

**SB**

**272**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
APR 28 2006  
SENATE FINANCE COMMITTEE

DATE: 4/5/06

FURTHER:

DATE TURNED  
IN TO OFFICE: 4/28/06

Finance Committee considered

SENATE BILL NO. 272

SB 272 MORTGAGE LENDING

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

and recommends:

- be replaced with CS SB 272 (FIN)
- adopt previous CS Forthcoming \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

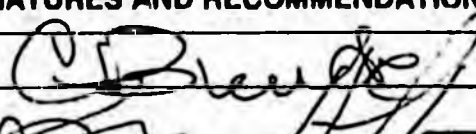
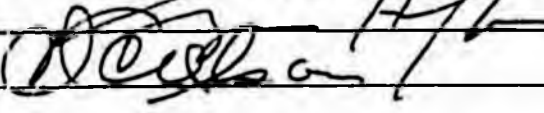
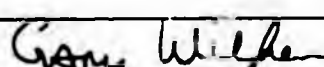
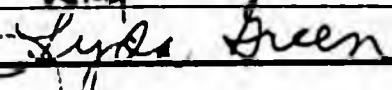
**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

Department	Date	Fiscal	Ind.	Zero	FN#
DCED	3/6/06	259,2			1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	<input checked="" type="checkbox"/>			
			<input checked="" type="checkbox"/>	
			<input checked="" type="checkbox"/>	
COCHAIR: 			<input checked="" type="checkbox"/>	
COCHAIR: 			<input checked="" type="checkbox"/>	

# FISCAL NOTE

REPORTED OUT  
APR 28 2006  
SENATE FINANCE COMMITTEE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 272(L&C)  
(S) Publish Date: 4/5/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Mortgage Lending RDU Banking & Securities (536)  
Component Banking & Securities  
Sponsor Wagoner  
Requester Labor & Commerce Component No. 2808

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	121.1	121.1	121.1	121.1	121.1	121.1
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	58.0	58.0	58.0	58.0	58.0	58.0
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	4.8	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>200.4</b>	<b>195.6</b>	<b>195.6</b>	<b>195.6</b>	<b>195.6</b>	<b>195.6</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( 1156 )</b>	259.2	228.4	348.5	348.5	348.5	348.5
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Receipt Supported Services (1156)	200.4	195.6	195.6	195.6	195.6	195.6
<b>TOTAL</b>	<b>200.4</b>	<b>195.6</b>	<b>195.6</b>	<b>195.6</b>	<b>195.6</b>	<b>195.6</b>

Estimate of any current year (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would require the licensing and regulation of people making and brokering mortgage loans to borrowers. The division estimates there are about 22,000 mortgage documents filed each year in Alaska. The division anticipates needing two additional staff to implement the provisions of this legislation, one Financial Institution Examiner I, and one Business Registration Examiner position. Travel funds would cover the cost of 20 trips to conduct examinations of licensees. Contractual expenses include \$25.0 for the Department of Law to draft and enforce orders resulting from investigations, and \$33.0 to contract for the collection of the documentation filing fees.

Prepared by: Mark Davis, Director Phone 907 269 8144  
Division: Banking & Securities Date/Time 3/6/06 2:57 PM  
Approved by: William C. Noll, Commissioner Date 3/6/2006  
Agency: Commerce, Community, and Economic Development

FISCAL NOTE # 1

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CSSB 272(L&C)

ANALYSIS CONTINUATION

Revenue: The division estimates this legislation would generate \$259.2 in the first year due to the initial licensing of an estimated 112 establishments (\$39.2 resulting from \$250 per license and \$100 investigation fee per establishment, and the collection of \$220.0 in document filing fees (22,000 documents at \$10 per document.)) In the second year, the division anticipates licensing 24 additional establishments for a total revenue amount of \$228.4 which results from \$220.0 in document filing fees and \$8.4 in license fees.) In year 3 the division anticipates generating \$348.5 (\$126.0 results from the examination of 56 establishments at a cost of \$2.25 per examination; \$220.0 document filing fees; and \$8.4 in new licensing fees for 7 new establishments.) Years 4 and 5 are expected to generate a similar amount of revenue.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mall Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 29, 2006

**SUBJF :** CSSB 272(FIN) relating to mortgage loan activities  
(Work Order No. 24-LS1644\N)

**TO:** Senator Lyda Green  
Senator Gary Wilken  
Co-Chairs of the Senate Finance Committee  
Attn: Robin

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

This memo accompanies the bill described above.

Relationship to AS 34.80. It is possible that sec. 06.60.440(d), relating to trust accounts for mortgage lenders and mortgage brokers, may overlap and conflict slightly with AS 38.40, which establishes the rules for escrow transactions for residential real property. If mortgage lenders or mortgage brokers ever act as settlement agents (as that term is defined in AS 38.40.090), you may want to add a provision to sec. 06.60.440 that indicates whether sec. 06.60.440(d) or AS 34.80 governs when both might apply.

Since this bill has passed out of your committee, please pass this information along to the appropriate person.

If I may be of further assistance, please advise.

TLB:lmb  
06-156.lmb

Enclosure

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 272(FIN), Draft Version "U"

1 Page 2, line 14:

2 Delete "Except for AS 06.60.400 - 06.60.440, this"

3 Insert "This"

4

5 Page 6, line 22:

6 Delete "a record of"

7

8 Page 6, line 23:

9 Delete "a conviction"

10 Insert "been convicted"

11

12 Page 6, line 26:

13 Delete "an act, an omission, or a practice"

14 Insert "committed an act, made an omission, or engaged in a practice"

15

16 Page 6, line 28, through page 7, line 1:

17 Delete all material and insert:

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

21 (D) had a license for engaging in an occupation revoked or  
22 terminated for cause by a federal or state agency."  
23

1 Page 8, following line 18:

2 Insert new subsections to read:

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

6 (j) While a license is inactive under this section, the department may take  
7 action against the license, the person holding the inactive license, or both under  
8 AS 06.60.300 - 06.60.360 and 06.60.500 - 06.60.540 for noncompliance with this  
9 chapter before the license became inactive or for noncompliance with this section  
10 while the license is inactive.

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

SENATE FINANCE COMMITTEE

4/28/2006

COMMITTEE ACTION

Bill Number	SB 272		
Amendment	#1		
Motion	to adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

Amendment #2  
(conceptual)

Adopted

26 **Sec. 06.60.430. Certain refinancing prohibited.** (a) A mortgage lender or a  
27 mortgage broker may not refinance a mortgage loan as defined in 15 U.S.C. A.  
28 1602(aaa) within 12 months after the date

29 the mortgage loan is originated by the lender or broker, unless the refinancing is in  
30 the  
31 borrower's best interest.

32 (b) The factors to be considered when determining if a mortgage is in the  
33 borrower's best interest may include, but are not limited to, whether

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

38 (2) the amortization period of the new loan is different from the  
39 amortization period of the loan being refinanced;

40 (3) the borrower receives cash in excess of the costs and fees of the  
41 refinancing;

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

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

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

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

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

51 **Sec. 06.60.440. Escrow accounts.** (a) A mortgage lender and a borrower may  
52 agree that the mortgage lender will mortgage

53 broker shall keep in an escrow account all money that a borrower is required  
54 to pay to

55 defray future taxes or insurance premiums or for other lawful purposes. The  
56 escrow

57 account must be a trust account or another account that is segregated from the  
58 other

59 accounts of the mortgage lender ~~or mortgage broker~~. The mortgage lender and  
60 ~~mortgage broker~~ may not commingle the borrower's money with the general funds  
61 of

62 the mortgage lender ~~and mortgage broker~~.

63 (b) A mortgage lender ~~and a mortgage broker~~ may not require a borrower to  
64 pay money into escrow to defray future taxes, to defray insurance premiums, or for  
65 another purpose, in connection with a subordinate mortgage loan, unless an escrow  
66 account for that purpose is not being maintained for the mortgage loan that is  
67 superior

68 to the subordinate mortgage loan.

69 (c) A mortgage lender ~~or a mortgage broker~~ who is holding money in escrow  
70 for insurance premiums shall notify the insurer in writing within 30 days after the

30 billing address of the mortgage lender ~~or mortgage broker~~ changes, or 60 days before

~~31~~ ~~34~~ — the renewal date of the insurance policy, whichever is later.

(d) A mortgage broker who accepts funds belonging to a borrower in connection with a mortgage loan shall deposit all those funds into a trust fund account maintained by the broker in a bank or recognized depository in this state. The mortgage broker may not commingle the borrower's money with the general funds of the mortgage broker.  
All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the borrower.

SENATE FINANCE COMMITTEE  
4 28 / 2006 COMMITTEE ACTION

Bill Number	SB 272		
Amendment	#2		
Motion	<del>Adopt</del>		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	<b>ADOPTED</b>		

Our Proof

24-LS1644N

CS FOR SENATE BILL NO. 272(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mortgage lenders, mortgage brokers, state agents who collect  
2 program administration fees, and other persons who engage in activities relating to  
3 mortgage lending; relating to mortgage loan activities; relating to fees for recorded  
4 mortgage loan instruments; and providing for an effective date."

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

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

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

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

14 Chapter 60. Mortgage Lending.

1 Article 1. Licensing.

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

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

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

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

14 Sec. 06.60.020. Exemptions. This chapter does not apply to

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

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

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

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

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

Amend  
#1

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) be in writing;

1 (2) be made under oath or affirmation;

2 (3) be in the form prescribed by the department;

3 (4) contain the name and both the residence and business addresses of  
4 the applicant as follows:

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

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

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

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

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

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

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

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

1 annual license fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Amend #1*

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

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

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

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

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

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

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

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

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

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

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

1 the license is reactivated.

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

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

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

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

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

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

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

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

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

*Amend #1*

1 the transferring or assigning licensee; and

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

4 **Article 2. Licensee Obligations.**

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

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

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

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

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

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

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

1 to the licensee to reflect the new location.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 written approval of the department.

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

6 (d) In this section,

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

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

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

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

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

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

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

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

24 (1) the licensee has failed to

25 (A) pay any required fee or costs;

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

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

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

1 denial of the issuance of the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 government under

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

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

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

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

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

9 (6) any other federal law or regulation.

10 **Sec. 06.60.20. Prohibited activities.** In addition to activities prohibited  
11 elsewhere in this chapter or by another law, a person who is a licensee, a person who  
12 is required to be licensed under this chapter, and an employee and an independent  
13 contractor to whom AS 06.60.025 applies may not, in the course of a mortgage loan  
14 transaction,

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

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

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

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

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

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

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

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

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

6 (A) consider additional appropriate property information;

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

9 (C) correct errors in the appraisal report;

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

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

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

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

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

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

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

Amend.  
# 2

1 borrower's interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 15 Article 5. Enforcement.

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

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

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

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

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

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

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1 required under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3 Article 7. Miscellaneous Provisions.

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

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

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

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

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

### 18 Article 8. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (11) "mortgage loan"

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

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

22 (C) does not include loans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 300  
State Capitol  
Juneau, Alaska 99801-0300

### FAX COVER SHEET

DATE: 4/28/06 TIME: 4:05 pm

TO: LEGAL

NUMBER OF PAGES, INCLUDING COVER SHEET: 5

FROM: ROBIN PAUL  
SENATE FINANCE CMTE. ASST. SECRETARY  
PHONE: 465-2618  
FAX: 465-2187

NOTES: Final Pls. CS SC 272 (FIN)  
Version 24-LS1644/u plus  
Amendments #1 and #2  
(attached)

*Thank You!*  
*Robin*

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-LS1644U  
Bannister  
4/26/06

CS FOR SENATE BILL NO. 272(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mortgage lenders, mortgage brokers, state agents who collect  
2 program administration fees, and other persons who engage in activities relating to  
3 mortgage lending; relating to mortgage loan activities; relating to fees for recorded  
4 mortgage loan instruments; and providing for an effective date."

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

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

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

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

14 Chapter 60. Mortgage Lending.

Article 1. Licensing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) the applicant has complied with the requirements of this chapter for

1 obtaining a license, including having paid all required fees and investigative costs;

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

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

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

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

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

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

22 (4) has, within the previous seven years, a record of

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

26 (B) an act, an omission, or a practice that constitutes a breach  
27 of a fiduciary duty;

28 (C) a suspension, a revocation, a removal, or an administrative  
29 act by a federal or state agency limiting the person's participation in the  
30 conduct of a business; or

31 (D) the revocation or termination for cause by a federal or state

1 agency of a license for engaging in an occupation.

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

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

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

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

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

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

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

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

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

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

31 (d) If a person holds a license that is inactive, the person may not solicit or

1 engage in business, or offer to provide services, as a mortgage lender in this state until  
2 the license is reactivated.

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

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

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

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

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

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

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

## 25 Article 2. Licensee Obligations.

26 **Sec. 06.60.200. Annual report.** (a) On or before March 15, or on another date  
27 established by the department by regulation, of each year a licensee shall file a report  
28 with the department giving relevant information that the department requires  
29 concerning the business and operations of each location in the state where business  
30 was conducted by the licensee in the state during the preceding calendar year. The  
31 licensee shall make the report under oath or on affirmation. The report must be in the

1 form established by the department.

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

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

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

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

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

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

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

27 (b) The prior written approval of the department is required for the continued  
28 operation of a licensee's business when a change in control of the licensee is proposed.  
29 The department may require the information it considers necessary to determine  
30 whether a new application is required. The licensee requesting approval of the change  
31 in control shall pay all reasonable expenses incurred by the department to investigate

1 and approve or deny the change in control.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (d) In this section,

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

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

31 (B) is held liable within the previous seven years for an action

1 that involves dishonesty or fraud by a final judgment in a civil action or by an  
2 administrative judgment by a public agency; or

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

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

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

9 **Article 3. Discipline of Licensee.**

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

14 (1) the licensee has failed to

15 (A) pay any required fee or costs;

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

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

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

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

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

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

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

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

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

12 **Sec. 06.60.340. Investigation and examination.** (a) The department may  
13 investigate and examine the affairs, business, premises, and records of a mortgage  
14 lender or mortgage broker required to be licensed under this chapter to determine  
15 compliance with this chapter and regulations adopted under this chapter and AS 06.01.  
16 Notwithstanding AS 06 01.015, the department shall conduct an examination at least  
17 once every 36 months, or sooner if the examination is part of review of a complaint  
18 against the licensee.

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

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

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

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

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

30 (d) A licensee shall reimburse the department reasonable costs incurred by the  
31 department to conduct the examination. The reimbursement under this subsection may

1 not exceed the rate of \$75 an hour for the examination, plus travel, housing, and per  
2 diem that does not exceed the per diem allowance for employees of the state under  
3 AS 39.20.110.

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

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

#### 13 **Article 4. Business Duties and Restrictions.**

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

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

23 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of  
24 1974);

25 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

26 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

27 (4) 15 U.S.C. 1601 - 1660 and 1671 - 1693r (Consumer Credit  
28 Protection Act);

29 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

30 (6) any other federal law or regulation.

31 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited

1 elsewhere in this chapter or by another law, a person who is a licensee, a person who  
2 is required to be licensed under this chapter, and an employee and an independent  
3 contractor to whom AS 06.60.025 applies may not, in the course of a mortgage loan  
4 transaction,

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

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

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

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

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

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

20 (7) engage in a transaction, practice, or course of business that is not  
21 engaged in by the person in good faith or fair dealing or that constitutes a fraud on a  
22 person in connection with the brokering, making, purchase, or sale of a mortgage loan;

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

27 (A) consider additional appropriate property information;

28 (B) provide further detail, substantiation, or explanation for the  
29 appraiser's value conclusion, or

30 (C) correct errors in the appraisal report;

31 (9) in a loan commitment or prequalification letter, make a false or

1 misleading statement, or omit relevant information or conditions that the person knew  
2 or reasonably should have known from a preliminary examination of the borrower's  
3 loan application, credit report, assets, and income, except that this paragraph does not  
4 apply if

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

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

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

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

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

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

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

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

28 (2) the amortization period of the new loan is different from the  
29 amortization period of the loan being refinanced;

30 (3) the borrower receives cash in excess of the costs and fees of the  
31 refinancing;

- 1 (4) the rate of interest of the borrower's promissory note is reduced;
- 2 (5) the loan changes from an adjustable rate loan to a fixed rate loan
- 3 after taking into account costs and fees;
- 4 (6) the refinancing is necessary to respond to a bona fide personal need
- 5 or an order of a court of competent jurisdiction;
- 6 (7) the original term of the loan being refinanced is two years or less;
- 7 and
- 8 (8) the refinancing is being made to prevent a foreclosure on an
- 9 existing loan.

10 **Sec. 06.60.440. Escrow accounts.** (a) A mortgage lender and a mortgage

11 broker shall keep in an escrow account all money that a borrower is required to pay to

12 defray future taxes or insurance premiums or for other lawful purposes. The escrow

13 account must be a trust account or another account that is segregated from the other

14 accounts of the mortgage lender or mortgage broker. The mortgage lender and

15 mortgage broker may not commingle the borrower's money with the general funds of

16 the mortgage lender and mortgage broker.

17 (b) A mortgage lender and a mortgage broker may not require a borrower to

18 pay money into escrow to defray future taxes, to defray insurance premiums, or for

19 another purpose, in connection with a subordinate mortgage loan, unless an escrow

20 account for that purpose is not being maintained for the mortgage loan that is superior

21 to the subordinate mortgage loan.

22 (c) A mortgage lender or a mortgage broker who is holding money in escrow

23 for insurance premiums shall notify the insurer in writing 30 days before a change

24 occurs in the billing address of the mortgage lender or mortgage broker.

#### 25 **Article 5. Enforcement.**

26 **Sec. 06.60.500. Cease and desist orders.** The department may issue, under

27 AS 06.01.030, an order directing a person to cease and desist from engaging in an

28 unsafe or unsound practice.

29 **Sec. 06.60.510. Censure, suspension, or bar.** (a) In addition to any other

30 remedy provided under this chapter, the department may, by order after appropriate

31 notice and opportunity for a hearing, censure a person or suspend for a period not to

1 exceed 12 months or bar a person from a position of employment, management, or  
2 control of a licensee if the department finds that

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

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

6 (3) the violation has caused material damage to the licensee or to the  
7 public.

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

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

17 **Sec. 06.60.520 Responsibility of licensee for violations.** A licensee who acts  
18 as a mortgage lender or mortgage broker is vicariously liable under AS 06.60.300 and  
19 06.60.530 for a violation of a provision of this chapter or of a lawful demand, ruling,  
20 or requirement of the department made under and within the authority of this chapter,  
21 committed by a person while in the course of the person's employment or agency for  
22 the licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 13 Article 7. Miscellaneous Provisions.

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

17 Sec. 06.60.705. Applicability of administrative procedures. The provisions  
18 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to  
19 deny, revoke, or suspend a license under this chapter and to hearings and orders of the  
20 department.

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

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

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

#### 28 Article 8. General Provisions.

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

31 (1) "agent" does not include a person who is a state employee when

1 acting in the capacity of a state employee;

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

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

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

6 (5) "dual license" means a license issued under AS 06.60.110(c);

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

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

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

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

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

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

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

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

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

25 (11) "mortgage loan"

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

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

1 (C) does not include loans

2 (i) or extensions of credit to buyers of real property for  
3 a part of the purchase price of the property by persons selling the  
4 property owned by them;

5 (ii) to persons related to the lender by blood or  
6 marriage;

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

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

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

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

15 (14) "records" includes books, accounts, papers, files, and other  
16 records;

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

19 Sec. 06.60.995. Short title. This chapter may be known as the Mortgage  
20 Lending Act of 2006.

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

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

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

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

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

29 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND  
30 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a  
31 person who is engaging in activities for which a license is required under AS 06.60, enacted

1 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to  
2 comply with the licensing requirements of AS 06.60 until March 1, 2008. In this section,  
3 "license," "mortgage broker," and "mortgage lender" have the meanings given in  
4 AS 06.60.990, enacted by sec. 2 of this Act.

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

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

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

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

SENATE FINANCE COMMITTEE  
4 128/2006 COMMITTEE ACTION

Bill Number	SB 272		
Amendment			
Motion	Adopt CS version "u"		
<u>Motion by</u>	Green		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOP TED		

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 26, 2006

**SUBJECT:** CSSB 272(FIN) relating to mortgage loan activities  
(Work Order No. 24-LS1644\U)

**TO:** Senator Lyda Green  
Co-Chair of the Senate Finance Committee  
Attn: Darwin

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Additional grounds for denial of license (sec. 06.60.090). In sec. 06.60.090(4), subparagraphs (B), (C), and (D) need to be made more clear if the department wants to base a denial on them. First of all, what is "record" intended to cover? In (B), the language is very broad; can you be more specific as to what a "record of an act," etc. is meant to cover? In (C), what is the person being suspended from, what is being revoked, and what is being removed? Is an administrative act limited to formal proceedings or just something from the department like a letter or a decision?

2. Inactive license (sec. 06.60.120). Although this section indicates some of the chapter's provisions that are to apply or not apply to a person with an inactive license, it is not complete. The application or nonapplication of each of the provisions of the chapter needs to be made clear. This can be done by specific provisions, or by general statements in the section as long as the general statements are clear and don't cover provisions that you don't want covered.

If I may be of further assistance, please advise.

TLB:ljw  
06-216.ljw

Enclosure



Official Business

# ALASKA STATE LEGISLATURE

## SENATOR THOMAS H. WAGONER

- Chair, Senate Resources Committee
- Vice-Chair, Senate State Affairs Committee
- Member, Community & Regional Affairs
- Member, Legislative Council
- Member, World Trade

Session: January - May

State Capitol, #427

Juneau, AK 99801

Phone: 907-465-2828 Fax: 907-465-4779

Interim: May - December

145 Main Street Loop; Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax 907-283-8127

## SPONSOR STATEMENT CSSB 272(L&C)

Alaska is the only state that does not license and regulate residential mortgage lending. Because of this, the Alaska Division of Banking and Securities has no authority to investigate the 50 phone calls per week on questionable lending practices and 20 plus legitimate complaints, and can do nothing to help Alaska consumers that feel they are being taken advantage of. Increased access to internet lending in recent years has contributed even further to the growing number of complaints and has caused the U.S. Congress to seek ways to strengthen consumer protection in an area that represents, to some, the largest single investment they will make in their lifetime.

Recognizing this problem, the mortgage lending industry in Alaska has been meeting for several years to develop legislation that balances protection of Alaska's consumers while insuring sufficient access to residential mortgage loans. And this past year the Alaska Division of Banking and Securities has worked closely with several leading mortgage lending groups to develop the language in SB 272 that will address this problem.

SB 272 has been introduced as a companion bill to HB 424 and is a strong starting point to address this problem and grant the Alaskan Division of Banking and Securities enough licensing and regulatory authority to begin dealing with the growing number of complaints they receive from Alaska home buyers.

This effort to establish accountability in the mortgage lending industry in Alaska is vital and past due. The proposal is an initial attempt to regulate the mortgage lending industry in Alaska and is supported by the Alaska Division of Banking and Securities and several groups in the industry.



Official Business

# ALASKA STATE LEGISLATURE

## SENATOR THOMAS H. WAGONER

- Chair, Senate Resources Committee
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Session: January - May  
State Capitol, #427  
Juneau, AK 99801  
Phone: 907-465-2828 Fax: 907-465-4779

Interim: May - December  
145 Main Street Loop; Suite 226  
Kenai, AK 99611  
Phone: 907-283-7096 Fax 907--283-8127

## SECTIONAL ANALYSIS CSSB 272(L&C)

### SECTION 1

Adds mortgage lenders and brokers to the definition of financial institution.

### SECTION 2

#### Article 1. Licensing

06.60.010 Subjects lenders and brokers to licensing

06.60.020 Lists various exemptions from licensing under this Act

06.60.025 Requires that an employee and independent contract have to follow the provisions in this chapter even though they do not have to get a separate license

06.60.030 Provides the requirements for licensure under this Act

06.60.040 Requires the Division to investigate applications for a license under this Act

06.60.050 Requires the initial license fee be submitted with the application, and that only one fee is required for dual licenses.

06.60.060 Sets out bonding requirements and amounts and gives the Division authority to increase the amount set in this section.

06.60.070 Requires the Division to grant or deny a license within 90 from the date they receive a complete application.

06.60.080 Details some things the Division must consider when determining whether to grant or deny a license.

06.60.090 Lists additional grounds for denying a license.

06.60.100 Gives the Division the authority to define the form and contents of the license and requires the business and internet addresses be included.

06.60.110 Gives duration of a license and means to renew a license.

06.60.120 Provides requirements for a licensee to transfer a license.

## **Article 2. Licensee Obligations**

06.60.200 Requires an annual report, that contents are specified by the Division, be submitted and provides a \$25/day fee for late filling.

06.60.210 Sets a \$250 annual license fee and sets when the fee is due each year.

06.60.220 Prohibits the licensee from doing business within another business unless it is disclosed in the application.

06.60.230 Allows for a license to change business locations after the licensee submits written notice to the Division.

06.60.240 Requires the licensee to notify the Division of any significant change in the operation or control of the license.

06.60.250 Sets guidelines and requirements for record keeping.

06.60.260 Requires a licensee who's office is located outside Alaska make their records available at a location in Alaska, or pay the costs of the Division to examine their records out of state.

06.60.270 Defines disqualified person and prohibits them from most aspects of a licensed office/business, unless there is written approval by the division in some cases, or after seven years of having a clean record.

06.60.280 Requires the license to be posted at the place of business.

## **Article 3. Discipline of Licensee**

06.60.300 Specifies when the Division should revoke or suspend a license

06.60.310 Sets guidelines/requirements for surrendering a license.

06.60.320 Provides the effect of revocation, suspension or surrender of a license and requires all preexisting contracts and loans be satisfied or sold/assigned to another licensee.

06.60.330 Gives the Division the authority to reinstate a revoked license.

06.60.340 Sets requirements and purposes for an examination of a licensee. Frequency of at least every 3 years and provides for reimbursement to the Division for costs of conducting the examination.

06.60.350 Prohibits a licensee from giving false, misleading or deceptive statements to the Division in the course of an investigation or examination.

06.60.360 Gives the Division the authority to make a ruling, demand or finding addressing proper conduct of a licensee.

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

06.60.400 Prohibits a licensee from advertising false, misleading or deceptive information about their business.

06.60.410 Subjects a person, when pertinent, to federal regulations.

06.60.420 Gives a list of activities that are prohibited of a person listed in this chapter.

06.60.430 Sets restrictions on refinancing a loan within the first 12 months.

06.60.440 Requires segregations of escrow accounts and restricts when a licensee can require a borrower to supply escrow funds.

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

06.60.500 Defines when the Division can issue a cease and desist order.

06.60.510 Provides authority and process for the Division to censure, suspend or bar a licensee, also limits the period covered for such actions; up to 12 months.

06.60.520 States that the licensee is liable for a violation committed by a person/agency employed by the licensee.

06.60.530 Sets a civil penalty of no more than \$10,000 for a person who knowingly violates any provision of this chapter.

06.60.540 Provides additional enforcement provisions.

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

06.60.600 Sets up a program administration fee.

06.60.610 Provides authority for the Division to contract with a licensee or other person to act as an agent to collect the program administration fee, and removes liability of the Division.

06.60.620 Allows an agent from .610 to retain 25% of collected fees, requires transmittal of fees collected by January 15 and gives the Division authority to assess a penalty for late fees or no fees.

### **Article 7. Miscellaneous Provisions**

06.60.700 Clarifies that the provisions of this chapter apply to internet businesses.

06.60.705 Triggers the Administrative Procedures Act for actions of the Division taken to deny, revoke or suspend a license, and for hearings and orders.

06.60.710 Gives the Division the authority to adopt regulations to implement this chapter.

06.60.720 Clarifies that when sections of this Act are preempted by federal law, then federal law applies. When this Act conflicts with another state law, then this Act applies.

### **Article 8. General Provisions**

06.60.990 Gives definitions for various terms used in this Act.

06.60.995 Gives the short title of this Act

### **SECTION 3**

Amends AS 44.62.330(a) to add this Act to that section of law

### **SECTION 4**

Adds new subsection to AS 45.50.481

### **SECTION 5**

Provides for a transition period for the implementation of this Act. Gives current business activities, subject to this Act, until March 1, 2008 to get licensed.

### **SECTION 6**

Provides the Division the ability to adopt regulations necessary to implement the changes made by this Act.

**SECTION 7**

Gives an immediate effective date for Section 6 of this Act.

**SECTION 8**

Gives an effective date, for all other sections of this Act, of July 1, 2007.

Alaska SB 272  
Broker Licensing and Mortgage Loan Activities  
Testimony, 4-28-06

Intro

1. Gregory Williams, AFSA Regional Director, SGA. Operate out of Denver, CO and manage SW region.
2. AFSA, founded 1916, consumer credit and finance industry trade association, members in auto finance, personal loans, credit cards, and mortgage lending
3. Here today to address mortgage lending aspect of the industry as it relates to SB 272 broker licensing
4. AFSA members are supervised/regulated lenders under state and/or federal law
5. As rule we are generally supportive of state-based efforts to regulate the lending industry yet are always cautious about unnecessary restrictions relating to consumer choices, duplicative licensing requirements, and unintended consequences of new legislation.
6. Highly appreciative of the opportunity to comment today

Key Areas

1. Several mortgage lenders within AFSA have reviewed the bill and have asked me to share their observations and concerns with you today. My comments will address three areas
  - a. Licensing exemption 06.60.020
  - b. Refinancing 06.60.430
  - c. Escrow 06.60.440

Article I Licensing Exemptions

1. Article I (licensing) exempts certain lenders, including state and federally regulated lenders, but this exemption does not apply to the provisions of Article IV (business duties and restrictions). The exemptions should apply to the entire bill. I will come back to this later.
2. Also, not all large regulated mortgage lenders are covered under the language of this exemption section (because they are not bank affiliated), additional language recognizing Federal Housing Administration approved lenders is needed in order to ensure a level playing field.

Article IV Refinancing

1. Parts of this section appear to duplicate existing law and the need for this portion of the bill is questionable, particularly the section relating to prohibited refinancing, which appears to apply to any and all home loans in the state, regardless of the terms of the loan.
2. If 06.60.430 is intended to apply to high cost loans, the citation for the appropriate section of the federal Truth in Lending Act. We would be happy to provide a citation.

3. The term "best" in "borrower's best interest" is problematic and may result in unintended consequences limiting the borrower's options. Substituting "borrowers interest" for "borrowers best interest" would address this issue.
4. The list of factors to consider in determining whether such a refinance is in the borrowers interest appears to be all inclusive (that is all factors need to be met). By saying these factors "may" include but "are not limited to" would address this issue.

#### Article IV Escrow

1. This portion of the bill appears to require escrow accounts for all applicable loans. The borrower is not given a choice, if the intent is to define the parameters of escrow when the borrower and lender agree to establish them, appropriate language needs to be developed, otherwise the unintended consequence of requiring escrow accounts on all loans will be put into place.
2. Mortgage brokers typically do not manage escrow accounts and the language in this portion of the bill relating to mortgage brokers probably needs to be restructured.

#### Closing

1. Appreciate the hard work of the sponsor and the staff.
2. Have provided language addressing our concerns and will be happy to work with the sponsor and the committee as they move forward.

Here is the FHA lender language for the exemption section. This is from Colorado HB 1161 that is up for final passage in the Senate.

(c) A FEDERAL HOUSING ADMINISTRATION APPROVED MORTGAGEE  
OR AN APPOINTED FEDERAL HOUSING ADMINISTRATION CORRESPONDENT,  
ACTING THROUGH OFFICERS, PARTNERS, MEMBERS, EXCLUSIVE AGENTS,  
CONTRACTORS, OR EMPLOYEES OF SUCH ENTITIES WHEN MAKING OR  
BROKERING ANY MORTGAGE LOAN:

Gregory E Williams

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Sec. 06.60.430. Certain refinancing prohibited. (a) A mortgage lender or a  
26 mortgage broker may not refinance a mortgage loan as defined in 15 U.S.C. A.  
1602(aa) within 12 months after the date  
27 the mortgage loan is originated by the lender or broker, unless the refinancing is in  
the  
28 borrower's interest.

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29 (b) The factors to be considered when determining if a mortgage is in the  
30 borrower's interest may include, but are not limited to, whether  
31 (1) the borrower's new monthly payment is lower than the total of all  
01 monthly obligations being refinanced, after taking into account the costs and fees  
of  
02 the refinancing;  
03 (2) the amortization period of the new loan is different from the  
04 amortization period of the loan being refinanced;  
05 (3) the borrower receives cash in excess of the costs and fees of the  
06 refinancing;  
07 (4) the rate of interest of the borrower's promissory note is reduced;  
08 (5) the loan changes from an adjustable rate loan to a fixed rate loan  
09 after taking into account costs and fees;  
10 (6) the refinancing is necessary to respond to a bona fide personal need  
11 or an order of a court of competent jurisdiction;  
12 (7) the original term of the loan being refinanced is two years or less;  
13 and  
14 (8) the refinancing is being made to prevent a foreclosure on an  
15 existing loan.

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

Deleted: mortgage  
17 broker shall

Deleted: a

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

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

Deleted: or a mortgage broker

Deleted: or mortgage broker

Deleted: 31

(d) A mortgage broker who accepts funds belonging to a borrower

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in connection with a mortgage loan shall deposit all those funds into a trust fund account maintained by the broker in a bank or recognized depository in this state. The mortgage broker may not commingle the borrower's money with the general funds of the mortgage broker.  
All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the borrower.

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 1 of 10**

This summary is a response to Mr. Martin's letter regarding SB 272. Beginning on page 2, Mr. Martin recommends the legislation incorporate all mortgage originators are added to bill and be licensed. The division is supportive of licensing originator's but feels that SB 272 is not the proper format for such licensing.

A number of issues need to be resolved regarding Originator's licensing before it can be brought before the legislator for passage. The issues surround the following:

- Which state division will regulate this activity? Since an originator's license resembles that of a personal occupational license, should the Division of Corporations, Business and Professional Licensing or the Division of Banking and Securities be authorized to enforce the legislation? While SB 272 clearly is a license for the business, in the same manner as a charter for a bank or credit union, or a license for a payday lender is regulated by the Division of Banking and Securities, it is not known if we should regulate Originators because they would not be individually examined. Instead, their employer would be examined as provided in SB 272.
- Licensing requirements for originators have not been sufficiently researched to determine the best process. Mr. Martin testified that originators should be educated and tested. As part of any originator licensing bill, pre-license testing would be a requirement. The content of the licensing, what qualifies for passage to obtain a license, and continued examinations all must be resolved before an originator bill can be drafted.
- Another component of licensing that Mr. Martin has testified to is the need for continued education for originators. The division supports this concept and would require that minimum standard for continued education is necessary in any originator licensing bill. However, a consensus must be identified between the division and all the originators. The consensus must provide the type of classes that must be passed by the originator and what the minimum score they should

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 2 of 10**

receive in order to receive a license and continue to maintain their license.

- Same exemptions that exist in SB 272 would apply to originators. Mr. Martin asserts that having all originators licensed, we would be able to bypass all the exemptions under SB272. This is not correct. Federally chartered institutions, **which employee a bulk of originators**, would still be exempt under the originator bill. The goal of having all originators licensed is something that will require a change of view by federal regulatory agencies.
- The exemptions in SB 272 would still apply to originators because the other applicable law that regulates the exempted entities has to be changed, and there has not been sufficient time to study the effect of a broad implementation of the originators license.
- Another part of the originator licensing was the request by Mr. Martin and others that the originators' pay into a surety fund for coverage of any losses that might occur to the public for unscrupulous or illegal acts on the part of a licensed originator. The terms of the surety fund have not been drafted or determined how it will be managed.
- Mr. Martin did point out correctly that an originator must be supervised by their employer, who is the licensee. If the originator does not conduct business legally, then the division will take away the license of the lender or broker, thereby affecting their ability to earn an income. We have also added in SB 272 an ability to remove an employee for violation of the law.

In summary, the division supports licensing of originators. However, SB 272 is not the place to attempt to force the originator licensing law into. Instead, a number of the issues highlighted above must be resolved and a framework for the originator licensing bill needs to be prepared. **The Division of Banking and Securities plans to work with the Alaska Mortgage Bankers Association, Alaska Mortgage Brokers Association, Alaska Bankers Association, and the Independent Lenders Association of Alaska over this year to develop a comprehensive legislation for regulating mortgage originators.**

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 3 of 10**

*On pages 4 through 8 of Mr. Martin's updated testimony, Mr. Martin lists a number of sections of SB 272 that need changes. The department addresses those concerns as follows:*

Referencing residential properties. This is done in the definition of what a mortgage loan covers under this act. It is not needed in the preface of the bill.

Sec. 06.60.010(a) -- The division has deferred to legislative legal on how to handle such language. The intent is to cover all persons, whether they are a sole proprietor, partnership, corporations, LLC, or other entity to be required to obtain a license.

Mr. Martin lists the exemption in AS 06.60.020 as concerns. The list of exempted entities is based on sections of both state and federal law. The exemptions are authorized as follows:

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

This exemption is to allow individuals who have property that they intend to subdivide or liquidate over a period of time to enter into owner-financed transactions. The division wanted to preserve the rights of land owners in more rural sections of Alaska a method to finance the sale of their property without become a licensee. In most rural communities the sale of residential property is considered non-conforming. For purposes of this discussion, Non-conforming loans for rural properties do not qualify for most conventional loan programs because the lack of local zoning or building ordinances which affect the appraisal standards; in addition, the borrowers may have credit qualification issues.

(2) a mortgage lender who is authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States, a state or territory of the United States, or the District of Columbia;

The mortgage lender engaged in business through bank or credit union, or other financial institution usually operates as a unit or department of the chartered financial institution. In the case of federally chartered institutions, the state authority is limited in scope due to supremacy clause. Federal courts have repeatedly applied those principles to determine that federal law preempts state law that would pose obstacles

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 4 of 10**

to the exercise of national bank powers. The Court has observed that the history of Supremacy Clause litigation of national bank authority is "one of interpreting grants of both enumerated and incidental 'powers' to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting contrary state law." This is also held for other federally chartered financial institution, for example federal credit unions are exempt under the Federal Credit Union Act, 12 U.S.C. 1751 et seq.

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

Because subsidiaries and affiliates are treated with the same exemption that applies to federally chartered financial institutions, based on their inclusion in the regulatory review they would be excluded on the same basis as institution governed under exemption (2). However, based on the structure of some subsidiaries or affiliates, they are not subject to the same regulatory oversight and therefore they would be subject to SB 272. It is the division's intent to review on a case-by-case basis any exemptions from SB 272 that some institutions may apply for. An application for exemption at a minimum will require the entity to state why they should be exempt from SB 272, and also have a determination letter from a regulatory authority stating: the entity is exempt from SB 272; and the entity is subject to examinations and regulatory oversight.

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

(A) "nonprofit corporation" means a corporation that qualifies under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code) for an exemption from federal income taxation;

(B) "qualified individual" means an individual

- (i) whose income is 60 percent or less of the median income in the United States;
- (ii) who is over the age of 60 years; or
- (iii) who has a disability; in this subparagraph, "disability" has the meaning given at 42 U.S.C. 12102(2)(A);

Treatment of Non-profit entities with respect to loan, or other financial assistance programs are usually exempt from licensing, or other regulatory oversight because they only exist to provide services to the community that other for-profit business will not offer. In most cases, the non-profit has a Board of Directors and Executive Director that are

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 5 of 10**

responsible to report to the grant funding agencies or other charities that provide the operating capital of the non-profit. The services to the public the non-profit provides are normally non-traditional and usually are conducted in a subsidized or cost-free manner. With mortgage lending, a housing non-profit's traditional role is to either manage their own housing projects, or administer a rent-to-own program that provides for subsidized housing loans, or grants for consumers to purchase private dwellings.

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

The exemption for this type of entity is primarily due to the function they serve in the economy. The entities are primarily housing finance conduits that package and sell mortgage securities in the financial markets, and in turn provide the funding to purchase mortgage directly from mortgage companies. These entities in whole are known as the "secondary market", and are normally removed from direct lending to the customer; instead they rely upon the mortgage companies to complete the origination of the loan and then it is packaged and sold or transferred to a loan servicer. The secondary market provides the means to consolidate capital from other market participants.

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

Pension benefit allow mortgage to be funded from individual accounts held by the participants. The terms of the loans are usually set by the plan participants, with the overall plan having basic guidelines. The fees charges are normally for administrative services, along with fees for any legal services. While the loan may be for a real estate purpose, the collateral for the loan is pledged assets of the plan. The most common example is an administered 401(k) plan that allows for borrowing. The plan assets are encumbered and the money is granted to the plan participant. Any interest they pay on the "loan" is re-invested into the corpus of the plan assets.

(7) a person who is licensed in this state as an attorney, real estate broker, or real estate agent when rendering services as an attorney, real estate broker, or real estate agent, but who is not actively and principally engaged in negotiating, placing, or finding

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 6 of 10**

mortgage loans; however, a real estate broker or real estate agent who receives a fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage loan for another person is not covered by this paragraph;

An attorney, real estate broker, or real estate agent are professions that are supervised by other regulatory agencies. In the course of discharging their professional duties, each of the referenced professions is supervised by laws of the state. Their duties are subject to review as part of their professional conduct by the boards or commission that govern the licensing process. The division has been discussing if an originator regulation bill should be drafted to make the professional licensing fall under the Division of Professional or Business Licensing.

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

An individual appointed by the court may be acting in the capacity as an administrator, guardian, or trustee. They are exempt because they are acting for the benefit of the party they are appointed to represent. An example of this capacity is a bankruptcy trustee who is responsible for administering the estate of a bankruptcy petitioner. The trustee has the authority to enter into contracts that are intended to provide the greatest amount of recovery for the creditors of the estate. In addition, a guardian may be appointed fiduciary duties to enter into transaction for an incapacitated adult, or for minor children.

In either situation, the trustee or guardian may enter into contract for liquidation of estate assets where they may provide "owner financing". In all these situations, the person appointed by the court is bound by court rules and their activity is supervised by the court.

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

A small business investment company is an incorporated body, a limited liability company, or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this the SBI Act, which, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years, and possesses the powers reasonably necessary to perform such

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 7 of 10**

functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

Under Alaska law, these are Business and Industrial Development Corporation (BIDCO) organized under AS 10.10. They are licensed, examined and supervised by the Division of Banking and Securities. Alaska has one licensed BIDCO which is regulated by the division. An out of state lender that has offices in Alaska is Evergreen Capital, LLC, is licensed from the state of Maryland.

Sec. 06.60.025(b) - Independent contractors are required to submit their contract for review by the division. A contractor and their principal are bound together through the contract for services.

The department does not agree with Mr. Martin, if the independent contractor was also licensed, then we would fracture the small broker market because a license would for an independent contractor would put them in the same position as a licensed broker. They would then be, more or less, competing against each other. Some independent contractors do not want to work on their own, but instead want to work for a business operator. This would restrict their ability to do so.

The department wants to preserve the right of hiring independent contracts, but still make them abide by the terms of this law.

Sec. 06.60.030 (4), (A), (B), and (C) - The information the applicant submits is not disclosed to the public. We do not publish their residence address. As a financial institution, their information is not subject to a subpoena. Mr. Martin's address would be protected under the law.

Sec. 06.60.040 - Investigation costs are similar to what the department charges other licenses for the cost of investigation. The amount quoted in the magazine cannot be relied upon because we do not know the scope or the amount review that goes into the application review. The investigations cost could be lowered, but then we may have to bill the application for additional fees.

The annual licensing fee is not an occupational licensing fee. Instead, they are a license for businesses in a regulated environment. The fees for other similar sized businesses are much higher. The department tried

**From the Division of Banking and Securities  
Response to  
John Martin's updated testimony on SB 272, dated 4/4/06.  
Page 8 of 10**

to accommodate the industry and came up with the program administration fee, where the consumers pay a portion of the department's administrative costs.

Sec. 06.60.050 - The department is agreeable to having the license be due on a biannual basis, but the fee should be \$500.

Sec. 06.60.070 - The department is agreeable to changing the issuance of a license to 30 days, if it is clear that the 30 days runs from the date the department receives a **full and complete application**.

Sec. 06.60.080(2) - We do interpret applications on a case-by-case basis because not all people fit a monolithic mold of ratios and numbers. The division applies this interpretation to all the entities that are chartered under AS 06, which include banks, trust companies, and credit unions.

The department would review the entirety of the application and the totality of experience the applicant has to determine ability to be licensed.

Sec. 06.60.090(1) - Safely handle mortgage is that there is no expectation of loss or financial misconduct on the part of the licensee. If the licensee cannot meet personal obligations, how would they handle any trust money paid to the broker or lender? The department has to have a belief that licensee will not inject consumer's funds into their own business operation as short term, "cash-flow management".

Sec. 06.60.090(3) - This section and others are being modified to match with section 270.

Sec. 06.60.110(a) - The department agrees that the license could be modified to be effective for two-years. The fee would be \$500.00 for every two years.

Sec. 06.60.110(b) - This section would be similar to what a corporation does when it pays its biannual license fee. The licensee submits a biannual report for any changes to the ownership, directors, or other information of the corporation. This section does not limit the ability of the business to be sold.

I think what Mr. Martin is discussing in Sec. 120, deals with the transfer of a license. If a license is to be sold or transferred it must be to a

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 9 of 10**

qualified party or the business should be transferred to an existing licensee. The department requested this language to make sure that all loans are either going to a qualified person who can obtain a license or one that is already a licensee.

Sec. 06.60.200(a) - the contents of the report would be clarified by regulation. The department would like to be able to track statistical data regarding mortgage loans in the state. Some of the information would be the loan amount, interest rate, term of the mortgage, for an example.

Sec. 06.60.210 - The department agrees the report cycle could be changed to biannual. However, the department disagrees with the fee being \$250.00, it should be \$500.00 every two years.

Sec. 06.60.220. - The premise is listed on the license. This section is required because the business location should match the license. If the business was in multiple floors of an office building, it would list just the primary location where the public first entered.

Sec. 06.60.250(b) - These are standard industry terms that are interpreted to mean the licensee will maintain their records in a manner that provides a clear historical record of the transaction. This would include documentation that provides evidence of significant decisions or actions taken on the loan.

Sec. 06.60.260 (c) and (d) - Each paragraph is distinctive in what it covers and should remain separate.

Sec. 06.60.280 - This section is deleted.

Sec. 06.60.310(b) - The division would agree to a section that would allow for inactive licenses. Any language for an inactive license should cover reactivation requirements, such as updated information from the licensee.

Sec. 06.60.340 - Brokers and Lenders provide the financing and with all other financial institution, a review is done to determine compliance with applicable laws. Financial institutions are examined every 18 months, instead we have stretched the cycle to 36 months for licensees.

Safes and vaults are terms to describe how the information is stored by the licensee, substitute language can be used.

**From the Division of Banking and Securities**  
**Response to**  
**John Martin's updated testimony on SB 272, dated 4/4/06.**  
**Page 10 of 10**

The department has a duty to consumers to verify compliance of a licensee and not to wait until a complaint is issued.

Sec. 06.60.410 - this allows the state to adopt federal guidelines as the minimum standards the state will apply against licensees.

Sec. 06.60.420(8) - the department agrees that this section should be deleted.

Sec. 06.60.420(10) - Agree with Mr. Martin that the additional language could be added.

Sec. 06.60.440(a) This would defined as part of the regulations for this act.

Sec. 06.60.530 - Penalties would assessed according to the severity of the infractions committed by the licensee.

Sec. 06.60.600(b) - Agree with Mr. Martin. The fee can be negotiated between buyer and seller.

Sec. 06.60.610 - The state has talked with title companies to collect the fee, but no decision has been reached. The state would not be held liable if an agent did not report all the fees it collected. **The agent would still be held liable for their failure to pay the fees.** The department will have the right to inspect the reports and payment of fee handled by agents to ensure their correctness.

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End,

Submitted by Gregory E. Williams re: SB 272, "Mortgage Lending"

American Financial Services Association

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32 (b) The factors to be considered when determining if a mortgage is in the  
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34 (1) the borrower's new monthly payment is lower than the total of all  
35 monthly obligations being refinanced, after taking into account the costs and fees  
36 of

37 the refinancing;

38 (2) the amortization period of the new loan is different from the  
39 amortization period of the loan being refinanced;

40 (3) the borrower receives cash in excess of the costs and fees of the  
41 refinancing;

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

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

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

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

48 and

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

51 **Sec. 06.60.440. Escrow accounts.** (a) A mortgage lender and a borrower may  
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53 broker shall keep in an escrow account all money that a the borrower is required  
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57 account must be a trust account or another account that is segregated from the  
58 other

59 accounts of the mortgage lender or mortgage broker. The mortgage lender and

60 mortgage broker may not commingle the borrower's money with the general funds  
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62 the mortgage lender and mortgage broker.

63 (b) A mortgage lender and a mortgage broker may not require a borrower to  
64 pay money into escrow to defray future taxes, to defray insurance premiums, or for  
65 another purpose, in connection with a subordinate mortgage loan, unless an escrow  
66 account for that purpose is not being maintained for the mortgage loan that is

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68 to the subordinate mortgage loan.

69 (c) A mortgage lender or a mortgage broker who is holding money in escrow  
70 for insurance premiums shall notify the insurer in writing within 30 days after the

30 billing address of the mortgage lender or mortgage broker changes, or 60 days before

31 ~~31~~ — the renewal date of the insurance policy, whichever is later.

(d) A mortgage broker who accepts funds belonging to a borrower in connection with a mortgage loan shall deposit all those funds into a trust fund account maintained by the broker in a bank or recognized depository in this state. The mortgage broker may not commingle the borrower's money with the general funds of the mortgage broker.  
All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the borrower.

I appreciate the opportunity to give testimony on the proposed licensing of mortgage lenders.

The opinions expressed herein are not the official position of any organization, but my own personal opinions.

First I would like to give you a little background information on myself so that you may better understand my views.

I have been a resident of Alaska since 1959. I went to school here and served in the Alaska National Guard. Since 1977 I have been involved in the real estate industry. I have been a real estate broker, investor and developer. For the last 20 years I have been in the mortgage loan business. I have been a loan originator, manager in charge of production for one of Alaska's largest lenders as well as the manager in charge of all their branch offices.

I am a member of the Predatory Lending Task Force in Anchorage representing the Alaska Association of Mortgage Brokers.

Presently I'm the executive manager of a small net branch operation that is affiliated with a large mortgage banker company.

I am the past President of the Alaska Association of Mortgage Brokers (AKAMB) and a founding member of that organization. I presently serve as the Committee Chair for membership, and a member of the Legislative Committee for AKAMB.

In addition, I am the President-Elect of the Western Regional Mortgage Brokers Lenders Conference (WRMBLC). WRMBLC is an organization of fourteen western states that puts on an educational program each year for people in the mortgage loan industry to receive education, up to date information from national leading experts, and a face-to-face expo with the nation's top mortgage lenders. This event has over 4,000 attendees with over 300 exhibitors.

As you can ascertain from the above information, I am a long time Alaskan with deep ties to our state. As such, I am very interested in the long term care of our state.

To that end, I was part of a small group of people that wanted to start an organization to promote professionalism, high ethics, and licensing of the mortgage industry in Alaska. We organized and started AKAMB as an affiliate of the National Association of Mortgage Brokers (NAMB) because they espouse the same things we desire. NAMB has a Code of Ethics that all must adhere to in order to become a member, as well as Professional Designations that can be earned through their educational classes.

Mortgage lending is a multi-faceted process. Part of the process is the availability of funds for loans and their associated programs. Perhaps some of you remember the mid eighties during the real estate downturn we had here in Alaska. Part of the problem back

then was that many mortgage lenders (we call them markets) pulled out of Alaska along with the mortgage insurance companies (who insure many real estate loans). Funding was difficult in those times.

One of the reasons was, Alaska has always been a "cash poor state" for mortgage funding. We rely on national markets that obtain most of their funding via mortgage-backed securities on Wall Street, to do business in our state. It is a constant job of convincing national markets, even today, to do business here. Many markets still think of us as igloos and dog sleds when they think of Alaska. They have no idea how vast this state is and that our utility bills in the summer aren't that bad, because we don't have to refrigerate our igloos, we have real homes.

Each year when I visit the markets that come to WRMBLC, I urge them to do business in Alaska. The more that do, gives our clients more and better mortgage capital. As we are considering licensing, we want to make sure it is done on a fair and even basis so that our markets do not begin to leave Alaska. After all, our state is really small potatoes on a national level compared to other states that we have to compete with for the same mortgage funding.

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 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" involved.

To be effective we need to license mortgage company entities. Requirements need to be fair and reasonable considering that many entities are small business.

But, more effectively, we must license all mortgage originators. They should be subject to a background check, testing for competency, and subject to continuing education requirements. An Originator must work for a licensed entity in order to perform their duties.

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.

By the same token, if mortgage company entity does not conduct business legally and control their originators, their license can also be taken away, thereby affecting their ability to earn income.

In regards to the proposed legislation:

I believe the intent of this legislation is to license mortgage company entities rather than individual originators. The language needs to be more clearly written. The bill has so

many exceptions, that it appears very little would be accomplished with licensing. The bill was also written with some of the language from the Division of Banking and Securities. While I appreciate their interest in licensing, the mortgage lending business does not have a "depository relationship" with its clients. As such some of the language needs to be changed and or deleted.

Our legislation needs to be a comprehensive bill that addresses the full picture and not just part of the solution. We want it done right the first time and do not want to have to come back to the legislature for future changes and additions.

I believe it would serve the public well if the legislature would obtain input from the Alaska Association of Mortgage Brokers members as well as the Alaska Mortgage Bankers Association members along with the independent mortgage lenders in this state. I dare say, most independent lenders are not aware of this bill. I think you will find most are very interested in the subject and would like to see the public protected in a fair manner.

The following comments are for the CS for Senate Bill 272 (L&C), 24-LS1644C (Adopted by the L & C on 3/30/06 as a working copy), that bill was also adopted by House (L&C) on 3/1/06.

Under "A BILL FOR AN ACT"

After "mortgage loan activities", I would add in parenthesis: (for residential owner-occupied property for one to four families located in the state.) By adding this phrase up front, it helps clarify which transactions are covered by this Statute.

Sec.06.60.010 (a)

Would change "a person" to entity (entity could also mean sole proprietorship). In fact many mentions of person in this legislation could be replaced by entity.

Sec 06.60.20 Exemptions (1)

Would delete this section, everyone should be subject to licensure to protect the public. Just because they only do a limited number of transaction per year should not exclude them from licensure. In fact, if they aren't doing many loans per year, they may not be on all the regulatory changes on loan programs or Federal regulations.

Sec 06.60.20 (2)

I question why a state, territory or the District of Columbia should be exempt. Entities regulated on a Federal may be exempt from state regulation, but why a state, territory or the District of Columbia would be exempt doesn't seem right.

Sec 06.60.020 (3)

Would delete "a subsidiary and an affiliate"  
Also see above, Sec 06.60.020 (2).

*(Please note there are approximately 300 originators in the state, almost two thirds would be exempted under the proposed bill as written).*

Sec 06.60.020 (4)

Would delete this entire section, a non profit needs the same accountability as any other entity to the general public. Non profit does not mean they are competent or are currently informed on Federal regulations, let alone State regulations.

Sec 06.60.020 (5)

Although a Federal regulated entity may be exempt, all other entities should be held accountable to the same standards as is proposed for licensees.

Sec 06.60.020 (6)

Would delete this entire section, fiduciary for an employee pension trust is not necessarily competent in mortgage lending practices, nor would they necessarily grant a loan on the best terms.

Sec 06.60.020 (7)

This section is confusing.

I would delete this section

Anyone who receives monetary enumeration needs to be subject to licensure

Sec 06.60.025 (b)

I would delete (1), (A), (B) and (1)

If the independent contractor agrees to operate in compliance with this chapter, why not license the independent contractor? The independent contractor by its very nature could be supplying loans to any number of licensees, let them be accountable for their actions via licensure. Does the independent contractor meet all the IRS standards to be truly called an Independent Contractor?

Sec 06.30.030 (4), (A), (B), (C)

Would delete requirements for residence address

I don't about you, but I would like to limit the amount of "junk mail" I get at home. This provision is another way for people to obtain my address, I desire my privacy.

Sec 06.60.040 Investigation

Would reduce nonrefundable fee from \$500 to a more realistic fee of say \$125. Recently the October 2005 issue of "Mortgage Originator" magazine, page 135 shows that background checks vary from \$10-\$125. I would cap this fee at the \$125 level, with the balance to be refunded to the licensee if not used.

If you look at 12 AAC, which concerns license fees for other occupations, you will see the initial fee for most is \$50 and that the licenses are issued on a "Bier.ual" rather an annual basis. This license should also be on a biennial schedule. Also, I would like to point out that the biennial fee for most licenses is under the \$300 threshold and recommend that this one be \$250 or less.

Sec 06.60.050 Initial annual fee

Would change to read Biennial fee (every two years)

Sec 06.60.070 Issuance of license (a)

Would change 90 to 30 days

Why in the world would it take 90 days to issue a license??

Waiting up to 90 days seems unreasonable. A person could end up waiting 25% of the year for a license. During this, they are not producing an income and the public is not being served.

Sec 06.60.080 (2)

Explain how "financial responsibility, experience, character and general fitness" and "the organization and operation of the applicant indicate that the business will be operated efficiently and fairly in the public interest," would be determined. Sounds too vague and open to interpretation.

Sec 06.60.090 (1)

Explain how this section would be determined

Bear in mind that a broker does not have a need for a net worth in order to do business with their markets, so we should have an exception for them. How do we interpret "safely handle?"

Sec 06.60.090 (3)

This section conflicts with 06.60.270 (1) which has time limitations, while 06.60.090 (3) does not infer any time limits.

Need to clarify.

Sec 06.60.110 (a)

License should be in effect for up to two years, not one.

Sec 06.60.110 (b)

Seems like we getting out of scope here. A business should be able to be sold or assigned any time otherwise we restraint of free trade, now, having said that, unless the "license" is transferred in a proper manner, the business would not be able to function until said license is properly transferred or obtained.

Sec. 06.60.200 (a) Annual Report

What does "concerning the business and operations of each location" really mean, needs to clarified as to exactly is needed.

Sec 06.60.210 Annual report

Would change to a Bi-annual fee of \$250 (every two years)

Sec 06.60.220 Location of business of making loans

Would delete this section

An entity should be able to operate anywhere they want. If they are affiliated with another type of entity, that should be disclosed to the general public at loan application.

A license may move at a later date from a single business to say the Atwood Building. So does he have to list all offices in that building??

Sec 06.60.250 (b)

Define "sound and accepted accounting practices".

Loan files are any where from one to two or more inches thick. There is no reason to have every scrap of paper on file, we need to define what are the minimum documents necessary for review. Also on this topic, lenders have to conform to the FTC rules and regulations regarding safekeeping of borrowers personal information. Just how much and what type of info can we release to the state (if any) and not be out of compliance with the Federal government?????

06.60.250 (c), (d)

Both paragraphs should be combined into one

06.60.260 (2)

Should be deleted as these expenses are being recovered via the Program Administrative Fee.

Sec 06.60.280 Minimum net worth

Per Mr. Davis this section was being deleted.

06.60.310 (b)

A person (such as myself) may want to take a year off and drive around in a motor home and discover the lower for a year or so. So why surrender the license and incur fees to get another when you get back? I point out that I don't see any provision to have an inactive license, perhaps we need one???

Sec 06.60.340 (a) Examination

The last sentence, after "The department shall conduct the examination" delete "at least every 36 months" and add: "no sooner than 36 months or when deemed necessary". There is no need to examine unless the department is receiving complaints. We don't examine real estate brokers or property inspectors every 36 months, why should we do it to lenders?

Sec 06.60.340 (c) (1)

Delete "safes, and vaults of the licensee;" (Banking language not pertinent)

Sec 06.60.340 (d)

Delete this section

This seems like an attempt by the state government to build an empire on the backs of small business. Their funding for will come from license fees and the Administrative Fee. It would be hard for small business to budget for this and of course the expense is going to be covered by the general public in the form of higher costs for financing. Again this is banking language.

Sec. 06.60.410

Delete this section

This section is redundant. Mortgage entities are already charged with compliance with Federal regulations and laws. We don't need another level of bureaucrats trying to interpret Federal issues, let alone having to pay for them. The expense will be untimely be paid for by the consumer. Why would Alaska legislatures want to be involved with Federal regulations? Our licensing provisions should cover items not already regulated on a Federal or State level.

Sec 06.60.420 (8)

Delete

Why should a licensee be held hostage for non payment of a bill? Why should a licensee now be a collection agency for appraisers? If a licensee doesn't do this for realtors or home inspectors, why for appraisers? This section is not pertinent.

Sec 06.60.420 (10)

Would add (C)-The underwriter changes any portion of the loan request including but not limited to rate, term or down payment or loan program.

Sec 06.60.430

Delete this section

A borrower should be able to refinance whenever and however they want without permission from the "state" to do so. These borrowers have been through the loan process before and know how it works and are a better judge of what is good for their individual situation than anyone else. Recently Montgomery, Maryland passed a lot of new laws and 42 Lenders pulled out of the area and would not do loans there. We don't need the same situation to arise here in Alaska.

Sec 06.60.440 (a)

Define "other lawful purposes for this section."

It appears that an company would be required to have two different accounts to hold borrower funds, we need to clarify this.

Sec 06.60.530

Any penalties levied should be relevant to the seriousness of the infraction.

A clerical error for example should not be as severe as covering up important facts of fraud, etc.

Sec 06.60.600 (b)

By mandating the buyer pay this unwanted fee, we may be in conflict with Federal agencies such as HUD, VA, USDA, as they may not permit the buyer to pay the fee under their regulations. If so, many people would loose the benefit of these Federal programs and would unnecessarily be discriminated against. In addition, the entities exempted under this legislation would also not have to pay this fee and would have an unfair trade advantage over licensees that are regulated. By this chapter.

Sec 06.60.610

Who will the agent be?? How will they determine which documents will incur the fee under this chapter. And how convenient that the State will mandate the fee be collected, but NOT BE LIABLE for an agent's defalcation or failure to account for the fees! And on top of that, we are giving 25% of the fee away to the agent??? Doesn't seem right or fair.

Sec 06.60.990

There are many question marks in this legislation. I believe that adding the following definitions to this section would help clear up some misunderstandings:

Organization  
Operations  
Financial Responsibility  
Experience  
Activities  
Character  
General Fitness  
Public Interest  
Safely handle  
Relevant Information  
Business Operations  
Significant Change  
Loan Activity  
Written Commitment  
Prequalification Letter  
Borrowers Best Interest  
Unsafe practice  
Unsound practice

All of these terms are found in the legislation but not defined and should be to be better understood by all parties.

In conclusion:

The present CS as is written needs major revisions to be effective. It also doesn't make sense without provisions for originator licensing. I would say that most problems in the mortgage loan industry arise from a misunderstanding between the loan originator and the client and not the loan entity.

Clear effective laws are necessary to protect the public and to promote professionalism for all mortgage loan originators. Control of lending entities, proof of competency and education of originators is what will best serve the public in one comprehensive bill.

In the mortgage loan business we have to have two packages for one loan approval: the credit package on the borrower, and the property package that concerns property issues. We need the same thing for mortgage lending: licensing of entities and licensing of originators.

I would appreciate the ability to review the new CS "P" as I just received it and have not had an opportunity to review it for testimony. Would you allow my written comments on it before moving it out of committee, or allow me to testify at the next hearing??

I appreciate your attention to these matters and would be happy to entertain any questions you may have or you may call me at 907-250-9000.

Respectfully Submitted,

John Martin  
Anchorage, Alaska

**Response from Division of Banking and Securities  
To letter from Greg Harsha, The Mortgage Network, LLC  
Dated April 4, 2006**

Sec. 06.60.300(2)

The division would use this section of law to determine if under Sec. 06.60.070-.090 if there existed a circumstance that the applicant would have not be able to receive a license in their initial application. If the applicant concealed facts in their application that would have been a cause to deny a licensee that is grounds for revocation at a future date when they become known to the department.

Sec. 06.60.340(a)- (d)

Staff Examiners

Examiners that work in the department must meet minimum standards and have completed additional training classes. A typical examiner has a Bachelors of Art or Science if the field of Finance, Business Administration, or Accounting. Their background should have provided them with strong skills in accounting and business management. In addition to their college education, examiners are required to attend a minimum of approximately 26 weeks of educational courses that encompass a variety of subject, which include the compliance examination standards for mortgage lender/broker operations. These educational courses are provided by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Conference of State Banking Supervisors (CSBS). The educational courses are the same courses required of federal regulatory examiners in order for them to achieve the status of a Commissioned Examiner.

A Commissioned Examiner for a federal regulatory agency is able to sign-off on examinations and to pursue regulatory enforcement against institution that meet the level of enforcement. Under the State of Alaska, Financial Institution Examiner III are the most senior level of examiners and can request regulatory enforcement from the Director of Banking and Securities. The Financial Institution Examiner I conducts examination under the supervision of either a Financial Institution Examiner II or III. A Financial Institution Examiner II is a journeyman examiner that is capable of performing all duties of an examiner and has completed the required educational courses.

The state personnel ranges are a Financial Institution Examiner I (Range 17), Financial Institution Examiner II (Ranger 19), and Financial Institution Examiner III (Ranger 21).

A large number of questions have surrounded the issue of examinations that can be conducted by the division. The examination provision of the bill allows the division to conduct examinations every 3 years or sooner if there is a credible complaint.

Triggering an examination or investigation

A credible complaint would usually be based on a written complaint from a consumer and it would include documentation to support their complaint. As the division currently handles complaints for other sections of law under AS 06, the process for the complaint is to receive a written complaint detailing the set of allegations the consumer wishes to report, and they supply as much documentation as possible to support their allegations. The division will review the allegation and then interview the consumer to obtain additional information as necessary. If the complaint appears to have merit based on the facts compared to established law, the division will contact the licensee for clarification and response.

The division is committed to a policy that it will only examine based on the level of activity for each licensee – as it has stated to each industry group. A broker who only provides the introductory qualification and placement of a consumer's mortgage loan application with an institutional lender would be examined for their sales activity. What documents does it routinely provide the consumer when placing a mortgage loan? Some mortgage brokers will allege that they do not interface with the consumer, but this is debatable.

**Usually, the mortgage broker conducts the primary interview to determine the qualification level of the consumer and then matches the consumer up with one of the various loan programs that – based on the broker's knowledge of the consumer's financial ability – they would qualify to receive a mortgage loan.**

Given this industry practices, under SB 272, the scope of the examination would cover – namely the commitments made by the broker, whether or not they were authorized to make such commitments.

Scope of examination

- If the mortgage broker or lender conducts no more than just the initial interview, then the examination would cover the document preparation by the broker or lender.

- If the broker or lender was party to the actual closing and funding of the loan, the examination would cover the closing process to ensure compliance with applicable laws.
- If the broker or lender was the servicer of the mortgage loan, the examination would cover compliance review to ensure the payments were properly being processed. If taxes and insurance were in trust accounts, there would be a verification that the lender or broker was properly paying those items when due.

The examination process the division would employ would be based on an increasing level of complexity based on the number of services the lender or broker would conduct. It is not meant to make all licensees round pegs to fit into a round hole. For licensees outside of the division's offices in Anchorage or Juneau, examinations would be conducted either through the mail or on-site, based on the licensee's level of activity. For instance, a licensee that either brokers or originates a small number of loans per year and lives in Ketchikan, they most likely would be subject to a mail examination every three years. Their cost would be for the Examiner's time and the cost of mailing the documents to the examiner.

#### Cost of Examination

On average, the cost of the examination is estimated to run between \$200 and \$5,000, depending on the level of activity of the licensee. If a lender or broker performs the underwriting, origination, funding, and servicing of loans, the cost of the examination would be at the higher end.

#### Sec. 06.60.400.

The department wanted to have a separate section dedicated to advertising to cover all types of broadcast media. In addition, the language used is to ensure that certain loan information is disclosed in the appropriate manner, to be clear to the members of the public.

#### Sec. 06.60.410.

This enables the state to adopt the federal law for enforcement. Instead of re-writing pertinent federal law and thus creating a dual regulatory environment for licensees to be required to operate under, it is much more streamlined to allow the state to enforce existing laws.

#### Sec. 06.60.430 etal

(a) the intent is to protect the consumer from constant selling from the lender/broker the consumer used in the house financing.

(b)(1-7) these are all the factors to consider when determining if the loan is/was in the best interest of the borrower. Each singular items in and of itself can be the sole consideration for the benefit derived from the refinance. The refinance in total must be considered.

Sec. 06.60.600.

The program administration fee is separate of recording fees. If the department did not collect the program administration fees, the industry would have to pay licensing fees of up to approximately \$2,000 per year depending on the number of licenses issued. By tying the program to the direct product – namely a mortgage loan – the division is compensated based on the volume of consumers that are participating in the program.

The department will not only be assisting Alaskans that have loans with licensees, but in addition it will be helping Alaskans that may have a mortgage through an exempted entity. For example, we can file a letter on behalf of an affected Alaskans to an exempt entity or their regulatory agency advising them that they are in violation of Alaska law. Right now we have no law and no authority. In addition we will be able to coordinate with other states regarding violation of law from their regulated entities.



## The Mortgage Network, LLC

1752 Tongass Avenue • Ketchikan, Alaska 99901 • (907) 225-5626 • FAX (907) 247-2428

Honorable Bert Stedman  
State Capital, Room 30  
Juneau, AK 99801-1182

Re: SB 272

Dear Senator Stedman:

I would like to address the following points in SB 272:

**Article 3, Sec. 06.60.300(2);** I would like it to be clear who determines this or by what guidance they would act. Is guidance simply this chapter?

**Article 3, Sec. 06.60.340(a);** Who in the department is qualified and what training would such an individual receive. Is there a pay scale associated with these positions, and will the department be hiring from outside? I might be interested.

**Article 3, Sec. 06.60.0340(d);** This provision is absolutely unreasonable for a small mortgage broker in Ketchikan, or Fairbanks. The mandatory financial burden is in no way equal or fair. There should be no penalty for doing a good job.

**Article 4, Sec. 06.60.400;** This section has no definition and is already address in Federal if not State advertising law. It is definitely covered in the laws enforced by the Federal Securities and Exchange Commission as well as the Federal Trade Commission.

**Article 4, Sec. 06.60.410;** Why must Alaska have a law that simply states one must abide by specific Federal laws.

**Article 4, Sec. 06.60.430(a);** What prevents a different mortgage lender or mortgage broker from refinancing the loan, even if it is or is not in the borrower's best interest. Why is there no legal provision for his scenario? It serves the same end.

**Article 4, Sec. 06.60.430(b)(1);** What slide-ruler or other arbitrary notion would be used to determine that the costs and fees would or wouldn't make a refinanced mortgage loan within a 12 month period in the borrower's best interest?

**Article 4, Sec. 06.60.430(b)(2);** It should be defined how one amortization period is better than another amortization period at any given time. This must be delineated. Here is an additional question; is a simple change in term by itself satisfactory evidence that a refinanced mortgage loan was in the borrower's best interest?

Article 4, Sec. 06.60.430(b)(3); Can it possibly be determined that if the borrower receives cash at closing from a refinance mortgage loan, then it is in the borrower's best interest? This is a poor test.

Article 4, Sec. 06.60.430(b)(5); This part is too subjective with regard to costs and fees. There needs to be clear guidance. Besides, there are current Federal laws regarding costs and fees.

Article 4, Sec. 06.60.430(b)(6); This part seems a loophole to me. Who determines when it is a "bona fide" personal need? Does this need to be approved by the State agency first? Doesn't the satisfaction of a "bona fide" personal need also satisfy the borrower's best interest test? Doesn't this go without saying?

Article 4, Sec. 06.60.430(b)(7); Should this also include mortgage loans that are due within 2 years, as in the case of a mortgage with a balloon payment.


Article 6, Sec. 06.60.600; I feel this article and section should be deleted in its entirety. It serves no purpose other than to create revenue from an existing revenue source. The fee for recording of mortgage documents is currently being collected by recording departments all over the state. This piece of legislation is preposterous.

From this, it is also not clear who would pay the fee. Is it the originator, or the funder. This is not the way to fund the mortgage lending enforcement division. Where is this method standard procedure in other states?

Article 9, Sec. 06.60.990(8)(C)(iv); Why is residential construction lending exempt?

Thank you for your time.

Sincerely Yours,

  
Greg Harsha  
The Mortgage Network, LLC

Enclosed: CC sheet

# INDEPENDENT LENDERS OF ALASKA

5313 ARCTIC BLVD., SUITE 206

ANCHORAGE, AK 99518

Phone: (907) 279-8551 Fax: (907) 274-7630

E-Mail: [kgain4cash@msn.com](mailto:kgain4cash@msn.com)

March 14, 2006

Senator Con Bunde, Chair  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Juneau, Alaska

Reference: CSSB 272--Proposed Legislation to License Mortgage Lenders and Mortgage Brokers for Residential Mortgages.

Dear Senator Bunde and Committee Members:

At the hearing on CSSB 272 last week, a number of questions and issues were raised. Since I worked with the Division of Banking and Securities in writing this Bill, I would like to make an attempt to answer the questions and respond to some of the issues raised by the opponents of the Bill.

**Definition of "Predatory Lending":** This term does not have a specific definition other than to generally mean lending practices that are unfair to the borrower. For that reason the term "Predatory Lending" is not used in the Bill. Instead the types of prohibited activities by mortgage lenders and brokers are specifically listed in Sections 06.60.400 thru 06.60.440.

**Complaints can't be anonymous and must be in writing:** I believe the procedure for complaints is addressed in the Alaska Administrative Procedures Act, which this Bill is subject to (see 06.70.700). In any event, administrative issues such as complaint procedures are better addressed in regulations rather than statutes.

**Clarify what would trigger an audit and how often it would be done:** Section 06.60.340 requires an *"examination of the licensee to determine whether the licensee is complying with the provisions of this chapter and regulations adopted by the department and to obtain information required by the department under this chapter"*. Such an examination shall be conducted at least every 36 months, and may be conducted if a credible complaint is received by the department. Unfortunately, someone started referring to this very reasonable examination process as an "AUDIT", and therefore opponents of the Bill have created fear in the minds of some mortgage brokers familiar with the high cost and detailed effort involved in a

financial audit by a CPA. This Bill does not require audits.

**Required Continuing Education:** This is a Bill to license mortgage lending and mortgage brokerage companies. How can you require continuing education by a company?

**Deal With Loan Originators:** The proposal to license originators relates to the licensing of employees of mortgage lenders and mortgage brokers. The opponents to this Bill want to be regulated like the real estate industry under the authority of the Division of Occupational Licensing. However, all other financial service entities (*banks, credit unions, small loan companies, pay day lenders and securities firms*) first require licensing of the company. Only securities firms also require licensing of employees. While the licensing of originators has some merit, there is currently no proposal on the table, and if this Bill fails to become law the whole issue becomes moot as there would be no licensed companies.

**Too Many Exemptions:** By only counting, the number of exemptions does seem high. However, when analyzed, they are all logical. Does it make sense to require licensing of any of the following exemptions?

1. Lenders loaning their own money who make 1 or fewer loans per month?
2. A federally or state regulated bank or credit union that is already subject to regulation?
3. A subsidiary of a bank or credit union that is also subject to regulation?
4. Non-profit corporations that make charitable loans?
5. Government agencies?
6. A fiduciary of a pension plan who makes loans only to plan participants?
7. Licensed attorneys and real estate salesmen and brokers when rendering a service for which they are already licensed?
8. A fiduciary acting under authority of the court?
9. A person licensed by the SBA as an SBIC?

While it is true that banks and credit unions do make many mortgage loans, they are already subject to rigorous regulation. In addition, a state Legislature has no authority to regulate federally chartered financial institutions.

**Big Guy vs. Little Guy:** While it is true that all those testifying against the Bill are from small companies, there is absolutely no justification for framing the issue in that manner even though the opponents effectively used the time proven rhetoric of saying, "*this Bill hurts small business*". Our organization, which supports the Bill, is comprised solely of small businesses. For example, my company, Cash Now Financial Corporation, consists of my partner, myself and two half time employees. We are the little guys, and we support this Bill.

Many of the opponents have not taken the time to read the Bill and discuss it with the Department. It is true that there was an earlier draft that was anti-small business (*It would have cost my little company \$25,000 per year*), but that is not true with this Bill. It is my estimate that the annual cost of regulation for our company will be about

\$1,500 per year averaged over 3 years. (This includes my estimate of the cost every 3<sup>rd</sup> year of the mandatory examination, including lost productivity of our employees during the examination)

CONCLUSION: As you will recall, one of the persons testifying against the Bill admitted that he hadn't read the Bill. It was obvious that several of the people testifying against the Bill were testifying based upon incomplete information told to them by others without a thorough and independent analysis of what the Bill actually says. While I would prefer not to be regulated, given the magnitude of complaints being received by the Department it is unrealistic to argue that regulation is not needed. Because the Department believes this Bill gives them the tools they need to provide consumer protection and because the Bill does not place an excessive burden on ethical small businesses, it should be passed.

Sincerely,  
Independent Lenders of Alaska

A handwritten signature in black ink, appearing to read "Kenneth Jay Gain", written over a horizontal line.

Kenneth Jay Gain,  
Secretary/Treasurer  
Legislative Chairman

# INDEPENDENT LENDERS OF ALASKA

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ANCHORAGE, AK 99518

Phone: (907) 279-8551 Fax: (907) 274-7630

February 27, 2006

Senator Con Bunde, Chair  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Juneau, Alaska

Reference: CSSB 272--Proposed Legislation to License Mortgage Lenders and Mortgage Brokers for Residential Mortgages.

Dear Senator Bunde:

Our organization is comprised of 15 small private lenders within the State who specialize in making mortgage loans to borrowers and on properties that do not qualify for loans through banks and credit unions. I am submitting this letter in support of CSSB 272.

Like many small Alaskan businesses, our members would prefer to maintain our current status as businesses not subject to government regulation. Unfortunately, we are advised by the Division of Banking & Securities that they receive approximately 20 complaints per week concerning mortgage financing. We are also aware that Alaska is one of the few states that does not regulate mortgage lenders, that are not banks or credit unions, and that Congress is now considering legislation that would require each state to do so. We have therefore accepted the fact that reasonable regulation to protect Alaska consumers is needed and necessary.

Since June of last year, we have worked with the Division of Banking & Securities to draft legislation that will provide meaningful protection for consumers without placing an undue regulatory burden on small businesses. Because our members lend their own money, they don't need the same degree of regulation that is required for banks and credit unions which lend depositor's money. As with any legislation, this proposed bill doesn't provide everything we would like, but we do consider it to be a reasonable proposal. We believe that this bill merits the support of the Alaska Legislature for the following reasons:

- 1 It provides strong consumer protection against abuses in Mortgage Lending.
- 2 It gives the Alaska Division of Banking & Securities strong enforcement ability.
- 3 The enforcement of the Act will be self funded from fees paid by licensees and a small \$10 per loan fee for each residential transaction paid by borrowers. *(This is similar to the funding methodology used by several other states)*
- 4 In addition to being applicable to small independent lenders, such as our members, it will also be applicable to the out-of- state "internet lenders" that we have been advised are a major source of complaints to the Division of Banking & Securities.
- 5 Although the Act will restrict the business freedom that small independent lenders have enjoyed, the bill is not so onerous as to place an undue regulatory burden on Lenders who treat borrowers in a fair and ethical manner.
- 6 While we understand this Bill represents only a portion of the Divisions full regulatory package which will also include mortgage originators, we believe it is a good first step that will bring the issue forward for legislative consideration in a timely manner that can hope for passage this year.

If I can answer any questions that you, or the members of your Committee, have concerning this legislation, please contact me.

Sincerely,

Independent Lenders of Alaska



Kenneth Jay Gain,  
Secretary/Treasurer

**Amy Seitz**

---

**From:** John Carman [jcarman@homestatemtg.com]  
**Sent:** Friday, March 31, 2006 9:53 AM  
**To:** Sen. Con Bunde  
**Cc:** Tim Kelly; Amy Seitz  
**Subject:** Senate bill 272

Senator Bunde

I have testified in the past regarding the above bill and I will be out of town next week and will not be able to testify

First I want to recognize that this is not the most important piece of legislation for you to consider this year. I have been very impressed and greatly appreciate the efforts that Senator Wagoner and his staff have made to address all parties concerns. If I had my way this would have been in front of you 4 years ago instead of in this session. Five years ago I recognized that our industry needed some form of regulation. I started volunteering my time researching other state laws and polling others in my industry to try to gain support for legislation. My goal from the start was to get legislation that would accomplish the most consumer protection with the least industry regulation and bureaucracy. Over the last 5 years I have sat at committee after committee redrafting draft after draft of proposed language. The certainties that I have come to from this are.

- 1) We will never get a bill that all parties are happy with – as a matter of fact I doubt there is one sentence in the entire bill that I could get everyone to agree to.
- 2) We very much need a bill – and therefore I have compromised my position again and again in the interest of getting something that we can agree on.
- 3) The most sure way to defeat a bill is to amend and study it to death

The bottom line is we are the only state without legislation. We are way past due to pass a bill. What you have to ask is - are the consumers of this state better protected with no bill and no agency to enforce existing federal law –or are they better protected with this bill. I personally think the answer is clear – I hope you feel the same.

John Carman  
Chairman – Legislative committee  
Manager  
Homestate Mortgage  
3801 Centerpoint Dr #100  
Anchorage, Alaska 99503  
Direct (907) 762 5894  
Cell (907) 360 1140

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**ALASKA MORTGAGE BANKERS ASSOCIATION  
P.O. BOX 9-2691  
ANCHORAGE, ALASKA 99509-2691**

March 7, 2006

Senator Con Bunde  
State Capitol, Room 506  
Juneau, Alaska 99801-1182  
ATTN: Senator Wagoner  
FAXED: 907-465-4779

RE: SB 272/HB 424


Dear Senator Bunde,

As President of Alaska Mortgage Bankers Association, I can't begin to tell you just how long this organization has been working on a Licensing Bill for the State of Alaska. In the past twelve months momentum has increased and our Association along with the Alaska Association of Mortgage Brokers and the Division of Banking have worked very closely in making a licensing bill a reality.

The Alaska Mortgage Bankers Association would like to express our support for SB272. We recognize the intent and spirit of the bill. Through the coming weeks we will work very closely with the Division to further assist in language and definitions for SB272.

It is my sincere commitment to work in accomplishing Mortgage Lending Licensing this session. AMBA appreciates your and your staff's efforts and look forward to continuing to work closely in overcoming this challenge.

Sincerely



Kevin M. Breeland  
President  
Alaska Mortgage Bankers Association  
907-222-8823 direct line  
907-743-9623 fax  
[www.akmba.org](http://www.akmba.org)  
[breelandk@residentialmtg.com](mailto:breelandk@residentialmtg.com)

cc: John Carman, Legislative Committee Chair, Alaska Mortgage Bankers Association



ALASKA ASSOCIATION OF REALTORS, INC.  
4205 Minnesota Drive Anchorage, Alaska 99503  
Telephone (907) 563-7133 Fax (907) 561-1779  
www.alaskarealtors.com

February 28, 2006

The Honorable Tom Wagoner  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska 99801

RE: Senate Bill 272, relating to mortgage lenders and persons who engage in activities relating to mortgage lending

Dear Senator Wagoner,

The Alaska Association of REALTORS® with over 1,600 members statewide supports Senate Bill 272, which relates to the licensing of the mortgage lending industry in Alaska.

We favor this bill because up until the last decade or so, prospective homebuyers could be relatively certain that they knew what they were getting into with their mortgage loan. This is not the case anymore with predatory lending practices in the mortgage industry.

This bill would assist in protecting the homebuyer from incredible debt and loss of property equity as a result of predatory lending practices.

The Association encourages the passage of Senate Bill 272.

Sincerely,

A handwritten signature in cursive script that reads 'Don McKenzie'.

Don McKenzie  
AAR President



# **GMAC Mortgage**

Jim Picard  
District Manager

March 23, 2006

Senator Con Bunde  
State Capital, Room 506  
Juneau, Alaska 99801-1182

Re: SB 272

Dear Senator Bunde:

As an individual who has been involved in real estate and mortgage lending in Alaska since 1975, and twice past president of the Alaska Mortgage Bankers Association, I would like to provide my input regarding the legislation that is currently before your committee.

I wholeheartedly support the intent of the legislation. Achieving the American Dream of Homeownership is a goal that the vast majority of those residing in Alaska wish to achieve. Unfortunately the process, by nature and because of abuse by a minority of individuals, financing a home is one of the most stressful transactions an adult can experience in their lifetime.

The draft legislation, in its present form, for the most part, is an outstanding bill and will go a long way to minimizing the abuse Alaskans have experienced financing a home. My concerns regarding the present language deal with several sections:

**Sec. 06.60.020. Exemptions.** Paragraph (1) states "a mortgage lender who makes six or fewer mortgage loans within a period of six consecutive months;" would be considered exempt. I would recommend that this exemption be deleted for the following reasons: I can think of no way that the Division of Banking, charged with administering the proposed legislation, will be in a position to identify lenders or brokers who claim to close less than six loans in a six month period. Currently the Division of Banking will confirm that they are powerless to act because of the lack of legislation. With legislation in its present form they will still be unable to act if any entity, anywhere in Alaska, the United States, or the world represents that they close less than six transactions in

six months. Essentially six different consumers would have to complain about the same lender in a six month period before the division would focus on them. I think it is important to understanding that someone originating mortgage loans can do so with an internet connection anywhere. Holding all individuals and firms accountable by requiring licensing for every transaction is critical. Appraisers, real estate sales agents, and virtually every other professional licensed in the state of Alaska does not get an exemption for six transactions in six months. With this exemption the legislative result will regulate the more legitimate lenders but give a gate pass to the unscrupulous lenders hiding behind the "6 in 6 rule".

**Sec. 06.60.420. Prohibited activities.** Paragraph (4) states as a prohibited activity "**fail to account for or deliver to a person, a document, or another thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report ...**". It would be my recommendation to not single out a particular product or service provider in a transaction. If like language is to remain, to not specify "borrower". Funds provided to the lender in advance of ordering an appraisal are negotiated by the buyer and the seller contractually and governed more by common practice. In Fairbanks, for instance, the appraisal funds are typically advanced by the buyer, while in Anchorage, by the seller. To limit a prohibited activity to money advanced only by the borrower does not protect the seller if they were the party that advanced funds per the terms of the contract to sell the property.

Paragraph (8) states as a prohibited activity "**fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are ... requested (and) performed...**". My recommendation would be to delete this paragraph. There is no question that appraisers, or for that matter credit bureaus, title companies, flood certification services etc. deserve to be paid for services requested and provided. The danger here is singling out one vendor category in the mortgage process and reducing the Division of Banking to a collection agency, but only for the appraisal industry. I believe that financial irresponsibility on the part of a lender or broker, if it occurs, is addressed in other sections of the legislation. Secondly, the appraiser or other vendor providing the service has a common sense business obligation, like any other business, to provide their products and services to those they chose. If the appraiser is not getting paid, or is dealing with a lender that is frequently tardy, the appraiser has some responsibility. Only the Veteran's Administration assigns appraisers, which essentially requires the appraiser to perform an appraisal for a particular lender, but the VA takes a hard position with any lender that does not satisfy the appraiser's invoice in a timely manner. This provision seems to simply be "special interest" legislation that will not prevent this problem from occurring, and if it does, it will be at the expense of other vendors who won't get paid where an entity co-mingles funds.

Paragraph (10)(B) states that activity is not prohibited if **“the person funds a loan at the rate, terms, and costs stated in the good faith estimate provided to the borrower at the time of the prequalification letter or loan commitment.”** Rates are based on market conditions that change throughout the day, every day that the financial markets are open. Rates quoted up-front when the Good Faith Estimate is provided to the applicant within three days of the application, can only be based on the interest rate and costs in effect at that moment for that product and risk variables. The Federal government refers to the GFE as an estimate and a rate quoted on the day of application, frequently where many variables regarding the loan to value or credit worthiness of that borrower and loan product are unknown, it would be practically impossible to quote a rate and be required to honor it during the two weeks to 10 months (some new construction) it may take before the loan actually closes. Further, a loan commitment can be issued citing an interest rate, but unless the applicant makes the conscious decision to “lock” their rate for the period covered until the loan is closed, typically at added cost because “time is money”, no GFE or loan commitment can guarantee a rate. My recommendation would be to delete this language and substitute language that guarantees a rate based on a contract the lender and the borrower both agree to where the stipulation is that the rate and terms apply so long as credit, loan program and other conditions do not materially change.

Paragraph (11) states that a prohibited activity occurs when one **“engages(s) in a practice or course of business in which the ultimate rates, terms, or costs of mortgage loans are materially worse for the borrower than are represented to be in the first good faith estimate the person provides the borrowers”**. Again, the GFE is an estimate, and market conditions change, and redefining the Federal government regulated GFE to now be a lock contract between the lender and the borrower will not be enforceable. I see a clear collision course over the intent and use of the GFE, with the state legislation redefining the Federal GFE to include lock contract provisions. Again, the solution to this challenge is to not redefine the GFE from its original Federal intent and turn it into a lock contract, but rather language that defines a lock contract and the responsibility of the parties to that contract. GMAC Mortgage has a contract, presented to the borrower at time of application, offering the choice of either “locking” or “floating”. It is the borrower's choice whether they wish to lock or float.

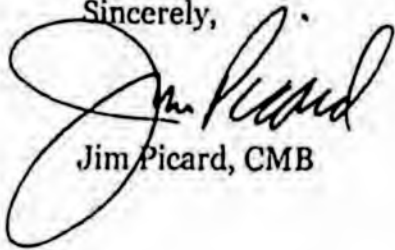
Other language that I feel is critical to this bill is disclosing the location of the lending entity, whether lender or broker, in all publicly posted or distributed material. The borrower is entitled to know where the lender or broker they are dealing with has their office. The Division of Banking would have that information, but the average consumer would not.

There is no question that this legislation is needed. Alaska is the only state without mortgage lender/banker/broker legislation, which encourages

unscrupulous individuals from anywhere there is an internet connection of taking advantage of unsuspecting Alaskans, experienced and inexperienced.

Thank you for taking the time to consider my input. Please let me know if you have any questions or additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Picard". The signature is stylized with large loops and a long horizontal stroke at the end.

Jim Picard, CMB

CC: Senator Ralph Seekins  
Senator Ben Stevens  
Senator Johnny Ellis  
Senator Bettye Davis  
Senator Thomas Wagoner  
Representative Tom Anderson  
Representative Bob Lynn  
Kevin Breeland, President, Alaska Mortgage Bankers Association  
Doug Issacson, President, Alaska Association of Mortgage Brokers  
John Carman, Legislative Chair, Alaska Mortgage Bankers Association  
Roger Prince, Division of Banking, State of Alaska  
Tim Kelly, Lobbyist

**Amy Seitz**

**From:** Jane Alberts  
**Sent:** Monday, March 06, 2006 10:52 AM  
**To:** Amy Seitz  
**Cc:** Tim Kelly  
**Subject:** SB 272  
**Importance:** High

letter for SB 272

Lynne:

Just an FYI: I'm forwarding this to you because it appears Sen. Bunde's name was spelled incorrectly in the address...

Shannon Straube, Staff  
 Office of Senator Ben Stevens

**From:** Petesy Lust [mailto:petesy@mtaonline.net]  
**Sent:** Monday, March 06, 2006 9:08 AM  
**To:** Senator\_Con\_Bundy@legis.state.ak.us  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* SB 272  
**Importance:** High

Recently, there was legislation introduced in the Alaska State House as HB 424 and the Alaska Senate as SB 272 that deals with the licensing of Lenders and Mortgage Brokers. This piece of legislation is being touted as a "consumer protection" bill and was authored by the Alaska Department of Banking and Commerce along with an individual from the Alaska Association of Mortgage Bankers.

These bills set forth regulations, compliance, and licensing requirements for all Lenders and Mortgage Brokers in the state of Alaska. However, the authors left out the most critical element of protecting the consumer; the licensing of each and every Mortgage Loan Originator in the State of Alaska. This fundamental precept of Loan Officer licensing is truly the one paramount component of consumer protection along with Lenders and Broker licensing. Without the licensing of Loan Officers, who actually meet with the consumer, the Lender and Broker licensing has no teeth and lacks any degree of enforcement. It is a known fact most all unscrupulous activities begin at the mortgage loan originator level, but the Bills make no reference to licensing and education of loan officers.

Other issues of this Bill are there are too many exempt entities being allowed. The authors of this bill have exempted certain individuals and institutions. Namely,

- \*Banks
- \*Credit Unions
- \*Savings Institutions
- \*a subsidiary or affiliate of a Bank, Credit Union, or Savings Institution
- \*a non profit corporation
- \*an agency of the government or a quasi-governmental agency
- \*an employee of any of the above
- \*an independent contractor working for any of the above

The above will exempt most all large entities from regulations and licensing, but the small independent brokers be

subject to the bill. We believe that Lenders, Brokers, AND Mortgage Loan Originators all need to be licensed. NO EXCEPTIONS!!!

We are asking for your help and voice to force true consumer protection. We must incorporate into this Bill, licensing of mortgage loan originators, which includes competency and continuing education requirements, for true consumer protection.

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Mary Jo King  
PO Box 244561  
Anchorage, AK 99524-4561  
(907) 884-1640

15 March 2006

Shellie Buck  
Platinum Funding Group  
3120 Denali Street, Suite B  
Anchorage, AK 99503

Dear Shellie,

When I first came to you with concerns about my mortgage loan in process with another broker – Northstar Mortgage – it was hard to envision closing on schedule. The other "loan officer" there had a great sales pitch, but the process had been rife with problems. First she claimed an inability to provide the mortgage rate promised to me when I made my application. Then she allowed several lenders to pull my credit report without authorization – despite the fact she had already done so and promised that further inquiries would not occur. Furthermore, paperwork sat on her desk without the timely attention it needed for closing. And perhaps worst of all, she became totally inaccessible. My phone messages would go unanswered for days. I finally had to appear at her workplace and wait for an opportunity to get her attention.

Thus I arrived at your office in a very emotional state, mere days before the scheduled closing. To my everlasting amazement, you fixed everything *right before my eyes*. You made a great mortgage happen for me with one phone call. (I found out later the Northstar broker didn't even know the product existed!) We faxed a notice to her on the spot to take her off the project, and you had my loan underwritten within twenty-four hours. Then you came to my closing to make sure it went smoothly. This turned out to be a critical service, because you found an error in the paperwork that would have delayed closing and cost me *hundreds* of dollars. I cried with relief when it was over.

In short, you ultimately saved me *thousands* of dollars by providing a better loan product for my individual needs. You made my closing happen *ahead* of schedule. Your knowledge, compassion and diligence made a difference in my life that will have a positive impact for the duration of the loan, and you are a credit to your industry.

I understand that you are working for state legislation to license loan officers, and I support your cause wholeheartedly. The current proposal to license mortgage companies doesn't go far enough. Indeed, the company I initially worked with would be exempt from that legislation, and this is exactly the sort of company – and broker – from which Alaskans need to be protected. Please let me know if I can do anything to further your efforts.

Warm and grateful regards,

*Mary Jo King*

Mary Jo King  
First Time Home Buyer

To: Senator Con Bunde, Chair of Senate Labor and Commerce  
Representative Tom Anderson, Chair of House Labor and Commerce  
And: All committee members

CC: Senator Wagoner

Re: HB 424 and SB 272 "An act relating to mortgage lenders, etc."

Sirs,

My name is Vernon W. Rush. I own or am involved in several entities that provide "A" mortgage loan paper through National Lenders such as Bank of America or Countrywide and/or alternative financing for Alaskans depending on property offered as collateral and/or credit. I loan my own monies as well. Most of my clients have been with me 15 years or longer. I own Alaska Capital, am a partner in Equity Investors, am managing partner of Astoria Investments, am a member of the Independent Lender's Association, the Alaska Mortgage Brokers Association and chair of the Legislative Committee. I am also a licensed Real Estate Broker in the State of Alaska and a member of the Mat-Valley Board of Realtors. I hold several degrees. I have been involved in Banking and Real Estate since 1968.

Having been involved in a desire to create licensing since 1999 (and with the office of Lisa Murkowski as an Alaska House of Representatives Member), I would like to offer my views and background on the above proposed legislation.

**First let me point out that by definition, ALL LENDERS are predatory. The public or borrower cannot change the note or trust deed as they wish. As the Bible puts it, "not a borrower or lender be." In today's society borrowing is sometimes a necessary evil. It is found and established by FNMA and HUD audit that almost all fraudulent and deceptive lending results when the borrower contacts or is contacted by the lender's loan officer or representative. It is not done once the loan has been generated and sold to HUD or the secondary loan market. This situation is now being addressed nationally by registering ALL signers of a uniform mortgage application (1003) (loan officers). I, personally, am slated to appear in Washington at the end of this month to add my name to the proponents of the "Responsible Lending Act". (HR 1295)**

The proposed legislation before you started as a bill backed by the Independent Lenders Association to license Lenders so that we could be tracked and monitored by the state. It was a no-frills, no-nonsense piece of legislation that would have done precisely what was intended. It was crafted and presented as a stand-alone document. It was to ensure that a lender was a real, tangible entity and could provide the funds that were being offered. This protected the public in that they could be assured that a promised loan could be funded by a licensed lender.

While the above was going on, the Division of Banking was developing a proposed bill with the consensus of the mortgage bankers and mortgage brokers. That effort contained

provision for licensing Mortgage Bankers, Mortgage Brokers and Originators/loan officers of mortgage loans. It not only contained financial requirements but **educational requirements as well**. It is this addition as well as non-essential additions to the above bill that makes it very murky at present. It has turned a straight-forward bill into a collection tool for appraisers, mortgage qualification tool for Realtors, exemption tool for about everyone and cost increase tool for the public. **In short, it does not protect the public, does not promote the growth of the industry, ignores competency, increases costs to the public, is detrimental to small business and does not serve any socially redeeming value.**

It has been advised by my attorney and I'm sure you could check with legislative counsel, that since most legitimate brokers (Alaska Mortgage Broker Association Members) have "independent contractor" agreements with their lenders who are Federally Chartered banks or institutions, which provide for duties performed and responsibilities to abide by federal mortgage loan guidelines they would be exempt because they have federal (exempt status) oversight. Rates, terms, commitments, underwriting and approvals as described in definitions on page 18, are all dictated by the lender. It would only preclude members of the Alaska Mortgage Broker Association from brokering and open them to audit of transactions funded by non-exempt lenders. In fact, EXCEPTING (C) and (D) the definition of a broker as defined under section 06.60.990, page 18 IS ONE OF THE DEFINITIONS OF AN ORIGINATOR OR LOAN OFFICER as contemplated by some authors in the Federal Responsible Lending Act. A commissioned mortgage loan officer (originator) is simply an individual (broker) who has elected to "sell" his production (pipeline) to only one lender.

**I would ask you to consider and recommend the following:**

1. I know that there is a copy of the Originator's proposed licensing with Tim Kelly, the lobbyist for the independent lenders or I have attached it to this letter. I would recommend that it be added as a rider to this bill as part and parcel of the industry. This would be because a broker mirrors originators more than a lender.
2. Delete all reference to mortgage brokers in the present bill. They are not lenders nor do they hold themselves to be so.
3. Delete collection efforts for Appraisers. There are other legal channels for them to address non-payment.
4. Require Trust accounts for any funds pre-paid by the public held by ANY LENDER, BROKER, or INDIVIDUAL for third-party reports
5. Delete exemptions for any entity that is not DIRECTLY monitored by a Federal or State oversight agency.

Let's keep it simple.....you are either a lender or you are a broker/originator. You might do both, but you need to qualify as both. If we want to protect the public, especially from internet companies, lets make all originators of any loan solicited in Alaska, subject to Originator/Loan Officer licensing so that the public knows that they are dealing with a knowledgeable, responsible person that is licensed, bonded and tracked by the State Government.

I am in the process of hopefully opening a small office in Ninilchik, Alaska. I have built a home on the Ninilchik River and would prefer working in my area. The bill, as presented, would severely limit what I could offer to the residents of the area and make mortgage money more scarce and expensive. I would hope you will consider the rural areas when passing any legislation.

Thank you for your kind attention,

Vernon W. Rush

**Constance Hartle**

---

**From:** Vernon W. Rush [rushloanak@yahoo.com]

**Sent:** Friday, March 03, 2006 10:44 AM

**To:** Rep. Tom Anderson; Rep. Ethan Berkowitz; Sen. Con Bunde; Rep. Mike Chenault; Sen. John Cowdery; Rep. Harry Crawford; Sen. Bettye Davis; Sen. Johnny Ellis; Sen. Hollis French; Neal & Co. Inc. Real Estate Brokerage; Vic Korhring; Rep. Pete Kolt; Ron Kukes; Rep. Bob Lynn; Rep. Kurt Olson; Robin Phillips; DEBORAH PLESSINGER; Roger Prince; Rep. Norman Rokeberg; Rep. Paul Seaton; Sen. Ralph Seekins; Bill Simpson

**Subject:** HB 424 & SB 272

Testimony on the Above

## **Vernon W. Rush**

**YOUR ALASKA REAL ESTATE CONSULTANT**

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## Amy Seitz

---

From: dwighld@evergreenalaska.com  
Sent: Wednesday, March 08, 2006 2:39 PM  
To: Emily Stancliff; Josh Applebee; Amy Seitz  
Cc: Lorice Ponsford  
Subject: \*\*\*\*\*SPAM\*\*\*\*\* CS 272 (Senate) 424 (House) from Dwight Deely @ Evergreen Alaska Mortgage

March 8, 2006

Lorice Ponsford  
Legislative Information Assistant  
Fairbanks Information Office  
State of Alaska

Re: CS 272 (Senate) CS 424 (House)

Dear Ms Ponsford,  
Please forward this correspondence to the Labor and Commerce committees for review:

Mr. Chairman and members of the Labor and Commerce Committee, thank you for the opportunity to address Senate Bill 272 and House Bill 424. My name is Linda Patrick, Vice-President and Senior Loan Originator with Evergreen Alaska Mortgage Corporation. I've been originating loans in Alaska for nine years and been active in the mortgage industry for thirteen. Our company is the only "internet based" mortgage firm in Alaska and a top correspondent for large national wholesale lenders. We are also affiliated with a federally chartered bank in Washington State. I am very concerned that you may not be fully aware that CS 272 and 424 are written in such a manner that they will not meet the stated objective of "protecting consumers from predatory lenders" If in fact these bills are designed protect them then much of CS 272 and 424 needs to be rewritten:

- \* A "flat playing field" needs to be established so that no matter where a consumer seeks a loan they will be protected. Banks, Credit Unions, and other entities, both instate and out-of-state, should not be exempt from this legislation. For example, a group called Association of Community Organizations for Reform Now (acorn.org) cites Wells Fargo Bank as one of the a leading practitioners of abusive lending practices.

- \* This legislation should not make the State of Alaska an agent to collect monies from service companies associated with mortgage brokers and lenders. Sec. 06.60.420 (8) is a good example. Why are appraisers listed while other third parties associated with a mortgage loans are not? If left in the bill, why should banks, credit unions etc be exempt from these collection efforts?

- \* Most brokers have the option of "shopping mortgage loans" to many lenders to get the client the best rate and term while banks and credit unions usually do not make this effort. By exempting banks and credit unions and placing added regulatory burdens on brokers and lenders, this bill will effectively reduce competition and result in fewer choices for brokers, and as such, translate into higher costs for consumers.

- \* Brokers and Lenders specialize in structuring loans for individuals with damaged credit or no credit. Again, since about 70% of loans in Alaska are originated by mortgage brokers, placing additional regulations on lenders and brokers will limit competition and drive consumers toward the exempt enterprises such as banks and credit unions who DO NOT usually offer competitive products in the area.

- \* Brokers work through national wholesale lenders and actually bring "new" money into the state from financial sources across the nation. Banks and Credit Unions recycle existing money. By placing added burdens on these national wholesale lenders, they will be less willing to do business in Alaska.

- \* All originators should be educated on the basics of mortgage lending and licensed regardless of where they are employed. This will allow better oversight by the State and address the biggest consumer complaint, which is originators structuring loans that may be detrimental to their financial interests. By licensing originators you are setting a minimum level of core competencies, which will allow for better enforcement and

monitoring of consumer complaints.

In closing, consumer protection is no important than a fair and equitable regulatory environment for business. Mortgage brokers and lenders should not be "singled out" in this case. I urge the committee to write legislation that will in fact protect consumers from predatory lending practices without unjustly hurting the ability of small and large mortgage brokers and lenders to conduct business in Alaska. The issues I've stated here are only a small sample of the changes required. I urge you to contact the President of the Alaska Association of Mortgage Brokers (AKAMB) for a line item response to CS 272 and 424. Contrary to some, bad legislation is worse than no legislation, and in fact, mortgage brokers and lenders are already federally mandated to adhere to RESPA and HUMDA regulations.

Sincerely

Linda Patrick  
lindap@evergreenalaska.com  
907-457-5834

Approved: Dwight Deely  
President, Evergreen Alaska Mortgage Corporation [www.moneyalaska.com](http://www.moneyalaska.com)

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/8/06

FURTHER: Finance

Date of 5-Day Notice: 2/23/06  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/5/06

Labor and Commerce Committee considered SENATE BILL NO. 272

### SB 272 MORTGAGE LENDING

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

and recommends:

- be replaced with \_\_\_\_\_ CS SB 272 (LEC)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DCEd	3/6/06	✓			1

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	DO NOT PASS	No REC	AMEND
DAVIS <i>Bobby Davis</i>				X
ELLIS <i>Bob Ellis</i>			X	
SEEKINS <i>Hal Seekins</i>	✓			
B. STEVENS <i>Ben Stevens</i>				
CHAIR: <i>C. Bunde</i>	✓			

BUNDE