

HOUSE BILL NO. 252

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HUGHES

Introduced: 1/21/14

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mortgage lending, mortgage loan originators, depository
2 institutions, nonprofit organizations, and nonprofit organization employees; and
3 providing for an effective date."

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

5 * **Section 1.** AS 06.60.012(b) is amended to read:

6 (b) An individual required to be licensed as a mortgage loan originator shall

7 (1) register with the registry and maintain a valid unique identifier
8 issued by the registry;

9 (2) work under

10 (A) an exclusive contract for, or as an employee of, a mortgage
11 licensee; **or**

12 (B) an exclusive contract for a registered depository
13 institution; and

14 (3) be sponsored in the registry by a mortgage licensee under a

1 sponsorship approved in the registry by the department or be sponsored by a
 2 registered depository institution under AS 06.60.014; in this paragraph,
 3 "sponsored" means authorized to conduct business as a mortgage loan originator under
 4 the supervision of a mortgage licensee or a registered depository institution.

5 * **Sec. 2.** AS 06.60 is amended by adding a new section to read:

6 **Sec. 06.60.014. Registered depository institutions.** (a) A depository
 7 institution may sponsor a mortgage loan originator under AS 06.60.012(b) if the
 8 depository institution is registered with the department under this section, has an
 9 exclusive written contract to sponsor a mortgage loan originator licensed under this
 10 chapter, is otherwise in compliance with this chapter, and satisfies the other
 11 requirements of this section. Registration under this section does not affect the
 12 exemption of the depository institution under AS 06.60.015(a).

13 (b) To register under (a) of this section, a depository institution shall

14 (1) complete a registration form established by the department; the
 15 form must identify the mortgage loan originator to be sponsored by the depository
 16 institution; and

17 (2) pay a registration fee established by the department.

18 (c) Registration under (b) of this section expires after one year. To renew a
 19 registration, the depository institution shall file a renewal application with the
 20 department and pay a renewal fee established by the department.

21 (d) The department may deny an initial or renewal registration under this
 22 section, or may suspend or revoke the registration of a depository institution that is
 23 registered under (b) of this section, if the department determines that the depository
 24 institution

25 (1) failed to satisfy a requirement of this section;

26 (2) failed to supervise its sponsored mortgage loan originator
 27 adequately; or

28 (3) made a material misstatement or withheld information on the
 29 application for registration, on an application for the renewal of the registration, or on
 30 another document required to be filed with the department.

31 * **Sec. 3.** AS 06.60.015 is amended to read:

1 **Sec. 06.60.015. Exemptions.** (a) The following persons are exempt from the
2 mortgage lender or mortgage broker licensing requirements of this chapter:

- 3 (1) a depository institution;
4 (2) a subsidiary that is
5 (A) owned and controlled by a depository institution; and
6 (B) regulated by a federal banking agency; [OR]
7 (3) an institution regulated by the Farm Credit Administration; **or**
8 **(4) a bona fide nonprofit organization.**

9 (b) The following individuals are exempt from the mortgage loan originator
10 licensing requirements of this chapter:

11 (1) a registered mortgage loan originator, when acting for an entity
12 described in (a)(1), (2), or (3) of this section;

13 (2) an individual who offers or negotiates terms of a residential
14 mortgage loan with or on behalf of an immediate family member of the individual; in
15 this paragraph, "immediate family member" means a spouse, child, stepchild, sibling,
16 stepsibling, parent, stepparent, grandparent, or grandchild;

17 (3) an individual seller who offers or negotiates terms of a residential
18 mortgage loan secured by a dwelling that serves as the individual's residence;

19 (4) a licensed attorney who negotiates the terms of a residential
20 mortgage loan on behalf of a client as an ancillary matter to the attorney's
21 representation of the client, unless the attorney is compensated by a lender, a mortgage
22 broker, or another mortgage loan originator or by an agent of a lender, a mortgage
23 broker, or another mortgage loan originator;

24 **(5) an employee of a bona fide nonprofit organization, if the**
25 **employee acts as a mortgage loan originator only with respect to**

26 **(A) the employee's duties to the bona fide nonprofit**
27 **organization; and**

28 **(B) residential mortgage loans that have terms that are**
29 **favorable to the borrower by being consistent with mortgage loan**
30 **origination for a public or charitable purpose rather than in a commercial**
31 **context.**

1 * **Sec. 4.** AS 06.60.015 is amended by adding new subsections to read:

2 (c) For a nonprofit organization to qualify as a bona fide nonprofit
3 organization under (a)(4) of this section, the department shall determine that the
4 nonprofit organization

5 (1) has and maintains the status of a tax-exempt organization under 26
6 U.S.C. 501(c)(3) (Internal Revenue Code);

7 (2) promotes affordable housing or provides home ownership
8 education or similar services;

9 (3) conducts its activities in a manner that serves a public or charitable
10 purpose rather than a commercial purpose;

11 (4) receives funding, receives revenue, and charges fees in a manner
12 that does not provide an incentive for the organization or its employees to act other
13 than in the best interests of its clients;

14 (5) compensates its employees in a manner that does not provide an
15 incentive to its employees to act other than in the best interests of its clients;

16 (6) provides or identifies for a borrower residential mortgage loans
17 with terms favorable to the borrower and comparable to mortgage loans and housing
18 assistance provided under government housing assistance programs; for residential
19 mortgage loans to have terms that are favorable to the borrower, the terms must be
20 consistent with mortgage loan origination for a public or charitable purpose rather than
21 in a commercial context; and

22 (7) meets other standards that the department determines are
23 appropriate.

24 (d) The department may establish by regulation the information that an
25 organization shall provide to qualify as a bona fide nonprofit organization under (c) of
26 this section.

27 (e) The department shall establish by regulation

28 (1) the procedure for determining that an organization meets the
29 criteria identified under (c) of this section;

30 (2) how long the determination made under (c) of this section shall
31 remain in effect and the fee to be paid by the organization;

1 (3) how often and under what circumstances the department shall
 2 examine the books and activities of the organization to determine that the organization
 3 continues to meet the criteria identified under (c) of this section; and

4 (4) the procedure for denying an organization the status of a bona fide
 5 nonprofit organization, for suspending or revoking an organization's status as a bona
 6 fide nonprofit organization if the organization does not continue to meet the criteria
 7 identified under (c) of this section, and for taking disciplinary action against an
 8 organization arising out of a violation of (c) - (e) of this section; the provisions of
 9 AS 44.62 (Administrative Procedure Act) apply to an action of the department under
 10 this paragraph.

11 * **Sec. 5.** AS 06.60.045(a) is amended to read:

12 (a) An applicant for a mortgage license shall file with the application
 13 submitted to the department under AS 06.60.020, **and an applicant for registration**
 14 **under AS 06.60.014 shall file with the application filed under AS 06.60.014,** a
 15 bond with one or more sureties. The department shall establish by regulation the
 16 amount of the required bond and the standards and procedures for recovery on the
 17 bond. The bond must be satisfactory to the department.

18 * **Sec. 6.** AS 06.60.045(c) is amended to read:

19 (c) An applicant for a mortgage license that covers more than one location **or**
 20 **an applicant for registration that covers more than one location** is not required to
 21 file more than one bond.

22 * **Sec. 7.** AS 06.60.045(d) is amended to read:

23 (d) The bond required under (a) of this section must be continuous until three
 24 years after the department revokes or otherwise terminates the license **or registration.**

25 * **Sec. 8.** AS 06.60.045(e) is amended to read:

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

31 * **Sec. 9.** AS 06.60.100 is amended to read:

1 **Sec. 06.60.100. Annual report.** (a) Annually, on or before a date established
 2 by the department by regulation, a mortgage licensee **and a registered depository**
 3 **institution** shall file a report with the department providing relevant information that
 4 the department requires concerning the business and operations of the mortgage
 5 licensee **or registered depository institution**. The mortgage licensee **and the**
 6 **registered depository institution** shall make the report under oath or on affirmation.
 7 The content and form of the report shall be established by the department by
 8 regulation.

9 (b) A mortgage licensee who **or registered depository institution** that fails to
 10 file a report as required by this section is subject to a civil penalty of \$25 for each
 11 day's failure to file the report.

12 (c) A mortgage licensee **and a registered depository institution** shall submit
 13 to the registry, as required by the registry, reports of the condition of the licensee **or**
 14 **registered depository institution**, which must be in the form and contain the
 15 information that the registry may require.

16 * **Sec. 10.** AS 06.60.135(a) is amended to read:

17 (a) The requirements of this section apply to the business transactions of a
 18 mortgage licensee **or registered depository institution** that occur entirely or partially
 19 in this state.

20 * **Sec. 11.** AS 06.60.135(b) is amended to read:

21 (b) A mortgage licensee **or registered depository institution** shall keep and
 22 use in the [MORTGAGE LICENSEE'S] business **of the mortgage licensee or**
 23 **registered depository institution** the accounting records that are in accord with
 24 generally accepted accounting principles.

25 * **Sec. 12.** AS 06.60.135(c) is amended to read:

26 (c) A mortgage licensee **and a registered depository institution** shall
 27 maintain a record of the account of each borrower and for each mortgage loan or
 28 mortgage loan application that is related to the purchase or refinancing of an existing
 29 mortgage loan. This record must contain all documents, work papers, electronic
 30 correspondence, and forms that are produced or prepared for the mortgage loan by the
 31 mortgage licensee **or registered depository institution**, and the mortgage licensee

1 **and registered depository institution** shall retain each document, work paper,
2 electronic correspondence, and form for 36 months from the date they were created.

3 * **Sec. 13.** AS 06.60.135(d) is amended to read:

4 (d) A mortgage licensee **and a registered depository institution** shall retain,
5 for at least three years after final payment is made on a mortgage loan, or three years
6 after a mortgage loan is sold, whichever occurs first, the original contract for the
7 [MORTGAGE LICENSEE'S] compensation **of the mortgage licensee or registered**
8 **depository institution**, copies of the note, settlement statement, and truth-in-lending
9 disclosure, an account of fees received in connection with the loan, and other papers or
10 records relating to the loan that may be required by department order or regulation.

11 * **Sec. 14.** AS 06.60.135(e) is amended to read:

12 (e) If a mortgage licensee **or registered depository institution** conducts
13 business as a mortgage loan servicing agent for mortgage loans that the mortgage
14 licensee **or registered depository institution** owns, or as an agent for other mortgage
15 lenders or investors, the mortgage licensee shall, in addition to complying with (b) and
16 (c) of this section, maintain a record for each mortgage loan. The record of each
17 mortgage loan must include the amount of the mortgage loan, the total amount of
18 interest and finance charges on the mortgage loan, the interest rate on the mortgage
19 loan, the amount of each payment to be made on the mortgage loan, a description of
20 the collateral taken for the mortgage loan, a history of all payments received by the
21 mortgage licensee **or registered depository institution** on the mortgage loan, a
22 detailed history of the amount of each payment that is applied to the reduction of the
23 mortgage loan principal, the interest that accrues on the mortgage loan, and any other
24 fees and charges that are related to the mortgage loan, as well as other papers required
25 by law, department order, or regulation. The mortgage licensee **or registered**
26 **depository institution** shall retain the record required by this subsection for three
27 years after the loan is sold to another mortgage loan servicing agent or after the
28 mortgage loan is satisfied, whichever occurs first.

29 * **Sec. 15.** AS 06.60.140 is amended to read:

30 **Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee
31 who **or registered depository institution that** operates an office or other place of

1 business outside this state shall, at the request of the department,

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

4 (2) reimburse the department its reasonable costs, as provided in
5 AS 06.60.250(k), that are incurred by the department in conjunction with an
6 investigation or examination conducted at the office or place of business.

7 * **Sec. 16.** AS 06.60.410 is amended to read:

8 **Sec. 06.60.410. Censure, suspension, or bar.** (a) In addition to any other
9 remedy provided under this chapter, the department may, by order after appropriate
10 notice and opportunity for a hearing, censure a person, suspend the license of a person
11 for a period not to exceed 12 months, or bar a person from a position of employment,
12 management, or control of a licensee **or registered depository institution** if the
13 department finds that

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

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

17 (3) the violation has caused material damage to the licensee, **to the**
18 **registered depository institution,** or to the public.

19 (b) When a person who is the subject of a proposed order under this section
20 receives a notice of the department's intention to issue an order under this section, the
21 person is immediately prohibited from engaging in any activities for which a license is
22 required under this chapter **or for which registration is required under**
23 **AS 06.60.014.**

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

31 * **Sec. 17.** AS 06.60.900 is amended to read:

1 **Sec. 06.60.900. Applicability of administrative procedures.** Notwithstanding
 2 AS 06.01.030(f), the provisions of AS 44.62 (Administrative Procedure Act) apply to
 3 an action of the department to deny, revoke, or suspend a license **or registration**
 4 under this chapter, to censure, suspend, or bar a person under AS 06.60.410, to take
 5 other disciplinary action under this chapter, to hold disciplinary hearings, and to issue
 6 disciplinary orders. **In this section, "registration" means the registration of a**
 7 **depository institution under AS 06.60.014.**

8 * **Sec. 18.** AS 06.60.990 is amended by adding new paragraphs to read:

9 (35) "bona fide nonprofit organization" means an organization that the
 10 department has determined qualifies as a bona fide nonprofit organization under
 11 AS 06.60.015(c);

12 (36) "registered depository institution" means a depository institution
 13 that is registered under AS 06.60.014.

14 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

16 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
 17 Economic Development may proceed under AS 06.60.014, enacted by sec. 2 of this Act, and
 18 under AS 06.60.910, to adopt regulations necessary to implement this Act. The regulations
 19 take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2015.

20 * **Sec. 20.** Sec. 19 of this Act takes effect immediately under AS 01.10.070(c).

21 * **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect July 1, 2015.