

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3082

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

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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.

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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

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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. 06.60.020. 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

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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

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2

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

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

NOTES: Final Pls. CS SC 272 (FIN)
Version 2.4 - 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.

1
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.** Except for AS 06.60.400 - 06.60.440, this
15 chapter does not apply to

16 (1) a person who makes six or fewer mortgage loans within a period of
17 12 consecutive months;

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

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

28 (4) a nonprofit corporation that makes mortgage loans to promote
29 home ownership or home improvements; in this paragraph, "nonprofit corporation"
30 means a corporation that qualifies under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue
31 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 - 1666j 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			
MOTION	ADOPTED		

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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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-LS1644U)

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.



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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

American Financial Services Association

Regional Director, State Government Affairs

AZ, CO, NM, NV, OK, and TX Associations

1566 Saint Paul Street, Denver CO 80206

720-941-6817 FAX 720-941-6818

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.

Deleted: best

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
escrow
19 account must be a trust account or another account that is segregated from the
other
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.

Deleted: or mortgage broker

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21 mortgage broker

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Deleted: and a mortgage broker

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

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(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

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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 employ 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.**

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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

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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

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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

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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

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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 must higher. The department tried

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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

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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.

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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.

End,

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

American Financial Services Association

Regional Director, State Government Affairs

AZ, CO, NM, NV, OK, and TX Associations

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720-941-6817 FAX 720-941-6818

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(aa) 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 the 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 ~~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 anywhere 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.