

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 23, 2007

3:04 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Robert L. "Bob" Buch
Representative Berta Gardner

MEMBERS ABSENT

Representative Jay Ramras

COMMITTEE CALENDAR

HOUSE BILL NO. 170

"An Act relating to annual audit reports by insurers, to custodians of insurer assets, to writing workers' compensation insurance by surplus lines insurers, to reports by surplus lines insurers, to the definition of 'wet marine and transportation insurance,' to false or misleading financial statements concerning insurance audits, and to the membership of the Alaska Life and Health Insurance Guaranty Association; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 162

"An Act relating to mortgage lenders, mortgage brokers, mortgage originators, state agents who collect program administration fees, and other persons who engage in activities relating to mortgage lending; relating to mortgage loan activities; relating to an originator fund; relating to fees for mortgage loan transactions; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 170

SHORT TITLE: INSURANCE

SPONSOR(s): LABOR & COMMERCE BY REQUEST

03/01/07 (H) READ THE FIRST TIME - REFERRALS
03/01/07 (H) L&C, FIN
03/23/07 (H) L&C AT 3:00 PM CAPITOL 17

BILL: HB 162

SHORT TITLE: MORTGAGE LENDING
SPONSOR(S): REPRESENTATIVE(S) LYNN

02/28/07 (H) READ THE FIRST TIME - REFERRALS
02/28/07 (H) L&C, FIN
03/23/07 (H) L&C AT 3:00 PM CAPITOL 17

WITNESS REGISTER

LINDA HALL, Director
Division of Insurance
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska
POSITION STATEMENT: Presented HB 170.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 162.

MARK DAVIS, Director
Division of Banking & Securities
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska
POSITION STATEMENT: Answered questions and offered comments
during hearing on HB 162.

ROGER PRINCE, Securities Examiner
Division of Banking & Securities
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska
POSITION STATEMENT: Answered questions and offered comments
during hearing on HB 162.

JOHN CARMAN, President
Home State Mortgage;
Chair
Legislative Committee, Alaska Mortgage Bankers Association

NAOMI LOUVIER, Owner
Prudential Jack White/Vista Real Estate
Anchorage, Alaska
POSITION STATEMENT: Testified during hearing on HB 162.

DANIELLE FAGRE ARLOW, Senior Vice-President
State Government Affairs
American Financial Services Association (AFSA)
Washington, DC
POSITION STATEMENT: Testified during hearing on HB 162

GREG HARSHA, Mortgage Broker
The Mortgage Network, Inc.
Ketchikan, Alaska
POSITION STATEMENT: Testified during hearing on HB 162.

JOHN COURSON, President & Chief Executive Officer (CEO), Central
Pacific Mortgage
Folsom, California
POSITION STATEMENT: Testified during hearing on HB 162.

JOHN MARTIN, Mortgage Banker
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 162.

KEVIN BREELAND, Mortgage Banker
Residential Mortgage, LLC
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 162.

JOE BRAMMER, Mortgage Loan Originator;
Chair
Legislative Committee, Alaska Association of Mortgage Brokers
(AKAMB)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 162.

ACTION NARRATIVE

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at [3:04:22 PM](#). Representatives Buch, Gardner, Gatto, Neuman, and Olson were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 170-INSURANCE

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 170, "An Act relating to annual audit reports by insurers, to custodians of insurer assets, to writing workers' compensation insurance by surplus lines insurers, to reports by surplus lines insurers, to the definition of 'wet marine and transportation insurance,' to false or misleading financial statements concerning insurance audits, and to the membership of the Alaska Life and Health Insurance Guaranty Association; and providing for an effective date."

3:05:04 PM

LINDA HALL, Director, Division of Insurance ("the Division"), Department of Commerce, Community, & Economic Development (DCCED), stated that HB 170 was introduced at the request of the Division. Sections 1,2, and 3 of the bill address solvency oversight. The general purpose of these sections is to provide authorization to adopt in regulation the model financial reporting regulations of the National Association of Insurance Commissioners (NAIC). The Division intends to adopt the entire financial reporting model, which has been in place for several years. In 2006, several revisions were made, which have been adopted by the NAIC. She explained that the basic model regulation is an accreditation standard. The Division is accredited by the NAIC, which is a mechanism to review each states financial examinations of the insurance companies for which it is the primary regulator. States rely on other states for quality financial reviews and financial oversight. The accreditation process ensures that the states are doing an adequate job of the financial review.

MS. HALL went on to say that in August of 2007, the Division will undergo its accreditation review. A team of three financial examiners will review the Division's financial exams, to determine whether or not the Division should maintain its accreditation. She stressed the importance of recognizing that the Division's financial exams are "taken to be good, and [are] accepted by other states." Referring to Sections 1 and 2, she explained that these deal with annual audited financial reports. She stated that Section 1 applies to audits that are currently required, yet are not in statute, adding that AS 21.09.200 includes a statement requirement that the Division is attempting to codify, adding that this statement requirement is being removed from the statement instructions. She explained that this does not change any requirements, and insurance companies will still be required to have annual audits done by a certified

public accountant (CPA). These audits must still report significant deficiencies in internal controls, and misstated financial conditions, in addition to non-compliance with capital and surplus. She explained that HB 170 codifies these requirements. HB 170 also allows the director of the Division to require a report describing internal control over financial controls. She stated that the Division needs to ensure adequate internal controls are in place. Additionally, HB 170 requires the insurer to have an internal audit committee. A CPA must forward a report of misstatement of financial condition or non-compliance with capital and surplus requirements, if the insurer does not. Insurers are also prohibited from making false or misleading statements to a CPA. This annual report requirement provides an annual review of financial reports, along with the reporting of poor internal controls. The Division feels that the audit committee is a factor in "good corporate management." She stated that the detailed rules will keep with the NAIC model regulations, which will be adopted in every state.

3:10:00 PM

MS. HALL went on to discuss Section 3. She explained that this section is an updated requirement for entities and the custodial agreements. Current statute has a number of restrictions on where insurance companies can keep money, and Section 3 restates this, and specifies that only banks, trust companies, security firms, or clearing corporations may be used. It requires that custodial agreements be in writing, properly authorized by the insurer, and comply with regulatory requirements. She stated that financial examinations have shown that the custodial agreements between an insurer and its bank may or may not meet the Division's requirements. The bank is required to sign an indemnity agreement, which some banks are not willing to sign. She explained that part of the financial oversight is being sure that when a claim is filed, there is money to pay it.

MS. HALL then referred to Sections 4,5, and 6, which deal with surplus lines. She stated that this area of insurance is not as highly regulated. Section 4 replaces "directive" with "order." She said that the Division issues orders as a part of its process, adding that "directive" is not a term typically used by the division, and does not have a statutory definition. She explained that the intention is to ensure that this reflects the work done by the Division. Section 5 removes the notarization requirement for monthly surplus lines broker reports. The Division has found that this is not necessary, and is moving toward electronic filings. Section 6 changes the definition of

"wet marine and transportation insurance." Ms. Hall went on to say that Section 7 prohibits any false or misleading statements. She explained that Sections 8 and 9 apply to the Alaska Life and Health Insurance Guaranty Association. These sections clarify that a "member" is an insurer who has the authority to issue a policy, and does not need to write a policy to help pay the administration costs of the guaranty association.

[3:14:24 PM](#)

REPRESENTATIVE NEUMAN offered his understanding that HB 170 helps to ensure that the companies writing insurance in Alaska have the funds to pay for claims.

MS. HALL agreed, adding that the bill focuses on solvency oversight. This section deals with the annual audited statements. She stated that the Division does statutory examinations every three years, for those companies that it is the primary regulator for. These standards keep the state in line with the rest of the country. In response to an additional question, she said that some financial statements are public record, and requests for this information can be made to the Division.

[3:17:05 PM](#)

REPRESENTATIVE BUCH asked if the state has ever had an insurance company declare insolvency.

MS. HALL replied yes. She noted domestic insolvencies in 1998 and 1988, and more recent insolvencies involving Fremont Insurance (Fremont) and Reliance Insurance Company (Reliance), whose primary regulators were out-of-state. In response to an additional question, she agreed that HB 170 is intended to protect against insolvency. In response to a question from Representative Neuman, she clarified that the Division must approve the financial institutions that are used for deposits. There are also specific types of instruments that money can be deposited in. This is addressed in regulation. The types of assets are also monitored closely. She pointed out that bonds are the largest class of assets kept by insurance companies. The Division can send securities to the NAIC Securities Evaluation Office for evaluation.

REPRESENTATIVE NEUMAN, referring to Page 4, line 21, pointed out that "and" is changed to "or". He questioned whether the

intention with this change is to create more flexibility for insurance companies.

MS. HALL explained that this defines a specific type of insurance. She stated that the word "and" may imply that all components must be included to be considered. She said that "wet marine" is defined as "things that are transported on water." This change clarifies that [all four components do not need to be present].

REPRESENTATIVE NEUMAN, referring to Section 8, asked if the Alaska Life and Health Insurance Guaranty Association is mandatory for all insurance companies in Alaska.

MS. HALL replied that the aforementioned guaranty association is mandatory for all life and health insurance companies. Property and casualty insurance companies have a separate guaranty association, which is also mandatory. She said that this is the "backstop" for insolvent insurers.

[3:21:59 PM](#)

REPRESENTATIVE GARDNER asked for clarification regarding the changes made by HB 170.

MS. HALL explained that the only new requirement is for all insurance companies to have an internal audit committee. She reiterated that the Division intends to adopt the model regulations from the [NAIC].

[3:23:07 PM](#)

REPRESENTATIVE LEDOUX, referring to Page 5, lines 13-14, inquired as to why the language was changed to "Each member insurer".

MS. HALL replied that this changes who must pay the administrative assessment. She explained that each company that writes insurance in Alaska must pay a portion of the administrative costs associated with the guaranty fund. If the company does not issue a policy, it will not pay an insolvency assessment; however, it would pay a portion of the administrative fees, which may be up to \$250.

REPRESENTATIVE LEDOUX shared her understanding that this would be all insurers in Alaska, and would not be limited to life and health insurance companies.

MS. HALL replied no. She clarified that this would only apply to each member insurer of the Alaska Life and Health Insurance Guaranty Association. She reiterated that there is a separate guaranty association for property and casualty insurance companies.

[3:25:01 PM](#)

MS. HALL, in response to questions from Representative Gatto regarding the language in Section 7(d), explained that the audit committee hires a CPA, and this section states that no member of management can coerce or manipulate the CPA. If a member of management were to manipulate the CPA by providing false information, he or she would be held accountable to the Division. She stated that the Division would not hold the CPA accountable, although the CPA would be registered with the Division.

[3:27:22 PM](#)

REPRESENTATIVE BUCH indicated that he met with Ms. Hall previously regarding this bill and expressed appreciation for her efforts to explain the bill.

REPRESENTATIVE NEUMAN inquired as to whether the number of insurance companies in Alaska has increased or decreased, noting that previously, legislation was passed in an attempt to create a better environment for insurance companies in the state.

MS. HALL replied that the insurance industry has grown. In September of 2006 a new health insurance company began selling group insurance in Alaska. Additionally, she recently received official notification from a property and casualty insurer that is going to begin writing homeowners and auto insurance in addition to the insurance it currently writes. She stated that this is a "huge move" in the insurance industry. However, she recently received notice of an insurance company that is leaving the state. While this is distressing, she sees this as an overall gain for the industry. She stated that this is a "delicate marketplace," and the Division "walks a fine line" to encourage companies to do business in the state. She opined that the best consumer protection is consumer choice, and a competitive marketplace. While she is not sure this will ever be available to a great extent, there has been improvement.

REPRESENTATIVE GATTO referred to the insolvency of the Fremont Insurance Company, and asked whether this type of insolvency could occur again.

MS. HALL replied that it is possible. She then explained that previously, a series of insolvencies occurred. The Fremont insolvency affected Alaska a great deal; however, the Reliance insolvency was the largest. She explained that Reliance previously wrote a large share of workers' compensation in Alaska, adding that Reliance is no longer actively writing insurance, although it is still paying claims. This company has been in a "runoff state" for three years. While the possibility for insolvency remains, there is a greater awareness.

REPRESENTATIVE GATTO expressed concern with school districts and how insurance carriers are chosen. He surmised that because a school district is a state entity, it may be required to go with the cheapest rate, which may result in a future insolvency. He asked whether HB 170 includes a provision that would require audits to ensure solvency, in order to advise customers. He questioned whether this is outside of the parameters of the Division.

MS. HALL replied that this is within the parameters of the Division. She explained that during the aforementioned insolvency, the Division examined what financial tools were needed. She opined that HB 170 is a step toward this goal. In response to rate concerns, she explained that the Division also does rate oversight. The Division does market conduct examinations when it receives information that suggests a company is writing business at prices that are "less than it takes to write a risk." She said that in each state, workers' compensation insurance rates have the most regulation. She stated that the Division does not want to discourage competition, adding that the rating standards are set by statute. Rates must not be excessive, inadequate, or unfairly discriminatory. She said "I hope - in my lifetime - we don't see another Fremont."

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MS. HALL, in response to a request from Representative Neuman, explained that Fremont Insurance Company sold workers' compensation insurance. She stated that at one point, it sold 27 percent of the Alaska workers' compensation market, which was the largest market share. The company was taken under the supervision of the State of California [Department of

Insurance], and declared insolvent in July 2003. While there have been various allegations as to what caused the insolvency, the actual reason is unknown. The insolvency was declared when the company's reserves were evaluated. She explained that insurance companies reserve for losses. She explained that this is the future cost of claims. When the reserves were reevaluated, they were placed at twice what had originally been set. When the reserves are increased, surplus must be available to pay for the reserves. The company then went to court to be declared insolvent. Once a company is declared insolvent, it goes into "receivership," which is similar to a bankruptcy. The state's chief regulator then becomes the receiver, and the claims are transferred to a guaranty association, which is the safety net. She stated that when this occurred, the Alaska guaranty association failed, as it did not have adequate ability to raise money to pay for claims. The claims, she said, were being paid at around \$1 million per month, which equates to around \$12 million in a year. The statutory assessment capability of the guaranty fund only allowed it to raise \$4 million. She stated that this was termed a crisis, and the legislature, the Division, and the administration worked to prevent this situation from becoming "a true nightmare." There were over 800 injured workers potentially unable to receive lost wages and claims payments. Additionally, over 400 employers with injured workers stood to take on the responsibility of the aforementioned claims.

[3:38:22 PM](#)

REPRESENTATIVE NEUMAN asked whether this is the reason behind the Division's desire to ensure that the insurance companies writing claims in Alaska have financially able to cover the claims.

MS. HALL replied that this is correct.

REPRESENTATIVE LEDOUX asked if the result of the aforementioned insolvency would have been different if HB 170 had been in affect.

MS. HALL replied no.

REPRESENTATIVE LEDOUX asked what changes would be necessary in order to avoid this in the future.

MS. HALL replied that she does not feel additional financial tools are necessary. She shared her belief that no amount of

regulation can guarantee that a business will not fail. She opined that Alaska has an "incredibly good" financial examination department. She stated that HB 170 contains models that give the Division greater oversight. She explained that this applies to the annual, CPA audited statements that insurance companies must file. She stressed the importance of internal control, adding that it is a matter of how the tools are used.

REPRESENTATIVE LEDOUX asked whether the regulators in California "misused their tools."

MS. HALL replied that she does not know. While it has been suggested that the Division take a closer look at this, she opined that California likely "has an excellent staff." She pointed out that reviews are part of the accreditation process. She surmised that there may have been issues during the reserving process, which resulted in the lack of funds. She said that studies are done to discover what causes an insolvency; however, she opined that it is still too soon to be certain of the cause.

CHAIR OLSON indicated that HB 170 would be brought up again at a future committee hearing.

[3:41:47 PM](#)

HB 162-MORTGAGE LENDING

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 162, "An Act relating to mortgage lenders, mortgage brokers, mortgage originators, state agents who collect program administration fees, and other persons who engage in activities relating to mortgage lending; relating to mortgage loan activities; relating to an originator fund; relating to fees for mortgage loan transactions; and providing for an effective date."

[3:42:01 PM](#)

REPRESENTATIVE BOB LYNN, Alaska State Legislature, sponsor, began by stating that he is a licensed real estate broker, and is currently in referral status. He said that for most individuals, a mortgage loan is the largest loan he or she will receive. Inability to find the best loan and the best terms can result in a "very expensive, 30-year mistake." Most home-buyers are not educated in the inner-workings of these loans, or

federal mortgage laws. He explained that his first step in selling a mortgage loan would be to take the homebuyer to a knowledgeable and honest lender. He opined that having a good lender is more important than finding a buyer the perfect house and location.

REPRESENTATIVE LYNN stated that he sponsored HB 162 because it is important to have qualified lenders. HB 162 has the support of the Alaska Mortgage Bankers Association, Independent Lenders of Alaska, and various realtors throughout the state. He pointed out that individuals working in the Alaska mortgage industry are not licensed, nor are they required to have any training. Additionally, the aforementioned individuals are not subject to periodic examination by the Division, or background checks. He stated that HB 162 changes this. He noted that state and federal laws concerning mortgage loan origination are complex, and representatives from the Department of Commerce, Community, & Economic Development (DCCED), Division of Banking & Securities and the industry are prepared to explain the bill in further detail. He said that HB 162 is a consumer protection bill of great importance, and respectfully requested members' support.

[3:46:11 PM](#)

MARK DAVIS, Director, Division of Banking & Securities ("the Division"), Department of Commerce, Community, & Economic Development (DCCED), began by stating that the Division is in support of HB 162, which is pro-consumer and will create a level regulatory environment for mortgages in Alaska. He explained that currently, mortgages issued by a state or federally chartered bank or other institution are regulated. However, mortgages offered by "stand alone" mortgage companies or subsidiaries of financial institutions are not regulated. He pointed out that Alaska is the only state in the US that does not license those in the mortgage industry. He theorized that those in the mortgage industry should be following ten federal statutes. However, since the state does not examine mortgage companies, the level of compliance is unknown. He stated that HB 162 would allow the Division to examine and license mortgage brokers, lenders, and originators. Additionally, the Division would be able to take action against prohibited practices, and enforce compliance with federal mortgage laws. The Division has a "predatory lending hotline" which receives many complaints from consumers regarding mortgage practices.

MR. DAVIS went on to say that the Department of Law (DOL) can enforce consumer protection statutes, and the Federal Bureau of Investigation (FBI) is currently investigating mortgage fraud. However, the Division lacks the regulatory authority to ensure that those in the mortgage lending industry are fully qualified, or to take action against those who are not. In addition to in-state lenders, HB 162 would allow the Division to regulate out-of-state lenders and brokers that are offering mortgages within the state. He stated that out-of-state companies in particular, need to be regulated. The goal of HB 162 is to protect Alaskans when shopping for a home, which he agreed is one of the largest financial commitments consumers make. He reiterated that this would give the Division the regulatory authority to investigate, examine, and prevent consumer complaints.

[3:50:16 PM](#)

REPRESENTATIVE GATTO, referring to the fiscal note, pointed out the \$6 examination fee, and questioned whether this is correct.

[3:50:46 PM](#)

ROGER PRINCE, Securities Examiner, Division of Banking & Securities, Department of Commerce, Community, & Economic Development (DCCED), clarified that the examination fee is actually \$600. In response to additional questions, he agreed that the Division estimates the need for two examiners and one business registration examiner, with an additional examiner added in the third year.

REPRESENTATIVE GATTO noted that the cost for personal services does not change, and questioned this.

MR. DAVIS explained that the Division was told to assume a static cost, and agreed that the actual cost will be higher. He stated that the cost of personnel can go up due to retirement costs or wage increases.

MR. PRINCE, in response to a question from Representative Gatto, explained that over time, the goal is for increases in the number of licensees, examinations conducted, and mortgages originated in-state, to offset the increased operational fees. Therefore, the program would remain at a "zero-cost."

REPRESENTATIVE GATTO questioned why \$50 thousand is needed for travel.

MR. PRINCE replied that this includes both in-state and out-of-state travel. This would allow staff examiners to travel to conduct compliance examinations for out-of-state internet based lenders that would need to be licensed, in addition to wholesale institutional lenders.

[3:55:12 PM](#)

MR. DAVIS added that the Division currently examines premium finance companies and payday lending companies. The Division has found that, when attempting to determine whether a company is complying with statutory requirements, it is more useful to examine the out-of-state home office. Therefore, the Division is anticipating that it will travel to these offices to ensure compliance with the law.

REPRESENTATIVE GATTO asked whether travel expenses are added to the cost [of the examination].

MR. DAVIS replied that this is correct. In response to a question from Representative Neuman, he stated that the Division was not involved in drafting HB 162. He explained that while the Division has looked over drafts of the bill, the request for regulations came from the industry. In response to additional questions, he explained that currently, the Division can not take regulatory action against misrepresentation. He surmised that the Department of Law (DOL) may be able to respond to consumer protection concerns, and reiterated that he is unable to take any action, such as license revocation or other disciplinary actions, against a person engaged in acts that should be prohibited or acts that are prohibited under federal statutes. He pointed out that HB 162 contains a penalty provision for a fine of up to \$10 thousand, in addition to a provision which preserves the ability of the DOL to enforce the Consumer Protection Act. In regard to fees, he stated that HB 162 proposes to license mortgage originators. Mortgage originators begin the process to obtain a mortgage, through a mortgage lender or a mortgage broker. Currently, Alaska does not have training requirements for these individuals. He explained that a mortgage originator working independently would pay the licensing fee, and if working for a company, the company may choose to cover this cost. He pointed out that this is similar to law firms, where the firm may cover dues for the associates. He opined that a mortgage originator working as a contractor for a large company will most likely work this out with the contracting company. The Division has asked those in the industry whether this fee would deter individuals from

engaging in business. The industry consensus is that the fee is reasonable, considering the income of mortgage originators in the state.

REPRESENTATIVE NEUMAN asked for further explanation of the work done by a mortgage originator.

MR. DAVIS explained that a mortgage originator meets with the potential borrower and executes the necessary documentation to apply for a mortgage. The mortgage originator then works with the mortgage lender or mortgage broker to fund the mortgage. The realtor often brings the potential borrower to the mortgage originator. He stated that the public rarely meets with a mortgage broker, and is likely to never meet with a mortgage banker. He commented that mortgage originators are similar to the loan officer at a bank. Mortgage originator is defined in HB 162 using the terms set in federal statutes, which are well accepted throughout the industry.

REPRESENTATIVE NEUMAN inquired as to whether a competency test is required for mortgage originators.

MR. DAVIS reiterated that currently, there are no education requirements for mortgage originators. However, HB 162 would require that these individuals pass an examination prior becoming licensed, in addition to completing continuing education courses. An educational board would work with the Department of Commerce, Community, & Economic Development (DCCED) to set reasonable educational requirements. He said that many other states have similar requirements.

REPRESENTATIVE NEUMAN asked how this would affect a homeowner selling his or her own home.

[4:04:46 PM](#)

MR. DAVIS replied that the bill contains an exemption for this situation, adding that HB 162 is directed at commercial mortgage transactions for residential property. Referring to Section 2, he explained that AS 06.60.015 contains exemptions for certain organizations, which are driven by the federal banking laws. There are two federal regulating entities: The Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). These institutions take the position that if a bank is regulated by either these entities, the mortgage department is not subject to state regulations. This position has been upheld in court. In response to a request from

Representative Neuman, he detailed the exemptions listed in Section 2, noting that any individual seeking an exemption under this section would still be required to file a registration for with the Division, in order to obtain the exemption.

[4:07:22 PM](#)

CHAIR OLSON indicated HB 162 would be held for further consideration.

REPRESENTATIVE LEDOUX shared her understanding that the Division would need to travel in order to conduct competency examinations.

MR. DAVIS replied no. He explained that the Division would travel in order to examine the company's home office to ensure compliance with statute. He stated that the company would pay for this via the hourly rate charged for the examiner, along with the per diem rate and travel costs. In response to additional questions, he explained that the Division would look for any complaints against the company, compliance with federal statutes, whether the company has engaged in prohibited activities set forth by HB 162, and will examine the company's records to ensure that all paperwork is in order. This examination is to ensure that the company should be re-licensed, and would be similar to those currently done of credit unions, banks, and premium finance companies.

[4:11:08 PM](#)

JOHN CARMAN, President, Home State Mortgage; Chair, Legislative Committee, Alaska Mortgage Bankers Association, stated that he has been working on this legislation for seven or eight years, in an attempt to come up with legislation that regulates the industry while remaining as non-invasive as possible. He has been involved in the Alaska banking industry since 1971, and has seen many changes. He noted that similar legislation was introduced during the previous legislative session. The aforementioned legislation proposed a company license, and the intent was to add an originator license to the bill. He explained that HB 162 combines company licensing and originator licensing. Input has been received from the Alaska Association of Mortgage Brokers (AKAMB), the Alaska Mortgage Bankers Association (AKMBA), and the Division. He said that the aforementioned organizations are in agreement that this legislation is urgent and necessary. He pointed out that all other industry professionals are regulated. He then shared a

story involving an individual who lost her real estate license, yet was able to work as a mortgage broker, as mortgage brokers are not regulated. He offered his understanding that Alaska is the only state that does not regulate mortgage brokers, pointing out that mortgage fraud is becoming a common concern throughout the country. He urged passage of HB 162.

[4:14:29 PM](#)

NAOMI LOUVIER, Owner, Prudential Jack White/Vista Real Estate, began by stating the importance of HB 162. It is not uncommon for homebuyers to be given a settlement statement that is different from what they expected. She explained that realtors attempt to avoid lenders that do this on a regular basis, although it is not always possible. In response to a question from Representative Neuman, she shared her belief that realtors are in support of HB 162, and "will be relieved" to have regulations in place. She agreed that this is a consumer protection issue. She stated that in Anchorage, the public is generally protected, with the exception of "questionable" lending practices.

[4:19:10 PM](#)

DANIELLE FAGRE ARLOW, Senior Vice-President, State Government Affairs, American Financial Services Association (AFSA), began by giving a brief description of AFSA and its members. She stated that there are concerns regarding the unintended consequences of HB 162. She explained that originally, AFSA had hoped to amend HB 162 to reflect the bill passed by the Senate during the previous legislative session, which exempted large, multi-state entities from individual employee licensing. She stated that language has been drafted which AFSA believes meets the objective of enhancing consumer protection, while maintaining access to credit. This language was included in a letter recently sent to Representative Lynn, with the hope that it would be adopted. The AFSA hopes that the debate will continue with the same spirit of cooperation with which it began, and move towards eliminating potential problems HB 162 would cause, if enacted in its current form. Ms. Fagre then stated that while AFSA has a number of concerns with HB 162, she would be focusing on the requirement for licensing individual employees and exclusive agents of mortgage lenders. This language, she said, would significantly increase the burden on lenders, regulators, and consumers. She explained that licensing individual employees of large, multi-state mortgage lenders can impose substantial costs and administrative burdens

for lenders and regulators. The lenders pass these costs onto the borrowers, while the negatively affecting the regulator's compliance activities. She stated that sensible state licensing of the lending companies makes it unnecessary to license individual employees, such as collections personnel, call center employees, and loan processors. This is the solution proposed by AFSA, and takes into account the fact that large mortgage lenders operating in multiple states have policies in place for pre-employment screening, background checks, and extensive in-house training programs, among others. The AFSA does not oppose licensing for loan originators working on behalf of independent brokers, and is aware that Alaska is the only state that does not license independent mortgage brokers. The AFSA requests substitute language that would establish licensing requirements for mortgage companies, but not for the individual employees. The AFSA believes that this is the best way to protect consumers in Alaska from far-reaching and damaging unintended consequences.

CHAIR OLSON shared his understanding that amendments would be introduced to address these concerns.

[4:24:27 PM](#)

GREG HARSHA, Mortgage Broker, The Mortgage Network, Inc., stated that he has several concerns with HB 162. Referring to Page 2, lines 9-16, stated that he does not understand the intent behind this language.

The committee took an at-ease from 4:26 PM to 4:27 PM.

[4:26:48 PM](#)

MR. DAVIS explained that the intent of the aforementioned language is that both mortgage brokers and mortgage originators are licensed. However, if an individual performs both of these functions, he or she would not need to obtain two licenses. Instead, he or she would simply need to inform the Division that both activities would be performed. He stated that the language in Section 2(b)(2) is subject to revision, and the DOL is working on amending this language.

MR. HARSHA expressed concern with the requirements for a mortgage license versus an originator license, and pointed out that a mortgage license does not require fingerprints, while an originator license does. He stated that an individual that performs both functions should be subject to all requirements.

He opined that mortgage licenses should be given to individuals, and companies should not be licensed. He suggested that revision of this section be considered. He then pointed out that the mortgage licensee is required to provide written consent to an investigation, while the mortgage originator licensee does not. He then expressed concern with the fees and expenses, as they relate to small businesses versus banks. In regard to the investigation fee, he suggested that this be capped at \$250. In regard to the competency test, he questioned how the testing score was chosen, as it is his understanding that the test has yet to be created. He then pointed out that there is no delineation between a mortgage broker license versus a mortgage lender license, and expressed concern with this.

CHAIR OLSON requested that the aforementioned concerns be submitted in writing to his office.

[4:33:55 PM](#)

JOHN COURSON, President & Chief Executive Officer (CEO), Central Pacific Mortgage, said that he is a former chair of the Mortgage Bankers Association (MBA). The MBA is the national association that represents the real estate finance industry. He stated that the MBA supports the state level corporate licensing that is proposed by HB 162, adding that it is important for mortgage banking companies and other mortgage lending entities to be approved and monitored by the states in which business is done. He said that state regulation is appropriate for financial statements, review of operations, recertification of the company and its principles, and company response to consumer complaints. Additionally, it is important to have the ability to enforce federal statutes. However, the MBA does not support the bill as it relates to licensing mortgage originators. He pointed out that there are many out-of-state companies that are originating loans in Alaska, and expressed concern that the provisions in the bill may discourage new business from coming into the state. Individuals currently working in the state might make the decision to exit the state, based upon these provisions.

MR. COURSON went on to say that the individual licensing requirement included in the bill ignores the accountability of mortgage banking companies. He explained that these companies have certain regulatory and capital standards that must be met, in addition to the responsibility to hire, screen, train, and manage loan officers. While the MBA supports the AFSA in its proposed amendment, the MBA feels that this does not fully address the issue. He stressed the importance of recognizing

that there is a distinct difference between mortgage brokers and mortgage bankers. He explained that mortgage bankers originate, underwrite, and lend their own funds, and are subject to capital requirements from investors and regulators throughout different regions of the country. Mortgage bankers are corporately responsible for loans that are originated by employees. Mortgage brokers, he said, are commissioned sales people, and are typically independent contractors working with a number of different mortgage bankers. Mortgage brokers work with the borrower to find a lender for the mortgage loan.

MR. COURSON stated that the MBA hopes the legislature would take these differences into consideration, and consider including exemptions for mortgage bankers that are approved by the Federal Housing Association (FHA) as direct endorsement lenders, those approved by Fannie Mae or Freddie Mac, and those maintaining a minimum net worth of \$5 million, or total assets of \$25 million. He explained that the FHA endorsement, as well as Fannie Mae and Freddie Mac, require a minimum net-worth of \$1 million, and are subject to government auditing standards, are part of the consolidated audit guide, and internal control practices are audited on an annual basis. He stated that mortgage bankers that meet one of the aforementioned criteria are clearly distinguished from mortgage brokers, adding that the MBA feels mortgage brokers should be licensed. Amending language has been sent to the sponsor's office.

[4:41:37 PM](#)

MR. COURSON, in response to a question from Representative Neuman, stated that the MBA supports the licensing of mortgage lenders. However the bill has two components. The MBA is in support of licensing mortgage lending entities, but feels careful consideration should be given to defining which individual mortgage loan originators should be required to have an individual mortgage loan originator license.

[4:42:38 PM](#)

JOHN MARTIN, Mortgage Broker, stated that he is on the Legislative Committee for the Alaska Association of Mortgage Brokers. He agreed that licensing of mortgage brokers is needed, and expressed concern with the exemptions suggested by the previous speaker. He opined that the endorsements are important for lenders to have, but questioned whether this is helpful if a company "goes belly up." Mr. Martin then

paraphrased from the following written remarks [original punctuation provided]:

As some of you may remember, there was bill introduced last year that would have licensed mortgage companies only. That bill died in the House.

So in the fall of 2006, the Alaska Association of Mortgage Brokers, the Alaska Mortgage Bankers Association, and the Division of Banking and Securities joined forces and decided to get together and work on a bill that would license mortgage companies and mortgage originators. The result of many hours of hard work was the introduction of HB-162. Thank you, Representative Lynn, for sponsoring this important bill. We are also working with the Department of Law on some technical issues on some of the verbage.

For your information, our state is the last to license mortgage operations in the country.

One of the most important components of the bill is the licensing of mortgage originators. They should be subject to a background check, testing for competency, and subject to continuing education requirements. An Originator must also work for a licensed entity in order to perform their duties.

As far as a client is concerned, the mortgage conduit looks all the same to them. It makes no difference to them if they are with a mortgage lender, bank or broker. They want a loan for their new home. This is arranged by talking to an originator, usually in person, sometimes by phone, to get the terms they want. The mortgage loan business is a "people" business. The best way to control it is to license the "people" (originators) involved.

By licensing the industry, we are able to protect the public from unscrupulous operators. If the originator is subject to licensure and does not perform legally, his/her license can be taken away. That affects their ability to earn a living. That is effective control. Along with that, the mortgage company they work for could also lose their license if they do not properly monitor their originators.

Competency testing ensures that all mortgage originators have the knowledge to perform their duties and not injure the borrower. The testing would establish minimum guidelines for knowledge that all originators would be required to master in order to become licensed. Originators should have a basic knowledge of RESPA*, TILA*, FHA*, Regulation Z*, title insurance, escrow, and credit issues.

Continuing education required for license renewal ensures that the public will be dealing with originators who obtain and maintain current information regarding the mortgage loan process.

Background checks would protect the residents in the State of Alaska from bad apples moving to our state and going into the business.

Just last year it was disclosed that a mortgage originator for a very large national mortgage company was indicted on federal charges regarding his business practices. That person had previously had their license revoked from the state of Wisconsin in March of 2002. If our licensing policy been in effect at the time this person came to Alaska, this person would never had the opportunity to originate loans in Alaska, and the public would have been protected.

The residents of this state deserve a bill that will to protect them from unscrupulous companies and originators. By having a bill that effectively addresses those issues, the residents of our state for the first time will have the protections they deserve and avenues to pursue if damaged.

[4:49:06 PM](#)

KEVIN BREELAND, Partner & Senior Loan Officer, Residential Mortgage, LLC; President, Alaska Mortgage Bankers Association (AMBA), paraphrased from the following written remarks:

I thank the committee for holding this hearing and inviting the Alaska Mortgage Bankers Association to share its views with this committee on HB 162. My name is Kevin Breeland and I am Partner and Sr. Loan Officer with Residential Mortgage, LLC located in

Anchorage, Alaska, President of Alaska Mortgage Bankers Association (AMBA), and current General Members Representative of the Real Estate Service Providers Council, Inc. (RESPRO) representing the 270+ general members nationwide on the RESPRO Board of Directors. Formerly I was President of Pacific Alaska Mortgage in Anchorage, Alaska till our merger with Residential Mortgage in late 2005. I am here today because AMBA believes the State House must act on this important piece of legislation know as HB 162.

I have been in the mortgage business for 27 years, 21 years in Anchorage, Alaska. My entire career in Alaska I have never worked for a company that had to be licensed. I have seen our industry grow since the repressed times of the mid 80's and early 90's. During this time our industry had available for home mortgages Alaska Housing Finance Corporation, FHA, VA, and the most common conventional mortgage loans were sold to Fannie Mae and Freddie Mac however they would not purchase 95% Loan to Value Loans. During this time Alaska suffered from an "investor red lining" however, as with most things in life, time cures all. In the last ten years we have seen markets open and home loan opportunities for Alaskan grow uncontrollably. While Alaskan have benefited from this growth, they have also suffered as well.

In recent weeks you have heard about the woes of the Subprime Market. Do not be fooled in believing the problems of the subprime markets do not exist in Alaska. They do and here is one example. New Century, and their woes are widely published, was trading on the New York Stock Exchange about eight weeks ago at over \$40.00 a share. Today that number is under \$4.00. They continue to make headlines, are under investigation, and continue to do everything they possibly can to avoid bankruptcy. [Their net worth] has dwindled to almost nothing. New Century operated in Alaska and they were very aggressive with their products and pricing. Most companies speaking today sold loans to New Century. However, their net worth will do nothing for any of the customers that might ultimately be affected by their demise. The same is true for Freemont Mortgage, Option One (owned by H&R Block), and countless other companies current with their own struggles. Alaska Mortgage Bankers

Association does not support the position of the National Mortgage Bankers Association by allowing net worth exemptions. We [feel] this does not provide adequate consumer protection.

Licensing would not have prevented the fall of New Century or any other company for the matter, but what it would do is allow the citizens of Alaska ... a resource of enforcement they currently do not have available. It affords the State of Alaska a level of enforcement the State does not have available as well. The licensing and bonding requirements are not difficult, expensive, or overaggressive. Licensing is needed so everyone that wants to operate in the State of Alaska operates by the same rules. Although in most cases Mortgage Bankers have FHA, VA, Fannie Mae, and Freddie Mac approvals these annual audit requirements do not address enforcement actions for consumer protection.

My comments today will be posted on AMBA website www.akmba.org. I will email my comments today to the members of this committee as well. Again, I thank the committee for holding this hearing and encourage the committee to move the bill forward and passage this session.

[4:53:31 PM](#)

JOE BRAMMER, Mortgage Loan Originator; Chair, Legislative Committee, Alaska Association of Mortgage Brokers (AKAMB), paraphrased from the following written remarks [original punctuation provided]:

Thank you, Mr. Chairman and the members of the committee for affording me the opportunity to present my public testimony today on House Bill 162.

My name is Joe Brammer and I am a Mortgage Loan Originator. I also chair the Legislative Committee on behalf of the Alaska Association of Mortgage Brokers.

I have been working with consumers in Alaska since 1992 by helping them obtain financing for the home of their dreams. I originated my very first mortgage loan in 1980.

My purpose before you today is three fold. First I would like to provide you with a brief amount of recent history surrounding the development of this legislation. Secondly, I would like to address the issue of competency testing, and finally I would like to share my views on continuing education requirements.

Nobody likes additional regulations being imposed that they must abide by.

This is especially true of the mortgage industry as we currently have no state regulations. As one can pick up the Anchorage Daily News and easily ascertain, this lack of regulation has contributed to unscrupulous operators preying on the consumers of Alaska. Nothing can be done currently to stop these predators.

Enter House Bill 162.

This piece of consumer protection legislation was drafted in conjunction with industry representatives from the Alaska Association of Mortgage Brokers and the Alaska Mortgage Bankers Association, along with various state departments.

This consumer protection legislation provides safeguards for the public and enforceable penalties for violators.

It requires the licensing of mortgage companies and more importantly Mortgage Loan Originators.

The way it is right now is that you can be peddling used cars yesterday and be a mortgage loan originator today. No training. No education. No accountability. No competency requirements. I say No Way!

But it's true. These mortgage loan originators are the individuals who meet with the consumers, your constituents, and advise them on the single largest purchase they will ever make...their family's home.

In addition, they negotiate contracts that commit the consumer to typically their families' largest monthly expense...their mortgage payment.

Before a loan originator can be eligible for licensing under HB 162, they will be required to pass a competency test as you will see on page 5, line 7 of this bill under 06.60.040. The passing of a competency test prior to dealing with the public is a critical component of protecting the public.

In addition, the Loan Originator will be required to attend and complete continuing education requirements as outlines on page 15, line 12. This is a vital ingredient in this consumer protection legislation as our industry is under constant change.

If we look at other professions such as insurance agents, or those individuals offering securities, real estate brokers or licensees, we find that state regulations exist for pre-license testing and the completion of continuing education prior to license renewal. Mortgage Professionals are no different.

In closing, HB 162 is a consumer protection bill, designed to level the playing field in the industry, protect consumers from unscrupulous and predatory lenders, and provides enforcement mechanisms and penalties for violators. This bill is absolutely a step in the right direction. I ask your support for HB 162.

CHAIR OLSON indicated that HB 162 would not be moved from committee at this time.

[4:57:42 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:51 PM.