

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 7, 2006

2:31 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair

Senator Ben Stevens

Senator Bettye Davis

MEMBERS ABSENT

Senator Ralph Seekins, Vice Chair

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 306

"An Act requiring an employing unit with a change in ownership, management, or control or similar change to notify the Department of Labor and Workforce Development of the change; relating to the unemployment contribution rate of an employing unit; defining 'business' for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date."

MOVED SB 306 OUT OF COMMITTEE

SENATE BILL NO. 272

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

HEARD AND HELD

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 274(FIN)

"An Act relating to the practice of accounting; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 306

SHORT TITLE: UNEMPLOYMENT INSURANCE FUND & TAXES

SPONSOR(S): LABOR & COMMERCE

02/23/06 (S) READ THE FIRST TIME - REFERRALS
02/23/06 (S) L&C JUD
03/02/06 (S) L&C AT 2:00 PM BELTZ 211
03/02/06 (S) -- Meeting Canceled --
03/07/06 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 272

SHORT TITLE: MORTGAGE LENDING
SPONSOR(s): SENATOR(s) WAGONER

02/08/06 (S) READ THE FIRST TIME - REFERRALS
02/08/06 (S) L&C, FIN
03/02/06 (S) L&C AT 2:00 PM BELTZ 211
03/02/06 (S) -- Meeting Canceled --
03/07/06 (S) L&C AT 1:30 PM BELTZ 211

02/23/06 (S) L&C, FIN
03/07/06 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

PAULA SCAVERA, Special Assistant to the Commissioner
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 306.

TOM NELSON, Director
Division of Unemployment Security
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 306.

PAT SHIER, Acting Deputy Director
Division of Employment Security
Department of Labor & Workforce
Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Commented on SB 306.

AMY SEITZ
Staff to Senator Wagoner
State Capitol

Juneau AK

POSITION STATEMENT: Commented on SB 272 for the sponsor.

MARK DAVIS, Director
Division of Banking and Securities
Department of Commerce, Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800

POSITION STATEMENT: Supported SB 272.

AL SHAW
Shaw Mortgage Inc.
Anchorage AK

POSITION STATEMENT: Commented on SB 272.

JOHN CARMAN, President,
Home State Mortgage &
Chairman,
Alaska Mortgage Bankers Legislative Committee
Anchorage AK

POSITION STATEMENT: Supported SB 272.

KEN GAIN, President
Cash Now Financial Corporation
Legislative Chairman, Secretary Treasurer
Independent Lenders of Alaska
Anchorage AK

POSITION STATEMENT: Supported SB 272.

JOHN MARTIN
Offnet speaker

POSITION STATEMENT: Supported concept of SB 272, but it needs more work.

CRIS SKINNER, President/Broker
Kelstar Financial of Alaska Mortgage Company
Alaska Association of Mortgage Brokers Member
Anchorage AK

POSITION STATEMENT: Opposed SB 272.

JOE BRAMMER, Manager
First Metropolitan Mortgage
Alaska Association of Mortgage Brokers Member
Anchorage AK

POSITION STATEMENT: Opposed SB 272.

DUANE MATHES, Associate Broker

Dynamic Properties
MatSu AK
POSITION STATEMENT: Opposed SB 272.

ULRIKE JOHNSON, Broker
Double Eagle Real Estate
MatSu AK
POSITION STATEMENT: Opposed SB 272.

SHELLIE BUCK
Platinum Funding Group, Inc.
Anchorage AK
POSITION STATEMENT: Opposed SB 272.

JAY PRICE
Aurora Mortgage Corporation
Wasilla AK
POSITION STATEMENT: Commented on SB 272.

LINDA PATRICK
Evergreen Alaska Mortgage
Fairbanks AK
POSITION STATEMENT: Opposed SB 272 as written.

DOUG ISAACSON, President
Alaska Association of Mortgage Brokers
Fairbanks, AK
POSITION STATEMENT: Opposed SB 272 as written.

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [2:31:45 PM](#). Present at call to order were Senators Ben Stevens, Davis and Chair Con Bunde.

SB 306-UNEMPLOYMENT INSURANCE FUND & TAXES

SENATOR CON BUNDE announced SB 306 to be up for consideration.

[2:32:24 PM](#)

PAULA SCAVERA, Special Assistant to the Commissioner, Department of Labor and Workforce Development (DOLWD), explained that this is a very simple bill and brings the state into conformity with federal law, which was passed in 2004 and deals with people who manipulate the system to pay UI taxes at an artificially low rate.

CHAIR BUNDE asked for an explanation of what past abuse has been like.

TOM NELSON, Director, Division of Employment Security, Department of Labor and Workforce Development (DOLWD), replied that currently the division can identify State Unemployment Tax Act (SUTA) dumping, which is a scheme that is more prevalent in the Lower 48 where employers move groups of employees to another business entity for the sole purpose of deriving a lower UI tax rate - defrauding the system. The state lacks conformity in establishing criminal and civil penalties associated with that type of crime. Alaska has had little activity like that. One was identified, but the department had no authority to take action.

CHAIR BUNDE asked if there would be substantial cost to the employers if the state chooses not to comply.

MR. NELSON replied that the state faces decertification to operate unemployment insurance and collect any benefit from the FUTA tax system. That includes the entire Unemployment Insurance system as well as the Wagoner Peyser Act funded job center services. The losses would amount to \$103.9 million for one fiscal year.

[2:36:19 PM](#)

PAT SHIER, Acting Deputy Director, Division of Employment Security, said he would be happy to answer questions.

MS. SCAVERA elaborated that Alaska employers would pay \$103.9 million in additional taxes. The department would lose another \$30.8 million in operational funds for its Unemployment Insurance programs and employment programs.

SENATOR BUNDE commented that while this is an option, it really isn't.

MS. SCAVERA agreed.

[2:37:13 PM](#)

SENATOR BEN STEVENS said an existing entity can't be audited and asked if this only happens when a trade occurs.

MR. SHIER replied that was correct. No new powers were granted to the department other than the criminal penalty that could be imposed. The federal guidelines require the department to show intent. Currently the department has the authority to audit

periodically to make sure employers are complying with the entire Chapter 23.20.

SENATOR BUNDE closed public testimony.

SENATOR BEN STEVENS moved to report SB 306 and attached fiscal notes from committee with individual recommendations. There being no objection, it was so ordered.

SB 272-MORTGAGE LENDING

[2:39:04 PM](#)

SENATOR BUNDE announced SB 272 to be up for consideration.

AMY SEITZ, staff to Senator Wagoner, sponsor, said she would address version I.

SENATOR BETTYE DAVIS moved to adopt version I as the working document. There were no objections.

MS. SEITZ explained that currently Alaska is the only state that doesn't license and regulate residential mortgage lending. Because of this, the Division of Banking and Securities has no authority to investigate the complaints that it receives weekly on protecting consumers. It receives about 20 complaints and 50 phone calls on questionable lending practices per week.

Increased access to Internet lending has contributed to the growing number of complaints. The mortgage lending industry in Alaska has been meeting for several years to develop language for a bill that balances protection of Alaska's consumers while insuring sufficient access to residential mortgage loans. SB 272 is a starting point to address this problem by granting the division enough licensing and regulatory authority to begin addressing the growing complaints from Alaska homebuyers. It has the support of the division and several groups in the industry.

SENATOR BUNDE asked if the Department of Law had completed its analysis.

MS. SEITZ replied that it is forthcoming.

[2:42:51 PM](#)

MARK DAVIS, Director, Division of Banking and Securities, Department of Commerce, Community & Economic Development (DCCED), said Alaska is the last state that does not have any form of regulation. It operates a mortgage referral hotline with

the Department of Law. He gets inquiries from companies outside of Alaska that might want to do business here that have to be told the state doesn't have licensing; they then decide to not come here. Also, because the state has no regulation, it might be attracting companies that are less desirable. He supported this legislation as does the Department of Law.

He said their comments on the committee substitute would be technical and focused on the enforcement provisions in AS 06.604.20. The Department of Law wants to make sure that nothing in that chapter excludes the powers it already has under the Consumer Protection Act, which allows for restitution and significant monetary damages. He supported the restitution provision.

MR. DAVIS said this regulation should attract more competition, not less, and that the cost to the consumer would be low; it would better regulate contractor activity and protect consumers.

[2:46:17 PM](#)

SENATOR BUNDE asked about opposition.

MR. DAVIS replied that there is opposition. Some brokers thought that a bill that does not include licensing of originators would not protect consumers and would be inappropriate. That is why he and the Department of Law felt they should make the mortgage companies liable for the acts of the employees or the independent contractors in this bill.

SENATOR BUNDE asked if this has a neutral fiscal note.

MR. DAVIS replied yes; it would require two positions - a bank examiner and a licensing person. The fees should cover those costs, however.

[2:47:45 PM](#)

AL SHAW, Shaw Mortgage Inc., from Alaska and Hawaii, testified that predatory lending should be addressed and defined in the legislation. Complaints should be in writing and not anonymous. Audits should be limited in frequency and scope unless justified in writing. The reason for the audit should be given in writing. It should contain a provision for continuing education classes. He felt that brokers should be liable for the actions of their originators.

[2:51:36 PM](#)

JOHN CARMAN, President, Home State Mortgage, said he is also Chairman of the Alaska Mortgage Bankers Legislative Committee. He testified that more loans in Alaska are made by mortgage brokers than by banks or savings and loans and they are not regulated in any way. Many federal laws are in place that mortgage brokers are required to adhere to, but there is no one to enforce them. Alaska is the only state without regulations. He has worked many years to get a bill, but it is impossible to make everyone happy.

People who don't want regulation fall into two groups - those that are honest and admit they don't want regulation for whatever reason and others that say they are for regulation, just not this regulation or any regulation that would stand a chance of passing.

Consumers don't understand the difference between mortgage brokers and mortgage lenders. The difference in the two entities occurs as the loan is closed and sold. Most of the problems occur on mortgage loans that are reported to his division because of abuses in the application processing and locking part of the loan process, which brokers do the same as mortgage bankers. Those that oppose this legislation say that everyone is being exempted from this legislation. Numerous brokers in House testimony were saying that two-thirds of all originators would be exempt. But that is just a red-herring issue. He explained:

This can only be a misunderstanding of the way these exemptions work. The exemption for bank-affiliated entities only applies to those entities that are already subject to examination and audit by a federal or state agency. If you aren't subject to examination, you aren't exempt. This also applies to Internet lenders. If they aren't subject to examination, they aren't exempt.

He estimated that his company originates about one-third of all loans in the Anchorage area. It would not be exempt. "If they are subject to outside examination, then we don't want to burden the state with examining them a second time when there is already an examination going on."

He said the other exemptions are for non-profits like the Anchorage Neighborhood House or quasi-governmental agencies like Alaska Housing Finance or parents lending to their children. All of those should be exempt.

Some say there are no consumer protections provided in the bill, but the parts of the bill that have the most problems are the ones in the 90 percent letters and the good faith estimate sections, which give great protection to the consumers. It also puts the Division of Banking in a place where it can respond to problems. He didn't want to be regulated, but he wanted the other guy to be regulated bad enough that he was willing to be regulated under the same rules they are regulated under.

MR. CARMAN advised against attaching originator licensing, which is needed, because that would delay the bill further. Even if it passes, its effects would take one or two years. He noted that someone complained about a section that would make loans more difficult in rural Alaska, but the CS addresses those issues. He felt that some were worried about the vindictive use of the audit process by the Division of Banking and that is far outweighed by the system he has now with no controls or audit.

2:58:51 PM

KEN GAIN, President, Cash Now Financial Corporation, a small private lender, said he is also the Legislative Chairman and Secretary Treasurer of the Independent Lenders of Alaska. He worked very closely with the Division of Banking to have the original bill introduced. At first he thought Cash Now didn't need to be regulated because it lent its own money, but after finding out about the complaints and that federal legislation is pending that would require states to do this, he changed his mind.

The first draft would have cost his firm about \$25,000 a year to comply, but the current bill would have a nominal cost - comparable to what he pays as a licensed real estate appraiser with an initial application fee of \$500 and \$250 per year. Having to undergo an audit every 36 months or if there is a complaint would add some costs, but those wouldn't be that out of line. He estimated the audit would take a small firm about a half-day. Also, he asked himself how else could the law be enforced if the division didn't have the right of audit of records, loan applications, etc. and figured that authority was essential.

MR. GAIN reiterated that this bill regulates those who are not now regulated and most of the exempted entities are already regulated by the federal law that is referenced in it.

Most of the arguments against this regulation are from banks and credit unions that are already regulated. The others would be

government agencies and non-profit charitable agencies, which are giving charitable loans, which would not be abusive and certain court appointed people. "So, the only one that might be arguable is one that allows exemptions for lenders only, not brokers, loaning their own money who do an average of one loan a month...."

MR. GAIN summarized that he would like to see this bill passed.

3:05:28 PM

JOHN MARTIN, testifying offnet, noted he sent an email detailing his points. He said some of the current language is vague. The intent is to regulate mortgage entities, but the language refers to a "person" in many places. So he suggested using "entity" whenever possible. He estimated that about two-thirds of all mortgage originators would be exempt and the bill is incomplete because it is missing the most important element of all - the licensing of individual mortgage originators. He felt the control of the business needs to be with the people who deal directly with the general public and that is the mortgage originator.

MR. MARTIN said that most licensing deals with the individuals who face the client. He used a real estate agent for an example of a person who must take a competency test and has to undergo ongoing education in order to do business. He also must work for a licensed broker. The buck stops with the broker.

It's a good system. We should have the same thing for mortgage lending. All mortgage lending entities in the state should be licensed on a fair and even basis. All mortgage originators should be licensed in the state and have to work for a licensed entity, as well. Utilization of that concept brings accountability sharply into focus and better serves the residents of our great state....

MR. MARTIN thought the bill should cover licensing of mortgage entities and originators so that all players know the rules and how they interact.

3:09:40 PM

DWIGHT DEELY, President, Evergreen Alaska Mortgage Corporation, said they are an Internet mortgage company based in Alaska. It is a member of the Alaska Association of Mortgage Brokers, the National Association of Mortgage Brokers, and is a correspondent

for large wholesale lenders across the nation. It is also affiliated with a federally chartered bank in Washington State.

He was essentially in favor of some form of regulation, but this bill would not prevent "predatory lending," if that's the ultimate goal. It's poorly written and "predatory lending" is not well defined. There are also too many exemptions and it seems to focus primarily on mortgage brokers and mortgage lenders. Third, he felt they needed to consider regulating the conduct of loan originators and officers rather than brokers.

MR. DEELY related that Bill Graham, Chairman, US Senate Committee on Banking, Housing and Urban Affairs, concluded in a report:

Predatory lending not defined by regulators seems to encompass an ever-changing and broad assortment of terms and conditions associated with a variety of financial transactions. It is difficult to understand how regulators can formulate proposals to combat predatory lending when there is no clear understanding as to what it is. In the absence of a definition, not only might we miss the target, but we may hit the wrong target....

The letters from the regulators recognize that the practice can be abusive in some context, but it can also in absence of fraud or deception be highly beneficial to consumers. Moreover, this lack of any definition hampers the effort to gather systematic data on predatory lending....

MR. DEELY added that he thought that any regulation needs to be applied across the board, not just to brokers and bankers. Lastly, he thought it best to license individual originators, no matter who they work for.

[3:14:04 PM](#)

CRIS SKINNER, President/Broker, Kelstar Financial of Alaska Mortgage Company, said she is also on the legislative committee of the Alaska Association of Mortgage Brokers. She criticized the bill in its current form for being hollow. The questionable activities take place at the mortgage loan originator's level. She said, "By the time the client file reaches the lender, the damage to the consumer has already taken place."

She asserted that the licensing and education of loan originators must be incorporated in this bill for effective consumer protection. Licensing of loan originators is being pushed even on a national level, although it has been set aside.

Another reason this bill lacks merit is because it allows far too many exemptions and is not in the best interests of the consumer. Consumer complaints have been made to the Division of Banking against all entities, even those who are exempt under this bill. She formally asked this committee to require the division to provide documentation of consumer complaints that may prove the entities exempt under this bill are also the subject of consumer complaints.

MS. SKINNER said that language in the bill has many gray areas and needs clarification. It is evident that it regulates small independent brokers and will impose financial burdens on them that will be passed on to the consumer. It is questionable with regards to fair trade and small business protection.

She disagreed that any licensing is better than no licensing. The licensing in this bill won't protect the consumer from unscrupulous activities due to its many exemptions. It will take options away from the consumer and allow larger entities to monopolize the market.

[3:16:56 PM](#)

JOE BRAMMER, Manager, First Metropolitan Mortgage, said he also serves on the Legislative Board of the Alaska Association of Mortgage Brokers. He observed:

I know of no federal regulations that exist, let alone that are being enforced that relate to the issuing or preparation of prequalification letter or the preparation of a good faith estimate for the ability to refinance a consumer's mortgage loan. I have never known the comptroller of the currency to audit a prequalification letter.

He said that this bill doesn't create a level playing field and, therefore, doesn't protect the consumer because most of those involved are exempt. The supposition that something is better than nothing is preposterous. He said, "The true problem is unscrupulous mortgage loan originators. This is where regulations must begin." He suggested that including brokers, bankers and lenders would make this a better piece of

legislation and insisted that all mortgage loan originators should be licensed.

[3:20:32 PM](#)

DUANE MATHES, Associate Broker, Dynamic Properties, said this bill discriminates against small business people and small mortgage brokers, in particular. It doesn't serve the public well, either. He finds that mortgage lenders are more responsive than mortgage bankers to their clients. He hoped the Legislature could see that mortgage bankers had a big hand to play in this bill and that wasn't very fair.

[3:22:46 PM](#)

VERNON RUSH, Alaska Capital, noted that he emailed and faxed his comments. He related a personal story about how the arena on Fireweed had been passed off to him as a commercial building of grade "A" quality. He said:

My point to you is that any fraud or misrepresentation starts at the customer level. By the time it gets to the lenders and the secondary market, it's already there.

He submitted that mortgage bankers are the ones who are interested in this legislation and an exemption is a hollow argument. He concluded saying there will always be customer complaints.

[3:25:47 PM](#)

ULRIKE JOHNSON, Double Eagle Real Estate, testified that she was totally delighted there was a bill and hoped would mandate education for loan originators and processors straight across the board. But this bill isn't even a good band-aid. It doesn't protect the public. When times are good, everyone hires and the training is forgotten.

She said that realtors, appraisers, home inspectors are licensed and, "What's good for the goose is good for the gander. I think it should be straight across for everybody." Everyone should be licensed with continuing education and competency required.

[3:27:14 PM](#)

SHELLIE BUCK, Platinum Funding Group, Inc., said she is also a member of the National Association of Mortgage Brokers and the Alaska Association of Mortgage Brokers. She advocated for education. She said consumer-level predatory lending happens with originators. She related that a client could put down a lot

of money and turn around and not get their mortgage loan because the mortgage originator had no idea he did not qualify under the standard of the mortgage product he was offered. "This is where predatory lending is at its highest and worst."

If licensing for mortgage originators is not added, consumers won't be helped. Many areas of the bill are vague and she offered to submit further comments through email about them.

[3:28:50 PM](#)

JAY PRICE, Aurora Mortgage Corporation, Wasilla, supported the idea of the bill, but found the language in it was not clear. For instance, Section 60.080. (2) had no definitions of what experience is required or what is meant by "character." He suggested including specifics. As written, this legislation wouldn't protect the public.

[3:30:39 PM](#)

LINDA PATRICK, Evergreen Alaska Mortgage, Fairbanks, supported a bill for licensing loan originators, but there are so many points that need to be clarified that she didn't support it as written.

[3:31:22 PM](#)

DOUG ISAACSON, President, Alaska Association of Mortgage Brokers, didn't support the bill as written. He accused the chairman of taking preferential testimony.

CHAIR BUNDE informed him that he took people as they had signed up to speak and this bill would be heard again. "Everyone will have an opportunity. I don't have a dog in this fight."

MR. ISAACSON said he wanted this bill modified before it passed.

[3:32:12 PM](#)

SENATOR BUNDE announced he would hold SB 272 in committee. He said he wanted the bill's sponsor to work with interested parties to accommodate a majority of the problems. He wanted more specifics on the complaints from the Division of Banking. He wanted "predatory lending" defined and the audit and continuing education requirements fleshed out.

There being no further business to come before the committee, Chair Bunde adjourned the meeting at [3:33:34 PM](#).