

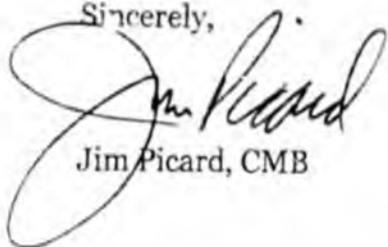
SENATE LABOR & COMMERCE, 1921

11921 SENATE LABOR & COMMERCE

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

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

Sincerely,

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

Jim Picard, CMB

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

Constance Hartle

From: Jim Picard - AK [Jim.Picard@gmacm.com]
Sent: Thursday, March 23, 2006 10:15 AM
To: Sen. Con Bunde; Sen. Ralph Seekins; Sen. Ben Steven; Sen. Johnny Ellis; Sen. Bettye Davis;
Sen. Tom Wagoner; Rep. Tom Anderson; Rep. Bob Lynn; Kevin Breeland;
doug@goldcoastak.com; John Carman; Roger Prince; Tim Kelly; jpicard@alaska.net
Subject: SB 272 Comments

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3/1/06

CS FOR SENATE BILL NO. 272(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): 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; and providing for an effective date."

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

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

6 **Chapter 60. Mortgage Lending.**

7 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

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

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

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

20 (B) "qualified individual" means an individual

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) be in writing;

25 (2) be made under oath or affirmation;

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

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

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

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

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

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

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

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

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

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

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

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

1 required to file more than one bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Article 2. Licensee Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (d) In this section,

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

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

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

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

12 (A) AS 11.46;

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

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

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

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

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

Article 3. Discipline of Licensee.

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

(1) the licensee has failed to

(A) pay the annual license fee;

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

(C) comply with a provision of this chapter or a lawful demand, ruling, or requirement of the department made under and within the authority of this chapter; 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 or criminal liability for acts committed before surrender of the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 agreement to make a mortgage loan;

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

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

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

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

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

14 (A) consider additional appropriate property information;

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

17 (C) correct errors in the appraisal report;

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

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

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

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

1 borrowers: this paragraph does not apply if

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Article 5. Enforcement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **Article 7. Miscellaneous Provisions.**

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

1 department.

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

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

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

9 **Article 8. General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (11) "mortgage loan"

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

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

13 (C) does not include loans

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

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

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

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

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

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

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

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

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

1 Lending Act of 2006.

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

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

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

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

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

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

20 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

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

Jane Alberts

From: Amy Seitz
Sent: Friday, March 10, 2006 10:37 AM
To: Jane Alberts
Subject: FW: *****SPAM***** CS 272 (Senate) 424 (House) from Dwight Deely @ Evergreen Alaska Mortgage

-----Original Message-----

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

March 8, 2006

Lorice Ponsford
Legislative Information Assistant
Fairbanks Information Office
State of Alaska

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

Dear Ms Ponsford,
Please forward this correspondence to the Labor and Commerce committees for review:

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

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

This legislation should not make the State of Alaska an agent to collect monies from service companies associated with mortgage brokers and lenders. Sec. 06.60.420 (8) is a good example. Why are appraisers listed while other third parties associated with a mortgage loans are not? If left in the bill, why should banks, credit unions etc be exempt from these collection efforts?

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

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

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

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

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

Sincerely

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

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

Dear Senate Committee,

My name is Shellie Buck; I am president of Platinum Funding Group, Inc. a member of the National Association of Mortgage Brokers, a member of the Alaska Association of Mortgage Brokers and currently serve my clients as a Loan Originator.

I have been working in the mortgage industry in Alaska for the past 9-years. I entered this line of work with no experience whatsoever. I have made it my personal mission to educate myself so that I may hold myself out to be of the highest ethical standard for the consumers I am serving. I have been active in seeking licensing in the state of Alaska for at least 4-years and played a key role in creating an Alaska Association that could pioneer education that would be available on local ground.

I would like to thank you for the opportunity to present my views on the current legislation for Mortgage Lending Licensing HB 224 working copy I.

First I would like to state that I am an advocate of licensing for the lending industry. My concerns over the current legislation are not a veil to hide an ulterior motive to quash licensing altogether as some testimony by other individuals in the industry may have indicated. It was stated that any licensing is better than no licensing, I emphatically disagree. There are many states that have been licensed for a long time and are now facing issues of law and possible revocation of statutes due to the lack of planning when instituting the laws they created.

Other testimony has alluded to complaints that have been received by the new predatory lending hotline. Accounting these complaints by who is making them, against whom they are being made must be made public so that we can use this information in formulating true consumer protections in licensing.

There is much discussion as to who would be exempt under this current legislation, and I myself find that section 06.60.020 as I interpret it would exempt me from licensing. Since I am advocating licensing this is not acceptable. Additionally, institutions that are overseen by Federal regulation who fall under exempt status per this bill are part of the largest group that have been scrutinized, fined and shut down because of bad business practice. Individual licensing and education of loan officers employed by these institutions has proven to be the most effective way to curb breeches of federal law. Nationally the federal government is proposing legislation of individual licensing because of the lack of company oversight when it comes to hiring and monitoring Loan Officers.

Some testimony implied that licensing the office will ensure that the owner will "police their own", in short that companies will be forced to make sure loan officer's are trained properly and not acting in an unprofessional or predatory manor. Currently industry wide loan officers are hired without any previous knowledge or current education specific to mortgage lending. I have worked locally in both retail and wholesale offices neither of which provided me a requirement for education. Most of the lending industry's loan officers are commissioned not salaried. This leaves the door wide open to gouge or practice predatory lending on an individual level. When you have an industry driven by a commissioned work force with high potential income an entry level way to measure their general fitness is to require minimum education standards and competency testing which will in turn protect the consumer.

I am also concerned that we are creating legislation as an avenue to assist appraisers in collecting their fees. I have no idea why this would be a part of a bill to license mortgage lenders. When you are creating legislation for the purpose of consumer protection how does this relate? And, like the appraiser fees, I do not believe you should include verbiage to legislate information regarding what is called a 90% commitment or pre-qualification letter. The purpose of pre-approval letters is for realtor's peace of mind. They are not utilized Nationwide and you would have no way of tracking the validity of 90% letters. Further, it states that you can tell a lie in these letters as long as you close the loan, this is ridiculous.

I believe there are many areas in the body of the legislation that are either too vague or encompass laws that cannot be monitored to any real level of consumer protection. With out picking each paragraph apart any further I would simply say that there is a way to create a bill that will provide the state with oversight into office practices and monitor individuals who hold themselves out to the public as Loan Originators without re-writing federal standard, and without have to re-invent the wheel. The creation of 2 bills, one covering Mortgage Lending and one covering Loan Originators will far better serve the industry, the consumer and the economic growth in Alaska.

All originators in Alaska should be required a standard education in FNMA, FHMLC, GNMA, FHA, VA AND ALASKA HOUSING FINANCE loans. This education should encompass guidelines for these types of mortgages as well as federal laws governing mortgages and ethical standards of business. By enforcing education to the individuals who are working in this industry you are protecting the consumer.

Oversight of mortgage companies and mortgage brokers should be limited to the scope of business that is done by these companies. There is a true difference in "lending" and "brokering" mortgage loans. By understanding these differences and governing them accordingly time and money will be saved. This will protect the public from undue costs as a result of licensing. Below are some definitions that I believe will shed light to some of the main concerns of the current licensing.

Mortgage Broker: An individual or company which brings borrowers and lenders together for the purpose of loan origination, but which does not originate or service the mortgages. The broker might also negotiate with the lender to try and find the best possible financing deal available for the borrower.

Mortgage Banker: A banker who originates, sells, and services mortgages in the secondary mortgage market.

Mortgage Loan Officer/Loan Originator/Home Loan Consultant: A loan originator is an individual contracted by an entity who charges the service of locating borrowers and putting them together with an appropriate lender. The loan originator fees are charged to the borrower at the time of closing in the form of points on the loan.

Some States and other institutions have deemed Loan Officers to be Loan Brokers in that they are negotiating on behalf of borrowers either for a multitude of lenders, or for one particular company.

I hope that my commentary here has been enlightening and will prove fruitful in the pursuit of Mortgage Lending and Loan Officer licensing.

Listed below is an outline of Educational items that would be appropriate for Loan Officer and Lender/Broker licensing.

Sincerely,

Shellie Buck

President Platinum Funding Group, Inc.

Platform for Education and Licensing

1. Pre-Requisite
 - a) Application for license which includes testament of knowledge and experience, and successful completion of state approved test. If a first time Loan Officer a minimum of 20 hour state approved class time completion to be submitted with application.
 - b) Background investigation
 - c) Successful passing of a state approved examination

2. Recommendation of Course Curriculum for Loan Originator Licensing
 - a) Federal Truth in Lending Laws:
 - b) Ethics, Diversity and Sensitivity:
 - c) Practices of Residential Lending:
 - d) General Provisions of Lending Institutions such as FNMA, GNMA, FHLMC, FHA, VA and AHFC
 - e) State Law as it relates to the purchase of Residential Real Estate
 - f) Basic Mathematical Computations as it relates to Mortgages
 - g) Basic Processing and Underwriting process
 - h) Escrow, Title and Loan Settlement Procedures
 - i) Appraisal Basics (to be further defined)
 - j) Loan Default and Foreclosure Law

3. Recommendation of Course Curriculum for Owner Broker/Originator Licensing
 - a) All of the above
 - b) Appraisals and land surveys
 - c) Mortgage servicing
 - d) Escrow accounts for taxes and insurance
 - e) Payoffs
 - f) Assumptions
 - g) Transfer of Servicing Rights
 - h) State Law as it relates to the operations of a mortgage brokerage or residential lending entity (to be further defined)

4. Recommendation of Continuing Education
 - a) minimum of 20 Hours of CE credits by state approved course work

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

CC: Senator Wagoner

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

Sirs,

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

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

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

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

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

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

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

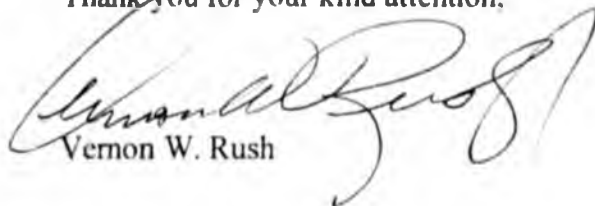
I would ask you to consider and recommend the following:

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

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

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

Thank you for your kind attention.

A handwritten signature in cursive script, appearing to read "Vernon W. Rush".

Vernon W. Rush

Constance Hartle

From: Cris / Kelstar Alaska [cris@kelstaralaska.com]
Sent: Tuesday, March 07, 2006 5:09 PM
To: Sen. Bettye Davis; Sen. Johnny Ellis; Sen. Ben Stevens; Sen. Ralph Seekins; Sen. Con Bunde
Subject: Written Testimony / Public Hearing SB272

Dear Senator Bunde and members of the Committee.

I would like to begin by saying "thank you" for allowing input in reference to SB272. For the record my name is Cris Skinner, president/broker of Kelstar Financial of Alaska, Mortgage Company. I am also on the legislative committee of the Alaska Association of Mortgage Brokers.

As a professional in the industry, I believe the Bill in its current form is hollow. It is a fact the majority of consumer complaints are due to questionable activities at the Mortgage Loan Originators level. By the time the client file reaches the lender, the damage to the consumer has already taken place. The licensing and education of loan originators **MUST** be incorporated in this Bill for effective consumer protection. Licensing by loan originators is being pushed even on a National Level. Our organization has been working with the Division of Banking on a Bill which includes loan originators licensing and continued education, encompassing all aspects of the lending process, thus ensuring true consumer protection. This Bill was pushed aside.

One main issue of the current Bill which lacks merit is it allows far too many exemptions and again not in the best interest of the consumer. Consumer complaints have been made to the Division of Banking against all entities, even those who are exempt under this Bill. I formally request this committee ask the Division of Banking for documentation of consumer complaints that may prove the entities exempt under this bill are also the subject of consumer complaints. The verbiage in this Bill has many gray areas and clarification is needed, especially in regards to the exemptions. My question to the committee is how much of the industry is being licensed and how many are exempt? We need to re-evaluate and remove some of these exemptions in order to provide true consumer protection. With this Bill it is evident that small independent brokers will be regulated and licensed. This Bill will impose financial burdens and cause small brokers operating costs to increase, thus passed on to the consumer. Or it may even cause small business owners to close their doors, again taking options away from consumer. As a small business owner, it seems apparent this Bill is designed to target small entities and is questionable with regards to Fair Trade and Small Business protection. I run a highly ethical and honest company and am an advocate for the consumer.

I am asking the committee to take all issues into consideration prior to passing this Bill. Ask yourself if this is true consumer protection or is it to limit competition by the larger entities. It has also been said "Any licensing is better than no licensing". I firmly disagree. The outcome of licensing in this Bill will not provide enough protection to the consumer due to the numerous exemptions. It will also take options away from the consumer and allow larger entities to monopolize the market.

Other areas of concern as to the content and verbiage:

Sec 06.60.060 Bonding (E): *If the department determines at any time that the bond required*

under (a) of this section is unsatisfactory for any reason...the department may require an additional bond... My question is who makes this decision and under what terms will the bond be rejected.

Sec 06.60.080 Determinations for licensing (2) the financial responsibility, experience, character, and general fitness of the applicant, and of the applicants members and officers...
 Financial responsibility: based on what, personal/business? If a person has severe medical problems and has to file bankruptcy due to enormous medical bills...will this disqualify them.
 Experience: who determines what experience and if there are no education requirements how can anyone determine experience? Character: Who is the judge of character? I truly believe there is only one, who is a much higher authority, who has the right to judge. Also, sometimes someone just may not like the other person and therefore make false judgements on their character. General Fitness: This is just bizarre in itself. Again, this section needs much further explanation.

Sec 06.60.420 Prohibited Activities This section in itself is an important part of licensing and regulation and should include more about predatory lending. However, I feel the penalties should be define and separated with reference to what degree of the prohibited activity. For example, withholding an appraisal fee due to fault on the appraiser is a much lower level. Fraudulently taking money from a client or overcharging a client for 3rd party services would be a more serious crime and should have a higher penalty. Again, to many gray areas in the wording of this Bill.

Also in the section under (11) - There are times when the client may alter their credit in some manner after the initial approval for a specific program. An example of this would be obtaining a new liability prior to the closing date, causing the debt-to-income ratio to increase, thus disqualifying themselves from the original program guidelines. The wording in this section allows for NO exceptions to its rules, therefore requiring the licensee to be punished under circumstances beyond their control. Again, clarification is needed.

Thank you for time and consideration in this matter.

Respectfully submitted,

Cris Skinner

Sr. Mortgage Consultant

President/Owner

Former U.S. Marine

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CONFIDENTIALITY NOTICE

This electronic message and any documents accompanying it may contain confidential information. The information is intended only for the use of the individual(s) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distributing, or the taking of action in reliance on the contents of this information

3/8/2006

* Revised letter

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

March 7, 2006

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

RE: SB 272/HB 424

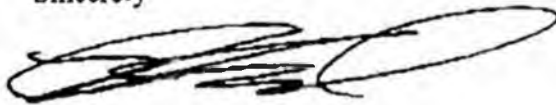
Dear Senator Bunde,

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

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

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

Sincerely



Kevin M. Breeland
President
Alaska Mortgage Bankers Association
907-222-8823 direct line
907-743-9623 fax
www.akmba.org
breelandk@residentialmtg.com

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

Draft CS SB272 (L&C)/version I
Mortgage Lending
Department of Commerce, Community, and Economic Development
Division of Banking and Securities
Talking Points
7 March 2006

- The Division of Banking and Securities has been working with a variety of industry groups with respect to these bills.
- Alaska is the only state in the United States which has no regulation over mortgages and mortgage lending.
- The division receives about 50 telephone calls a week regarding mortgage lending on its predatory Lending referral Hotline, which it operates with the Department of Law.
- With respect to many of these complaints, the division can take no action because mortgage companies are not licensed by the state.
- Because of the need for regulation and consumer protection, the division supports the concepts contained in this legislation.
- The division received this committee substitute on March 2 at which time the division staff and the Department of Law's Consumer Protection Section reviewed it.
- We support this legislation but recognize that it may need some refinement in order to protect consumers and to provide the authority that both the Division and the Department of Law should have to effectively regulate abuses in this industry.
- With respect to enforcement, the key provisions in the legislation are at Section 06...60.420 which prohibits a variety of deceptive or unfair practices.
- However, we should not make these provisions the **exclusive remedy** and the division supports adding a provision to make clear that nothing in this chapter excludes the jurisdiction of the Department of Law under the Consumer Protection Act.
- The enforcement procedures under this proposed act also need clarification. For example the bill at Section 06.60.530 provides for a substantial civil penalty of \$10,000, but does not give the division the power to order restitution to an aggrieved consumer.

- This civil penalty provision also uses a standard that all violations must be “knowingly”, which difficult standard to apply to a corporation or LLC.
- Procedural enforcement issues should also be addressed and the division is working with the Department of Law on certain technical changes that will be needed to ensure that this bill strikes a good balance between regulatory burdens and enforcement. For example, it should be made clear that a licensee is responsible for the conduct of its employees.
- We believe that more mortgage companies would do business in Alaska if we had licensing.
- Absent regulation, Alaska may be attracting undesirable mortgage companies located outside the state because we are the last unregulated state.
- Licensing will provide stability to the industry and provides a needed framework to effectuate consumer protection.
- In sum, the regulatory frame work contained in this bill is positive and we welcome the opportunity to work with the sponsor and with industry to address some of the points we have raised.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 272
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	259.2	228.4	348.5	348.5	348.5	348.5
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Mark Davis, Director Phone 907.269.8144
Division: Banking & Securities Date/Time 3/6/06 2:57 PM
Approved by: William C. Noll, Commissioner Date 3/6/2006
Agency: Commerce, Community, and Economic Development

FISCAL NOTE

**STATE OF ALASKA
2006 LEGISLATIVE SESSION**

BILL NO. SB 272

ANALYSIS CONTINUATION

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



Official Business

ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER

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

Session: January - May

State Capitol, #427

Juneau, AK 99801

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

Interim: May - December

145 Main Street Loop; Suite 226

Kenai, AK 99611

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

SPONSOR STATEMENT SENATE BILL 272

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

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

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

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

INDEPENDENT LENDERS OF ALASKA

5313 ARCTIC BLVD., SUITE 206

ANCHORAGE, AK 99518

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

February 27, 2006

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

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

Dear Senator Bunde:

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

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

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

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

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

Sincerely,

Independent Lenders of Alaska



Kenneth Jay Gain,
Secretary/Treasurer



ALASKA ASSOCIATION OF REALTORS, INC.
4203 Mission Drive Anchorage, Alaska 99503
Telephone (907) 563-7133 Fax (907) 561-1779
www.alaskarealtors.com

February 28, 2006

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

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

Dear Senator Wagoner,

The Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 424, which relates to the licensing of the mortgage lending industry in Alaska.

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

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

The Association encourages the passage of Senate Bill 272.

Sincerely,

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

Don McKenzie
AAR President



LEGAL SERVICES

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

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

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

MEMORANDUM

March 1, 2006

SUBJECT: CSSB 272(L&C) relating to mortgage lending
(Work Order No. 24-LS1644V)

TO: Senator Con Bunde
Chair of the Senate Labor and Commerce Committee
Attn: Jane

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Program administration fee. With regard to the program administration fee described under AS 06.60.600, is this fee to be required by, or paid to, the recorder when the document is recorded? If so, the recording statutes (AS 40.17) may need to be amended to reflect this additional fee. In addition, did you want to describe the purpose for charging the fee?
2. Exemption. Although you have said that you do not want to include any standards, there should be some standards set for when the department can approve the agreement between the independent contractor and the exempt entity in sec. 06.60.010. What would you like?

If I may be of further assistance, please advise.

TLB:med
06-171.med

Enclosure

24-LS1644V
Bannister
3/1/06

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

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): 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; and providing for an effective date."

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

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

6 **Chapter 60. Mortgage Lending.**

7 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

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

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

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

20 (B) "qualified individual" means an individual

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) be in writing;

25 (2) be made under oath or affirmation;

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

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

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

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

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

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

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

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

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

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

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

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

1 required to file more than one bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 revoked or suspended under AS 06.60.300 or surrendered by the licensee under AS 06.60.310.

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

Article 2. Licensee Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (d) In this section.

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

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

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

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

12 (A) AS 11.46;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 agreement to make a mortgage loan;

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

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

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

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

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

14 (A) consider additional appropriate property information;

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

17 (C) correct errors in the appraisal report;

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

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

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

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

1 borrowers; this paragraph does not apply if

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Article 5. Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **Article 7. Miscellaneous Provisions.**

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

1 department.

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

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

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

9 **Article 8. General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (11) "mortgage loan"

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

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

13 (C) does not include loans

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

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

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

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

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

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

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

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

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

1 Lending Act of 2006.

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

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

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

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

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

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

20 * Sec. 5. Section 4 of this Act takes effect immediately under AS 01.10.070(c).

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

Sectional Analysis
HB424/SB 272 Mortgage Lending

(Ver. 24-LS1644\Y includes changes made by T. Bannister as of 2/23/2006)

Department of Commerce, Community, and Economic Development
Division of Banking & Securities

1 March 2006

This legislation brings the business of mortgage lending and brokering under the supervision of the Division of Banking & Securities (Division). In this sectional, the legislation is referred to as "Act."

***Sec 1**

Article 1. Licensing.

- Sec. 06.60.010** Subjects mortgage lenders and brokers to licensing.
- Sec. 06.60.020** List various exemptions from licensing under this Act.
- Sec. 06.60.030** Provides the requirements for licensure under the Act.
- Sec. 06.60.040** Requires the Division to investigate applications for a license under the Act.
- Sec. 06.60.050** Requires the initial license fee to be submitted with the application.
- Sec. 06.60.060** Sets out bonding requirements and amounts and give the Division authority to increase the amount set in this section.
- Sec. 06.60.070** Requires the Division to issue a license, or reason for refusal to license, within 90 days of the filing of the application.
- Sec. 06.60.080** Details some things the Division must consider in its determination of whether or not to issue a license.
- Sec. 06.60.090** Contains a list of additional grounds for disapproving a license.
- Sec. 06.60.100** Give the Division the authority to define the form of the application and requires the licensee to supply an address for where business will be conducted, and includes the Internet, if appropriate.
- Sec. 06.60.110** Gives duration of a license and prohibits the transfer of a license.

Article 2. Licensee Obligations.

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

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

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

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

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

Sec. 06.60.250 Provides guidance/requirements for record keeping.

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

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

Sec. 06.60.230 Sets out minimum net worth requirements for licensees.

Sec. 06.60.290 Requires the license to be posted.

Article 3. Discipline of Licensee.

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

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

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

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

Sec. 06.60.340 Specifies a requirement and purpose for examination of licensees. Frequency of at least every 3 years! Also sets out requirement for the Division to be reimbursed for expenses of conducting examinations.

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

Sec. 06.60.360 Provides authority to Division to make rulings, demands, or findings addressing proper conduct of a licensee.

Article 4. Business Duties and Restrictions.

Sec. 06.60.400 Prohibits licensee from making false, misleading, or deceptive statements.

Sec. 06.60.410 Subject a person, if pertinent, to various federal regulations.

Sec. 06.60.420 Give a laundry list of prohibited activities of a licensee.

Sec. 06.60.430 Set restrictions for the refinancing of a mortgage loan done within 12 months of its origination.

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

Article 5. Enforcement.

Sec. 06.60.500 This section defines when the Division can issue a "stop" order. I believe "stop" must be used instead of the Divisions usual use of "cease and desist" orders. If the Division does not act on a request for a hearing, the order is considered rescinded.

Sec. 06.60.510 Provides the process for making the "stop" order to become final.

Sec. 06.60.520 Provides authority and process for the Division to censure, suspend, or bar a licensee, and limits the period covered for such actions period of up to 12 months.

Sec. 06.60.530 Provides specific penalties for licensees conducting business in violation of the Act.

Article 6. Collection of Program Administration Fee.

Sec. 06.60.600 Provides authority for the Division to contract with a licensee or another person to act as an agent in conjunction collection of a program administration fee, and removes liability of the Division in conjunction for wrong doing of a contract agent.

Sec. 06.60.610 Provides for an agent of Sec. 06.60.600 to retain 25% of collected fees, to transmit collected fees on an annual basis by January 15, and for the Division to assess a penalty for late transmittal of fees to the Division.

Article 7. Miscellaneous Provisions.

Sec. 06.60.700 Triggers the Administrative Procedures Act for actions of the Division taken to deny, revoke, or suspend a license, and for hearings and orders.

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

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

Article 8. General provisions.

Sec. 06.60.990 Provides definitions for various terms used in this Act.

Sec. 06.60.995 Give short title for this Act as Mortgage Lending Act of 2006.

***Sec. 2**

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

***Sec. 3**

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

***Sec. 4**

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

***Sec. 5**

This makes *Sec. 4 effective immediately.

***Sec. 6**

Provides an effective date for the Act of July 1, 2007.

HB 424/SB 272: Mortgage Lending

Department of Commerce, Community, and Economic Development Division of Banking & Securities Talking Points

- The division has been working with a variety of industry groups, namely the Alaska Mortgage Bankers Association, Alaska Mortgage Brokers Association, and Independent Lenders Association for over one year.
- A group effort has been made to bring to the Legislature a bill that regulates the residential mortgage lending industry in a manner that promotes a healthy industry while balancing consumer protection.
- Legislation is needed because unfortunately a number of Alaskans have contacted the division asking for assistance in resolving mortgage complaints. Currently, the division has no authority to assist the public in the investigation of those complaints.
- Furthermore, Alaska is the last state to enact a framework for the regulation of mortgage lenders and brokers.
- This proposed Act will regulate lenders and brokers in Alaska as well as outside companies doing business here. The legislation is intended to address the following goals:
 - Protect Alaskans when they obtained a mortgage for the purchase of their homes.
 - Provide regulatory authority for the state to investigate, review and resolve consumer complaints about mortgage lenders and brokers.
 - Provide the necessary authority to regulate lender and brokers that solicit Alaskans for loans, but do not have a physical presence in the state. This will allow the division to supervise Internet-based lenders.
- We understand that the Department of Law is reviewing the legislation and will be providing comments.
- The division supports this legislation's continued review and eventual approval.

3/1/06

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

March 1, 2006

Senator Con Bunde
State Capitol, Room 506
Juneau, Alaska 99801-1182
ATTN: Jane Albert
FAXED 907-465-3871

RE: SB 272/HB 424

Dear Senator Bunde,

As President of Alaska Mortgage Bankers Association, I can't begin to tell you just how long this organization has been working on a Licensing Bill for the State of Alaska. In the past twelve months momentum has increased and our Association along with the Alaska Association of Mortgage Brokers and the Division of Banking have worked very closely in making a licensing bill a reality. I am sad to say that problems exist with SB 272/HB 424.

Without going into a line-by-line description of what the Alaska Mortgage Bankers Association finds problematic, I will briefly outline a few items that cause great concern. Two problem sections are as follows:

Section 06.60.020 Exemptions: Simply there are far too many of them. We have always objected to the exemption of a mortgage lender who makes six or fewer loans in a six month time frame. We believe any company, individual, or agency who originates mortgage loans with the exception of National Banks, State Banks, and Credit Unions should be licensed.

Section 06.60.420 Prohibited activities Items (10) (11): While I understand the intent of items (10) (11) they were added much later in the process, within the last three or four weeks. It is my opinion the membership of AMBA has not had adequate time to review this language nor do I believe the State or Division of Banking has thought through all of the potential ramifications these two items can create for Mortgage Lenders, Bankers, and Brokers. It is my belief this language will create confusion. While the intent is one thing, the courts, if any action is ever brought against and Bank, AMBA member, Mortgage Brokers, any entity engaged in the activity of Mortgage Loan Origination, this language could be interpreted differently by the courts.

While AMBA does not want to appear negative about the bill I can not in good consciouness offer AMBA's 100% support with these and other items still needing attention. AMBA and AMBA's legislative committee was worked endless hours on a Mortgage Licensing Bill. We will continue to work toward a licensing bill that provides the consumer protection that all of AMBA's members, in concert with the Alaska Association of Mortgage Brokers and the Division of Banking, desire. While we are closer to achieving this goal, SB 272/HB 424 does not quite achieve this goal.

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

Sincerely



Kevin M. Breeland
President
Alaska Mortgage Bankers Association
907-222-8823 direct line
907-743-9623 fax
www.akmba.org
breelandk@residentialmtg.com

Cc: Senator Thomas Wagoner
State Capitol
Juneau, Alaska

Representative Tom Anderson
State Capitol
Juneau, Alaska

Alaska Association of Mortgage Brokers
ATTN: Doug Issacson, President

John Carman
Legislative Committee Chair
Alaska Mortgage Bankers Association

Current AMBA Membership

Roger Prince
Division of Banking
State of Alaska

SB

273

SENATE COMMITTEE REPORT

TE: 3/3/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

For and Commerce Committee considered SENATE BILL NO. 273

SB 273 MOTOR VEHICLE SALES

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

Recommendations:

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

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

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>John Elkin</i>	X			
<i>Keith Deekin</i>	✓			
<i>Ben Johnson</i>	✓			
CHAIR: <i>A. Brande</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 273
 S) Publish Date: 3/3/06

Revision Date/Time (Note if correction): 2/28/06/ 11:24 a.m. Dept. Affected: Administration
 Title: An Act relating to a motor vehicle dealer's selling.. RDU: Division of Motor Vehicles
 Component: Motor Vehicles
 Sponsor: Senator Cowdery
 Requester: SITRA Component No. 2348

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends legislation relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties.

This bill will not have a fiscal impact on the Division of Motor Vehicles.

Prepared by: Duane Bannock, Director Phone (907) 269-5008
 Division: Motor Vehicles Date/Time 2/28/06 11:24 a.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/28/2006
 Agency: Administration

SENATOR
JOHN J. COWDERY

Anchorage

Committees

Chair: Rules

Chair: World Trade &

State/Federal Relations

Vice-Chair: Transportation

Legislative Council



Senate

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

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

Senator_John_Cowdery@legis.state.ak.us

Sponsor Statement

Senate Bill 273

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

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

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

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

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

February 21, 2006

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

Re: SB 273; Sale of Current Model Motor Vehicles

Dear Senator Cowdery;

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

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

Please let me know if you have any questions.

Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL

By:


Clyde E. Sniffen, Jr.

Assistant Attorney General

CES/sjm

HEARING CHECKLIST

Bill # and Title : _____

_____ Notice **Thursday** Before Hearing by 4pm
_____ Location Confirmed

_____ Notification of Admin, Testifiers
and Interested Parties

_____ Teleconference Set Up
(FAX form to Juncau LIO 465-2864)

_____ Sponsors' Packets Received

_____ Fiscal Note Requested

_____ Fiscal Note Received

_____ Members' Packets Prepared

_____ Recorder's Packet Prepared

_____ Members Packets Delivered

(Noon the day before hearing)

_____ Bill Analysis for Chair

_____ Agenda Script prepared and approved

_____ Teleconference Packet Sent Over to LIO

_____ Prepare list of testifiers for LIO tech

_____ Hearing Location Prepared?

Sign in sheets ... Ann to bring

Coffee, water, tea set-up ..Pages

Testifiers

Contact Info:

1.

2. *Ed Sniffen*

3. *Jon Cook*

4.

5.

6.

7.

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9.

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