
26 practice that constitutes a breach of a fiduciary duty;

27                               (C) had the person's participation in the conduct of a business  
28 limited by an administrative act of a federal or state agency, including the  
29 suspension of a license for engaging in an occupation; or

30                               (D) had a license for engaging in an occupation revoked or  
31 terminated for cause by a federal or state agency.

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

7           **Sec. 06.60.110. Duration and renewal of license.** (a) A license issued under  
8 this chapter remains in effect for one year after the license is issued unless revoked or  
9 suspended under AS 06.60.300 or surrendered under AS 06.60.310.

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

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

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

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

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

21           **Sec. 06.60.120. Inactive license.** (a) A license may be made inactive under this  
22 section.

23           (b) To be eligible to have a license be made inactive, all mortgage loans of the  
24 licensee must have been paid in full or sold.

25           (c) To make a license inactive, a licensee shall provide the department with a  
26 written request that the license be made inactive. The request must include the  
27 licensee's name, address, and other information that the department requires that is  
28 necessary for the department to process the request and a statement by the licensee  
29 that all mortgage loans of the licensee have been paid in full or sold.

30           (d) If a person holds a license that is inactive, the person may not solicit or  
31 engage in business, or offer to provide services, as a mortgage lender in this state until

1 the license is reactivated.

2 (e) If a license is made inactive under this section, the license remains inactive  
3 until the person who holds the inactive license provides the department with a written  
4 request that the license be reactivated. The request must include the information that  
5 the department requires is necessary to process the request.

6 (f) While a license is inactive, the person holding the inactive license shall pay  
7 the annual license fee as required by AS 06.60.210 and inform the department of any  
8 change that occurs in the name and address of the person, the location of the person's  
9 business, or in the business operations or control of the person, but the person is not  
10 required to maintain the bond required by AS 06.60.060, and the person is not required  
11 to file the annual report required by AS 06.60.200.

12 (g) Notwithstanding AS 06.60.130, while a license is inactive under this  
13 section, the person who holds the license may not transfer the license to another  
14 person.

15 (h) While a license is inactive under this section, the person is not required to  
16 surrender the license under AS 06.60.310(b) for not having engaged in mortgage loan  
17 activity for 12 months.

18 (i) While a license is inactive under this section, the person holding the  
19 inactive license shall continue to maintain records as required by AS 06.60.250 for the  
20 business transactions of the person that occurred before the license became inactive.

21 (j) While a license is inactive under this section, the department may take  
22 action against the license, the person holding the inactive license, or both under  
23 AS 06.60.300 - 06.60.360 and 06.60.500 - 06.60.540 for noncompliance with this  
24 chapter before the license became inactive or for noncompliance with this section  
25 while the license is inactive.

26 (k) Except as otherwise provided in this section and by regulations adopted by  
27 the department, the provisions of this chapter do not apply to a person holding an  
28 inactive license under this section.

29 **Sec. 06.60.130. Transfer of license.** A licensee may not transfer or assign the  
30 licensee's business unless

31 (1) the transfer is to another licensee with the same type of license as

1 the transferring or assigning licensee; and

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

4 **Article 2. Licensee Obligations.**

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

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

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

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

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

22 **Sec. 06.60.220. Location of business of making loans.** A licensee may not  
23 maintain the licensee's principal place of business or a branch office within an office,  
24 suite, room, or place of business in which any other business is solicited or engaged in,  
25 or in association or conjunction with another business, unless the name, ownership,  
26 and business purpose of the other business is disclosed in the licensee's application for  
27 a license.

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

1 to the licensee to reflect the new location.

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

6 (b) The prior written approval of the department is required for the continued  
7 operation of a licensee's business when a change in control of the licensee is proposed.  
8 The department may require the information it considers necessary to determine  
9 whether a new application is required. The licensee requesting approval of the change  
10 in control shall pay all reasonable expenses incurred by the department to investigate  
11 and approve or deny the change in control.

12 **Sec. 06.60.250. Records of licensee.** (a) The requirements of this section apply  
13 to the business transactions of a licensee that occur entirely or partially in this state.

14 (b) A licensee shall keep and use in the licensee's business the accounting  
15 records that are in accord with sound and accepted accounting practices.

16 (c) A mortgage lender or mortgage broker required to be licensed under this  
17 chapter shall maintain a record, by electronic record or photocopying, for the account  
18 of each borrower and for each loan made to the borrower. This record must contain all  
19 documents, notes, electronic correspondence, and forms that are produced or prepared  
20 for the mortgage loan by the licensee, and the licensee shall retain each document,  
21 note, electronic correspondence, and form for three years.

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

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

1 (f) If a licensee conducts business as a mortgage loan servicing agent for loans  
 2 that the licensee owns, or as an agent for other mortgage lenders or investors, the  
 3 licensee shall in addition to complying with (b) and (c) of this section, maintain a  
 4 record for each mortgage loan. The record for each mortgage loan must include, either  
 5 in electronic or printed format, as well as other papers required by department order or  
 6 regulation, the amount of the mortgage loan, the total amount of interest and finance  
 7 charges on the mortgage loan, the interest rate on the mortgage loan, the amount of  
 8 each payment to be made on the mortgage loan, a description of the collateral taken  
 9 for the mortgage loan, a history of all payments received by the licensee on the  
 10 mortgage loan, a detailed history of the amount of each payment that is applied to the  
 11 reduction of the mortgage loan principal, the interest that accrues on the mortgage  
 12 loan, and any other fees and charges that are related to the mortgage loan. The licensee  
 13 shall retain the record required by this subsection for three years after the loan is sold  
 14 to another mortgage loan servicing agent or after the mortgage loan is satisfied,  
 15 whichever occurs first.

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

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

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

24 **Sec. 06.60.270. Disqualified persons.** (a) A disqualified person may not be an  
 25 officer, a director, a partner, a member, a sole proprietor, a trustee, an independent  
 26 contractor under AS 06.60.025(b), an employee of a licensee, or in another position  
 27 with similar responsibilities. In this subsection, "employee" means an individual who  
 28 negotiates an agreement with a member of the public for the licensee or who has  
 29 access to, or responsibility for, escrow accounts or escrow money held by the licensee.

30 (b) A licensee may not permit a disqualified person to obtain a controlling  
 31 ownership interest of 10 percent or more in the licensee's business without the prior

1 written approval of the department.

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

6 (d) In this section,

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

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

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

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

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

17 **Sec. 06.60.280. Posting of license.** A licensee shall conspicuously post the  
18 license in each place of business of the licensee.

19 **Article 3. Discipline of Licensee.**

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

24 (1) the licensee has failed to

25 (A) pay any required fee or costs;

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

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

31 (2) a fact or condition exists that would have constituted grounds for

1 denial of the issuance of the license.

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

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

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

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

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

22 **Sec. 06.60.340. Investigation and examination.** (a) The department may  
23 investigate and examine the affairs, business, premises, and records of a mortgage  
24 lender or mortgage broker required to be licensed under this chapter to determine  
25 compliance with this chapter and regulations adopted under this chapter and AS 06.01.  
26 Notwithstanding AS 06.01.015, the department shall conduct an examination at least  
27 once every 36 months, or sooner if the examination is part of review of a complaint  
28 against the licensee.

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

1 (c) For the purposes of conducting an examination under this section, the  
2 department

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

5 (2) may conduct the examination without prior notice to the licensee;  
6 and

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

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

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

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

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

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

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

1 government under

2 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of  
3 1974);

4 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

5 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

6 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit  
7 Protection Act);

8 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

9 (6) any other federal law or regulation.

10 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited  
11 elsewhere in this chapter or by another law, a person who is a licensee, a person who  
12 is required to be licensed under this chapter, and an employee and an independent  
13 contractor to whom AS 06.60.025 applies may not, in the course of a mortgage loan  
14 transaction,

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

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

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

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

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

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

30 (7) engage in a transaction, practice, or course of business that is not  
31 engaged in by the person in good faith or fair dealing or that constitutes a fraud on a

1 person in connection with the brokering, making, purchase, or sale of a mortgage loan;

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

6 (A) consider additional appropriate property information;

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

9 (C) correct errors in the appraisal report;

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

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

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

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

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

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

29 **Sec. 06.60.430. Certain refinancing prohibited.** (a) A mortgage lender or a  
 30 mortgage broker may not refinance a mortgage loan within 12 months after the date  
 31 the mortgage loan is originated by the lender or broker, unless the refinancing is in the

1 borrower's interest.

2 (b) The factors to be considered when determining if refinancing is in the  
3 borrower's interest may include whether

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

7 (2) the amortization period of the new mortgage loan is different from  
8 the amortization period of the mortgage loan being refinanced;

9 (3) the borrower receives cash in excess of the costs and fees of the  
10 refinancing;

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

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

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

16 (7) the original term of the mortgage loan being refinanced is two  
17 years or less; and

18 (8) the refinancing is being made to prevent a foreclosure on an  
19 existing mortgage loan.

20 (c) In this section, "mortgage loan" has the meaning given in 15 U.S.C.  
21 1602(aa).

22 **Sec. 06.60.440. Escrow and trust accounts.** (a) A mortgage lender and a  
23 borrower may agree that the mortgage lender will keep in an escrow account all  
24 money that the borrower is required to pay to defray future taxes or insurance  
25 premiums or for other lawful purposes. The escrow account must be a trust account or  
26 another account that is segregated from the other accounts of the mortgage lender. The  
27 mortgage lender may not commingle the borrower's money with the general funds of  
28 the mortgage lender.

29 (b) A mortgage lender may not require a borrower to pay money into escrow  
30 to defray future taxes, to defray insurance premiums, or for another purpose, in  
31 connection with a subordinate mortgage loan, unless an escrow account for that

1 purpose is not being maintained for the mortgage loan that is superior to the  
2 subordinate mortgage loan.

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

7 (d) A mortgage broker who accepts money belonging to a borrower in  
8 connection with a mortgage loan shall deposit all of the money into a trust account  
9 maintained by the mortgage broker in a bank or another recognized depository  
10 institution in this state. The mortgage broker may not commingle the borrower's  
11 money with the general funds of the mortgage broker. The mortgage broker shall  
12 maintain all money deposited by the mortgage broker in the trust account until the  
13 money is disbursed by the mortgage broker in accordance with instructions from the  
14 borrower.

#### 15 **Article 5. Enforcement.**

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

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

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

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

27 (3) the violation has caused material damage to the licensee or to the  
28 public.

29 (b) When the person who is the subject of a proposed order under this section  
30 receives a notice of the department's intention to issue an order under this section, the  
31 person is immediately prohibited from engaging in any activities for which a license is

1 required under this chapter.

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

7 **Sec. 06.60.520 Responsibility of licensee for violations.** A licensee who acts  
8 as a mortgage lender or mortgage broker is vicariously liable under AS 06.60.300 and  
9 06.60.530 for a violation of a provision of this chapter or of a lawful demand, ruling,  
10 or requirement of the department made under and within the authority of this chapter,  
11 committed by a person while in the course of the person's employment or agency for  
12 the licensee.

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

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

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

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

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

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

31 **Sec. 06.60.600. Authorization of program administration fee.** (a) The

1 department may collect a program administration fee of \$10 for each mortgage loan  
2 instrument to reimburse the state for the cost of administering this chapter.

3 (b) The fee shall be paid by the borrower who is providing real property as  
4 security for the mortgage loan, except that, if the regulations of a federal or state loan  
5 program that insures the loan and that applies to the mortgage loan transaction  
6 prohibits the borrower from paying this fee, another party to the mortgage loan  
7 transaction shall pay the fee.

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

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

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

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

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

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

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

29 (d) The department may assess against an agent who does not comply with (c)  
30 of this section a civil penalty of one and one-half percent of the amount of the program  
31 administration fees that the agent is required to transmit to the department. The

1 department may assess the penalty for each entire month and each partial month that  
2 the proceeds are delinquent.

3 **Article 7. Miscellaneous Provisions.**

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

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

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

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

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

18 **Article 8. General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (11) "mortgage loan"

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

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

22 (C) does not include loans

23 (i) or extensions of credit to buyers of real property for  
 24 a part of the purchase price of the property by persons selling the  
 25 property owned by them;

26 (ii) to persons related to the lender by blood or  
 27 marriage;

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

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

31 (12) "mortgage loan servicing agent" means a person who acts on

1           behalf of a mortgage lender to collect payments on a mortgage loan and enforce the  
2           terms of a mortgage loan;

3                       (13) "program administration fee" means the fee described under  
4           AS 06.60.600(a);

5                       (14) "records" includes books, accounts, papers, files, and other  
6           records;

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

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

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

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

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

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

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

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

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

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

- 1 \* **Sec. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).
- 2 \* **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect July 1, 2007.