

1544 HOUSE LABOR & COMMERCE

Ostrem was an independent contractor, we first look to the character of Ostrem's work or business. There was sufficient evidence that a high degree of skill was involved in his work. There was also evidence indicating that Ostrem was engaged in a separate calling or business. This included the testimony that he established his own rate of pay, established his own minimum hours, established his mileage rate, took out a business license, was paid after submission of an invoice, and paid his own income tax. Appellant further testified that he generally was independent and unsupervised, that he had worked for up to half-a-dozen other people under arrangements similar to this, and that he was reputed to be available for heavy equipment work. The Board also considered that the invoice submitted in this case bore the heading "Curt's Diesel Service", and the fact that appellant utilized his own tools, except for the additional Cummins tool specified for the particular job. As to the extent to which Ostrem could be expected to carry his own accident burden, the third factor in examining the character of claimant's work, no direct evidence or testimony was introduced. There was testimony, however, that Ostrem had secured the advice of an accountant in establishing his business. Most of the necessities of establishing an independent business, with the exception of securing workmen's compensation coverage, seem to have been considered. One reasonable inference from the facts is that Ostrem could be expected to carry his own workmen's compensation coverage. We are not here dealing, of course, with the question of whether or not he did carry workmen's compensation coverage, but only with the question of whether he could have been expected to carry his own accident burden, either by work-

5 Larson sets forth guidelines for this test in 1A of *The Law of Workmen's Compensation*, sections 45.31, 45.31(a) and 45.31(b), at 716-724. An article in 1 *UCLA-Alaska Law Review* 40, 56 (1971) suggests several questions to be asked in applying the Larson tests to a skilled

men's compensation insurance or some other means.

Looking to the second major test, the relationship of the claimant's work or business to the purported employer's business, the first factor to be considered is the extent to which claimant's work is a regular part of the employer's regular work.⁵ There is evidence from which the Board could find that Ostrem's work was not a regular part of the employer's regular work. Ostrem worked for a number of businesses and was generally on call. He had never worked directly for Cummins before, was undertaking a job which apparently involved only 40-50 working hours, had worked for other people under this type of arrangement, and generally was reputed to be available to do such work. In light of these facts, it appears that the job was required at unpredictable intervals and was not protracted, and that the specialist called into handle the installation could be considered an independent contractor.

The second subsidiary factor in testing the relationship of the claimant's work or business to the purported employer's business is whether the work is continuous or intermittent. Here the work was a single job for Cummins involving but 40-50 working hours and thus could not be considered continuous.

The third factor is whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of a particular job. Here it seems clear that Cummins was contracting for the installation of a single engine in a loader, a job that would take at most a few days. He was thus engaged for the completion of a particular job.

laborer. Does he work for many people, "on call", for a few businesses, or for a single employer? Does he employ private listings, or work in connection with a general contractor or a subcontractor? If the latter, how often with the same contractor?

Upon the basis of the above evidence, the Board concluded that appellant was an independent contractor and not an employee of Cummins. Applying the *Scarfus* legal tests, we find that although there was evidence to the contrary and more than one inference could have been drawn from the testimony, the Board's determination was supported by substantial evidence. We accordingly concur in the superior court's affirmance of the Board's decision on this point.

Ostrem has more than one string to his bow, however, and argues that even if he is not to be considered an employee of Cummins he is still entitled to compensation either as an emergency employee or as a borrowed servant of Burgess. When Ostrem was injured he was performing services for the benefit of Burgess. This alone, however, is not sufficient to justify payment of compensation. A determination must be made as to whether Ostrem was performing services as a loaned or emergency employee.

[2] In *Reader v. Ghemyn Co.*,⁶ we quoted the Restatement of Agency definition of a loaned servant, as follows:

A servant directed or permitted by his master to perform services for another may become the servant of such other in performing the services. He may become the other's servant as to some acts and not as to others.

It is clear that to be a loaned servant one first must be a servant of a master who loans his employee's services to another. Since Ostrem was found to be an independent contractor as to Cummins rather

than an employee, the loaned servant doctrine is inapplicable.

A more difficult question is presented as to whether Ostrem was an "emergency employee" of Burgess. Larson, in his discussion of emergency services, states:

It is well established that a person who is asked for help in an emergency which threatens the employer's interests becomes an employee under an implied contract of hire. The most familiar example is that of the farmer or bystander who is called upon by an employed trucker to help get the truck out of the mire in which it is stuck. In such a case it is possible to say that the employee, although ordinarily without power to make contracts binding his employer, has implied authority to employ an assistant, since the employer must be presumed to intend that necessary measures be taken to set the employer's business again in motion. (Footnote omitted.)⁷

It is entirely consistent with the theory of workmen's compensation legislation that a business which utilizes the services of a third person in an emergency should bear the risk of his injury, the costs incurred being ultimately borne by the consumer as a part of the cost of the product.⁸

An independent contractor or self-employed person may as readily become an emergency employee as may one who is already an employee of a different employer. In *City of Seward v. Wisdom*⁹ this court dealt with the concept of an emergency employee. In that case, we ruled that a volunteer helping after the earthquake should not be considered an employee of the city, and therefore his wife could not

6 490 P.2d 1200, 1205 (Alaska 1971), quoting 1 Restatement (Second) of Agency § 227 (1957).

7 1A Larson's Workmen's Compensation Law § 47.42(c), at 780 (1967).

8 The social philosophy of workmen's compensation legislation is discussed in 51A P.2d—67½.

Seattus v. Northern Gas Co., 472 P.2d 966, 969 (Alaska 1970).

9 413 P.2d 931 (Alaska 1966). Citation of this case is not necessarily to be construed as agreement by all present members of the court with its holding.

recover workmen's compensation benefits from his death. The decision was based on the fact that Wisdom had volunteered to help without any request for assistance by the city official in charge. Ostrem's claim is distinguishable from *Wisdom* in that Ostrem was asked to help and did not volunteer his services. Nor do we consider the fact that he received no remuneration for his services as controlling. The test should be whether or not he had the right to compensation, not whether he demanded payment.

[3 4] However, not every service at the request of another creates an emergency employee situation.

For this kind of implied hiring authority to arise there must, of course, be a genuine emergency ruling out normal procedures for hiring or for obtaining permission to engage assistance.¹⁰

Although the claimant raised the issue before the Alaska Workmen's Compensation Board as to whether he was an emergency employee, the Board's decision makes no findings or conclusions directed to that doctrine.¹¹ We, therefore, find it necessary to remand this matter to the superior court for the purpose of having it direct the Board to make findings and conclusions with reference to the issue of the emergency employee doctrine. Specifically, the Board should enter findings as to whether an emergency existed at the time that Ostrem was requested to assist the Burgess employee, and whether Ostrem would have had the right to compensation for such services under an implied contract of hire if he had so requested. The Board may take additional evidence on these questions, if necessary, and should then decide whether or not Ostrem is entitled to compensation as an emergency employee.

Remanded.

¹⁰ 1A Larson's Workmen's Compensation Law § 47.42(e), at 781 (1967).

¹¹ The Board did state: "In our opinion the applicant, at least in the present case, is an independent contractor and is not

Thomas Michael ELIASON and Michael Lane Burns, Appellants,

v.

STATE of Alaska, Appellee.

No. 1750.

Supreme Court of Alaska

July 9, 1978

Defendants were convicted in the Superior Court, Fourth Judicial District, Fairbanks. Everett W. Hepp, J., of concealing stolen property, and they appealed. The Supreme Court, Rabinowitz, C. J., held that affidavit in support of search warrant, taken as a whole, was constitutionally sufficient to establish probable cause for issuance of search warrant; that the court would not interpret a motion for judgment of acquittal as a specific objection to a proposed instruction within meaning of rule, and that there was sufficient evidence from which jury could have reasonably inferred that defendants were in possession, constructively or otherwise, of stolen property.

Affirmed.

1. Criminal Law (394.6(4))

In view of absence of any evidence that 15-year-old runaway, whose statement was used in affidavit in support of search warrant, was in any way identified, taken into custody, questioned, or connected to defendants as result of purportedly unlawful police behavior, it would be determined that the statement was acquired by officer in a manner sufficiently independent of any other evidence contained in affidavit and was not obtained through any coercive means.

an employee of either of the defendants". Since there were no specific findings or conclusions made pertaining to the emergency employee doctrine we cannot determine whether that quoted conclusion was meant to apply to that issue.

Title 8. Labor and Workforce Development.

Part 3. Workers' Compensation.

Chapter

- 45 Compensation, Medical Benefits, and Proceedings Before the Alaska Workers' Compensation Board (8 AAC 45.010 — 8 AAC 45.900)
- 46 Self-Insurance (8 AAC 46.010 — 8 AAC 46.900)
- 50 Second Injury Fund (No Regulations Filed)
- 55 Fishermen's Fund (8 AAC 55.010 — 8 AAC 55.040)

Chapter 45. Compensation, Medical Benefits, and Proceedings Before the Alaska Workers' Compensation Board.

| Section | Section |
|---|--|
| 10 (Repealed) | 150 Rehearings and modification of board orders |
| 20 Transaction of business | 160 Agreed settlements |
| 25 Forms | 162 Present value of future compensation |
| 30 Fees | 170 Listing of injuries |
| 32 Files | 174 Uninsured employer: |
| 35 (Repealed) | 178 Appearance and withdrawals |
| 40 Parties | 180 Costs and attorney's fees |
| 50 Pleadings | 182 Controversion |
| 52 Medical summary | 184 Executive office, waivers |
| 54 Discovery | 186 Second injury fund |
| 60 Service | 188 Third party claim |
| 63 Computation of time | 190 Guardianship |
| 65 Pre-hearings | 195 Waiver of procedures |
| 70 Hearings | 210 Weekly compensation rate |
| 72 Venue | 220 Gross weekly earnings |
| 74 Continuances and cancellations | 222 Social security and pension or profit sharing plan offsets |
| 80 (Repealed) | 400 List of rehabilitation specialists |
| 82 Medical treatment | 410 Eligibility of rehabilitation specialist |
| 84 Medical travel expenses | 415 Definition of rehabilitation specialist |
| 85 Duty of employer and insurer to file evidence of insurance | 420 Rehabilitation specialist application |
| 86 Physician's reports | 430 Assignment of rehabilitation specialists |
| 90 Additional examination | 440 Removal of rehabilitation specialists |
| 92 Selection of an independent medical examiner | 490 Gross hourly wages |
| 95 Release of information | 500 Reporting requirements |
| 100 (Repealed) | 510 Request for reemployment benefits eligibility evaluation |
| 110 Record of proceedings | 520 Determination of unusual and extenuating circumstances |
| 112 Witness list | 525 Reemployment benefit eligibility evaluations |
| 114 Legal memoranda | 530 Determination of eligibility for reemployment benefits |
| 116 Opening and closing argument | 535 Selection of a rehabilitation specialist |
| 120 Evidence | 540 Rehabilitation specialist assignment for reemployment benefits |
| 122 Rating of permanent impairment | 542 Change of rehabilitation specialist |
| 130 Findings and awards and orders | 550 Plans |
| 132 Survival of accrued benefits | 600 Request for liability coverage under: AS 23.30.045(c) |
| 134 Modification and offset of compensation reimbursement | 690 Determining employee status |
| 136 Notice of payment or modification of compensation | 900 Definitions |
| 138 Cost-of-living adjustment | |
| 140 (Repealed) | |
| 142 Interest | |

8 AAC 45.010. Definitions. Repealed 5/28/83

Editor's note: Definitions for this chapter are located in 8 AAC 45.900, effective 5/28/83, Register 25

(B) signed by the specialist, the employee, and the employer, to the administrator in accordance with 8 AAC 45.500, or

(2) a report together with medical documentation attached, that shows the employee's medical condition has changed since the start of efforts to develop the employee's reemployment plan, and that the employee is currently unable to participate in plan activities; the medical documentation required by this paragraph must also include an estimate of when efforts to develop the employee's reemployment plan can resume.

(c) If the employee and the employer fail to agree to the reemployment plan written under (a) & (b) of this section, either party may request the administrator to review and approve the plan. Within 14 days after the administrator receives the plan for review, the administrator will

(1) approve the plan and notify the parties by certified mail;

(2) deny the plan and notify the parties by certified mail; or

(3) notify the parties that the plan is incomplete and request additional information from the parties before making a decision on the plan.

(d) If the administrator requests additional information, the administrator will make a decision within 14 days after the additional information is received, and notify the parties by certified mail. (Eff. 7/2/98, Register 146)

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.600. Request for liability coverage under AS 23.30.045(c). (a) To request liability coverage under AS 23.30.045(c), the requesting party shall give the administrator notice that a written plan is being submitted. The requesting party shall give the notice by telephone. The plan that is submitted must include,

(1) a written request for coverage under AS 23.30.045(c);

(2) a description of the services being provided;

(3) the time frame for coverage under AS 23.30.045(c);

(4) the name, address, and telephone number of the employer who is providing the services;

(5) proof of workers' compensation insurance for the employer; and

(6) for coverage requested for on the job training;

(A) the plan must meet the requirements of AS 23.30.041(h) — (o); and

(B) the employer must provide proof that the employee will receive minimum wages.

(b) The administrator will approve or deny the written request immediately, but not more than five working days, after receiving the completed written plan. Coverage under AS 23.30.045(c) is not effective until approved by the administrator and may not begin on a date sooner than the date the administrator approves the request for coverage. (Eff. 7/2/98, Register 146)

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.890. Determining employee status. For purposes of AS 23.30.265(12) and this chapter, the board will determine whether a person is an "employee" based on the relative-nature-of-the-work test. The test will include a determination under (1) — (6) of this section. Paragraph (1) of this section is the most important factor and is interdependent with (2) of this section, and at least one of these factors must be resolved in favor of an "employee" status for the board to find that a person is an employee. The board will consider whether the work

(1) is a separate calling or business; if the person performing the services has the right to hire or terminate others to assist in the performance of the service for which the person was hired, there is an inference that the person is not an employee; if the employer

(A) has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status;

(B) and the person performing the service have the right to terminate the relationship at will, without cause, there is a strong inference of employee status;

(C) has the right to extensive supervision of the work then there is a strong inference of employee status;

(D) provides the tools, instruments, and facilities to accomplish the work and they are of substantial value, there is an inference of employee status, if the tools, instruments, and facilities to accomplish the work are not significant, no inference is created regarding the employment status;

(E) pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status; and

(F) and person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference; however, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed;

(2) is a regular part of the employer's business or service, if it is a regular part of the employer's business, there is an inference of employee status;

(3) can be expected to carry its own accident burden; this element is more important than (4) — (6) of this section, if the person performing the services is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status.

(4) involves little or no skill or experience; if so, there is an inference of employee status;

(5) is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job; if the work amounts to hiring of continuous services, there is an inference of employee status;

(6) is intermittent, as opposed to continuous; if the work is intermittent, there is a weak inference of no employee status. (Eff. 3/16/90, Register 113)

Authority: AS 23.30.005(h); AS 23.30.265

8 AAC 45.900. Definitions. (a) In this chapter

(1) "Act" means the Alaska Workers' Compensation Act, as amended, AS 23.30.005 — 23.30.270;

(2) "board" means any single three-member panel, or a quorum thereof, of the Alaska Workers' Compensation Board;

(3) "carrier" means an insurance carrier meeting the requirements of AS 23.30.025 with respect to authorization to provide insurance fulfilling the obligation of an employer to secure the payment of compensation under the Act;

(4) "chairman" means the commissioner or any person designated by the commissioner to preside as board chairman in a particular proceeding.

(5) "claim" includes any matter over which the board has jurisdiction;

(6) "commissioner" means the commissioner of the Department of Labor and Workforce Development.

(7) "department" means the Department of Labor and Workforce Development of the state;

(8) "division" means the division of workers' compensation within the administrative branch of the Department of Labor and Workforce Development.

(9) "effecting settlement" means the ability to timely pay all medical benefits and timely pay compensation in accordance with AS 23.30.155;

(10) "executive officer" means the president, vice-president, secretary, treasurer, or a corporate employee who is responsible for the corporation's affairs generally, has a close

HB

416

LEGAL SERVICES

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

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

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

MEMORANDUM

March 2, 2006

SUBJECT: CSHB 416(L&C) relating to business licenses
(Work Order No. 24-LS1555\Y)

TO: Representative Tom Anderson
Chair of the House Labor and Commerce Committee
Attn: Josh

FROM: *JB*
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Implementing regulations. Because the immediate effective date clause for the transitional provision relating to regulations probably will not occur before the general effective date for the other provisions of the bill, the department may not have an opportunity to adopt regulations before the effective date. Usually when the department needs to adopt regulations, there is a longer lead time for the main provisions of the bill to go into effect.

2. Applicability of fee change. In bill sec. 3(a), the reference to an alternative effective date was removed since the bill now has an effective date of July 1, 2006 for the section changing the fee amount.

I realize that this bill has passed out of your committee. Therefore, please pass this memo along to the next committee of record, so that committee can review these comments.

If I may be of further assistance, please advise.

TLB:ljw
06-108.ljw

Enclosure

ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4th Ave
Anchorage, AK 99501
Room 610



Phone (907)-269-0265
Fax# (907)-269-0264

Representative Tom Anderson

FACSIMILE

To: Legislative Legal Fax: 2029

From: Josh Applebee Date: 3/1/2006

Subject: CS for HB 416

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Good Afternoon,

Attached please find the adopted amendments and conceptual amendments to HB 416 24-LS1555/F. Please incorporate the amendments and deliver the draft to Room 408.

Thanks.

Please let me know if you have any questions or if there is anything else you need.

-Josh

465-4954

HB 416 – Business License Fee

Amendment # 1

Insert a new bill section to read:

****Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISION. The annual fee for a business license that is paid in 2006 before July 1, 2006, or before the effective date of this Act, whichever is later, is the rate established under AS 43.70.030(a), as that subsection exists before being amended by sec. 2 of this Act.”

Amendment #2

Section 1. AS 43.70.020 is amended by adding a new subsection to read:

(e) If a person knowingly engages in a business in the state without having a current license issued under (a) of this section, **the department may impose a civil fine not to exceed \$100.** In this subsection, “knowingly” has the meaning given in AS 11.81.900.

Conceptual Amendment #3

Page 1, line 13, insert language to the effect “shall be paid on a pro-rata basis as determined by department regulations on or before December 31, 2007. Also to give authority to the Department to take up regulations prior the effective date of the bill. Insert and effective date of the bill – July 1, 2006.

Conceptual Amendment #4

Title change amendment – please conform the title to reflect the 1st three amendments.

Amend #3 Lpin
conceptual

Title change conforming
to changes in Bill.

Roskeberg Amend 2 Amend #3
concurrent

revise Line 13 to include
paid on pro rata basis prior to Dec 31
2007.

ALL effective date:

July 1, 2006

Passed
v/c

AMENDMENT #1

OFFERED IN THE HOUSE ^{by Rokeberg}
TO: CSHB 416(EDT)

BY THE HOUSE LABOR AND
COMMERCE COMMITTEE

- 1 Page 1, line 7:
- 2 Delete "\$50"
- 3 Insert "\$100"

- 4
- 5 Page 1, line 10:
- 6 Delete "\$25"
- 7 Insert "\$50"
- 8

Amend de Amend #1
Delete
Passed
v/c

9 Page 2, following line 2:

10 Insert a new bill section to read:

11 "§ Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 TRANSITIONAL PROVISION. The annual fee for a business license that is paid in
14 2006 before July 1, 2006, or before the effective date of this Act, whichever is later, is the rate
15 established under AS 43.70.030(a), as that subsection exists before being amended by sec. 2
16 of this Act."

→ Rokeberg Amend 2 Amend #2 delete Lines 1-3

MEMORANDUM



Amend #2
Rokkeberg
passed
j/c

DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

TO: Representative Tom Anderson, Chairman
House Labor & Commerce Committee

FROM: Rick Urion, Director
Division of Corporations, Business and Professional Licensing

Date: 3/01/2006

Re: Proposed amendment to CSHE 416

* **Section 1.** AS 43.70.020 is amended by adding a new subsection to read:
(e) If a person knowingly engages in a business in the state without having a current license issued under (a) of this section, **the department may impose a civil fine not to exceed \$50.** In this subsection, "knowingly" has the meaning given AS 11.81.900.

Amend 2 Amend #1 Lynn
Charge \$50 - \$100
passed
j/c

MEMORANDUM



DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

TO: Representative Tom Anderson, Chairman
House Labor & Commerce Committee

FROM: Rick Urion, Director
Division of Corporations, Business and Professional Licensing

Date: 3/01/2006

Re: Proposed amendment to CSHB 416

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AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 416(EDT)

BY THE HOUSE LABOR AND
COMMERCE COMMITTEE

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15 established under AS 43.70.030(a), as that subsection exists before being amended by sec. 2
16 of this Act."

Representative Jay Ramras
Co-Chair, House Resources
Co-Chair, Economic Develop.
Tourism & Trade
House State Affairs
Joint Armed Services
119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
Phone: (907) 452-1088
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Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
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Toll Free: (877) 465-3004

House District 10

House of Representatives

SPONSOR STATEMENT

CSHB 416(EDT)

CS for House Bill 416 will return growth of small business back to the small business owner and potential future owners by returning the licensing fees back to \$25 per year. Several years ago the administration was looking for ways to cover budget deficits and one of the proposals included raising business license fees.

The decision to raise those fees has had a negative effect on small business growth in the state as many small struggling, or new idea businesses are closely counting every penny. They either chose to pay the fee, which is actually \$200 as licenses are issued for two years at a time, ignore it and operate illegally, or give up the idea all together. The EDTT Committee added language to the original version of the bill that allows for enforcement of operating a business without a license. The fine can be as high as twice the license fee for an infraction.

Alaska, like the rest of the country needs to promote the development and growth of small business and let these potential entrepreneurs know we as a state welcome them and want them to succeed. A regressive license fee is not accomplishing this and the repeal language in HB 416 will once again say we are opened for business.

Alaska State House of Representatives

Representative Jay Ramras, Co-Chair
Alaska State Capitol, Room 104
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
House District 10



Representative Mark Neuman, Co-Chair
Alaska State Capitol, Room 432
Juneau, Alaska 99801-1132
Phone: (907) 465-2679
Fax: (907) 465-4822
House District 15

House Special Committee on Economic Development, Trade & Tourism

To: Representative Tom Anderson, Chair House Labor & Commerce Committee

From: Representative Jay Ramras, Co-Chair
Representative Mark Neuman, Co-Chair

Date: February 15, 2006

RE: HB 389

Attached is the master copy of the package for HB389 from the House Economic Development, Trade and Tourism Committee.

Feel free to contact either co-chair or the committee aides, Rex Shattuck x2696 or Jane Pierson x3004 if you have any questions or concerns.

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

(907)-465-3719

FAX# (907)-465-3258

State Capitol
Room 204

Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

REPRESENTATIVE JOHN COGHILL

HB 389 - Tourist Accommodations

SPONSOR STATEMENT

I was contacted by the Department of Environmental Conservation after my office solicited information from state agencies about laws that should be repealed.

This legislation repeals the permitting requirement for tourist accommodations.

Tourist accommodations are heavily regulated as public accommodations and the remaining sections of AS 18.35 will provide DEC with the regulatory authority necessary to insure the health and safety of the public.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 389
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
Title Regulation of Tourist Accomodations RDU Environmental Health
Component Food Safety and Sanitation
Sponsor Rep. Coghill
Requester Economic Development., Trade, and Tourism Component No. 2343

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contractual | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Supplies | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Equipment | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Land & Structures | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Grants & Claims | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Miscellaneous | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| CAPITAL EXPENDITURES | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|----------------------|---------|---------|---------|---------|---------|---------|
| | | | | | | |

| CHANGE IN REVENUES () | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|------------------------|---------|---------|---------|---------|---------|---------|
| | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1037 GF/Mental Health | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other (Specify Type--Do not abbreviate) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-time | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-time | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no fiscal impact on DEC.

Prepared by: Kristin Ryan, Director Phone (907) 269-7644
Division: Environmental Health Date/Time 2/6/06 4:53 PM
Approved by: Kurt Fredriksson Date 2/10/2006
Agency: Department of Environmental Conservation

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

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Session

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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

HB 389 – Tourist Accommodations

SECTION 1.

Section 1.

Presently DEC does not require permits for public accommodations. This bill will cleanup language deleting reference to AS 18.35.040, 050, 070, and AS 44.66.025(a) which are being repealed in Section 2.

Section 2.

Repeals:

AS 18.35.040 Permits –
Permits are no longer required.

AS 18.35.050 Penalty for noncompliance with permit requirement.
There is no permit; there is no noncompliance.

AS 18.35.070 Posting regulations.
It is unnecessary to post the laws and regulations on the premises.

AS 44.64.030(a)(16) - AS 18.35.040 (Tourist Accommodations).
This section needs to be repealed, because 18.35.040 is repealed.

Section 3:

This Act will take effect immediately under AS 01.10.070(c).

Article 1. TOURIST AND TRAILER CAMPS, MOTOR COURTS, AND MOTELS

Section

- 10. Purpose.
- 20. Administration of laws and regulations.
- 30. Regulations.
- 40. Permits.
- 50. Penalty for noncompliance with permit requirement.
- 60. Unlawful disposal of wastes.
- 70. Posting laws and regulations.
- 80. Penalty for noncompliance.
- 90. Definitions.

Collateral references. 40 Am. Jur. 2d, Hotels, Motels, and Restaurants, §§ 5, 14, 15, 18, 23, 27-46; 56 Am. Jur. 2d, Municipal Corporations, §§ 427, 428; 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 29.

14 C.J.S., Civil Rights, § 7; 39A C.J.S., Health and Environment, §§ 3, 5-9, 21, 26, 27, 47; 43A C.J.S., Inns, Hotels, and Eating Places, §§ 1-12.

Sec. 18.35.010. Purpose.

The purpose of AS 18.35.010 - 18.35.090 is to establish and maintain minimum standards of health and sanitation in tourist camps, trailer camps, motor courts, and motels necessary and desirable for the protection of the public health and welfare.

(§ 1 ch 100 SLA 1955)

Sec. 18.35.020. Administration of laws and regulations.

The department has jurisdiction over the health and sanitary conditions of tourist accommodations under AS 18.35.010 - 18.35.090.

(§ 3 ch 100 SLA 1955)

Sec. 18.35.030. Regulations.

- (a) The department may adopt and enforce regulations that relate to health and sanitation in

the construction, operation, and maintenance of the accommodations including but not limited to minimum standards for water supply, sewage and refuse disposal, laundry, bathing and toilet facilities, communicable disease control, general cleanliness and safety, that are necessary or desirable for the protection of public health.

(b) The provisions of AS 18.35.010 - 18.35.090 do not prohibit the health authorities of a municipality from instituting local programs for health and sanitary control of tourist accommodations, including the enactment of ordinances for issuance and revocation of permits and additional regulations. However, the ordinance or regulation may not detract from the provisions of AS 18.35.010 - 18.35.090 or the regulations under these sections.

(§ 3 ch 100 SLA 1955)

Administrative Code. - For public accommodations, see 18 AAC 30, art. 4.

Collateral references. Maintenance or regulation by public authorities of tourist or motor camps, courts or motels. 22 ALR2d 774.

Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.

Sec. 18.35.040. Permits.

A person may not establish, operate, or maintain a tourist accommodation in the state without first obtaining a permit from the department. The department may issue both provisional and annual permits and may suspend the permits after a hearing resulting in findings that the holder has failed to comply with AS 18.35.010 - 18.35.090 or a regulation adopted under AS 18.35.010 - 18.35.090. The department may not exercise jurisdiction or require permits inside municipalities regulating tourist accommodations substantially in the manner provided in AS 18.35.010 - 18.35.090.

(§ 4 ch 100 SLA 1955)

Revisor's notes. In 2002, at the end of the second sentence, "AS 18.35.010 - 18.35.090" was substituted for "them" to conform the language to the style of the Alaska Statutes.

Sec. 18.35.050. Penalty for noncompliance with permit requirement.

A person establishing, operating or maintaining a tourist accommodation who refuses or neglects to obtain a permit as provided in AS 18.35.040, or who continues to operate or maintain a trailer camp after the permit has been suspended or revoked, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both.

(§ 5 ch 100 SLA 1955)

Sec. 18.35.060. Unlawful disposal of wastes.

A person may not dispose of human excreta, garbage, or refuse on or near a public way or thoroughfare or on or near a tourist accommodation except in the use of appropriate facilities.

(§ 6 ch 100 SLA 1955)

Sec. 18.35.070. Posting laws and regulations.

Each person operating a tourist accommodation shall post a copy of the provisions contained in AS 18.35.010 - 18.35.090 and pertinent regulations in at least one conspicuous place on the premises.

(§ 7 ch 100 SLA 1955)

Sec. 18.35.080. Penalty for noncompliance.

A person who fails to comply with AS 18.35.010 - 18.35.090, except AS 18.35.040, or the regulations adopted under those sections, upon conviction, is punishable by a fine of not more than \$100, or by imprisonment in a jail for not more than 30 days, or both.

(§ 8 ch 100 SLA 1955)

Sec. 18.35.090. Definitions.

In AS 18.35.010 - 18.35.090,

(1) "department" means the Department of Environmental Conservation;

(2) "tourist accommodations" means a place maintained or held out to the public for purposes of abode, whether occupied by transient or permanent guests, whether equipped with tents, tent houses, cottages, automobile trailers, coaches, motor courts, or motels, and regardless of whether benefit accrues to the owner or operator.

(§ 2 ch 100 SLA 1955; am § 6 ch 104 SLA 1971; am E.O. No. 51, § 35 (1981))

Revisor's notes. Reorganized in 1986 to alphabetize the defined terms. In 2002, in paragraph (2), "and" was inserted before "regardless" to conform the language to the style of the Alaska Statutes.

HB

424

ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4th Ave
Anchorage, AK 99501
Room 610



Phone (907)-269-0265
Fax# (907)-269-0264

Representative Tom Anderson

FACSIMILE

To: Legislative Legal Fax: 2029
From: Josh Applebee Date: 3/7/2006
Re: CS for HB 424
CC:

Urgent For Review Please Comment Please Reply Please Recycle

Good Afternoon,

Attached please find the adopted amendments to Committee Substitute for HB 424 by the House Labor & Commerce Committee on Monday 3/6/06. This amendment was made to version HB 424 24-LS1504/F. Please deliver the final to Room 408. Thanks.

Please let me know if you have any questions or if there is anything else you need.

-Josh

465-4954

Page 3, lines 2, 3, and 4

Delete the term real estate agent and insert the term real estate licensee.

This is a conforming type amendment, as Alaska Statutes do not use the term real estate agent any longer. See HB 169 (24th Legislature).

24-LS1504F
Bannister
3/1/06

CS FOR HOUSE BILL NO. 424(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

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; and providing for an effective date."**

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

5 *** Section 1. AS 06 is amended by adding a new chapter to read:**

6 **Chapter 60. Mortgage Lending.**

7 **Article 1. Licensing.**

8 **Sec. 06.60.010. License required.** (a) Except as provided under AS 06.60.020,
9 a person may not solicit or engage in business as a mortgage lender or hold the person
10 out to the public as a mortgage lender unless the person is licensed under this chapter.

11 (b) Except as provided under AS 06.60.020, a person may not solicit or
12 engage in business as a mortgage broker or hold the person out to the public as a
13 mortgage broker unless the person is licensed under this chapter.

14 (c) The department may issue a dual license under this chapter that allows a

1 person to engage in business as a mortgage lender and a mortgage broker and to hold
2 the person out to the public as a mortgage lender and a mortgage broker.

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

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

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

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

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

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

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

20 (B) "qualified individual" means an individual

21 (i) whose income is 60 percent or less of the median
22 income in the United States;

23 (ii) who is over 60 years of age; or

24 (iii) who has a disability; in this sub-subparagraph,
25 "disability" has the meaning given at 42 U.S.C. 12102(2)(A);

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

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

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

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

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

13 (10) an employee who is working under the direction and supervision
14 of a licensee or of an entity identified under (1) - (9) of this section, and

15 (11) an independent contractor who is working as an independent
16 contractor for an entity identified under (1) - (9) of this section if

17 (A) the independent contractor has a written agreement with
18 the entity under which the entity accepts responsibility for ensuring that the
19 independent contractor complies with the requirements imposed in this
20 chapter, including maintaining records under AS 06.60.250 - 06.60.260; and

21 (B) the department approves the agreement between the
22 independent contractor and the licensee or entity.

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

24 (1) be in writing;

25 (2) be made under oath or affirmation;

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

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

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

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

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

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

9 (6) other information that the department may require.

10 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant
11 for a license to determine if the applicant satisfies the requirements of this chapter for
12 the license. An applicant for a license shall pay the investigation expenses incurred by
13 the department. When the applicant submits the application to the department, the
14 applicant shall pay to the department a nonrefundable application fee of \$500 in partial
15 payment of the investigation expenses incurred by the department. An applicant for a
16 dual license is not required to pay more than one annual license fee.

17 **Sec. 06.60.050. Initial annual fee.** An applicant for a license shall pay the
18 annual license fee required by AS 06.60.210 to the department when the applicant
19 submits an application under AS 06.60.030, and the applicant's next license fee is due
20 the last day of the first January that occurs after the applicant receives a license.

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

25 (b) The bond required by (a) of this section shall be for the use of the
26 department for a cause of action against the obligor under this chapter. The bond must
27 state that the obligor will faithfully conform to and abide by the provisions of this
28 chapter and of all regulations adopted under this chapter and will pay to the
29 department all money that may become due or owing to the department from the
30 applicant under this chapter.

31 (c) An applicant for a license that covers more than one location is not

1 required to file more than one bond.

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

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

9 **Sec. 06.60.070. Issuance of license.** (a) Within 90 days after the date an
10 application is filed with the department under AS 06.60.030, the department shall
11 either approve the application and issue a license to the applicant or disapprove the
12 application.

13 (b) If the department disapproves the application, the department shall
14 promptly notify the applicant. The notification must indicate the reason for the
15 disapproval and provide the applicant with an opportunity for a hearing on the
16 department's disapproval.

17 **Sec. 06.60.080. Determinations for licensing.** Before approving an
18 application filed under AS 06.60.030, the department shall determine that

19 (1) the applicant has complied with the requirements of this chapter for
20 obtaining a license, including having paid all required fees;

21 (2) the financial responsibility, experience, character, and general
22 fitness of the applicant, and of the applicant's members and officers, and the
23 organization and operation of the applicant indicate that the applicant will operate in
24 compliance with AS 06.60.400 - 06.60.440; and

25 (3) the department has not found grounds for disapproval of the
26 application under AS 06.60.090.

27 **Sec. 06.60.090. Additional grounds for disapproval of application.** The
28 grounds for disapproval of an application for a license include a finding by the
29 department that a person named in the application

30 (1) has liabilities that exceed the person's assets, cannot meet the
31 person's obligations as they mature, or is in a financial condition that indicates that the

1 person cannot continue in business and safely handle the mortgage loans of the
2 person's customers;

3 (2) has engaged in dishonest, fraudulent, or illegal practices or conduct
4 in a business or profession;

5 (3) has been convicted of a crime, if an essential element of the crime
6 was fraud;

7 (4) is permanently or temporarily enjoined by a court of competent
8 jurisdiction from engaging in or continuing conduct or a practice involving an aspect
9 of the business of providing financial services to the public; or

10 (5) has been prohibited by a federal or state regulatory agency from
11 engaging, participating, or controlling a finance-related activity that provides financial
12 services to the public.

13 **Sec. 06.60.100. Force and contents of license.** A license must be in a form
14 established by the department, state the address for each office of the business where
15 the business of the licensee is to be conducted, and contain the full name of the
16 licensee. If a licensee conducts business on the Internet, the license must also state the
17 registered domain address or addresses through which the licensee conducts the
18 licensee's business and the physical location of the main business office.

19 **Sec. 06.60.110. Duration and transfer of license.** (a) A license issued under
20 this chapter is a continuing license and remains in full force and effect until the license
21 is revoked or suspended under AS 06.60.300 or surrendered by the licensee under
22 AS 06.60.310.

23 (b) A licensee may not transfer or assign the licensee's business unless the
24 licensee transfers or assigns the business to another licensee with the same type of
25 license as the transferring or assigning licensee.

26 **Article 2. Licensee Obligations.**

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

1 licensee shall make the report under oath or on affirmation. The report must be in the
2 form established by the department.

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

5 **Sec. 06.60.210. Annual license fee.** (a) A licensee shall pay the department a
6 license fee of \$250 each year on or before the last day of January.

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

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

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

19 **Sec. 06.60.240. Change in business operations.** If there is a significant
20 change in the business operations of the licensee, the licensee shall, within 10 days,
21 provide notice of the change to the Department.

22 **Sec. 06.60.250. Records of licensee.** (a) A licensee shall keep and use in the
23 licensee's business the accounting records that are in accord with sound and accepted
24 accounting practices.

25 (b) A licensee shall maintain a record, by electronic record or photocopying,
26 for the account of each borrower and for each loan made to the borrower. This record
27 must contain all documents, notes, electronic correspondence, and forms that are
28 produced or prepared for the mortgage loan by the licensee, and the licensee shall
29 retain each document, note, electronic correspondence, and form for three years.

30 (c) If a licensee conducts business as a mortgage loan servicing agent for other
31 mortgage lenders or investors, the licensee shall, in addition to complying with (a) and

1 (b) of this section, maintain a record for each mortgage loan. The record for each
2 mortgage loan must include the amount of the mortgage loan, the total amount of
3 interest and finance charges on the mortgage loan, the interest rate on the mortgage
4 loan, the amount of each payment to be made on the mortgage loan, a description of
5 the collateral taken for the mortgage loan, a history of all payments received by the
6 licensee on the mortgage loan, a detailed history of the amount of each payment that is
7 applied to the reduction of the mortgage loan principal, the interest that accrues on the
8 mortgage loan, and any other fees and charges that are related to the mortgage loan.
9 The licensee shall retain the record required by this subsection for three years after the
10 loan is sold to another mortgage loan servicing agent or after the mortgage loan is
11 satisfied, whichever occurs first.

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

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

17 (2) reimburse the department reasonable costs that are incurred by the
18 department during an investigation or examination made at the office or place of
19 business, as provided in AS 06.60.340(d).

20 **Sec. 06.60.270. Disqualified persons.** (a) A disqualified person may not serve
21 as an officer, a director, a partner, a shareholder controlling an ownership interest of
22 10 percent or more, a trustee, an independent contractor, or an employee of a licensee
23 without the prior written approval of the department. In this subsection, "employee"
24 means an individual who negotiates an agreement with a member of the public for the
25 licensee or who has access to, or responsibility for, escrow accounts or escrow money
26 held by the licensee.

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

30 (c) Before an officer, director, or other person may obtain a controlling
31 ownership interest of 10 percent or more in the business of a licensee, the officer,

1 director, or other person shall authorize the department to access the officer's,
2 director's, or other person's criminal history information in this state to determine
3 whether the officer, director, or other person is a disqualified person.

4 (d) In this section,

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

6 (A) pleads guilty of, is convicted of, or pleads no contest to an
7 offense that is a felony within the previous seven years; or

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

11 (2) "offense" means a criminal offense under

12 (A) AS 11.46;

13 (B) a law in another state that is substantially similar to an
14 offense under AS 11.46; or

15 (C) P.L. 101-73 (Financial Institutions Reform, Recovery, and
16 Enforcement Act of 1989).

17 **Sec. 06.60.280. Minimum net worth required for certain licensees.** If a
18 licensee conducts business as a mortgage loan servicing agent for other mortgage
19 lenders or investors, the licensee may not engage in an activity that is authorized under
20 this chapter unless the licensee continuously maintains minimum net worth in the
21 following amount based on the average monthly balance of the accounts maintained
22 by the licensee:

| AVERAGE MONTHLY BALANCE | MINIMUM NET WORTH REQUIRED |
|---|-------------------------------|
| \$100,000 or less..... | \$ 25,000 |
| More than \$100,000 but not more than \$250,000 | 50,000 |
| More than \$250,000 but not more than \$500,000 | 100,000 |
| More than \$500,000 but not more than \$1,000,000 | 200,000 |
| More than \$1,000,000 | 250,000 |

30 **Sec. 06.60.290. Posting of license.** A licensee shall conspicuously post the
31 license in the place of business of the licensee.

1 **Article 3. Discipline of Licensee.**

2 **Sec. 06.60.300. Revocation and suspension of a license.** The department
3 shall revoke the license of a licensee if the department finds that

4 (1) the licensee has failed to

5 (A) pay the annual license fee;

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

7 (C) comply with a provision of this chapter or a lawful demand,
8 ruling, or requirement of the department made under and within the authority
9 of this chapter; or

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

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

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

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

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

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

27 **Sec. 06.60.330. Reinstatement of revoked license.** The department may
28 reinstate a revoked license if the licensee complies with this chapter or with a demand,
29 ruling, or requirement made by the department under this chapter. Before
30 reinstatement of a license, the licensee shall pay the annual license fee required under
31 AS 06.60.210.

1 **Sec. 06.60.340. Examination of licensees.** (a) The department shall conduct
2 an examination of a licensee to determine whether the licensee is complying with the
3 provisions of this chapter and regulations adopted by the department and to obtain
4 information required by the department under this chapter. The department shall
5 conduct the examination at least once every 36 months.

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

9 (c) For the purposes of conducting an examination under this section, the
10 department

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

13 (2) may conduct the examination without prior notice to the licensee;
14 and

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

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

22 **Sec. 06.60.350. False information in course of investigation or examination**
23 **prohibited.** A person may not knowingly give or cause to be given to the department
24 a document or an oral or written statement or report that is false in any respect in the
25 course of an investigation or examination by the department under this chapter.

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

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

31 **Sec. 06.60.400. False, misleading, or deceptive advertising prohibited.** A

1 person may not advertise, print, display, publish, distribute, broadcast, or cause or
2 permit to be advertised, printed, displayed, published, distributed, or broadcast, in any
3 manner a statement or representation with regard to the rates, terms, or conditions for
4 a mortgage loan that is false, misleading, or deceptive.

5 **Sec. 06.60.410. Compliance with federal requirements.** If the regulations
6 apply to a person under federal law, a person shall conduct the person's affairs under
7 12 CFR Part 226 and other regulations adopted by the federal government under

8 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
9 1974);

10 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

11 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

12 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
13 Protection Act); and

14 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968).

15 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited
16 elsewhere in this chapter or by another law, a person may not, in the course of a
17 mortgage loan transaction,

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

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

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

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

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

31 (6) fail to disburse money in accordance with a written commitment or

1 agreement to make a mortgage loan;

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

5 (8) fail promptly to pay when due reasonable fees to a licensed
6 appraiser for appraisal services that are

7 (A) requested from the appraiser in writing by the person; and

8 (B) performed by the appraiser in connection with the
9 origination or closing of a mortgage loan for a customer of the person;

10 (9) influence or attempt to influence through coercion, extortion, or
11 bribery the development, reporting, result, or review of a real estate appraisal sought
12 in connection with a mortgage loan; this paragraph does not prohibit a person from
13 asking an appraiser to

14 (A) consider additional appropriate property information;

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

17 (C) correct errors in the appraisal report;

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

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

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

29 (11) engage in a practice or course of business in which the ultimate
30 rates, terms, or costs of mortgage loans are materially worse for the borrowers than
31 they are represented to be in the first good faith estimates the person provides to the

1 borrowers; this paragraph does not apply if

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

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

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

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

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

15 (2) the amortization period of the new loan is different from the
16 amortization period of the loan being refinanced;

17 (3) the borrower receives cash in excess of the costs and fees of the
18 refinancing;

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

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

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

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

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

28 **Sec. 06.60.440. Escrow accounts.** (a) A mortgage lender and a mortgage
29 broker shall keep in an escrow account all money that a borrower is required to pay to
30 defray future taxes or insurance premiums or for other lawful purposes. The escrow
31 account must be a trust account or another account that is segregated from the other

1 accounts of the mortgage lender or mortgage broker. The mortgage lender and
2 mortgage broker may not commingle the borrower's money with the general funds of
3 the mortgage lender and mortgage broker.

4 (b) A mortgage lender and a mortgage broker may not require a borrower to
5 pay money into escrow to defray future taxes, to defray insurance premiums, or for
6 another purpose, in connection with a subordinate mortgage loan unless an escrow
7 account for that purpose is not being maintained for the mortgage loan that is superior
8 to the subordinate mortgage loan.

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

13 **Article 5. Enforcement.**

14 **Sec. 06.60.500. Stop orders.** (a) If, after investigation, the department has
15 reasonable grounds to believe that a licensee is conducting business in an unsafe or
16 injurious manner, the department shall, by written order addressed to the licensee,
17 direct the licensee to stop the unsafe or injurious practices.

18 (b) If the department determines that a person is engaged in the activities of a
19 mortgage lender or a mortgage broker without a license required by this chapter, the
20 department may order the person to stop engaging in the activities.

21 (c) An order issued under (b) of this subsection is considered rescinded, if,
22 within 30 days after the order is served on the person, the person files with the
23 department a written request for a hearing, and the department fails to hold the hearing
24 within 60 days after the request is filed.

25 (d) An order issued under this section is effective immediately, but only
26 becomes final as indicated by AS 06.60.510.

27 **Sec. 06.60.510. Finality of stop orders.** (a) If the department provides written
28 notice to a licensee of the department's intention to make a stop order issued under
29 AS 06.60.500 final, the notice gives the reasons for the order, and the notice contains a
30 hearing notice, the order becomes final if

31 (1) the licensee does not request a hearing within 30 days after the

1 department provides the notice, and the department does not order a hearing;

2 (2) after a hearing, it appears to the department that the licensee is
3 conducting business in an unsafe or injurious manner, or that the person, if not a
4 licensee, is engaged in the activities of a mortgage lender or mortgage broker without
5 a license required by this chapter.

6 (b) In this section, "hearing notice" means a notice that indicates that, if the
7 department receives a request for a hearing, the department will set a hearing to begin
8 within 15 business days after receiving the request or on a date agreed to by the
9 department and the person to whom the hearing notice is given.

10 **Sec. 06.60.520. Censure, suspension, or bar.** (a) In addition to any other
11 remedy provided under this chapter, the department may, after appropriate notice and
12 opportunity for a hearing, by order, censure or suspend a licensee for a period not to
13 exceed 12 months or bar another person from a position of employment, management,
14 or control of a licensee if the department finds that

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

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

18 (3) the violation has caused material damage to the licensee or to the
19 public.

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

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

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

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

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

5 **Sec. 06.60.600. Appointment of agents.** (a) The department shall collect a fee
6 of \$10 for each mortgage loan document recorded for a mortgage loan handled by a
7 licensee.

8 (b) The department may contract with a licensee or another person to act as an
9 agent to collect the program administration fee.

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

14 **Sec. 06.60.610. Retention and reporting of fees.** (a) An agent may retain 25
15 percent of the program administration fees collected by the agent.

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

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

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

28 **Article 7. Miscellaneous Provisions.**

29 **Sec. 06.60.700. Applicability of administrative procedures.** The provisions
30 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to
31 deny, revoke, or suspend a license under this chapter and to hearings and orders of the

1 department.

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

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

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

9 **Article 8. General Provisions.**

10 **Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise
11 requires,

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

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

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

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

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

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

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

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

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

26 (A) accepts or offers to accept an application for a mortgage
27 loan;

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

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

30 (D) issues mortgage loan commitments or interest rate
31 guarantee agreements to borrowers;

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

6 (11) "mortgage loan"

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

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

13 (C) does not include loans

14 (i) or extensions of credit to buyers of real property for
15 a part of the purchase price of the property by persons selling the
16 property owned by them;

17 (ii) to persons related to the lender by blood or
18 marriage;

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

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

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

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

27 (14) "records" includes books, accounts, papers, files, and other
28 records;

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

31 **Sec. 06.60.995. Short title.** This chapter may be known as the Mortgage

1 Lending Act of 2006.

2 * **Sec. 2.** AS 44.62.330(a) is amended by adding a new paragraph to read:

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

5 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND**
8 **MORTGAGE BROKERS.** Notwithstanding AS 06.60.010, enacted by sec. 1 of this Act, a
9 person who is engaging in activities for which a license is required under AS 06.60, enacted
10 by sec. 1 of this Act, immediately before the effective date of AS 06.60 is not required to
11 comply with the licensing requirements of AS 06.60 until March 1, 2008. In this section,
12 "license," "mortgage broker," and "mortgage lender" have the meanings given in
13 AS 05.60.990, enacted by sec. 1 of this Act.

14 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

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

20 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.C70(c).

21 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect July 1, 2007.

Josh Applebee

From: Petesy Lust [petesy@mtaonline.net]
Sent: Monday, March 06, 2006 8:58 AM
To: Rep. Tom Anderson
Subject: *****SPAM***** HB 424
Importance: High

Recently, there was legislation introduced in the Alaska State House as HB 424 and the Alaska Senate as SB 272 that deals with the licensing of Lenders and Mortgage Brokers. This piece of legislation is being touted as a "consumer protection" bill and was authored by the Alaska Department of Banking and Commerce along with an individual from the Alaska Association of Mortgage Bankers.

These bills set forth regulations, compliance, and licensing requirements for all Lenders and Mortgage Brokers in the state of Alaska. However, the authors left out the most critical element of protecting the consumer; the licensing of each and every Mortgage Loan Originator in the State of Alaska. This fundamental precept of Loan Officer licensing is truly the one paramount component of consumer protection along with Lenders and Broker licensing. Without the licensing of Loan Officers, who actually meet with the consumer, the Lender and Broker licensing has no teeth and lacks any degree of enforcement. It is a known fact most all unscrupulous activities begin at the mortgage loan originator level, but the Bills make no reference to licensing and education of loan officers.

Other issues of this Bill are there are too many exempt entities being allowed. The authors of this bill have exempted certain individuals and institutions. Namely,

- *Banks
- *Credit Unions
- *Savings Institutions
- *a subsidiary or affiliate of a Bank, Credit Union, or Savings Institution
- *a non profit corporation
- *an agency of the government or a quasi-governmental agency
- *an employee of any of the above
- *an independent contractor working for any of the above

The above will exempt most all large entities from regulations and licensing, but the small independent brokers be subject to the bill. We believe that Lenders, Brokers, AND Mortgage Loan Originators all need to be licensed. NO EXCEPTIONS!!!

We are asking for your help and voice to force true consumer protection. We must incorporate into this Bill, licensing of mortgage loan originators, which includes competency and continuing education requirements, for true consumer protection.

Petesy & Dean Lust

"SALE with LUST!"
 Petesy & Dean Lust
 Dynamic Properties
 Direct 907.373.2734
 Direct fax 907.373.2893
www.realestateinmatsu.com

Josh Applebee

From: Doug Isaacson [doug_isaacson@hotmail.com]
Sent: Wednesday, March 01, 2006 6:49 AM
To: Rep. Tom Anderson
Cc: Rep. David Guttenberg; Rep. Harry Crawford; Rep. Norman Rokeberg; Rep. Bob Lynn; Rep. Gabrielle LeDoux; Rep. Pete Kott; Rep. John Coghill; Rep. John Harris
Subject: *****SPAM***** CS for HB 424 Mortgage Lenders and Brokers
Importance: High

Dear Chairman Anderson,

The Alaska Association of Mortgage Brokers (www.akamb.org) is affiliated with the National Association of Mortgage Brokers (NAMB) in order to promote professional conduct, ethical behavior, and education within our industry. As President of the Alaska Association of Mortgage Brokers (AKAMB), I am writing to express my concern regarding today's scheduled hearing for the CS for HB 424.

First, we have not received a copy of the CS for review. As of last night, the CS had still not been introduced. This bill will potentially affect EVERY homeowner in Alaska. It is vital that the bill is understood by those of us in the industry and the public at large in order to provide useful testimony to the Committee. I understand there is a desire by some to push through legislation this year that governs mortgage lenders and brokers, but how is the public interest served if what is passed is not well-considered and if it really doesn't provide consumer protections?

I received, and that only yesterday, a copy of the CS for the Senate version of this bill. I am concerned that if the House CS is very similar, with all the exceptions, the only entities truly being licensed will be the small, unaffiliated mortgage brokers. This is unfair and does not protect the public! This bill should be demanding proof of competency, not simply proof of affiliation or net worth. ***Without a test for competency there is no consumer protection.*** The bill, as currently written, has omitted this crucial test.

Finally, I understand that Committees often request expert testimony or select speakers for their hearings. I am told that this selection has been deferred to members of the industry but has NOT included the President, anyone from the Board of AKAMB, or even an AKAMB Committee Chair. I am hoping this is an oversight but am concerned it is intentional. I request the House Labor & Commerce Committee be given an opportunity to hear from members of our governing board, separate from the public at-large, in order to be given sufficient time to address legitimate concerns regarding this bill.

Sincerely,

Doug Isaacson

President, Alaska Association of Mortgage Brokers
President, Gold Coast Mortgage (Fairbanks)
Councilman, City of North Pole
Phone: (907) 451-7375
Cell: (907) 322-3133
Email: doug@goldcoastak.com



FAIRBANKS LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN ST., SUITE 101
FAIRBANKS, AK 99701

WRITTEN TESTIMONY TRANSMITTAL SHEET

| | |
|------------------------------------|-----------------------------|
| TO: Representative Anderson, Chair | FROM: Lorie/Fbx LIO |
| COMPANY: House Labor & Commerce | DATE: 3/2/2006 |
| FAX NUMBER: 465-2418 | |
| PHONE NUMBER: 465-4954 | FAXED ON: |
| RE: Written Comments | DATE COMPLETED ON: 3/1/2006 |

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Enclosed, please find the originals of the written testimony. Please distribute to committee members.

This testimony is from: Doug Isaacson, President
Alaska Association of Mortgage Brokers
doug@goldcoastak.com
451-7375

PHONE: 452-4448
FAX: 456-3346

SUBMITTED FOR WRITTEN TESTIMONY 3/1/06

TESTIMONY FOR CS FOR HB 424 AND CS FOR SB272

DRAFT

27 FEB 2006

Page 1 of 7

THIS DOES NOT REVIEW CS DATED 3/1/06 WHICH WAS JUST PROVIDED U.S.

INTRODUCTION: WITHOUT A REQUIREMENT FOR COMPETENCY, AND TESTS FOR COMPETENCY, THERE IS NO CONSUMER PROTECTION IN THIS BILL. WHAT THIS BILL DOES, IN ITS PRESENT FORM, IS NARROWLY FOCUSES ON A PART OF THE INDUSTRY, RAISING ITS COSTS AND ENDANGERING ITS ABILITY TO FAIRLY COMPETE. BECAUSE MOST CONSUMER FRAUD HAPPENS AT THE POINT OF ORIGINATION, AND BECAUSE THIS BILL DOES NOT ADDRESS THAT POINT, AND BECAUSE THERE IS TOO MUCH ARBITRARY POWERS ASSIGNED TO THE STATE, THIS BILL DOES NOT SUCCEED IN ITS PRESENT FORM TO PROTECT EITHER THE CONSUMER OR THE PROFESSIONALISM OF THE INDUSTRY.

TITLE:

- Question the validity of the title relating this bill to "and other persons who engage..." because they are dealt with only by their exclusion.
- Other states use language **HOLDING ONESELF OUT TO THE PUBLIC AS MAKING MORTGAGE LOANS** instead of "other persons who..."

Sec.06.60.010 (a)

- **ADD TO DEFINITIONS: "PERSON" MEANS INDIVIDUAL, CORPORATION, LLC, PARTNERSHIP, SOLE-PROPRIETOR OR ANY LEGAL ENTITY"**
- Instead of "mortgage lender" **HOLDING ONESELF OUT TO THE PUBLIC AS MAKING MORTGAGE LOANS**

Sec 06.60.010 (b)

- **ADD TO DEFINITIONS: "PERSON" MEANS INDIVIDUAL, CORPORATION, LLC, PARTNERSHIP, SOLE-PROPRIETOR OR ANY LEGAL ENTITY"**
- Instead of "mortgage broker" **HOLDING ONESELF OUT TO THE PUBLIC AS MAKING MORTGAGE LOANS**

Sec 06.60.20 Exemptions (1)

- **DELETE**
- If can't delete, add after "a mortgage lender" **OR BROKER** who makes any mortgage loans

Sec 06.60.20 Exemptions (2)

- **DELETE**

Sec 06.60.020 (3)

- **DELETE**
- If can't delete entirely, would delete "a subsidiary and an affiliate"

INITIAL DRAFT

TESTIMONY FOR CS FOR HB 424 AND CS FOR SB272
DRAFT 27 FEB 2006
Page 2 of 7

Sec 06.60.020 (4)

- **DELETE**

How is the consumer protected when those most at risk do not have the protection of a competent entity?

Sec 06.60.020 (5)

- **DEFINE "Quasi-governmental" & the need for exclusions in this paragraph**

How is the consumer protected when those most at risk do not have the protection of a competent entity? And why should the State not require competency of it's agencies and of those who make mortgage loans on behalf of the state?

Sec 06.60.020 (6)

- **DELETE**

How is the consumer protected when those most trusting do not have the protection of a competent entity?

Sec 06.60.020 (7)

- **DELETE**

How is the consumer protected when those most at risk do not have the protection of a competent entity?

- If can't entirely delete, After "however" Would add **ATTORNEY**

Sec 06.60.020 (8)

- **DELETE**

How is the consumer protected when those most at risk do not have the protection of a competent entity?

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

Would **DELETE** requirements for residence address

Sec 06.30.030 (6)

DEFINE "OTHER INFORMATION" i.e. LIMIT SCOPE OF ARBITRARY REGULATION

Sec 06.60.040 Investigation

- Would **REDUCE** nonrefundable fee from \$500 to a more realistic fee of say \$200
- **INCLUDE** all entity Board members/Officers/Shareholders subject to investigation and background checks.

Sec 06.60.050 Initial annual fee

Would **CHANGE** to read-Bi-annual (biennial) fee

Sec 06.60.070 Issuance of license (a)

- **CHANGE** 90 to 30 days (how an existing applicant operate during this time

TESTIMONY FOR CS FOR HB 424 AND CS FOR SB272

DRAFT

27 FEB 2006

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- **CHANGE** "the department shall either approve the application and issue a license to the applicant [,] disapprove the application **OR STATE THE NEED FOR AN ADDITION NUMBER OF DAYS TO COMPLETE THE INVESTIGATION, WHICH NUMBER SHALL NOT EXCEED 90 DAYS.**

Sec 06.60.080 (2)

- Explain how "financial responsibility, experience, character and general fitness" and "the organization and operation of the applicant will operate in compliance with AS 06.60.400-06.60.440" would be determined
- Does this exclude Sole-proprietors? On what basis?
- This is way too vague and therefore onerous and arbitrary

Sec 06.60.080 (4)

ADD PARAGRAPH (4) TO INCLUDE EDUCATION, CERTIFICATION, AND COMPETENCY REQUIREMENTS, or include as part of the definition in (2) of "experience" or "general fitness."

Sec 06.60.090 (1)

EXPLAIN how this section would be determined

Sec 06.60.210 Annual report

- **CHANGE** to a Bi-Annual fee of \$250
- **REQUIRE** "Rule Making" as to the nature of the reporting and allow for grievance process if the rules are too onerous.

Sec 06.60.220 (a) Location of business of making loans

- **DELETE**
- If can't delete entirely, need to address more locations, e.g. Consumer's homes, etc.

Sec 06.60.230 (b)

DELETE - a broker/lender is not a depository; the community served is the entire State of Alaska, or does the department intend to limit the location of the communities where a loan may be made?

Sec 06.60.250 (a)

- **DEFINE** "sound and accepted accounting practices".
- **ADD PROVISION, IF THE APPLICANT DESIRES TO KEEP RECORDS OUT OF STATE, THEY ARE TO NOTIFY THE DEPARTMENT OF THE LOCATION.**

Sec 06.60.250 (c)

- **CHANGE** from "three years after the mortgage loan was originated" to **"THREE YEARS AFTER THE LAST ENTRY FROM THE BORROWER."** Therefore, to cover pure broker, table funding, or servicing of any length:

TESTIMONY FOR CS FOR IIB 424 AND CS FOR SB272
DRAFT
Page 4 of 7

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- o If taking an application = 3 years from last contact of application;
- o If funding a loan = 3 years after funding;
- o If servicing a loan = 3 years after the loan has been serviced or sold.

Sec 06.60.270 (a)

- ADD After "may not serve as an" add **OWNER**
- **DELETE 10 PERCENT**
- **DELETE** "an independent contractor, or an employee" This should be in an Originator's bill

Sec 06.60.280 Minimum net worth

- **DEFINE "SERVICING"**
- **DEFINE** how "Monthly Average Balance" is determined

Sec 06.60.340 (a) Examination

- **CHANGE** the demand for examination every 36 months to "THE DEPARTMENT SHALL CONDUCT AN EXAMINATION AT MOST EVERY 36 MONTHS, BUT MAY BE WAIVED BY THE DEPARTMENT IF THE EXAMINATION IS NOT WARRANTED OR CONDUCTED MORE FREQUENTLY IF THERE IS INDICATION OF FRAUD (et. al.)

Sec 06.60.340 (c) (1)

ADD AFTER "safes, and vaults of the licensee" **AS APPLICABLE**

Sec 06.60.340 (d)

- Delete this section, the State is collecting fees which should cover such expenses.
- If the section can't be deleted, as far as it examines mortgage brokers (who have little, if anything, to examine!) **ADD A LIMIT TO THE DEPARTMENT'S ABILITY TO CHARGE, e.g. "NO MORE THAN \$500..."**

Sec 06.60.400

ADD TO DEFINITIONS: "PERSON" MEANS INDIVIDUAL, CORPORATION, LLC, PARTNERSHIP, SOLE-PROPRIETOR OR ANY LEGAL ENTITY"

Sec. 06.60.410

DELETE

- this gives State Regulators the authority to regulate Federal requirements— an authority they do not exercise currently with Federally Chartered Banks.
- This would put a huge burden on the department to train, supervise, and keep current all our regulators and auditors
- "A Right to audit becomes a Requirement to audit."

Sec 06.60.420

TESTIMONY FOR CS FOR HB 424 AND CS FOR SB272

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- In the first paragraph, **ADD TO DEFINITIONS: "PERSON" MEANS INDIVIDUAL, CORPORATION, LLC, PARTNERSHIP, SOLE-PROPRIETOR OR ANY LEGAL ENTITY"**
- **ADD: PROHIBITED ACTIVITIES: differing levels of infraction require varying levels of discipline from**
 - a) give warning,
 - b) disciplinary actions,
 - c) suspensions,
 - d) revocations,
 - e) jail.
- **ADD "SUBSTANTIAL FAULT OF THE BORROWER" language.**
Example: NONE OF THESE PENALTIES OR PROHIBITED ACTIVITIES SHALL APPLY IF THE ACTIVITY OCCURS ON THE FAULT OF THE BORROWER. The licensee is not liable if the borrowers lie!

Sec 06.60.420 (7)

ADD TO DEFINITIONS: "PERSON" MEANS INDIVIDUAL, CORPORATION, LLC, PARTNERSHIP, SOLE-PROPRIETOR OR ANY LEGAL ENTITY"

Sec 06.60.420 (8)

DELETE.

- How does failure to pay an appraiser become as egregious as theft, especially if the appraiser hasn't performed reasonably?
- Why is the State becoming a Collection Agent for a segment of the industry?

Sec 06.60.420 (9)

DELETE.

- How can the State arbitrarily decide that a Pre-Payment Penalty is NEVER in the borrower's best interest?

Sec 06.60.420 (11)

- **DELETE**
- If can't delete, **DEFINE "LOAN COMMITMENT" v. "PREQUALIFICATION"**
- If can't delete, **ADD (C)-The underwriter changes any portion of the loan request including but not limited to rate, term or down payment.**
- **Note: "SUBSTANTIAL FAULT OF THE BORROWER" language, above.**

Sec 06.60.430 (a) AND (b)

- **CHANGE (a) A MORTGAGE LOAN MAY BE REFINANCED WITHIN 12 MONTHS AFTER THE DATE OF ORIGINAL LOAN FUNDING WHEN IT IS IN THE BORROWER'S BEST INTEREST."**
- **CHANGE (b) "whether" to (INCLUDE), BUT NOT LIMITED TO:**

TESTIMONY FOR CS FOR HB 424 AND CS FOR SB272

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- **ADD (9) OR OTHER MITIGATING FACTORS WHICH DEMONSTRATE THE BORROWER'S BEST INTEREST.**

Sec 06.60.440

- **ADD REQUIREMENT THAT THE DEPARTMENT USE THE STANDARD MORTGAGE BANKERS SINGLE LINE AUDIT PROGRAM which is used throughout the country.**
- **ADD: (a) after "required to pay to defray future taxes...or other lawful purposes." THIS SHALL NOT APPLY TO MONIES COLLECTED IN EXPECTATION OF A MORTGAGE FUNDING.**

Sec 06.60.520 (ii)

- **ADD: MORE THAN JUST MONETARY PENALTIES, AND USE VARYING LEVELS OF DISCIPLINE FOR DIFFERENT LEVELS OF INFRATCTIONS from:**
 - a) give warning,
 - b) disciplinary actions,
 - c) suspensions,
 - d) revocations,
 - e) jail.
- **ADD "SUBSTANTIAL FAULT OF THE BORROWER" language.**
Example: NONE OF THESE PENALTIES OR PROHIBITED ACTIVITIES SHALL APPLY IF THE ACTIVITY OCCURS ON THE FAULT OF THE BORROWER." The licensee is not liable if the borrowers lie!
- **CHANGE: after "exceed 12 months or bar" replace "another" with SAID.**

Sec 06.60.520 (c)

A "prohibited person" should be able to perform some duties—define??

Sec 06.60.600

DELETE OR DEFINE THAT THIS FEE APPLIES TO ALL MORTGAGE LOANS WITHIN THE STATE OF ALASKA REGARDLESS OF LICENSED OR EXCLUDED STATUS.

Sec 06.60.610

- (a) WHY 25% COMMISSION?
- (c) WHY PAY ONLY ANNUALLY v. monthly or quarterly?

Sec 06.60.990 (2)

CHANGE "BORROWER" MEANS A PERSON WHO INQUIRES, APPLIES FOR, OR RECEIVES...

Sec 06.60.990

TESTIMONY FOR CS FOR HB 424 AND CS FOR SB272

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- **ADD DEFINITION OF PERSON: "PERSON" MEANS INDIVIDUAL, CORPORATION, LLC, PARTNERSHIP, SOLE-PROPRIETOR OR ANY LEGAL ENTITY"**

Sec 06.60.990 (9)

CHANGE "person" to LICENSEE

Sec 06.60.990 (11)

CHANGE individual to PERSON

Sec 06.60.990 (14)

DELETE OR redefine as "USED AS THE BORROWER'S PRIMARY RESIDENCE."

Josh Applebee

From: Eddie Burke [frontiermortgage@yahoo.com]
Sent: Thursday, February 23, 2006 2:26 PM
To: Rep. Tom Anderson
Subject: Legislative concerns Hb-424

Rep, Anderson (Tom)

I have concerns about the intentions of this Bill (HB-424) and how the end result may affect small Mortgage Brokers like myself.

My office is located in Muldoon and we represent borrowers that larger lenders often turn-down. We work with outside lenders that specialize in provide more lending options for individuals who traditionally do not qualify under "conforming" loan programs. Removing these options and competition would not help the consumer.

Theres a saying, "If you can't buy someone out, then legislate them out." Creating legislation that makes it more difficult for smaller businesses to compete.. is not the role of government.

I hear this is being done to protect the consumer, but laws are already in place that protect the consumer. The legislation I've seen, places a large financial burden unevenly on small Brokers. We don't mind over site and testing, it's large fee's and annual cost that will drive us out. I do 1-4 loans a month, where Residential Mortgage and others do 150 loans a month. Placing the same cost on us small Brokers, is nothing more than running off the competition. (which I'm sure they would like)

It's my understand there is more legislation coming that will be specific to us brokers and will be blended with HB-424? I would ask that all this legislation be held in committee so that hearings can be held in the interim this summer.

Thank you for the opportunity to give you a brief explanation of my concerns.

Congratulations on your wedding.

Eddie Burke

Eddie Burke
Owner/Branch Manager
1st Frontier Mortgage
322 Muldoon Rd. Suite B
Anchorage, Alaska 99504

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Cell 907-229-2287
Fax 907-222-1478
frontiermortgage@yahoo.com
www.firstfrontiermortgage.com

Josh Applebee

From: Cris / Kelstar Alaska [cris@kelstaralaska.com]
Sent: Wednesday, March 01, 2006 4:53 PM
To: Rep. David Guttenberg; Rep. Harry Crawford; Rep. Norman Rokeberg; Rep. Bob Lynn; Rep. Gabrielle LeDoux; Rep. Pete Kott; Rep. Tom Anderson
Cc: Vernon W. Rush; John Martin; Doug Isaacson; Joe Brammer; dwightd@evergreer.alaska.com; Don.Nagel@sba.gov; connie.marshall@sba.gov; spalin@mtaonline.net; broadcast.sp4g@gci.net; Sen. Charlie Huggins; Sen. Lyda Green; Rep. Bill Stoltze; Rep. Carl Gatto; Rep. Mark Neuman; Rep. Vic Kohring
Subject: CS for HB 424 Mortgage Lenders and Brokers
Importance: High

To: Committee Chair Anderson and Committee Representatives
 RE: HB 424 and CS Senate Bill 272,
 Mortgage Lender / Mortgage Broker Act

My name is Cris Skinner, Broker/Owner of Kelstar Financial of Alaska Mortgage Company. I am also a member of the National Association of Mortgage Brokers, Alaska Chapter (AKAMB), but more importantly and advocate for the interests of the consumer. I am corresponding with you today in reference to the current proposed bills, HB 424 and CS Senate Bill 272. My purpose of this correspondence is to voice my concerns, stance and oppositions to the above mentioned Bills, not only as a small business owner, but foremost for the good of the consumer.

I would first like to say I am in favor of licensing and education of everyone who is dealing with the consumer in the mortgage industry. However, the above mentioned proposed Bills are missing a main ingredient: PROTECTION OF THE CONSUMER. Neither of the Bills discuss licensing and/or education requirements of loan officers or those in the industry who work directly with the consumer obtaining loan application, credit reports and all other pertinent documents in the loan transaction. It is a known fact that fraudulent and unscrupulous activities begin at the loan officers level. I am a member of the Legislative Committee for Alaska Association of Mortgage Brokers and this committee was working diligently and jointly with Alaska Mortgage Bankers Association in drafting a Bill which included licensing and education of loan officers. Since then, the Bill was introduced by another organization, without our knowledge or content and are missing the main component in the efforts of consumer protection; the licensing and the education of loan officers. The current Bills also "exempt" many in the industry. All loan officers in any entity should be required to be licensed and educated in order to provide true consumer protection.

Secondly, the current proposed Bills are allowing far to many exemptions from licensing. These bills are tailored to exempt anyone who closes 6 loans or less in six months, anyone who engages in business as a bank, savings institution or credit union, a "quasi-governmental" agency and any "nonprofit organization", just to name a few. Basically, the only entities truly being licensed will be the unaffiliated mortgage brokers. It is my position that NO ONE should be exempt when dealing with the protection of the consumer from unscrupulous, unethical and fraudulent activities. I have been told the "exempt" status is due to being Federally Regulated. As a Mortgage Broker, we too are held and regulated Federally, by RESPA, Fair Housing Act, Fair Lending, Predatory Lending etc. etc. In addition, we are bound by our broker agreement with lenders to follow all above regulations or the broker/lender agreement is terminated and reported to proper authorities. These "exempt" status entities are not free of fraudulent, unethical and unscrupulous practices and should be included in State regulations and auditing. This is also my stance in reference to the licensing and education of all loan officers accepting applications from the consumers and quoting mortgage terms...no exemptions. Again, the most important component in consumer protection is licensing and education of loan officer and that component is not present in these Bills. In fact, these Bills work against the consumer by not requiring licensing and education of loan officer and allowing to many "exempt" entities.

As a member of the Alaska Association of Mortgage Brokers, our organization has been pushed out of this process and have not been given the opportunity to work on the current proposed Bills. As a small business owner, I feel the current Bills are not

tailored toward the best interest of the consumer, but instead requiring financial burdens to be placed on smaller entities and more costs to operate. This too is not in the best interest of the consumer as we will either have to pass the costs on to the consumer or close our businesses. This will take away financing options for the consumer as we have many programs larger entities may not. I feel this is walking the fine line of Fair Business Trade and protection in place under the Small Business Administration. In addition, the lack of definition of sections and verbage leaves many questions and many gray and white areas throughout these Bills.

Below, I have outlined section by section of SB272 which will provide evidence of my oppositions and concerns.

Sec. 06.06.060 – Bonding. A \$25,000.00 bond is required. A bonding company will base the cost of the bond on the net worth and assets of the Broker. The smaller the Broker, the larger the costs. *Item (e) in this section states "if the department determines at anytime that the bond required under (a) of this section is unsatisfactory for any reason....the department may require an additional bond...* This section is lacking further definition of "unsatisfactory" and what the specific criteria is needed by the bonding company.

Sec 06.06.080 – Determinations for licensing. *Before approving an application filed under as 06.06.030, the department shall determine that (2) the financial responsibility, experience, character and general fitness of the applicant...* Further define "financial responsibility". Is this business related and/or personal? If an owner or officer is faced with unforeseen medical bills they can't pay is this grounds for disapproval? Experience...if there are no education requirements set forth, how can disapproval be based on experience? General fitness of the applicant...what exactly does this mean?

Sec. 06.60.210 – Annual license fee. I propose a biennial license fee of \$250.00. due to the fact we will also be imposed with the additional license fee under the Alaska Business License Act.

Sec. 06.60.340 – Examination of licensees. *This section is requiring an audit by the State Department at the rate of \$75.00 per hour, plus per diem, travel and housing of employees of the State.* The main issue with this is "what will they audit" Mortgage Brokers only maintain copies of the preliminary paperwork received from the borrower. All originals and final loan documents are held by the lender. Again, what will the department audit? Also, how will the department handle the fees for consumers who make false complaints? Will the Broker still be liable if it is found the Broker has NOT engaged in activity prohibited under this bill? Again, costs to Broker to be passed on to consumer or cause financial hardships to continue in business.

Sec. 06.60.420. Prohibited Activities. I am in favor of regulating prohibited activities, however the proposed Bills do not discuss the penalties other than revocation of license. For instance, if money is taken from an escrow account, this could be considered a felony. If an appraiser is not paid for an appraisal, what level of penalty will be and who will decide. Is the department taking on the task of a "collection agency" for an appraiser? Also, in an Earnest Money Contract, it is indicated that either buyer or seller is to pay for the appraisal. If the said party in the contract does NOT provide funds for the appraisal, how is the mortgage broker protected against this cost?

Under this same section, the entirety of (11) Verbage needs to be defined in the event the borrowers qualifications change. For instance, the original credit score is 689 and the final credit report is 642, this changes the borrowers qualification. Another instance is if the borrower has obtained a new liability that did not reflect on the original credit report.

These are only a few of the issues, and again the verbage in these Bills lack definition and leaves many gray areas. First and foremost, these proposed Bills are lacking the intent of consumer protection. What it does do is allow the larger entities to overcome any financial burdens and monopolize the market. It is my stance that mortgage brokers are being treated unfairly and undue requirements and costs are being required of mortgage brokers without equivalent requirements and costs being demanded of other members of the mortgage conduit. These extra costs will have an adverse affect on the consumer due to costs being passed onto the consumer or taking away options for the consumer if the mortgage broker can no longer afford to stay in business. Finally, it seems apparent the smaller brokers have been push aside when drafting these Bills and no one from the Association of Mortgage Brokers have NOT been included in any area of this process. I am hoping this is an oversight but am concerned it is intentional.

It is my request the committees and all involved in the response and review of these Bills to evaluate these bills according to whether or not they truly protect the consumer. Also, evaluate the restraint on trade and existence of smaller mortgage brokers as well as inflating costs which, in essence, could be passed onto the consumer.

Thank you in advance for your time and consideration in this matter.

Cris Skinner
Sr. Mortgage Consultant

President/Owner
Direct (907) 357-4740
Office (907) 357-9640
Fax (907) 357-9644
www.kelstaralaska.com

CONFIDENTIALITY NOTICE

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Josh Applebee

From: Vernon W. Rush [rushloanak@yahoo.com]
Sent: Friday, March 03, 2006 11:04 AM
To: Rep. Tom Anderson; Rep. Ethan Berkowitz; Rep. Mike Chenault; Sen. John Cowdery; Rep. Harry Crawford; Sen. Bettye Davis; Director; Sen. Johnny Ellis; Sen. Hollis French; Vic Korhring; Rep. Pete Kott; Rep. Bob Lynn; Rep. Kurt Olson; Rep. Kurt Olson; Rep. Norman Rokeberg; Rep. Paul Seaton; Sen. Ralph Seekins; Sen. Ben Stevens; Sen. Gary Stevens; Sen. Tom Wagoner
Subject: Fwd: Re: Realtors Mtg HB424/Originator draft
Attachments: Re: Realtors Mtg HB424; 2000858881-myanswer to 424.doc

Note: forwarded message attached.

Vernon W. Rush
YOUR ALASKA REAL ESTATE CONSULTANT
729 "N" Street, Anchorage, Alaska
Serving Alaska Clients for 28 Years
Properties, Notes, Loans
(907) 929-2224
Alaska Capital.com

To: Senator Con Bunde, Chair of Senate Labor and Commerce
Representative Tom Anderson, Chair of House Labor and Commerce
And: All committee members

CC: Senator Wagoner

Re: HB 424 and SB 272 "An act relating to mortgage lenders, etc."

Sirs,

My name is Vernon W. Rush. I own or am involved in several entities that provide "A" mortgage loan paper through National Lenders such as Bank of America or Countrywide and/or alternative financing for Alaskans depending on property offered as collateral and/or credit. I loan my own monies as well. Most of my clients have been with me 15 years or longer. I own Alaska Capital, am a partner in Equity Investors, am managing partner of Astoria Investments, am a member of the Independent Lender's Association, the Alaska Mortgage Brokers Association and chair of the Legislative Committee. I am also a licensed Real Estate Broker in the State of Alaska and a member of the Mat-Valley Board of Realtors. I hold several degrees. I have been involved in Banking and Real Estate since 1968.

Having been involved in a desire to create licensing since 1999 (and with the office of Lisa Murkowski as an Alaska House of Representatives Member), I would like to offer my views and background on the above proposed legislation.

First let me point out that by definition, ALL LENDERS are predatory. The public or borrower cannot change the note or trust deed as they wish. As the Bible puts it, "not a borrower or lender be." In today's society borrowing is sometimes a necessary evil. It is found and established by FNMA and HUD audit that almost all fraudulent and deceptive lending results when the borrower contacts or is contacted by the lender's loan officer or representative. It is not done once the loan has been generated and sold to HUD or the secondary loan market. **This situation is now being addressed nationally by registering ALL signers of a uniform mortgage application (1003) (loan officers).** I, personally, am slated to appear in Washington at the end of this month to add my name to the proponents of the "**Responsible Lending Act**". (HR 1295)

The proposed legislation before you started as a bill backed by the **Independent Lenders Association to license Lenders so that we could be tracked and monitored by the state.** It was a no-frills, no-nonsense piece of legislation that would have done precisely what was intended. It was crafted and presented as a stand-alone document. It was to **ensure that a lender was a real, tangible entity and could provide the funds that were being offered. This protected the public** in that they could be assured that a promised loan could be funded by a licensed lender.

While the above was going on, the Division of Banking was developing a proposed bill with the consensus of the mortgage bankers and mortgage brokers. That effort contained

provision for licensing Mortgage Bankers, Mortgage Brokers and Originators/loan officers of mortgage loans. It not only contained financial requirements but **educational requirements as well**. It is this addition as well as non-essential additions to the above bill that makes it very murky at present. It has turned a straight-forward bill into a collection tool for appraisers, mortgage qualification tool for Realtors, exemption tool for about everyone and cost increase tool for the public. **In short, it does not protect the public, does not promote the growth of the industry, ignores competency, increases costs to the public, is detrimental to small business and does not serve any socially redeeming value.**

It has been advised by my attorney and I'm sure you could check with legislative counsel, that since most legitimate brokers (Alaska Mortgage Broker Association Members) have "independent contractor" agreements with their lenders who are Federally Chartered banks or institutions, which provide for duties performed and responsibilities to abide by federal mortgage loan guidelines they would be exempt because they have federal (exempt status) oversight. Rates, terms, commitments, underwriting and approvals as described in definitions on page 18, are all dictated by the lender. It would only preclude members of the Alaska Mortgage Broker Association from brokering and open them to audit of transactions funded by non-exempt lenders. In fact, EXCEPTING (C) and (D) the definition of a broker as defined under section 06.60.990, page 18 IS ONE OF THE DEFINITIONS OF AN ORIGINATOR OR LOAN OFFICER as contemplated by some authors in the Federal Responsible Lending Act. A commissioned mortgage loan officer (originator) is simply an individual (broker) who has elected to "sell" his production (pipeline) to only one lender.

I would ask you to consider and recommend the following:

1. I know that there is a copy of the Originator's proposed licensing with Tim Kelly, the lobbyist for the independent lenders or I have attached it to this letter. I would recommend that it be added as a rider to this bill as part and parcel of the industry. This would be because a broker mirrors originators more than a lender.
2. Delete all reference to mortgage brokers in the present bill. They are not lenders nor do they hold themselves to be so.
3. Delete collection efforts for Appraisers. There are other legal channels for them to address non-payment.
4. Require Trust accounts for any funds pre-paid by the public held by ANY LENDER, BROKER, or INDIVIDUAL for third-party reports
5. Delete exemptions for any entity that is not DIRECTLY monitored by a Federal or State oversight agency.

Let's keep it simple.....you are either a lender or you are a broker/originator. You might do both, but you need to qualify as both. If we want to protect the public, especially from internet companies, lets make all originators of any loan solicited in Alaska, subject to Originator/Loan Officer licensing so that the public knows that they are dealing with a knowledgeable, responsible person that is licensed, bonded and tracked by the State Government.

I am in the process of hopefully opening a small office in Ninilchik, Alaska. I have built a home on the Ninilchik River and would prefer working in my area. The bill, as presented, would severely limit what I could offer to the residents of the area and make mortgage money more scarce and expensive. I would hope you will consider the rural areas when passing any legislation.

Thank you for your kind attention,

Vernon W. Rush

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: H3 424
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|----------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| CHANGE IN REVENUES (1156) | 259.2 | 228.4 | 348.5 | 348.5 | 348.5 | 348.5 |
|----------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|-----------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 CF | | | | | | |
| 1007 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Receipt Supported Services (1156) | 200.4 | 195.6 | 195.6 | 195.6 | 195.6 | 195.6 |
| TOTAL | 200.4 | 195.6 | 195.6 | 195.6 | 195.6 | 195.6 |

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Mark Davis, Director Phone 907.269.8144
 Division Banking & Securities Date/Time 3/6/06 2:52 PM
 Approved by: William C. Noll, Commissioner Date 3/6/2006
 Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. HB 424

ANALYSIS CONTINUATION

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

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 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. 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-LS1644\I, that was also adopted by House (L&C) on 3/1/06.

Under "BILL FOR AN ACT"

I would add mortgage companies/entities to clarify that the legislation is for company related entities.

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 06.60.010 (b)

Would change "a person" to entity

Sec 06.60.20 Exemptions (1)

Would delete this section, everyone should be subject to licensure to protect the public.

Sec 06.60.20 (2)

Would delete this section

Sec 06.60.020 (3)

Would delete "a subsidiary and an affiliate"

(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.

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 06.30.030 (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.

Sec 06.60.040 Investigation

Would reduce nonrefundable fee from \$500 to a more realistic fee of say \$200

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??

Sec 06.60.080 (2)

Explain how "financial responsibility, experience, character and general fitness" and "the organization and operation of the applicant will operate in compliance with AS 06.60.400-06.60.440" 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.

Sec. 06.60.200 (a) Annual Report

What does "concerning the business and operations of each location" really mean, needs to be clarified as to exactly what 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 loan

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.

Sec 06.60.250 (a)

Define "sound and accepted accounting practices".

Sec 06.60.270

Seems confusing, needs some clarity.

I would think that a person could be an independent contractor or employee of a licensee if they did not perform functions that are covered by licensure.

The section also talks about a 7 or 5 year limit for previous crimes, why not delete the time frames or make them the same if deemed necessary under other provisions of law??

Sec 06.60.280 Minimum net worth

"balance of the accounts maintained"-what accounts, and how is "Monthly Average Balance" determined?? On a 12 month, 36 month period? Because this formula could change, a person might not be in compliance and not be aware of it. We wouldn't want to punish an innocent person.

Sec 06.60.340 (a) Examination

The last sentence, after "The department shall conduct the examination" delete "at least every 36 months" and add: "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 this should come solely from license fees. 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 06.60.400

After "a person" add, or entity

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?

Sec 06.60.420

After "a person" add or entity in the first paragraph

Sec 06.60.420 (7)

After "a person" add or entity

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.

Sec 06.60.440 (a)

Define "other lawful purposes."

Sec 06.60.520 (a)

After "exceed 12 months or bar" replace "another" with "said"

Sec 06.60.520 (c)

A "prohibited person" should be able to perform some duties that are not related to licensure, —define ??

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 & Sec 06.60.610

Delete this section

This is an unwanted tax on the consumer. The funds are not needed. Besides, why give away 25% ? The consumer would howl at this. Any funding for this legislation should be derived from license fees.

Sec 06.60.990

(9) change "person" to licensee

Sec 06.60.990

Delete (14)

Sec 06.60.990

Add (15) "Entity" to include: sole proprietorship, partnership, corporation, LLC, etc.

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 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'm sure with more time to evaluate the present CS I could have more comments.

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

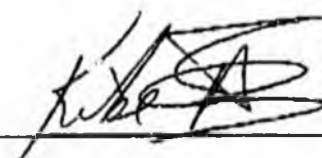


Alaska State Legislature

Please enter into the record my testimony to the House Labor & Commerce
Committee name ~

Committee on HB 424 Licensing of Mortgage dated 3/6/06
Bill/Subject Brokers

I am opposed to the bill in its current form! I believe it is important for Mortgage brokers, mortgage lenders, & loan originators to be licensed. Especially loan originators. Allowing for the exemptions in this bill negates the consumer protection which we need. The exemptions also harms the small mortgage brokers causing inflated costs and fees - which obviously get passed on to the consumer.

Signed: KIBE LUCAS 
Testifier

Representing (Optional)
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ALASKA STATE LEGISLATURE

House of Representatives

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CSHB 424(L&C) The Alaska Mortgage Lending Act of 2006 Sponsor Statement

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

Alaska is the very last state not to license and regulate residential mortgage lending. Because of this fact, the Alaska Division of Banking and Securities has no authority to investigate the more than 20 complaints and over 50 phone calls it receives weekly about questionable lending practices, and can do nothing to protect Alaska consumers from fraud, questionable lending or brokering practices. 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 representing, 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 to balance protection of Alaska's consumers while insuring sufficient access to residential mortgage loans.

During the past year the Alaska Division of Banking and Securities has worked closely with several leading Alaska mortgage lending groups to develop legislation to address this problem but to date no consensus, one acceptable to everyone, has been found. However, the concept of an attempt to regulate the mortgage lending industry in Alaska and is supported by the Alaska Division of Banking and Securities, the Alaska Mortgage Bankers Association, the Alaska Mortgage Brokers Association, the Independent Lenders of Alaska, the Alaska Realtors Association and the AHFC.

CSHB 424 has been introduced as a starting point to address this problem and grant the Division enough licensing and regulatory authority to begin addressing the growing number of complaints Alaska home buyers are experiencing.

This legislation does not address, and will not solve, all the issues Alaskan home purchasers face, but it is a strong first step. Additionally, more controversial legislation, addressing loan originators and other issues needs to be pursued. This effort to establish accountability in the mortgage lending industry in Alaska is vital and past due.

I urge your support for CSHB 424.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
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CSHB 424(L&C) Mortgage Lending Sectional Analysis

"An Act relating to mortgage lenders and persons who engage in activities relating to mortgage lending; and providing for an effective date." This legislation brings the business of mortgage lending and brokering under the supervision of the Division of Banking & Securities (Division). In this sectional, the legislation is referred to as "Act."

Section 1

Article 1. Licensing.

Sec. 06.60.010 Subjects mortgage lenders and brokers to licensing by the Division.

Sec. 06.60.020 List various exemptions from licensing under this Act.

Sec. 06.60.030 Provides the requirements for licensure application under the Act.

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

Sec. 06.60.050 Requires the initial license fee to be submitted with the application, and defines the next due date for the license fee.

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

Sec. 06.60.070 Requires the Division to issue a license, or reason for refusal to license, within 90 days of the filing of the application.

Sec. 06.60.080 Details those items the Division must consider in its determination of whether or not to issue a license.

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March 5, 2006

Sec. 06.60.090 Outlines a list of additional grounds for disapproving a license.

Sec. 06.60.100 Gives the Division the authority to define the form of the application and requires the licensee to supply an address for where business will be conducted, and includes the Internet, if appropriate.

Sec. 06.60.110 Defines the duration of a license and restricts the transfer of a license.

Article 2. Licensee Obligations.

Sec. 06.60.200 Requires submission of an annual report, gives the Division the authority to specify the form and content and provides for a \$25/day for late filing.

Sec. 06.60.210 Sets annual license fee at \$250.

Sec. 06.60.220 Prohibits the licensee from conducting other business from within the licensed office unless disclosed in the initial application.

Sec. 06.60.230 Gives the licensee the authority to relocate a licensed office upon giving the Division a 10-day prior notice.

Sec. 06.60.240 Requires a licensee to inform the Division within 10 days if there is a significant change in the business operations.

Sec. 06.60.250 Provides guidance and outlines requirements for record keeping.

Sec. 06.60.260 Requires a licensee who's office is located outside of Alaska to make records available at a location within Alaska, or to pay cost incurred to examine at its out of state office.

Sec. 06.60.270 Defines disqualified person and banishes them from most aspects of a licensed office/business.

Sec. 06.60.280 Sets out minimum net worth requirements for licensees.

Sec. 06.60.290 Requires the license be conspicuously posted.

Article 3. Discipline of Licensee.

Sec. 06.60.300 Requires the Division to revoke a license in specific situations.

Sec. 06.60.310 Provides the ability for a licensee to surrender a license and the process, and requires surrender in the event of 12 consecutive months of inactivity.

Sec. 06.60.320 Provides the effect of revocation, suspension, or surrender of a license. Licensee must divest itself of all outstanding loans.