

11920 SENATE LABOR & COMMERCE

SB

2660

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/1/06

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 260

SB 260 E. TEND TASK FORCE ON WORKERS' COMP

"An Act extending the date by which the Task Force on Workers' Compensation shall report its findings and the termination date of that task force; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

- APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Betty Davis</i>	X			
<i>Jim Davis</i>	X			
<i>Salph Wilkin</i>	✓			
<i>Dr. Stearns</i>	✓			
CHAIR: <i>B. Davis</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: **SB260-DOLWD-WC-02-03-06**
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: **Labor and Workforce Development**
 Title: **Extend Task Force on Workers' Comp** RDU: **Workers' Compensation**
 Component: **Workers' Compensation**
 Sponsor: **Senator Seakins**
 Requester: **Senate L&C** Component Number: **344**

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						
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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: None
 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)

The Task Force's continued use of the Legislative Information & Teleconferencing System will allow the Division to fulfill its liaison role without additional funding.

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
 Division: Workers' Compensation Date/Time: 2/3/06 2:05 PM
 Approved by: Grag O'Claray, Commissioner Date: 2/3/2006
 Agency: Department of Labor and Workforce Development

ALASKA STATE SENATE



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Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 260 Sponsor Statement

“An Act extending the date by which the Task Force on Workers’ Compensation shall report its findings and the termination date of that task force.”

Senate Bill 260 carries out two simple purposes. First, it extends the Task Force on Workers’ Compensation by one year terminating its charge on February 28, 2007. Secondly, the Bill allows the Task Force an additional two months in which to complete its report to the Legislature. The new due date is February 15, 2006.

During the first session of the 24th legislature the Governor introduced Senate Bill 130 designed to implement necessary reforms within the State’s workers’ compensation program. Additionally, SB 130 established a Task Force on Workers’ Compensation. The Task Force was charged with reviewing and analyzing a broad range of issues relevant to Alaska’s workers’ compensation system. Senate Bill 130 was signed into law on the 15th of September 2005.

The Task Force consists of ten public members and three members of the Legislature. Public members are as follows: Dr. John Duddy (Alaska State Medical Association); Rod Betit (Alaska State Hospital & Nursing Home Association); Michael Jensen (WC Attorney-Employee); Trena Heikes (WC Attorney-Employer); Kevin Dougherty (Organized Employees); Ted Quinn (Non-organized Employees); Conni Livsey (WC Insurance Carriers); Jamie Slack (Self-Insured Employers); Linda Lewis (Small Businesses), and; Evelett Billingslea (Large Businesses).

The Legislature is represented by: Senator Gretchen Guess (minority member); Senator Ralph Seekins (Senate co-chair), and; Representative Bob Lynn (House co-chair).

The Task Force held eight meetings between the 29th of September 2005 and the 5th of January 2006 out of which was produced a Final Report to the Legislature. The Report covers a broad range of topics and concludes with a recommendation for a one year extension. This recommendation is made as a result of the Task Force’s late commencement as well as the complexity of the subject matter.

The Task Force has no budget and has been conducting all its work telephonically. This mode of operation will continue thereby producing zero fiscal impact.

SB

272

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/8/06

FURTHER: Finance

Date of 5-Day Notice: _____
(In accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 272

SB 272 MORTGAGE LENDING

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

Same Title

New Title

SCS House Bill:

Same Title

Technical Title
Change

New Title w/
SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FNW

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FNW

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Bonny Davis</i>				<input checked="" type="checkbox"/>
<i>Bob Ekin</i>			<input checked="" type="checkbox"/>	
<i>Halvard Velheim</i>	<input checked="" type="checkbox"/>			
<i>Ken Hultin</i>	<input checked="" type="checkbox"/>			
AIR: <i>C. Branda</i>	<input checked="" type="checkbox"/>			

**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 (Ranger 19), and Financial Institution Examiner III (Ranger 21).

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

Triggering an examination or investigation

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

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

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

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

Scope of examination

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

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

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

Cost of Examination

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

Sec. 06.60.400.

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

Sec. 06.60.410.

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

Sec. 06.60.430 etal

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

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

Sec. 06.60.600.

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

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



The Mortgage Network, LLC

1752 Tongass Avenue • Ketchikan, Alaska 99901 • (907) 225-5626 • FAX (907) 247-2428

Honorable Bert Stedman
State Capital, Room 30
Juneau, AK 99801-1182

Re: SB 272

Dear Senator Stedman:

I would like to address the following points in SB 272:

Article 3, Sec. 06.60.300(2); I would like it to be clear who determines this or by what guidance they would act. Is guidance simply this chapter?

Article 3, Sec. 06.60.340(a); Who in the department is qualified and what training would such an individual receive. Is there a pay scale associated with these positions, and will the department be hiring from outside? I might be interested.

Article 3, Sec. 06.60.0340(d); This provision is absolutely unreasonable for a small mortgage broker in Ketchikan, or Fairbanks. The mandatory financial burden is in no way equal or fair. There should be no penalty for doing a good job.

Article 4, Sec. 06.60.400; This section has no definition and is already address in Federal if not State advertising law. It is definitely covered in the laws enforced by the Federal Securities and Exchange Commission as well as the Federal Trade Commission.

Article 4, Sec. 06.60.410; Why must Alaska have a law that simply states one must abide by specific Federal laws.

Article 4, Sec. 06.60.430(a); What prevents a different mortgage lender or mortgage broker from refinancing the loan, even if it is or is not in the borrower's best interest. Why is there no legal provision for his scenario? It serves the same end.

Article 4, Sec. 06.60.430(b)(1); What slide-ruler or other arbitrary notion would be used to determine that the costs and fees would or wouldn't make a refinanced mortgage loan within a 12 month period in the borrower's best interest?

Article 4, Sec. 06.60.430(b)(2); It should be defined how one amortization period is better than another amortization period at any given time. This must be delineated. Here is an additional question; is a simple change in term by itself satisfactory evidence that a refinanced mortgage loan was in the borrower's best interest?

Article 4, Sec. 06.60.430(b)(3); Can it possibly be determined that if the borrower receives cash at closing from a refinance mortgage loan, then it is in the borrower's best interest? This is a poor test.

Article 4, Sec. 06.60.430(b)(5); This part is too subjective with regard to costs and fees. There needs to be clear guidance. Besides, there are current Federal laws regarding costs and fees.

Article 4, Sec. 06.60.430(b)(6); This part seems a loophole to me. Who determines when it is a "bona fide" personal need? Does this need to be approved by the State agency first? Doesn't the satisfaction of a "bona fide" personal need also satisfy the borrower's best interest test? Doesn't this go without saying?

Article 4, Sec. 06.60.430(b)(7); Should this also include mortgage loans that are due within 2 years, as in the case of a mortgage with a balloon payment.

Article 6, Sec. 06.60.600; I feel this article and section should be deleted in its entirety. It serves no purpose other than to create revenue from an existing revenue source. The fee for recording of mortgage documents is currently being collected by recording departments all over the state. This piece of legislation is preposterous.

From this, it is also not clear who would pay the fee. Is it the originator, or the funder? This is not the way to fund the mortgage lending enforcement division. Where is this method standard procedure in other states?

Article 9, Sec. 06.60.990(8)(C)(iv); Why is residential construction lending exempt?

Thank you for your time.

Sincerely Yours,



Greg Harsha
The Mortgage Network, LLC

Enclosed: CC sheet

CC Sheet:

Honorable Con Bunde
Chair, Senate Labor and Commerce Committee
State Capital, Room 506
Juneau, AK 99801-1182

Honorable Ralph Seekins
Senate Labor and Commerce Committee
State Capital, Room 125
Juneau, AK 99801-1182

Honorable Ben Stevens
Senate Labor and Commerce Committee
State Capital, Room 111
Juneau, AK 99801-1182

Honorable Bettye Davis
Senate Labor and Commerce Committee
State Capital, Room 11
Juneau, AK 99801-1182

Honorable Johnny Ellis
Senate Labor and Commerce Committee
State Capital, Room 9
Juneau, AK 99801-1182

Amy Seitz

From: Mark Davis [mark_davis@commerce.state.ak.us] **BANKING**
Sent: Friday, March 31, 2006 10:37 AM
To: Sally Saddler
Cc: Cynthia C Drinkwater; Roger W Prince; Randy P Ruaro; Luann Eb Weyhrauch
Subject: Re: questions SB 272

I think an issue that Barbara raised regarding non-profit Native housing corporations needs review. I have asked Roger Prince to investigate her concerns.

Banking and Securities does not have a firm opinion on the poverty level to use for the exemption for non-profit housing corporations. I believe that the 60% figure used in the CS is based on federal guidelines and is used in several state mortgage statutes. I would defer to others as to whether it is an appropriate percentage figure to use in Alaska.

I do not believe that these non-profits will be double regulated. If they are exempt, then they still must comply to all federal program requirements and those of the IRS. If they are not exempt because of a particular group served by the housing (ie above the poverty line) they would need to be licensed.

The Predatory Lending Hotline is a joint venture between AARP, Law, and several municipalities. The Division of Banking and Securities is a participant. I suggest that we should educate the mortgage community about the "Don't Borrow Trouble" effort.

I have asked the staff to log in our mortgage complaints as to type. That is, we are asking the callers whether they are complaining about a national bank, state institution, Internet and the like. This started because of the inquiry from Senator Bunde. It was a good idea.

The language regarding appraisers was to be removed in the CS, but remained in I believe by mistake.

Cordially,

Mark Davis

Sally Saddler wrote:

Got it and am faxing it to Law and Banking right now!

Amy Seitz wrote:

thank you for your help!

Did you get the fax - it's just a 2 page memo from Terri Bannister.

From: Sally Saddler [mailto:sally_saddler@commerce.state.ak.us]
Sent: Thursday, March 30, 2006 4:56 PM
To: Amy Seitz
Cc: Jane Alberts
Subject: Re: questions SB 272

let me touch base with Law and Banking and get back to you tomorrow! Thanks to both of you for your help and hard work on this bill!

Amy Seitz wrote:

Constance Hartle

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

Senator Bunde

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

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

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

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

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

Changes to CSSB 272

SEC 06.60.060 Bonding

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

SEC 06.60.070

Response to Terri Bannister's 3-30-06 memo # 4

Deleted "assessment" added "investigative costs"

SEC 06.60.110

Response to Terri Bannister's 3-30-06 memo #3

Changed from "Duration and transfer of license" to "Duration and renewal of license"
Added in language for renewing a license
Moved transfer language to sec 06.60.120

SEC 06.60.270(a)

Response to Terri Bannister's memo # 6

Deleted reference to a shareholder controlling 10% interest or more – they are dealt with in subsections (b) and (c)

DELETE:

SEC 06.60.280 Minimum net worth required for certain licensees.

SEC 06.60.300(1)(A)

Response to Terri Bannister's memo #4

Deleted "assessment" added "costs"

DELETE:

SEC 06.60.350(a)

SEC 06.60.420

Response to Terri Bannister's memo #5

Added in language to specify which persons are covered under this section

DELETE:

Covered in 06.60.550(b)

SEC 06.60.540 Application of certain statutes

CHANGE:

Clarification language

SEC 06.60.550(b) This chapter may not be interpreted to prevent the attorney general or any [ANOTHER] person from exercising the [ENFORCEMENT] rights and remedies provided under AS 45.50.471-45.50.561.

LEGAL SERVICES

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

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FAX (907) 485-2029
Mail Stop 3101

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

MEMORANDUM

March 30, 2006

SUBJECT: CSSB 272() relating to mortgage lending
(Work Order No. 24-LS1644\C)

TO: Senator Con Bunde
Attn: Jane Alberts

FROM: *tb*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Interstate commerce. Since this bill applies expressly to Internet websites operating from outside the state, it will place some burden on interstate commerce. This raises the issue whether the requirement would be prohibited by the interstate commerce provision of the United States Constitution. The application will be valid under the commerce clause unless the burden it imposes on interstate commerce is clearly excessive in relation to the putative local benefits. I have not researched this issue.
2. Program administration fee. It is not clear whether the program administration fee is a condition of recording the mortgage loan document. If you want it to be a condition of recording, AS 40.17 should be amended to include that fee as a requirement. Currently, AS 40.17.030(a)(10) appears to require payment of a fee that is set by regulation, which would not include this fee.
3. Renewal. There does not seem to be a provision for renewing a license, although sec. 06.60.110 now states the license lasts one year.
4. Assessments. The term is used twice in the new material but only as a reference to assessments made elsewhere. The bill does not otherwise talk about assessments, only about costs and fees. What is "assessment" referring to?
5. Coverage of "person." Secs. 06.60.410 and 06.60.420 need language to tie down the "person" to whom the sections apply. Something like "person to whom AS 06.60.010 - 06.60.025 apply" could be used. I did add a reference to "mortgage loan activities" in sec. 06.60.410. As sec. 06.60.420 now stands, "person" could cover a person who is not in business.

Senator Con Bunde
March 30, 2006
Page 2

6. Disqualified persons. The prohibition in sec. 06.60.270(a) applicable to "a shareholder holding an interest of 10 percent or more" does not seem to be consistent with the department approval provision in sec. 06.60.270(b).

If I may be of further assistance, please advise.

TLB:ljw
06-169.ljw

Enclosure

24-LS1644P
Bannister
4/3/06

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

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

14 Chapter 60. Mortgage Lending.

1 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

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

30 (A) "nonprofit corporation" means a corporation that qualifies
31 under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code) for an exemption

1 from federal income taxation;

2 (B) "qualified individual" means an individual

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

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

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

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

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

14 (7) a person who is licensed in this state as an attorney, real estate
15 broker, or real estate agent when rendering services as an attorney, real estate broker,
16 or real estate agent, but who is not actively and principally engaged in negotiating,
17 placing, or finding mortgage loans; however, a real estate broker or real estate agent
18 who receives a fee, commission, rebate, or other payment for directly or indirectly
19 negotiating, placing, or finding a mortgage loan for another person is not covered by
20 this paragraph;

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

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

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

28 (b) An independent contractor of a licensee is not required to obtain a license
29 under this chapter if

30 (1) the independent contractor and licensee execute a written contract
31 under which

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

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

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

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

8 (1) be in writing;

9 (2) be made under oath or affirmation;

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

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

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

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

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

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

24 (6) contain other information as the department may require
25 concerning the organization and operations of the applicant and the financial
26 responsibility, background, experience, and activities of the applicant and its
27 members officers, directors, owners, and other principals.

28 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant
29 for a license to determine if the applicant satisfies the requirements of this chapter for
30 the license. An applicant for a license shall pay the investigation expenses incurred by
31 the department. When the applicant submits the application to the department, the

1 applicant shall pay to the department a nonrefundable application fee of \$500 in partial
2 payment of the investigation expenses incurred by the department. An applicant for a
3 dual license is not required to pay more than one application fee.

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

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

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

14 (b) The bond required by (a) of this section shall be for the use of the
15 department, the Department of Law, or a person for a cause of action against the
16 obligor under this chapter. The bond must state that the obligor will faithfully conform
17 to and abide by the provisions of this chapter and all regulations adopted under this
18 chapter and will pay the department, the Department of Law, or a person all money
19 that may become due or owing to the department, the Department of Law, or the
20 person from the obligor under an order of the department under this chapter.

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

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

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

30 **Sec. 06.60.070. Issuance of license.** (a) Within 90 days after the date a
31 complete application, the required bond, and any required fees and investigative costs

1 are received by the department, the department shall either grant or deny the license.

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

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

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

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

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

16 **Sec. 06.60.090. Additional grounds for denial of license.** The grounds for
17 denial of a license include a finding by the department that a person named in the
18 application

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

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

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

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

30 (5) has been prohibited by a federal or state regulatory agency from
31 engaging, participating, or controlling a finance-related activity that provides financial

1 services to the public.

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

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

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

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

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

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

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

22 **Sec. 06.60.120. Transfer of license.** A licensee may not transfer or assign the
23 licensee's business unless

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

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

28 **Article 2. Licensee Obligations.**

29 **Sec. 06.60.200. Annual report.** (a) On or before March 15, or on another date
30 established by the department by regulation, of each year a licensee shall file a report
31 with the department giving relevant information that the department requires

1 concerning the business and operations of each location in the state where business
2 was conducted by the licensee in the state during the preceding calendar year. The
3 licensee shall make the report under oath or on affirmation. The report must be in the
4 form established by the department.

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

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

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

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

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

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

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

29 (b) The prior written approval of the department is required for the continued
30 operation of a licensee's business when a change in control of the licensee is proposed.
31 The department may require the information it considers necessary to determine

1 whether a new application is required. The licensee requesting approval of the change
2 in control shall pay all reasonable expenses incurred by the department to investigate
3 and approve or deny the change in control.

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

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

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

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

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

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

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

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

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

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

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

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

28 (d) In this section,

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

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

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

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

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

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

10 **Article 3. Discipline of Licensee.**

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

15 (1) the licensee has failed to

16 (A) pay any required fee or costs;

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

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

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

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

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

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

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

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

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

13 **Sec. 06.60.340. Investigation and examination.** (a) The department may
14 investigate and examine the affairs, business, premises, and records of a mortgage
15 lender or mortgage broker required to be licensed under this chapter to determine
16 compliance with this chapter and regulations adopted under this chapter and AS 06.01.
17 Notwithstanding AS 06.01.015, the department shall conduct an examination at least
18 once every 36 months, or sooner if the examination is part of review of a complaint
19 against the licensee by a resident of the state.

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

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

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

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

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

31 (d) A licensee shall reimburse the department reasonable costs incurred by the

1 department to conduct the examination. The reimbursement under this subsection may
2 not exceed the rate of \$75 an hour for the examination, plus travel, housing, and per
3 diem that does not exceed the per diem allowance for employees of the state under
4 AS 39.20.110.

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

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

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

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

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

24 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
25 1974);

26 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

27 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

28 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
29 Protection Act);

30 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

31 (6) any other federal law or regulation.

1 **Sec. 06.60.420. Prohibited activities.** In addition to activities prohibited
2 elsewhere in this chapter or by another law, a person who is a licensee, a person who
3 is required to be licensed under this chapter, a person who is exempt under
4 AS 06.60.020, and an employee and an independent contractor to whom AS 06.60.025
5 applies may not, in the course of a mortgage loan transaction,

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

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

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

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

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

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

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

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

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

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

29 (9) influence or attempt to influence through coercion, extortion, or
30 bribery the development, reporting, result, or review of a real estate appraisal sought
31 in connection with a mortgage loan; this paragraph does not prohibit a person from

1 asking an appraiser to

2 (A) consider additional appropriate property information;

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

5 (C) correct errors in the appraisal report;

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

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

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

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

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

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

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

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

31 (1) the borrower's new monthly payment is lower than the total of all

1 monthly obligations being refinanced, after taking into account the costs and fees of
2 the refinancing;

3 (2) the amortization period of the new loan is different from the
4 amortization period of the loan being refinanced;

5 (3) the borrower receives cash in excess of the costs and fees of the
6 refinancing;

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

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

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

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

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

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

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

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

Article 5. Enforcement.

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

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

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

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

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

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

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

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

Sec. 06.60.530. Civil penalty for violations. (a) A person who knowingly violates a provision of this chapter or a regulation adopted under this chapter is liable

1 for a civil penalty not to exceed \$10,000 for each violation.

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

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

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

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

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

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

20 (b) The fee shall be paid by the buyer of the real property that is the subject of
21 the mortgage loan.

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

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

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

30 (b) The department is not liable for an agent's defalcation or failure to account
31 for the program administration fees collected by the agent, but the department may

1 require the agent to obtain a bond in an adequate sum conditioned on the agent's
2 faithfully accounting for all money collected under this section.

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

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

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

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

17 **Article 7. Miscellaneous Provisions.**

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

21 **Sec. 06.60.705. Applicability of administrative procedures.** The provisions
22 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to
23 deny, revoke, or suspend a license under this chapter and to hearings and orders of the
24 department.

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

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

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

1 **Article 8. General Provisions.**

2 **Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise
3 requires,

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

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

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

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

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

11 (6) "knowingly" has the meaning given in AS 11.81.900,

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

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

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

18 (A) accepts or offers to accept an application for a mortgage
19 loan;

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

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

22 (D) issues mortgage loan commitments or interest rate
23 guarantee agreements to borrowers;

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

29 (11) "mortgage loan"

30 (A) means a loan made to an individual if the proceeds are to
31 be used primarily for personal, family, or household purposes and if the loan is

1 secured by a mortgage or deed of trust on an interest in a residential owner-
2 occupied property for one to four families located in the state and regardless of
3 where the loan is made;

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

5 (C) does not include loans

6 (i) or extensions of credit to buyers of real property for
7 a part of the purchase price of the property by persons selling the
8 property owned by them;

9 (ii) to persons related to the lender by blood or
10 marriage;

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

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

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

17 (13) "program administration fee" means the fee described under
18 AS 06.60.600(a),

19 (14) "records" includes books, accounts, papers, files, and other
20 records;

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

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

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

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

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

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

31 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

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

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

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

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

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

14 Chapter 60. Mortgage Lending.

Article 1. Licensing.

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

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

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

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

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

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

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

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

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

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

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from federal income taxation.

(B) "qualified individual" means an individual

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

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

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

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

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

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

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

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

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

(b) An independent contractor of a licensee is not required to obtain a license under this chapter if

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

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

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

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

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

8 (1) be in writing;

9 (2) be made under oath or affirmation;

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

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

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

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

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

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

24 (6) contain other information as the department may require
25 concerning the organization and operations of the applicant and the financial
26 responsibility, background, experience, and activities of the applicant and its
27 members, officers, directors, owners, and other principals.

28 **Sec. 06.60.040. Investigation.** The department shall investigate an applicant
29 for a license to determine if the applicant satisfies the requirements of this chapter for
30 the license. An applicant for a license shall pay the investigation expenses incurred by
31 the department. When the applicant submits the application to the department, the

1 applicant shall pay to the department a nonrefundable application fee of \$500 in partial
2 payment of the investigation expenses incurred by the department. An applicant for a
3 dual license is not required to pay more than one application fee.

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

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

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

14 (b) The bond required by (a) of this section shall be for the use of the
15 department for a cause of action against the obligor under this chapter. The bond must
16 state that the obligor will faithfully conform to and abide by the provisions of this
17 chapter and all regulations adopted under this chapter and will pay the department or a
18 person all money that may become due or owing to the department or the person from
19 the obligor under an order of the department under this chapter.

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

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

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

29 **Sec. 06.60.070. Issuance of license.** (a) Within 90 days after the date a
30 complete application, the required bond, and any required fees and assessments are
31 received by the department, the department shall either grant or deny the license.

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

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

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

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

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

15 **Sec. 06.60.090. Additional grounds for denial of license.** The grounds for
16 denial of a license include a finding by the department that a person named in the
17 application

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

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

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

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

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

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

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

10 (b) A licensee may not transfer or assign the licensee's business unless

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

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

15 **Article 2. Licensee Obligations.**

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

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

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

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

31 (c) The license fee imposed by (a) of this section is in addition to the fee

1 imp sed under AS 43.70 (Alaska Business License Act).

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

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

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

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

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

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

31 (c) A mortgage lender required to be licensed under this chapter shall retain

1 for at least three years after final payment is made on a mortgage loan or after a
2 mortgage loan is sold, whichever occurs first, copies of the note, settlement statement,
3 truth-in-lending disclosure, and other papers or records relating to the loan that may be
4 required by department order or regulation.

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

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

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

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

30 (2) reimburse the department reasonable costs, as provided in
31 AS 06.60.340(d), that are incurred by the department during an investigation or

1 examination conducted at the office or place of business.

2 **Sec. 06.60.270. Disqualified persons.** (a) A disqualified person may not be an
3 officer, a director, a partner, a member, a sole proprietor, a shareholder controlling an
4 interest of 10 percent or more, a trustee, an independent contractor, an employee of a
5 licensee, or in another position with similar responsibilities. In this subsection,
6 "employee" means an individual who negotiates an agreement with a member of the
7 public for the licensee or who has access to, or responsibility for, escrow accounts or
8 escrow money held by the licensee.

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

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

16 (d) In this section,

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

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

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

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

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

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

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by the licensee:

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

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

Article 3. Discipline of Licensee.

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

- (1) the licensee has failed to
 - (A) pay any required fee or assessment;
 - (B) maintain in effect a bond required under AS 06.60.060; or
 - (C) comply with any applicable provision of this title, with any applicable regulations adopted under this title, with a lawful demand, ruling, order, or requirement of the department, or with any other statute or regulation applicable to the conduct of the licensee's business; or

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

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

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

(c) Surrender of a license under this section does not affect the licensee's civil

1 or criminal liability for acts committed before surrender of the license.

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

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

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

14 **Sec. 06.60.340. Investigation and examination.** (a) The department
15 investigate and examine the affairs, business, premises, and records of a mortgage
16 lender or mortgage broker required to be licensed under this chapter to determine
17 compliance with this chapter and regulations adopted under this chapter and AS 06.01.
18 Notwithstanding AS 06.01.015, the department shall conduct an examination at least
19 once every 36 months, or sooner if the examination is part of review of a complaint
20 against the licensee by a resident of the state.

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

24 (c) For the purposes of conducting an examination under this section, the
25 department

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

28 (2) may conduct the examination without prior notice to the licensee;
29 and

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

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

6 **Sec. 06.60.350. False information in course of investigation or examination**
7 **prohibited.** (a) A person may not knowingly give or cause to be given to the
8 department a document or an oral or written statement or report that is false in any
9 respect in the course of an investigation or examination by the department under this
10 chapter.

11 (b) A person may not, in a document filed with the department or in a
12 proceeding under this chapter, make or cause to be made, an untrue statement of a
13 material fact or omit to state a material fact necessary in order to make the statements
14 made, in the light of the circumstances under which they are made, not misleading or
15 false.

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

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

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

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

30 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
31 1974);

- 1 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);
2 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);
3 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
4 Protection Act);
5 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and
6 (6) any other federal law or regulation.

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

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

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

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

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

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

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

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

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

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

31 (B) performed by the appraiser in connection with the

1 origination or closing of a mortgage loan for a customer of the person:

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

6 (A) consider additional appropriate property information;

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

9 (C) correct errors in the appraisal report;

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

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

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

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

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

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

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

1 borrower's best interest.

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

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

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

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

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

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

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

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

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

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

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

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

5 Article 5. Enforcement.

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

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

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

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

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

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

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

28 Sec. 06.60.520 Responsibility of licensee for violations. A licensee who acts
29 as a mortgage lender or mortgage broker is vicariously liable under AS 06.60.300 and
30 06.60.530 for a violation of a provision of this chapter or of a lawful demand, ruling,
31 or requirement of the department made under and within the authority of this chapter,

1 committed by a person while in the course of the person's employment or agency for
2 the licensee.

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

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

9 **Sec. 06.60.540. Application of certain statutes.** Notwithstanding
10 AS 45.50.481, this chapter may not be interpreted to exempt the application of
11 AS 45.50.471 - 45.50.561 to an act or transaction regulated under this chapter.

12 **Sec. 06.60.550. Additional enforcement provisions, actions, and rights.** (a)
13 The department may treat a licensee as a financial institution under AS 06.01 when
14 applying the enforcement provisions of AS 06.01.

15 (b) This chapter may not be interpreted to prevent the attorney general or
16 another person from exercising the enforcement rights provided under AS 45.50.471 -
17 45.50.561.

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

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

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

28 (b) The fee shall be paid by the buyer of the real property that is the subject of
29 the mortgage loan.

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

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

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

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

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

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

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

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

25 **Article 7. Miscellaneous Provisions.**

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

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

1 department.

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

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

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

9 **Article 8. General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (11) "mortgage loan"

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

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

13 (C) does not include loans

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

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

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

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

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

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

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

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

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

1 Lending Act of 2006.

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

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

5 * **Sec. 4.** AS 45 50.481 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

Page 1

Sec. 06.60.010. License Required.

- (a) Except as provided under AS 06.60.020, a person, including a person doing business from outside this state, may not solicit or engage in business, or offer to provide services, as a mortgage lender in this state [or hold the person out to the public as a mortgage lender] unless the person is licensed under this chapter
- (b) Except as provided under AS 06.60.020, a person, including a person going business from outside this state, may not solicit or engage in business, or offer to provide services, as a mortgage broker in this state [or hold the person out to the public as a mortgage lender] unless the person is licensed under this chapter.
- (c) This chapter shall apply to a person operating an Internet website from within or outside the state.
- (d) The department may issue a dual license under this chapter that allows a person to solicit or engage in business, or offer to provide services, as a mortgage lender and a mortgage broker. [and to hold the person out to the public as a mortgage broker]

renumber accordingly

Page 2

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

- (1) A mortgage lender who makes six or fewer mortgage loans within a period of twelve [SIX] months;
- (2) a person who is authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States, a state or territory of the United States, or the District of Columbia, and whose mortgage loan activity is subject to the general supervision, regulation [AUDIT] and examination of a regulatory body or agency of the United States, a state or territory of the United States, or the District of Columbia;
- (3) delete "audit or" insert "and"

page 3 line 7 delete "kickback"

delete subsections (10) and (11) (A) and (B)

New section clarifying that eventhough an employee and independent contractor of a licensee do not need their own separate license under this chapter, they are still subject to the other provisions – such as the prohibited practices.

- (1) An employee of a licensee is not required to obtain a separate license under this chapter.**

(2) An independent contractor of a licensee is not required to obtain its own separate license under this chapter, if;

(A) The independent contractor and licensee execute a written contract whereby

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

(ii) The independent contractor agrees to operate in compliance with this chapter.

(B) The department provides advance written approval of the agreement between the independent contractor and the licensee.

Page 3

Sec. 06.60.030. Application for license.

(6) [Other information that the department may require] **Contain such other information concerning the organization and operations of the applicant as well as the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, owners, and other principals as the department may require.**

Sec. 06.60.040. Investigation.

Page 4, Line 18 "An applicant for a dual license is not required to pay more than one **application** [ANNUAL LICENSE] fee."

Page 4

Sec. 06.60.050. Initial Annual Fee.

(a) An applicant for a license shall pay the annual license fee required by AS 06.60.210[,] to the department when the applicant submits an application under AS 06.60.030, [and the applicant's next license fee shall be due the last day of the first January that occurs after the applicant receives a license.] The annual license fee will be due each year thereafter in accordance with AS 06.60.210.

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

Page 4

Sec. 06.60.060. Bonding.

(b) The bond required in (a) of this section shall be for the use of the department for a cause of action against the obligor under this chapter. The bond must state that the obligor will faithfully conform to and abide by the provisions of this chapter and [of] all regulations adopted under this chapter and will pay [to] the department or a person all money that may become due or owing to the department or a person from the [applicant] obligor pursuant to the order of the department under this chapter.

Page 5

Sec. 06.60.070. Issuance of license.

(a) Within 90 days after the date a complete application, the required bond, and any required fees and assessments are received by the department; [an application is filed with the department under AS 06.60.030,] the department shall either [approve the application and issue a license to the applicant or disapprove the application.] grant or deny the license.

(b) If the department denies [DISAPPROVES] the license [APPLICATION] the department shall promptly notify the applicant. The notification must indicate the reason for the denial [DISAPPROVAL] and provide the applicant with an opportunity for a hearing on the department's denial [DISAPPROVAL].

Page 5

Sec. 06.60.080. Determinations for licensing.

Before granting [APPROVING] a license [AN APPLICATION FILED UNDER AS 06.60.030], the department shall determine that

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

(2) The financial responsibility, experience, character, and general fitness of the applicant, and of the applicant's members and officers or other principals, and the organization and operation of the applicant indicate that the business will be operated efficiently and fairly, in the public interest, and in accordance with law [THE APPLICANT WILL OPERATE IN COMPLIANCE WITH AS 06.60.400 - 06.60.440]; and

(3) The department has not found grounds for denial of a license [DISAPPROVAL OF THE APPLICATION] under AS 06.60.090.

Page 5

Sec. 06.60.090. Additional grounds for denial [disapproval] of license [APPLICATION].
The grounds for denial [disapproval] of [AN APPLICATION FOR] a license include a finding by the department that a person named in the application

Page 6

Sec. 06.60.110. Duration and transfer of license.

(a) A license issued under this chapter [is a continuing license and remains in full force and effect until the license is] shall remain in force until the end of the calendar year in which the license is issued unless revoked or suspended under AS 06.60.300 or surrendered [by the licensee] under AS 06.60.310 of this chapter.

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

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

(2) the licensee provides the department with written notice at least thirty days prior to the effective date of the proposed transfer or assignment.

Page 7

Sec. 06.60.210. Annual license fee.

(a) A licensee shall pay the department [a] an annual license fee of \$250 [each year on or before the last day of January] for each complete year as well as for a partial year that occurs at the beginning or end of a licensed period.

Sec. 06.60.240. Change in business operations or control.

(a) If there is a significant change in the business operations of the licensee, the licensee shall[, within 10 days,] provide [notice of the change to the department] written notice to the department at least thirty days prior to the effective date of the change in operations.

(b) The prior written approval of the department is required for the continued operation of a licensee's business when a change in control of the licensee is proposed. The department may require the information it considers necessary to determine whether a new application is required. The licensee

requesting approval of the change in control shall pay all reasonable expenses incurred by the department to investigate and approve or deny the change in control.

Sec. 06.60.250. Records of licensee.

Delete pg 7 line 27 to page 8 line 4 up to "include"
Insert below language

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

(b) Each mortgage lender required to be licensed under this chapter shall retain for at least three years after final payment is made on any mortgage loan or the mortgage loan is sold, whichever first occurs, copies of the note, settlement statement, truth-in-lending disclosure and such other papers or records relating to the loan as may be required by order or regulation.

(c) Each mortgage broker required to be licensed under this chapter shall retain for at least three years after a mortgage loan is made the original contract for his compensation, a copy of the -settlement statement, and an account of fees received in connection with the loan, and such other papers or records as may be required by order or regulation.

(d) If a licensee conducts business as a mortgage loan servicing agent for loans that it owns, or as agent for other mortgage lenders or investors, the licensee shall, in addition to complying with (a) and (b) of this section, maintain a record for each mortgage loan. The record for each mortgage loan must include, either in electronic or printed format, the following as well as other papers required by order or regulation: the amount of the mortgage loan, the total amount of interest and finance charges on the mortgage loan, the interest rate on the mortgage loan, the amount of each payment to be made on the mortgage loan, a description of the collateral taken for the mortgage loan, a history of all payments received by the licensee on the mortgage loan, a detailed history of the amount of each payment that is applied to the reduction of the mortgage loan principal, the interest that accrues on the mortgage loan, and any other fees and charges that are related to the mortgage loan. The licensee shall retain the record required by this subsection for three years after the loan is sold to another mortgage loan servicing agent or after the mortgage loan is satisfied, whichever occurs first.

Page 8

Sec. 06.60.260. Availability of out-of-state records.

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

Sec. 06.60.270. Disqualified person.

(a): A disqualified person may not serve as an officer, director, partner, member, sole proprietor, shareholder controlling an [ownership] interest of 10% or more, trustee, an independent contractor, or an employee of a licensee, or other position with similar responsibilities. [without the prior written approval of the department] In this subsection, "employee" means an individual who negotiates an agreement with a member of the public for the licensee or who has access to, or responsibility for, escrow accounts or escrow money held by the licensee.

(C) Before [an officer, director, or other person] any person may obtain a controlling ownership interest of 10 percent or more in the business of a licensee, the [officer, director, or other] person shall authorize the department to access the [officer's, director's, or other] person's criminal history information in [this] any state to determine whether the [officer, director, or other] person is a disqualified person.

(d) In this section,

(1) "disqualified person" means a person who

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

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

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

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

Delete (2)(A), (B) and (C)

Page 9

Delete Sec. 06.60.280. Minimum net worth required for certain licensees.

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

(1) the licensee has failed to

(A) pay [the annual license fee] any required fee or assessment;

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

(C) comply with [a] any applicable provisions of this [chapter or] title, and with any applicable regulations adopted pursuant to this title, and with a lawful demand, ruling, order, or requirement of the department [made under and within the authority of this chapter; or], or any other statute or regulation applicable to the conduct of the licensee's business.

Sec. 06.60.340. Examination of licensees.

REWRITE (a) TO:

(a) The department may investigate and examine the affairs, business, premises, and records of any lender or broker required to be licensed under this chapter to determine compliance with this chapter and regulations adopted under this title. Notwithstanding 06.01.015, the department shall conduct the examination at least once every 36 months, or sooner if the examination is part of review of a complaint against the licensee by a resident of the state of Alaska.

Sec. 06.60.350. False information in course of investigation or examination prohibited.

Add new (b)

(b) A person may not, in a document filed with the department or in a proceeding under this chapter, make or cause to be made, an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or false.

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Sec. 06.60.410. Compliance with federal requirements.

Add new subsection

(6) any other applicable federal law or regulation.

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Replace current language with the following

Sec. 06.60.500. [Stop Orders] Orders and injunctions; notice and hearings.

The department shall have the authority under AS 06.01.030 to issue an order directing the person to cease and desist from engaging in an unsafe or unsound practice.

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Delete: **Sec. 06.60.510. Finality of stop orders.**

Add new section

Sec. 06.60.525. Responsibility of licensee for violations.

A licensee who acts as a mortgage lender or broker is vicariously liable under AS 06.60.300 and AS 06.60.530, for a violation of a provision of this chapter or a lawful demand, ruling, or requirement of the department made under an within the authority of this chapter, committed by a person while in the course of the person's employment or agency for the licensee.

Add new section

Sec. 06.60.535. Application of AS 45.50.471-45.50.561

Notwithstanding AS 45.50.471 nothing in this chapter shall exempt application of AS 45.50.471-45.50.561 to an act or transaction regulated under this chapter.

Sec. 06.60.540. Additional enforcement provisions, actions, and rights.

New subsection

(c) If the department determines that a licensee or any person acting on behalf of the licensee is in violation of, or has violated, and provision of this chapter, the department may refer the information to the Attorney General and request that the Attorney General investigate such violations pursuant to AS 45.50.495. The Attorney General is authorized to enjoin violations of the chapter and may seek restitution, rescission, and such other relief as allowed by law.

Sec. 06.60.605. Authorization of fee; responsibility party.

- (a) The Division shall be authorized to collect a fee of \$10.00 for each mortgage defined in (b) of this section to reimburse the state for cost of administering this chapter of law.
- (b) The fee shall be assessed to all deeds of trusts, mortgages, or other loan instruments recorded to encumber residential real estate in the state of Alaska.
- (c) The fee shall be paid by the buyer of the residential real estate.
- (d) If there are multiple instruments recorded under (b) of this section for a single mortgage loan transaction, only one fee under (a) of this section shall be due.

Sec. 06.60.700. Applicability of administrative procedures.

The payday lending act (06.50) doesn't have a specific section that states the APA will apply to actions of the department. I added this language to make it clear that it applies and will be used when making determinations of licensees.

May need to make clear that the APA applies to an action of the department to deny revoke, or suspend a license. Hearings under 06.01.030 are not subject to AS 44.62.330 – 44.62.630, except as required by AS 44.62.560 and 44.62.570.

add new subsection under AS 45.50.481

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

AS 06.01.050(3) is amended

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

I'm contacting you because of a series of problems my son and I encountered when he built his home starting in 2004. The process and lack of professionalism on the part of a local state banker and a retail lender, sent me on a mission to get these individuals licensed so that people have some protection from what happened to us. Please read our true story.

Initially, my son purchased 2-1/2 acres just off Chena Ridge Road. He wanted to build a log home on it, so we went to a local state bank and spoke with an established lender there. He gave us a construction loan for an amount adequate to build the house, and said when we had completed the house and passed the necessary inspections, they would convert the construction loan to a mortgage loan. It sounded pretty simple.

My son was cautioned not to purchase a new vehicle during this construction process and to stay at the same job. At that time, he was working as a mechanic doing lube and oil changes at Auto Service Company and making \$10.00 per hour.

During the next nine months, things went fairly well. Of course the building process was more difficult than we had imagined and lots of highs and lows. In March of 2005, the original construction loan matured and it was time to convert to a mortgage loan. We had our check list of inspections, etc. complete, our appraisal in hand, and submitted our Letter of Completion, preparing to move forward to the mortgage loan process.

To this point the construction loan process was relatively straight forward, except that our lender advanced amount in excess of requested amounts, resulting in early escalation of the construction loan balance and increased interest payments my son had to pay on a monthly basis, something we were carefully monitoring to keep the draws to a minimum.

We scheduled the pre-closing meeting with our lender and were quite amazed when we were told that the local state bank with whom we had been working all these months, would not be able to help us with the mortgage loan. The reasons we were given were:

- 1) My son, twenty years old by that time, did not have a credit history. (He didn't have a credit history when he was given the construction loan.)
- 2) He had changed jobs during the construction loan process. (He had changed employers, but had taken a superior job as a mechanic apprentice at another mechanic shop at the higher wage of \$12.00 per hour. He had been in the same line of work for over two years, which at twenty should have been a plus.)

The banker provided a lecture about how precarious his situation was and how the construction loan was now due and payable and recommended we go to a national retail lender where an individual with whom the banker had previously worked at the local state bank, and who had more leeway than the local state bank, would be able to help us. The banker forwarded my son's entire file to the mortgage company.

There were numerous applications to be completed and numerous credit letters to be requested and completed as my son attempted to establish a non-conventional credit profile and gain financing for the home he had built.

This went on for a couple months with no financing in site. Soon the local bank's lender began pressuring my son to get this resolved. The mortgage company's employee was telling us that she and the lender had an understanding, and he was probably "putting pressure on us because his board of directors was putting pressure on him", but not to worry, things would work out. She was close to finding a program. So on and so on.

To make a five month long story short, while the mortgage company employee "tried" to find a program, interest rates began to climb and the local state bank closed our original construction loan, re-writing it at a higher interest rate and requiring the "usual" fees, etc. be paid for the new loan. Now on our third construction loan at yet a higher interest rate, plus more of the "usual" fees, etc., the mortgage lender finally submitted my son's "package" to the home office in Anchorage. Weeks passed.

Finally, I contacted the office in Anchorage and inquired about the progress of my son's now third loan application. To my shock, I was told that the information received from his employee was inadequate, incomplete, and outdated and my son would have to start all over. This individual told me that if I would co-sign with my son, we could get things moving at a faster pace and he passed my name and number along to yet another individual who called me and told me if I dropped my son altogether, because of my credit rating, we could probably get things wrapped up in "no time."

The mortgage initially was to have been at 6.2% interests with a monthly payment of approximately \$615.00, an amount my son could pay.

By the second offering, the interest rate climbed to 7.5% with a monthly payment of over \$750.00. That was considerably higher and even though during this time, my son had been given another raise to \$14.00 per hour, it seemed like he was being tasked to fail.

The mortgage company then offered 9% interest and \$900.00 per month. At that point my son withdrew his application. That was a stressful, scary time. He felt he was risking losing his property and his house, not to mention the hours and hours of hard work.

We found a completely different mortgage program.... a government loan guarantee administered by a lady in the office immediately next to the original gentleman at the local state bank (in the same building). We never heard of it from that gentleman, but were made aware of it through a friend as an alternative type of financing. My son closed on his loan in November of 2005 and is paying a monthly payment he can afford.

The local state bank made several thousand dollars in construction interest they would have forgone, had they dealt honestly and responsibly with my son. The retail mortgage lender's lacking in knowledge of her own programs, lack of proper training and inability

to put together a package her own employer could use also resulted in my son having to pay for three appraisals for the same property, as they were valid for only so many months. This retail mortgage lender is still practicing today.

My decision to make it my business to see that persons in responsible positions such as these individuals be licensed, lead me to House Bill 424. This bill should demand licensing of all individuals involved in the mortgage business just as real estate brokers, agents and appraisers are licensed. The entities I have just spoken to you about would appear to be overlooked by this legislation.

Thank-you very much.

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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