

MEMORANDUM FOR THE SECRETARY, DEPARTMENT OF LABOR

1155 HOUSE LABOR & COMMERCE

From the Division of Banking and Securities
Response to
John Martin's updated testimony on SB 272. dated 4/4/06.
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functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

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

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

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

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

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 We do not publish their residence address.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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 06.60.280 – This section is deleted.

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

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

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

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

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

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

Sec. 06.60.420, 3) - Agree with Mr. Martin that the additional language could be added.

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

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

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

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

End.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By licensing the industry, we are able to protect the public from unscrupulous operators. If the originator is subject to licensure and does not perform legally, his/her license can be taken away. That affects their ability to earn a living.

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

In regards to the proposed legislation:

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

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

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

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

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

Under "A BILL FOR AN ACT"

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

Sec.06.60.010 (a)

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

Sec 06.60.20 Exemptions (1)

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

Sec 06.60.20 (2)

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

Sec 06.60.020 (3)

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

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

Sec 06.60.020 (4)

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

Sec 06.60.020 (5)

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

Sec 06.60.020 (6)

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

Sec 06.60.020 (7)

This section is confusing.

I would delete this section

Anyone who receives monetary enumeration needs to be subject to licensure

Sec 06.60.025 (b)

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

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

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

Would delete requirements for residence address

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

Sec 06.60.040 Investigation

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

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

Sec 06.60.050 Initial annual fee

Would change to read Biennial fee (every two years)

Sec 06.60.070 Issuance of license (a)

Would change 90 to 30 days

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

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

Sec 06.60.080 (2)

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

Sec 06.60.090 (1)

Explain how this section would be determined

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

Sec 06.60.090 (3)

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

Need to clarify.

Sec 06.60.110 (a)

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

Sec 06.60.110 (b)

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

Sec. 06.60.200 (a) Annual Report

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

Sec 06.60.210 Annual report

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

Sec 06.60.220 Location of business of making loans

Would delete this section

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

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

Sec 06.60.250 (b)

Define "sound and accepted accounting practices".

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

06.60.250 (c), (d)

Both paragraphs should be combined into one

06.60.260 (2)

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

Sec 06.60.280 Minimum net worth

Per Mr. Davis this section was being deleted.

06.60.310 (b)

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

Sec 06.60.340 (a) Examination

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

Sec 06.60.340 (c) (1)

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

Sec 06.60.340 (d)

Delete this section

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

Sec. 06.60.410

Delete this section

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

Sec 06.60.420 (8)

Delete

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

Sec 06.60.420 (10)

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

Sec 06.60.430

Delete this section

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

Sec 06.60.440 (a)

Define "other lawful purposes for this section."

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

Sec 06.60.530

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

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

Sec 06.60.600 (b)

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

Sec 06.60.610

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

Sec 06.60.990

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

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

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

In conclusion:

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

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

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

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

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

Respectfully Submitted,

John Martin
Anchorage, Alaska

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

Sec. 06.60.300(2)

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

Sec. 06.60.340(a)- (d)

Staff Examiners

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

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

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

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

Triggering an examination or investigation

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

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

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

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

Scope of examination

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

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

The examination process the division would employ would be based on an increasing level of complexity based on the number of services the lender or broker would conduct. It is not meant to make all licensees round pegs to fit into a round hole. For licensees outside of the division's offices in Anchorage or Juneau, examinations would be conducted either through the mail or on-site, based on the licensee's level of activity. For instance, a licensee that either brokers or originates a small number of loans per year and lives in Ketchikan, they most likely would be subject to a mail examination every three years. Their cost would be for the Examiner's time and the cost of mailing the documents to the examiner.

Cost of Examination

On average, the cost of the examination is estimated to run between \$200 and \$5,000, depending on the level of activity of the licensee. If a lender or broker performs the underwriting, origination, funding, and servicing of loans, the cost of the examination would be at the higher end.

Sec. 06.60.400.

The department wanted to have a separate section dedicated to advertising to cover all types of broadcast media. In addition, the language used is to ensure that certain loan information is disclosed in the appropriate manner, to be clear to the members of the public.

Sec. 06.60.410.

This enables the state to adopt the federal law for enforcement. Instead of re-writing pertinent federal law and thus creating a dual regulatory environment for licensees to be required to operate under, it is much more streamlined to allow the state to enforce existing laws.

Sec. 06.60.430 etal

(a) the intent is to protect the consumer from constant selling from the lender/broker the consumer used in the house financing.

(b)(1-7) these are all the factors to consider when determining if the loan is/was in the best interest of the borrower. Each singular items in and of itself can be the sole consideration for the benefit derived from the refinance. The refinance in total must be considered.

Sec. 06.60.600.

The program administration fee is separate of recording fees. If the department did not collect the program administration fees, the industry would have to pay licensing fees of up to approximately \$2,000 per year depending on the number of licenses issued. By tying the program to the direct product – namely a mortgage loan – the division is compensated based on the volume of consumers that are participating in the program.

The department will not only be assisting Alaskans that have loans with licensees, but in addition it will be helping Alaskans that may have a mortgage through an exempted entity. For example, we can file a letter on behalf of an affected Alaskans to an exempt entity or their regulatory agency advising them that they are in violation of Alaska law. Right now we have no law and no authority. In addition we will be able to coordinate with other states regarding violation of law from their regulated entities.

Division's Response to Martin's response to 1st Department of Banking and
Securities Letter
Regarding SB 272

I would like to take this opportunity to respond to the letter from the Division of Banking and Securities regarding my testimony on SB272 dated 4/4/06

Several groups have been involved in the review and comments on this proposed legislation because they recognize the need for oversight in the mortgage industry. Our legislation needs to be carefully considered so that it will be implemented in an even and fair basis for all parties. I find it interesting that the Division acknowledges that under exemptions (which are many) in this legislation, that Federally chartered institutions, which employ the bulk of originators in Alaska, would be exempt under this bill.

I appreciate that the Division recognizes the need for licensing, testing, and continuing education of Originators in Alaska along with creation of a surety fund to be used to protect the general public from damages. The present bill has none of that language in it. A thorough comprehensive approach to licensing needs to be utilized in Alaska. This bill has nothing in it about originators and therefore is missing the most important component of law that is needed. Perhaps we need to add a section that says all originators must work for a licensed person?

Div
Even if we could add registration of originator's, the department recognizes that a legal opinion and much research needs to be completed to determine if an Originator's Licensing Bill would apply to ALL originators no matter who they are employed by. The present framework allows originator's to be exempt from licensing if they work for a federally chartered financial institution. Florida did pass a law regulation loan officers/ originators; however the law exempts them from licensing, but does have them follow the education requirements.

Alaska would like to take a different approach but it first must be researched in order to make sure that any legislation for regulation of originator's is based on an occupational license.

For clarity, I still recommend that in the beginning of the Act, we state the law is for "owner-occupied single to four family residences." That way, there is no mistaking the interpretation of the Act.

Div
In Sec. 06.60.900 - a mortgage loan is defined as single-family and 1-4 multi-family units.

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

As to:

Sec 06.60.10

By defining "person" in the Act, it will clarify exactly who is covered for licensing.

A person is defined in AS 01.10.060(a)(8)

Dis (8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

Sec 06.60.20 (1)

A person that originates mortgage loans should be licensed even if they only do one a year. I do go along with the concept that an owner-financed transaction be exempt for a principal residence that is being purchased by the buyer.

Dis **Agree to change the language to persons that finance the sale of real property they own.**

A person that is "in the business of originating loans" should not be exempt. While the Department uses the example of people wanting to subdivided property and sell it them selves, especially in rural areas, those transactions would be exempt as they are land sales only.

Sec 06.60.20 (2)

It appears Federal Law would exempt many institutions from this bill in Alaska. Therefore, this bill is very limited as to whom it will cover. Why do we exempt another state institution, a territory or even the District of Columbia? The more exemptions we have the less effective this bill is.

Dis **But these other institutions are normally covered by the federal authority under FDIC or NCUA. They would be exempt.**

Sec 06.60.20 (3)

Because of Federal regulations, subsidiaries AND affiliates are treated as exempt because of the parent organization. This section raises a lot of questions in Alaska. Who then will be covered under this Act? Many in the industry are asking this question, so let's explore it a little. Here are some examples:

Wells Fargo Bank owns Wells Fargo Home Mortgage
Wells Fargo Home Mortgage and Alaska's Best Mortgage
Countrywide Bank and Countrywide Bank.
GMAC Bank and GMAC Mortgage Co.
North Rim Bank and Residential Mortgage

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

The subsidiaries of Residential Mortgage: Summit Mortgage, North Star Mortgage, Advantage Mortgage, Homestate Mortgage, and Preferred Mortgage
State Farm Bank and State Farm Mortgage
Alaska USA Federal Credit Union and Alaska USA Mortgage Co.
Denali Federal Credit Union and Denali Home Mortgage

I am asked all the time as to some of the above-named organizations as to who will be covered by this Act and who will NOT be covered under this Act. Can we get some clarity on this??

Div The exemptions are quite clear that they must be subject to examination by a regulatory authority. The test will be if they are not examined by a regulatory authority then they must receive a license.

Sec 06.60.20 (4)

While we recognize that non-profits do originate mortgage loans in Alaska, I still hold to the belief that for this Act to effective they need to be licensed as well so the State has authority over them. While the intent of non-profits is certainly commendable, they may not be current on lending practices in the industry because of their narrow scope of operations. None the less, the non-profit still needs a "buyer" to enter into a transaction for purchase, and as such, that "buyer" deserves to be protected on an even basis with all other residents of the state.

Div The state already has authority over the programs through review of the grant process, internal audits that are required, and by state appointed directors.

Sec 06.60.20(5)

The State needs to regulate agencies of the State, quasi-government agencies and municipalities in order to have the ability to make sure that all residents of the State are equally protected, no matter where they obtain financing. While I'm not aware of any current problems in this area, having this provision available for use could be important in the future. Federal law may exempt Federal agencies.

Div State agencies are already supervised for their compliance with federal loans relating to home housing. They have a separate compliance department that must provide review of the performance to be able to continue to receive state authority to operate.

Sec 06.60.20(6)

My thoughts are equally expressed in the above paragraphs. If the proceeds from a 401(k) ARE NOT pledged against a person's real estate, but only their plan funds, I would not object to this exemption.

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

Div In most cases, the assets of the 401(k) are the assets that are pledged for the loan. In some rare circumstances, both the assets of the 401(k) and the real estate are pledged as collateral. This provides for tax incentives for interest deduction.

Sec 06.50.20(7)

This section is confusing. Why do we even mention attorneys, real estate agents or real estate brokers? This Act covers entities for loan originations. If they have a company that is in that business, they should be required to be licensed like everyone else.

Div Attorneys, real estate agents or real estate brokers are sometimes involved in a mortgage transaction when they are representing a individual land owner. Since these individuals are already governed and licensed through a different regulatory framework, they should be exempt from licensing. In addition, the lending or brokering of residential loans is not their primary business.

Sec 06.60.20(9)

Unless there an exemption under Federal law, I would support licensing companies organized under the Small Business Investment Act of 1958 if they are in the mortgage loans business.

Div They are regulated through the Small Business Administration who is responsible for supervising their own loan programs.

Sec 06.60.025(b)

Independent contractors are by definition: independent. They have the ability to do what they want when they want to obtain business. A true independent contractor must meet the IRS guidelines to operate as such. The state should not be in the business of reviewing contracts and giving their blessing on them. The independent contractor by virtue of being "independent" can provide services to many operators and should be responsible for their very own actions, not indemnified by another entity. I have no problem with hiring independent contractors, just that they should be licensed like everyone else.

Div The one specific language the state wants to see in each contract between a licensee and a independent contractor is that the independent contractor will abide and follow Article 4 of this statute. If an independent contractor is licensed, then that removes any benefit of a business licensing. Each independent contract would be treated as a separate business entity and subject to licensing and thereby removing people willing to work for Mr. Martin on a commission basis. Instead, they would just open up there own shop and it would fracture the marketplace further.

Sec 06.60.40

A \$500 non refundable fee for investigation of a company seems unrealistic. While I admit there is a need for a fee, I question why we would want such a high fee and make it non-refundable. As I pointed out in previous testimony, these investigations can handled

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

for substantially smaller fees. The state should not be in the business of making money on this item, but, rather having a set fee that is reasonable. I am in favor of the fee being \$125.

Div The division's operation is to have no negative effects on the state's budget. We therefore must be a zero-sum budget. The division must charge for its actual costs of the investigation of an application for a license. The division can bill for actual costs.

Sec 06.60.050

Since this Act will cover many small businesses, I favor a biennial fee of \$250. As stated in my previous testimony, most licenses under 12AAC are under the \$300 threshold and this one should be too.

Div The department agrees with biannual licensing. But the fee should be \$500.00 for the cost of licensing. Licensee should bear some of the cost to have this law in place. This is the only financial institution to have a subsidy in their fees, or to have a third party pay for a portion of the department's operation.

Sec 06.60.80(2)

Upon review of this section I find that the many terms utilized are not defined anywhere in the Act, and could be loosely interpreted and create problems. As stated in by previous testimony, these terms need to be defined in the Act so people can know what to expect under this section when it is applied to them.

Div Regulations will assist in defining the items the applicant will be required to submit and even provide the forms they will have to submit.

Sec 06.60.90(1)

Some of the language seems that it could be applied as to interpretation rather than business practices. The part about liabilities exceeds assets is a concern. For example, mortgage brokers are not required to be in a financial condition where their assets exceeds their liabilities in order to originate loans. This is because they do not write the check for the mortgage loan, their investor does. An exemption for this may be appropriate for mortgage brokers.

Div As part of the role for the department, we must be able to assess the strength of the applicant. One method is to determine if they have a financial condition where because of losses they might more susceptible to fraud or money laundering.

Sec 06.60.110(a)

As in my previous testimony I would ask for a \$250 fee every two years.

Agree with the two-year format, but the fee should be \$500.00

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

Sec 06.60.120

Clearly says "A licensee may not transfer or assign the licensee's **business** unless....".
Transfer of license is one matter, transfer or sale of a business is another matter. Under this provision, the "license" could not be transferred or assigned unless approved by the Division.

Div **The license and business are two separate transactions; however, you can not have one without the other.**

Sec 06.60.200

Language should specify the information necessary for the annual report, other wise any type of information could be required. There should be a limit as to what is necessary for the Division to carry out its duties.

Div **These will be provided through regulations.**

Sec 06.60.210

Fee should be for \$250 for two years as previously stated.

Div **Restate that it should be \$500.00 for two years.**

Sec 06.60.220

Language is very confining. A business should be able to operate anywhere they desire, even if it's in a suite with another business. Remember, many companies are very small and need to share office space to hold down their overhead. It needs to be clear they can operate anywhere they choose. I do agree, that if they are affiliated in any way with any business (whether in the same office or not), that it should be disclosed to the client and the department.

Div **The purpose of the language is to make sure that where the licensee operates must be very clear and marked with appropriate signage. The department does not want to restrict where the licensee operates, unless is it confusing to the public or could be deceptive.³⁴**

Sec 06.60.250(b)

This section is too open ended, the only documents that should be required to be available are the documents submitted to underwriting for loan approval and even at that, I wonder: *can we provide private confidential borrower information to the State without breaking the Privacy Laws administered by the Federal Trade Commission? This topic needs to be investigated.*

Div **Privacy laws prohibit the department from disclosing any information even if a subpoena is served.**

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

Sec 06.60.250 (c) & (d)

Since all mortgages are delivered through the same distribution channel, the entities should be required to deliver the same level of documentation required by the Division. In (c) there is NO provision for "an account of fees received in connection with the loan" for a "lender" but is required for a "broker", this language needs to be included in (c). I still think ¹ in these paragraphs could be combined to make it easier to understand and put everyone on the same level of compliance. I am troubled by the phrase "and other papers or records that may be required by department order or regulation." This phrase is too open ended and could lead to inadvertent non compliance.

Div Each broker and lender may provide different levels of service. Through regulations, we will be able to address in more detail the file retention of licensees. This section of the statute only provides the framework.

Sec 06.60.340

In the banking and securities world, entities interface with their clients on a daily, weekly, and monthly basis. Their business is ongoing. While the mortgage loan business is a different breed of cat. Mortgage loan entities may only interface with clients two or three years after their first transaction with them. With most people keeping their home five to seven years, that time frame is stretched. Therefore the time period for examinations of mortgage entities should be stretched as well unless complaints are filed that warrant earlier examinations. I would propose that mortgage entities be examined no sooner than 36 months and no more than 60 months.

Div We will change the language to allow for no less than examination ever three years, but allow through regulation a longer examination cycle if warranted.

Sec 06.60.410

Anyone that is in the mortgage loan business is governed by various federal laws and regulations. I don't think it's correct for the state to embrace laws and regulations that they did not bring to the table. Essentially we would have two entities (Federal & State) trying to implement and interpret Federal laws and regulations. Since federal pre-empts state law, I would eliminate this section entirely. Otherwise we might have a situation of double jeopardy occurring.

Div The state adopts the federal laws instead of building a dual-level of federal and separate state law. Since the goal is to provide an enforcement framework, the state can adopt federal law for enforcement by the department and the Department of Law. Double jeopardy is not an issue, because the laws already allow for prosecution under federal and state laws.

Sec 06.60.610-620

I see this as a nightmare. First of all who will collect the fee? Quite frankly, I think the state should, but, how would they determine exactly which documents to charge for?

Response to Department of Banking and Securities Letter
Regarding SB272
From John Martin

There are probably 25,000 to 30,000 mortgage deeds of trust filed each year in the state.
How would a person know from looking at the documents that:

- It is an owner occupied property?
- Is a one to four unit owner occupied property?
- A purchase or refinance transaction?
- Is an exempt transaction?

so they could collect the appropriate fees?? It could be a confusing issue.

Div
Through regulations we will be able to further define the administrative program fee. The fee is already restricted to mortgages on residential real estate. If it is residential real estate it will encompass as defined all single family residences and multi-family units with 1 to 4 units. A refinance is not exempt, because it is a new mortgage.

IF SB272 incorporates the changes that Roger Prince has agreed to in his response to my former comments, and it addresses the issues I have mentioned above, I would say we have a livable bill with only the Loan Originator part missing. I would prefer that we have a bill that covers mortgage companies and originators together so we can see how it interacts on both issues and make sure we cover all the bases. This bill needs to be carefully considered as it affects and is directed at many small businesses. I would reserve my comments based upon any future revisions that may be made to this bill.

I am available for any questions that you may have by calling 907-250-9000.

Respectfully Submitted,

John Martin,
President Elect,
Western Regional Mortgage Brokers Conference

Amy Seitz

From: John Carman [jcarman@homestatemtg.com]
Sent: Friday, March 31, 2006 9:53 AM
To: Sen. Con Bunde
Cc: Tim Kelly, Amy Seitz
Subject: Senate bill 272

Senator Bunde

I have testified in the past regarding the above bill and I will be out of town next week and will not be able to testify

First I want to recognize that this is not the most important piece of legislation for you to consider this year. I have been very impressed and greatly appreciate the efforts that Senator Wagoner and his staff have made to address all parties concerns. If I had my way this would have been in front of you 4 years ago instead of in this session. Five years ago I recognized that our industry needed some form of regulation. I started volunteering my time researching other state laws and polling others in my industry to try to gain support for legislation. My goal from the start was to get legislation that would accomplish the most consumer protection with the least industry regulation and bureaucracy. Over the last 5 years I have sat at committee after committee redrafting draft after draft of proposed language. The certainties that I have come to from this are

- 1) We will never get a bill that all parties are happy with - as a matter of fact I doubt there is one sentence in the entire bill that I could get everyone to agree to
- 2) We very much need a bill - and therefore I have compromised my position again and again in the interest of getting something that we can agree on
- 3) The most sure way to defeat a bill is to amend and study it to death

The bottom line is we are the only state without legislation. We are way past due to pass a bill. What you have to ask is - are the owners of this state better protected with no bill and no agency to enforce existing federal law - or are they better protected with this bill. I personally think the answer is clear. I hope you feel the same.

John Carman
Chairman - Legislative committee
Manager
Homestate Mortgage
3801 Centerpoint Dr #100
Anchorage, Alaska 99503
Direct (907) 762 5894
Cell (907) 360 1140

**ALASKA MORTGAGE BANKERS ASSOCIATION
P.O. BOX 9-2691
ANCHORAGE, ALASKA 99509-2691**

March 7, 2006

Senator Con Bunde
State Capitol, Room 506
Juneau, Alaska 99801-1182
ATTN: Senator Wagoner
FAXED 907-465-4779

RE: SB 272/HB 424

Dear Senator Bunde,

As President of Alaska Mortgage Bankers Association, I can't begin to tell you just how long this organization has been working on a Licensing Bill for the State of Alaska. In the past twelve months momentum has increased and our Association along with the Alaska Association of Mortgage Brokers and the Division of Banking have worked very closely in making a licensing bill a reality.

The Alaska Mortgage Bankers Association would like to express our support for SB272. We recognize the intent and spirit of the bill. Through the coming weeks we will work very closely with the Division to further assist in language and definitions for SB272.

It is my sincere commitment to work in accomplishing Mortgage Lending Licensing this session. AMBA appreciates your and your staff's efforts and look forward to continuing to work closely in overcoming this challenge.

Sincerely



Kevin M. Breeland
President
Alaska Mortgage Bankers Association
907-222-8523 direct line
907-743-9623 fax
www.akmha.org
breelandk@residentialmtg.com

cc: John Carman, Legislative Committee Chair, Alaska Mortgage Bankers Association



ALASKA ASSOCIATION OF REALTORS, INC.
4205 Minnesota Drive Anchorage, Alaska 99503
Telephone (907) 563-7133 Fax (907) 561-1779
www.alaskarealtors.com

February 28, 2006

The Honorable Tom Wagoner
Alaska State Senate
State Capitol Building
Juneau, Alaska 99801

RE. Senate Bill 272, relating to mortgage lenders and persons who engage in activities relating to mortgage lending

Dear Senator Wagoner,

The Alaska Association of REALTORS® with over 1,600 members statewide supports Senate Bill 272, which relates to the licensing of the mortgage lending industry in Alaska.

We favor this bill because up until the last decade or so, prospective homebuyers could be relatively certain that they knew what they were getting into with their mortgage loan. This is not the case anymore with predatory lending practices in the mortgage industry.

This bill would assist in protecting the homebuyer from incredible debt and loss of property equity as a result of predatory lending practices.

The Association encourages the passage of Senate Bill 272.

Sincerely,

A handwritten signature in cursive script that reads 'Don McKenzie'.

Don McKenzie
AAR President



INDEPENDENT LENDERS OF ALASKA

5313 ARCTIC BLVD., SUITE 206

ANCHORAGE, AK 99518

Phone: (907) 279-8551 Fax: (907) 274-7630

April 24, 2006

Senator Gary Wilken, Co-Chair
Senate Finance Committee
Alaska State Legislature
Juneau, Alaska

Reference: CSSB 272--Proposed Legislation to License Mortgage Lenders and Mortgage Brokers for Residential Mortgages.

Dear Senator Wilken:

Our organization is comprised of 15 small private lenders within the State who specialize in making mortgage loans to borrowers and on properties that do not qualify for loans through banks and credit unions. I am submitting this letter in support of CSSB 272.

Since its introduction, this Bill and its companion Bill--HB 424 have had the support of the following:

- Alaska Division of Banking and Securities
- Alaska Mortgage Bankers Association
- Independent Lenders of Alaska

Although the Alaska Chapter of Mortgage Brokers had some problems with earlier versions of the Bill, its membership unanimously endorsed the current version of the Bill (*version R*) at the Annual Membership Meeting held this past Saturday. As a result, the Bill is now supported by all groups that will be regulated by the Bill and the State agency responsible for administering the Bill.

We believe that this bill merits the support of the Alaska Legislature for the following reasons:

- 1 It provides strong consumer protection against abuses in Mortgage Lending.
- 2 It gives the Alaska Division of Banking & Securities strong enforcement ability.

- 3 The enforcement of the Act will be self funded from fees paid by licensees and a small \$10 per loan fee for each residential transaction paid by borrowers. *(This is similar to the funding methodology used by several other states)*
- 4 In addition to being applicable to small independent lenders, such as our members, it will also be applicable to the out-of- state "internet lenders" that we have been advised are a major source of complaints to the Division of Banking & Securities.
- 5 Although the Act will restrict the business freedom that small independent lenders have enjoyed, the bill is not so onerous as to place an undue regulatory burden on Lenders who treat borrowers in a fair and ethical manner.

If I can answer any questions that you, or the members of your Committee, have concerning this legislation, please contact me.

Sincerely,

Independent Lenders of Alaska



Kenneth Jay Gain,
Secretary/Treasurer

INDEPENDENT LENDERS OF ALASKA

5313 ARCTIC BLVD., SUITE 206

ANCHORAGE, AK 99518

Phone: (907) 279-8551 Fax: (907) 274-7630

E-Mail: kgain4cash@msn.com

March 14, 2006

Senator Con Bunde, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska

Reference: CSSB 272-Proposed Legislation to License Mortgage Lenders and Mortgage Brokers for Residential Mortgages.

Dear Senator Bunde and Committee Members:

At the hearing on CSSE 272 last week, a number of questions and issues were raised. Since I worked with the Division of Banking and Securities in writing this Bill, I would like to make an attempt to answer the questions and respond to some of the issues raised by the opponents of the Bill.

Definition of "Predatory Lending": This term does not have a specific definition other than to generally mean lending practices that are unfair to the borrower. For that reason the term "Predatory Lending" is not used in the Bill. Instead the types of prohibited activities by mortgage lenders and brokers are specifically listed in Sections 06.60.400 thru 06.60.440.

Complaints can't be anonymous and must be in writing: I believe the procedure for complaints is addressed in the Alaska Administrative Procedures Act, which this Bill is subject to (see 06.70.700). In any event, administrative issues such as complaint procedures are better addressed in regulations rather than statutes.

Clarify what would trigger an audit and how often it would be done: Section 06.60.340 requires an "examination of the licensee to determine whether the licensee is complying with the provisions of this chapter and regulations adopted by the department and to obtain information required by the department under this chapter". Such an examination shall be conducted at least every 36 months, and may be conducted if a credible complaint is received by the department. Unfortunately, someone started referring to this very reasonable examination process as an "AUDIT", and therefore opponents of the Bill have created fear in the minds of some mortgage brokers familiar with the high cost and detailed effort involved in a

financial audit by a CPA. This Bill does not require audits.

Required Continuing Education: This is a Bill to license mortgage lending and mortgage brokerage companies. How can you require continuing education by a company?

Deal With Loan Originators: The proposal to license originators relates to the licensing of employees of mortgage lenders and mortgage brokers. The opponents to this Bill want to be regulated like the real estate industry under the authority of the Division of Occupational Licensing. However, all other financial service entities (*banks, credit unions, small loan companies, pay day lenders and securities firms*) first require licensing of the company. Only securities firms also require licensing of employees. While the licensing of originators has some merit, there is currently no proposal on the table, and if this Bill fails to become law the whole issue becomes moot as there would be no licensed companies.

Too Many Exemptions: By only counting, the number of exemptions does seem high. However, when analyzed, they are all logical. Does it make sense to require licensing of any of the following exemptions?

1. Lenders loaning their own money who make 1 or fewer loans per month?
2. A federally or state regulated bank or credit union that is already subject to regulation?
3. A subsidiary of a bank or credit union that is also subject to regulation?
4. Non-profit corporations that make charitable loans?
5. Government agencies?
6. A fiduciary of a pension plan who makes loans only to plan participants?
7. Licensed attorneys and real estate salesmen and brokers when rendering a service for which they are already licensed?
8. A fiduciary acting under authority of the court?
9. A person licensed by the SBA as an SBIC?

While it is true that banks and credit unions do make many mortgage loans, they are already subject to rigorous regulation. In addition, a state Legislature has no authority to regulate federally chartered financial institutions.

Big Guy vs. Little Guy: While it is true that all those testifying against the Bill are from small companies, there is absolutely no justification for framing the issue in that manner even though the opponents effectively used the time proven rhetoric of saying, "this Bill hurts small business". Our organization, which supports the Bill, is comprised solely of small businesses. For example, my company, Cash Now Financial Corporation, consists of my partner, myself and two half time employees. We are the little guys, and we support this Bill.

Many of the opponents have not taken the time to read the Bill and discuss it with the Department. It is true that there was an earlier draft that was anti-small business (*it would have cost my little company \$25,000 per year*), but that is not true with this Bill. It is my estimate that the annual cost of regulation for our company will be about

\$1,500 per year averaged over 3 years. (This includes my estimate of the cost every 3rd year of the mandatory examination, including lost productivity of our employees during the examination)

CONCLUSION: As you will recall, one of the persons testifying against the Bill admitted that he hadn't read the Bill. It was obvious that several of the people testifying against the Bill were testifying based upon incomplete information told to them by others without a thorough and independent analysis of what the Bill actually says. While I would prefer not to be regulated, given the magnitude of complaints being received by the Department it is unrealistic to argue that regulation is not needed. Because the Department believes this Bill gives them the tools they need to provide consumer protection and because the Bill does not place an excessive burden on ethical small businesses, it should be passed.

Sincerely,
Independent Lenders of Alaska



Kenneth Jay Gain,
Secretary/Treasurer
Legislative Chairman

INDEPENDENT LENDERS OF ALASKA

5313 ARCTIC BLVD., SUITE 206

ANCHORAGE, AK 99518

Phone: (907) 279-8551 Fax: (907) 274-7630

February 27, 2006

Senator Con Bunde, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska

Reference: CSSB 272-Proposed Legislation to License Mortgage Lenders and Mortgage Brokers for Residential Mortgages.

Dear Senator Bunde:

Our organization is comprised of 15 small private lenders within the State who specialize in making mortgage loans to borrowers and on properties that do not qualify for loans through banks and credit unions. I am submitting this letter in support of CSSB 272.

Like many small Alaskan businesses, our members would prefer to maintain our current status as businesses not subject to government regulation. Unfortunately, we are advised by the Division of Banking & Securities that they receive approximately 20 complaints per week concerning mortgage financing. We are also aware that Alaska is one of the few states that does not regulate mortgage lenders, that are not banks or credit unions, and that Congress is now considering legislation that would require each state to do so. We have therefore accepted the fact that reasonable regulation to protect Alaska consumers is needed and necessary.

Since June of last year, we have worked with the Division of Banking & Securities to draft legislation that will provide meaningful protection for consumers without placing an undue regulatory burden on small businesses. Because our members lend their own money, they don't need the same degree of regulation that is required for banks and credit unions which lend depositor's money. As with any legislation, this proposed bill doesn't provide everything we would like, but we do consider it to be a reasonable proposal. We believe that this bill merits the support of the Alaska Legislature for the following reasons:

- 1 It provides strong consumer protection against abuses in Mortgage Lending.
- 2 It gives the Alaska Division of Banking & Securities strong enforcement ability.
- 3 The enforcement of the Act will be self funded from fees paid by licensees and a small \$10 per loan fee for each residential transaction paid by borrowers. (*This is similar to the funding methodology used by several other states*)
- 4 In addition to being applicable to small independent lenders, such as our members, it will also be applicable to the out-of-state "internet lenders" that we have been advised are a major source of complaints to the Division of Banking & Securities.
- 5 Although the Act will restrict the business freedom that small independent lenders have enjoyed, the bill is not so onerous as to place an undue regulatory burden on Lenders who treat borrowers in a fair and ethical manner.
- 6 While we understand this Bill represents only a portion of the Divisions full regulatory package which will also include mortgage originators, we believe it is a good first step that will bring the issue forward for legislative consideration in a timely manner that can hope for passage this year.

If I can answer any questions that you, or the members of your Committee, have concerning this legislation, please contact me.

Sincerely,

Independent Lenders of Alaska



Kenneth Jay Gain,
Secretary/Treasurer

GMAC Mortgage

Jim Picard
District Manager

March 23, 2006

Senator Con Bunde
State Capital, Room 506
Juneau, Alaska 99801-1182

Re: SB 272

Dear Senator Bunde:

As an individual who has been involved in real estate and mortgage lending in Alaska since 1975, and twice past president of the Alaska Mortgage Bankers Association, I would like to provide my input regarding the legislation that is currently before your committee.

I wholeheartedly support the intent of the legislation. Achieving the American Dream of Homeownership is a goal that the vast majority of those residing in Alaska wish to achieve. Unfortunately the process, by nature and because of abuse by a minority of individuals, financing a home is one of the most stressful transactions an adult can experience in their lifetime.

The draft legislation, in its present form, for the most part, is an outstanding bill and will go a long way to minimizing the abuse Alaskans have experienced financing a home. My concerns regarding the present language deal with several sections:

Sec. 06.60.020. Exemptions. Paragraph (1) states "a mortgage lender who makes six or fewer mortgage loans within a period of six consecutive months;" would be considered exempt. I would recommend that this exemption be deleted for the following reasons: I can think of no way that the Division of Banking, charged with administering the proposed legislation, will be in a position to identify lenders or brokers who claim to close less than six loans in a six month period. Currently the Division of Banking will confirm that they are powerless to act because of the lack of legislation. With legislation in its present form they will still be unable to act if any entity, anywhere in Alaska, the United States, or the world represents that they close less than six transactions in

six months. Essentially six different consumers would have to complain about the same lender in a six month period before the division would focus on them. I think it is important to understanding that someone originating mortgage loans can do so with an internet connection anywhere. Holding all individuals and firms accountable by requiring licensing for every transaction is critical. Appraisers, real estate sales agents, and virtually every other professional licensed in the state of Alaska does not get an exemption for six transactions in six months. With this exemption the legislative result will regulate the more legitimate lenders but give a gate pass to the unscrupulous lenders hiding behind the "6 in 6 rule".

Sec. 06.60.420. Prohibited activities. Paragraph (4) states as a prohibited activity "**fail to account for or deliver to a person, a document, or another thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report ...**". It would be my recommendation to not single out a particular product or service provider in a transaction. If like language is to remain, to not specify "borrower". Funds provided to the lender in advance of ordering an appraisal are negotiated by the buyer and the seller contractually and governed more by common practice. In Fairbanks, for instance, the appraisal funds are typically advanced by the buyer, while in Anchorage, by the seller. To limit a prohibited activity to money advanced only by the borrower does not protect the seller if they were the party that advanced funds per the terms of the contract to sell the property.

Paragraph (8) states as a prohibited activity "**fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are ... requested (and) performed...**". My recommendation would be to delete this paragraph. There is no question that appraisers, or for that matter credit bureaus, title companies, flood certification services etc. deserve to be paid for services requested and provided. The danger here is singling out one vendor category in the mortgage process and reducing the Division of Banking to a collection agency, but only for the appraisal industry. I believe that financial irresponsibility on the part of a lender or broker, if it occurs, is addressed in other sections of the legislation. Secondly, the appraiser or other vendor providing the service has a common sense business obligation, like any other business, to provide their products and services to those they chose. If the appraiser is not getting paid, or is dealing with a lender that is frequently tardy, the appraiser has some responsibility. Only the Veteran's Administration assigns appraisers, which essentially requires the appraiser to perform an appraisal for a particular lender, but the VA takes a hard position with any lender that does not satisfy the appraiser's invoice in a timely manner. This provision seems to simply be "special interest" legislation that will not prevent this problem from occurring, and if it does, it will be at the expense of other vendors who won't get paid where an entity co-mingles funds.

Paragraph (10)(B) states that activity is not prohibited if **“the person funds a loan at the rate, terms, and costs stated in the good faith estimate provided to the borrower at the time of the prequalification letter or loan commitment.”** Rates are based on market conditions that change throughout the day, every day that the financial markets are open. Rates quoted up-front when the Good Faith Estimate is provided to the applicant within three days of the application, can only be based on the interest rate and costs in effect at that moment for that product and risk variables. The Federal government refers to the GFE as an estimate and a rate quoted on the day of application, frequently where many variables regarding the loan to value or credit worthiness of that borrower and loan product are unknown, it would be practically impossible to quote a rate and be required to honor it during the two weeks to 10 months (some new construction) it may take before the loan actually closes. Further, a loan commitment can be issued citing an interest rate, but unless the applicant makes the conscious decision to “lock” their rate for the period covered until the loan is closed, typically at added cost because “time is money”, no GFE or loan commitment can guarantee a rate. My recommendation would be to delete this language and substitute language that guarantees a rate based on a contract the lender and the borrower both agree to where the stipulation is that the rate and terms apply so long as credit, loan program and other conditions do not materially change.

Paragraph (11) states that a prohibited activity occurs when one **“engages(s) in a practice or course of business in which the ultimate rates, terms, or costs of mortgage loans are materially worse for the borrower than are represented to be in the first good faith estimate the person provides the borrowers”**. Again, the GFE is an estimate, and market conditions change, and redefining the Federal government regulated GFE to now be a lock contract between the lender and the borrower will not be enforceable. I see a clear collision course over the intent and use of the GFE, with the state legislation redefining the Federal GFE to include lock contract provisions. Again, the solution to this challenge is to not redefine the GFE from its original Federal intent and turn it into a lock contract, but rather language that defines a lock contract and the responsibility of the parties to that contract. GMAC Mortgage has a contract, presented to the borrower at time of application, offering the choice of either “locking” or “floating”. It is the borrower's choice whether they wish to lock or float.

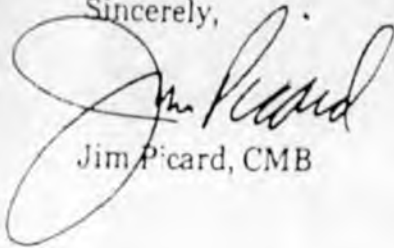
Other language that I feel is critical to this bill is disclosing the location of the lending entity, whether lender or broker, in all publicly posted or distributed material. The borrower is entitled to know where the lender or broker they are dealing with has their office. The Division of Banking would have that information, but the average consumer would not.

There is no question that this legislation is needed. Alaska is the only state without mortgage lender/banker/broker legislation, which encourages

unscrupulous individuals from anywhere there is an internet connection of taking advantage of unsuspecting Alaskans, experienced and inexperienced.

Thank you for taking the time to consider my input. Please let me know if you have any questions or additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Picard".

Jim Picard, CMB

CC: Senator Ralph Seekins
Senator Ben Stevens
Senator Johnny Ellis
Senator Bettye Davis
Senator Thomas Wagoner
Representative Tom Anderson
Representative Bob Lynn
Kevin Breeland, President, Alaska Mortgage Bankers Association
Doug Issacson, President, Alaska Association of Mortgage Brokers
John Carman, Legislative Chair, Alaska Mortgage Bankers Association
Roger Prince, Division of Banking, State of Alaska
Tim Kelly, Lobbyist



April 24, 2006

Senator Gary Wilken, Co-Chair
Senate Finance Committee
Alaska State Legislature
Juneau, AK 99801-1182

RE: Support of CSSB 272/R Mortgage Lender, Mortgage Broker Licensing

Dear Senator Wilken:

The Alaska Association of Mortgage Brokers (AKAMB) held its annual meeting on Saturday, April 22, 2006 and voted to unanimously support CS for SB 272 VERSION R (04-21-06) stating that the organization agrees in principle with the language and intent of VERSION R.

Version R removes some of the more onerous provisions of the bill. For example,

- 06.60.060(b), the words, "under an order of the department" have been deleted
- 06.60.070, 90 days has been reduced to 30 days
- 06.60.090, has been clarified and amplified
- 06.60.420(8), the deletion of unfairly making the State a bill collector for one third party vendor, without recourse
- 06.60.600, broadening who may pay the \$10 fee

There are a few other changes we have been requesting and which Roger Prince has voiced agreement to. We would appreciate your committee incorporating the following:

- Biennial licensing and fees: changing references from "annual" to every "two years" in sections 06.60.050, .110, and .210
- 06.60.340, deleting [SHALL] and [AT LEAST ONCE] so that the section reads, "Notwithstanding AS 06.01.015, the department MAY conduct an examination every 36 months..."
- 06.60.620, delete (a) the surrendering of 25% of the collected fee. This should be no different than the money collected for Recording Fees which is currently given by the closing agent to DNR. DNR can keep track of how much money was collected and the entirety of the fee be dedicated to the Division of Banking's budget.

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- 06.60.600 (b), this should be further simplified. Current State law does not mandate any particular party to the transaction to pay any specific mortgage fee. Proposed verbiage is, "THE FEE MAY BE PAID BY ANY PARTY TO THE TRANSACTION."

Thank you for your consideration. If I can answer any questions that you have concerning this legislation, please contact me.

Sincerely,

Doug

Douglas W. Isaacson
Immediate Past President
Alaska Association of Mortgage Brokers
Phone: 907-451-7375
Fax: 907-451-7381
Email: doug@goldcoastak.com

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Amy Seitz

From: Jane Alberts
Sent: Monday, March 06, 2006 10:52 AM
To: Amy Seitz
Cc: Tim Kelly
Subject: SB 272
Importance: High

letter for SB 272

Lynne

Just an FYI. I'm forwarding this to you because it appears Sen. Bunde's name was spelled incorrectly in the address.

Shannon Straube, Staff
 Office of Senator Ben Stevens

From: Petesy Lust [mailto:petesy@mtaonline.net]
Sent: Monday, March 06, 2006 9:08 AM
To: Senator_Con_Bundy@legis.state.ak.us
Subject: *****SPAM***** SB 272
Importance: High

Presently, 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

Therefore 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

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Mary Jo King
PO Box 244561
Anchorage, AK 99524-4561
(907) 884-1640

15 March 2006

Shellie Buck
Platinum Funding Group
3120 Denali Street, Suite B
Anchorage, AK 99503

Dear Shellie,

When I first came to you with concerns about my mortgage loan in process with another broker – Northstar Mortgage – it was hard to envision closing on schedule. The other "loan officer" there had a great sales pitch, but the process had been rife with problems. First she claimed an inability to provide the mortgage rate promised to me when I made my application. Then she allowed several lenders to pull my credit report without authorization – despite the fact she had already done so and promised that further inquiries would not occur. Furthermore, paperwork sat on her desk without the timely attention it needed for closing. And perhaps worst of all, she became totally inaccessible. My phone messages would go unanswered for days. I finally had to appear at her workplace and wait for an opportunity to get her attention.

Thus I arrived at your office in a very emotional state, mere days before the scheduled closing. To my everlasting amazement, you fixed everything *right before my eyes*. You made a great mortgage happen for me with one phone call. (I found out later the Northstar broker didn't even know the product existed!) We faxed a notice to her on the spot to take her off the project, and you had my loan underwritten within twenty-four hours. Then you came to my closing to make sure it went smoothly. This turned out to be a critical service, because you found an error in the paperwork that would have delayed closing and cost me *hundreds* of dollars. I cried with relief when it was over.

In short, you ultimately saved me *thousands* of dollars by providing a better loan product for my individual needs. You made my closing happen *ahead* of schedule. Your knowledge, compassion, and diligence made a difference in my life that will have a positive impact for the duration of the loan, and you are a credit to your industry.

I understand that you are working for state legislation to license loan officers, and I support your cause wholeheartedly. The current proposal to license mortgage companies doesn't go far enough. Indeed, the company I initially worked with would be exempt from that legislation, and this is exactly the sort of company – and broker – from which Alaskans need to be protected. Please let me know if I can do anything to further your efforts.

Warm and grateful regards,

Mary Jo King

Mary Jo King
First Time Home Buyer

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

CC: Senator Wagoner

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

Sirs,

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

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

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

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

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

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

It has been advised by my attorney and I'm sure you could check with legislative counsel, that since most legitimate brokers (Alaska Mortgage Broker Association Members) have "independent contractor" agreements with their lenders who are Federally Chartered banks or institutions, which provide for duties performed and responsibilities to abide by federal mortgage loan guidelines they would be exempt because they have federal (exempt status) oversight. Rates, terms, commitments, underwriting and approvals as described in definitions on page 18, are all dictated by the lender. It would only preclude members of the Alaska Mortgage Broker Association from brokering and open them to audit of transactions funded by non-exempt lenders. In fact, **ECEPTING (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

Amy Seitz

From: dwightd@evergreenalaska.com
Sent: Wednesday, March 08, 2006 2:39 PM
To: Emily Stancliff, Josh Applebee, Amy Seitz
Cc: Lorice Ponsford
Subject: *****SPAM***** CS 272 (Senate) 424 (House) from Dwight Draly @ Evergreen Alaska Mortgage

March 8, 2006

Lorice Ponsford
Legislative Information Assistant
Fairbanks Information Office
State of Alaska

Re: CS 272 (Senate) CS 424 (House)

Dear Ms Ponsford,

Please forward this correspondence to the Labor and Commerce committees for review

Mr. Chairman and members of the Labor and Commerce Committee, thank you for the opportunity to address Senate Bill 272 and House Bill 424. My name is Linda Patricia, Vice-President and Senior Loan Originator with Evergreen Alaska Mortgage Corporation. I've been originating loans in Alaska for nine years and been active in the mortgage industry for thirteen. Our company is the only "Internet based" mortgage firm in Alaska and a top correspondent for large national wholesale lenders. We are also affiliated with a federally chartered bank in Washington State. I am very concerned that you may not be fully aware that CS 272 and 424 are written in such a manner that they will not meet the stated objective of "protecting consumers from predatory lenders." If in fact these bills are designed to protect them then much of CS 272 and 424 needs to be rewritten.

A "flat playing field" needs to be established so that no matter where a consumer seeks a loan they will be protected. Banks, Credit Unions, and other entities, both in-state and out-of-state, should not be exempt from this legislation. For example, a group called Association of Community Organizations for Reform Now (acorn.org) cites Wells Fargo Bank as one of the leading practitioners of abusive lending practices.

This legislation should not make the State of Alaska an agent to collect fees from service companies associated with mortgage brokers and lenders.

06 60 420 (B) is a good example. Why are appraisers listed while other third parties associated with a mortgage loan are not? If left in the bill, why should banks, credit unions etc be exempt from these collection efforts?

Most brokers have the option of "shopping mortgage loans" to many lenders to get the client the best rate and term while banks and credit unions usually do not make this effort. By exempting banks and credit unions and placing added regulatory burdens on brokers and lenders, this bill will effectively reduce competition and result in fewer choices for brokers, and as such, translate into higher costs for consumers.

Brokers and Lenders specialize in structuring loans for individuals with damaged credit or no credit. Again, since about 70% of loans in Alaska are originated by mortgage brokers, placing additional regulations on lenders and brokers will limit competition and drive consumers toward the exempt enterprises such as banks and credit unions who DO NOT usually offer competitive products in the area.

Brokers work through national wholesale lenders and actually bring "new" money into the state from financial sources across the nation. Banks and Credit unions recycle existing money. By placing added burdens on these national wholesale lenders, they will be less willing to do business in Alaska.

All originators should be educated on the basics of mortgage lending and licensed regardless of where they are employed. This will allow better oversight by the state and address the biggest consumer complaint, which is originators structuring loans that may be detrimental to their financial interests. By licensing originators you are setting a minimum level of core competencies, which will allow for better enforcement and

monitoring of consumer complaints.

In closing, consumer protection is no important than a fair and equitable regulatory environment for business. Mortgage brokers and lenders should not be "singled out" in this case. I urge the committee to write legislation that will in fact protect consumers from predatory lending practices without unjustly hurting the ability of small and large mortgage brokers and lenders to conduct business in Alaska. The issues I've stated here are only a small sample of the changes required. I urge you to contact the President of the Alaska Association of Mortgage Brokers (AKAMB) for a line item response to CS 272 and 424. Contrary to some, bad legislation is worse than no legislation, and in fact, mortgage brokers and lenders are already federally mandated to adhere to RESPA and HUDMA regulations.

Sincerely

Linda Patrick
lindap@evergreenalaska.com
907-457-5834

Approved: Dwight Deely
President, Evergreen Alaska Mortgage Corporation www.moneyalaska.com

SB

273

SENATOR
JOHN J. COWDERY

Anchorage

Committees

Chair: Rules
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Legislative Council
State Affairs



Senate

January - May:
State Capitol, Suite 101
Juneau, Alaska 99801-1182
Tel: 907-465-3879
Toll Free: 888-269-3879
Fax: 907-465-2069

May - December:
716 W. 4th Avenue
Anchorage, Alaska 99501
Tel: 907-269-0222
Fax: 907-269-0223

Senator_John_Cowdery@legis.state.ak.us

MEMORANDUM

To: Representative Tom Anderson
Chairman, House Transportation Committee

From: Senator John Cowdery

Date: March 22, 2006

Re: Request for Hearing, SB 273 "An act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

I respectfully request that SB 273 "An act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties" be scheduled in House Labor and Commerce committee at your earliest convenience.

1. Sponsor Statement
2. SB 273
3. Department of Law Letter of support

If you have any questions please feel free to contact me personally, or my staff, Ryan Makinster, at 3879. Thank you for your time and consideration.

SENATOR
JOHN J. COWDERY

Anchorage

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Vice-Chair: Transportation
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Senator_John_Cowdery@legis.state.ak.us

Sponsor Statement

Senate Bill 273

"An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

In 2004, HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act was enacted and became law. Part of this Act directed the Department of Law to submit a report to the Legislature in January 2005 outlining any consumer or enforcement problems associated with AS 08.66.015.

This bill adopts language that addresses the recognized consumer protection and enforcement problems and is consistent with the changes proposed by the Department of Law.

This bill amends current law by deleting the phrase "current model" from AS 08.66.015(a) and adds a section (b) which requires the auto dealers to have a current sales and service agreement with a manufacturer to sell or attempt to sell a car as new. The removal of "current model" is important because with the language left as is, legitimate dealers are unable to sell used vehicles that are still current year vehicles. For example, a 2006 Ford F-150 that is used cannot be sold by a used car dealer or manufacturer's franchise until the new model vehicles are released later this year. This act also repeals AS 08.66.015(b), which created a situation in which a used, current model vehicle with a warranty, could only be sold by Manufacturer's franchise dealers, effectively barring used car dealers from selling used automobiles that are less than a year old.

Rep Anderson:

As you know of Max's situation, he will not have any final comments on the gaming task today.

He did not mention anything one way or another to me, or Michael.

Derech

SENATE BILL NO. 273

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY SENATOR COWDERY

Introduced: 2/8/06

Referred: Transportation, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as
2 new or current models or as new or current model motor vehicles having
3 manufacturer's warranties."

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

5 * Section 1. AS 08.66.015(a) is amended to read:

6 (a) A person who does business as a dealer in the state may not offer to sell or
7 sell a motor vehicle as a new [OR CURRENT MODEL] motor vehicle unless

8 (1) the motor vehicle retains the manufacturer's certificate of origin;

9 and

10 (2) the dealer has a current sales and service agreement with the
11 manufacturer of the motor vehicle for sales in this state.

12 * Sec. 2. AS 08.66.015(b) is repealed.

REQ. DEALERS WHO SELL USED
CARS W/ REBATE
45,250.400

BARRON, KODZAK

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907) 269-5100
FAX: (907) 276-8554

February 21, 2006

The Honorable John Cowdery
Chair
Senate Transportation Committee
State Capitol, Room 101
MS 3100
Juneau, AK 99801-1182

Re: SB 273; Sale of Current Model Motor Vehicles

Dear Senator Cowdery;

The Department of Law ("department") has reviewed SB 273. This bill resolves the current enforcement dilemma of AS 08.66.015(a). This statute makes it illegal for any car dealer to sell a current model used vehicle. By removing the restrictive language "current model" from the statute, any motor vehicle dealer will be allowed to sell a used current model vehicle so long as the vehicle is not represented to be "new."

In its current form, AS 08.66.015 is impractical to enforce because it prohibits the sale of used current model vehicles. Thus, a dealer would either refuse to purchase (or take on trade) any current model vehicle, or be forced to "warehouse" the vehicle until it was no longer the current model year. SB 273 will fix this problem.

Please let me know if you have any questions.

Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL

By:


Clyde E. Sniffen, Jr.
Assistant Attorney General

CES/sjm

**Alaska Auto Dealers Association
5001 Old Seward Highway
Anchorage, AK 99503**

March 24, 2006

Re: Support of SB 273

Dear House Member:

The Alaska Auto Dealers Association Board of Directors unanimously adopted a resolution supporting SB 273 on February 15, 2006. SB 273 will be beneficial to new car dealers, used car dealers and, most importantly, the consumer. Both I and Assistant Attorney General Mr. Ed Sniffen testified in support of this bill in the Senate Labor and Commerce Committee.

The bill cleans up some unintended consequences from a bill passed in 2004. Under the current statute, a dealer is not allowed to take a current model vehicle on trade unless they hold a franchise for the trade in. For example, we are a GMC dealer and are currently selling 2007 GMC Yukons. The 2008 model will not come out until August of 2007. If a customer wanted to trade that vehicle in at any other new or used dealership other than a GMC dealer, they could do so but the dealer would not be allowed to sell the trade in until August of 2007, when the vehicle is no longer "current model". Obviously, this scenario is detrimental to the dealer and consumer who will be penalized monetarily if the dealer can not sell the trade in for eighteen months.

Fortunately, Assistant Attorney General Mr. Sniffen realizes that this law is harmful to all parties and it is not enforced. However, dealers are technically in violation of the law if they take a current model vehicle on trade and the current statute could be enforced tomorrow were it not for the wisdom of Mr. Sniffen.

The AADA supports passage of this bill as we do not want our members to remain in a position of "technically" violating the law and we believe the economic benefits are positive to consumers and dealers.

Please feel free to contact via email or phone at 459-7087 should you have any questions regarding this matter.

Sincerely,

Jon Cook
Legislative Director

SB

289

Alaska State Legislature

DURING SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871

WEB SITE
www.akrepublicans.org/Bunde



DURING INTERIM
716 W. FOURTH AVE.
ANCHORAGE, AK 99501-2133
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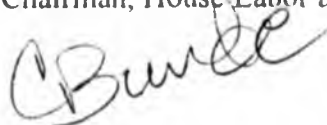
E-MAIL
Senator.Con.Bunde@legis.state.ak.us

SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE

MEMORANDUM

DATE: Wednesday, April 19, 2006
TO: Rep. Tom Anderson, Chairman, House Labor and Commerce Committee
FROM: Senator Con Bunde 
RE: Hearing Request for SB 289 Insurance

I respectfully request a hearing before the Senate Labor and Commerce Committee on SB 289 re: Insurance.

Senate Bill 289 could be referred to as an *insurance omnibus bill* because it contains numerous changes to Title 21 that are designed to ensure that state statutes are consistent with federal law, the National Association of Insurance Commissioners (NAIC) model acts, standards and guidelines, and to update procedures and transactions and to provide protections to consumers that purchase life, annuity and health insurance. Many of the changes are technical in nature and others are to make terminology more consistent throughout Title 21.

These changes to Title 21 will promote consistency between Alaska and other states, promote more efficient operations and provide better public protection.

Attached please find CS for SB 289 (FIN), sponsor statement, fact sheet, sectional analysis, amendments, support letter from the Division of Insurance and fiscal note.



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Insurance

Frank H. Murkowski, Governor
William C. Noll, Commissioner
Linda S. Hall, Director

April 3, 2006

The Honorable Con Bunde
Senate Labor & Commerce
State Capital

RE: Senate Bill 289

Senator Bunde,

The Division of Insurance strongly supports SB 289. The insurance bill proposes statutory changes that will promote consistency between Alaska and other states, provide increasing public protection, and improve the efficiency of Division operations.

Among the proposed modifications are changes in terminology to conform to terms used in federal and state laws, provisions for additional electronic payments and provisions for electronic notices. Other changes involve continuing reforms to make license regulation in Alaska consistent with national standards, modifications in the annuity nonforfeiture law in order to limit excessive surrender charges, extending certain provisions regulating group health insurance to individual policies and adoption of the National Association of Insurance Commissioners model law for actuarial opinion summary for property and casualty insurers.

I would appreciate support for the measures contained in SB 289.

Thank you.

Sincerely,

Linda S. Hall
Director

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 289(L&C)
 (S) Publish Date: 2/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Insurance RDU Insurance (116)
 Component Insurance Operations
 Sponsor Labor & Commerce by Request
 Requester Labor & Commerce Component No. 354

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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
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						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation contains numerous changes to Title 21 that are designed to ensure that state statutes are consistent with federal law, the National Association of Insurance Commissioners (NAIC) model acts, standards and guidelines, and to update procedures and transactions and to provide protections to consumers that purchase life, annuity and health insurance. This legislation does not have a fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone 907-269-7900
 Division: Insurance Date/Time 2/15/06 9:42 AM
 Approved by: William C. Noll, Commissioner Date 2/16/2006
 Agency: Commerce, Community and Economic Development



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement
Senate Bill 289 Insurance
CSSB 289 (FIN)

Senate Bill 289 could be referred to as an *insurance omnibus bill* because it contains numerous changes to Title 21. These improvements are designed to ensure that state statutes are consistent with federal law, the National Association of Insurance Commissioners (NAIC) model acts, standards and guidelines, to update procedures and transactions and to provide protections to consumers. Many of the changes are technical in nature and others are to make terminology more consistent throughout Title 21.

A summary of the general changes made by CSSB 289 (FIN):

1. Provisions to extend "patient bill of rights" which was enacted in 2000 and applied only to group health care insurance plans will be made effective to individual health insurance plans
2. Provisions to make technical changes including substituting the phrase "medical care services" for "health care services" to make the terminology consistent with other parts of AS 21 relating to health insurance
3. Provisions that require insurers providing individual health care insurance to comply with statutes similar to those required of insurers providing group health care insurance
4. Provisions to enact the model law of the NAIC relating to actuarial opinion summary for property and casualty insurers
5. Licensing revisions relating to managing general agents to conform to the NAIC model law and to make license regulation in Alaska consistent with national standards
6. Repeals the small employers Health Reinsurance Association as insurers are not using the mechanism
7. Provisions for mental health parity to be consistent with federal HIPAA law
8. Provisions for changes in the standard non-forfeiture law for individual annuities aimed at limiting unfair practices relating to surrender charges
9. Provisions for technical changes to licensing to achieve national uniformity in producer licensing and improving division efficiency in processing license applications and providing for electronic notices

These changes to Title 21 will promote consistency between Alaska and other states, promote more efficient operations and provide better public protection.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Labor & Commerce By Request
Current Version: CSSB 289 (FIN)
Contact: Linda Hall 465-2560

Fact Sheet for: Senate Bill 289

Short Title: INSURANCE

Summary:

- Extends certain provisions regulating group health insurance to individual health insurance policies, such as the patient "bill of rights," and prompt payment requirements.
- Includes provisions to enact the National Association of Commissioners model law for actuarial opinion summary for property and casualty insurers.
- Modifies the annuity nonforfeiture law in order to limit excessive surrender charges.
- Modifies requirements for managing general agents and provides technical changes to licensing to conform with national uniformity standards.

Benefits:

- Provides greater consumer protection.
- Makes Alaska licensing more consistent with national standards.
- Promotes more efficient administrative procedures and industry oversight.

Background:

- Many of the revisions are based on model laws of the National Association of Insurance Commissioners and are intended to bring Alaska into greater conformity with national standards. Some of the changes to terminology are to conform to the terms used in federal and state laws. Other changes are intended to bring about greater efficiency in administrative operations and to provide important consumer protections.

Section Analysis of CSSB 289(FIN)
24-LS1563S

Sec.	Statute	Change	Purpose or Effect
1.	21.06.110(8)	Amended	Modifies the reference consistent with the changes in Sec. 32 and Sec. 38
2.	21.06.160(a)	Amended	Requires examination fees to be paid by an electronic payment method specified by the director.
3.	21.07.010(a)	Amended	AS 21.07 is amended to expand applicability of the provisions to individual health insurance plans. Changes to this subsection: <ul style="list-style-type: none"> ➤ remove reference to "group" since applicability will extend to individual health insurance plans ➤ changes the term "health care services" to "medical care services" since medical care is a defined term used in the federal and state HIPAA laws to refer to health care services
4.	21.07.010(b)	Amended	same as Sec. 3.
5.	21.07.020	Amended	same as Sec. 3.
6.	21.07.030	Amended	same as Sec. 3. and in addition changes <ul style="list-style-type: none"> ➤ the term "enrollee" to "covered person" so that consistent terms are used throughout the chapter; and ➤ "group health plan" to managed care plan" which is the term redefined to include individual health insurance plans.
7.	21.07.040(c)	Amended	As in Sec. 3. changes the term "health care services" to "medical care services" since medical care is a defined term used in the federal and state HIPAA laws to refer to health care services
8.	21.07.050(a)	Amended	As in Sec. 6. changes the term "group health plan" to managed care plan" which is the term redefined to include individual health insurance plans
9.	21.07.050(c)	Amended	As in Sec. 6. changes the term "enrollee" to "covered person" so that consistent terms are used throughout the chapter
10.	21.07.050(d)	Amended	<ul style="list-style-type: none"> ➤ Removes reference to "group managed care plan" since the term is redefined to "managed care plan" and includes individual health insurance plans ➤ As in prior sections changes the term "enrollee" to "covered person"
11.	21.07.050(h)	Amended	As in prior sections changes the term "enrollee" to "covered person"
12.	21.07.060(a)	Amended	Same as Sec. 8.
13.	21.07.060(b)	Amended	Same as Sec. 8.
14.	21.07.060(d)	Amended	Same as Sec. 8.
15.	21.07.080	Amended	As in Sec. 3. changes the term "health care services" to

			"medical care services" since medical care is a defined term used in the federal and state HIPAA laws to refer to health care services
16.	21.07.250(1)	Amended	Same as Sec. 15.
17.	21.07.250(3)	Amended	Same as Sec. 15.
18.	21.07.250(5)	Amended	Same as Sec. 15.
19.	21.07.250(10)	Amended	<ul style="list-style-type: none"> ➤ Removes reference to "group managed care plan" since the term is redefined to "managed care plan" and includes individual health insurance plans ➤ As in Sec. 3. changes the term "health care services" to "medical care services" since medical care is a defined term used in the federal and state HIPAA laws to refer to health care services
20.	21.07.250(12)	Amended	As in prior sections removes reference to "group managed care plan" since the term is redefined to "managed care plan" and includes individual health insurance plans
21.	21.07.250(13)	Amended	As in Sec. 3. changes the term "health care services" to "medical care services" since medical care is a defined term used in the federal and state HIPAA laws to refer to health care services
22.	21.07.250 (15)	Amended	Clarifies definition of "religious nonmedical provider"
23.	21.07.250(16)	Amended	<ul style="list-style-type: none"> ➤ As in Sec. 3. changes the term "health care services" to "medical care services" since medical care is a defined term used in the federal and state HIPAA laws to refer to health care services ➤ As in prior sections removes reference to "group managed care plan" since the term is redefined to "managed care plan" and includes individual health insurance plans
24.	21.07.250(18) and (19)	Amended	Adds new definition of managed care plan to include individual health insurance plans and adds the definition of medical which is the term used throughout 21.07.
25.	21.09.207	New	This section provides an additional tool that the division can use to more quickly identify an insurer that may be in a troubled financial situation by giving the division information on how the insurer's reserves, as shown in the financial statement, compare to the estimates developed by the actuary. A domestic insurer who is required to file a statement of actuarial opinion with the director must now also file an actuarial opinion summary. The actuarial opinion summary is a confidential document that includes the actuary's estimate or range of reasonable estimates of reserves, explains adverse development and any difference between the actuary's estimate and management's reserves as stated in the insurer's annual statement. Confidentiality of the document is necessary as the actuary's indicated reserves

			presented in the summary are not otherwise published and can be taken out of context by the public when evaluating an insurer's financial situation without looking at the full actuarial report, which for some insurer's may be volumes of data and calculations.
26.	21.27.020(c)	Amended	Removes the requirement for corporations to disclose its officers and directors, consistent with national uniformity license requirements.
27.	21.27.020(g)	Amended	Removes reference that one of the continuing education advisory committee representatives be from the limited lines area since the national standards for continuing education do not require continuing education for limited lines licensees.
28.	21.27.040	New	Provides a time period as to when an applicant must act on an incomplete filing; otherwise, the filing will be considered withdrawn.
29.	21.27.620(a)	Amended	Adds a requirement for a managing general agent (MGA) who qualifies for exemption to file a certification with the director; clarifies when the contract and termination must be filed with the director and eliminates additional approval requirements for resident MGAs.
30.	21.27.650(a)	Amended	Streamlines the notification requirement of the third party administrator's employees to key personnel instead of all employees.
31.	21.34.050	Amended	Allows division to publish the white list by posting it on the web site [instead of mailing it]; clarifies that failure to pay the continuation fee or file the required financial statement is grounds for removal from the list; and provides authority that the director may reinstate a company to the list under specific conditions, including the payment of a late fee.
32.	21.36.128	New	Consistent with Sec. 38 contains the prompt pay requirements moved from 21.54.020 and in addition applies the requirements to both individual and group policies.
33.	21.36.260	Amended	Expands authority to allow for electronic communications if electronic confirmation can be obtained.
34.	21.45.305(b)	Amended	Clean-up to make consistent with NAIC Standard Nonforfeiture Law
35.	21.45.305(e)	Amended	Allows director discretion to give an insurer approval to use a higher discount rate for complying with 21.45.305(g)
36.	21.45.305(g)	Amended	Changes to this section will have the effect of limiting surrender charges on an annuity to about 10% and in addition will not allow surrender charges after maturity. Under current law an insurer may set the maturity age at, for example, 115, in order to increase surrender charges. Most annuities are in fact surrendered and do not reach maturity.
37.	21.51.120(a)	Amended	Since the prompt payment provisions in Sec.32. will apply to individual health insurance plans, these sections are amended

			to remove an inconsistency with those provisions.
38.	21.54.020	Amended	Removes the group prompt payment provisions and moves to 21.36.128 in Sec. 32.
39.	21.54.151	New	Adds HIPAA mental health parity provisions. These provisions were originally adopted in 1997 but sunset. Congress continues to extend the parity act and therefore these provisions need to be readopted. No sunset is proposed.
40.	21.56.120(a)	Amended	Removes reference to assessments consistent with the repeal of the Small Employer Health Reinsurance Association.
41.	21.56.140(a)	Amended	This amendment requires the director to approve the basic and standard health plans.
42.	21.56.140	New	Since the Small Employer Health Reinsurance Association is repealed in Sec. 48 and the Association determines the benefits offered in the basic and standard health care insurance plans that insurers are required to offer to small employers, this amendment allows the director to determine the benefits.
43.	21.66.480(8)	Amended	Modifies the definition to require licensure for any officer or salaried employees of a title insurance company that transacts insurance business, consistent with other license classes.
44.	21.90.900(17)	Amended	Modifies the definition, in conformance with national uniform licensing standards.
45.	21.90.900(29)	Amended	Modifies the definition, in conformance with national uniform licensing standards.
46.	25.24.160(b)	Amended	21.54 was amended which required this section to be updated to reflect the new section.
47.	25.24.230(h)	Amended	21.54 was amended which required this section to be updated to reflect the new section.
48.	21.07.250(4); 21.07.250(6); 21.27.900(10); 21.51.110; 21.56.010; 21.56.020; 21.56.030; 21.56.040; 21.56.050 21.56.060 21.56.070; 21.56.075; 21.56.080; 21.56.090; 21.56.100; 21.56.250(6);	Repealed	21.07.250(4) repeals "group managed care plan" which is replaced with "managed care plan" in Sec. 21 and includes individual health insurance plans; 21.27.900(9) is also defined in 21.90.900; 21.07.250(6) repeals "health care services" since that term is replaced with "medical care" services which is already defined in 21.90.900 21.56.010-250 repeals the Small Employer Health Reinsurance Association and references to the association throughout chapter 56.

	21.56.250(9); 21.56.250(17); 21.56.250(19); 21.56.250(22); 21.56.250(24); and 21.56.250(25)		
49.	Uncodified Law	Amended	Makes the changes to Sec. 36 apply only to contracts issued after January 1, 2007 and therefore these provisions would not apply to any contracts that were issued before that date.
50.	Uncodified Law	Amended	Allows transition to allow the Small Employer Health Reinsurance Association to wind up the affairs of the association and provides guidelines for closure.
51.	Effective Date		Makes certain sections effective immediately.
52.	Effective Date		Makes some sections effective January 1, 2007.
53.	Effective Date		Makes other sections effective July 1, 2006.

Amendment to SB 289 Insurance

Offered by Division of Insurance
(amendment to Version "Y" in L&C)

Pages 12-13 of the bill:

AS 21.07.080 is amended to read:

* Sec. 15. AS 21.07.080 is amended to read:

Sec. 21.07.080. Religious nonmedical providers. This chapter may not be construed to

(1) restrict or limit the right of a managed care entity to include [HEALTH CARE] services provided by a religious nonmedical provider as medical [HEALTH] care services covered by the managed care plan;

(2) require a managed care entity, when determining coverage for [HEALTH CARE] services provided by a religious nonmedical provider, to

(A) apply medically based eligibility standards;

(B) use health care providers to determine access by a covered person;

(C) use health care providers in making a decision on an internal or external appeal; or

(D) require a covered person to be examined by a health care provider as a condition of coverage; or

(3) require a managed care plan to exclude coverage for [HEALTH CARE] services provided by a religious nonmedical provider because the religious nonmedical provider is not providing medical or other data required from a health care provider if the medical or other data is inconsistent with the religious nonmedical treatment or nursing care being provided.

Pages 14-15

AS 21.07.250 is amended by adding a new paragraph to read

(18) "medical care" has the meaning given in AS 21.90.900(30)

AS 21.07.250(15) is amended to read:

(15) "religious nonmedical provider" means a person who [DOES NOT PROVIDE MEDICAL CARE, BUT WHO] provides only religious nonmedical treatment or nursing care for an illness or injury;

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR GREEN

TO: CSSB 289(L&C)

adopted

- 1 Page 1, line 5 – 6, following “annuity contracts,”
- 2 Delete “to unfair discrimination under a health insurance policy,”
- 3
- 4 Page 25, line 13. through page 26, line 2:
- 5 Delete all material.

CS FOR SENATE BILL NO. 289(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the payment of insurer examination expenses, to the regulation of
2 managed care insurance plans, to actuarial opinions and supporting documentation for
3 an insurer, to insurance firms, managing general agents, and third-party
4 administrators, to eligibility of surplus lines insurers, to suitability of life and health
5 insurance policies and annuity contracts, [to unfair discrimination under a health
6 insurance policy,] to prompt payment of health care insurance claims, to required notice
7 by an insurer, to individual deferred annuities, to direct payment to providers under a
8 health insurance policy, to mental health benefits under a health care insurance plan, to
9 the definitions of 'title insurance limited producer' and of other terms used in the title
10 regulating the practice of the business of insurance, and to small employer health
11 insurance; repealing the Small Employer Health Reinsurance Association; making
12 conforming amendments; and providing for an effective date."

deleted
in senate
FINANCE

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

2 * Section 1. AS 21.06.110(8) is amended to read:

3 (8) the annual percentage of health claims paid in the state that meets
4 the requirements of AS 21.36.128(a) and (d) [AS 21.54.020(a) AND (d)]; and

5 * Sec. 2. AS 21.06.160(a) is amended to read:

6 (a) Each person examined, other than examinations under AS 21.06.130, shall
7 pay a reasonable rate calculated on salary, benefit costs, and estimated division
8 overhead for time spent directly or indirectly related to the examination. Each person
9 examined, other than examinations under AS 21.06.130, shall pay actual out-of-pocket
10 business expenses, including travel expenses, incurred by division staff examiners and
11 shall pay the compensation of a contract examiner, to be set at a reasonable customary
12 rate, for conducting the examination upon presentation of a detailed account of the
13 charges and expenses by the director or under an order of the director. The accounting
14 may either be presented periodically during the course of the examination or at the
15 termination of the examination. A person may not pay and an examiner may not
16 accept additional compensation for an examination. A person shall pay examination
17 expenses to the division under this subsection using an electronic payment
18 method specified by the director.

19 * Sec. 3. AS 21.07.010(a) is amended to read:

20 (a) A contract between a participating health care provider and a managed care
21 entity that offers a [GROUP] managed care plan must contain a provision that

22 (1) provides for a reasonable mechanism to identify all medical
23 [HEALTH] care services to be provided by the managed care entity;

24 (2) clearly states or references an attachment that states the health care
25 provider's rate of compensation;

26 (3) clearly states all ways in which the contract between the health care
27 provider and managed care entity may be terminated; a provision that provides for
28 discretionary termination by either party must apply equitably to both parties;

29 (4) provides that, in the event of a dispute between the parties to the
30 contract, a fair, prompt, and mutual dispute resolution process must be used; at a
31 minimum, the process must provide

1 (A) for an initial meeting at which all parties are present or
 2 represented by individuals with authority regarding the matters in dispute; the
 3 meeting shall be held within 10 working days after the plan receives written
 4 notice of the dispute or gives written notice to the provider, unless the parties
 5 otherwise agree in writing to a different schedule;

6 (B) that if, within 30 days following the initial meeting, the
 7 parties have not resolved the dispute, the dispute shall be submitted to
 8 mediation directed by a mediator who is mutually agreeable to the parties and
 9 who is not regularly under contract to or employed by either of the parties;
 10 each party shall bear its proportionate share of the cost of mediation, including
 11 the mediator fees;

12 (C) that if, after a period of 60 days following commencement
 13 of mediation, the parties are unable to resolve the dispute, either party may
 14 seek other relief allowed by law;

15 (D) that the parties shall agree to negotiate in good faith in the
 16 initial meeting and in mediation;

17 (5) states that a health care provider may not be penalized or the health
 18 care provider's contract terminated by the managed care entity because the health care
 19 provider acts as an advocate for a covered person in seeking appropriate, medically
 20 necessary medical [HEALTH] care services;

21 (6) protects the ability of a health care provider to communicate openly
 22 with a covered person about all appropriate diagnostic testing and treatment options;
 23 and

24 (7) defines words in a clear and concise manner.

25 * Sec. 4. AS 21.07.010(b) is amended to read:

26 (b) A contract between a participating health care provider and a managed
 27 care entity that offers a [GROUP] managed care plan may not contain a provision that

28 (1) has as its predominant purpose the creation of direct financial
 29 incentives to the health care provider for withholding covered medical [HEALTH]
 30 care services that are medically necessary; nothing in this paragraph shall be construed
 31 to prohibit a contract between a participating health care provider and a managed care

1 entity from containing incentives for efficient management of the utilization and cost
2 of covered medical [HEALTH] care services;

3 (2) requires the provider to contract for all products that are currently
4 offered or that may be offered in the future by the managed care entity; or

5 (3) requires the health care provider to be compensated for medical
6 [HEALTH] care services performed at the same rate as the health care provider has
7 contracted with another managed care entity.

8 * Sec. 5. AS 21.07.020 is amended to read:

9 **Sec. 21.07.020. Required contract provisions for [GROUP] managed care**
10 **plans.** A [GROUP] managed care plan must contain

11 (1) a provision that preauthorization for a covered medical procedure
12 on the basis of medical necessity may not be retroactively denied unless the
13 preauthorization is based on materially incomplete or inaccurate information provided
14 by or on behalf of the provider;

15 (2) a provision for emergency room services if any coverage is
16 provided for treatment of a medical emergency;

17 (3) a provision that covered medical [HEALTH] care services be
18 reasonably available in the community in which a covered person resides or that, if
19 referrals are required by the plan, adequate referrals outside the community be
20 available if the medical [HEALTH] care service is not available in the community;

21 (4) a provision that any utilization review decision

22 (A) must be made within 72 hours after receiving the request
23 for preapproval for nonemergency situations; for emergency situations,
24 utilization review decisions for care following emergency services must be
25 made as soon as is practicable but in any event not [NO] later than 24 hours
26 after receiving the request for preapproval or for coverage determination; and

27 (B) to deny, reduce, or terminate a health care benefit or to
28 deny payment for a medical [HEALTH] care service because that service is
29 not medically necessary shall be made by an employee or agent of the
30 managed care entity who is a licensed health care provider;

31 (5) a provision that provides for an internal appeal mechanism for a

1 covered person who disagrees with a utilization review decision made by a managed
2 care entity; except as provided under (6) of this section, this appeal mechanism must
3 provide for a written decision

4 (A) from the managed care entity within 18 working days after
5 the date written notice of an appeal is received; and

6 (B) on the appeal by an employee or agent of the managed care
7 entity who holds the same professional license as the health care provider who
8 is treating the covered person;

9 (6) a provision that provides for an internal appeal mechanism for a
10 covered person who disagrees with a utilization review decision made by a managed
11 care entity in any case in which delay would, in the written opinion of the treating
12 provider, jeopardize the covered person's life or materially jeopardize the covered
13 person's health: the managed care entity shall

14 (A) decide an appeal described in this paragraph within 72
15 hours after receiving the appeal; and

16 (B) provide for a written decision on the appeal by an
17 employee or agent of the managed care entity who holds the same professional
18 license as the health care provider who is treating the covered person;

19 (7) a provision that discloses the existence of the right to an external
20 appeal of a utilization review decision made by a managed care entity; the external
21 appeal shall be as conducted in accordance with AS 21.07.050;

22 (8) a provision that discloses covered benefits, optional supplemental
23 benefits, and benefits relating to and restrictions on nonparticipating provider services;

24 (9) a provision that describes the preapproval requirements and
25 whether clinical trials or experimental or investigational treatment are covered;

26 (10) a provision describing a mechanism for assignment of benefits for
27 health care providers and payment of benefits;

28 (11) a provision describing availability of prescription medications or a
29 formulary guide, and whether medications not listed are excluded; if a formulary guide
30 is made available, the guide must be updated annually; and

31 (12) a provision describing available translation or interpreter services,

1 including audiotape or braille information.

2 * Sec. 6. AS 21.07.030 is amended to read:

3 **Sec. 21.07.030. Choice of health care provider.** (a) If a managed care entity
4 offers a managed care [GROUP HEALTH] plan that provides for coverage of
5 medical [HEALTH] care services only if the services are furnished through a network
6 of health care providers that have entered into a contract with the managed care entity,
7 the managed care entity shall also offer a non-network option to covered persons
8 [ENROLLEES] at initial enrollment, as provided under (c) of this section. The non-
9 network option may require that a covered person pay a higher deductible, copayment,
10 or premium for the plan if the higher deductible, copayment, or premium results from
11 increased costs caused by the use of a non-network provider. The managed care entity
12 shall provide an actuarial demonstration of the increased costs to the director at the
13 director's request. If the increased costs are not justified, the director shall require the
14 managed care entity to recalculate the appropriate costs allowed and resubmit the
15 appropriate deductible, copayment, or premium to the director. This subsection does
16 not apply to a covered person [AN ENROLLEE] who is offered non-network
17 coverage through another managed care [GROUP HEALTH] plan or through another
18 managed care entity [IN THE GROUP MARKET].

19 (b) The amount of any additional premium charged by the managed care entity
20 for the additional cost of the creation and maintenance of the option described in (a) of
21 this section and the amount of any additional cost sharing imposed under this option
22 shall be paid by the covered person [ENROLLEE] unless it is paid by an [THE]
23 employer or other person through agreement with the managed care entity.

24 (c) A covered person [AN ENROLLEE] may make a change to the medical
25 [HEALTH] care coverage option provided under this section only during a time period
26 determined by the managed care entity. The time period described in this subsection
27 must occur at least annually and last for at least 15 working days.

28 (d) If a managed care entity that offers a [GROUP] managed care plan
29 requires or provides for a designation by a covered person [AN ENROLLEE] of a
30 participating primary care provider, the managed care entity shall permit the covered
31 person [ENROLLEE] to designate any participating primary care provider that is